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EDITORIAL

₹ 700,000 CRORE PROJECTS ARE STUCK..!!

CA Vinod Jain*

In a recent meeting with the Finance Minister, P. Chidambaram, CMDs of all banks expressed concern over the fact that the infrastructure and industrial projects with total project cost of more than ₹ 700,000 crores are either struck in between or awaiting implementation..

These mainly include major highway projects, power projects and large industrial projects. The issues of coal linkages, determination of toll collection points, BOOT arrangement meeting regulatory hurdle and non-completion of financial closure are some of the main reasons.

Why the Government, industrial sector, financial sector and financial market are so helpless? Why the mood/ sentiments are so sluggish? The Public Sector Corporations have more than ₹ 250,000 crores surplus cash and most of the large and mid-size industrial houses are also having piles of large cash resources (top 100 having more than ₹ 150,000 crores). What is forcing them to stay back and not to start investing in India? On the other hand Indian investment has increased many folds outside India meaning thereby business houses are feeling comfortable and profitable to invest outside India as compare to investing in their own country?

The reasons are uncertainty at the end of Government policy, Tax department aggression, lack of timely clearances by Government machinery and extraordinarily negative attitude of regulatory bodies. Bribery is another factor which cannot be ignored. The Government is busy in fighting corruption related litigation.

This state of affairs is leading the country to a disastrous

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GOVERNMENT SHOULD DESIST FROM INTERFERING IN THE CA PROFESSION

Over the last few years, the Government is bent upon interfering in the affairs of the CA profession being regulated by the Institute of Chartered Accountants of India, a body set up by an Act of the Parliament. Satyam episode is being cited as the example for mismanagement and lack of regulation.

But the facts are otherwise. World over ICAI is being praised for its high grade education and creation of talented professionals. Chartered accountants from India are performing so well in the entire sphere they are involved with. It is a clear indication that CA profession in India is on the right path and being regulated properly.

It will be disastrous on the part of the Government to interfere in the profession of Chartered Accountant in the proposed manner. It has to relook and reconsider.

Satyam episode was only an aberration and the Institute of Chartered Accountant of India has already punished the guilty and has given them toughest legal punishment of fine and removal of name for life. The delay in the judgement was primarily due to court's stay and principles of natural justice/CPC being followed by ICAI.

The Government's ill-intentions are reflected from thevarious provisions relating to auditors in the Companies Bill, 2012 (Passed by Lok Sabha). The Bill provides for:

i) Very heavy penalties on Auditors, for minor fault/ technical breaches.

ii) The delegated legislation proposes to give too many wide powers to prescribe Rules by the Government beaurocracy.

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MAJOR CHANGES IN CONSOLIDATED FDI POLICY, 2003

The Department of Industrial Policy & Promotion (DIPP) has released consolidated FDI policy, 2003 on 29th March 2013, with effect from 5th April 2013, subject to certain conditions. A summary of major changes are as follows:-

1. Issue price of shares

A new paragraph has been included stating that where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

2. Downstream Investments by Banks

Downstream investments made by a banking company, incorporated in India and owned and/ or controlled by non-residents under Corporate Debt Restructuring (CDR) shall not count towards indirect foreign investment. However, their 'strategic downstream investment' shall count towards indirect foreign investment. For this purpose, 'strategic downstream investments' would mean investment by these banking companies in their subsidiaries, joint ventures and associates.

3. Conversion of ECB/ Lumpsum Fee/ Royalty/ CG import etc into Equity

The condition of independent valuation of the capital goods/machinery/equipments by a third party, preferably by an independent valuer from country of import has been removed.

