managers appointed by the PFRDA and the employees will get pension by the end of their service life and the pension amount will be determined by the return on investment of their pension fund made by the appointed fund manager. Originally government employees used to get pension at 50% of their last drawn pay and the pension amount used to get revised with the changes in price indices. It was an assured amount.

The New Pension Scheme (NPS) brought about a paradigm shift in the entire concept of pension as a social security measure. Now the pension will be based on "defined contribution" meaning thereby that the pension amount will be governed by what the employee's "pension fund account" can earn from investment in the market. The NPS does not ensure any assured amount of pension to the employee despite his life-long contribution to his own pension fund. Both the Pension Scheme notified by the government and the PFRDA Bill (both 2005 and 2011) mentioned in clear terms that "There shall be no implicit or explicit assurance of benefits except market based guaranteed mechanism to be purchased by the subscriber". (Sec 20(2)(g) of the PFRDA Bill.

The Union Cabinet has given the final nod to this retrograde PFRDA Bill 2011 in its meeting held on 16th November 2011 after taking into consideration the 40th Report of the Parliamentary Standing Committee on Finance on the same.

Source: http://indiacurrentaffairs.org/pension-fund-regulatory-development-authority-pfrda-bill-2011-%E2%80%93the-real-context-tapan-sen/

Points to Ponder

Can market ever guarantee any assured return on investments? In the present day market situation with extreme volatility in both the money market and the share market, the return on investment of public funds like pension-funds is destined to be uncertain and low. Moreover, the Fund managers appointed by the PFRDA will handle the fund not for charity but for their own profit. Hence whatever return on pension fund investment that will reach the pensioner will be the net amount after ensuring profit of the fund managers as well. In the context of natural uncertainty of the market, fund managers are naturally expected to neutralize their risk first and then take care of the risk of the pensioners who actually supply capital to the fund managers through their life time savings in pension fund. Therefore the PFRDA Bill has paved the new regime of replacing assured pension by a pension system governed by the market forces playing with the employees' life time savings. Thus PFRDA Bill and the pension system it enforces is an onslaught on the social security right of the government employees, loot on their pension fund.

Pension will no more remain a secure social security; it will become a funding source for unscrupulous investors, both domestic and foreign, which will be used through speculative share market. The Government in order to please the foreign pension fund operators, in USA, has kept the avenue fully open for FDI investment. With this bill, if passed, the hard earned money of crores of unorganized sector will be utilized for speculation. Can the working class and the country as a whole tolerate such open and shameless fraud in the name of social security of millions?

4. Regulator for India Post

The Financial Express has reported a new regulator on the cards for India Post and private courier firms that would fix the tariffs for their services. As per the re-draft, the Post Office and Courier Services Bill, 2011, the courier firms would need to register themselves with the new regulator; the Postal Regulatory Authority of India (PRAI) and adhere to a set of guidelines for quality of services framed by it. The firms will also have to contribute to a Universal Service Obligation (USO)Fund to enable delivery of postal services to financially unviable areas at affordable rates. The government has dropped the controversial provision in the original (2006) draft of the Bill which sought to bar private courier firms from carrying packets weighing below 500 gm. Also, in a departure from the original draft, which specified the fee structure for the players, the new Bill has left such matters for the regulator to decide. An Appellate Authority, the Postal Dispute Settlement and Appellate Tribunal is proposed for redressal of grievances of any person aggrieved by an order of Registration Authority.

The more than Rs 4,000 crore worth Indian courier industry is soon going to get PRAI which will have functions similar to that of telecom regulator TRAI. It can suomotu recommend to the government policy measures on the entire gamut of the postal sector. On its part, the government can seek its recommendations on issues of importance. Once PRAI is constituted, all existing courier firms would have to register themselves with it for a 10-year period on payment of a fee. The registration, of course, can be renewed once it expires.

Central Govt. may establish Extra Territorial Offices of Exchange (ETOE) and International mail Processing Centers (IMPCs) in other countries for providing international Mail Services including express and parcel services, subject to arrangements with such Postal Administrations regarding terms and conditions.

