

What Does Limited Liability Mean Here?

Lazy banking throttles entrepreneurship

A bankruptcy court has reportedly ruled that a promoter cannot escape liquidation of her personal assets by simply filing for bankruptcy. Going after the personal assets of a promoter is a flagrant violation of the principle of limited liability. It throttles entrepreneurship, especially for small businesses. The Insolvency and Bankruptcy Code provides a moratorium on all legal proceedings—for a finite window—till the completion of the resolution process. The failure to arrive at a resolution would entail liquidation of the company. Rightly, the law upholds the principle of limited liability; it allows only the attachment of assets of the company under liquidation, and not the assets of the promoters. However, the court, while admitting a voluntary bankruptcy petition of Schweitzer Systemtek, observed that the promoters had pledged their assets to the borrower. This could be valid on technical grounds. But it reflects a systemic bias against risk-taking and entrepreneurship.

The Companies Act seeks to safeguard the principle of limited liability, albeit only for a small class of shareholders—those who incorporate the “single person company”. Only the equity of the promoter is at risk. This should be the case for all promoters. There should be no personal liability

on promoters beyond risk capital that they have invested in the company. It is absurd that an entrepreneur has to risk her family’s future to secure a loan. However, banks, backed by the RBI, insist on personal guarantees to check the tendency of promoters to exploit legal delays. The regulator’s rules on strategic debt restructuring say that the general principle of restructuring should be that the shareholders bear the first loss rather than the lenders. Personal guarantees and commitments obtained from promoters should also cover losses incurred by lenders.

So, banks have been asked to devise appropriate ways to invoke or release personal guarantees based on the principle of reasonable satisfaction of lenders’ claims. With banks now using the bankruptcy code, the case for them to dispense with personal guarantees is compelling.



Mayawati Must Forge Alliances, to Hold

Mayawati’s resignation from the Rajya Sabha shows readiness to play the most aggressive game possible with the bad hand she has been dealt. True, the cause she wanted to champion in the Rajya Sabha speech that was cut short, protesting against which she resigned, violence against her core constituency of Dalits, is of the utmost significance. But it is not just the intrinsic importance of the subject that made her protest, but also her need to fight growing political irrelevance, after her share of the vote in Uttar Pradesh has stagnated at about 25% or lower in the elections since 2007. What she needs to do is to abandon her penchant for going it alone. Only as an ally of larger parties can she hope to stay relevant to her Dalit supporters and to the larger polity.

Nobody doubts her personal achievements: as a Dalit and a woman, she has broken through many glass ceilings. She ruled UP briefly in 1995, 1997 and 2002-03. In 2007, she came to power with a majority, by forging an alliance of Dalit and upper-caste voters. Today, she is much depleted, winning just 80 and 19 seats, respectively, in the 2012 and 2017 assembly elections, although she got 26% and 22% of the vote. She got no seats in the 2014 Lok Sabha elections. She shunned allies in the 2017 assembly polls, and lost heavily. Even her core supporters might desert an assured loser.

Mayawati is no stranger to taking a helping hand from other parties. In 1993, she supported Mulayam Singh of the Samajwadi Party, but toppled him in 1995, becoming chief minister with the BJP’s support. The BJP lent her a hand again in 1997 and 2002. Mayawati knows it is natural for big, national parties to disrupt or co-opt smaller players. But now she cannot go it alone and win UP. The choice is stark: alliance or irrelevance. Mere resignation from Parliament will not help.



Gender reassignment should not be confined to only one sex

Say, Dr Who isn’t the Only Shape-Changer!

The writing has been on the wall ever since Dame Judi Dench became M. A female Jemma (or even Jamila) Bond may yet be a few movies away, but Dr Who has appropriately taken the plunge and morphed into a woman in the latest avatar. Clearly, that has caused some consternation, given that the Merriam-Webster dictionary has been galvanised into tweeting an instant corroboration of the hit series’ decision by clarifying that ‘Doctor’ has no gender. Neither do scientist, banker, engineer, lawyer and architect; or, for that matter, thief, tycoon or psychopath. But then again, they have not been immortalised on the small screen as a time-travelling, shape-changing alien. At a time when nurse, nanny, secretary, plumber and even Potus have lost their implicit gender segregation, this is an inevitable gender transformation. In any case, the very English Dr John Watson has already become Joan and Chinese-American.

From Hamlet to The Mighty Thor and The Ghostbusters, male protagonists’ roles are increasingly giving way to gender reassignment. That, of course, begs the question of why there is no equivalent movement in the opposite direction too. A sweet old Mr Marple, a male devil wearing Prada, an endearing Mario in Sound of Music or a cute young Theodore in The Wizard of Oz could be a politically correct beginning.

