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EDITORIAL

EXPECTATION FROM THE NEW GOVERNMENT



CA Vinod Jain*

At the outset, the new BJP led NDA Government is to be congratulated for winning the General Election with a thumping majority. The agenda of the BJP government in the shape of their visionary Election Manifesto will lead the direction to a Growth oriented, people friendly, consensus driven policies.

There are very high expectations

from the government. The challenges are very tall and may be subjected to motivate political criticism by all those who have been ousted by the public. The politics of consensus with firm determination will ensure desired success.

The chartered accountants community commits their full-fledged support to the government for all positive and visionary initiative. The expectations outlined hereunder are summarized aspiration of Indian economy and the society and may be achieved in a planned manner over short to medium term.

DIRECT TAXES

The Government needs to bring an atmosphere of mutual trust and faith between the tax administrators and tax payer:

- To selectively consider retrospective withdrawal of retrospective amendments of the tax laws during last 5 years.
- To delete the provisions of GAAR, as it may promote unnecessary harassment and corruption.
- Tax authorities should be advised to desist from high pitched demands and unjust orders.
- The equity, fairness, responsiveness, simplicity and transparency need to drive the tax department.
- International transfer pricing adjustments should be

based only on clear-cut evidence and not on the basis of comparisons to which assessee has no access. The approach need to be judicial and reasonable.

- The tax department and assessee personal interface to be limited to only exceptional circumstances and all details needed in any scrutiny should be only electronically sought/ submitted.
- Raids, Surveys and Searches to be limited to only very exceptional cases to be approved at the highest level.
- Direct Taxes Code need to be scrapped. The govt. may consider all necessary amendments in the Income Tax Act.
- The SEZ Unit to be exempted from MAT and Dividend Distribution Tax. Similar benefit can be considered for domestic manufacturing sector set up in backward zone, subject to employment creation.
- The provisions attracting litigation to be made simple and assessee friendly. Multiple level appeals by the tax department, to be subjected to an independent internal judicial committee review to end continuous litigation. Decisions of tribunals and high courts to be made binding on national basis.
- Black money eradication from the system will require lower rates of Indirect taxes and direct taxes similar to countries like Singapore.

INDIRECT TAXES

• Tax audit by chartered accountants have contributed immensely to financial discipline, in view of competency, credibility and special expertise of the profession. Multiple Audits by Service Tax Audit wing, Anti Evasion Wing and CAG audit are creating unnecessary harassment. Service tax audit by chartered accountants will comprehensively improve compliance and tax collection.

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LATEST IN FINANCE / FEMA

LATEST IN FINANCE

1.0 Common Registration Form for various NBFCs

The Reserve Bank of India (RBI) has said that there will be a common application form for NBFCs, non-banking financial companies-micro finance institutions (NBFC- MFIs), NBFC-factors and infrastructure development finance-non-banking financial companies(IDF-NBFCs).

2.0 Convert Dormant Forex Accounts into Rupees

The Reserve Bank of India (RBI) has asked banks to convert dormant foreign currency deposit account into Indian rupees. In case the Deposit with a fixed maturity date remains inoperative for three years from the date of maturity, at the end of the third year, the bank shall convert the balances into Indian rupee at the exchange rate prevailing as on that date.

3.0 SLR Cut

It has been decided by the Reserve Bank of India to reduce the Statutory Liquidity Ratio (SLR) of banks from 23 per cent to 22.50 per cent with effect from the fortnight beginning June 14, 2014.

4.0 Prior RBI Approval needed in case of NBFC Transfer/Acquisition

The prior written permission of the Reserve Bank of India (RBI) shall be required for -

- (i) Any takeover or acquisition of control of an Non-Banking Financial Company (NBFC), whether by acquisition of shares or otherwise;
- (ii) Any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC that would give the acquirer/another entity control of the NBFC;
- (iii) Any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC which would result in acquisition/transfer of shareholding in excess of 10 percent of the paid up capital of the NBFC.
- (iv) Prior written approval of RBI would also be required before approaching the Court or Tribunal under Section 391-394 of the Companies Act, 1956 or Section 230-233 of Companies Act, 2013 seeking order for mergers or amalgamations with other companies or NBFCs.

