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EDITORIAL

INDIAN MANUFACTURING SECTOR - NEED FOR A POSITIVE ENVIRONMENT FOR GROWTH

CA Vinod Jain*

The Indian Economy, the Government, the public at large and specially the people who are in industry, manufacturing sector, service sector or any other arena of business activity , all are deeply concerned with poor growth rate of manufacturing sector during last 2 to 3 years and specially in 2012-13.

The silver lining is the fact that the Indian industry and businesses have matured in terms of commitment and capability to compete in terms of quality, size, new products and innovation during last 2 decades. The large corporate sectors have done extremely well in last 2 decades in terms of growth and in terms of financial resources except the recent issues off slow growth in a large number of areas. Large industrialists and entrepreneurs are also not coming forward to undertake large projects in the manufacturing sector.

An interaction with top management of number of banks, during last 6 months has provided a very serious feedback that there are no significant or material credit proposals being received by them for setting up or diversification or expansion of manufacturing units. Most of the proposals being received by the banks relates to real estate developments, housing, highway construction and power sector. Even the power sector and highway projects are moving very slow and a large number of these projects are stand still for policy constraint or lack of coal linkage or lack of clarity about recoverability of power sales revenue or due to issues on toll collection and similar other matters. The financial closure in case of even infrastructure projects are becoming difficult due to uncertainities.

The small and medium enterprises (SME Segment) of manufacturing sector have still deeper issues. There is a lot of lip service that the policy makers have serious will to promote the SME . The policies are also being made to this effect. The implementation issues are, however, very serious, to discuss some of them:

- **Land:** Availability of reasonable cost land with adequate infrastructure facilities is a big issue. It is important to develop industrial estates in various areas of the country and even barren land can be used by State Government Agencies or under PPP model to develop industrial estates with developed roads, sewerage , waste disposal, water and other facilities which are important to set up manufacturing units.
- **Power:** Availability of uninterrupted low cost power has to be ensured.
- **Man power :** Availability of trained manpower with adequate technical education and practical exposure can create a strong backbone for growth of industries and will also provide large scale employment.
- **Finance:** SME sector also suffer from lack of financial resources. It is important to provide equity support by banks and other financial institutions and also at the instance of the government Institutions. Even the term loan and working capital facility are available only against collateral security except for very small requirements. The government need to structure a scheme to insure credit risk of the financing institutions up to a loan amount of ₹ 5 crore provided to genuine proposals of SME sector, which can provide a big imputes to growth. The increasing requirement of retail sector can also met by SME in a more effective manner.
- **Low cost funds:** The SME sector need low cost funding at less than 10% per annum. In the present circumstances the limited money which is available to small scale and medium enterprises is costing 14% to 24% per annum. It is important to make the industrial units economically viable and competitive so that they can create large competitive

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* Mr. Vinod Jain, FCA, FCS, FICWA, LL.B., DISA (ICA), Chairman, INMACS and Vinod Kumar & Associates. vinodjain@inmacs.com, vinodjainca@gmail.com, +91 9811040004

LATEST IN FINANCE

1.0 NBFC not to be partners in LLP, AOC & Partnership Firms

The Reserve Bank of India (RBI) has said that Non Banking Financial Companies (NBFCs) are prohibited from contributing capital to any partnership firm or to be partners in partnership firms. Partnership firms will also include Limited Liability Partnerships (LLPs) and Association of Persons (AOPs). In cases of existing investments, NBFCs are advised to seek early retirement from the partnership firms/LLP/AOP.

RBI/2012-13/526 dated 11th June 2013, www.rbi.org.in

2.0 Guidelines on raising money through Private Placement by NBFCs

The Reserve Bank of India (RBI) has issued guidelines on private placement by NBFCs. The details are as follows:-

- The offer document for private placement should be issued within a maximum period of 6 months from the date of the Board Resolution authorizing the issue.
- The offer document may be printed or typed "For Private Circulation Only".
- An NBFC shall only issue debentures for deployment of funds on its own balance sheet and not to facilitate resource requests of group entities/ parent company / associates.
- Private placement by all NBFCs shall be restricted to not more than 49 investors, identified upfront by the NBFC.
- The minimum subscription amount for a single investor shall be ₹ 25 lakh and in multiples of ₹10 lakh thereafter.
- There should be a minimum time gap of at least six months between two private placements.
- An NBFC shall not extend loans against the security of its own debentures.

