

Raise a Toast to This Year's Winners

ET celebrates excellence in building India

ET Awards happen year after year but they do not pall, because of the intrinsic dynamism of what the awards honour: corporate achievement, the bedrock of growth and prosperity, of jobs and taxes, of innovation and returns on savings, of meeting the wants and needs of the entire populace. Having piloted the paradigm-shifting goods and services tax and the Insolvency and Bankruptcy Code, finance minister Arun Jaitley was a shoo-in for an award for upgrading the legal ecosystem for business; the jury gave him two, combining the Business Reformer and Policy Change Agent Awards.

With the disruptive launch of Jio, which is transforming, by itself and by forcing the incumbents to compete, Indians' ability to access the universe of possibilities embedded in high-speed data, Mukesh Ambani was difficult to beat as the Business Leader of the Year. It helped that his refining business has been performing spectacularly well, to cross-subsidise the telecom venture in the short run. Automaker Maruti Suzuki has had a mesmerising run, dominating virtually every segment of the market for passenger cars and creating new segments along the way. But it had a tough field to beat. Young technocrat and Ola founder Bhavish Aggarwal came out as the Entrepreneur of the



Year, raising capital to match the muscle of his bigger rival Uber and improving the core taxi business. ITC's Y C Deveshwar won the Lifetime Achievement Award, having transformed a tobacco major into a fast-growing, diversified consumer company, the bulk of whose investment and jobs are deployed in a non-tobacco future. Fairfax Financial Holdings' Prem Watsa's inspiring life story as a young immigrant to Canada who became that country's topmost investment wizard won him the Global Indian Award. Mahindra and Mahindra won the Corporate Citizen Award for its programme to empower the girl child.

The field of contenders for the awards was no less impressive (Bajaj Finserv was on the shortlist in two categories). May India Inc soar to greater heights of glory and achievement.

Let's Give Refuge to Persecuted Rohingyas

The Supreme Court has asked New Delhi to say if and why the latter wants to deport 40,000 or so Rohingyas from the country. This follows a Public Interest Litigation (PIL) plea submitted to the Supreme Court. Rohingyas are probably the most embattled community in the world today. Natives of the Arakan Hill Tracts, now the Rakhine state of Myanmar, they are predominantly Muslim. Their habitat is mostly in western Burma, bordering the Bay of Bengal with a northern extremity abutting Bangladesh. The army and sections of Buddhist zealots have been carrying out a systemic ethnic cleansing of Rohingyas since 2015. Some have fled the violence by boat to Southeast Asia, many have gone to Bangladesh, and around 40,000 may have crossed over to India. This week, the regime in Naypyidaw stopped UN aid from reaching Rohingya victims. The world is appalled at their plight. Her silence on Rohingya atrocities has dented the liberal credentials of democracy-crusader Aung San Suu Kyi.

Kiren Rijiju, junior minister of home, said in Parliament recently that New Delhi wants states to identify and deport these refugees. Rijiju fell foul of a basic principle of international law, called the non-refoulement principle. This bars countries from forcibly returning refugees to their original homes, if there is a danger of persecution on the basis of racial, religious or other reasons. The case of the Rohingya falls squarely within the ambit of this principle.

It has been Indian tradition to shelter refugees, whether Jews, Parsis, Tibetans or Bangladeshis. Between Partition and the war to liberate East Pakistan, some 19.5 million refugees poured into Tripura, Assam and Bengal. They were absorbed, no questions asked. Today, a much more prosperous India must shelter Rohingyas, or face global ignominy.

Even teens can tell that there's more to eternal love than a common set of likes

Perfect Matches Aren't Just a Click Away

A match made in heaven does not necessarily place the geographical location or the actual occurrence in the celestial sphere. Rather, the phrase indicates that a pair is so well-matched that it is divine. No wonder so many put their faith in various media to guarantee such a felicitous pairing including online dating sites that claim to find "soulmates" using computer analysis. But the fact that scientists now aver that artificial intelligence can only go so far as to list who is more desirable rather than who is the "perfect match" proves that humans are, as always, utterly unpredictable. We simply do not necessarily fall for or commit to people whose attributes appear to be the most suitable. That Vikram Seth spun out nearly six lakh words on the quest for a suitable boy underlines the sheer uncertainty and unlimited variables that beset this nerve-wracking rite of passage.

Even teenagers can aver with confidence that liking someone does not mean a perfect match. By analysing answers to questionnaires filled by speed daters, scientists at the University of Utah have simply reiterated conventional teenage wisdom by "discovering" that the overall tendency for someone to like and to be liked can be predicted by computer analysis but not which ones are a perfect match. In short, there is no one-click solution to finding true love.

