



EDITORIAL ADVISORY BOARD
CA Vinod Jain, Chairman

MEMBERS - CA Pramod K. Kapur, President
CA Anil Sharma, Vice President
CA Avineesh Matta
CA Naveen Jain
CA Praveen Sharma
CA Shiv Mittal
CA Sunil Khemka
CA Vijay Gupta
CA Vinod Rustagi

ANNUAL SUBSCRIPTION

- for Chartered Accountants:
Rs. 200/- Single Copy Rs. 20/-
- for Others: Rs. 250/-
Single Copy Rs. 25/-

EDITORIAL

COMPANIES BILL 2009 A DRACONIAN LAW

The Companies Bill 2009 read with 21st standing committee of Finance of Parliament on the Companies Bill, has miserably failed to achieve the prime objective of redrafting of the Companies Act:

- To simplify the law
- To reduce unnecessary procedure
- To improve corporate culture and
- Voluntary corporate Governance
- Investors protection mechanism similar to consumer courts.

The bill as proposed will discourage corporatization and will encourage inspector raj and corruption. The bill envisages very severe penalties and prosecution even for small technical delays and defaults having no impact on the public interest.

The government is also proposing to interfere into the independence of private corporate sector.

Smaller companies neglected

The government has also failed to provide separate legal requirements and procedures for one person companies, small companies and unlisted mid size companies. Most of the procedures and compliances for larger companies have been made applicable even for smaller and tiny companies. The bill proposes to levy heavy fines and imprisonment in 26 cases and a large number of such defaults are of non-serious and are of routine nature. This will only breed corruption.

The imprisonment should be restricted only to the cases of fraud, misfeasance and similar default only. In case of technical delays and defaults only additional filing fee can be prescribed.

Procedures and compliances increased

The corporate sector in India has been working reasonably effectively and except very few exceptional cases, there is no

Contd.....on page 2

AUDITORS UNDER FIRE...

The Companies Bill 2009 as amended by the 21st Report of Standing Committee on Finance, Parliament of India proposes to bring out several major changes impacting the working of corporate sector, accounts, and audit besides corporate administration, fines, penalties and prosecutions.

There are number of provisions proposing important changes in the field of auditing. The following paragraph proposes to outline various changes and their impact on the auditing profession as well as the corporate sector :

Rotation of Auditors

The bill proposes to introduce mandatory rotation of auditors in case of all Companies including small private limited companies, closely held public limited companies as well as listed companies. The bill proposes mandatory rotation of audit firms after every 5 years and mandatory rotation of audit partners after every 3 years. The same audit partners/ proprietor cannot be reappointed for a period of 3 years. Rotation is proposed, with a view to achieve independence of auditors and to make audit more effective. This noble objective will not be achieved by the proposed changes. There are no convincing reasons to mandatorily rotate auditors in case of Companies. There is no need to extend the concept of rotation of 8 lakh Companies. The rotation by itself will not improve the independence of auditors. This decision should not be mandated and may be left to corporate democracy.

In the present constitutional framework of Indian democracy the political parties as well as bureaucracy cannot be given a liberty to play with professional and technical matter.

Joint Auditor

It may be more appropriate to consider appointment of joint auditors in case of all large Public Limited Listed Companies as well as Companies in which public is substantially interested. The appointment of joint auditors should also be left to the shareholders. The appointment of one of the joint auditors can be made by the shareholders who are not directly

Contd.....on page 2



Contd.....from page 1

COMPANIES BILL 2009

large scale failure of corporate governance or frauds committed by the corporate sector. The exceptional cases, actually relates to human greed, which cannot be addressed by the proposed provisions and would require a basic structural change to correct the cause of such failure, rather than providing for severe detailed and unnecessary regulation, which may impact the growth of the corporate sector itself.

Accounting Standards

The government proposed to continue National Advisory Committee on Accounting Standards (NACAS). This committee was constituted through Companies Amendment Act 1999. NACAS has not been able to contribute very effectively and has brought out only cosmetic changes to the accounting standards framed and passed by the Institute of Chartered Accountants of India. Due to time undertaken by NACAS the implementation of mandatory accounting standard got substantially delayed and it took about 10 years to bring out Companies Accounting Standard Rules, 2009 although most of the accounting standards were already notified and prescribed by the Institute of Chartered Accountants of India.