RBI/2012-13/560 dated 27th June 2013, www.rbi.org.in

3.0 Regulator warns Aircel, Tata Tele, RCom against unsolicited SMS

The Telecom regulatory Authority of India (TRAI) has introduced a new law to curb the menace of unwanted calls. Under this new rule, telephone connection given to unauthorized telemarketers will be disconnected immediately on first complaint and they will be blacklisted for 2 years. During these 2 years, no phone company can offer a connection to the blacklisted individual or entity. Earlier, the illegal telemarketers were issued warnings & penalised before disconnection.

How to complaint against unsolicited SMS

For making a complaint through SMS, a customer has to SMS "the unsolicited commercial communication, XXX… dd/mm/yy" to 1909. Where 'XXX…' is the ten-digit telephone number or header of the SMS, from which the unsolicited message has originated.

The telephone number or header and the date of receipt of the unsolicited commercial SMS may be appended with such SMS, while forwarding to 1909, with or without space after comma.

4.0 Fitch revises India's rating outlook to 'stable'

Almost a year after downgrading India's credit rating outlook to 'negative', global rating agency Fitch has again given it a 'stable' rating. This upward revision in the outlook is mainly because of a lower-than-estimated fiscal deficit and some reform initiatives by the Government. The current rating is just one level above 'junk bond' status.

5.0 Apollo Tyres, India to buy Cooper Tire, US

India's second-largest tyre manufacturer Apollo Tyres has acquired US-based Cooper Tire & Rubber Company in an ₹ 14,500-crore all-cash deal. At $2.5 billion, it is one of the largest overseas acquisitions by an Indian company. Apollo will vault from 16th to 7th position in the global tyre manufacturing rankings, and get deeper market access in the US, Europe and China.

Congratulations!

Onkar Singh Kanwar
Chairman, Apollo Tyres

Neeraj Kanwar
VCMD, Apollo Tyres

EDITORIAL

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INDIAN MANUFACTURING...

manufacturing bases and can also develop as ancillary units, to support large projects.

- **Government initiative and monitoring:** The State Governments and Chief Ministers can take a lead to attract industrial activities in their respective States in a completely planned manner. The central government and the entire framework of the financial sector can provide necessary facilities and financial supports.
- **Tax Laws:** Taxation Laws are another major dampener. It is very important to reduce the rates of indirect taxes including VAT and Service Tax. The direct tax slabs also need substantial up-gradation. What is most important is to create a positive litigation free environment. The domestic transfer pricing legislation and several other similar irritants, bureaucratic process and litigative attitude is largely responsible for a poor business environment in the country.
- The Prime Minister and his team need to fully support the initiative of the government machinery including top level bureaucrats at the central level as well as at the State level to have a long term vision and program for a big leap in the manufacturing sector. The procedures need to be cut and a single window clearance in a time bound manner is needed. The delegation of powers should be wide with all necessary positive discretion with officials.

We also need to harness large mineral resources to the best our advantage in the manufacturing sector by bringing forth transparent schemes of developing mining as a backbone to manufacturing. The policy framework needed to ensure that the businesses are able to have good value additions to incentivise economic growth.

CAs is partner in Growth: The CA profession can play a very important role in conceptualizing various new projects and to promote entrepreneurship in the areas in which their clients can have special edge. The CA community is committed to provide all necessary support for preparation of techno-economic feasibility reports, resource rising for funding the projects, development of internal control procedures and systems and empower the entrepreneur to create necessary organization by handholding and guiding in planning, organizing, managing, controlling and implementing new projects, expansion and diversification. The financial planning to ensure successful and sustained viability and growth is the biggest strength of chartered accountants as practicing professionals as well as part of the implementation team of the industrial projects.

