

Franchising is a widely-practised option in India. This week, we look at the dos and don'ts of the business

Q: I have quit my job as I wanted to start up on my own. About 16 months ago, I was selected as a franchisee of a private petroleum marketing company for setting up a retail outlet and we started proceedings to set up shop my district. Now the company is saying that, for the time being, it has stopped all activities regarding setting up retail outlets in country. They tell me that there is a policy problem with government on a retail selling price between the government undertaking oil marketing companies and private oil marketing companies. I have also spoken with a few highly placed officials within the company but they always give a common reply — “wait & watch” till the new policy is introduced by the government in favour of private oil marketing companies or till they have in place a petroleum regulatory authority for downstream regulation activities for all. Sir, I do not want to get into any kind of litigation but at the same time I want to protect the investment that I have made in this project. Kindly advise.

— Name withheld on request

Nishith Desai replies:

Your question raises a few issues which first need to be clarified. When you were selected as a franchisee of the petroleum company, was any contract or other documentation entered into? This assumes importance because if there was a contract in place the terms and conditions of that contract would govern the legal relations between you and the company including the circumstances under which the company could stop these activities. In the absence of any contract, the intention of the parties assumes more importance. Correspondence exchanged between you and the company could have created some contractual obligations and therefore, examining that is also important. Generally, in such cases and specifically in government regulated industries such as petroleum, policy changes are not uncommon. These policy changes, unless barring the appointing of franchisees such as yourself, in the present case, should not affect your rights. Since you have invested time and money in this project it is important for you to safeguard your rights and investment. Therefore it becomes important to establish the presence of any contractual relationship. Litigation is always avoidable and the last resort. My advice to you will be to try and establish whether the company has made any express or implied promises or was bound by certain obligations to you. In contract law there is a doctrine of Promissory Estoppel, which provides that if one party has made a promise to another with respect to the legal relations between them and the other has acted upon that promise, the party making the promise cannot revert to the earlier position as if no such promise or assurance had been made by him. In the event you can establish that any promise was made to you, you must approach the company and engage them in dialogue to reach some mutually acceptable solution. Good Luck!

BEFORE BECOMING A FRANCHISEE

Critically examine franchiser's financial position

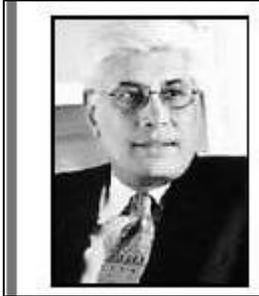
Look for a business or a product with considerable market presence

Research whether the franchiser's business is temporarily fashionable or can be successful long term

Ask an expert solicitor to double check the agreement with franchiser

Compare notes with existing franchisees about their experiences with the franchiser

Consider the risk — not every franchisee may succeed in doing good business



NISHITH DESAI ,

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