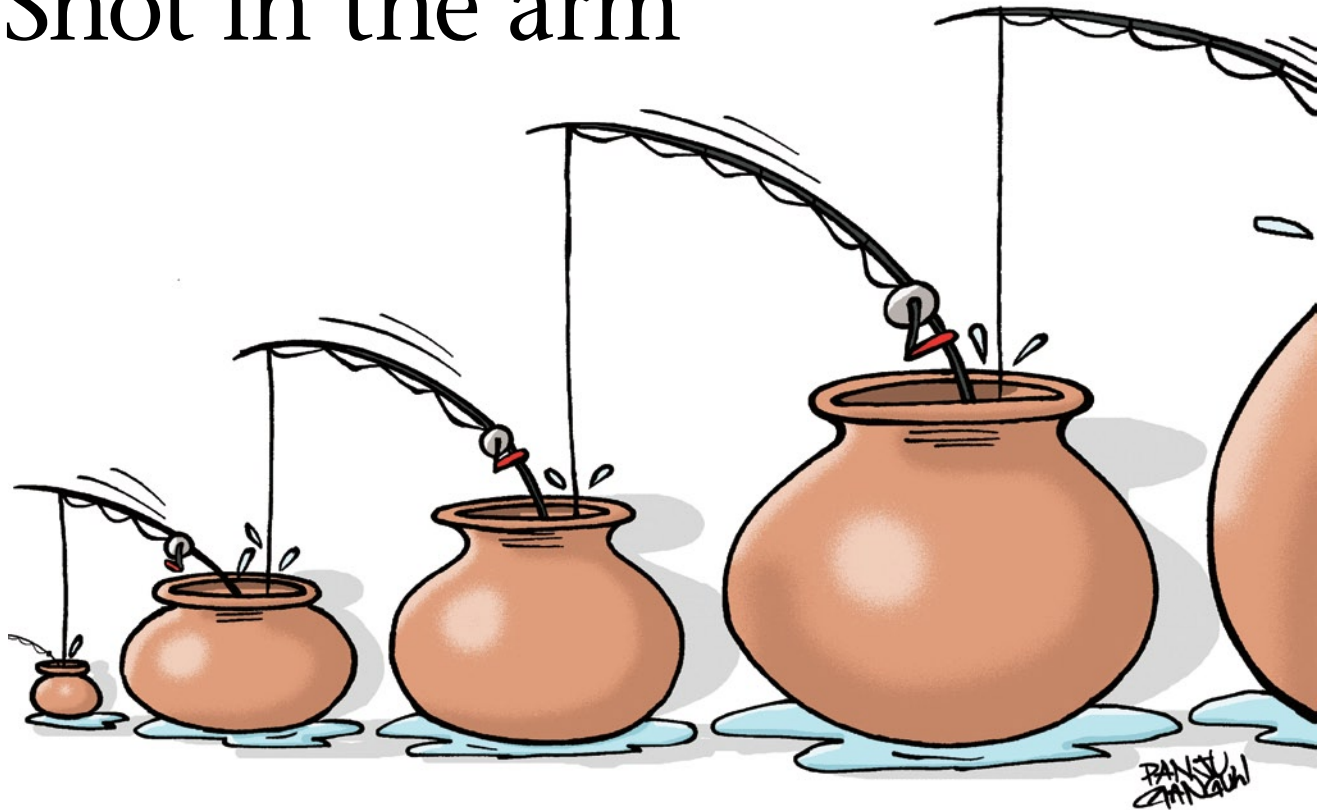


Shot in the arm



The Supreme Court order staying the proceedings against QNet augurs well for the direct selling industry

Economic evolution is a gradual process. It takes years for economies to develop and transform into meaningful and sustainable growth engines. The Indian economy is no exception to this. Post-liberalisation, from 1991 to date, it has transformed from a closely held inward looking one to a driving force of global growth.

Job creation for the teeming millions who enter the job market every year is a big challenge in the Indian context. But strategically it is better to create job creators rather than job seekers. The emergence of newer sectors that have come to form an integral part of the ecosystem stands testimony to this. Often, laws and regulations do not keep pace with economic development, but follow it. The best example of this in current times is the direct selling industry (DSI).

From creating entrepreneurs to

sourcing of products made by Indian companies, and from online sales to evolving the entire value chain of product distribution, the Indian DSI has had an all-pervasive impact. As for numbers, the DSI stands at \$183.7 billion globally, with more than 100 million people involved in it. The Asia-Pacific region is responsible for 46 per cent of the global direct sales, followed by the Americas (34 per cent), Europe (19 per cent) and Africa-Middle East (1 per cent).

In India, the DSI has grown to become a part of the 'billion-dollar club' of the global direct selling industry. The Indian DSI has generated about \$1.18 billion in revenues in 2015 and ranks 22nd among the top 25 countries in the world. In India, an estimated 4 million people are involved in this industry.

