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### **EDITORIAL**

### NATION UNDER ANGUISH - ACRIMONIOUS ENVIRONMENT Yet, upbeat hope of good times ahead!



CA Vinod Jain\*

The recent announcements of election results are historic and has brought to light serious concerns of the nation, the economy, society and most importantly public at large about the current political as well as economic state of affairs. This very clear from active involvement and a record turnout of voters for the election.

Almost uprooting of the ruling party in Delhi and Rajasthan is a very strong message to all political parties, bureaucrats, judiciary and specially to those who device policy and administer them, that nation and Indian society cannot be taken for granted and the general public is seriously concerned about price rise and inflation, corruption, lack of employment opportunities, complete dismantling of confidence of investors.

The Indian economy is negatively impacted by too many procedures, hyper active tax legislations, highly litigative and corruption oriented tax officials, prosecution of senior business leaders are severely impairing business sentiments.

The nation as a whole, have expressed that the decision makers and administrators need to act firmly, strongly and in a decisive manner with a clear vision and direction. It is important to address all major and minor issues, troubling the public at large. The Company law is interfering in private sector in the name of Corporate Governance, for example, restrictions to even undertake financial transactions among group companies even by private limited companies. Severe penalties and prosecutions with imprisonment are prescribed even in those cases where no public interest is involved. SEBI has been given sweeping powers of raids, searches, asset attachment etc, without any checks and balances.

The other areas responsible for national anguish include:

- 1. More than 300% rise in electricity rates.
- 2. More than 1100% rise in water rates.
- 3. Substantial increase in CNG, PNG prices without any iustification
- 4. Change in educational policies including 4 year graduation, semester examination and eradication of powers of AICTE without enough public debate or justification.
- 5. Non regulation of excessive and speculative storage and price manipulation by anti competitive large players and commodity exchange traders.
- 6. Failure to prevent financial scams in various organs of the system.

Gone are the days, when there was a class divide between Common Man and the so called Rulers, this gap is going to go for good now. Rulers need to accept the reality.

Presently a section of foreign investors are losing interest in immediate and long term prospects of the Indian economy. On the other hand, the US and Japanese economies have started moving forward. Institutional investors are getting interested in investing in the US or elsewhere and are withdrawing their investment from debt and equity markets in India. India is facing unprecedented current account deficit problems in its balance of payments accounts. It is being aggravated by the present withdrawal of FII investments. Exchange rates are rising against many major currencies, particularly against USD. As a result India is importing price level inflation through its high level of imports.

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#### LATEST IN FINANCE

#### **LATEST IN FINANCE**

#### 1.0 ECB – Liberalised

In order to strengthen the flow of resources to infrastructure sector, the Reserve Bank of India (RBI) has decided to permit Holding Companies/ Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank to raise ECB under the automatic route/ approval route, as the case may be, for project use in Special Purpose Vehicles (SPVs) with the specified terms and conditions.

A.P. (DIR Series) Cir. No. 78 dated 3 Dec. 2013, www.rbi.org.in

#### 2.0 Corporate Debt: Placement with FII, QFI, etc.

The Reserve Bank of India (RBI) has decided to allow Securities and Exchange Board of India (SEBI) registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) and long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks - to invest in the credit enhanced bonds, up to a limit of \$ 5 billion within the overall limit of \$ 51 billion earmarked for corporate debt.

A.P. (DIR Series) Cir. No. 74, dated 11th Nov. 2013

#### 3.0 FDI in financial sector – relaxed

The Reserve bank of India (RBI) has decided that the requirement of NoC(s) will be waived from the perspective of Foreign Exchange Management Act, 1999 and no such NoC(s) need to be filed along with form FC-TRS. However, any 'fit and proper/ due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with.