5.0 10 years Export Loan permitted

The Reserve Bank of India (RBI) has permitted banks to give exporters, with a minimum of 3 years satisfactory track record, long-term export advance up to a maximum period of 10 years. The exporters can receive export advance from banks (authorised to deal in foreign exchange or Authorised Dealer Bank) only for execution of long-term supply contracts for export of goods, subject to conditions. The conditions specified by the central bank include firm irrevocable supply orders & company having capacity, systems and processes in place to ensure that the orders over the duration of the said tenure can actually be executed. Product pricing should be in consonance with prevailing international prices.

6.0 RBI raises forward contract limit for importers

The Reserve Bank of India has increased the amount of forward contracts importers can book to 50% of their average import turnover for three years, or the actual import turnover of the previous year, whichever is higher. The earliest limit for such contracts was 25%.

FFM

1.0 RBI allows LLPs to carry out financial commitment abroad

The Reserve Bank of India (RBI) has allowed Limited Liability Partnership (LLP) firms to carry out financial commitment to/on behalf of joint ventures or wholly-owned subsidiaries of the Indian companies abroad. The RBI in a notification said that it has been decided to notify a Limited Liability Partnership as an 'Indian Party'. Accordingly, an LLP, may henceforth undertake financial commitment to/on behalf of a JV/WOS abroad.

2.0 Liberalised Remittance Scheme (LRS) for resident individuals-Increase in the limit from USD 75,000 To USD 125,000

It has now been decided to enhance the existing limit of USD 75,000 per financial year (April-March) to USD 125,000 with immediate effect. Accordingly, AD Category –I banks may now allow remittances up to USD 125,000 per financial year, under the Scheme, for any permitted current or capital account transaction or a combination of both.

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EDITORIAL



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EXPECTATION FROM THE NEW GOVT.

INDIRECT TAXES

- The Reverse Charge Mechanism should be abolished, as it defeats the basic exemption limit to small service providers and is very harsh on them in the absence of registration/cenvat or refund options.
- Advance Ruling to be available to all domestic assessees.
- CENVAT Credit Rules be made simpler to apply and restrictions & limitations to be withdrawn completely.
- Notifications and Circulars to be restricted to maximum twice in a year in the shape of Master Circular, at national level only. Delegated Legislation to be used only exceptionally.
- Prosecutions to be limited only to fraudulent and wilful default, with mensrea.

GOODS AND SERVICE TAX

- The GST need to submerge all national level taxes into a single GST. The State level VAT can also be submerged into a single national level GST as step-1.
- GST collection and assessment to be administered at State level.
- All collections of GST to be automatically credited as per pre-defined formula between Central Government and State Government. The states percentage share can be a little higher as compared to existing ratio of central state collection levels, with a minimum guarantee of existing collection by State Government.
- The national GST to be refunded to exporting State by the importing State to ensure tax benefit to the respective State on the basis of value addition.
- Alternatively, the exporting State may refund the input GST to the exporting dealer automatically and the importing State can charge import GST on the purchase price, at the time of import itself. This will result into consumption based taxation. This alternative will also facilitate refund of entire GST in case of international export.
- No other tax in addition to GST be permitted to Central Government as well as to the State Government except few exceptions.
- The national level computer network to disseminate information between States about interstate purchase/ sale to eradicate evasion.

