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De(Coding) The Indian EdTech Sector

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The National Educational Policy 2020 **(Policy)** has been touted as a breakthrough in the Indian education sector. The key objective of this Policy – utilizing information and communication technologies in education systems to provide new and innovative forms of support to teachers and students – is in sync with the underlying factors responsible for the present boom in India's education technology (**EdTech**) sector.

This sector is typically characterized by attractive attributes such as high scalability, robust cash flows and high-growth business models. The same is evidenced through the proactive mobilization of resources that various EdTech firms have undertaken through acquisitions and investments from both domestic and international markets, despite the grim state of the world economy. The Indian EdTech sector reportedly raised USD 1.5 billion in first nine months of 2020 as compared to USD 409 million in 2019 with Byjus, Unacademy, Vedantu, Interview Bit Academy leading from the front and strengthening India's claim to be the second-largest market for E-learning after the USA.

In this upbeat background, the authorities regulating the Indian education sector have the imperative responsibility to guard against hurdles faced by stakeholders of the EdTech sector in order to maximize the underlying value of the sector, as a whole. The analysis of the regulatory landscape includes but is not limited to the wide range of regulations that must be complied with by an entity operating in the Indian EdTech sector.

The first aspect includes the cobweb of regulations that seemingly envelope the EdTech industry in India. Although 100% FDI is permitted through the automatic route in education sector, the EdTech sector correlates more to 'E-Commerce activities', defined under the consolidated FDI Policy of India 2017 (**FDI Policy**). According to paragraph 5.2.15.2.2 of the FDI policy, 'e-commerce' refers to buying and selling of goods and services, including digital products, over a digital & electronic network and is further divided into an inventory-based model and marketplace-based model of e-commerce. Though 100% FDI is allowed under the automatic route for marketplace-based e-commerce businesses, the Government of India has been reluctant to allow the same for an inventory-based model of e-commerce in order to safeguard the smaller business outfits.

If the Ed-tech companies themselves provide educational services through their platforms, they are likely to fall under inventory-based e-commerce, where FDI is prohibited. This is bound to adversely impact the EdTech sector. Given that the online platform providers in EdTech have increasingly played the role of content providers and curators in recent times, a caveat-based approach allowing FDI for EdTech under the automatic route even for inventory-based model is essential. Should this approach be effectively implemented, other sectors where domestic market remains a large source of employment, such as operating corner stores and other small-time trading, will continue to be protected.

Additionally, the scope and applicability of the new Consumer Protection (E-Commerce) Rules, 2020 (**E-Commerce Rules**) is considered wide enough to cover all goods and services bought or sold over digital or electronic network. Owing to the elements of profit making and commercialization in exchange for a consideration paid for such services, the EdTech firms would potentially be subjected to the E-Commerce Rules. Though the objective of the E-Commerce Rules is to regulate the conventional e-tail businesses, broad-based application of an 'e-commerce entity' could inadvertently include the EdTech sector as well. As a result, some of the key compliances that EdTech firms could be subjected to under the E-Commerce Rules range from expansive information disclosures to additional and cumbersome obligations relating to marketing, service providers and warranties.

Another major regulatory issue that impacts the EdTech industry pertains to a lack of clarity in data protection obligations and liabilities. Currently, the Information Technology Act, 2000 read with the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or information) Rules, 2011 regulates the use of personal data. However, it provides a very narrow definition of sensitive personal data with no specific rule for the usage of personal data of consumers, these being children in the case of EdTech sector. In an attempt to address the same, the Personal Data Protection Bill was introduced in 2019 (**Bill**) to provide data protection and discuss the role of entities that handle data, especially data relating to children. Considering that the volume of personal data being exchanged is rising exponentially, with the current lack of adequate governance, it is time that the law catches up with the technology to ensure that individual data privacy and protection is not left at the discretion of private companies. In the background of Vedantu's recent data breach that exposed personal details such as emails and IP addresses of children and their parents, it is imperative that the Bill is promulgated into law expeditiously to remove regulatory setbacks and ensure a modern data regime in India. This will, in turn, boost investor sentiment and thereby maintain a sustainable flow of investment in the EdTech sector that has witnessed improved internet connectivity and widespread adoption of digital payment options in recent times.

The incorporation of unconventional and wholesome changes in the education sector propagated by the Policy, along with other enabling factors – such as hi-speed internet infrastructure in the country and penetration of smart devices amongst the population – will provide a massive boost to this sector and present a significant opportunity for companies, more so in light of the growing number of traditional schools and colleges that are opening their doors to the notion of online education amidst a global pandemic. In what can be construed as a direct result of promulgating the Policy, Byjus has acquired White HatJr, a Mumbai based firm rendering coding lessons, for a reported fee of USD 300 million in August 2020.

EdTech has the amazing potential of removing traditional barriers to education and allowing each student to operate independently while still being a part of the collective. While the shift to EdTech will require additional consideration of aspects pertaining to cyber-behavior such as bullying, monitoring content, ensuring protection of students from cyberattacks or phishing scams, screening of instructors, etc., the mantle of ushering in this new dawn would require additional legal and policy interventions to pave the path for the growth of this sector in India.

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