Remembering Arun Jaitley

If GST and IBC could be rehabilitated, it would help the economy. And also be a fitting tribute to Jaitley

ARVIND SUBRAMANIAN

IT IS HARD to believe that a year has passed since Arun Jaitley’s death. On that sad occasion, I wrote: “We consequently mourn for him deeply. But we also mourn ourselves, conscious that his sharp mind, sober head, and restraining hand will forever be unavailable as India navigates its uncertain economic and political future.”

A year later, the future now seems even more uncertain; the economic and political challenges have grown more severe than anticipated; India has faced more challenges than anyone imagined to its health, institutions, federal relations, and national security; and, as a result, we have missed Jaitley’s presence even more than we feared.

He was one of the vanishing species of politicians who are centrist by temperament and disposition as much as ideology; and who, for that reason, could practise the fading art of politics as the hanging of heads and forging of compromise without deploying sordid means.

Consider the best aspects Jaitley’s legacy which, of course, was not without blemishes of omission and commission. Among the achievements of the current government, he played a particularly important role in two critical reforms. He shepherded the Indian Bankruptcy Code (IBC) through Parliament, opening up the prospect that India would finally address the long-standing problem of what I called “capitalism without exit.”

Second, his strenuous efforts to secure bipartisan support smoothed the way for the passage of the Goods and Services Tax (GST). And his leadership ensured that the GST Council, like its Vestal Sinha-created predecessor — the Empowered Committee of State Finance Ministers — functioned in a democratic, consensual spirit.

The best illustration of his role was in 2017 when CPM-run Kerala stood firm but isolated on the issue of gambling taxation. Kerala’s personnel and well-intentioned Finance Minister, Thomas Isaac, said he had no choice but to leave the negotiating room, at which point, in a truly Bollywood moment, Jaitley headed for him to stay. The strategy worked: Isaac stayed, and Jaitley was able to forge a compromise that met Kerala’s needs, while preserving unity within the Council. If the GST was a tribute to India’s cooperative federalism, Jaitley was its agent and embodiment.

However, as Jaitley’s health and influence declined, the reforms that he spearheaded began to falter. Today, the GST council is riven by a trust-deficit, the GST is on the verge of becoming discredited, while the IBC has been consigned to some netherland of zombie-dom. Even so, the decline is not terminal and the GST and IBC can yet be resuscitated.

For the GST, the immediate priority is to rescue the compensation discussions, which have become trapped in obscure legalities. This is a distraction because the spirit of the compensation commitment was clear: The Centre guaranteed states annual revenue increases of 14 per cent. It is up to the Centre to will the means, and resist recourse to legal legerdemain to avoid or delay compensation. The integrity of reforms like the GST is tested in difficult times such as now. And to pass the test, the Centre will have to incur costs.

This counterfactual speculation but had Jaitley been alive, he may have been able to preserve enough trust to persuade the states to accept a lower compensation this year, in view of the parlous state of revenues all around. But now states will not engage in that discussion, fearing that compensation might be diluted even beyond the crisis. If this stalemate continues, each revenue-starved state could start to impose its own GST rates, beginning as a trickle and soon leading to the flood that results in many taxes and several balkanised markets, undermining the dream of one economic India. At that point the GST would be dead. Such an outcome is too horrid to contemplate; it must be avoided at all costs.

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The GST and IBC could be rehabilitated. The broader economy seemed to be doing well so the official GDP numbers (mis)led us into believing, sucking out the oxygen of policy urgency. The government was at times sensitive to the suit-boot-sarkari critique and did not want to be seen as allowing promoters to buy back their firms at a discount, should they win in the auction.

As a result, the executive decided to pass the back for bad debt resolution to a judici- ary-based process, and only the RBI under Urjit Patel then took on the commendable task of implementing it, ensuring that delinquencies were not actually sent to the bankruptcy courts in a rules-based, timely manner via the famous February 12 circular. But several problems materialised. In partic- ular, the nuance of “stigmatised capitalism” led the government to disallow defaulting promoters from the auctions. Promoters responded initially by delaying proceedings for years through judicial appeals. Then in 2019 they convinced the Supreme Court, with the government’s acquiescence or support, to scupper the February circular, on the procedural grounds that the RBI had over- reached its mandate.

Once the pandemic is behind us, the government will consequently need to chart a new way forward. One option, which Josh Feldman and I have proposed, would be to adopt a broad resolution strategy, employing both judicial and executive processes. On the judicial side, the government should take advantage of its improved political strength to resuscitate the IBC, allowing promoters (except willful defaulters) to be part of the resolution process. That would make the IBC less vulnerable to theiraining efforts, expedite resolution, and also help maximise value from assets.

On the executive side, the government could recognise that the power and real estate sectors are sui generis, and cannot be handled through the IBC. Instead, bad banks should be established to resolve these debts. In other words, the debate of IBC versus bad banks should be set aside. They should not be seen as competing; they can be treated as two sides of the same coin.

If the GST and IBC could be rehabilitated along these lines, this would go some way in getting the economy back to a path of gradual recovery in the post-pandemic period. It would also be a fitting tribute to Jaitley, a small consolation (as a paraphrased version of Simon and Garfunkel’s plaintive plea plays in our ears: “Where have you gone Arun Jaitley. Our nation turns its lonely eyes to you.”

The writer is professor, Ashoka University, and former chief economic adviser, Government of India