A.P. (DIR Series) No. 72 dated 11th Nov. 2013, www.rbi.org.in

#### 4.0 NRE A/c interest rate free from restrictions

The Reserve Bank of India (RBI) has allowed banks the freedom to offer interest rates on incremental NRE deposits with maturity of 3 years and above without any ceiling till 31st Jan. 2014. *RBI/2013-14/395 dated 2nd December 2013, www.rbi.org.in* 

#### 5.0 Defence FDI eased

The Foreign Investment Promotion Board (FIPB) has decided not to reject proposals from a foreign company only because it or any of its group companies or their parent company is under investigation in the country or abroad.

#### 6.0 Foreign Banks free to enter India

The Reserve Bank of India (RBI) has released guidelines stating that wholly owned Subsidiaries (WOSes) of foreign banks could acquire domestic private-sector banks, as well as set up branches anywhere in the country.

The Central Bank also said that these WOSes might be permitted to enter into merger & acquisition (M&A) transactions with any private bank in India, subject to the overall foreign investment limit of 74 per cent. The following are the main highlights of the guidelines: -

- a. The Subsidiarisation is not mandatory but foreign banks with complex structures and concentrated shareholding will have to create wholly-owned subsidiaries (WOSes)
- **b.** Foreign banks opting for branch presence must convert into WOSes when it becomes systemically important.
- **c.** Foreign banks creating subsidiaries to be permitted to acquire local banks
- d. Restriction is to be placed on entry of new WOSes and capital infusion when capital & reserves of WOSes and foreign bank branches exceed 20% of the banking system's capital & reserves
- e. ₹500 crore prescribed as initial minimum paidup voting equity capital for a WOS
- **f.** The Priority Sector Lending requirement for WOSes to be on a par with Indian banks 40%
- **g.** Corporate governance norms for WOSes to be stringent, including two-thirds of directors to be non-executive

RBI has also said that foreign banks that wish to convert their branch holding operations in exempt from capital gains tax and stamp duty.

#### LATEST IN FINANCE



#### 7.0 SEBI permits shelf prospectus to debt issuers

The Securities and Exchange Board of India (SEBI) plans to allow frequent issuers of non-convertible debentures with credit rating of AA and above to raise money using a shelf prospectus.

The issuers include public financial institutions, banks and issuers authorised by the Central Board of Direct Taxes to issue tax-free bonds and RBI-regulated infra debt funds and NBFCs. Other NBFCs and listed companies with a credit rating of AA and above subject to minimum net worth of ₹ 500 crore, besides distributable profit (three years for NBFCs and five for listed companies) with no default on deposit/interest payments would also be allowed.

### 8.0 Loans to medium enterprises under priority sector

The Reserve Bank of India (RBI) has allowed banks to treat incremental loans given to medium manufacturing enterprises and medium service enterprises (upto a credit limit of ₹ 10 crore) after November 13, as priority sector advances.

### 9.0 Govt to relax debt-equity ratio for Metro, rapid rail projects

To boost private investment in metro and rapid rail projects, the Centre has proposed to have an equity-to-debt ratio of 20:80 in these projects instead of the present 30:70.

#### 10.0 SEBI allows foreign feeder funds in IDFs

The Market regulator Securities and Exchange Board of India (SEBI) has relaxed norms for long – term foreign investors eligible to put money into infrastructure debt funds.

### 11.0 Six World powers ink landmark nuclear deal with Iran

Iran and six world powers clinched a deal curbing Iran's nuclear programme in exchange for initial sanctions relief.

#### 12.0 Proposed retail bonds to fetch 1.5% above CPI

The proposed consumer inflation linked bonds will earn a fixed return of 1.5%, in addition to the

consumer inflation rate. The taxable bonds will also be eligible as collateral for loans and early redemptions with some riders.

### 13.0 Exchange Traded Cash Settled Interest Rate Futures (IRF) permitted

The Securities and Exchange Board of India (SEBI) has decided to permit stock exchanges to introduce cash settled Interest Rate Futures on 10-Year Government of India Security. Two different designs (Option-A: Coupon bearing Government of India security as underlying and Option-B: Coupon bearing notional 10-year Government of India security with settlement price based on basket of Securities as underlying) are permitted for cash settled futures on 10-year Government of India (GoI) Security. Exchanges are permitted to launch contracts on either one or both of these options.

