

BusinessLine

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India against investors?

That's the story emerging from the caprices of the Andhra Pradesh government

We've had two reminders this week of just how perilous it can be to do business in India. Announcing Vodafone's quarterly results, the company's global CEO Nick Read said its India operations, beset by huge tax demands and need to invest in costly spectrum, were on the verge of collapse. He later said he'd been misquoted, but rumours have already been doing the rounds that Vodafone will find it tough to continue here, hit as it has been by multiple adversities. Almost simultaneously, Singapore released a bland press release saying the city-state's companies would keep investing in India even though the Jaganmohan Reddy government in Andhra Pradesh on Monday cancelled the Amravati mega-project to build a new capital city for the State. "The Singapore Consortium companies have stated the project has cost them a few million dollars, and its closure does not impact their investment plans in India," said Singapore's Ministry of Trade and Industry (MTI). Several renewable energy companies have also been battling the Andhra Pradesh government in court because the State government has peremptorily demanded they slash rates and the State's distribution companies have cut back on power taken from them. Renewable energy companies have made large investments in the State.

Today, though India likes to boast it's risen 14 notches to 63rd position in the World Bank's ease of doing business index, the fact is international investors have become more wary than ever of investing in India. This could account for why so few companies being forced to shift base from China are considering India as an alternative. A study by Japanese financial powerhouse Nomura found out of 56 companies moving from China between April 2018 and August 2019, 26 were heading for Vietnam and another 11 to Taiwan (though this figure might include some Taiwanese firms shifting back). Another eight switched their manufacturing base to Thailand. India was way down the charts with three companies coming here while two went to Indonesia, ASEAN's biggest market.

The list of companies that have come a cropper or faced difficulties in India is lengthening by the day. Some have been hit by extortionate tax demands, other by court rulings and others by almost whimsical State government decisions. Bihar Chief Minister Nitish Kumar wooed Carlsberg to set up a brewery and then three years later shut it down after imposing prohibition in 2016. Nokia was forced to leave the country after receiving a whopping tax demand. Now, Amazon and Walmart, are having difficulty coping with the chopping and changing rules and there are even murmurs Walmart might sell and leave the country. If that were to happen the damage to India's reputation would be incalculable. Governments at the Central and State levels would do well to stop changing the rules of the game, before investors conclude India's just not worth the risk.

FROM THE VIEWROOM

Regulating e-commerce business

The draft rules are ambiguous on issues such as discounts

The traders' association is pleased with the draft e-commerce rules, The Consumer Protection (e-commerce) Rules, 2019, issued by the Department of Consumers Affairs earlier this week. They reckon such rules will curb the so-called malpractices of e-commerce companies that are intended to destroy the domestic trade and mislead consumers. There is no denying that the proposed rules seek to bring transparency in the delivered price of products bought on an e-commerce platform, set out refund rules, and require sellers to be responsible for warranty and guarantee of the goods and services sold and also provide upfront information on the exchange, returns and refund process.

The obligations on e-commerce companies to process and effect refund requests of customers within 14 days and remove the listing of sellers found selling fakes will ensure that counterfeit products are not sold on their platform.

However, many clauses of the draft rules are ambiguous, short on definitions and open to interpretation. For instance, an e-commerce entity has been defined in the draft rules, but e-commerce as a business has not been defined. That definition appears in the press notes on FDI in e-commerce but has not been referenced in the draft rules of the Consumer Affairs Department. There is also a perception from the reading of the draft rules that the government is attempting to put pricing curbs on e-commerce entities with foreign equity. However, the government's position on the level of discounts that e-commerce platforms offer from time to time is not clear. The rules state that e-commerce entities shall maintain a level-playing field and not influence prices directly or indirectly. One view is that this specific rule would apply only to platforms that follow the marketplace model, and by implication to the ones that have some element of foreign ownership, although the rule does not state that explicitly. Under the current FDI rules, e-commerce platforms that have foreign investment can only follow the marketplace model.