CAPITAL MARKET

- Complete liberty on pricing of public issues has resulted into manipulation of financial statements, false turnover, manipulations of profitability as well as share prices in the formal as well as grey market. It is important to prescribe that in case the actual share price went below 10% of the issue price in the 1st year, then on the basis of average price during the year, the number of shares allotted to the public shareholders will be proportionately increased to compensate. The promoters may also have the freedom to bring in additional money at same price. It will eradicate the lure of manipulating price & will bring back confidence of the investor in the new issues. Investor protection through immaculate regulatory mechanism & strong governance practices should be in place.
- Investor Courts to be established at district level, state level and national level, in lines of Consumer Courts, to enable investor to claim compensation arising out of mis-statements in prospectus, financial statements and reports.
- Independence of Auditors: The majority shareholders, shareholders in-charge of management and promoter of public interest companies, to be prohibited to vote at Audit committee as well as at AGM in respect of Auditors appointment, remuneration and removal, being an interested party.
- Similarly, collaborators, JV partners or investors including FII and non-residents holding 10% or more shares should not be able to influence the appointment, remuneration, removal, retirement of auditors. Alternatively, Joint Statutory Auditors may be appointed by minority shareholders, excluding the aforesaid classes.
- Derivatives promoting Gambling and Price Fluctuation: Buying and Selling of derivative in the stock exchanges, currency exchanges as well as commodity exchanges have only fuelled speculation and manipulation and have not served the real purpose of hedging. This has actually become organized and legalized betting, gambling and has given birth to legal casinos all across the nation. Derivative Trading should be restricted only to hedging.
- **SEBI functions** should be restricted to regulation and vigilance. The investigation wing and the adjudication (involving prosecution and imposing fine) to be undertaken by independent separate wing of the government. The judiciary should only be authorized to impose fines, penalty and prosecution, except minor fines for very routine administrative matters that can be within the purview of SEBI's powers.

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FEMA / CAPITAL MARKET

contd......from Pg. 2

3.0 ECB - Re-Schedulement delegated

As a measure of simplification of the existing procedures, it has been decided to delegate the power to the designated AD Category–I bank to allow re-schedulement of External Commercial Borrowings (ECB) due to changes in draw-down schedule and / or repayment (subject to conformity with applicable ECB guidelines).

There should not be any increase in the rate of interest and no additional cost (in foreign currency / Indian Rupees) should be involved. The reschedulement is allowed only once, before the maturity of the ECB.

4.0 ECB from Foreign Equity Holder - Liberalised

It has been decided to delegate powers to Authorised Dealer (AD) banks to approve the following cases under the automatic route:

- Proposals for raising External Commercial Borrowings (ECB) by companies belonging to manufacturing, infrastructure, hotels, hospitals and software sectors from indirect equity holders and group companies.
- ii. Proposals for raising ECB for companies in miscellaneous services from direct / indirect equity holders and group companies. Miscellaneous services mean companies engaged in training activities (but not educational institutes), research and development activities and companies supporting infrastructure sector.
- iii. Proposals for raising ECB by companies belonging to manufacturing, infrastructure, hotels, hospitals & software sectors for general corporate purpose.
- iv. Proposals involving change of lender when the ECB is from Foreign Equity Holders-direct /indirect equity holders and group company.

5.0 Foreign Investment in India - Preference Shares & NCD permitted

Now Registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) deemed as registered Foreign Portfolio investors, registered Foreign Portfolio Investors (FPIs), long term investors registered with SEBI - Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign

Central Banks can invest on repatriation basis, in non-convertible/redeemable preference shares or debentures issued by an Indian company in terms of A.P. (DIR Series) Circular No. 84 dated January 6, 2014 & listed on recognized stock exchanges in India, within the overall limit of USD 51 billion earmarked for corporate debt. Further, NRIs may also invest, both on repatriation & non-repatriation basis, in non-convertible/redeemable preference shares or debentures as above.

CAPITAL MARKET

1.0 Compulsory Derecognition of Stock Exchange

The Securities & Exchange Board of India (SEBI) has held that if a stock exchange is not able to achieve the prescribed turnover of ₹ 1000 Crore on continuous basis or does not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of SEBI circular dated May 30, 2012 (Exit Circular), SEBI shall proceed with compulsory de-recognition and exit of the stock exchanges, in terms of the conditions as may be specified by SEBI. As per the 'Exit Circular' the exclusively listed companies, which fail to obtain listing on any other stock exchange, which do not voluntary delist or which are not considered as 'Vanishing companies', will cease to be listed company and will be moved to the dissemination board.

2.0 SEBI raises Cash Investment Limit in Mutual Funds

SEBI has allowed asset management companies to accept cash investments of up to ₹ 50,000. Earlier, cash transaction limit was set at ₹ 20,000.

3.0 Regulations to Ease

Indian companies might soon be allowed to issue depository receipts (DR) abroad on a wide range of securities, with fewer regulatory restrictions. A committee of the Securities & Exchange Board of India (SEBI) has recommended sweeping changes to the DR regulations aimed at easing foreign capital raising for domestic companies.