### 14.0 Mandatory filing of records of equitable mortgages with the Central Registry

The Reserve Bank of India (RBI) has said that the institutions notified under the SARFAESI Act have to mandatorily register with Central Registry of Securitisation Asset Reconstruction and the Security Interest of India (CERSAI), the records of the mortgages created in their favour by deposit

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### **EDITORIAL / LATEST IN FINANCE / FEMA**



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#### NATION UNDER ANGUISH.....

Reserve Bank of India has been able to arrest the free fall of rupee by some temporary effective but cosmetic measures including permission to Indian banks to borrow internationally and a special FCNR(B) Swap Scheme, wherein RBI has agreed to take the risk of exchange fluctuation indirectly. The real issue of balance of payment, current account deficit and pressure on Indian rupee exchange rate are critical issues not adequately addressed. The GDP and IIP low growth rates are matters of very serious concern.

It is very important for the government to learn the tough lesson immediately. The Government need to address all issues with compassion, positive attitude and concern for the common man and all the actions, policies and procedures need to be redesigned and implemented to bring a soft-touch to restore confidence in every echelon of the society.

of title deeds. All NBFCs are advised to file and register the records of all equitable mortgages created in their favour on or after 31st March 2011 with the Central Registry and they shall also register the records with the Central Registry as and when equitable mortgages are created in their favour.

RBI/2013-14/369 dated November 12, 2013, www.rbi.org.in

#### 15.0 RBI to permit Insurance Broking for Banks

The Reserve bank of India (RBI) proposes to allow banks to engage in insurance broking business with some preconditions, including a minimum net worth of  $\stackrel{?}{\sim} 500$  crore, capital adequacy ratio of 10% and profits for three consecutive years.

#### 16.0 Hotels categorized as Infrastructure lending

The Reserve Bank of India (RBI) has widened the definition of infrastructure lending including hotels with project costing more than ₹ 200 crores as well as convention centres with project cost of more than ₹ 300 crores.

#### 17.0 RBI questions on FC arbitrage

The Reserve bank of India (RBI) has questioned Foreign Currency (FC) arbitrage transactions. Dollars bought from Mumbai branch of a foreign bank and sold to same bank in Singapore. Such trades allow companies to profit from arbitrage in forward trade in two markets. But forward trades such as dollar buying weakens the spot rupee as well. RBI is unhappy with the banks undertaking such transactions.

#### 18.0 RBI extends FCNR(B) swap facility till Jan 31

The Reserve Bank of India (RBI) has extended the stipulated date for relaxed norms on FCNR(B) deposits till January 31, 2014. The Central bank had said that it had received about \$ 25 billion from special concessional swap windows.

RBI has also allowed the banks to utilise the special window till December 31, 2013 to borrow forex against their core capital but with riders.

### 19.0 SIDBI given ₹ 5,000 crore to refinance receivables of MSEs: RBI

The Reserve Bank of India (RBI) will provide refinance of ₹ 5,000 crore to the Small Industries Development Bank of India (SIDBI) for direct liquidity support for finance receivables to micro and small industries (MSEs), by SIDBI or selected intermediaries like banks, NBFCs and state finance corporations. The refinance will be available against receivables, including export receivables, outstanding as on November 14, 2013 onwards.

#### **FEMA**

### 1.0 Third Party payments for export / import transactions

The Reserve Bank of India (RBI) has said that normally payment for exports has to be received from the overseas buyer named in the Export Declaration Form (EDF) by the exporter and the payment shall be received in a currency appropriate to the place of final destination as mentioned in the EDF irrespective of the country of residence of the buyer. Similarly, the payments for the import should be made to the original overseas seller of the goods and the AD

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### FEMA/CAPITAL MARKET/CORPORATE AND ECONOMIC LAWS



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#### Third party payments ......

