



Monthly Newsletter

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According to the latest quarterly estimates of GDP released by Central Statistics Office (CSO), the Indian economy registered a growth rate of 7.7% in fourth quarter (Q4) of the FY 2017-18 at 2011-12 prices as against 5.6%, 6.3% and 7.0% respectively, in the first three quarters of 2017-18. Indian economy is on an uptrend and the growth scenario is set to improve further. This rise in growth in Q4 can be attributed mainly to manufacturing and construction sector, which grew at an impressive rate of 9.1% and 11.5 % respectively as compared to their growth of 6.1% and -3.9% respectively, in the same quarter of the last financial year. The financial, real estate and professional services sector also showed remarkable growth of 5% vis-a-vis its growth of 1% in Q4: 2016-17. The provisional estimates of GDP for whole financial year 2017-18 is now estimated at 6.7%.

One of the key issue hampering the investigations and prosecutions against entities involved in financial irregularities has been lack of a proper and uniform definition for "shell companies". A task force on shell companies, set up by the Government in 2017, has arrived at a criteria to define shell companies. The task force has suggested some possible parameters to define if a company has been set up to launder money or exploit regulatory arbitrage. Some of the criteria are (i) obscuring ownership (ii) excessive leveraging (iii) rotation in transactions with no apparent business purpose (iv) majority of shares held by other companies (v) Disproportionate investment in shares of other companies etc.

The recent Supreme Court ruling in the Mahindra and Mahindra limited case wherein it was decided that the waiver of a loan cannot be treated as income and cannot be subject to income tax in the hands of the borrower, is likely to have implications on the cases under the IBC, as there are large number of cases where such waivers are being sought and granted making debt waiver an integral part of the resolution process. The Supreme Court found that under both the applicable sections i.e. 28(iv) and 41(1) of the Income tax Act, the write-backs of loan would not be treated as income for taxing purpose. It may facilitate smoother and faster revival of insolvent companies given that it was a big concern for all potential buyers in the IBC.

The Union Cabinet approved an Ordinance on 23rd May, 2018 amending the Insolvency and Bankruptcy Code (2016), following the suggestions submitted by the Insolvency Law Committee in March 2018. The amendments mooted are; (i) home buyers to be treated as financial creditors and giving them bigger say in resolution process; and (ii) the promoters of Micro Small and Medium Enterprises (MSMEs) who are not classified as wilful defaulters can bid for their companies. Both these sectors, i.e., real estate and MSME, are a major source of growth in the Indian economy and stability and transparency in them is important for growth of the Indian middle class.

Securities and Exchange Board of India (SEBI) has issued notifications to bring to effect new corporate governance norms. This move comes after SEBI's board accepted most of the recommendations of the Uday Kotak panel on corporate governance in March, 2018. Under the new norms, top 500 listed entities will have to ensure that the chairperson is a non-executive director, which in effect splits up the post of chairman and managing director, w.e.f. April, 2020. It has also mandated top 500 companies to appoint at least one woman independent director and top 1000 listed companies to have a minimum six directors, w.e.f. 1st April, 2019. The new rules also cover issues on number of directorship positions that can be held in listed firms and provide clear definition of related party and issues in accounting and auditing practices by listed companies.

POLICY DEVELOPMENTS

Rules to operationalize fugitive economic offenders' law

The Government has come out with series of Rules to operationalize the fugitive economic offender's law, for which an Ordinance was promulgated by the President in April, 2018. The Fugitive Economic Offenders Ordinance, 2018, is aimed at deterring economic offenders from evading the process of law by remaining outside the jurisdiction of Indian Courts. The law seeks to expedite recovery of losses incurred by banks and other entities by confiscating their properties. The Notifications regarding Rules, issued by the Ministry of Finance, spell out the process for declaration of fugitive economic offender, issuance of attachment order, and management of confiscated properties, among others.

As per one of the Notifications, only officers of the rank of Assistant Director or above in the Enforcement Directorate could exercise the power to search and seize record/property which may be useful for proceedings under the Fugitive Law. Special Directors of Enforcement of ED's Regional Offices will function as Administrator of confiscated properties, said another Notification. On management of confiscated property, the rules said that the administrator will arrange for the proper maintenance and custody of the immovable properties.