4. Non- Banking Finance Companies (NBFCs)

Inclusion of existing policy of FDI in NBFC by providing that:

a) NBFCs having foreign investment more than 75% and up to 100%

b) NBFCs with a minimum capitalisation of US$ 50 million

can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital

5. Asset Reconstruction Companies

Inclusion in existing policy of FDI up to 74% in Asset Reconstruction Companies, subject to conditions:-

a) No sponsor may hold more than 50% of the shareholding in an ARC either by way of FDI or by routing through an FII.

b) The foreign investment in ARCs would need to comply with the FDI policy in terms of entry route conditionality and sectoral caps

c) The foreign investment limit of 74% in ARC would be a combined limit of FDI and FII

d) The total shareholding of an individual FII shall not exceed 10% of the total paid-up capital.

6. Investment by citizen / entity of Pakistan

Allowing Pakistani citizens, nationals and companies to invest in India, under the Government Route, in all sectors other than defence, space and atomic energy and sectors/ activities prohibited for foreign investment.

7. Single Brand Retail

Permitting in existing policy of FDI up to 100% in single brand retail.

8. Multi Brand Retail

Allowing FDI up to 51%, under the Government route, in Multi-Brand Retail Trading, subject to specified conditions.

9. Broadcasting Services

Inclusion in existing policy of FDI up to 74% in broadcasting sector.

10. Civil Aviation

Inclusion in existing policy of FDI up to 49% in the capital of Indian companies, operating scheduled & non-scheduled air transport services.

11. Power Exchanges

Inclusion in existing policy of allowing FDI up to 49% in power exchanges, registered under Central Electricity Regulatory Commission (Power Market) Regulations, 2010, subject to the specified conditions.

Circular no. 1/2013, dated 5th April 2013, www.dipp.nic.in

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GOVERNMENT SHOULD DESIST......

iii) Imprisonment and penalties even without a wilful default or criminal negligence (mens rea not mandatory)

Legislating on code of ethics for CAs including maximum number of Audits, undertaking other assignment by Auditors etc.

iv) The most glaring example of clear interference in the profession is the provision of setting up of National Financial Reporting Authority to :

(a) Prescribe Auditing Standard

(b) Prescribing Accounting Standard

(c) Undertaking disciplinary action against Auditors/Audit firms, with minimum fines, penalties and imprisonment to be imposed.

The aforesaid assault and interference in the Chartered Accountant profession is highly condemnable. The Government has full right to prescribe expectations of the society, corporate sector and investors from Auditors and not beyond. The Government has ample representation in the governing of ICAI to ensure compliances and putting in place checks and balances.

It may be noted that Indian Accounting Standards and Auditing Standards are currently at par with International Standards notified by International Accounting Standards Board (IASB) and Indian Auditing and Assurance Standards Board (IAASB). The Government has not been able to point out any deficiency in Auditing Standards prescribed by the ICAI. In case some Auditor fails to follow auditing standard, he need to be punished by ICAI having adequate representation of the Government on the council and also on Disciplinary committees.

The Government has no in-house capability or competence to design accounting and auditing standards. Even investigation machinery of MCA including serious fraud office has a very very poor track record. The functioning of Government has been saddled with several allegations of corruption and mal practices. **It will be disastrous on the part of the Government to interfere in the profession of Chartered Accountant in the proposed manner. It has to relook and reconsider.**

LATEST IN FINANCE

1.0 GUIDELINES FOR ENABLING PARTIAL TWO-WAY FUNGIBILITY OF INDIAN DEPOSITORY RECEIPTS (IDRs)

The Securities & Exchange Board of India (SEBI) has provided for partial fungibility of Indian Depository Receipts (IDRs) (i.e. redemption/ conversion of IDRs into underlying equity shares) in a financial year to the extent of 25% of the IDRs originally issued.

All the IDRs shall have partial two-way fungibility. The partial two-way fungibility means that the IDRs can be converted into underlying equity shares and the underlying equity shares can be converted into IDRs within the available headroom. The headroom for this purpose shall be the number of IDRs originally issued minus the number of IDRs outstanding, which is further adjusted for IDRs redeemed into underlying equity shares ("Headroom").