Tina Edwin Senior Deputy Editor

Retail investors hurt in DHFL free-for-all

None of the safeguards that are supposed to protect retail investors in NCDs has worked as they should

AARATI KRISHNAN
CIRCUIT BREAKER

Ever since Cobrapost made its sensational financial scam allegations against Dewan Housing Finance in January this year, the DHFL saga has unfurled like a prime-time mega serial, with so many twists and turns to the plot that most folks have lost track of it.

But for any investor who dabbles in the Indian bond market, this case is a good illustration of how Murphy's Law can operate on one's investments.

Retail investors who were unlucky enough to participate in any of the multiple tranches of DHFL NCDs (non-convertible debentures), have found that none of the regulatory safeguards that were supposed to protect their interests have worked as they should.

Mercurial ratings

To help retail investors navigate the minefield of debt investing, regulators place considerable faith on the opinions of rating agencies. SEBI's (Issue and Listing of Debt Securities) Regulations make it mandatory for all NCD issuers to obtain credit ratings from at least one rating agency and to disclose this in their offer documents.

But investors who bet big money on DHFL bonds based on their top-notch credit ratings have had every reason to rue their decision. When DHFL issued its series of NCDs between 2015 and 2018, it enjoyed high investment grade credit ratings from not just one, but multiple rating agencies. Then,

CARE and Brickworks rated its NCDs AAA, while CRISIL and ICRA rated its commercial paper issues A1+.

After the Cobrapost allegations, in February 2019, the rating agencies sought to hedge their bets by lowering the NCD ratings to AA+, but they remained high investment grade, with hopes pinned on asset monetisation. It was only in June 2019, after an actual instance of default by DHFL, that the rating agencies made bold to peg down its ratings to D (default grade). The DHFL case is not the first where rating agencies have scrambled to bolt the stable doors after the horses have bolted.

Given that rating agencies can change their minds on the credit-worthiness of an issuer any time after investors buy its bonds, it appears rather futile to place so much emphasis on ratings at the time of the issue.

Uncertain collateral

While investing in bonds, investors are often advised to prefer secured NCDs over unsecured bonds or fixed deposits, as in the case of any default the underlying collateral can be liquidated to meet one's dues. By this yardstick, most lenders to DHFL should have no reason to panic as ₹74,000 crore of its ₹84,000 crore debt, is from secured creditors.

But the case that Reliance Nippon AMC has been fighting against DHFL in Bombay High Court shows that, in India, the collateral backing your bonds can prove ephemeral too. The AMC had subscribed to multiple tranches of DHFL NCDs that were secured by a first charge on the company's receivables.

But it found that, while repeatedly defaulting on its dues to secured NCD holders between May and October 2019, DHFL had continued to make selective payments to unsecured creditors.

The AMC also alleged that DHFL



had defaulted on a few obligations, that it disclosed the company's failure to maintain adequate security for its NCDs of 2016-2018 vintage. DHFL had also skipped maintaining the 15 per cent Debenture Redemption Reserve required by the Companies Act from FY18. It was only after defaults surfaced that the trustee seems to have initiated legal action against DHFL for these slip-ups.

The trustee also proved less than forthcoming in its communications with bondholders. Writing to DHFL's NCD holders for the first time in early August, it sought their written consent for an inter-creditor agreement and a draft resolution plan, offering rather sketchy details of what the plan entailed.

With quite a few retail investors either missing out on the communiqué or failing to grasp its import, just 24,400 of the 87,000 bondholders responded with their consent.

The details of this resolution plan, when they were finally made public in September, may have come as a shock to those who did respond. The plan proposed that NCD holders agree to defer their principal dues from DHFL for another ten years, with the company promising to use its future (uncertain) cash flows to repay their principal in instalments, with a modest 'return on investment' of 8.5 per cent.

Since then, an active skirmish has broken out between DHFL's big

lenders on this plan. While the banks seem keen to push ahead with it, institutional bondholders such as mutual funds appear to be resisting it on the grounds that the haircut is too steep. In October, Catalyst Trusteeship finally moved the Debt Recovery Tribunal on behalf of NCD holders.