(Authorised Dealer) should ensure that the importer furnishes evidence of import, such as, Exchange Control copy of the Bill of Entry to satisfy itself that goods equivalent to the value of remittance have been imported.

AD banks may allow payments for **'export'** of goods / software to be received from a third party (a party other than the buyer) subject to conditions as specified in the circular.

AD banks are also allowed to make payments to a third party for **'import'** of goods, subject to conditions as specified in the circular.

A.P. (DIR Series) No. 70 dated 8th Nov. 2013, www.rbi.org.in

# 2.0 Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives

The Reserve Bank of India (RBI) has decided to operationalise the CCI platform with effect from December 30, 2013 for the following OTC derivative instruments: -

- a. Inter-bank and client transactions in Currency Swaps
- b. Inter-bank and client transactions in FCY FRA/ IRS
- c. Client transactions in INR FRA/IRS

  \*\*RBI/2013-14/400 dated 4th Dec.2013, www.rbi.org.in\*\*

# 3.0 SEZ Board to give licences for defence goods production

Special Economic Zone (SEZ) units producing defence related items will no longer have to go to the Department of Industrial Policy & Promotion (DIPP) for an industrial licence.

The Board of Approval (BoA) for SEZs, which approves proposals for setting up these zones and takes decisions on matters related to their operation, will now also issue industrial licences for producing defence related goods.

### **CAPITAL MARKET**

### 1.0 SEBI needs to step up criminal enforcement in markets: ESMA

European market watchdog European Securities and Markets Authority (ESMA) has noted that the legal authority of SEBI (Securities and Exchange Board of India) has been strengthened and it now has broad regulatory, licensing, investigation, supervision and enforcement powers.

#### 2.0 SEBI issues draft norms to regulate analysts

The Securities and Exchange Board of India (SEBI) has circulated a concept paper, seeking public comments to review the proposed regulations of research analysts.

# 3.0 After ESOPs, SEBI eyes regulating other employee benefits

To bring all types of employee benefit schemes under its ambit, a Securities and Exchange Board of India (SEBI) discussion paper has proposed that trusts set up managed and financed directly or indirectly by companies, should be regulated. Trusts include those managing general employee benefits such as education, scholarship, medical, retirement benefits such as superannuation, gratuity or any other schemes.

Currently, SEBI regulates only employee stock option plans (ESOP) and employee stock purchase schemes.

#### **CORPORTE AND ECONOMIC LAWS**

#### 1.0 No relaxation: Rotate auditors

The corporate affairs ministry has rejected the industry's demand for a relaxation in the norms on rotation of auditors outlined in the new Companies Act.

#### 2.0 Doctors are not mere "Workmen"

The Supreme Court of India has said that medical profession is a noble profession dedicated to the service of society and therefore doctors cannot be classified as "workmen" entitled to invoke the Industrial Disputes Act.



### CORPORATE AND ECONOMIC LAWS / INDIRECT TAXATION / ICAI

#### 3.0 No to overstrech cheque bounce cases: SC

The Supreme Court of India has said that once the amount in a dishonoured cheque is paid with interest and compensation, the payee cannot insist on criminal prosecution of the directors of a firm who issued the cheque. The object of Section 138 of the Negotiable Instrument Act, which makes issuing of cheques without sufficient balance in the account an offence, is meant to "inculcate faith in the efficacy of banking operations and credibility of transactions". It is not meant only to punish the guilty, as directed by the supreme court in *Lafarge Aggregates & Concrete India Ltd vs Sukarsh Azad*.

### 4.0 Latest draft rules issued by ministry outrage cost auditors

The latest draft rules issued by the Ministry of Corporate Affairs (MCA) related to the cost records and audit mechanism could substantially curb the scope of the cost audit profession and have outraged its practitioners.

