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EDITORIAL

AUDITORS : ADDING SIGNIFICANT VALUE



CA Vinod Jain

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The Indian Chartered Accountant firms have ensured a high degree of client satisfaction and credibility among the businesses of all size- large, midsize, and small based on their in-depth knowledge, practical approach and dedicated professionalism. The Contribution of Chartered Accountants as Tax Auditors is also highly appreciated by the Income Tax Authorities as well as GST department of Government of India and all state Governments. The Prime Minister Narendra Modi Ji has also underlined high expectations from the Auditors to take care of the interest of the investors and other stake holders.

In few instances of major financial scams or frauds, the first reaction of the stakeholders has been "what the auditors were doing" when the fraud or scam was perpetrating. It has however been established that in majority of cases auditors were not guilty, as for example in famous PNB Scam, the branch of PNB was not even subjected to Audit by a Chartered Accountant in last more than 5 years. Also, even in alleged financial scam in Infrastructure Leasing & Financial Services Ltd.(ILFS), National Financial Reporting Authority (NFRA) could not find and substantial failure in accounting or disclosure nor they could point out any material fraud or error, impacting truth and fairness of financial statements, similar is the case of Dewan Housing & Finance Ltd, where no audit failure could be so far identified.

The stakeholders may have apprehensions about auditors due to misconception about their role. Auditors are not expected to question the propriety of management decision including

usage of financial resources and assets. Decisions are subject to review by the management based on delegation of powers and corporate governance framework. The Audit is conducted based on transactions recorded in books of accounts and an appropriate examination is made of Internal financial Controls and delegation of Powers within the entity by those who are Charged with governance. The underlying documents, supporting vouchers and business processes are examined in detail in respect of an appropriate sample transactions based on the examination of the extent to which controls are in place and are working. All material transactions are covered by the sample and an overall scrutiny of Books of accounts is undertaken to identify any unusual or suspicious transactions by the Auditors.

The entire examination scope is limited by the fact that the transactions outside the books of the auditee Company including the transactions undertaken by different parties in their own books in respect of dealing with the Company under audit can not be verified by the Auditors in absence of access to records of third parties. It is noted that in past there are several financial frauds which are committed by third parties and the transactions in the Company books do not indicate any suspicious activity providing necessary warning signals. In certain other cases the documents received from third parties are relied upon, whereas such third parties may not account for the transactions in the same manner as these are reflected in documents.

Thus, the Audit may not Guarantee complete absence of Fraud, however Audit effectively and efficiently act as a prevention mechanism and deterrent against material error, diversion of funds, fraud, mis management of Funds and resources and Auditors warranty that during Audit no fraud or their indicators are noticed by Auditors. The Chartered Accountants as Auditors are Committed to ensure Truth, fairness, integrity, honesty, transparency and compliance of regulations and tax laws.



TRUTH

सत्य के लिए हम प्रतिबद्ध हैं

Latest in Finance

Finance Deposit Insurance, Which is Rs 5 lakh,

The amendment to the Act will enable depositors to access their deposit up to sum prescribed under deposit insurance, which is Rs 5 lakh, in case the bank is placed under moratorium and that too within 90 days.

National Asset Reconstruction Company Ltd

The Indian Banks' Association (IBA) has moved an application to the Reserve Bank of India (RBI) seeking licence to set up a Rs. 6,000 Crore National Asset Reconstruction Company Ltd (NARCL) or bad bank.

Centrum Financial Services to set up Small Finance Bank

Centrum Financial Services Ltd (CFSL) has initiated the process of establishing a small finance bank (SFB), which will eventually take over the scam-hit Punjab and Maharashtra Co-operative (PMC) Bank, by taking steps towards creating necessary infrastructure in this regard, according to the Reserve Bank of India (RBI).

CFSL, which is a non-banking finance company, and Resilient Innovations Pvt. Ltd (BharatPe), which is a fintech Reserve Bank Company, are equal partners in setting up the SFB.

Forex reserves rise by \$889 million to lifetime high of \$621.5 billion

The country's foreign exchange reserves increased by \$889 million to a lifetime high of \$621.464 billion in the month of August. In July, the reserves had surged by \$9.427 billion to reach \$620.576 billion. The increase in the forex kitty was owing to a rise in foreign currency assets (FCAs), a major component of the overall reserves, as per weekly data by the RBI. FCAs rose by \$1.508 billion to \$577.732 billion. Union Road Transport and Highways Minister Nitin Gadkari said infrastructure projects in the country need low-cost financing and surplus funds of RBI Can be utilised for the same.