But with a recent forensic audit by KPMG reportedly raising new red flags on DHFL's loan book, an Enforcement Directorate investigation has kicked off, nipping hopes for a quick resolution in the bud.

Passive regulators

As this free-for-all has been playing out over the last nine months, both the National Housing Bank — the sector regulator for housing finance — and SEBI — the de facto regulator for bond markets — have been largely passive spectators, doing little to help retail investors caught in the cross-fire.

Had regulators ordered a third-party forensic audit on DHFL's books immediately after the Cobrapost allegations, the problems may have come to light earlier, making for a more orderly resolution.

Had they intervened to ensure that DHFL and the debenture trustee kept retail investors informed as they engaged in hectic parleys with institutions, retail investors could have made more informed decisions instead of groping in the dark.

Overall, the DHFL case goes to show that the regulation and functioning of the Indian market for bond issues is today at the same rudimentary state that its IPO market used to be in the mid-1990s.

Until the conduct of bond market participants and the enforcement of regulations are brought up to scratch, small investors must perhaps be discouraged from directly subscribing to NCDs, through a high minimum ticket size and prominent disclaimers on the risk of capital losses.

Crack down on piracy in entertainment biz

The government machinery must be empowered to block infringing websites and apps and prevent counterfeit products

BLAISE FERNANDES

The Central government has shown foresight in identifying the media and entertainment industry as a champion sector. In the creative world, the tiniest idea gives birth to stories which take the form of various visual and performing arts. There are many livelihoods involved in the creation of films, music, literature and art, the entire creative process has investments and economics driving the sector and contributing to the GDP.

In Asia, K-Pop today contributes \$5 billion to the South Korean economy — the leading player of K-Pop, Big Tree Entertainment today has a market valuation of \$1 billion. Per FICCI-EY 2019 report, the media and entertainment industry in India is estimated to have revenues of approximately \$25 billion.

For our country, with a rich diversity and cultural heritage there are many stories to tell, but as long as there are a high percentage of revenue leakages in the monetisation chain because of piracy, fair value to all stakeholders in the cre-

ative process will always remain a pipe dream and champion status will always elude us. The government has addressed this concern recently, but the time has now come to introduce administrative measures which will empower the executive and bring immediate and long-term relief to this cancer called piracy of content.

Cheap data and smartphone penetration have proved to be a double-edged sword. Though they have helped the Indian recorded music industry cross the ₹1,000 crore mark for the first time, as per the IFPI-IMI Digital Music Study '19, piracy is still pegged at 67 per cent and causes an estimated revenue loss of ₹1,500 crore annually.

Administrative measures

Like cancer, piracy will need chemotherapy and the prescribed course of action which will be most effective is through administrative measures — the executive at the Centre and State need to be empowered to block infringing websites and apps in the digital space, and in the physical space preventing counterfeit products.



Strengthen content protection ISTOCK

The palliative care to this cancer is via digital civics where it is important that the public at large needs to be educated about the potential financial threat of accessing content illegally. As per RAND reports, entertainment piracy operations have close links to terror organisations and crime syndicates.

Cell for IPR Promotion and Management (CIPAM), an initiative of the Ministry of Commerce, has made a good start to spreading digital civics, but efforts need to be ramped up — both monetarily and professionally. The MCDU (Maharashtra Cyber Digital Crime Unit) project in Mumbai is a much-

needed initiative as a B2G (business to government) partnership where industry has made monetary and technical collaborations with a State initiative.

The Maharashtra B2G initiative should be rolled out initially to other high potential creative States such as Karnataka, Kerala, West Bengal, Andhra Pradesh, Tamil Nadu with immediate effect — and in Phase 2 to the rest of the country.

The creative industry, the telecom operators and the Chinese government introduced the "Sword Net Action", an annual anti-piracy programme under which the music industry files 200-500 administrative complaints, of which, 80-90 per cent are resolved successfully every year.

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However, India has a low take-down rate of 37 per cent while in China it is 97 per cent.

This is the same Chinese Digital Ecosystem where as recently as 2013, the take-down time was two weeks and two days, but now stands at two hours, highlighting the collaborative work done by the Chinese administration, telecom service providers and creative industry stakeholders on the back of administrative measures for piracy.