According to a report put out jointly by industry body FICCI and the consulting company KPMG, "the

industry has also contributed to greater growth and technology percolation which stems from it sourcing the manufacturing capabilities of Small and Medium Enterprises (SMEs) in the state, which is in line with the government's 'Make in India' campaign." The companies also impart the manufacturing know-how, technology and processes and invest in providing the right equipment and machinery for production. Another advantage, according to the report, comes from the operating model for direct selling generating tax contributions to the government, which is estimated to be ₹400-450 million in 2013-14. Considering the market potential and the future growth of the industry in 2025, the contribution to the government revenue in the form of indirect taxes is also expected to be ₹1,500-2,000 million.

"There are reasons for the increase in the importance of direct selling," adds the FICCI report. "As an additional channel, it can lead to disintermediation, reduction in transaction costs and bridging the gap between

consumer prices and manufacturer prices, facilitated by the use of technology. Urbanisation, income and consumption growth, higher female work participation rates and dual income families increase the importance of transaction costs and their decline”.

But, despite the potential that is recognised by industry bodies, in India, this industry has faced a lot of turbulence over the recent past. The biggest problem for this multi-billion-dollar industry has been the misinterpretation of its business model. Companies in the budding sector have gone through a lot of pain, with various allegations being made around their business models. The draconian acts in this context include the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999, the Prize Chits and Money Circulation (Banning) Act and the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

“A large number of direct selling & multi-level marketing (MLM) companies have been bearing the brunt, in a number of states, due to the misinterpretation of certain provisions of the Prize Chits and Money Circulation Schemes (Banning) Act 1978. Sadly, the act has been left at the mercy of vague interpretations of the state machineries. It is truly appalling that, despite the industry raising its voice before different government bodies, both at the Centre and the states and also with the regulators, there have been continuous unjustifiable actions taken by the state police machineries against the genuine direct selling and MLM companies,” said D.S. Rajora of ASSOCHAM in an earlier interview with *Business India*.

It takes multiple pillars of democracy to move a business ecosystem in the right direction. The recent Supreme Court order in the case of the Malaysian company QNet is exactly one of those situations. While the government recently tabled the model guidelines for the DSI, the Supreme Court has cleared the path for legitimate businesses in the sector by considering merit in the petition filed by QNet.



Kuna: encouraging developments

According to a petition filed by QNet, based on which relief has been granted to it by the Supreme Court, the company’s model entails IRs benefitting from sale of goods and products and not by recruitment or induction of new members. Hence, it does not fall under the ‘pyramid scheme’ as prohibited by the ‘direct selling guidelines’ nor could it be termed as ‘money circulation scheme’ or ‘prize chits’ as envisaged in the Prize Chits and Money Circulation Scheme (Banning) Act 1959 or ‘Deposit’ under the MPID Act 1999.

In fact, the apex court also granted bail to two shareholders of Vihaan Direct Selling (India) – Michael Ferreira (the 79-year-old, high-profile former world billiards champion and two Padma Awards winner) and Malcolm Desai (who had early last year surrendered before the authorities). The apex court’s order paved the way for their release after more than six months of being in custody

for questioning and investigation in the various charges that were slapped against the company and its sub-franchisee over here.

The interim order granting relief to the company comes against the backdrop of the model direct selling guidelines issued by the Centre for proper functioning of direct selling companies in India and is a hugely positive development for companies like QNet. This is a step in the right direction which will change the landscape of the direct selling industry in the country.

Even market leaders like Amway have not been spared. Legal pursuit of Amway in India dated back to September 2006, after public complaints to the Reserve Bank of India (RBI) regarding the company’s business practices. It went on for years.

Helpful guidelines

In 2008, even the Andhra Pradesh government banned Amway from advertising in the state. Then in May 2013, William Pinckney, MD & CEO, Amway India was arrested by Kerala police along with two company directors on charges of alleged financial irregularities. In May 2014, he was once again arrested. In this case, Pinckney was named second accused while the enterprise was named prime accused. He was charged under various charges ranging from section 420 of IPC (cheating) and sections 3, 4, 5, and 6 of Prize Chits and Money Circulation Schemes (Banning) (PCMCS) Act 1978.

Globally, in many of the cases, the modus operandi is such that, the scammers pose as direct selling enterprises to increase the popularity of direct selling multi-level marketing (MLM) plans. It has taken time in different economies to distinguish between the two, and recognise direct selling as a legitimate business model. This has primarily been done by introducing specific legislations to govern the direct selling industry and by recognising direct selling as a rightful business model within existing consumer laws. The industry also self-regulates by the creation of specific and stringent guidelines for its

members, which are governed by local associations accredited by a global association.

In recent times, India has also woken up. “The introduction of the direct selling guidelines by the ministry of consumer affairs is perhaps the most encouraging development the industry has seen in India,” explains Trevor Kuna, global CEO, QNet, since last month. “This is the first step, possibly the most significant one, towards an actual legislation for the industry. Having a strong legislation for direct selling will also contribute to the government’s desire to stimulate economic and job growth via the application of entrepreneurship and innovation. Enhanced economic growth is, and must be, achieved by the promotion of competition, entrepreneurship and innovation”. Kuna, a Canadian, was the chief marketing officer of the company at its headquarters since 2015, having joined the company in 2008. “The supreme court has granted the stay, as it considers the QNet business to be legitimate. This order is not just helpful to QNet, but gives confidence to other genuine companies in the industry as well. We are now in a position to change the narrative about QNet and help people see the positive impact our products and business have had on the lives of thousands of people in India,” affirms Kuna, welcoming the guidelines issued by the Ministry of Consumer Affairs.