RBI record gold Reserve

Now, the RBI's gold holding as a proportion of its forex reserves has for the first time crossed 700 tonnes. The central bank's gold reserves stood at 705.6 tonnes as on June 30. The gold reserves were at 558.1 tonnes in the beginning of 2018.

Banks have been using ARCS for ever greening: Parliamentary committee

The Standing Committee on Finance observed that banks park their stressed assets with asset reconstruction companies (ARC) to hide the actual extent of bad debts and this should not be encouraged.

Export/ import

Remission of Duties and Taxes on Export Products (RODTEP): New Export Scheme

- RODTEP replaces MEI's scheme that was not WTO-compliant
- Rates vary between 0.5% and 4.3%
- Boost for employment oriented sectors, such as marine, Agriculture, leather, gems, and Jewellery
- Steel, organic, and inorganic chemicals, pharmaceuticals, and SEZ excluded.

Associations, such as EEPC, urge government to relook at rates and give full rebate on taxes that remain in export production chain.

CBIC Introduces Auto-renewal for Tier 1 AEO License Holders

The AEO certification allows traders expedited customs clearances with fewer examinations. It is provided to those importers and exporters that meet safety parameters laid down by the customs. CBIC said that the facility of continuous AEO certification or auto renewal for such entities will be subject to the submission of annual self-declaration between October 1 and December 31 each year and a review. At present, the validity of AEO T1 certificate is three years and renewal requires an application to be made a month prior to expiration. The status is reviewed every three years.

EXPORT OF TEXTILE: Tax Refund Scheme Extended

The Government notified its decision to extend by over three years the validity of a key tax refund programme. Extant refund rates under the Rebate of State and Central Taxes & Levies (RoSCTL) scheme will be retained for some more, time. At present, garment exporters get scrips up to about 6% of the freight-on-board value of the products and made-up exporters

are entitled to a maximum of 8.2%. The notification ends uncertainties over the continuation of tax refunds and will prop up garment exports that have lost pace of late.

Services Exports from India Scheme (SEIS) for 2019-20

The SEIS was introduced in 2015, replacing the earlier Served from India Scheme (SFIS). The scheme started with duty credits at 3% to 5% of net foreign exchange (NFE) earnings through exports of specified services such as business services (including professional services, research and development services, management consulting services, technical and testing services etc.), communication services, tourism and travel-related engineering services, education services.

Unlike the earlier SFIS where, 'Indian service providers' were eligible for the benefits, the SEIS allowed 'Service Providers located in India' to claim the duty credit scripts. That enabled some multinational consultancy firms providing services such as taxation, accounting, auditing, engineering, etc., collect hefty rewards at 7% of NFE earnings under SEIS.

The SEIS benefits are available only to cross-border delivery of services from India to any other country and supply of services in India to service consumers of any other country. They are not available for supply of services through commercial presence in any other country.

Custom

India considers sharp import tax cuts on EVs

- For imported EVs of less than \$40,000, rate may be slashed to 40% from 60% presently
- For EVs valued at more than \$40,000, rate may be cut to 60% from 100%
- Majority of cars sold in the country priced below \$20,000

Import**100% Security Deposit Not Needed for Claiming FTA Benefits Anymore**

The government has done away with the requirement of full

deposit of security amount in some cases where free-trade agreement (FTA) benefit was being claimed. CBIC dispenses with the requirement of 100% security for certain types of provisional assessments. The move is expected to free up working capital for companies.

FEMA**Government notifies changes in FEMA**

The Finance Ministry has made changes to the Foreign Exchange Management Act (FEMA) regulations to ensure that private banks having joint venture or subsidiary in the insurance sector do not breach the 74% cap on FDI.

The RBI guidelines do not permit banks to undertake insurance business with risk participation departmentally; they can do so only through a subsidiary or joint venture set up for the purpose.