### The salient features of the draft rules are as under:

- a. Number of industries covered is reduced.
- b. Turnover and Net worth thresholds have been increased substantially. The threshold has been increased from net worth of ₹ 5 crore to ₹ 500 crore and the threshold of turnover from the specified product is fixed at ₹ 100 crore.
- **c.** Apart from companies required to undergo cost audit, all others have been exempted from maintaining even cost accounting records

#### **INDIRECT TAXATION**

#### 1.0 Compulsory E-payment of tax above ₹ 1 lakh

Threshold of mandatory e-payment reduced from  $\overline{\leftarrow}$  10 lakh to  $\overline{\leftarrow}$  1 lakh for both central excise and service tax payment. The revised changes are applicable from January 1, 2014. The threshold annual turnover above which traders have to pay central excise tax is  $\overline{\leftarrow}$  1.5 crore; for service tax, it is  $\overline{\leftarrow}$  10 lakh

#### 2.0 GST: Waiting for Political clearance

Parthasrathi Shome, the advisor to finance minister P Chidambaram has said that all the technical work in relation to Goods & Service Tax (GST) is almost done and the concerns of various states have been taken on board.

#### 3.0 Government plans concessional GST

The following changes are made in the proposed Goods & Service Tax (GST) bill:

Earlier proposal: No tax for business with annual sales below ₹ 25 lakhs

**Proposed Additional SOP:** Lower than standard GST rate for manufacturers, service providers, dealers in ₹ 25-75 lakh bracket

**Objective:** Making new tax regime acceptable to small businesses

**The Caveat:** Lower rate applicable only on intra – state sales by manufacturers, service providers and traders, all of whom will be categorized as dealers

**Benefit:** Service providers of ₹ 10 lakh turnover can expand sales 7-fold and still pay only compounded rate. For manufacturers with ₹ 25 – 75 lakh sales, impact may be cushioned to some extent. Traders with ₹ 5- 10 lakh sales who pay state VAT need not pay GST upto ₹ 25 lakhs sales, those with ₹ 25 – 75 lakh sales to pay lower rate.

#### **ICAI**

### 1.0 Penal Provisions for non compliance with CPE hours

The Institute of Chartered Accountants of India (ICAI) has said that any shortfall in the CPE credit for the calendar years 2011, 2012 and 2013 should be met by the members by 31st December 2013.

The names of the members who fail to comply with their CPE hours requirements for the block period of 3 years by 31<sup>st</sup> December 2013 would be hosted on the website of the ICAI for the information of the public at large.

#### **DIRECT TAXATION**



#### **DIRECT TAXATION**

### 1.0 Government allows deduction of CTT as part of Business Income

In a relief of commodity exchanges, the government has allowed deduction of Commodity Transaction Tax (CTT) to traders as it forms part of their business income.

#### 2.0 Cyprus notified as a non cooperating country

The Central Board of Direct Taxes (CBDT) has said that since Cyprus has not been providing the information requested by the Indian tax Authorities under the exchange of information provisions of the agreement, it has been decided to notify Cyprus as a notified jurisdictional area under Section 94A of the Income Tax Act, 1961 through Notification No. 86/2013 dated 1<sup>st</sup> November, 2013 published in the official Gazette through SO 4625 GI/13.

The implications of such a Notification are summarized as under: -

- a. If an assessee enters into a transaction with a person in Cyprus, then all the parties to the transaction shall be treated as associated enterprises.
- b. No deduction in respect of any other expenditure or allowance arising from the transaction with a person located in Cyprus shall be allowed unless the assessee maintains and furnishes the prescribed information.
- c. If any sum is received from a person located in Cyprus, then the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner.
- **d.** Any payment made to a person located in Cyprus shall be liable for withholding tax at 30 % or a rate prescribed, whichever is higher.

#### 3.0 LATEST JUDGEMENTS

#### a. Section 68: Cash Credit

The Gujarat High Court has held that partners having declared unsecured loan given to assessee-firm in their independent returns, said amount could not be added in hands of assessee-firm.

CIT-II, Surat vs. Nisuki Farms, [2013] 39 taxmann.com 111

#### b. Section 37(1): General Expenditure

 The Bombay High Court has held that payment on account of gratuity, retrenchment compensation and leave encashment made to workers in connection with VRS on closure of business would be allowable as revenue expenditure.