“This is a step in the right direction and it is about time the industry was regulated properly,” he adds. “Both Singapore and Malaysia have specific and strict direct selling and MLM legislation and QNet is fully compliant in these heavily regulated countries. In terms of growth, we want to strengthen our presence in India, Turkey and the UAE. For the next three to five years, the vision is about really building a strong retail customer base with the help of our distributors”.

“In India, we have more than 4 million people involved in the direct selling business. Today, it is an ₹7,200 crore industry, which is growing at a rate of 16 per cent year on year (y-o-y). By 2025, the industry is expected to



Jain: great opportunity

touch ₹64,000 crore. It projects a promising picture with employment opportunities on an unprecedented scale. Also, it is a great opportunity for budding entrepreneurs”, says Sujit Jain, CMD, Netsurf Communications Pvt. Ltd., a direct selling company, operating in India since 2000. Netsurf initiated its operations in India with organic farm care products, rightly foreseeing the future of the global environment. “Gradually, we introduced products ranging across health & wellness, personal care and home care. Today, Netsurf offers 49 result-oriented FMCG products across four categories.”

“The growth in jobs has not kept pace with the rising number of aspirants in India,” observes Kuna. “The Labour Bureau statistics show that, as of 2015, only 135,000 jobs were created, compared to more than 900,000 jobs in 2011 and 419,000 in 2013. Unemployment has been on the rise. The one possible solution to this grave problem is promoting

entrepreneurship. The direct selling industry provides the most accessible form of entrepreneurship available today. In every single market, the industry was able to demonstrate its positive impact in areas of economic, fiscal and social contributions”, he adds. Kuna has big plans for India but, like many other companies, he is waiting and watching how the implementation of the guidelines unfolds on the ground. “The challenges have always stemmed from lack of regulatory overview for the industry. Hopefully, with the roll-out of the direct selling guidelines and the orders we have received from the Karnataka High Court, Hyderabad High Court and now the Supreme Court, the misconception seems to have been addressed properly. We are now waiting for the state governments to adopt the guidelines and put in place a system that will allow companies and consumers to participate in direct selling without fear of unwarranted arrests.”

Bone of contention

Legitimate direct selling activities have been alleged to be akin to money circulation schemes and thus, covered under the PCMC Act. “The bone of contention here is that the act empowers states to formulate their own rules to implement the law,” says Kuna. “This needs to be addressed and legitimate direct selling companies excluded from its application. It would also help to have an independent self-regulating trade body in India under the purview of the ministry, with a transparent membership process”.

A major issue, as it happens is that the direct selling business follows a multi-level compensation or commission plan, based on the sales volume of the individual and the group, when the sale of products happens through independent sales persons referred to as Independent Representatives (IRs) or groups of people at various levels. In the process, all different levels of direct sellers earn. This compensation structure has vaguely been interpreted as a so-called ‘pyramid’ scheme.

Yes, within the direct selling

model there may be multi-level marketing (MLM) and multi-level compensation plans; however that is very different from the pyramid schemes that the government needs to protect consumers against. Also, in legitimate businesses, no commission is paid unless the product is sold. Even globally, direct selling has been often confused with artificial money circulation and ponzi schemes. The pyramid or ponzi schemes involve promises of abnormal returns. In contrast, the direct selling model even if it is in the MLM form is about sales of goods and sometimes services.

Interestingly, a report by Edelweiss Finance says that the domestic direct selling market, which logged 16 per cent CAGR during 2010-14 and was expected to reach ₹7,900 crore in 2014-15, formed 0.4 per cent of total retail sales in India. "Amway is the market leader (ahead of Avon and Herbalife) with over 140 products in five categories – personal care, home care, nutrition & wellness, cosmetics and great value products, with almost 70 per cent of its revenue



Ferreira: under the cloud

coming from personal care, wellness and nutrition segments. Following the government's 'Make in India' campaign, the company has set up its manufacturing facility in Tamil Nadu and is committed to make all its products locally. It has 5 million direct sellers (expected to increase to 18 million in the coming decade). Amway plans to add 10 new products specially designed for the Indian consumer which is likely to result

in double-digit growth in cookware, health, nutrition and skin care segments showing India's importance for the parent."

Clearly, the convergence of thoughts of the legislature and judiciary will certainly go a long way in taking forward a sector which is completely in sync with the broader objectives of the government today. From encouraging entrepreneurship to benefitting small and medium enterprises the DSI has the right ingredients to support the government in pursuing its initiatives such as 'Start-up India' and 'Make in India'. The proactive approach of the government in instituting a proper legal framework for the sector to function in will probably help in realising its true potential. And creating a clear legislative framework will not only benefit genuine companies, which have already been operating in India for over a decade now, but also help attract other global direct selling companies to enter the Indian market.

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