The Essar verdict was a validation of the new Bankruptcy Code. But the code faces more tests

Viva Insolvency Resolution!



Aparna Ravi

When the Insolvency and Bankruptcy Code came into effect late last year, sceptics pointed out that the time-bound process contemplated by the code could easily be derailed if one of the affected parties were to file legal challenges in the high courts, which could drag on for months. Essar Steel’s recent petition in the Gujarat High Court against the RBI and two banks provided the first high-profile test case for how a court might deal with such a scenario. And it appears that the judgement has passed the initial test.

On May 22, an Ordinance amending the Banking Regulation Act was approved, which gave the RBI powers to direct banking companies to initiate insolvency proceedings under the Code. The RBI subsequently issued a press release on June 13 identifying 12 debtors in default, totalling about 25% of the gross non-performing assets (NPAs) of the banking system, that would be referred for resolution under the Code.

Essar Steel was one of these debtors and, following the RBI’s directive, the State Bank of India (SBI) filed an application with the National Company Law Tribunal (NCLT) for commencing insolvency resolution proceedings against Essar under the Code. Separately, Standard Chartered Bank (SCB) also initiated insolvency proceedings against Essar.

Essar’s primary challenge was to the RBI’s press release that, it alleged, unfairly discriminated against Essar by using arbitrary criteria to determine which debtors would qualify for reference under the Code. Further, Essar pointed out that the RBI had overstepped its boundaries by trying to control how the NCLT was to manage cases under the Code.

Essar also challenged the ability of the SBI and SCB to initiate insolvency proceedings, stating, among other things, that both these banks were in restructuring discussions with Essar. It added that the appointment of an insolvency resolution professional would have disastrous consequences on Essar’s business.

In Danger, Press ‘Release’

This case does give rise to some legitimate questions on the role of the RBI in directing banks to file applications under the Code. By the RBI’s own admission, its June 13 press release did overstep its jurisdiction, causing it to issue a corrigendum deleting the sentence from the press release which stated that “[s]uch cases will be accorded priority by the National Company Law Tribunal”.

However, the high court correctly dismissed the petition primarily on two considerations. First, that the Ordinance amending the Banking Regulation Act permitted the RBI to direct banks to take action under the Code. Second, and more important, the court recognised that the banks had the right to initiate insolvency proceedings against Essar independent of the RBI directive.

A proceeding under the Code may be filed by any financial creditor of a debtor in default. And, as such, both the SBI and SCB had a right to initiate proceedings, regardless of whether the RBI could direct them to do so. As



Impressive shutter speed

a result, the court held that the insolvency proceedings would continue and be heard by the NCLT on the merits of the case.

At the same time, the court clarified that it was not pronouncing on whether the insolvency applications against Essar should be admitted. It observed that the NCLT should determine this after giving Essar an opportunity to be heard.

The decision of the Gujarat High Court, as well as the relative speed with which it decided the case, sets a helpful precedent for the functioning of the Code as intended. The Code has been designed with strict timelines and objective criteria (a default of more than ₹1 lakh) for the NCLT to decide whether to admit an application. Once this is done, the NCLT steps into the background and allows creditors and debtor to come up with a resolution plan under the supervision of the resolution professional.

As the Code does not stipulate any particular type of resolution plan, Essar’s ongoing restructuring discussions with lenders could continue after its insolvency application is admitted by the NCLT. Essar can even submit a resolution plan to the resolution professional as a ‘resolution applicant’ under the Code.

There are, however, two crucial differences between a restructuring that takes place within the four corners of the Code and an out-of-court restructuring. First, any restructuring under the Code must be completed in 180 days (with a one-time 90-day extension in special cases), failing which the company goes into liquidation.

Solve-‘n’-See, a.k.a. Solvency

Second, once an application is admitted under the Code, the debtor loses control of the business that is taken over by the resolution professional. This second factor is the most likely reason for Essar’s strong resistance.

The Gujarat High Court’s decision is, of course, only a first step in the right direction. What remains to be seen—and is likely to be far more challenging—is whether Essar, and other cases admitted for insolvency resolution, are able to come up with a successful resolution plan.

While over 100 cases have been admitted under the Code, none of them has completed the corporate insolvency resolution process. This would be the next milestone under the Code to watch out for in the coming months.