As per IFPI, in 2019, there were 467 websites hosting illegal Indian content outside India, the number of apps embedded with pirated Indian content grows by the hour.

It is time that India uses every diplomatic platform or forum be it at the bi-lateral level via the FTAs or multi-lateral trade pacts such as BIMSTEC and RCEP to ensure greater enforcement of media and entertainment content infringement and seek content protection for the Indian creative industry. Maybe it is time for our own India 301 annual report.

The writer is President and CEO, Indian Music Industry

LETTERS TO THE EDITOR

Send your letters by email to bleditor@thehindu.co.in or by post to 'Letters to the Editor', The Hindu Business Line, Kasturi Buildings, 859-860, Anna Salai, Chennai 600002.

Pollution control

This is with reference to 'Addressing the issues of India Invisible' (November 14). The issue of pollution and controlling traffic in Delhi and other major cities has been debated for a long time without any amicable solution. More than strict rules, educating people on the hazards of pollution and traffic jams will be more beneficial. Without people's co-operation and awareness, problems relating to traffic and air pollution cannot be solved. A efficient public transport system will not only reduce road traffic but also pollution levels and save fuel. Point-to-point services should also be encouraged.

Second, government servants are many a times given official vehicles. They should be allowed to use their vehicles only for emergencies and should be asked to use public transport. The odd-even scheme is also a good move on the part of the Delhi government. If it is

successful, it can be implemented in other cities. Third, no scheme will be successful without the whole-hearted participation of the people. NGOs, teachers, students and artistes should be roped in to sensitise the people.

Veena Shenoy
Thane

Corruption problem

Apropos 'Infra projects need a unified management' (November 14). The write-up focusses on systems improvement in project and programme management. However, the other major cause for delays and cost overruns is corrupt practices. This starts with the overestimation of the cost of a project and continues during implementation by granting extensions to the contractors for a price.

Given the fact that the budgeted infrastructure investment is ₹5.97 lakh crore this year itself, and would be a high ₹304 lakh crore up

to the year 2040, the suggestion to include project management as a regular course in schools is welcome. This has to be supplemented at the organisational level by strengthening the internal audit system, encouraging and rewarding whistleblowing and penalising corrupt practices quickly and heavily.

YG Chouksey
Pune

Bank scam

This refers to 'BMS union raises red flag over alleged fraudulent activities at Syndicate Bank' (November 14). It is shocking to hear of the alleged scam which resulted in ₹300-crore NPAs in the bank's books. The union has also claimed that large cash withdrawals were allowed from the builder's OD account facilitating money laundering, huge tax evasion and issuance of fraudulent bank guarantees to the borrower's joint ventures. If the

charges are true, it raises troubling questions over the bank's credit appraisal norms, its pre- and post-inspection procedures and the monitoring of the advances.

The Union Minister of State for Finance, Anurag Thakur, recently assured that there would be "no witch-hunt of bankers who take genuine decisions", the operative word being "genuine". The government wants banks to lend to the various sectors of the economy. However, lending should always be subject to asset quality and prudential norms. Where corruption is involved, strictest action needs to be taken against the errant officials and the borrowers concerned.

V Jayaraman
Chennai

Right to know

The verdict of Supreme Court which opens the office of Chief Justice to public scrutiny under RTI is historic, as it would strengthen

the efforts to usher in an era of transparency in the functioning of higher judiciary. While the judiciary enjoys high public trust, it has long shied away from subjecting itself to public scrutiny. The concerns over secrecy afflicting the present collegium system of appointment and transfer of judges are genuine. While executives have had no problem in disclosing the reasons for rejecting collegium recommendations, the Supreme Court's defence remains absent from public debate. The landmark ruling allows public to seek information on appointment and transfer of judges, but the reasons behind these recommendations could still be clouded in secrecy as decisions of the collegium are largely based on reports from the Intelligence Bureau which is exempted from providing information sought through RTI.

M Jeyaram
Sholavandan, TN