The accounting standards being implemented in India are based on International Accounting Standards as well as International Financial Reporting Standards. ***The government need not interfere into the technical process of framing of accounting standards and their prescription and it is important to leave it to the experts i.e. to the profession of Chartered Accountants.*** The bureaucracy or the polity need to concentrate on clean, efficient and effective government, rather than getting into the nuts and bolts of how the businesses are managed. Medical, legal, architecture, accounting are specialised professional stream and all such matters need to be left to the expert professionals.

Auditing Standards

The proposal of the government to also commence framing and prescription of auditing standards is another major lope sided move and is a result of thinking whereby the government bureaucracy always lure to start exercising power and duty of specialized profession. The Institute of Chartered Accountants has implemented international level auditing standards in India and any move on the part of government to interfere in framing of auditing standards will only reduce the quality of audit. It may be more appropriate that the auditing standards are

Contd.....to page 3

Contd.....from page 1

AUDITORS UNDER FIRE...

or indirectly engaged into the day-to-day management of the company. The work among joint auditors can rotate.

Auditors - Other Services Prohibition

The Companies Bill proposes to bar the auditors of companies from providing non audit services to their audit clients. This prohibition extent even to small and mid size companies is completely unwarranted. A complete bar on auditors to provide other services is not relevant for independence of auditors. The non audit services may be allowed to be provided by the auditors including tax audit, special statutory compliance and auditors' certificate as well as tax representation subject to approval by the audit committee. The code of ethics in this regard and specific prohibition to provide non audit services like accounting, internal audit and others may be left to ICAI based on internationally acceptable Code of Ethics as promulgated by International Federation of Accountants from time to time.

Auditors of Subsidiary Companies

The Standing Committee of Parliament proposed that auditors of holding companies should not be auditing the accounts of subsidiary companies. This provision has been proposed on the basis of completely unacceptable logic where some miscreants have wrongly pleaded before the Parliamentary Committee that the auditors of holding companies do not undertake audit of subsidiary companies carefully. This is completely without any basis.

In fact in terms of mandatory auditing standards which are acceptable even internationally the auditors of holding companies would be required to not only vet the accounting policies of subsidiary companies but is also required to exercise necessary due diligence before audit undertaken by separate auditors of subsidiary companies is accepted for the purpose of consolidation.

Panel of Auditors

The Companies Bill 2009 proposes to prepare a Panel of Auditors for the purpose of appointment of auditors of the companies including small and mid size companies. The purpose of such panel and criteria of categorization of panel have not been provided for in the bill. The proposal to appoint auditors by Registrar of Companies as suggested by some people and as recorded by the Parliamentary Committee is completely non acceptable.

Any proposal to withdraw rights of shareholders to appoint auditors even in case of small , mid size companies will have far-reaching implications and may bring forth corrupt and malpractices.

Auditors' Independence

The Companies Bill 2009 has miserably failed to provide necessary checks and balances to ensure independence of auditors. It is important that the removal of auditors as well as retirement of auditors before a specific period is

Contd.....to page 3



Contd.....from page 2

COMPANIES BILL 2009.....

recognized in the companies' bill and the power to prescribe auditing standards can be delegated to ICAI.

The government needs to consider withdrawing the Companies Bill 2009. It may be important to set up a specialized committee of experts to review the existing Companies Act, 1956, with a view to analyze specific areas where amendments may be needed to simplify the existing Companies Act and to bring out specific initiative to improve corporate governance, reduce procedures and compliances and concentrate prosecutions and penalties only on grave misconduct or fraud having impact on public interest in general.

The Companies Bill 2009, as amended by the 21st report of the Standing Committee on Finance of Parliament, will not be able to achieve any of the objectives. The Companies Bill is neither based on Naresh Chandra Committee Report nor based on JJ Irani Committee Report but has actually mixed up the entire thinking process and lost the corporate culture and its independence.