2.0 PERMISSION TO INSURERS TO INVEST IN CATEGORY I ALTERNATIVE INVESTMENT FUNDS

The Insurance Regulatory Development Authority (IRDA) has permitted the Insurers to invest in Alternative Investment Funds (AIFs) subject to the following:

Investment in the Alternative Investment Fund (AIF) along with the existing investments in Venture Funds shall be subject to the following exposure norms:

Type of Insurer	Exposure Limits
Life Insurance Company	3 % of respective Fund (or) 10% of AIF's size, whichever is lower.
General Insurance Company	5% of Investment Assets (or) 10% of AIF's size, whichever is lower.

IRDA/F&I/INV/CIR/054/03/2013 dated 18th March, 2013, www.irda.gov.in

3.0 BRICS TO SET UP DEVELOPMENT BANK

In a major move aimed at reforming the global financial architecture, finance ministers of BRICS

nations has agreed on the setting up of a development bank to fund infrastructure and development projects in the five-nation grouping of emerging powers. The summit of BRICS nations would set up a Joint Business Council that would seek to encourage free trade and investment in goods and services among the five nation grouping.

4.0 REPORTING PLATFORM FOR OTC FOREIGN EXCHANGE AND INTEREST RATE DERIVATIVES

The Reserve Bank of India (RBI) has decided that the reporting arrangement on the CCIL platform covering OTC foreign exchange derivative trades above $ 1 million between Authorised Dealers (ADs) and their clients in the following products should be operationalised w.e.f April 02, 2013.

a. FCY-INR Forwards b. FCY-INR Options

c. FCY-FCY Forwards d. FCY-FCY Options

FMD.MSRG.NO.75/02.05.002/2012-13, dated 13th March, 2013

5.0 RBI ON FOREIGN INVESTMENT DEBT LIMIT

The Reserve Bank of India (RBI) has said that the debt limit available for foreign investors has been merged into two categories - government debt and corporate debt. Foreign investors can invest up to $ 25 billion in government bonds including both long- term and short- term debt papers such as Treasury- bills (T- bills). Earlier there had been investment restrictions on T- bills of up to $ 10 billion.

6.0 SIDBI VC TO INVEST RS 150 Cr IN SME

The SIDBI Venture Capital Fund, a subsidiary of Small Industries Development Bank of India (SIDBI), is planning to invest about ₹ 150 crore of SME Growth Fund in the next 3-4 months.

7.0 INTEREST RATE ON SMALL SAVINGS, PPF LOWERED

The government has reduced the interest rate on Public the Provident Fund (PPF) from 8.8 per cent to 8.7 per cent. The new rate will come into effect from April 1.

CAPITAL MARKET

1.0 DEPOSITORY RECEIPT REGIME REVIEW: INDIA'S TRUST WITH DEPOSITORY RECEIPTS

- India's first depository receipt (DR) programme for Reliance Industries established in 1992
- Since then 330 companies have created DR programme
- 13 listed on New York Stock Exchange or NASDAQ
- 24 listed on London Stock Exchange
- Remainder used Luxembourg Stock Exchange or Singapore Stock Exchange

In permitting OTC non-capital-raising DRs, India would join 67 other countries. The instrument would allow an overseas investor to ask his local broker to purchase shares of a company which can then be converted into Depository receipts. Current regulations do not allow for issuing Depository receipts where there is no capital raising by the company.

2.0 SEBI ISSUES COLOUR CODE FOR MUTUAL FUND SCHEMES

The Securities and Exchange Board of India (SEBI) has said that to curb mis-selling, mutual funds will have to label and colour code their schemes to indicate risk to capital invested. Blue, yellow and brown will indicate low, medium and high risk to invested capital. Fund houses would now be required to label the scheme according to nature (wealth creation, regular income), time horizon (short-/ medium- /long-term), investment objective followed by asset class and finally the risk using colour codes. The product label has to be disclosed in the scheme document, applications and advertisements. This circular comes into effect for all schemes from July 1.

3.0 ARBITRATION MECHANISM- CENTRALI-ZED SEBI PANEL

The Securities and Exchange Board of India (SEBI) has tweaked the stock exchange arbitration mechanism to facilitate selection of arbitrators through an automatic process.