4.0 Delisting Share tender through Stock Exchange

The Securities & Exchange Board of India (SEBI) plans to allow investors to tender their shares through stock exchange platform in a delisting offer.



CORPORATE & ECONOMIC LAWS/AUDIT

CORPORATE & ECONOMIC LAWS

1.0 SARFAESI Property Sale Quashed

The Supreme Court has upheld the judgment of the Karnataka High Court setting aside the sale of property of a borrower under the Securitisation Act ("SARFAESI") for non-payment of loan. The Supreme Court stated that the Security Interest (Enforcement) Rules were mandatory and were not followed in this case, Vasu Shetty vs Hotel Vandana Palace. The hotel had taken a loan from Syndicate Bank, which was not returned. Despite two auction dates and an attempt at 'one-time settlement', litigation continued in various forums. The high court ultimately set aside the sale on the ground that according to the rules, before bringing the property for sale in auction, fresh valuation by the accrued valuer should have been obtained by the bank and the 30-day notice was not given to the borrower. The buyer moved the Supreme Court claiming the property, arguing that he was a bona fide purchaser. Rejecting his appeal, the Supreme Court stated that "when there is a breach of mandatory requirement, the sale is to be treated as unconstitutional, null and void".

2.0 Some Legal Concepts

♦ Multiple Litigation

The Civil Procedure Code (CPC) vide section 10 prohibits multiple litigation through its maxim res sub judice forum shopping. In other words, if a matter is pending before a court or forum of competent jurisdiction, the same matter cannot be taken before another court or forum till it is pending.

♦ Res Judicata

Section 11 of the CPC through its maxim res judicata prohibits the matter which has been judicially resolved from being agitated again. There are two relaxations to the rigour of this rule - statutory and Constitutional appeals as well as taxation matters where the courts have said the rule of res judicata does not apply because a matter of one particular year can be agitated the next or subsequent years.

♦ Sub Judice

The Concise Oxford Dictionary defines sub judice as a matter under judicial consideration and therefore prohibited from public discussion elsewhere. Does this prohibition hold sway in India? The answer is in the negative.

Barring one or two cases where the courts had interjected to prohibit media discussions, by and large the Indian judiciary has been generous in permitting free discussions and airing of views on matters pending before it.

3.0 Whistle-blowers Act gets President's Assents

The Whistle-blowers Protection Act, which aims to protect the identity of whistleblowers, got the assent of President Pranab Mukherjee.

4.0 "Right to be Forgotten"

The decision by the Court of Justice of the European Union (EU), which affects the region's 500 million citizens, requires that internet search services remove information deemed "inadequate, irrelevant or no longer relevant". Failure to do so can result in fines. Europeans can submit takedown requests directly to Internet companies rather than to local authorities or publishers under the ruling. If a search engine elects not to remove the link, a person can seek redress from the courts. Google Inc. is already getting requests to remove objectionable personal information from its search engine after Europe's top court ruled that subjects have the "right to be forgotten". A simple way of understanding what happened here is that you have a collision between a right to be forgotten and a right to know. From Google's perspective that's a balance.

AUDIT

1.0 Prohibition to undertake the assignment of Audit and Accounting work together for the same entity

It has come to the knowledge of some members that certain entities, while inviting tenders for services of Chartered Accountants for the assignment of statutory audit, are mentioning accounting and book keeping related works in the scope of works required to done by the auditor. Members are hereby advised not to undertake such assignment since it is violative of the provisions of 'Code of Ethics' and 'Guidance Note on Independence of Auditors' for auditor of an entity to do book keeping work of the entity. The said prohibition in the case of companies is also mentioned in Section 144 of the Companies Act, 2013.



EDITORIAL

contd......from Pg. 3

EXPECTATION FROM ...

