Ministry of Corporate Affairs

Monthly Newsletter

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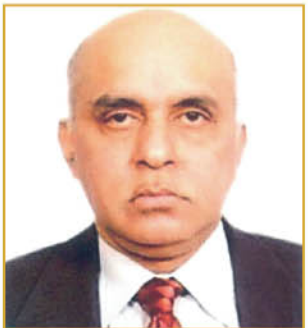

Shri Naved Masood,
Secretary, MCA

From The Secretary's Desk

India's GDP number for the first quarter of this fiscal, released by the Central Statistical Office (CSO) on 31st August, 2013, reported a growth rate of 4.4%, the lowest in last four years. Agriculture GDP grew at a rate of 2.7%, manufacturing GDP declined by 1.2%, and service sector grew by 6.6% during the April-June Quarter. However, there are indications of a positive revival of the economy.

Several measures introduced in the recent past to curtail gold imports and arrest rupee depreciation have favourably impacted the economy. Exports from India rose to a two-year high of 13% in August, 2013, and import declined by 0.68%, with significant drop in gold import from 47.5 tonnes in July to 2.5 tonnes in August, 2013, thanks to hike in customs duty. India's trade deficit narrowed to a five months low in August, 2013, easing India's current account deficit worries to some extent. Index of Industrial Production (IIP) rose by 2.6% in July, its first expansion in last three months, driven by a double-digit growth in capital goods sector estimated at 15.6%.

The WPI-based inflation has increased to 6.1% in August, 2013 from 5.8% in July, 2013. Food inflation still remains a cause of concern, with Consumer Price Index (CPI) registering an increase of 9.52% in August, 2013. At the same time, the positive impetus coming from India's external sector performance and industrial output as well as the expected good harvest in the coming months will boost investors' confidence.

I am glad to share that the Companies Bill 2013 has been enacted as a law. The new Act, inter-alia, proposes significant changes to the existing provisions on various aspects of corporate governance. The provisions in the Act are progressive, futuristic, and aligned with global best practices. The Act provides for enlightened self-regulation by corporates, promotes investors' democracy; addresses public concern over corporate accountability and responsibility; and simultaneously introduces some business friendly provisions. Some of the innovative features in the Act include introduction of One-Person Company (OPC), provision of woman director, rotation of auditors, statutory status to SFIO, and last but not the least, mandatory CSR spend by companies of a prescribed threshold

The first and second tranche of draft rules under the Act have been placed on the Ministry's website inviting public suggestions and comments. I invite all stakeholders to participate in this consultative process in right earnest so as to jointly develop an appropriate business friendly corporate governance frame-work.

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Senior Level Appointment: Smt. Aruna Sethi has assumed charge of Cost Adviser in the Ministry of Corporate Affairs with effect from 02.09.2013. Smt. Aruna Sethi is an officer of the Indian Cost Accounts Service (ICoAS).

The Companies Act, 2013: The Companies Act, 2013 received the assent of the Hon'ble President of India on 29.08.2013, after being passed by the Rajya Sabha on 08.08.2013. The Bill was earlier passed by the Lok Sabha on 18.12.2013. The Act was notified on 30.08.2013. The new Companies Act, 2013 contains 470 clauses, as against 658 Sections in the existing Companies Act, 1956. The entire Act has been divided into 29 chapters.

The Ministry has initiated the process of formulation of relevant draft rules inviting comments/suggestion/ feedback of all stakeholders, including regulators, such as SEBI, RBI on provisions related to them. The first and second tranche of draft Rules under the new Act, have been posted on the website of the Ministry of Corporate Affairs. Stakeholders, who would like to send their comments/ suggestions on the draft Rules can use the web link http://mca.gov.in/NCB/feedback, or use the link "Feedback on draft Rules under the Companies Act, 2013" on the Ministry's website www.mca.gov.in. The e-platform hosted on the website has been developed in a user friendly and interactive manner, and will facilitate collation and analysis of suggestions/ comments received on the draft Rules. The draft Rules and the Companies Act, 2013 are also available on the Ministry' website.