Arbitration mechanism is a dispute resolution process between market players such as brokers, sub-brokers, clearing members & depositories. Many broker disputes are resolved through this mechanism.

Under the new process, the entire list of arbitrators empanelled with stock exchanges shall be pooled and made publicly available. SEBI has said that this common pool of arbitrators will be chosen by an automatic process where neither the parties to the arbitration nor the concerned stock exchanges will be directly involved.

4.0 SHARES GIFTED TO BROTHER NOT TO TRIGGER OPEN OFFER

The Securities & Exchange Board of India (SEBI) that shares gifted by the promoter of a listed company to a brother without monetary considerations would not trigger any open offer obligations for the new owner of equity.

However, such an acquisition of shares should be by way of a gift involving an inter-se transfer amongst immediate relatives and without involving any acquisition price.

CORPORATE AND ECONOMIC LAWS

1.0 CLARIFICATION UNDER SECTION 372 A (3) OF THE COMPANIES ACT, 1956

The Ministry of Corporate Affairs (MCA) has clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the yield on prevailing bank rate, there is no violation of Section 372A(3) of Companies Act, 1956.

MCA Circular No. 06/2013 dated 14th March 2013, www.mca.gov.in

2.0 SCHEME TO CONVERT DDA FLATS TO FREE HOLD

Allottees of Delhi Development Authority (DDA) flats can now convert them to free hold basis by paying a surcharge. The Urban Development Ministry has said that it has further liberalized the scheme of conversion to free hold, in public interest. This move is expected to benefit thousands of DDA flat allottees.

As per the policy, General Power of Attorney (GPA) and Agreement to sell holders (AS) having registered GPA & AS between 24.09.2001 & 11.10.2001 will be entitled to conversion to free hold after paying 66.66% surcharge in addition to conversion charges applicable on the date of application. This scheme have immediate effect.

3.0 SEBI TO CHECK FRIVOLOUS OPEN OFFERS

The Securities and Exchange Board of India (SEBI) has said that an acquirer shall not withdraw an open offer pursuant to a public announcement made even if proposed acquisition through the preferential issue is not successful.

4.0 SUPER-REGULATOR FOR FINANCIAL SECTOR MOOTED

A government-appointed panel has proposed a unified regulator for markets, insurance, pensions & commodities. It has also proposed to keep banking out of its purview, but only temporarily.

5.0 COMPANIES CAN INVEST IN TAX FREE BONDS

The Ministry of Corporate Affairs (MCA) has clarified companies investing in tax-free bonds that have a lower coupon than the bank rate is not in violation of section 372A(3) of the companies Act.

DIRECT TAXATION

1.0 TRANSFER PRICING: R & D CENTRES

The Central Board of Direct Taxes (CBDT) has issued a circular on conditions relevant to identify development centres engaged in contract R&D services with insignificant risk.

CBDT has also issued a Circular on application of Profit Split method.

Circular No. 02/2013 & 03/2013, F No. 500/139/2012 dated 26th March, 2013

2.0 PRE-FILLED I-T RETURN FORMS

In a bid to increase tax compliance, the income-tax department is considering providing prepopulated forms for filing returns. A good portion of information, such as data received from employers and third-party sources may be pre-filled by the tax department in these forms - in line with the global practice.

3.0 AMENDMENT TO SECTION 40(A)(IA), READ WITH SECTION 139

- **The Karnataka High Court** has amended Section 40(a)(ia) relating to Interest, etc., paid to resident without deduction of tax at source by ruling that disallowance cannot be made in case where the tax is deducted during last month of previous year and deposited within due date specified in section 139(1).

ITO, Ward-I, Bijopur vs Anil Kumar & Co., [2013] 31 taxmann.com 370

- **The Rajkot ITAT bench** has held that where assessee had deducted tax at source on payment made by him in conformity with Chapter XVII-B and deposited same on or before due date as per in section 139(1), disallowance u/s 40(a)(ia) could not be made.