6.0 AICTE approval is not necessary for MBA programmes: SC

The top court was of the view that approval from the technical education regulator, All India Council for Technical Education (AICTE), was not required for MBA programmes offered by private institutions.

The Supreme Court had said that AICTE's role vis-a-vis universities was "only advisory, recommendatory and one of providing guidance, and has no authority empowering it to issue or enforce any sanctions by itself". Citing its order in the *Bharathidasan University and Parshvanath Charitable Trust case*, the court said that AICTE norms could be applied through the University Grants Commision (UGC). As a result, the AICTE cannot directly "control" or "supervise" these affiliated colleges.

7.0 Govt to Step up speed of reforms after Gas Price Hike

After the increment in gas prices, the Government is set to issue further reforms in various sectors as under:-

- Higher FDI limits in many sectors
- Authority for railway tariffs
- Regulator for roads sector
- New instruments to attract sovereign wealth funds
- Allocation for coal blocks & natural gas
- Implementation of fertilizer policy

The following actions has been implemented :-

- Sharp rise in price for gas produced domestically
- Independent regulator for the coal sector
- Exit facility for road project developers

8.0 India may challenge US Visa Rules

The government has told the US that the latter's under-discussion legislation to change the rules on H-1B and L-1 work visas are against World Trade Organization (WTO) rules. It has warned that if the law is passed in its present format, India

is likely to challenge it at the WTO's dispute panel.

All companies that have 50% or more employees from outside the US to pay a higher visa fee of $10,000 for each such staffer, against $4,500 at present.

9.0 RBI bans gold imports with bank credit

The Reserve Bank of India (RBI) has said that all letters of credit to be opened by nominated banks, agencies for import of gold under all categories will be only on 100% cash margin basis. Further, all imports of gold will necessarily have to be on documents against payment basis. Accordingly, gold imports on documents against acceptance basis will not be permitted.'

10.0 RBI allows end use for Import of Services

The Reserve Bank of India (RBI) has decided to include import of services, technical know-how and payment of license fees as part of import of capital goods by the companies for the use in the manufacturing and infrastructure sectors as permissible end uses of ECBs.

Currently, eligible entities can raise External Commercial Borrowings (ECBs) for investment such as import of capital goods, new projects, modernization /expansion of existing production units in industrial sector, infrastructure sector and entities in the service sector

CAPITAL MARKET

1.0 SEBI to allow start ups to list shares

Market regulator Securities and Exchange Board of India (SEBI) decision to allow small and medium enterprises to list their shares without an initial public offer has boosted sentiment across the country's startup ecosystem.

It also exempts them from having to offer 25 of shareholding to the public through through an offer document to get listed.

2.0 SEBI considers new norms for foreign investors

A Securities and Exchange Board of India (SEBI) panel has recommended waiving the requirement for Foreign Institutional Invetors (FIIs) to directly register with the market regulator. According to the recommendations, FIIs and sub-accounts would now be able to register themselves and transact through Designated Depositary Participants (DPs) whose qualification would be prescribed by the market regulator.

The panel also wants the merger of existing FIIs, sub-accounts and qualified foreign investors into a new investor-class called Foreign Portfolio Investor (FPI).

3.0 SEBI initiate penalty on promoters of 105 cos

Cracking the whip on the promoters of over 100 private sector companies having failed to attain minimum 25% public holding, the Securities and Exchange board of India (SEBI) has ordered freezing their voting rights and corporate benefits and barred them from holding any new position on boards of listed firms. The promoters and directors of non-compliant companies have also been barred from dealings in the market and holding new positions on the boards of listed entities till the time those companies comply with the minimum public shareholding requirements.