CURSOR Moral hazard of a high order runs through the current design of the insolvency process

A Ganga for Corporate Sins



T K Arun

For devout individuals, getting rid of sins is relatively easy. If you are a Hindu, you take a dip in the holy river Ganga. If you are a Catholic, you confess to your priest. But companies had no such easy path to absolution. Till we created the Insolvency and Bankruptcy Code (IBC).

For a company, the biggest sin is failure to service its loans. And the wages of sin are, indeed, death—or used to be, albeit a slow one. With the IBC and the resolution process undertaken by the National Company Law Tribunal (NCLT), companies that have sinned mortally can now have a chaste afterlife. Which is not a bad thing at all. But, in this afterlife, too, it can acquire the same promoters/managers who ran it into the ground in the first place. This is where the shades of Hades begin to colour the retrieved corporate soul.

Wages of Corporate Sin

Indian companies are notorious for inflating project costs. A bunch of bankers, into whose ears the political leadership and ministry minders whisper compelling advice, accepts these inflated project costs and sanctions loans much larger than would be warranted if the project cost were realistic. While implementing the project through captive companies, the promoter takes money out from the project, to line his own pocket and pay off the neta-babu nexus. Now, the project has to service a lo-

an larger than what its viability warranted. The solution is to set up yet more companies with inflated project costs and use these loan proceeds to service the original debt. If the process can be sustained till the original project becomes completely debt-free and turns into a cash cow to service the subsequent rounds of loans, the promoter would have pulled off the project successfully. He has to repeat the process with the subsequent loans as well.

If this chain of recycling bank funds is broken before enough projects turn debt-free and ready to finance the remaining loans, things turn sour. Multiple loans turn unserviceable. Companies begin to sink and sin. Banks accumulate non-performing assets and act shy towards new loan applicants. On a large scale, this makes the entire economy grind to a halt, with little fresh lending, and private investment gone.

Suppose the promoter could rid his company of its dirty, unserviceable loans by an expedient as simple as running a load of soiled clothes in a washing machine. In goes a dirty load and out comes freshly laundered clothes smelling of roses.

The way the insolvency process in the country is designed to function, the NCLT process will work as a laundromat that takes out the stain of bad loans from failed companies and gives them back to the promoter free of loans and ready to make clean profits for the promoter.

Of course, bad loans do not wash down the drain with water and suds. When banks write off loans, they have to provide for them. Banks cannot tell their depositors, sorry, your money just went down the NCLT drain. They have to find the money to provide for the 'haircut' they take, either from their own reserves or, if these are not adequate, from fresh capital infusion. That is, the taxpayer must



Another promised castle in the air

pick up the tab for the loans that are written off by public sector banks.

If the loan-free company is put up for sale to the highest bidder and the original promoter turns out to be that white knight who rides forth to rescue this stricken company salvaged by NCLT and the resolution professional, it would amount to a legal charade for the taxpayer picking up the tab for inflated project costs, diversion of funds and illegal enrichment of the promoter who now gets a company with zero or reduced debt.

Promoter Must Pay a Price

Under American bankruptcy laws, a failed promoter cannot bid for the company he bankrupted. Why should Indian law permit this?

Under America's Chapter 11 bankruptcy, the court can sanction a limited window of time for the incumbent management to turn the company around without having to devote fresh revenues to debt servicing. In the Indian scheme of things, to achieve the same result, the Independent Resolution Professional, to whose care the NCLT entrusts the company,

must first take a call that it is possible to run the company as a going concern, and then allow the promoter to have a say in running the company. The gaps between these possible decisions can potentially be stuffed and sealed with wads of currency notes, to produce a smooth finish.

Companies fall sick for reasons other than diversion of funds. It is only fair that incumbent managements get a chance to fix things without having to use every rupee of revenue to pay off interest and penalties. Once such a chance is exhausted, the failed management should not be allowed to come anywhere near the company—primarily because it has demonstrated its inability to run that company. The company and its assets should be sold to third parties.