Points to Ponder

Undoubtedly the major players in this sector such as DHL, FedEx India and DTDC have lobbied hard for getting the regulator restructured. Although a number of changes have been suggested in the 2011 Bill yet issues of pricing and implementation of USOs would haunt the new regulator and pose challenges. While fixing eligibility criteria entry barriers must be carefully examined by the regulator otherwise it would become hegemony of few players. The role kept with government i.e. the department of post and a reinforced Postal Board to make policies and provide licenses would be another challenge with respect to autonomy and efficacy of postal regulator.

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CIRC RegTracker

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RT.006, February 2012

CIRC RegTracker is a bi-monthly publication which tracks the current policy changes and proposals on economic regulation in the country, particularly on the dynamics of the same as and when a news report appears. It does not aim to provide an in depth analysis of the happenings, but raises some points to ponder, as food for thought and deeper analysis by policy makers and researchers.

1. Regulator for Railways

[The Financial Express on 2nd Feb, 2012]

"The time has come where we have to bite the bullet," said Shri Dinesh Trivedi, Minister of Railways while responding to a question about stern opposition to setting up the regulator by previous ministers. A committee on railways' modernisation headed by Sam Pitroda has suggested a 25% increase in railway fares to meet operational expenses. This panel was set up by ShriTrivedi.

In a marked change over its earlier stand, the Indian Railways has now favoured an independent regulator to look after its operations and resurrect its financial weaknesses. Suggesting that a regulator could be the right option to depolitise the policies followed for the national transporter. Although he did not categorically mention the proposed terms of reference for the body, Planning Commission and finance ministry have been pressing the railway ministry to go for a regulatory set up for tariffs. Passenger fares have remained constant for last eight years as successive ministers were wary of losing their vote bank. Under popular pressure, the national transporter has not hiked passenger fares since 2002-03 and this had led to a loss of Rs 18,960.67 crore in 2009-10. Planning Commission has advocated an independent regulator to rationalize tariff and to remove distortion in the inter-modal mix of transport.

"There is lot of room (for a regulatory authority). If you want to de-politicise railway policies, you must have some kind of regulator which deals with fare, freight and quality," he said. Asked whether the regulator should be under the railway ministry or outside its purview, he said, "We can start somewhere. Ultimately regulatory body must have authority. If they do not have authority then what is the point?" Speaking at a FICCI seminar on January 31, 2012, the minister said railways needs to restructure itself to concentrate more on consumers.

Source:http://www.financialexpress.com/news/rlys-moots-regulator-for-monitoring-tariff/906653/

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The information in this newsletter has been collected through secondary research and CIRC is not responsible for any errors therein. The press clippings used here have been suitably adapted and summarised to convey their essence to the reader without any distortion of content. ***Your views and comments are welcome at circ@circ.in***

Points to Ponder

Indian Railways finally seems to be getting into the regulatory fold, which has swayed almost all sectors of the economy for reasons of efficiency. Although there was no consensus earlier on such a move in the Railways yet things are changing for the better. It may be noticeable that in the absence of a fare hike in the last eight years and operational inefficiencies, railways has exhausted all its cash surplus and is seeking financial assistance from theFinance ministry, which seems hard to come by in the wake of rising fiscal deficit. When a regulator seems almost feasible for railway operations, still there remains lack ofclarityaboutthe structure and mandate for such a regulator. Tariff fixation and railway expansion and maintenance are intricately related, in such a case whether one regulator for tariff would do the needful remains to be seen. There is a need to make railways' operations more transparent and this calls for an effective regulatory set up for railways. There may be a possibility that the task of contract management be brought under the new regulator, as the railways is bidding out key projects to private companies since the last four years but has been unable to complete the process. Such regulatory induction in the Indian Railways may bring in more competitiveness in the economy.

2. Sebi rushes to help fill govt coffers, but is that its job?

[Firstpoint.com on 4th Jan, 2012]

Is the Securities and Exchange Board of India the market watchdog or the government's lapdog? The government is in a hurry to sell a part of its holdings of public sector shares to plug the gaping holes in the budget, and Sebi has rushed to help.Tuesday's announcement of two new ways for promoters to raise money from the public the institutional placement programme (IPP) and offer for sale of shares through the stock exchange is another example of the market regulator behaving like the finance ministry's fund-raising cheerleader.

Sebi also cleared new rules for share buybacks by promoters another pet project of a resource-starved finance ministry this year, which wants cash cows like Coal India, Bhel, ONGC, and Sail to buy back sharesand put money in the finance ministry's hands.