Rana Builders vs ITO, Ward 1(2), Junagadh, [2013] 31 taxmann.com 372

4.0 SOME LATEST JUDGEMENTS

SECTION 35(2AB)(1): RESEARCH OUTSOURCED ELIGIBLE

The Gujarat High Court has held that Section 35(2AB) (1) does not require that the expenses which are included in this explanation are essentially to be incurred inside an in-house research facility because it is not possible to incur these expenses inside in-house research facility.

Cadila Healthcare Ltd. v/s Addl. CIT [2013] 29 taxmann.com 229

SECTION 80-IA: WORKS CONTRACT INELIGIBLE

The Gujarat High Court upholds the vires of retro amendment clarifying no deduction under section 80-IA for execution of work contracts.

Katira Construction Ltd. v/s Union of India & 2 [2013] 31 taxmann.com 250

RULE 8D: APPLICABILITY TO STOCK IN TRADE LIMITED

The Kolkata ITAT Bench has held that computation provision provided in Rule 8D (2)(ii) and (iii) can only be applied in the situations in which shares are held as investments. However, Rule 8D (i) to apply whether shares are held as stock-in-trade or investments.

Deputy Commissioner of Income-tax, Circle 6, Kolkata v/s Gulshan Investment Co. Ltd. [2013] 31 taxmann.com 113

SECTION 28(iv): AMALGAMATION CAPITAL RESERVE IS NOT INCOME

As Capital reserve arising in amalgamated company's books as a result of amalgamation in the nature of merger is a capital receipt and not a revenue receipt, same cannot be brought to tax by AO by invoking section 28(iv).

Income-tax Officer, Ward 7(3), Kolkata v/s Shreyans Investments (P.) Ltd. [2013] 31 taxmann.com 11

SECTION 92C: TP OFFICER CAN EXAMINE ADDITIONAL COMPARABLES

The Mumbai ITAT bench has held that the provisions of Transfer Pricing do not fix any upper limit on no. of comparables that can be selected by TPO. Further there are no restrictions on the powers of TPO in carrying out fresh search for the relevant comparables.

Willis Processing Services (I) (P.) Ltd. v/s Deputy Commissioner of Income-tax 2(3), Mumbai [2013] 30 taxmann.com 350

SECTION 36(1): INTEREST ON BORROWED CAPITAL

The Ahmedabad ITAT bench has held that where borrowed funds were not used for setting up of a new unit of an existing running business, but it was setting up of a new unit for production of an altogether new product, interest paid on borrowing was not allowable.

Gujarat Mineral Dev. Corpn. Ltd. v/s Assistant Commissioner of Income-tax, IT Appeal Nos. 128, 186 & 402 of 2005

SECTION 194C: TDS ON CONTRACTORS-NOT APPLICABLE

- No section 194C TDS from payments to transporters, if contract is for hiring of Lorries only and not for carriage of goods.
- Salary paid by assessee to deputed employees

of other companies, who worked under its control and management and whose salary was charged on its profits, did not constitute payment made for works contract coming under section 194C.

Deputy Commissioner of Income-tax v/s Reez Karakkattil Raghavan, T Appeal No. 312 of 2011

SECTION 4: INCOME CHARGEABLE AS COMPENSATION-CAPITAL RECEIPT

The Delhi High Court has held that where compensation was paid to assessee on account of impairment of its profit making structure, such compensation was to be treated as capital receipt and not revenue receipt

Hanna & Annadhanam v/s Commissioner of Income-tax, [2013] 30 taxmann.com 322

SECTION 40A(3): BUSINESS DIS-ALLOWANCE -CAN NOT BE MADE

The Madhya Pradesh High Court has held that once net profit rate is applied to compute income, there is no scope of disallowance u/s 40A(3).

