

THE DEEMED APPROVAL PROVISION IN THE BILL WILL ENSURE TIMELINESS OF CCI OPERATIONS

Deadlines for efficiency

THE COMPETITION (AMENDMENT) Bill, 2022, presently under consideration of the Parliament, has several advanced regulatory provisions. A key provision is 'deemed approval'. It provides that a combination (acquisition, merger, and amalgamation) shall be deemed to have been approved if the Competition Commission of India does not take a view within 21 days of receipt of its notice. If the Commission fails to respond within this time period, the market will consummate the combination, and consequently, the economy might benefit/suffer irreversible consequences, if any. The Electricity Act, 2003 obliges Electricity Commissions to grant a license to an applicant, as far as practicable, within 90 days after receipt of the application. The Electricity (Amendment) Bill, 2022 provides for similar deemed approval if the Commission fails to grant the licence or reject the application within the time so provided.

These deeming provisions reflect the confidence the government has in regulators that the latter would not let the economy suffer the consequences of their inaction, come what may. Such confidence most probably emanates from the experience of the time consumed in the disposal of combination notices/applications for licenses in the preceding years. More importantly, this demonstrates the willingness of the state to hold its agencies liable for timely delivery and its commitment to deliver governance, without fail, notwithstanding the fact that many state agencies are still trapped in a 'soft state' syndrome. As part of business reforms, the state has moved away from doing business to the ease of doing business, whereby discretions gave way to entitlements. The state cannot deny entitlements (registration/approval) to a party/transaction that meets the pre-specified norms. Sebi can-

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not refuse registration to a party as an intermediary if it meets the pre-specified eligibility criteria under the securities laws. The adjudicating authority cannot decline approval of a resolution plan if it meets the pre-specified requirements under the insolvency laws. This subsumes two obligations on the concerned state agency—it must accord the required approval, and it must do so in time.

Most statutes and regulations prescribe timelines for parties in relation to transactions. The securities laws require a shareholder to disclose the change in shareholding beyond a threshold within X days of the change; failure to do so invites penal action. The insolvency laws require a resolution plan to be submitted to the adjudicating authority by the prescribed time, failing which the concerned company is liquidated. The law of limitation requires parties to initiate proceedings by a prescribed time, failing which they lose the right. Thus, parties face serious consequences if they fail to perform their tasks on time. For them, timelines are mandatory, *de jure* and *de facto*.

Many statutes provide timelines for regulators for some of their activities. Rules occasionally do so. The insolvency rules require 'no objection' from regulators for persons who would be in control or management of the financial service

provider post-resolution. If the regulator does not refuse 'no objection' within 45 days of the receipt of the request, it shall be deemed to have been granted. Many regulators have volunteered to deliver some of their services on time. Sebi has notified timeline benchmarks for various activities involving public interface like examination of complaints, observation of offer documents, registration of intermediary, etc.

It discloses on its website the status of various applications and registrations under process. Some regulators have specified in regulations timelines for their approvals. The insolvency regulations require the Insolvency and Bankruptcy Board of India (IBBI) to grant registration to an insolvency professional within 60 days of the receipt of the application.

These regulations also provide that if the authorisation for assignment is not issued, renewed or rejected by the insolvency professional agency within 15 days of the receipt of application, the authorisation shall be deemed to have been issued or renewed.

Thus, legal and regulatory frameworks provide mandatory timelines for regulators for some of their tasks and for the parties. Regulators have adopted the best practice to deliver some of their mandates on time. The law should prescribe timelines for all their tasks. Fail-

ure to deliver on time should attract penalties as much for the regulators as for the parties. Some statutes prescribe timelines for the government. For the judiciary, tribunals and adjudicating authorities, these are generally considered to be directions, because the parties would suffer if these authorities fail to deliver in time. The insolvency law provides 14 days' time to the adjudicating authority to make a decision regarding admission or rejection of an application for corporate insolvency. The apex court, in *Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Limited and others*, held this timeline to be of a 'directory nature'. In *Vidarbha Industries Power Limited Vs. AXIS Bank Limited*, it held that the adjudicating authority has the discretion to admit an application, reject it, or even keep the admission in abeyance.

The ease of doing business will be a reality if all three wings of the government are also mandated to deliver their assigned responsibilities on time, as much as they require regulators and parties to do. For example, the investigation must be completed within X days of its commencement, chargesheet filed within X days of completion of the investigation, and the trial completed within X days of the filing of charge sheet. Appointments must be made at least X days before the current incumbent demits office, dues are paid to vendors within X days of purchase, matters are decided within X days of receipt of the petition, etc. Approvals are deemed to be granted if the agency does not take a view within the prescribed time. And no state agency has any discretion to defer its decision on any matter. Such a decisive shift from having no timelines, directory timelines, and discretionary timelines to 'deemed approval' upon the expiry of a timeline will be a positive paradigm shift in governance.

Failure to deliver in time should attract punitive measures for the regulators as much as for the parties