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Tough get going in bearish job market

Instead of fretting over retrenchment fears, know your rights as an employee to make the right moves at the right time, says Preeti Kulkarni

THE nightmare on Wall Street has, for the first time, awakened many Indians to economic uncertainties — particularly those who have never seen a sustained bear phase in their career. Job insecurity has crept in and many are losing sleep over their future prospects. While the magnitude of the disaster has taken even the most pessimist analysts by surprise, the slowdown in the US economy had been making its impact felt over the past few months, with several companies — Indian and multinational alike — switching to the 'right-sizing' mode. Though everyone highlights India's resilience, it makes sense to be prepared for the worst, while continuing to hope for the best. Here are a few points you need to bear in mind if you happen to hear the axe being sharpened.

Read the Fine Print

"Studying the offer letter closely is very important, but many tend to ignore this," pointed out Kris Lakshmikanth, founder CEO and managing director of HR consulting firm The Head Hunters India. Going through employment contract can help you get clarity on your entitlements in troubled times.

Know Your Rights

Rishi Das, co-founder and CEO, CareerNet Consultingm, said: "Employees need to be aware of the fact that their employer cannot terminate their services without serving the necessary notice (as mentioned in the employment contract) or compensating for the salary in lieu of that period. Some MNCs also have the practice of offering a severance package to the employees being retrenched which, depending on their policies, could amount to 3-6 months' salary." Vikram Shroff, head, HR laws, Nishith Desai Associates said, "In case of any conflict between the provisions of the applicable labour laws and those contained in the employment contract or employee handbook, the provisions that are more favourable to the employees will prevail."

In the event of winding up of a company, the Companies Act, 1956 ensures that employees' dues (along with the company's tax liabilities) are given the first charge over the assets of the company, prior to settlement of other creditors' dues. Also, no matter what financial condition the organisation is in, there are regulations in place to ensure that the employee's provident fund (PF) is safe. Mr Shroff explained: "To the extent the organisation is adjudicated insolvent or being wound up, there are also provisions under labour laws to ensure that the employer's liability towards employees' PF is to be paid in priority to all other debts while distributing the property. Private trust set up by the employer for PF contributions should also remain unaffected."

Legal Recourse

If employees feel that they have been unfairly sacked, they can take recourse to the Industrial Disputes Act, 1947. Legal consultant Atul Nagarjan informed: "If the management of a company serves a notice for terminating employees' service and they wish to dispute it,

they can, after accepting the letter and the compensation cheque, write a protest letter — preferably a registered one — to the company. Then, the employee can challenge the employer's decision in the labour court under the Industrial Disputes Act. Such a complaint can be lodged even after accepting the compensation cheque."

Transfer of Ownership

If the ownership of your organisation has changed hands, you need to get clarity on the terms of your new contract. "In such cases, employees should discuss with the new management team the commitments made by the previous management and ensure that they promise to honour the same," advised Mr Das. "At times, employees are given the impression that they are being inducted by the new company with a hike in salary and are made to sign bonds. However, at this juncture, they could lose the benefits of previous service they have put in and in this scenario it becomes quite difficult to file a petition. Therefore, the employees should be careful while signing the bonds and make sure that the continuity of their service is not impacted as it could affect their gratuity, leaves, increments, promotions etc," said Mr Nagarajan.

When the Going Gets Tough

Finally, if you have to encounter the unfortunate scenario of the dreaded pink slip making its way to your desk, you need to brace yourself for some belt tightening measures. Taking stock of your expense pattern and holding capacity, that is, your liquid assets comprising your savings bank deposits and fixed deposits, and drawing up a restructuring plan would be in order. Post this exercise, you might find yourself in one of these three situations: solvent, but illiquid; insolvent as well as illiquid, or in a comfortable zone, where you are both solvent and have enough liquid investments at your disposal.

If you are in the solvent, but illiquid bracket, i.e. your net worth covers more than a year's expenses, but liquidity cannot cover even three months' expenses, then you need to look at encashing your illiquid assets like property, gold and insurance policies. "You don't need to cut the expenses brutally, but selling of a car or raising short-term finance against your illiquid assets can be considered. For instance, if an individual has purchased a house in 2004, the market value would have swelled considerably now. Also, the loan would have been repaid to an extent, paving the way for seeking a top-up loan against the asset," said PARK Financial Advisors' director Swapnil Pawar. If you are in the comfortable zone, the restructuring required would be minimal – you would only need to ensure that you there is no dilution in the liquidity level by not locking-in your funds till you zero in on your next assignment.

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