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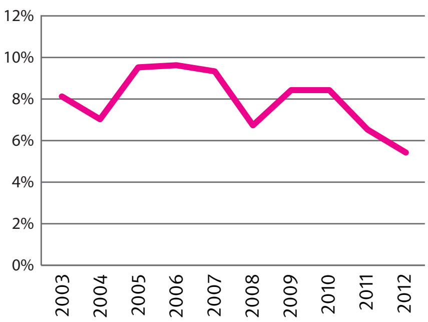
The Indian economy has been on a roller-coaster ride since the year 2003. GDP growth rate scaled more than 9% levels during 2005-2007 before succumbing to the global financial crisis of 2008 and the corruption tsunami during 2010-2012. The growth of the Indian economy is expected to touch a meagre 5.6% by the end of FY 2013. This coupled with high fiscal deficit and worsening current account deficit has jeopardized the country's rating in the global scenario which in turn adversely impacted the confidence of the investors' fraternity. Of late, the government of India has taken several steps to arrest this downfall in the economic growth and deterioration of the country's balance sheet. However, it should be kept in mind that the fundamental pre-requisite for a sustainable growth for any country is better governance and higher transparency. Hence, reforms addressing both growth and better governance are the need of the hour.

IN SPITE OF BEING AN ENGINE OF GROWTH FOR THE ECONOMY, THE REAL ESTATE INDUSTRY HAS STILL NOT WON THE TRUST AND CONFIDENCE OF ITS CUSTOMERS, INVESTORS AND EVEN BANKERS

Real GDP growth rate (%)



Source: RBI

The Indian economy is on the cusp of an economic boom and hence it has to take this opportunity to accelerate its economic growth rate. So, what are the steps taken by the government to boost the economic growth? After a long hiatus the central government rose to the expectations of the nation and introduced a new generation of economic reforms in various facets of the Indian economy. Foremost, by deferring the GAAR (General Anti-Avoidance Rules) for three years till April 2016, the government has boosted the confidence of the investors. Further, opening up of certain sectors like multi-brand retail, aviation, power and broadcasting to FDI is likely to propel the economic growth. Moreover, in the upcoming budget session of the parliament, the government is expected to open up Insurance and Pension funds to FDI.

In addition to the growth boosters, the government has shown renewed commitment to fiscal consolidation and implemented certain measures to rein current account deficit. To expedite approvals of ultra-mega infrastructure projects, the government has given a nod for setting up of the National Investment Board.

The positive impacts of all the above mentioned measures will result in long term benefits and a competitive edge, provided the transparency and governance of our country is comparable to most of the developing economies. However, during the last couple of years, lack of governance and corruption was proliferating in private as well as government offices - from telecom spectrum allocation and coal- gate scam to irrigation and bribe-for-loan scams. Empirical evidence suggests that globally, transparency in business dealings is the most sought after pre-requisite for investors. Even a small inconsistency or aberration dents the overall credibility of a country, state or company. India ranks low in terms of transparency amongst its global peers. Hence, in a competitive global environment and to feed its burgeoning population, it is imperative for India to better its global standing.

BY DEFERRING THE GARR FOR THREE YEARS TILL APRIL 2016, THE GOVERNMENT HAS GIVEN SOME AMOUNT OF BOOST TO THE CONFIDENCE OF THE INVESTORS

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In India, real estate is considered to be one of the most non-transparent sectors. Its activities are often accompanied by corrupt practices adversely impacting all stakeholders. As a matter of fact, this sector was directly or indirectly linked to the scams of 2010-12. In spite of being an engine of growth for the economy, the real estate industry has still not won the trust and confidence of its customers, investors and even bankers. Further, opaque business conduct and multi-layered holding companies combined with absence of a regulator have adversely affected the confidence of consumers and investors alike.

NEW PROVISIONS HAVE BEEN INTRODUCED TO CURB MULTI-LAYERED STRUCTURES IN A COMPANY, THEREBY MAKING THE TRANSACTIONS OF THE COMPANY MORE TRANSPARENT TO THE INVESTORS

Recently, by introducing the Companies Bill the government has taken a step in the right direction to improve upon the governance issue. The Bill was passed in the Lok Sabha on 18th December 2012. The Bill once approved by the upper house and the President of India will replace the Companies Act, 1956. The amendments in the bill were made primarily to protect the interests of the minority shareholder by giving him more ammunition to take legal action against fraudulent practices. It also provides an exit option for investors and a separate Investor Education and Protection Fund will be established to reimburse any loss accrued due to wrongdoings of the companies. This bill is likely to have a positive impact on the real estate companies giving them a better perception amongst its various stakeholders.

The Companies Bill 2012 has brought in certain changes to improve the corporate governance in India. Discussed below are the major provisions that are likely to impact the corporate sector in general and real estate industry in particular.

Multi-Layered Company: The Bill has taken more progressive steps towards creating an investor friendly environment; however, at the same time it has proposed certain stringent measures to protect minority shareholders. Of late, it has been observed that forming a multi-layered subsidiary as a part of an efficient tax planning programme is quite rampant in India. Hence, new provisions have been made to curb multi-layered structures in a company. According to this provision, a company will not be permitted to invest through more than a two-layered structure. However, it has provided flexibility on acquisition of a foreign company that has more than two investment subsidiaries. This provision will make the transactions of the company more transparent to the investors. In the present context, most of the transactions undertaken by the developers are through multi-layered companies and are practically very difficult for any investor to comprehend.