4.0 SEBI tightens buyback, preferential allotment norms

The Securities & Exchange Board of India (SEBI) has said that the mandatory minimum buyback is now 50 per cent of the offer size, against the earlier 25 per cent. Companies have to forfeit up to 2.5 per cent of the money earmarked for the buyback if they fail to achieve the 50 per cent mark.

The maximum buyback period has been reduced from 12 months to six. Companies can neither raise further capital nor make another buyback offer for a year.

Shares bought back every month have to be extinguished by the 15th of the next month. The last installment should, however, be completed within seven days of completion of the offer.

5.0 SEBI new norms for listing of preference shares

The Securities & Exchange Board of India (SEBI) has said that the listing of privately placed non-convertible redeemable preference shares would require a minimum application size of ₹ 10 lakh

for each investor. Besides, the public issuance of such shares would require minimum three-year tenure for the instruments and at least a rating of 'AA-' or equivalent investment grade.

6.0 SEBI allows PSUs to sell shares to employees at discount after OFS

The Securities & Exchange Board of India (SEBI) has said that employees of public sector undertakings (PSUs) will now get an option to subscribe up to 5% of the issue size at a discount after the completion of disinvestment in the concerned state-owned company.

PSU will be selling shares to interested employees at a 5% discount over the last cut-off price in that OFS.

FEMA

1.0 RBI issues norms on ECB for low cost affordable house projects

The Reserve bank of India (RBI) has issued guidelines for External Commercial Borrowings (ECBs) for the low cost affordable housing projects. The details are as follows:-

- The condition of the minimum Net Owned Funds (NOFs) of ₹ 300 crore for the past three financial years remains unchanged.
- The aggregate limit for ECB under the low cost affordable housing scheme is extended for the financial years 2013-14 and 2014-15 with a ceiling of USD 1 billion in each of the two years, subject to review thereafter.
- The ECB availed of by developers and builders shall be swapped into Rupees for the entire maturity on fully hedged basis

A.P. (DIR Series) Circular No. 113 dated 24th June 2013, www.rbi.org.in

2.0 Guidelines for ECB for structured obligations

The Reserve Bank of India (RBI) has issued guidelines for ECBs for structured obligations. The details are as under:-

- As per the extant guidelines, credit enhancement is permitted to be provided by multilateral / regional financial institutions, Government owned development financial institutions, direct/indirect foreign equity holder(s) under the automatic route for domestic debt raised through issue of capital market instruments.
- The Reserve Bank of India (RBI) has decided that credit enhancement can be provided by eligible non-resident entities to the domestic debt raised through issue of INR bonds/ debentures by all borrowers eligible to raise ECB under the automatic route.
- The minimum average maturity of the underlying debt instruments has been reduced from seven years to three years. Prepayment and call/put options, however, would not be permissible for such capital market instruments up to an average maturity period of 3 years.
- On invocation of such credit enhancement, if the guarantor meets the liability and if the same is permissible to be repaid in foreign currency to the eligible non-resident entity, the all-in-cost ceilings, as applicable to the relevant maturity period of the Trade Credit / ECBs as per extant guidelines, would apply to the novated loan.

A.P. (DIR Series) Circular No. 120 dated 26th June 2013, www.rbi.org.in

3.0 No concept of sub-brands under single brand retail policy

The Department of Industrial Policy & Promotion (DIPP) has written to the Finance Ministry that there is no such concept of sub-brands under the Foreign Direct Investment (FDI) policy in the sector.

The government is in the process of coming out with a definition of 'single brand retail' to remove ambiguities regarding retailing of sub-brands and labels. Currently, there is no definition of single-brand retail in the FDI policy. As per the current policy, products to be sold should be of a 'single brand' only. According to industry experts, this policy means multiple brands or sub-brands owned by the same company can neither be sold under one roof nor sold by the same firm.

4.0 ₹ 8,600-cr notice to Emmar MGF for FEMA violations

The Enforcement Directorate (ED) has slapped

₹ 8,600-crore show-cause notice on construction major Emmar MGF Land. It claimed the group had disclosed to the Reserve Bank of India (RBI) that it is bringing FDI for developing construction-related projects but it used the funds for purchasing farm land, which is a violation of the banking and FDI regulator.