COMPANY LAW

- Companies Act 2013 has been implemented in parts. The Companies Act 1956 has still not been repealed.
- The indiscriminate application of various restrictions even to private limited companies having no public interest has resulted into complete destabilization of corporate sector. Section 185 restricting loans to related parties, section 186 restricting investment and loans to others, heavy restrictions on share application, deposits from shareholders and related party transactions even on small and medium size private limited companies have resulted into large scale unintended harassments. It is recommended that the Companies Act 2013 may be suspended for its application till 31st March, 2015 so that the new government can analyse all the new provisions and unjustified rules and regulations brought in on the Corporate Sector.
- Auditors' and Directors' criminal prosecutions should only be restricted to cases of wilful fraud or where public interest is adversely impacted.
- NFRA: Setting of Accounting standards, Auditing standards, ensuring quality of audit and disciplining auditors and audit firms should be left to the Institute of Chartered Accountants of India and NFRA need not be constituted. The government nominees have been adequately guiding and supporting the working of ICAI.
- Too many procedures and compliances included in the Companies Act 2013 need to be eradicated and to be brought to the level of international standards on the premise of least interference of government in corporate sector.

COAL SECTOR

- The mining of coal can also be expedited and modernized under the revised PPP model.
- It is important and necessary that the coal is made available at very reasonable price to the power sector, so that the cost of power can be reduced significantly. This will achieve international competitiveness of our manufacturing sector.

POWER SECTOR

- The power sector has suffered badly in last 3 years due to coal linkage, non-payment by transmission and distribution state level electricity companies, non-disbursal of funds by lender, in respect of financial closure and a halt on further loan sanctions by banks and Institutions. It is important to address these
- The distribution and transmission can also be brought in public-private partnership, in terms of a revised model, in which the State government and Central government can hold at least 20% equity with a power to monitor diversion of funds by appointment of CFO and independent auditors.
- Power may be allowed to be produced for captive consumption & also selling within one kilometer area freely without any license.
- Industrial Centers: One Power Unit may be established in each Industrial Area which can be responsible for providing quality power/power distribution network, maintenance of distribution, collection of bills and in case of power failure from Government, may generate power with efficient power generators and supply quality power to these industrial units.
- **Solar:** All schools and public Institutions should install or make arrangement with Solar Power Companies to establish SOLAR POWER UNITS on their roofs and they can supply additional power to nearby areas and recover revenues.
- Residential Colony: Power distribution may be given to local distribution companies for maintaining quality power supply round the clock and responsible for payment collections, maintenance of distribution lines and in case of Government power failure may produce own power to maintain continuous supply of power to their respective areas/users.

HIGHWAYS

• The approach of top management of National Highway Authority of India needs to be positive and practical.

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EDITORIAL



HIGHWAYS

- There is no need to guarantee any return to the road developers.
- The government needs to actively assist in procurement of land and removal of obstacles in implementation as a true partner.
- The government can ensure financial monitoring by holding reasonable equity, appointing Chief Financial Officers and independent auditors.
- The regulator can determine reasonable pricing of Toll Plaza.
- The manipulation by related party transactions and over invoicing can be monitored by independent preventive audit and transparent reporting.

MANUFACTURING SECTOR

It is important to promote manufacturing by small and medium enterprises on one hand and large scale hitech manufacturing at highly competitive costs in all the areas where latest technology can be absorbed by India and specially in those areas where raw-material is available in abundance. The following important suggestions need consideration:

- The development of industrial areas in barren and non-fertile land need to be initiated by active government support.
- Roads and railway hi-tech network need to be established.
- Ports, canals, waterways development need a long term visionary plan along with river linking projects.
- The government clearances need to be faster, transparent and industry friendly. The number of approvals and laws need to be cut by 90%.
- Availability of risk capital as well as reasonable cost borrowing is very important for gaining momentum in the manufacturing as well as service sector.

AGRICULTURAL SECTOR

- The development of innovative agriculture technology and latest equipment for ploughing and harvesting are key to long term success.
- **Drip/Pulse irrigation** need to be introduced at the behest of government. In case of PPP, 2 or 3 unit may be permitted in each block to achieve competitive pricing.
- Full freedom to agriculturists and the public to sell the agricultural produce to anyone at any place. This will need complete freedom on interstate movement of agricultural goods and a wider network

- of agricultural marketing infrastructure, without any limit to sell in the local market.
- The co-operative sector and corporate sector may be permitted to support farming with detailed guidelines and protection of land owner, farmers and agricultural labourers.
- To develop small and mid-size water bodies in all villages and talukas, besides development of large ponds and canals/check dams for storage of rain water and its use for irrigation need a comprehensive initiative.
- Agriculture Consultancy to be developed and established at Block Level for analysis of land, suggestions on fertilizer, insecticides and seeds and selection of best crops. The consultancy sector can be supported by Agricultural University experts. This can also provide sampling of seeds and equipment.
- **Food Processing Centers**, Food Storage and complete cold chain can be developed with the support of public sector equity.