If the current scheme of things stands, and bankrupt companies get sold to the original promoters, who now have debt-free companies, the public would perceive insolvency as scandal. The very resolution process would come under a cloud.

tk.arun@timesgroup.com

Managements who failed their companies and investors must not be allowed to reappropriate their companies after insolvency has rid them of their loans

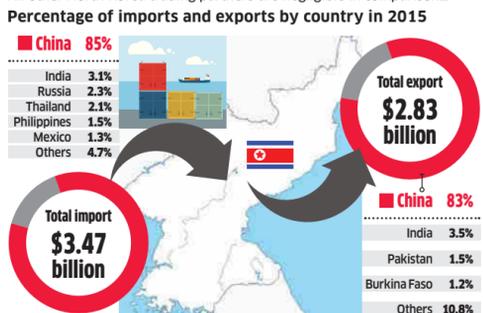
WIT & WISDOM

"Facts are not science, as the dictionary is not literature."

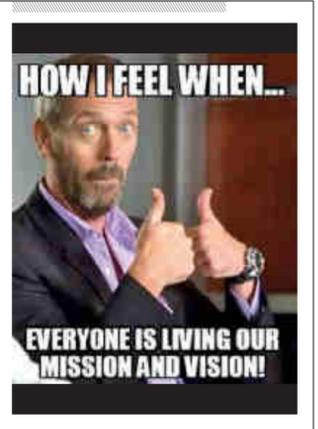
Martin H Fischer
Physicist

North Korea's Foreign Trade

North Korea is highly dependent on just one trading partner: China. China supported N Korea in the Korean War (1950-53) and shares some of its ideological viewpoints. But it's the blunt trade statistics that show why the Chinese government holds the key to reigning in the N Korean regime. All other North Korea trading partners are negligible in comparison...



MEME'S THE WORD



ANTI-MONEY-LAUNDERING

Enforce, But With Care



Jaiveer Shergill

At the time of drafting any law, it is important to insert enough checks and balances within the statute to avoid arbitrary and excessive abuse of power by using that law. This intention is well reflected in the Prevention of Money Laundering Act, 2002 (PMLA).

It secures the 'proceeds of crime' by virtue of which the Enforcement Directorate (ED) has the power to attach any property during the pendency of a trial, irrespective of whether the owner of such property himself was involved in any crime or not.

Much caution was taken with regard to the PMLA imposing conditions on the authorities. The officer should form an opinion, apply his mind based on facts regarding the property being prima facie reflective of the 'proceeds of crime' before attaching such a property. He should also gauge whether there is any imminent danger that the owner may distance himself from the property frustrating the entire investigation or trial proceedings.

But are the officials implementing the statute while remaining within its lakshman rekha?

The ED, rightly, throws a net to catch sharks. But more than often, a few innocent dolphins get caught in the net. Despite no fault of their own, the latter are subjected to an expensive and time-consuming litigation process.

However, the recent judgement of the appellate tribunal of the Money Laundering Act headed by Justice Manmohan Singh in the 'State Bank of India vs The Joint Director, ED' case comes as a big respite for the banking sector that, more often than not, gets caught

in the crossfire between the accused and the ED.

In recent cases, the ED started attaching a lot of properties that had been mortgaged to the banks to procure loans. This was done on the pretext of these properties being representative of 'proceeds of crime'. On the one hand, in most cases, banks had advanced loans—and continue to do so—after conducting proper due diligence and in compliance of RBI guidelines and regulations.

On the other hand, the ED goes ahead attaching these properties without making an assessment of the financial repercussions of such a move on the banks, whose only source of recovering the loan amount is the income from the attached mortgaged properties.

To rescue banks from the jaws of the ED in such situations and to ensure stability of the banking sector, the tribunal has rendered a path-breaking judgement. It held that no property belonging to the banks or mortgaged to them can be provisionally be attached by the ED, especially when the date of the alleged crime is prior to the transaction between the bank and the accused.

The tribunal also clarified that if the title of the property is clear, and there

is proper documentation of the loan transaction between the bank and the accused, then the ED has no right to such a property over the bank. This is a welcome celebratory judgement. It should provide a protective layer to banks advancing loans to companies without being involved in any offence of money-laundering and should stop any wild goose chase by the ED.

However, the judgement also puts an extra onus on the banks to be more diligent, and to travel beyond the usual 'due diligence' checks and verify the actual 'source' of the money behind the property.

We are living in times when terrorism and organised crime are being financed via proper banking channels. So, it becomes imperative for any financial institution to not merely rely on simple documentation, but to lift the veil and verify the source of income or fund flow backed by actual proof before entering into any financial transaction.

Banks have to be mindful of the fact that in the legal proceedings emanating from PMLA, standard documents, like income-tax returns and chartered accountant certificates, hold no value. The court(s) and the department demand solid proof that serve as evidence to genuine verifiable transactions, and not a mere declaration before the statutory authorities.