5.0 Electronic brands find loophole to get around FDI norms on e-retailing

Electronic brands have found a way to beat the Foreign Direct Investment rules governing e-commerce to sell their products online. These companies are selling their wares through Web sites created specially for them by Indian distributors.

6.0 Foreign Investment in G-securities limit raised

The government has increased the investment limit of foreign portfolio investors in government bond by $5 billion to $30 billion.

7.0 DIPP moves to end control of companies via back door

The Department of Industrial Policy and Promotion (DIPP) has moved the much-awaited draft Cabinet note on expanding the definition of "control" for calculating foreign investment, direct and indirect, in an Indian company.

The proposal, which has to be cleared by the Cabinet Committee on Economic Affairs (CCEA), has suggested the definition of "control" be expanded to include the control exercisable through management and policy decisions, management rights, and shareholder agreements of an Indian entity. Currently, a company is considered "controlled" by resident Indian citizens if the power to appoint a majority of the directors on its board is held by Indian companies and citizens. It was felt this definition was not comprehensive enough to cover all possible ways in which "control" was exercised in corporate entities.

8.0 Panel identifies 9 sectors for mandatory Indian control

The Arvind Mayaram committee, set up to liberalise the country's Foreign Direct Investment (FDI) policy, has recommended nine sectors be categorised as those where 'Indian ownership' and 'control' will be mandatory. These are FM radio, uplinking news & current affairs, print media (news & current affairs), commodity exchanges, stock exchanges along with depositories and clearing corporation, power exchanges, petroleum & natural gas refining, insurance, defence production and private security agencies.

The committee has suggested FDI be capped at 49 per cent in nine sectors and clearance (except for defence production and private security agencies) be through the automatic route. It has clarified FDI will not include portfolio investments in two of these sectors - insurance and petroleum & natural gas refining.

9.0 FCCB buyback, prepayment extended till Dec

The Reserve Bank of India (RBI) has extended the deadline for buyback and prepayment of foreign currency convertible debentures (FCCBs) under the approval route till December this year.

AUDIT

1.0 Deferment of applicability of SA-700(Revised) on Tax Audit Report

The Institute of Chartered Accountants of India (ICAI) has deferred the applicability of SA-700 (Revised) on the tax audit report under section 44AB of the Income-tax Act, 1961 by one year till 31st March 2014.

2.0 Audit Report Impact

Five top executives at the Indian unit of American company Bunge have resigned amid an internal audit into possible financial irregularities at the world's largest oilseeds processor and owner of domestic edible oils brands Dalda and Amrit.

3.0 Govt to initiate action against erring CAs

The government has said that it will ensure that all Chartered Accountants found guilty of wrongdoing in certification of banks' books will be debarred from taking up further work with these public sector banks. It will also suggest action - including suspension/dismissal/fine/action under criminal laws - against bank officials found

guilty of rejecting eligible cases and/or granting debt relief and debt waiver to ineligible farmers as well as other wrongdoings, including forgery/ tampering of documents.

4.0 Audit firms may be held to be accountable

The ministry of corporate affairs is working to amend the Chartered Accountants Act, 1949, which would in cases of any exceptional negligence' penalize the audit firm in addition to the individual auditor.

5.0 Legal Audit of title documents in respect of large value loan accounts

The Reserve Bank of India (RBI) has decided that the banks should also subject the title deeds and other documents in respect of all credit exposures of ₹ 5 crore and above to periodic legal audit and re-verification of title deeds with relevant authorities as part of regular audit exercise till the loan stands fully repaid.