In case, the property confiscated consists of cash, Government or other securities, bullion, jewelry or other valuables, the administrator would deposit them for safe custody in the nearest Government treasury or a branch of the RBI or SBI or any authorized bank.

The ordinance makes provisions for Special Court under the Prevention of Money-laundering Act, 2002 to declare a person as a Fugitive Economic Offender.

Centre set up 12-Member panel to advice on valuation standards

The Centre has set up a 12-Member Committee to make recommendations on the formulations and laying down of valuation standards and policies for compliance by companies and registered valuers. This Committee will be headed by Prof. R. Naryanaswamy of IIM Bengaluru. The Members of this panel include Mr. Biswal, Additional Secretary, Ministry of Law & Justice; Mr. Navrang Saini, Whole time Member, IBBI; Mr. K.V.R. Murty, Joint Secretary, MCA; Ms. Saurav Sinha, Chief General Manager-in-charge, Reserve Bank of India; Mr. Jayanta Jash, Chief General Manager, SEBI, and Mr. A. Ramana Rao, General Manager, IRDAI. This panel will also have representations from FICCI, CII and nominees of ICSI's Registered Valuers Organization and Institution of Valuers (IOV) Registered Valuers Foundation.

Allotment of shares to staff in Start-ups from Day 1

Start-ups and other unlisted companies have now been allowed to issue "sweat equity" shares to employees on their joining date. Earlier, sweat equity shares could be issued by unlisted entities only to permanent employees of a company who has been working in India or oversees "for at least one year". Sweat equity is used to describe the non-financial investment that an employee contributes to the development of a startup business. MCA has relaxed this

norm to allow companies that had commenced business more than a year back to offer sweat equity shares to employees even before they complete one year of service.

This move will be mutually beneficial to both sides. From a company perspective, it would benefit as it can retain talent without waiting for one year to expire before the company can issue sweat equity shares to employees. On the other hand, it will also benefit an employee who is incentivized by a reward for the value additions which are actual or anticipated without waiting for one year.

Senior Level Appointment:

Mrs. Anjali Bhawara, a Punjab Cadre Officer of the IAS. 1988 batch took charge as Additional Secretary in the Ministry of Corporate Affairs with effect from 14th May, 2018. She replaced Shri Pritam Singh, a Rajasthan cadre IAS officer of 1984 batch who earlier joined as DG, National Archives of India. Dr. Sameer Sharma, a Andhra Pradesh Cadre Officer of the IAS, 1985 batch took charge as Director General, IICA with effect from 24th May, 2018 and Shri B. Mohanty of Indian Corporate Law Service (ICLS) was promoted to Senior Administrative Grade (SAG) as Regional Director (NER) (on regular basis).

Review of Corporate Sector

As on 30th April, 2018, the number of companies registered under the Companies Act was 17,59,989. Of these, 5,40,538 companies were closed, 6,035 companies were under liquidation, 35,917 companies are in the process of being struck-off from the register, 107 companies were in the process of being re-activated and 1,331 companies have so far obtained the "dormant" status according to Section 455 of the Companies Act, 2013. There are 11,76,061 active companies, including 1,61,273 companies which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).

A total of 10,551 companies, including 545 One Person Companies (OPCs), were registered under the Companies Act, 2013 during April, 2018 with authorized capital of ₹ 4976.43 Crore. The breakup of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in April, 2018	Total Authorized Capital (In ₹ in Crore)
Company limited by Shares	10,524	4,976.33
Of which,		
(a) Private	10,338	4,350.85
Of which,		
One Person Companies	545	14.93
(b) Public	186	625.48
Company limited by Guarantee	27	0.1
Of which,		
(a) Private	26	0.1
(b) Public	1	-
Unlimited Company	-	-
Grand Total	10,551	4,976.43

During the Month of April, 2018, Maharashtra had maximum number of company registrations (1,921) followed by Delhi (1,424) and Uttar Pradesh (1,054). "Business Services" topped the economic activity-wise classification (5,818) of newly registered companies.

During April, 2018, 10,524 (out of 10,551) companies were registered as companies limited by shares with authorized capital of ₹ 4,976.33 crore. For more statistical details about the growth of the corporate sector, the reader is invited to the 'Monthly Information Bulletin on Corporate Sector', at URL: mca.gov.in/MinistryV2/Information Bulletin.html.