There are number of areas in which fresh suggestions have been brought out by the Standing Committee on Finance of Parliament of India. More than 500 changes have been agreed between the Government and the committee. The amendments proposed now have not been debated by the corporate sector and the professionals. Even the Parliamentary Committee did not have a chance to consider response of corporate sector and professionals on most of the new amendments. In view of this, either the entire report or the Companies Bill can be again referred to a Select Committee of Parliament or the government can redraft the Companies Bill and present the same as a final discussion paper before it is framed into a new Companies Act. The best alternative would be to seek necessary amendments in the current Companies Act, 1956, in a phased manner, so that all the proposed changes are adequately understood and debated.

The Companies Bill 2009 need to be withdrawn from the Parliament.

❖ MIS Design ❖ Systems

❖ Risk Management

INMAGS

Cell : 9868144380

Contd.....from page 2

AUDITORS UNDER FIRE...

approved at least by 75% of the total strength of votes (and not alone by those present and voting).

That the Standing Committee has made a very unusual suggestion, according to which it would be mandatory for the auditors to file the reasons for their resignation or removal. In case of failure to file such reasons a minimum penalty of Rs. 50,000 extendable to a penalty of Rs. 5 lakh is proposed.

It may be necessary to shift the responsibility to the companies concerned to file reasons for resignation, removal or retirement of auditors, including the comments of the retiring auditors, with the Registrar of Companies for public knowledge. Punishment of auditors for non-filing reasons for their own removal is criminal.

Auditors' Disqualification

The Provisions of Companies Bill 2009 has proposed to restrict shareholding beyond a prescribed percentage by the Auditors and their relatives. In principle this is a welcome move. However extending the list of relatives to 34 distant categories makes the provision completely illogical and unsustainable. This should be restricted only to dependant relatives. The distant relatives may not inform the auditors at the time of acquisition of shares and some distant relatives having bad intention may even purposefully acquire shares to displace the auditors.

Auditors Remuneration

The proposal to develop benchmark for auditors remuneration is a positive move, provided it takes into account ICAI recommended scale of fee while determining the benchmark. It would be important to provide for the quantum of work and time spent to be considered as important criteria while determining auditors' remuneration benchmark. ***This benchmark may be used for the purpose of minimum auditors' remuneration.*** The final remuneration payable by the company may be left to the shareholders democracy. The remuneration of auditors should not be delegated to the Board or to the Audit Committee and the proposal to include the remuneration and the basis of remuneration in the AGM notice is a welcome move. The management / audit committee can always allow variation of auditors' remuneration, subject to its approval by shareholders in the next General Body Meeting.

Auditors' Dues

The proposed mandatory dues prescribed for auditors include mandatory confirmation of balances of all loans, advances, debtors and liabilities above Rs. 5 lakh. The limit of Rs. 5 lakh cannot be applied across the board and even for very large companies. This limit may be decided on the basis of a percentage of net worth or similar other criteria. The delegation of this responsibility on the auditors may not be appropriate. The balance confirmation from the respective parties should be sent by the management to the parties for direct submission to auditors, in terms of auditing standards.

Contd.....to page 8



LATEST IN FINANCE

1.0 STRUCTURED PRODUCTS

A structured product is a pre-packaged strategy in which value is derived from the performance of various underlying assets such as equity indices, a basket of stocks, commodities, interest rate or currencies. In a capital-protected structured product, an investor gets back his principal amount at maturity irrespective of the performance of the underlying asset, subject to credit risk of the issuer. In a non-capital protected structured product, the principal amount is not guaranteed. This exposes an investor to the risk of losing his capital. In India, mostly equity-linked and gold-based structured products are sold to HNIs. Barclays Capital, Citibank, JP Morgan, JM Financial, Kotak Securities and Edelweiss Capital are major issuers of structured notes in India. There is no official data about the size of the structured products market in India. Industry officials peg it at over \$1 billion (Rs. 4,700 crores) a year. The Securities and Exchange Board of India (SEBI) has asked credit rating agencies not to rate non-capital protected structured products, putting an end to issuance of these instruments.

2.0 FIIs GET TO INVEST \$10 BILLION MORE IN DEBT MARKET

The government permitted FIIs to put in an additional \$10 billion in corporate and government papers. The move to raise the investment limit for FIIs will deepen the domestic debt market, helping infrastructure companies. The marginal cut in government's market borrowing by Rs 10,000 crore will help the domestic private sector to raise capital at competitive rates and reduce the fiscal deficit.