MCA-21 e-Governance Project: There is significant improvement in service delivery of MCA-21 during August, 2013. 2,07,426 documents were filed, of which 8,736 were filed through Certified Filing Center (CFC) and 1,98,690 through Virtual Front Office (VFO). These e-filings include 4,506 Balance Sheets and 3,897 Annual Returns.

The MCA-21 Portal is being strengthened to meet annual peak filing requirements during October/November, 2013 by augmenting its capacity. The Ministry of Corporate Affairs has introduced a new feature on its website relating to pending prosecution details filed against those companies and their directors to bring more transparency. The functionality is available through "master data" link.

Investor Protection and Awareness:

1. In collaboration with the three Professional Institutes [i.e., Institute of Chartered Accountants of India, Institute of Company Secretaries of India, and Institute of Cost Accountants of India], 86 Investor Awareness Programmes were conducted in different towns/cities of the country during August, 2013.

2. Till the end of August, 2013, 2058 companies have uploaded information about unpaid and unclaimed amounts of investors lying with them on website (www.iepf.gov.in) set up for companies to file details of unpaid and unclaimed amounts of investors for the last seven years, which are yet to be transferred to the Consolidated Fund of India. The total amount reported by these companies is Rs. 2,471.54 crore.

Circulars: The Ministry of Corporate Affairs has issued a Circular concerning administration of the Companies Act, 1956 in July, 2013 (for further details, visit our website: www.mca.gov.in). As per General Circular No. 15/2011 dated 11th April 2011 (amended further by General Circular No. 36/2012 dated 6th Nov. 2012), companies are required to e-file their applications for appointment of the Cost Auditor within 90 days from the date of commencement of each financial year along with prescribed fee. Further, the additional fee for delay in filing applications for appointment of Cost Auditor were prescribed vide Notification, G.S.R. 617 (E) dated 7th August, 2012. It has been decided, vide the General Circular No. 14/2013 dated 03rd Sept. 2013, to extend the last date of filing and to relax the additional fee applicable on e-Form 23C up to 31.10.2013. As such e-Form 23C can be filed for appointment of cost auditor with normal applicable fee, up to 31.10.2013, or within 90 days of the commencement of the company's financial year to which the appointment relates, whichever is later.

Companies in the Registry: A total of 7,179 companies were registered under the Companies Act, 1956 during August, 2013. Of these 7,149 Companies were registered as Companies Limited by Shares with authorized capital of Rs. 5,549.07 crore. This comprises 6,986 private limited companies with authorized capital amounting to Rs. 979.75 crores, and 163 public limited companies with authorized capital amounting to Rs. 4,569.32 crores.

As on 31st August 2013, there are 13.45 lakh companies in the Registry. Of these, as many as 2.57 lakh companies have been closed. There are 30,127 companies that are in the process of being closed. As many as 1.44 lakh companies have not filed their Annual Returns/ Balance Sheets (i.e., Annual Statutory Filings) for more than three consecutive years, and are classified as 'dormant'. In other words, there are about 8.99 lakh active companies, of which 1.49 lakh companies were incorporated within the preceding eighteen months (not due for filing).

During August, 2013, six government-owned companies were registered under the Companies Act, 1956, as public limited companies with authorized capital of Rs. 4,181 crores. The Government companies incorporated are: 1. Bharatiya Mahila Bank Limited, 2. Railway Energy Management Company Limited, 3. TCIL Lakhnadone Toll Road Limited, 4. National Capital Region Transport Corporation Limited, 5. Surat Sitilink Limited, 6. Southern-up Power Transmission Company Limited. Of these, first 4 Companies are Central Public Sector Undertakings (CPSU) and rest 2 companies are State Level Public Enterprises (SLPEs).