CCI

MONTHLY MIS REPORT FROM COMPETITION COMMISSION OF INDIA

S. No.	Sections	Cases pending as on last day of previous month (A)	Cases received during the month (B)	Total Cases (A+B)	Net Cases pending with CCI for final disposal	Remarks
1.	19(1)	89	-	89	87	#
2.	19(1)(a)	117	05	122	115	@
3.	19(1)(b)	11	-	11	11	
4.		06	10	16	08	*
TOTAL		223	15	238	221	

Cases remanded by COMPAT

5.	Remanded	12	-	12	12	
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Cases regarding contravention of orders of Commission

6.	Causing fresh inquiry	01	-	01	01	
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Notes and references:

1. [#] Split cases: (a) Suo-Moto Case No. 07/2014 is segregated in to 02 sub cases w.e.f. August 2016 to facilitate exploration of investigation by DG. (b) Suo-Moto Case No. 02/2015 is segregated in to 66 sub cases w.e.f. July 2016 to facilitate exploration of investigation by DG. 2. [@] Details of three oldest cases are attached as per Annexure-1. 3. [*] Combination Cases filed u/s 5 & 6.

EVENTS

(1) IICA jointly with IBBI and International Monetary Fund (IMF) had organized an International Workshop on "Current Trends in Comparative Insolvency Law" on 25th and 26th May, 2018 in New Delhi. The objective of the workshop was to apprise the policy makers/ authorities about international best practices and cross-country experience on the subject with an-intent to assist them in addressing the practical and operational challenges emerging in insolvency processes under the Code.

(2) Eco-Innovation, Sustainable Design and Business Solutions for Transformative CSR and Sustainability: IICA - Centre of Excellence for Sustainable Development (IICA-CESD) organized its 1st Indo-Belgium Joint MDP from May 24th to June 2nd, 2018 - first week in IICA, India and the second week in Belgium. It was 19th MDP of CESD being jointly organized in association with Antwerp Management School (AMS), Belgium. 18 participants from 10 leading corporates pan India attended the program. This 10 days international-MDP has been designed to provide national & global perspectives to corporate delegates on Eco-innovation technologies, Sustainable design and Business solutions for transformative CSR and sustainability. The program gave exposure to delegates to leading-edge knowledge and frameworks from academia and their application in business, governance and government policy, bringing together theory and practice. Through interactive sessions and field visits, the delegates got an opportunity to learn global best practices in Belgium while national level perspectives provided to them in IICA during the first phase (initial 3 days) of the program implementation.

(3) Competition Commission of India celebrated its 9th Annual Day 2018 on 20th May, 2018 in New Delhi. Shri Rajiv Mehrishi, C&AG delivered lecture on "Competition Law 2.0: Way Forward". He addressed the gathering comprised of senior Government functionaries, leading Corporates, Academicians and legal luminaries. Shri Injeti Srinivas, Secretary, MCA was also present in the function and spoke about the recent developments in the area of competition law and policy.

(4) The steering committee on Corporate Social Responsibility held its first meeting on 4th May, 2018 to discuss about its Terms of Reference (ToR), the report of Legal Sub-Committee and the future course of action of the committee.

Notifications:-

(i) The Companies (Amendment) Bill, 2017 was assented to by Hon'ble President on 3rd January, 2018 and enacted as Companies (Amendment) Act, 2017. [CAA-17]. Out of total 93 sections of CAA-17, 45 sections were notified earlier in two tranches (first on 26th January, 2018 and second on 9th February, 2018). During the month of May, 2018, 27 sections of CAA-17 have been brought into force along with relevant amendment rules (notification No. S.O. 1833 (E), dated 7th May, 2018). With this, a total of 72 sections of CAA-17 have been brought into force. Remaining 21 sections would be notified shortly.