Commissioner of Income-tax - II v/s Hindustan Equipment (P.) Ltd., [2013] 30 taxmann.com 295

SECTION 40A(3): SALARY PAID IN CASH DISALLOWABLE

The Rajasthan High Court has held that where assessee paid salary in cash exceeding ₹ 20,000, section 40A(3) was clearly attracted

Rajasthan Telematics Ltd. v/s Assistant Commissioner of Income-tax, Circle-1, Kota, [2013] 30 taxmann.com 248

SECTION 9: TECHNICAL SERVICES

The Mumbai ITAT bench has held that 'Creative fees' and 'Database cost' received by assessee were in nature of 'fees for included services' chargeable to tax in India; whereas 'co-ordination fees' was business profit which could not be taxed in India as assessee did not have a PE in India.

Dy. DIT v/s Euro RSCG Worldwide Inc., [2012] 28 taxmann.com 176 (Mumbai- Trib.)

SECTION 35: SCIENTIFIC RESEARCH EXPENDITURE

The Hyderabad ITAT bench has held that only those R & D expenditure which is approved by DSIR would be eligible for weighted deduction.

Electronics Corpn. Of India Ltd. v/s Asstt. CIT, [2012] 28 taxmann.com 280

SECTION 132: SEARCH AND SEIZURE

The Delhi High Court has held that initiation of search proceedings in case of assessee on basis of information that there was a 'likelihood' of documents belonging to 'DS' group being found at residence of assessee in which her late husband was director and major shareholder, was not justified.

Madhu Gupta v/s Director of Income-tax (Investigation), [2013] 30 taxmann.com 92

SECTION 68: CASH CREDITS

The Allahabad High Court has held that in course of proceedings under section 68, assessee could not be asked to prove source of source or origin of origin.

Zafa Ahmad & Co. v/s Commissioner of Income-tax, Varanasi, [2013] 30 taxmann.com 267

SECTION 54B: EXEMPTION FORM CAPITAL GAINS

The Kerala High Court has held that unless assessee establishes that land sold was actually being used for agricultural purposes during two years prior to date of transfer, exemption under section 54B would not be available.

Smt. Asha George v/s Income-tax Officer, Ward 2(1), Thrissur, [2013] 30 taxmann.com 334

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR ($)	0.277	0.510	0.305	0.343
3 Month MIBOR (₹)	8.79	9.48	8.75	8.70
SENSEX	18413	19683	19664	18631
NIFTY	5558	5946	5969	5652
CRR	4	4	4.25	4.5
REPO	7.5	7.75	8	8
REVERSE REPO	6.5	6.75	7	7
Gold (per 10 gm)	29230	29345	30797	31456
Silver (per kg)	51775	54855	58128	62176
Crude (USD/bbl)	105.79	110.85	112.38	114.33
Rs. vs USD	54.53	54.4	54.63	53.05
Rs. vs Euro	71.33	71.24	71.32	68.21
Rs. vs Yen (₹ 100)	55.03	57.06	61.99	67.82
Rs. vs RMB	8.8	8.71	8.79	8.44
Rs. vs Pound	83.59	81.57	87.5	84.84
MCX Aluminium	102.4	104.8	113.3	105.65
MCX Copper	413.2	420.85	444.75	429.3

**As on 10th April 2013* *(Sources: Bloomberg, NSE, BSE, RBI, MCX)*

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EDITORIAL

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situation resulting in unemployment, unrest and poverty. The growth of Indian business and inclusive growth of common man are all getting negatively impacted. We need to move and move fast, despite hurdles. Immediate steps have to be taken by the Government to ensure immediate movement in execution of stalled projects and to change the prevailing negativity and uncertainty in the minds of the investors. Proactive role of the Government machinery is the need of the hour.

Is Prime Minister and his cabinet team listening??

INDIRECT TAXATION

1.0 EXTENSION OF DUE DATE OF FILING SERVICE TAX RETURN

The Central Board of Excise & Customs (CBEC) has extended the due date of filing the service tax return for the period July 1, 2012 to September 30, 2012 from 15th April 2013 to 30th April 2013.

Service Tax order no. 02/2013, dated 12th April 2013, www.cbec.gov.in

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