Major events at IICA:

1. **Seminar on Corporate Social Responsibility in new Companies Act:** The Indian Institute of Corporate Affairs (IICA) in partnership with Federation of Indian Chamber of Commerce and Industry (FICCI) organized a seminar on "Corporate Social Responsibility – Companies Act, 2013 & Impact of Section 135" in Mumbai on 07.08.2013. The seminar was organized to bring awareness about various changes being brought in new Companies Act, 2013 on how companies spend on CSR and what kind of activities will be qualified for compliance etc. Dr. Bhaskar Chatterjee, DG and CEO IICA; Ms. Rajashree Birla, Chair, FICCI committee on CSR, J S Saharia, Additional Chief Secretary – Education and Sports, Government of Maharashtra etc. spoke at the seminar. The seminar was attended by over 90 industry representatives.

2. **Training on Competition Law for Public Sector Oil Marketing Companies:** The School of Competition Law, IICA organized a two day residential training course on Competition Law for Public Sector Oil Marketing Companies on August 2-3, 2013 at the IICA, Manesar. The training was organized to sensitize the officials of public sector oil marketing companies about the competition law principles, orient their business strategies consistent with the provisions of competition law and applying them in their commercial transactions. Training was divided into six academic sessions: 'Impact of Regulatory Regime in Oil and Natural Gas Sector on Competitive Environment'; 'Public Procurements and Competition Law'; 'Anti-competitive agreements'; 'Abuse of Dominance'; 'Combinations'; and 'Voluntary Self Compliance'.

Events at CCI:

(1) Shri Anurag Goel, Member, CCI, along with Dr. K.D. Singh, Dy. Director (Law), CCI held a meeting with Chief Secretary and senior officer of Government of Maharashtra on competition related issues with focus on the areas where the State Government can work with CCI to promote competition and fair play in the market at Mumbai on 26.08.2013.

(2) Shri. Nayan Chanda, Director of Publications, Yale Center for the Study of Globalization delivered the Ninth "Distinguished Visitor Knowledge Sharing Series" Lecture on "Globalization: Riding the Wave of Competition" organized by the CCI held on 6th August 2013.

(3) Dr. Sanjay Kumar Pandey, Joint Director (Law) conducted Liaison Officer's conference call between Australian Competition and Consumer Commission (ACCC) and CCI on developing mutual understanding on 21.08.2013.

(4) Dr. Satya Prakash, Director (Law) and Shri Amit Tayal, Deputy Director (Law) made a presentation on 'Overview of Competition Law: Section 3 & 4' and Powers & Duties of CCI, Trade Association and Competition Compliances, at CII, Chennai on 21.08.2013.

(5) Shri Shyamal Misra, Adviser In-charge (Eco) and Shri Ved Prakash Mishra, Joint Director (Law) made a presentation on 'Combination Regulations' and Powers & Duties of CCI, Trade Association and Competition Compliances, respectively, at FICCI, Bangalore on 23.08.2013.

(6) Shri R N Sahay, Adviser (Eco) made a presentation on 'Overview of Competition Law: Section 3 & 4' at Bombay Chambers of Commerce and Industry (BCCI), Mumbai on 01.08.2013.