3.0 RBI ALLOWS 'FOR PROFIT' COs TO ACT AS BANK BUSINESS CORRESPONDENTS

In a bid to give a fillip to financial inclusion, the Reserve Bank of India allowed banks to engage the services of 'for profit' companies as business correspondents (BCs). However, non-banking finance companies are not permitted to act as BCs.

4.0 PARTICIPATION IN CURRENCY OPTIONS

It has been decided that NBFCs may participate in the designated currency options exchanges recognized by SEBI as clients, subject to RBI (Foreign Exchange Department) guidelines in the matter only for the purpose of hedging their underlying forex exposures. Appropriate

disclosures may be made regarding transactions undertaken in the Balance sheet.

RBI/2010-11/205 DNBS (PD) CC No. 199/03.10.001/2010-11, 16.09.2010

5.0 RBI TIGHTENS RULES FOR BANK FINANCE AGAINST SHARES

The Reserve Bank of India (RBI) has tightened norms for banks extending loans to promoters against shares. It has now extended the existing restriction against banks granting advances for financing promoters' contribution towards equity capital to bank financing activities related to acquisitions like payment of non compete fee, etc. Such a restrictions would also be applicable to bank finance for activities by overseas branches/subsidiaries of Indian banks.

6.0 LOANS SET TO PINCH MORE AS RBI HIKES REPO RATE 25 BPS

For the fifth time this year, the central bank raised the repo rate- the rate at which it lends to bank- by 25 basis points to 6% and the reverse repo rate- at which it absorbs funds from bank- by 50 basis points to 5%, prompting lenders to review the rates they charge both retail and corporate customers.

7.0 BANKS' WILFUL-DEFAULTERS LIST UNDER SC SCRUTINY

The practice of RBI allowing banks to publish the names of wilful defaulters has come under the Supreme Court's scrutiny for its alleged circumvention of the judicial process and legislative supervision. The petitioner contended that passing such judgments on the character of a person pre-eminently falls within the domain of the legislature as it involves one's fundamental right to good reputation and challenged RBI's giving such powers to itself. In 2004, RBI authorized CIBIL to publish a list of defaulters of Rs 1 crore and above and also give out details of wilful defaulters of Rs. 25 lakh and above against whom suits have been filed. The measure that followed the 2002 scheme that defined 'wilful defaulters' and terms like 'diversion of funds' and 'siphoning of funds'. In July this year, RBI issued a master circular combining all its instructions and directions in this regard, with a view to making available credit information pertaining to wilful defaulters to banks and blocking further bank finance to these firms.

8.0 IRDA PULLS THE PLUG ON RECKLESS SALE OF CREDIT DEFAULT INSURANCE

The Insurance Regulatory Development Authority (IRDA) has placed a ban on credit insurance covers following reckless sale of the product by some non-life companies.



CORPORATE LAWS

1.0 HC SEAL ON "RIGHT OF FIRST REFUSAL" TO BENEFIT PEs

A recent judgment by a divisional bench of the Bombay High Court, up-holding the validity of agreement like 'right of first refusal' between promoters of unlisted firms and strategic investor, has come as a big relief for both companies and private equity funds which invest in these firms. The court ruled that such arrangements do not violate Section 111A of the Companies Act, which holds that share and debenture of companies must be freely transferable.

2.0 SC : REASONS ARE MANDATORY

The Supreme Court last week admonished the National Consumer Commission for passing order without giving reason for its conclusion. "Reason is the soul of law and when the reason of any particular law ceases, so does the law itself".

CAPITAL MARKET

1.0 SIZZLING SEPTEMBER: 22 FIRMS FILE FOR IPOs

As many as 22 companies filed draft papers for initial public offers (IPOs) in September, the highest in any single month of the calendar year 2010 so far, according to data from the Securities and Exchange Board of India (SEBI).

2.0 SEBI DEBARS 197 FIIs ON NON-COMPLIANCE GROUNDS

Stock market regulator SEBI debarred 197 FIIs and 342 sub accounts handled by FIIs from taking fresh position in capital markets until they comply with the SEBI directive of providing requisite declarations and the undertaking about their structure. Failure to comply by September 30, 2010 prompted the regulator to debar these entities.