Sebi's job is to guard the markets from malpractice, not look the other way when the promoter of PSUs is plotting all kinds of money-raising schemes. While the IPP provision is not specifically aimed at public sector disinvestment the idea has been under discussion for more than a year at Sebi it's the timing of the change that benefits the government.

But the offer for sale through the stock exchange a form of auction to potential bidders will enable the government to sell off small bits of shares in companies where its shareholdings are above 90 percent. It will thus extract a premium over the market price by pandering to the scarcity value of these shares. As for the changes in share buyback rules, these are manifestly intended to aid the government, sometimes at the cost of minority shareholders. Not one newspaper failed to remark that these changes are essentially intended to facilitate the government's disinvestment programme.

As if on cue, the government has already convened a meeting of the Cabinet Committee on economic Affairs (CCEA) to consider raising resources either by selling shares or asking cash-rich public sector companies to buy back their own shares, says a report in Business Line. If a private sector company's board held a meeting a day after a new regulation was announced, it would be considered a case of acting on prior information. But no eyebrows will be raised if the CCEA meets to discuss Sebi's changes a day after they were announced. They probably knew all about it.

Unfortunately, when Sebi rushes to help government, what it essentially does is open the doors wide for unscrupulous private sector promoters to take advantage and cheat investors. Of course, when the government is planning to be equally unscrupulous, who can blame greedy promoters for emulating it?

Let's see how the three changes help the government in the short run.Under the institutional placement programme (IPP), the promoter (i.e. the government) will be able to sell a part (up to 10 percent) of its public sector stakes to qualified institutional buyers (QIBs) by filing a red herring prospectus with Sebi and the stock exchanges. The idea is to enable promoters who are not in compliance with the minimum 25 percent public shareholding norm to comply with it. But it's the government that will leap in to sell. Under the new norms, the government needs only 10 QIBs to go ahead with disinvestment, and the floor price or price band can be announced just one day before the placement.

Since QIBs include foreign institutional investors (FIIs), mutual funds, insurance companies and some government institutions, the finance ministry can sell public sector shares to its own QIBs and raise money in case the FIIs and mutual funds are unwilling.In essence, Sebi will be facilitating not the dispersal of share ownership which is the stated purpose of the minimum 25 percent public shareholding norm for listed companies but to transfer money from the pockets of government institutions to the exchequer.

Plans are already underway to convert the Special Undertaking of the UTI into a fundthat will buy public sector shares from the government. The point is this: if public sector shares are being offloaded to another public sector fund or insurance company, how is it disinvestment?

For the exchequer, the advantage is obvious: by parking public sector shares in another public sector vehicle, the budget deficit reduces this year. But since the shares are still with another public sector company, they can be sold when the market revives for a higher price and the government can capture the higher profits, too. It can have its cake and eat it, too.

Private promoters will be large beneficiaries. When the markets are weak, they can't plan further public offers (FPOs) since these sell only at a discount to market price. Now, they can place shares with long-term investors at higher than market prices. Of course, QIBs are not going to be in a hurry to buy shares at higher than market prices unless they get large chunks that may not be accessible through the markets. What could happen is that private promoters will enter into deals with QIBs to offload stakes now and then buy these back through promoter-friendly groups or benami companies. The public shareholding norm will be met, and promoters also get to keep their shareholdings above the Sebi norm.

Next, there's the offer of sale through stock exchanges. The new rule says promoters of the top 100 companies by market capitalisation which include companies such as ONGC and Coal India can offer a minimum of 1 percent of their shares, subject to a minimum of Rs 25 crore, to be auctioned through the stock exchanges during trading hours.However, this route is more likely to be used by the government to sell holdings in companies like Hindustan Copper, MMTC and Neyveli Lignite, where its holdings are well above 90 percent and where it can harvest the scarcity value of sales in lots of 1 percent to the highest bidders in the markets.

By selling public sector shares in bits of 1 percent, the government also avoids excess political scrutiny on disinvestment. It is worth recalling that in UPA-1, the unions and the DMK scuttled Neyveli's disinvestment. But when sales are in lots of 1 percent, who can crib about it?