If a bank plans to set up such a subsidiary to undertake insurance business with risk participation, it will have to fulfill certain conditions - the net worth of the bank should not be less than 1,000 Crore, Capital Adequacy Ratio should not be less than 10%, NPA should not be more than 3%, and should have been profitable for the last three consecutive years.

Promoters may give personal guarantee on foreign assets

As FEMA rules, no person resident in India shall give a guarantee or surety in respect of, or undertake a transaction, by whatever name called, which has the effect of guaranteeing, a debt, obligation or other liability owed by the person resident in India to, or incurred by, a person resident outside India.

The draft guidelines on FEMA, 2021, guarantees may be issued to or on behalf of the foreign entity or its step-down operating subsidiary in which the Indian entity has acquired control through the foreign entity, including "personal guarantee by the resident individual promoters of such Indian entity".

"Where the guarantee is extended as above by a promoter, which is a body corporate or an individual, the Indian entity shall be a part of the promoter group" as defined by capital markets regulations.

The guarantee, to the extent of the amount invoked, will no longer be part of non- fund-based exposure but will be considered lending.

It also said where a guarantee had been extended jointly by two

or more Indian entities to a foreign entity, 100% of the amount of such a guarantee "shall be reckoned towards the individual limits of each of such Indian entities".

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RBI issues draft proposals to liberalise overseas investments norms

The RBI has placed on its website two documents-draft Foreign Exchange Management (Non-debt Instruments – Overseas Investment) Rules, 2021 and draft Foreign Exchange Management (Overseas Investment) Regulations, 2021.

LIBOR being replace as a reference rate

The Reserve Bank of India has decided to amend guidelines related to export credit in foreign currency and restructuring of derivative contracts to ensure smooth transition away from the London Interbank Offered Rate (Libor).

The banks can now extend export credit using any other widely accepted alternative reference rate in the currency concerned.

Secured overnight financing rate (SOFR), one such alternative reference rate, is based on transactions in the US Treasury repo market and is being widely used as a substitute for Libor in dollar denominated loans and derivatives across the world.

Since the impending change in reference rate from Libor is a force majeure event, banks are being advised that change in reference rate from Libor or Libor-related bench marks to an alternative reference rate will not be treated as restructuring.

Capital Market**Pension funds to invest in IPOs**

Pension regulator PFRDA has advised pension funds to formulated a detailed policy on investment in Initial Public Offer (IPOs) and get it approved by their boards. The investment team of these funds can take a decision on a day-to-day basis subject to compliance of the investment policy.

India is also mulling ways to allow pension and insurance funds to flow to startups, a move which will give startups access to stable and long-term domestic capital.

The Department for Promotion of Industry and Internal Trade (DPIIT) is in talks with the Employees' Provident Fund Organisation (EPFO) and the Life Insurance Corporation (LIC) of India in this regard.

Unlisted InvITs: New rules on unit holders

SEBI has issued a framework on minimum number of unit holders in unlisted InvITs. The minimum number of unit holders in an InvIT, other than the sponsor(s), its related parties and its associates, should be five, collectively holding at least 25 per cent of the total units of the InvIT at all times.

SEBI relaxes post-IPO lock-in requirements for promoters

The regulator has halved the lock-in period to 18 months that promoters have to observe on 20 per cent of their shareholding following an Initial Public Offering (IPO). The lock-in on pre-IPO share- holding of non-promoters has also been halved to six months, while the minimum lock-in for venture capital funds will be six months from the date of acquisition, as against one year at present.

Resident Indian fund managers can now be part of FPIs

Capital Market Regulator SEBI has amended its FPI rules, allowing resident Indian fund managers to be constituents of Foreign Portfolio Investors (FPIs).

The move comes after the board of SEBI approved a proposal in this regard in June. In a notification, SEBI said non-resident Indians (NRIs) or overseas citizens of India (OCIS) or resident Indian individuals can be part of FPIs, provided they meet the conditions specified by the regulator.

In case of resident Indians other than individuals, they can be the constituents of the applicant if such a person is a fund manager of the FPI or the FPI is an eligible investment fund approved under Income Tax Rules.

SEBI amends rules to empower independent directors

Appointment, re-appointment and removal of Independent directors in a listed company, will be done through a special resolution of shareholders.