3.0 TRADING DEADLINE FOR DEMAT HOLDING CONVERSION

All listed Cos told to convert 50% of their non founder holding to dematerialised form by October 31 to continue trading in the normal segment on stock exchanges.

4.0 NSE INVITES BROKERS TO REGISTER FOR MOBILE TRADING

The National Stock Exchange has invited brokers to register for trading over its new wireless

platform, which allows investors to buy or sell securities using mobile phones.

5.0 USE REGISTERS RECORD FOREIGN CURRENCY VOLUME ON DAY 1

The United Stock Exchange (USE), which commenced its operations in the currency futures segment from September 20th, recorded a turnover of Rs 45,486 crore, the highest ever by a currency futures exchange in a day.

6.0 GOVT CLEARS DRAFT BILL TO GIVE FMC MORE TEETH

The Union Cabinet approved long-pending amendments to the Forward Contracts (Regulation) Act. This is a prelude to seeking parliamentary approval to make the Forward Markets Commission (FMC) an independent regulator and allow the launch of options in the commodity market, among a host of other changes. In addition, the government proposes to enhance the powers of FMC. The power would be akin to those of the Securities and Exchange Board of India (SEBI).

COMMODITY

1.0 INDIA TO ALLOW SUGAR FUTURES TRADE FROM OCTOBER

The Forward Markets Commission will relaunch sugar futures trading from October when the new marketing season starts.

2.0 JAYPEE CAPITAL TO EMERGE NCDEX ANCHOR INVESTOR

After months of negotiation, the decks have finally been cleared for the entry of Delhi-based broker Jaypee Capital into agri bourse NCDEX as its anchor investor. The decision, according to one of the shareholders, was taken at an NCDEX board meeting. He refused to spell out details of the amount and price of equity that will be offered to Jaypee. The decision to issue anchor investor's stake to Jaypee has been approved by the shareholders.

*International Taxation,
Corporate Structuring &
Transfer Pricing*

INMAGS

Cell : 9868144380



TAXATION

TAXATION

1.0 TAXMAN CANNOT IMPOUND PASSPORT

In the Avinash Bhosale vs UOI (2010 322 ITR 381) case, which came up before the Bombay High Court, it was held that a passport cannot be impounded under Section 131(3) of the I-T Act which confers power on the Income-Tax (I-T) authorities to seize and retain in its custody any books of accounts or other documents. According to the court, the term 'document' does not include 'passport'.

2.0 SC REVERSES HC RULING ON STOCK EXCHANGE CARD

The Supreme Court reversed a ruling of the Bombay High Court, which had held that the stock exchange card is not an 'intangible asset' eligible for depreciation under Section 32 of the Income-Tax Act. In the appeal against the High Court judgment, the Supreme Court bench, headed by the Chief Justice S H Kapadia, ruled that a stock exchange card is a "licence" and eligible for depreciation under Section 32(1)(ii).

INDIRECT TAXATION

1.0 SC: GOVT CAN IMPOSE DUTY ON ENGG DESIGN CD

THE SUPREME COURT has ruled that the revenue department can impose appropriate duty on the import of CD ROMs containing image of drawing and design of engineering goods. The assessee cannot claim clearance of such goods at zero duty, said the apex court. According to the bench, such engineering drawings or design data in CD cannot be placed in the category of the term software.

2.0 SC: PENALTY ONLY IN CASE OF FALSE INTENTION

In a breather to the assesses, the Supreme Court has ruled that revenue department cannot impose penalty under provisions of the Central Sales Tax Act for furnishing incorrect representation without proving the intention (mens rea) for false representation. The penalty in tax matters is to

levied strictly in accordance with the intention of the statutes, said the apex court over-ruling an Allahabad High Court order. The bench is of the opinion that a finding of mens rea is a condition precedent for levying penalty under section 10(b) read with section 10A of the Central Sales Tax Act, 1956.

3.0 EXCISE RELIEF FOR UNITS SUPPLYING GOODS TO EXPORTERS

The penultimate sale before export will be exempt from central sales tax if it is "inextricably" connected with the export of goods, a Constitution bench of the SC ruled. This judgment in, State of Karnataka vs Azad Coach Builders Ltd, will benefit ancillary industries catering to exporters. In this case, Azad Coach Builders was requested to build bus bodies by the exporter, Tata Engineering Locomotive Co, in accordance with the specifications provided by the foreign buyer, Lanka Ashok Leyland Ltd, Colombo. Azad built bodies on the chassis made by Telco. It claimed exemption from sales tax as it was a penultimate operation exempted from duty. The revenue authorities rejected the claim.