The writer is counsel, Samvad Partners, Bengaluru

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GOODS & SERVICES TAX

Tax Reform’s Just One Bit of It



Krish Iyer

India has finally introduced the goods and services tax (GST) that is going to facilitate the creation of ‘one nation, one tax, one market’. This will not only positively affect key sectors of the economy, but it will also result in a host of benefits for end consumers by way of lower prices on a wide range of goods and services, greater transparency and formalisation of the economy.

GST will transform the way India conducts its business. This is due to the efficiencies created by a ‘single market’, the reduction of transaction costs in interstate movement of goods and services. While it is way too early to quantify the impact of GST on various sectors till its full implementation, this transformative reform should be extremely good for all sectors, including Indian retail.

An efficient transportation system is a prerequisite for driving higher GDP growth. Any transportation system has two critical elements: one, efficient infrastructure; two, free and smooth movement of goods across

the country. While the former is being addressed by GoI with significant investments and allocation of resources for physical and digital infrastructure, GST will remove the barriers for free movement of goods.

This will also enable manufacturers and retailers to work with 4-5 large efficient warehouses or distribution centres, instead of almost 29 warehouses or cost and freight (C&F) agents. This enables manufacturers and retailers to disintermediate the supply chain and reap the benefits of economies of scale. Savings in costs thus generated will eventually be passed on to consumers. The enormous positive multiplier effect of GST will unfold in the medium- to long-term, leading to higher GDP growth.

GST will also help in bringing down the prices of essential commodities. Businesses will be allowed to set off the output tax liability with taxes paid on procurement and, hence, lower the impact of indirect taxes in the value chain. Further, the incorporation of anti-profiteering provisions means that the benefit from GST will have to get passed to the end customer.

Also, the rate structure in GST is finalised in such a manner that on a net basis, household budgets are expected to get a relief. A lot of people are talking about multiple rates in the GST Act. GoI and the GST Council’s approach is calibrated



One country, one domino effect

and much needed.

The current system mandates a multi-rate structure so that different sectors have time to move to a more unified rate structure in the future. A single-rate GST regime would have created huge turbulence in the economy and would have impacted certain sectors, such as food, adversely.

GST’s implementation will improve accessibility of goods and services by changing the way logistics and warehousing operations are organised. Supply chain and retail operations in India will become more efficient.

Finally, GST imposes a tax obligation on firms dealing with unregistered suppliers. This may bring a large swathe of the informal economy into the tax bracket, thereby boosting revenue collections. These will eventually accrue to taxpayers through

various government schemes and programmes. Along with demonetisation, GST is the key reform to formalise the Indian economy.

India is a large country. Minor operational issues are, of course, expected during the transition phase. Once GST is implemented, customers will have a better understanding of tax levied on products and services they are buying or consuming.

The fact that it took almost 17 years to be brought about, shows how complex the whole process has been. With GST now a reality, it is important to appreciate that it is not just tax reform but a completely new way of conducting business intended to benefit consumers, manufacturers and the whole economy.

The writer is president, Walmart India

FUNNY BUSINESS

No, Don’t Shut Down Air India!



Anuvab Pal

There’s been a quiet push to consider selling Air India (AI). Here’s a request. Please, the good people in government, do not sell AI. Without it, we would all feel a little empty.

Complainers will stop complaining. Comedians will be bereft of jokes. Drunks on free booze will have no one to shout at. Airports will miss the crying customers. Pilots will have nothing to strike about. And politicians will have to show up on time to board a flight. Yes, the last one is cruel.

Also, Air India One is our Prime Minister’s carrier across the skies. How would it look if he had to fly Etihad 1 or IndiGo 1? I doubt if the Prime Minister of Israel would be as excited to receive him.

Also, the great mascot, the Maharaja, where’s he going to go? With

that moustache in the real world, he would look like an Indian assistant of Super Mario.

Some of you reading this are thinking, ‘Oh, c’mon. It isn’t such a bad airline.’ And therein lies the real intrigue of AI. Nobody knows what it is. Some even doubt if it is an airline or a really clever marketing campaign.

Many who’ve flown the Dreamliner to New York say it is the best flight they’ve ever taken. Others on the same flight say it is the worst flight



Ah, for the good old days

they’ve ever taken. The airline is, as Churchill said of Russia, a riddle, wrapped in a mystery, inside an enigma. And that’s just the economy class.

The real mystery is how AI ever made any destination at all, given the number of VIPs it has had to butter up. And the Sherlock Holmes’ mindset required by all AI staff to know which passenger is important. And once that gut instinct kicked in, they’d make the plane wait, like a private car, till the VIP had boarded.