By far the most egregious change is the one involving buybacks. A key rule introduced by Sebi this time favours promoters over minority shareholders.Under current rules, shareholders are free to tender all, or some or none of their holdings in buyback offers. The company, based on the number of shares it wants to buy back, buys the shares in proportion to each shareholder's entitlements.

But the new law tilts the balance in favour of promoters. It says: “While the shareholders are free to tender over and above their entitlement, acceptance of shares shall first be based on entitlement of each shareholder and if any shares are still left to be bought back, acceptance of additional shares tendered over and above the entitlement shall be in proportion to the excess shares tendered by the shareholder.”

What this rule change means is this. If you have 100 shares and don't offer it for buyback since the price offered is low, and the government offers all its shares, the bulk of the buyback will be that “excess” tendered by the government since “acceptance of additional shares tendered over and above the entitlement shall be in proportion to the excess shares tendered by the shareholder.”

Prithvi Haldea of Prime Database, an expert on the primary markets, told First post that this provision would be of use to the government if it goes for buy backs. of course, this provision can be used by private promoters when it suits them to pocket a company's surplus funds through disproportionate buybacks if they are allowed to do the same as government. Since they can always award themselves preferential offers at a later date on the plea that the company needs more capital, this apparent dilution of stake over the short term will not matter.Should Sebi

be tilting the rules so much in favour of majority shareholders against minority shareholders? The problem with Sebi is that it treats government and listed public sector companies as a special case. Misgovernance and insider trading in the former invites no action, while private sector wrong-doing is seen as a crime.

Sebi needs to ask itself: How many times has it sent a notice to the promoters of government companies when they acted against the interests of minority shareholders (transfer of ONGC profits to oil marketing companies, for example)?

How often does it investigate unusual movements in public sector shares when policy changes are being contemplated? When the finance ministry announces a disinvestment plan or buyback, these decisions affect share prices. Have any of the officials involved in these decisions ever been investigated for unusual price movements?

Source:http://www.firstpost.com/economy/sebi-rushes-to-help-fill-govt-coffers-but-is-that-its-job-171882.html

Points to Ponder

A classic case of regulators acting to serve the interests of the Government rather than fulfilling their statutory objectives-SEBI announcing new rules that would, in effect help the Government in meeting its disinvestment targets. The financial year is coming to an end and Government is in dire need of funds to bridge its fiscal deficit.

Given the volatile conditions in the stock market due to unfavorable domestic and international scenario, the government has not come out with any significant public offer to sell its stake in PSUs. As a follow-up to this, SEBI has announced new rules of increasing minimum public shareholding to comply with Securities Contracts Regulation (Rules), 1957. Specifically, Institutional Placement Programme (IPP) and Offer for Sale of Shares through the stock exchange for the purpose of compliance with Securities Contract Regulation (Rules), 1957 are introduced. While the stated intent behind the introduction of these rules is to facilitate the dispersal of share ownership (25 percent public shareholding norm for listed companies), the new rules and the timing of their announcement help in facilitating Government's disinvestment plan. The Government will be able to sell a part (up to 10 percent) of its public sector stakes to qualified institutional buyers (QIBs) by filing a red herring prospectus with Sebi and the stock exchanges. Even if the usual QIBs- FIIS and mutual funds are not willing to buy the shares, the finance ministry can sell public sector shares to its own QIBs and raise money.

The question is: Is this a disinvestment in true sense? In essence the Government is trying to address a chronic issue of high fiscal deficits through short-run solutions of transferring funds from one public sector fund to another. The way things are being handled also leads us to re-think on the issue of regulatory independence.

3. Pension Fund Regulatory & Development Authority (PFRDA) Bill 2011 The Real Context

[Indiacurrentaffairs.org on 16th Dec, 2011]

The Pension Fund Regulatory & Development Authority (PFRDA) Bill 2011 is almost the same version of the bill introduced in parliament in 2005 with minor changes. When the 2005 Bill was introduced, there was opposition from the government employees as it had direct bearing on the pension prospect of the central government employees who joined service on or after 1-1-2004 for whom government already notified a new contributory pension scheme on 22nd December 2003.

The New Pension Scheme notified in December 2003 envisaged a contribution of 10% of wages by the employees with a matching contribution from the central government as employer which together will form the pension account for the concerned employee. The Fund will be managed and handled by fund