SERVICE TAX

1.0 FINMIN IN A FIX OVER SERVICE TAX RULES

The finance ministry is in a fix over the proposed implementation of point of taxation rules for service tax from October 1 this year with the industry resisting transition to the accrual basis for taxation of services. Simply put under the accrual based method, the tax will be considered "paid" when the invoice is made, irrespective of whether or not it is actually paid. This means that once the invoice is issued, the service provider will have to account for the tax even if he has not received the amount.

2.0 IATA TERMS SERVICE TAX ON AIR TICKETS ILLEGAL

The International Air Transport Association (IATA) has termed the service tax charged on air tickets by the Indian government as illegal according to the Chicago Convention.



INSURANCE

1.0 IRDA SUPPORTS EQUAL STAKES FOR PARTNERS IN INSURANCE VENTURES AFTER PUBLIC FLOAT

Insurance Regulatory Development Authority (IRDA) would prefer equal stakes for both local and foreign partners once life insurers went public. The IRDA chief indicated that the norms for initial public offering (IPO) would be framed in such a manner that after the IPO, both partners would have to dilute their stakes, ensuring that a foreign player wouldn't end up with a majority stake in a joint venture, in violation of the law.

2.0 INSURANCE IPOs LIKELY BEFORE MARCH' 11

According to leading rating agency CARE, Life insurance companies instead of general insurers would hit the capital market earlier and the market would witness a number of insurance IPOs before March 31 next. CARE, the agency which grades IPO based on companies' fundamental, said insurance IPOs would do better than expected as the sector has a tremendous potential though it went through a bad phase during the SEBI-IRDA tussle over the sale of unit linked insurance plans.

ICAI

1.0 EASY FINANCE FOR CAs

Institute of Chartered Accountants of India (ICAI) is arranging easy financing schemes for its members through public sector banks, as it looks to help domestic audit firms enhance infrastructure and resource base to ward off competition. ICAI has signed MOU with Corporation Bank in this regard (www.icai.org)

FEMA

1.0 DIPP AGAINST FOREIGN AIRLINES BUYING STAKE IN INDIAN CARRIERS

The commerce and industry ministry is not in favour of allowing foreign airlines to buy stake in Indian carriers on the ground that the sector is sensitive.

AUDIT

1.0 PRUDENTIAL NORMS ON INVESTMENT IN ZERO COUPON BONDS

Banks should henceforth not invest in ZCBs unless the issuer builds up sinking fund for all accrued interest and keeps it invested in liquid investments/securities (Government bonds), and Banks should put in place conservative limits for their investments in ZCBs.

RBI/2010-11/219 DBOD No.BP.BC.44/21.04.141/2010-11, 29.09.2010

2.0 PRUDENTIAL NORMS FOR OFF-BALANCE SHEET EXPOSURES OF BANKS - BILATERAL NETTING OF COUNTERPARTY CREDIT EXPOSURES

Since the legal position regarding bilateral netting is not unambiguously clear, it has been decided that bilateral netting of mark-to-market (MTM) values rising on the account of such derivative contracts cannot be permitted. Accordingly, banks should count their gross positive MTM value of such contracts for the purpose of capital adequacy as well as for exposure norms.

RBI/2010-11/223 DBOD No.BP.BC.48/21.06.001/2010-11, 01.10.2010

3.0 RBI WARNS BANKS ON INVESTING IN ZERO COUPON BONDS

The Reserve Bank of India has told banks to put 'conservative limits' on their investments in zero coupon bonds, including those by non-bank finance companies (NBFCs). Banks should invest in zero coupon bonds only if the issuer builds up a sinking fund for the accrued interests and invests in liquid investments or securities such as government bonds.