CIT -7 vs. Swan Mills Ltd., [2013] 39 taxmann.com 112

• The Allahabad High Court has held that where by providing scholarship, business of assesseecoaching institute was expanded, same would be allowable as business expenditure.

CIT vs. Rubic's Rostram Coaching Inst. (P.) Ltd., [2013] 38 taxmann.com 365

#### c. Section 43B: Deduction on payment basis

The Punjab & Haryana High Court has held that where assessee deposited employer's and employees contribution to PF and ESI after expiry of due date but prior to filing return of income under section 139(1), amount so deposited could not be disallowed by invoking provisions of Sec. 43B. CIT, Faridabad vs. Kamal Family Trust, [2013] 38 taxmann.com 334

# d. Section 40A(3): Disallowance for cash payments exceeding ₹ 20000

The Karnataka High Court has held that payment made to government concern in cash in excess of amount prescribed under section 40A(3) would be allowable.

CIT vs. Devendrappa M. Kalal, [2013] 39 taxmann.com 16

### e. Section 45, read with section 2(47): Income from Capital Gains

The Allahabad High Court has held that Capital gains would be charged only on receipt of sale consideration after development of land; and not when agreement was signed for development of land.

CIT -I vs. Najoo Dara Deboo, [2013] 38 taxmann.com 258

# f. Section 271(1)(c): Penalty for concealment of Income

The Allahabad High Court has held that where assessee admitted undisclosed income found

during search and he was ready to make payment of tax, no penalty was to be levied.

CIT -1, Kanpur vs. Sidh Nath Geol, 38 taxmann.com 260

### g. Section 54EC, read with section 50: Exemptions from Capital Gains

The Gujarat High Court has held that where capital gain arose out of long-term capital asset was invested in specified assets, exemption under section 54EC could not be denied on account of fact that deeming fiction of short-term capital gain was created under section 50.

CIT-I vs. Aditya Medisales Ltd., 38 taxmann.com 244

### h. Section 50C: Capital Gains on sale of land or building or both

The Mumbai ITAT bench has held that Section 50C

FINANCIAL INDICATORS						
	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)		
3 Month LIBOR (\$)	0.23	0.24	0.26	0.27		
3 Month MIBOR (₹)	9.09	9.19	10.99	8.53		
SENSEX	21255	20490	19782	19441		
NIFTY	6333	6079	5850	5878		
CRR	4	4	4	4		
REPO	7.75	7.75	7.25	7.25		
REVERSE REPO	6.75	6.75	6.25	6.25		
Gold (per 10 gm)	29223	30143	30047	28011		
Silver (per kg)	44468	48373	50495	44162		
Crude (USD/bbl)	108.67	106.4	112.63	103.95		
Rs. vs USD	61.21	62.73	64.22	57.78		
Rs. vs Euro	84.15	84.06	85.21	76.24		
Rs. vs 100 Yen	59.29	63.94	64.28	58.79		
Rs. vs RMB	10.05	10.40	10.45	9.50		
Rs. vs Pound	100.65	100.92	100.83	89.71		
MCX Aluminium	107.85	110.7	113	108.85		
MCX Copper	439.45	448.15	476.7	408.9		
*As on 10th Dec. 2013	(Sources: M	oneyControl	, NSE, BSE,	RBI, MCX)		

cannot be invoked to a transfer of leasehold rights.

ITO vs. Pradeep Steel Re-Rolling Mills (P.) Ltd., [2013] 39
taxmann.com 123

#### i. Section 92C: Computation of Arm Length Price

The Ahmedabad ITAT bench has held that where assessee granted loan to its foreign subsidiary company which was subsequently converted into equity capital, in view of fact that as per loan agreement interest was not chargeable in such a situation, addition made by TPO/Assessing Officer on account of notional interest was to be set aside.

DCIT (OSD), Range -1 vs. Cadila Healthcare Ltd., [2013] 39 taxmann.com 51

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• 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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