RBI/2012-13/524 dated 7th June 2013, www.rbi.org.in

INDIRECT TAXATION

1.0 Service Tax on AC Bar Restaurants & Hotels is Unconstitutional: Kerala HC

The Kerala High Court has held that the levy of Service Tax on AC Bar Restaurants and Hotels providing short term accommodation as Unconstitutional and beyond the Legislative Competence of the Parliament. It contends that the levy by the Central Government transgress upon the subject matter falling under Entry 54 and Entry 62 respectively of the List II (State List) of the Seventh Schedule of the Constitution and therefore beyond the legislative competence of the Parliament.

2.0 Excise dept slaps Rs 30-cr service tax notice on Amity

The Directorate General of Central Excise Intelligence (DGCEI) has served Rs 30-crore service tax liability show-cause notice to Amity University's Lucknow campus.

The 25-page notice says the Lucknow campus of Amity is an "off-campus" centre and not approved by the University Grants Commission and hence is "not authorised by law".

DIRECT TAXATION

1.0 Transfer Pricing - R&D Units

The Central Board of Direct Taxes (CBDT) has now classified the local captive units of MNCs into entrepreneurial, cost-sharing arrangements and contract research and development centres. The new rules list six conditions for an MNC unit in India to be considered a contract research centre with insignificant risk on which 'profit split' method of attributing higher profits is not applicable.

The major change from the earlier rules is that an MNC unit need not fulfill all the six conditions to be eligible for a less stringent tax treatment.

The revised circular has dropped the word "cumulatively" to clarify that not all the conditions need not be fulfilled.

2.0 Transfer Pricing - APA

- An Advance Pricing Agreement (APA) is a pact between a taxpayer and a tax authority on pricing of future inter-company transactions.
- APA provides certainty on pricing and the methodology for inter-company transactions and also eliminates double taxation risks

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR ($)	0.27	0.27	0.28	0.31
3 Month MIBOR (₹)	8.21	8.53	8.79	8.75
SENSEX	19294	19441	18413	19664
NIFTY	5817	5878	5558	5969
CRR	4.00	4.00	4.00	4.25
REPO	7.25	7.25	7.50	8.00
REVERSE REPO	6.25	6.25	6.50	7.00
Gold (per 10 gm)	26103	28011	29230	30797
Silver (per kg)	40174	44162	51775	58128
Crude (USD/bbl)	108.51	103.95	105.79	112.38
Rs. vs USD	60.13	57.78	54.53	54.63
Rs. vs Euro	76.89	76.24	71.33	71.32
Rs. vs 100 Yen	59.76	58.79	55.03	61.99
Rs. vs RMB	9.76	9.50	8.80	8.79
Rs. vs Pound	89.52	89.71	83.59	87.50
MCX Aluminium	105.90	108.85	102.40	113.30
MCX Copper	405.85	408.90	413.20	444.75

**As on 10th July 2013 (Sources: Moneycontrol, NSE, BSE, RBI, MCX)*

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- The parties to an APA agree on the transfer pricing methodology to be applied to such transactions for a future period of time
- In India, besides unilateral APA between the tax authority and a taxpayer, bilateral and multilateral APAs involving the tax authorities of other countries are also permitted

3.0 Domestic Transfer Pricing Rules & Audit Report

The Central Board of Direct Taxes (CBDT) has issued a notification amending Transfer Pricing Rules 10A onwards to include domestic transfer pricing. It has also issued an amended form 3CE to cover international & domestic transfer pricing transactions for issuance of Audit report.

CORPORATE AND ECONOMIC LAWS

1.0 Cos to raise Public funds subject to Compliance

All newly incorporated firms and those in the process of getting registered under the Companies Act, 1956 will have now file an additional declaration, saying they will never raise money from public without meeting the norms of SEBI, RBI and other authorities.

The ministry has also said that the declaration, which is mandatory, has to be filed by the directors and initial shareholders of the companies. In the case of already registered firms, this declaration would be required whenever the company changes its objects of business.

● **Contact details :** Dharampal (9013363257) All India Chartered Accountants' Society - CFO World 909, 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.

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All India Chartered Accountants' Society
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Darya Ganj, New Delhi-110 002