VIPs feel like it is their private plane. But it is a sixth sense, really, among the flight attendants—knowing who matters, keeping up with current affairs. When the flight staff of other airlines insists on a particular departure time, AI insists on making sure the whole plane knows who the VIP is. And not just the VIP, but his cousins, friends, animals, his deceased loved ones, anyone.

All in all, AI is a microcosm of India’s class system, inside one airplane.

And we haven’t even talked of the non-VIP customers, shouting at air hostesses like it were a local train platform and they were negotiating tomato prices. I once saw a gentleman so drunk on the free booze that he’d fallen off to sleep in the toilet.

Sadly, those were the old days. Nowadays, there’s ticketing. No tolerance for being hit by slippers when not serving a VIP to his whim. And even, I hear, actual democratic service: leaving when the flight is supposed to, and landing at the actual airport printed on the boarding card. This is sadly what capitalism does: take out all the charm with inefficiency.

So, my humble request is, keep it. I know we’re out changing all sorts of history, with names of roads from British and Mughal times, our entire tax regime and even currency notes. Niti Aayog and other think tanks see an Indian future that is transparent and digital. Where governments don’t sell ice cream (sorry, milk boards) and TV programmes (sorry, Doordarshan).

So, apparently, there’s no place for a bulky, overweight, somewhat suspicious uncle. Which is what AI has become in the government’s book of assets. Memory of the uncle though, however mad, is necessary. Even if it is to learn how not to be an airline.

Look, if you’ve lost ₹30,000 crore, why not another ₹30,000 crore? As a lovely reminder of a thoroughly corrupt, inefficient India when digital meant a Seiko watch.



the speaking tree

The Power of Yoga

Y CHINMAY

Hatha yoga is the combination of ham and tham, representing the masculine and feminine aspects of our existence, and also the physical and mental force. The practice of hatha yoga begins with the purification of the physical body, the carrier of energy and the meridians, or nadis. Once this is achieved, the body becomes ready to carry the kundalini shakti.

There are three aspects to body purification: neti, or cleaning the nostrils and sinus cavities; dhauti, or cleaning the stomach; and basti, or cleaning the small and large intestines. Besides, some asanas and pranayamas are practised to make the body toxin-free. Tratak is practised to make the mind focused. In the beginning itself, the practitioner feels its effect. In the long run, it brings about a personality change.

Neti, basti and dhauti involve cleansing with water, and their practice requires expert supervision. Tratak, however, can be practised without supervision. After neti, kapal bhati pranayama is done to make the sinuses water-free. This stimulates the frontal lobe, which is responsible for skills like good social interaction and a good personality.

Dhauti involves drinking saline warm water and bringing it out. At the psychic level, it expels repressed emotions and the practitioner is left with an euphoric feeling. Basti involves drinking six glasses of water and practising five asanas, tadasana, tiryak tadasana, kati chakrasana, supta bhu-sangasana and udarakaravana, eight rounds each. This practice relieves all kinds of gastrointestinal problems.

Chat Room

Unintentional Bogus Idea: UBI

Apropos A Doleful, Wasteful Idea’ by Swaminathan S Anklesaria Aiyar (Jul 19), the concept of Universal Basic Income (UBI) seems like a square peg in a round hole for India. The UBI, if implemented, will produce a lethargic and inefficient population with fewer hands to work and more mouths to feed—contrary to the skill-deficient workforce the country needs for:

Scrapping the welfare schemes on the board that cater to the intended beneficiaries, the UBI will turn around the game and give an equal hand to the population, irrespective of the employment status, social and financial standing, and, above all, leave a huge hole in the exchequer’s purse. The concept can work well for welfare-led economies but not for a heterogeneous emerging superpower like India. It is worth mentioning here that a majority—77% to be precise—of the Swiss population had voted against the idea of UBI in a referendum, citing the sluggishness and inefficiency such a dole spreads.

MONIKA ADWANI

Indore

Venkaiah Right Choice for V-P

This refers to the Edit, ‘Good for Venkaiah And for the Nation’ (Jul 19). Indeed, the candidature of M Venkaiah Naidu is a masterstroke from the BJP. Naidu, who is two-time MLA and four-time MP, apart from



having a clean image and excellent oratory skills, has rich administrative and legislative experience. He comes across as

someone who has cordial relationships across party lines. These qualities will certainly come in handy when he chairs the Upper House after his election as vice-president.

BAL GOVIND

Noida

A Correction

A Page 1 headline in ET on July 19 should have said tax authorities were keeping a close watch on prices, not I-T Keeps Close Watch on Prices Post GST Rollout’ as published. The error is regretted.

— Editor

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