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PRICE CONTROL & HEALTHCARE

Don't confuse access with affordability

Simply making healthcare affordable will not counter the problem we have—a large part of the population denied access due to poor availability of hospitalisation, specialists and drugs

NCE AGAIN, THE FOCUS is back on providing low-cost healthcare. Almost always, our solution to make healthcare coverage dable is to cap prices of drugs, con-tions and hospitalisation. With high f pocket expenses and poor insur- coverage, it is always a seemingly listic solution that emerges from olicy-makers. Cut down the costs by ing prices and health coverage will ove—that's what we have been led lieve on multiple occasions. This es for quick fixes and political rtunism. Last month, we had the e Minister in London, blaming doc-for colluding with pharmaceutical s in cheating poor patients.

a country where two-thirds of the lation is denied access to quality thcare today, it is important to ly guarantee universal health cov-. However, we must also be cautious o confuse access with affordability. ly making healthcare affordable ot counter the problem we have—a part of the population denied s due to poor availability of hospi-tion, specialists and drugs. The first cament, therefore, is to guarantee s and coverage.

condly, it is equally important to that in the absence of a fully func-ng public health system, it is the pri-sector that we must depend upon. ealth system in our country is fash-l upon the National Health Service) of the UK, which provides state-ed high quality healthcare to the e population. However, what we n terms of infrastructure is hardly o cover a fifth of the entire popula-The private sector is large, and in the ce of regulation and poor imple-mentation of standards, tends to cut corners and provide snobby treatment.

Thirdly, because of the absence of a smoothly functioning insurance market, out of pocket expenses go up to 70% of total costs. Most of this expenditure is on drugs. Therefore, it does make political sense to cut down drug costs. However, if this is done through government-ordered arbitrary price fixing, it could only result in drug firms pulling out products and, thereby, stocks will run dry. If hospitalisation costs are capped, patients will suffer long waiting periods and other hidden costs. Price caps have rarely worked in any sector; there is no proof they will work in the health sector.

Therefore, it is important that the state must focus on other innovative methods. Centralised drug procurement has been effectively used in states like Tamil Nadu to bring down costs. A well-functioning generics market, not like the often ignored and empty Jan Aushadhi centres, is required to give the poor access to inexpensive drugs. Primary health centres must be well-staffed, public health improved and supply chains should be made functional. The state must first realise that primary healthcare and public health are the government's responsibility and must be guaranteed to all. The private sector can, at best, supplement this effort.

It has indeed become politically expedient to hit out against the entire fraternity of doctors and hospital care providers, and paint them as callous profiteers who are immune to human suffering. Instead of bringing in a strict and firm monitoring and regulatory mechanism, the government mostly takes the easiest way out through arbitrary price controls.

Probably the best example that can be cited here to prove that price control doesn't work is the government's stand on pricing of stents and other medical implants. Stent price capping has resulted in eliminating the choice of stents that are unique in make, such as sleeker stents, or stents that can pass through a calcified lesion. Furthermore, there have been multiple reports which point to the fact that hospitals have cited no significant increase in the number of angioplasty procedures performed, after the move on stent price control.

Sure, price capping sounds all good when we look at it from a distance, but the ghost essentially sits in its details. The setback in terms of medical devices support from international players will majorly affect patients, whose lives are at stake because of a host of ailments. Moreover, there is a very small chunk of population that can afford to travel overseas, for quality treatment.

Most importantly, constant innovation is what it takes to tackle disease and ill health. The legion of neglected diseases exits because there are various health problems that are unique to a region like ours, and solutions to those can't be imported from elsewhere. They will have to emerge from our laboratories and our drug firms, which must be incentivised to innovate and invest in research and development. We need to acknowledge that only 1% of the GDP is being spent by the government on healthcare, and that we are doing worse than most sub-Saharan countries. We need a far greater commitment from the state. We need more doctors and more medical schools. Blaming doctors for rising costs, while keeping their supply low, is not going to take us anywhere good.

A welcome move by RBI on cross-border mergers

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RBI HAS ROLLED OUT the long-awaited regulations to allow cross-border mergers that could boost foreign direct investment into the country. In March, RBI notified that the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, will cover both inbound and outbound investments. The ministry of corporate affairs had already notified Section 234 of the Companies Act, 2013, paving way for the merger and amalgamation of a foreign company with an Indian company and vice-versa. Earlier, Section 234 required prior approval of RBI, but now RBI has stated that any transaction done in compliance with merger regulations will be deemed to have its prior approval. This will have a huge positive impact on the timeliness of cross-border mergers and acquisitions.

Inbound merger: It means 'merger of a foreign company with an Indian company.' The 2018 merger regulations allow an Indian company to issue or transfer any security to a person resident outside India subject to pricing and sectoral foreign investment conditions and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017. RBI has stated that the assets can also be held by the Indian company outside India and anything that is not permitted to be acquired or held has to be disposed off within a period of two years from the National Company Law Tribunal's (NCLT) sanction date.

Any guarantee or borrowing of the foreign company, which due to the merger becomes the borrowing of an Indian company, must conform to the External Commercial Borrowing Regulations within a period of two years. This is subject to a condition that no remittance or repayment from India will be made within such period and the conditions with respect to end-use shall not apply. Further, any office of the foreign company outside India shall be deemed to be a 'branch office' of the Indian company pursuant to sanctions of the scheme.

Outbound merger: It means 'merger of an Indian company with a foreign company.' The 2018 merger regulations allow a resident person in India to hold securities of the foreign company in accordance with the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004. Further, a resident individual may acquire securities outside India subject to fair market value of such securities which is under the Liberalised Remittance Scheme. RBI has stated that the Indian assets can also be held by the foreign company and anything that is not permitted to be acquired or held has to be disposed off within a period of two years from the NCLT's sanctioned date.

Any borrowing of the Indian company, which due to the merger becomes the borrowing of the foreign company, shall be repaid as per the terms of the NCLT-approved scheme. This is subject to obtaining a no-objection certificate from the Indian lenders and the foreign company shall not acquire those Indian borrowings that are not in conformity with the Act or the Rules. The 2018 merger regulations require the valuation of the Indian company and foreign company to be in accordance with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Also, a certificate is required to be submitted with the NCLT, which has to be certified by the director or MD or company secretary, stating the company will comply with 2018 merger regulations. This will ensure that regulatory actions of companies involved in the scheme with respect to non-compliance, contravention, violation, if any, under foreign exchange regulations are completed.

The benefit of fast-track mergers is not available in the case of a merger of a wholly-owned foreign subsidiary to merge with its Indian holding company (or a wholly-owned Indian subsidiary merging with its foreign parent company), making it mandatory for all cross-border mergers to get NCLT approval.

Currently, the Income-tax Act, 1961, provides tax exemption to the capital gains accrued to the transferor company and its shareholders in case of inbound mergers by treating such mergers as being tax-neutral (subject to certain conditions being met). In the absence of similar tax exemption, in case of outbound mergers, the capital gains arising from these mergers may result in tax liabilities in the hands of the transferor company and its shareholders.

Although there remain a few issues, as highlighted above, cross-border mergers will present an additional structuring avenue to undertake corporate transactions in an efficient and flexible manner. The notification of the provision on cross-border mergers and the amendment is a welcome development.

(Surbhi Maheshwari, assistant manager, KPMG in India, contributed to the article)