★ Private Placement of NCD

★ Commercial Paper

★ Debt Syndication

INMAGS

Cell : 9868144380

Contd.....from page 3

AUDITORS UNDER FIRE...**Financial Statements - Compliance with Auditing Standards**

It was enough to prescribe that the financial statements are prepared in accordance with the mandatory accounting standards. It is difficult to appreciate as to how the financial statements can comply with auditing standards. In fact the Companies Act has no jurisdiction on the auditing standards or their applicability. The auditing standards should be left to be decided by ICAI based on internationally best practices and any bureaucratic or political interference in technical matters will vitiate the application of auditing standards.

This is a very dangerous direction and may tomorrow result into government interference as to how a bypass operation should be done or how medicine is given. The government may tomorrow start designing and prescribing architectural design, medical treatment and even legal presentation/opinions.

Auditors' Punishment

The proposal to include prosecution and punishment of firms has to be restricted to fine, penalty and disgorgement in case where conspiracy and abatement of firm is proved, sever action could be taken if they have fraudulently acted.

The Companies Bill 2009 proposes to impose severe fine and penalties including criminal prosecution and imprisonment for auditors even for technical or other non-compliance.

The principle adopted in the LLP Act should actually be adopted and the punishment and prosecution should be restricted only to those who are actually guilty. It is completely inappropriate to extend the scope of criminal prosecution to the entire firm. The fault committed by one of the audit partners or may be an audit team cannot be the basis of prosecution of the tax partner, consulting partner or even to audit partner who have no direct or indirect role in the concerned audit. In a large number of cases the other partners might be working from different geographical location and to involve everybody into prosecution is completely uncalled for.

In case a doctor is grossly negligent in undertaking an operation, this should not entitle a democratic government to close down the hospital and its branches all across the country. This is nothing but "अंधेर नगरी चौपट राजा" How

can we permit closure of entire firm because of fault of a handful of individuals?

We fully support strict punishment to all those auditors who are party to a fraud (which will happen only in very exceptional circumstances) but the Chartered Accountants community cannot tolerate such a great injustice due to certain exceptional defaulters.

No arrest before Conviction

It is completely improper and unjust of the government and its administrative and judicial machinery to arrest professionals like auditors based on allegation. Auditors should be arrested only on conviction and when the guilt is proved.

Class Action Suit

The government proposed to bring in a legislation thereby empowering shareholders and other stake holders to file Class Action Suit against auditors. These provisions are proposed to be inbuilt in a chapter dealing with oppression and mismanagement and will result into unnecessary litigation against auditors by disputing group of shareholders. The auditors liability towards shareholders and others who rely on the financial statement signed by the auditors is definitely understood and appreciated but providing a mechanism of Class Action Suit will only promote a litigative society on the lines of America and will bring pendency of civil and criminal suits to a very large level.

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)
3 Month LIBOR	0.29	0.29
3 Month MIBOR	7.70	7.01
SENSEX	19872	19208
NIFTY	5982	5760
CRR	6	6
REPO	6	5.75
REVERSE REPO	5	4.5
Gold (per 10 gm)	19510	18861
Silver (per kg)	35540	31340
Crude (USD/bbl)	81.82	78.43
Rs. vs USD	44.29	46.31
Rs. vs Euro	61.05	59.39

* as on 20th October, 2010.

(Sources: Bloomberg, NSE, BSE, RBI)

● **Contact details** : Dharampal (9013363257) All India Chartered Accountants' Society - CFO World 504, Chiranjiv Tower, 43, Nehru Place, New Delhi-110019. Ph: 26223712, 26228410, 26226933 E-mail: aicas.cfo@gmail.com / cfoworld@gmail.com ● **EDITOR**: Pankaj Gupta, LLB, FCS E-mail: pankajguptafcs@gmail.com ● **PUBLISHED & PRINTED**: At New Delhi by Satish Chandra, Administrative Officer, on behalf of All India Chartered Accountants' Society, 4696, Brij Bhawan, 21A, Ansari Road, Darya Ganj, New Delhi-110 002 Phone 23265320, 23288101 E-mail : aicas.cfo@gmail.com Printed at: EIH Ltd., Unit : Printing Press, No. 7, Sham Nath Marg, Delhi-110054. Views expressed by contributors are their own and the Society does not accept any responsibility.

If undelivered, please return to :
All India Chartered Accountants' Society
4696, Brij Bhawan 21A, Ansari Road,
Darya Ganj, New Delhi-110 002