SHAREHOLDERS HAVE BEEN EMPOWERED TO APPOINT AUDITORS FOR STRAIGHT FIVE YEARS INSTEAD OF ON A YEAR ON YEAR BASIS

Compulsory rotation of Auditor: As per the Companies Act 1956, rotation of auditor/ audit firm is not mandatory except for the banking companies. However, in the new bill, this provision has been extended to all the listed companies and other class of companies as may be prescribed by the law. The new provision empowers the shareholders to appoint auditors for straight five years instead of a year-on-year basis. This measure is intended to reduce the influence of promoter/company/management on the auditor.

MERGER PROCESS OF A SUBSIDIARY COMPANY WITH A PARENT COMPANY HAVE BEEN SIMPLIFIED BY DOING AWAY WITH THE TRIBUNAL APPROVAL REQUIREMENT

Treasury stock: The Bill has prohibited companies from holding treasury stock. Treasury stock is the term used to describe the amount of stock that a company keeps of its own shares. It generally arises through consolidation of group companies. This amendment will restrict creation of 'trust structures' which is often exploited by the companies to retain control and/or to monetize it in future. This provision will weaken promoters' ability to access fund at a short notice. This amendment is expected to enhance the transparency of the real estate companies.

Cross border amalgamation: To improve transparency levels of Indian companies and provide a conducive environment to foreign companies, Indian Multinational Companies (MNC) as well as the domestic companies, the bill has proposed one of the major amendments for consolidation of businesses either in India or abroad. As per the Companies Bill 2012, an Indian company will now be allowed to merge with the foreign company while at the same time a listed company will be permitted to merge with an unlisted company. It is a fine balancing act

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Amendments	Companies Act 1956	Companies Bill 2012	Impact
Step down subsidiary	Multi-layered structures allowed	No investments allowed in more than 2 layers of investment companies	This will reduce irregularities carried through multi-layered structures.
Rotation of auditors for all listed companies	No specific provisions except for the banking companies	Individual Auditor every 5 years, Audit Firm every 10 years	This measure is intended to reduce the influence the promoter/company/ management had on the auditor.
Treasury stock	Permitted	Holding treasury stock prohibited	Weakens the promoters' ability to access funds at a short notice
Cross-border mergers	Foreign with Indian company allowed	Both foreign with Indian company and Indian with Foreign company permitted	Cross border consolidation of global businesses / assets
Merger of listed company with unlisted company	No specific provisions	Permitted with easier mechanism	Will simplify the merger of a subsidiary company with a parent company
Objections to scheme by minority shareholders and creditors	No specific provisions	Permitted but only to a) Shareholders holding >10% b) Creditors owed >5%	Empowerment of minority shareholders and creditors
Loans and investments by companies	Allowed only to body corporate and company	Scope expanded to include 'Person'	Shall bring individuals under the net of companies act
Loans to directors	Allowed only for public companies	Both public as well as private companies permitted	Creates accountability by bringing private companies under the net
Corporate social responsibility	No specific provisions	2% of average net profits during the preceding three years	Substantiates Government's focus on inclusive growth

by the government to meet expectations of all stakeholders, as this was not permitted earlier. The Bill has also done away with the requirement of the tribunal approval, thereby simplifying the merger of a subsidiary company with a parent company. These amendments are a welcome measure for the domestic as well as for the foreign companies as the new provision is expected to ease the consolidation process.

SHAREHOLDERS HOLDING MORE THAN 10% AND CREDITORS OWED MORE THAN 5% CAN OBJECT TO A SCHEME OF ARRANGEMENT

Protecting minority shareholders: Minority shareholders in the real estate sector were worse-off due to irregularities in the business conduct of the companies. Hence, certain measures were included to protect the interest of minority shareholders and third-parties. For example, the minority shareholder is provided an exit route through a fair compensation in case of any scheme of arrangements, like acquisition, merger, demerger, divestment etc. Additionally, the Bill has bestowed rights on a specified group of shareholders and creditors to object to a scheme. However, to confine it to only serious claims, certain thresholds have been provided for; shareholders holding more than 10% and creditors owed more than 5% can object to a scheme. These measures are expected to protect the minority investors from a significant scheme of arrangement decisions taken by the controlling group.

Government by passing the Companies Bill 2012 has taken the first step towards adopting best corporate governance practices. Similarly, sector specific measures to support the ailing real estate sector will be a step in the right direction. The much talked about Land Acquisition and Rehabilitation and Resettlement Bill, Real Estate Regulation Bill and Land Titling Bill will be important catalysts in changing real estate business dynamics in India. The real estate sector has had its share of problems in the past. The sector has fallen from being the most favoured to the least favoured in a very short span of time. Better late than never, developers and government alike have started taking cognizance of the situation and are working towards enhancing the confidence of consumers and investors.

LAND ACQUISITION AND REHABILITATION AND RESETTLEMENT BILL, REAL ESTATE REGULATION BILL AND LAND TITLING BILL WOULD BE AN IMPORTANT CATALYSTS THAT WOULD CHANGE REAL ESTATE BUSINESS DYNAMICS IN INDIA

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