Pursuant to commencement of 27 sections from 7th May, 2018, amendments have been made in the following sets of Rules prescribed under the Companies Act, 2013 as follows:

- a) **Companies (Meetings of Board and its Powers) Rules:-** to provide, inter-alia, that where there is quorum available in a board meeting through physical presence of requisite number of directors, any other director may participate through video conferencing or other audio visual means; (vide Notification No. G.S.R. 429 (E), dated 7th May, 2018).
- b) **Companies (Prospectus and Allotment of Securities) Rules:-** to omit specific disclosures for inclusion in the prospectus mandated in the rules. This omission is consequent to amendment in the relevant section (section 26) wherein SEBI has been empowered to specify such disclosures (vide Notification No. G.S.R. 430 (E), dated 7th May, 2018).
- c) **The Companies (Appointment and Qualification of Directors) Rules:-** to provide, inter-alia, the thresholds in respect of indebtedness or giving of guarantee or providing security by a relative of an independent director to the company concerned or its group companies (vide Notification No. G.S.R. 431 (E), dated 7th May, 2018).
- d) **Companies (Audit and Auditors) Rules :-** to omit the proviso for ratification of auditor's appointment in every annual general meeting and devolvement of criminal liability on concerned partners of audit firms. Further, the auditor is now to report on existences of adequate internal financial controls with reference to financial statements. With regard to the remuneration of the cost auditor, now the board can considered cost accountant for appointment as cost auditor instead of 'cost accountant in practice'. (Vide Notification No. G.S.R. 432 (E), dated 07.05.2018). Further the word 'amendment' has been replaced with word 'second amendment'. (Vide Notification No. G.S.R. 461 (E), dated 17th May, 2018).
- e) **Companies (Specification of Definitions Details) Rules:-** to omit the definition of total share capital to be used for associate company and subsidiary company. (Vide Notification No. G.S.R. 433 (E) dated 7th May, 2018)
- f) **Companies (Share Capital and Debentures) Rules:-** to redefine the expression 'employee' for the purpose of issue of sweat equity shares and the requirement of working in India or outside India for at least last one year with regard to permanent employee of the company has done away with.(vide Notification No. G.S.R. 434 (E), dated 7th May, 2018)
- g) **Companies (Registration Offices and Fees) Rules:-** the provides for time limit for resubmission of RUN has been allowed for 15 days. Also a table of additional fee for delaying in filing forms other than for increase nominal share capital or forms under section 92/137 of the Act has been modified. This notification also prescribed the additional fee for the document to be filed under section 92 or 137 which could not be filed before 30.06.2018.

(Vide Notification No. G.S.R. 435 (E), dated 7th May, 2018)

(ii) Vide notification G.S.R. No. 422(E), issued on 1st, May, 2018, the Central Government issued Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018. These rules relate to form of the Annual Report and time of furnishing of the Annual Report.:

(iii) Vide notification G.S.R. No. 423(E), issued on 01.05.2018, the Central Government issued Insolvency and Bankruptcy Board of India (form of Annual Statement of Accounts) Rules, 2018.

(a) **Maintenance of accounts and records:-** (i) The Board shall maintain its accounts and records in the Form of financial statements annexed to these Rules. (ii) The Board shall follow the general directions of the Central Government given in consultation with the Comptroller and Auditor General of India in maintaining the financial statements.

(b) **Preparation and submission of annual statement of accounts of the Board:-** (i) The Board shall prepare its annual statement of accounts and balance sheet showing the financial results and significant accounting policies in Form 'A', Form 'B' and Form 'C' and the Schedules (available in Gazette of India). (ii) The annual statement of accounts and balance sheet of the Board, duly authenticated by the whole-time members in-charge of Finance Accounts Department of the Board, Chairperson of the Audit Committee of the Board and Chairperson and approved by the Board shall be forwarded to the Comptroller and Auditor General of India, for the purpose of audit, within three months of the end of the financial year. (iii) The duly audited annual statement of accounts and balance sheet of the Board as certified by the Comptroller and Auditor General of India together with the audit report thereon shall be forwarded by the Chairperson for every financial year to the Central Government of laying before each House of Parliament.

Circulars:-

(i) Vide General Circular No. 05/2018 dated 17.05.2018 has clarified the queries/concerns/doubts of the stakeholders with regard to filing of Condonation of Delay Scheme 2018. It was directed to the Registrar of Companies to raise change requirement form (CRF) only after thorough scrutiny of NCLT orders and after ensuring that stuck off companies has filed overdue documents before filing e-CODS, 2018 and had filed petitions before the NCLT during the validity of CODS Scheme.

(ii) Vide General Circular No.06/2018 dated 28.05.2018 issued by CSR-Cell regarding non-compliance of the first proviso to sub section (5) of the section 135 of the Companies Act, 2013, which lays down that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities. It is reiterated that the above provision has to be followed in letter and spirit.