ROLE OF POLITICIANS

• The politicians can play very important role in the development and growth at all levels. It is important to develop respect and honour for politicians as a Class. The politicians need to monitor the working of the government at national level, state level, district level, taluka level and village panchayat level.

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FINANCIAL INDICATORS				
	Current Rate*	Month Ago	3 Month	6 Month
3 Month LIBOR (%)	0.23	0.22	0.23	0.23
3 Month MIBOR (%)	8.85	9.17	9.96	9.09
SENSEX	25,584	22,994	21,935	21,255
NIFTY	7,656	6,859	6,537	6,333
CRR (%)	4.00%	4.00%	4.00%	4.00%
REPO (%)	8.00%	8.00%	8.00%	7.75%
REVERSE REPO (%)	7.00%	7.00%	7.00%	6.75%
Gold (per 10 gm)	25,988	29,725	30,123	29,223
Silver (per kg)	40,230	41,251	45,996	44,468
Crude (USD/bbl)	110.22	107.97	108.21	108.67
₹ vs USD	59.28	60.04	60.85	61.21
₹ vs Euro	80.30	82.49	84.42	84.15
₹ vs 100 Yen	57.95	58.93	58.94	59.29
₹ vs RMB	9.52	9.64	9.92	10.05
₹ vs Pound	99.48	101.03	101.21	100.65
MCX Aluminium	111.35	103.15	105.95	107.85
MCX Copper	396.30	405.05	409.00	439.45
*As on 10th June 2014 (Sources: MoneyControl, NSE, BSE, RBI, MCX)				

ROLE OF POLITICIANS

• All committees and decision making process in the government and semi government bodies need to have compulsory participation of elected representatives, representing the appropriate stake holders. This can ensure accountability of entire government structure including regulator towards the society, public and the economy. The current approach of taking all decisions only by professionals or bureaucrats and big stake holders, has not proved very successful. It is very important that all government bodies are responsive to the common man to meet the need to bring out an inclusive growth.

• The society need to plan its affairs as a Welfare State to ensure higher level of earnings, food, medical and clothing and all other facilities and a reasonably good standard of living to all members of the Indian society without any discrimination of cast, creed or religion. It is important to add that a special treatment for empowerment of backward and poor is an important continuing necessity of the nation.

DEVELOPMENT OF HAND WORKERS

- The government has announced its commitment to skill and scale. It is very important to develop and train highly skilled man power in various vocations, specialized occupations and professions.
- At the same time, is also important to ensure that the hand workers also get their due share and reasonable level of earning and fair treatment including adequate social security and retirement benefits.
- The mind workers have been able to clock a reasonably good growth rate in their earning levels and comparatively hand workers are still at a very low basic level.

TO END PROSECUTION ERA

- The prosecution era during last 3 years, prosecuting, arresting and harassing businessmen, bankers, politicians and bureaucrats has vitiated the working atmosphere completely. All genuine policy and administrative decisions need to be respected except in case of clear-cut evidence of corruption where tough action should be taken.
- The investigation by CBI, Enforcement Directorate, SEBI, RBI, IRDA, CCI, MCA and all other investigative agencies have to be kept completely and strictly confidential, till such time the evidence collected are confidentially reviewed and approved by an Independent Judicial Panel.
- The arrest of any citizen of the country should be restricted only to heinous crimes or in matters of National safety & security, even at investigation stage.

Congratulations!



Mr. Arun Jaitely, a SRCC Alumni Minister of Finance, Company Affairs and Minister of Defence

Congratulations!



CA Pivush Goval Minister of State with Independent Charge for Power, Coal and New & Renewable Energy

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