SALIENT FEATURES OF THE COMPANIES ACT, 2013

- The Act has 470 clauses as against 658 Sections in the existing Companies Act, 1956. The entire Act has been divided into 29 chapters.
- The Act prescribes thirty-three new definitions, including "Associate Company", "Small Company", "Employee Stock Option", "Promoter", "Related Party", "Turnover", "Chief Executive Officer", "Chief Financial Officer", "Global Depository Receipt" etc.
- Financial Year of any Company can only be First day of April to Thirty-first day of March. A different financial year is permitted only in respect of certain companies complying with certain conditions, and only with the approval of Tribunal.
- The maximum number of members in respect of a Private Company has been increased to 200, from the existing ceiling of 50.
- The term "Officer Under Default" has been expanded to include Share Transfer Agents, Registrars and Merchant Bankers to the Issue or Transfer Related to Issue of Shares and Chief Financial Officer.
- The concept of One Person Company (to be formed as a private limited company) has been introduced.
- In the Memorandum of Association of Company, only objects for which company is incorporated along with matters considered necessary for its furtherance need be mentioned.
- Commencement of business by public/private Company will be considered only after filing of (a) Declaration by director in prescribed form providing that the subscribers have paid the value of shares agreed to be taken by them, and (b) Confirmation that the company has filed a verification of its registered office, with the Registrar.
- A public company can only issue securities by following the provisions related to public offer or Private Placement or by way of bonus or right issue, while a Private company may issue securities only through private placement.
- Power of SEBI extended to include the provisions related to Share Capital in respect of listed companies and companies desirous of getting listed. Provisions regarding Prospectus, variation of terms of contract mentioned in the prospectus and Shelf prospectus have been made more detailed and investor-friendly.
- Companies may now issue Global Depository Receipts.
- The Act defines "private placement" and provides detailed provision for the same.
- Every Annual Return shall contain the additional information like particulars of its holding, subsidiary and associate companies; matters related to certification of compliances, disclosures for remuneration of directors and key managerial personnel etc.
- In case of Companies with prescribed paid up capital and turnover, certification of annual return by practicing company secretary has been made mandatory.
- First Annual General Meeting of the Company shall be held within the period of 9 months from closure of its first financial year (instead of 18 months from the date of the Incorporation, as provided in the Companies Act 1956).
- Every Listed Public Company must prepare a report on each annual general meeting including the confirmation that meeting was convened, held and conducted as per the Act and rules made thereunder.
- Board of Directors empowered to declare interim dividend out of profits of the corresponding year, and not exceeding average of three preceding years if it has suffered loss up to the previous quarter.
- Unpaid and unclaimed dividends will be transferred to Investor Education Protection Fund; funds from IEPF can be utilized to serve court decrees in respect of disgorgement.
- Along with financial statement (including Balance Sheet, Profit and Loss Account, and cash flow statement), consolidated financial statement of all subsidiaries and company will be prepared and shall also be laid before the Annual General Meeting. Conduct of internal audit of certain companies has also been provided for.
- The name of National Advisory Committee on Accounting Standards has been changed to National Financial Reporting Authority. The role of the authority is to advise on matters related to auditing standard in addition to accounting standards.
- Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The committee shall recommend the policy for CSR to the Board.
- The Act provides for compulsory rotation of individual auditors in every five years and audit firm in every ten years in listed companies and certain classes of companies, as may be prescribed.
- Provisions for representation for women in Board of Directors, residency requirements on at least one director, number of independent directors to be appointed and their qualifications have been made; maximum number of directors has been fixed at 15 (up from 12 earlier), with a provision to increase this ceiling by special resolution.
- No person can be director on the board of more than 20 companies (or, 10 public companies). Disclosure of interest by every director has been made mandatory.
- Various Committees such as Audit Committee (Vigil Mechanism), Nomination and Remuneration Committee, and Stakeholders Relationship Committee have been provided for.
- The functions of the Company Secretary have been elaborately laid down. It also provides for provision related to secretarial audit in certain prescribed companies.
- Registrar/Inspector have powers of search and seizure, after obtaining permission of special court. They can access the premises of Key Managerial Personnel, Auditors and Company Secretary in practice, and Registrar will have powers of civil court in such matters.
- The Serious Fraud Investigation Office (SFIO) gets a statutory status and can investigate such complaints. The investigation can go even into the question of ownership of the related company. Foreign companies are explicitly covered under this office.
- The manner of declaring a company sick and process of its revival and rehabilitation has been rationalized. Criteria of erosion of 50% of the net worth for declaring the company as sick has been dispensed with; creditors representing 50% or more of the debt of the company can, if even after 30 days of service of demand notice their debt remains unpaid, can apply to the Tribunal for declaration as sick company. Even the company, after its failure to comply with the demand notice can also apply.
- New definition of Nidhi Company has been prescribed.

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