All individuals, corporates and financial institutions prior to entering any transaction must keep in mind the Latin maxim, 'Ignorantia legis neminem excusat', or, ignorance of the law is no excuse in the court of law.

At the same time, the ED should resist the temptation to invoke the draconian power of attachment when there is no evident nexus between the crime and the property sought to be attached. The faith in the justice system should not be shaken just because of arbitrary exercise of powers by a few officers in deviation from the rule book.



Last, but not the leash

The writer is a Supreme Court lawyer

Citings

Money Illusion

ROGER BACKHOUSE

Although money was fundamental to Aristotle's thinking, he believed that there were clear limits to the legitimate role of commercial activity... What disturbed Aristotle about commerce was that it offered the prospect of an unlimited accumulation of wealth.

This was something of which Athenians were well aware, for, although the self-sufficient city state was the ideal, there had been several crises when the city had been forced to raise money from traders. Typically, merchants were not citizens, so raising money in this way meant going outside the polis. The puzzle was that, even though they did not do anything useful, traders and speculators managed to create so much wealth that they could help out cities.

How was this possible? Aristotle's answer: goods can be either used or exchanged. Of these, the former is a proper, natural procedure, as is exchange between people who need goods different from what they possess. On the other hand, exchange simply for the purposes of making money is unnatural, for, goods are not being used for their proper purpose.

The unnaturalness of such activities is revealed in that creating wealth by exchange suggests that wealth could be accumulated without limit—something Aristotle believed to be impossible. Men might be rich in coin, he argued, yet starve through lack of food.

From "The Ordinary Business of Life: A History of Economics from the Ancient World to the Twenty-First Century"



Cycle of Birth and Death

R G SUBRAMANYAM

Life has been described as a long preparation for death. Death, as also birth, is governed by cosmic laws of shrushti, sthithi and laya. Though commonplace, death is dreaded. To survivors, the thought that they came so close to death is traumatic.

Ever since life originated, the cycle of birth and death has continued ceaselessly. All life forms, whichever kingdom they belong to—vegetable, animal or human—are destined to die. Even inanimate objects undergo mutation over time. Then why are we afraid of death? Is it because death will, all too suddenly, transport us from light to darkness, from a known area to an unknown one? Is our fear of death merely fear of the unknown? The mind wonders where the soul, which is said to be indestructible, immortal and permanent, went after being freed from its mortal coils.

The soul cannot operate independent of the body. Then where and in what form will the soul be till it gets a new body? How much time will elapse between death and the assumption of a new body? The only welcome aspect about death is that it is a great reliever of pain, misery and suffering. It brings to an end our troubles, trials, tribulations and travails. So, even though death is dreaded, it is welcomed by some as a release from worldly suffering.

Hindus and Buddhists believe in rebirth. Birth and death are two faces of the same coin. Nature perpetuates the species. Man dies, but the human species might survive for a long time to come. Death and renewal go on side by side ceaselessly and relentlessly.

Chat Room

Award Women Entrepreneurs

Appropos 'Vision, Fortitude and Hard Work Honoured at ET Awards' (Sep 5), a perusal of the list of contenders for ET Awards shows how hard it was for the eight-member jury to select the winners from the shortlist consisting of the crème de la crème of industry. It was interesting to find Baba Ramdev among the nominees for Entrepreneur of the Year. A suggestion: please reinstitute Business Woman Leader of the Year award since women face more hurdles than men in business, from planning to execution.

Y G CHOUKSEY
Pune

Merge Distinctly Similar MFs

While the Sebi initiative to merge similar mutual fund schemes will benefit investors, it could also mean low diversification and more risky portfolios. Mutual funds with similar investment strategies often differ in terms of fund management skills that reflect in the returns to investors. The new regulations should seek unitholder's consent to consolidate schemes and take retrospective effect. We also need to have specialised investment advisers who can advise investors properly.



GIRISH LALWANI
New Delhi

Push Cricket in Mofussil Areas

The BCCI has been left laughing all the way to the bank after Star India bought the coveted Indian Premier League media rights for a whopping ₹16,347.50 crore for the next five years. The mind-boggling deal, which will run from 2018 to 2022, is almost double the amount that Sony had paid for decade-long broadcast rights for the Indian Premier League (₹8,200 crore) from 2008 to 2017. The BCCI must now plough all the moolah that is flowing into its kitty back into the game and develop infrastructure in mofussil areas. There can be no doubt that cricket is our number one sport despite the administrative crisis it is facing at the moment.

N J RAVI CHANDER
Bengaluru

Letters to the editor may be addressed to editet@timesgroup.com