

EASE OF DOING BUSINESS

PART - 1

How well is India doing really, when it comes to “ease of doing business?” Has it in fact become easier? Some people may have had better experiences than they have had in the past. Maybe the theory of relativity spoils us. For those who have no relative experience in India though, doing business is still painful.

Let us explain with an example. One of our clients decided to acquire a company that runs a factory on land owned by the government. The promoters of the target were old, well past their sixties. The target company had acquired leasehold rights to the land from the government through an auction process. A legal due diligence on the land documents revealed that once the auction had been completed, the lease in favour of the target company was signed for only half the land. Obviously, our clients insisted the lease needed to be rectified. No one thought this would be a difficult process. Why? Because, the target had been in possession of and was running a factory on the land for nearly half a century. The government was charging lease for the entire land, not half of it. The target was paying property taxes, electricity bills, water bills and all other government charges for the entire land, not for half of it.

We approached the government for a lease for the remaining half. The target was willing to pay any additional security deposit or other land charges required for the lease. The government attempted to pull out its old files. Unfortunately, they had been destroyed in a fire. The government had absolutely no records of who the legal lessee of the land was. This is where all the complications started. The

officer in charge was of the view that the land would need to revert to the government, the government would need to re-auction, and only once that was completed could a lease be signed. We were shocked. Our clients were shocked. The promoters thought it better to ditch the acquisition out of fear that they would lose their factory land. All because the government had failed to safeguard its own records.

We decided to approach someone higher in the government to explain the predicament of all the parties, and that what had been suggested made no sense at all. The target was willing to pay any new land acquisition cost levied by the government, despite the fact that this issue had cropped up due to a failure on account of non-availability of documents with the government, so why was an auction process necessary? Thankfully, this made sense to the senior government official. From here, we believed that in a few weeks the matter would be closed. Little did we know, that this was only the beginning.

What proceeded was the following: The target was asked to seek environmental clearance, since this was not available for the entire factory. The target did not see this as a problem. However, it took a grand total of 2 years for the relevant authorities to issue this. Why? They had new thoughts on the factory plans every single time. A factory that had been operating for half a century.

Next, the government asked the target to procure a new fire NOC, since the fire NOC they had was for only half the land. The target acceded to this request. A new fire NOC was applied for. After



several dozen visits from the fire officer, changes to the factory, a fire NOC was granted. By this time, another 2 years had passed.

4 years had gone by and there was still no lease to the land. 4 years it took for the government to grant a fire NOC and to grant an environmental clearance. It took another year to just sign the lease. No reason, that's just how long it took. This begs the question; how had the target been operating a factory for near 50 years without these approvals if they were necessary? The authorities didn't think it necessary that the target should have these permissions before, what changed when all that was required was a new lease deed? That too when the target had approached the government themselves. There is no doubt that each of the authorities is well within its rights to ask these questions, whether or not they had been complacent for 50 years is irrelevant, but need it have taken a total of half a decade to get the relevant approvals?

Experiences such as these deal a significant blow to foreign companies looking to make acquisitions in India. The impact of this experience on the psyche of the foreign acquirer is significant. If it takes 5 years to obtain a lease in India, how easy have we really made it to do business in the country?

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