Those subscribing to NPS after age of 65 can take 50% equity exposure

Making the National Pension System (NPS) more attractive for subscribers joining it after 65 years of age, the PFRDA has permitted them to allocate up to 50% of the funds in equity, besides easing the exit norms. The Pension Fund Regulatory and Development Authority (PFRDA) has been revised the entry age for NPS has been revised to 18-70 years from 18-65 years previously.

SEBI allows payments banks to operate as investment bankers.

SEBI allowed payments banks to carry out the activities of investment bankers.

Non-scheduled payments banks, which have prior approval from the Reserve Bank of India (RBI), will be eligible to act as a banker to an issue (BTI), SEBI said in a circular, subject to conditions stipulated in the rules.

KYC norms eased for FPI

According to SEBI instruction, institutional investors, including foreign funds can share either the mobile number or the office landline number. Also, it will no longer be mandatory for them to submit income details to the regulator.

SEBI comes out with Detailed Modalities for Accredited Investors

SEBI came out with detailed modalities for implementation of the accredited investor's framework, a move expected to open up a new channel of raising funds from sophisticated investors. The regulator has issued guidelines on eligibility criteria for accredited investors (AIs), procedure as well as validation for accreditation, procedure to avail benefits linked to accreditation and flexibility to investors to withdraw "consent", according to a circular.

A person will be identified as an accredited investor based on net worth or income. Individuals, HUFs, family trusts, sole proprietorships, partnership firms, trusts and body corporate can get accreditation based on financial parameters specified by the regulator. Under the framework, AIs may avail flexibility in minimum investment amount (lower ticket size) or concessions from specific regulatory requirements applicable to investment products.

Regulator notifies relaxed sweat equity rules for new age technology companies

Markets Regulator SEBI has relaxed the quantum of sweat equity that can be issued by new-age technology companies listed on the Innovators Growth Platform (IGP). The yearly limit for sweat equity shares will be 15%, while the overall limit will be 50% of the paid-up capital at any time. The companies trading on the main board will have the annual sweat equity ceiling of 15%, but the overall limit will be capped at 25%.

The issue of sweat equity shares to employees who belong to promoter or promoter group shall be approved by way of a resolution passed by a simple majority of the shareholders in general meeting, the regulator said.

SEBI said the period for appropriating the unappropriated inventory of the trust has been extended from one year to two years, subject to the approval of the compensation or nomination and remuneration committee for such extension.

SEBI to usher in T+1 settlement cycle soon

Stock markets in India may soon witness share and money transfers into the client account in less than 24 hours as market regulator SEBI is planning to usher in an era of T+1 (today plus one) settlement cycle for equity transactions. A Panel has been set up to decide on modalities and approach.

Currently, in the T+2 cycle, it takes 48 hours or even more for the shares to be transferred into the client account in case of purchase deals. This means a seller cannot demand payment for at least two days. But soon India would be the only country to adopt T+1 settlement cycle.

Shift to 'Controlling shareholders' concept gets SEBI approval

SEBI is looking to move away from the concept of the promoter to "controlling shareholders" or person in control as nowadays several businesses, including new-age and tech companies are non-family owned and do not have a distinctly identifiable promoter group.

The regulator recently introduced review of documents by Merchant Bank ahead of IPOs by AIFs

An asset manager provides investors details about a new AIF through a private placement memorandum (PPM). It contains fees, the investment strategy, and other important information. The Securities and Exchange Board of India (SEBI) has mandated merchant bankers vet these documents. The process is similar to how bankers look at details in initial public offer (IPO) documents when a company first sells shares to the public.

Qualified Institutional Placement (QIP) mechanism: e-book platform must for NCDs

SEBI came out with guidelines for non-convertible debentures with warrants products, whereby it made electronic book platform (EBP) mandatory for the NCDs portion of the issue. It is aimed at streamlining the procedure of issuance and applicability of EBP mechanism on the NCDs portion.

When the size of NCDs portion is above threshold prescribed under the rules, EBP platform mechanism shall be mandatory for NCDs portion of the issue (for both stapled and segregated offer).

Currently, listing of NCDs of 200 Crore or above in a year is possible only if such issuance is through the electronic book

mechanism. In a qualified institutions placement (QIP) of NCDs instrument along with warrants, an investor can either subscribe to the combined offering of NCD instruments with warrants or to the individual securities (that is, either NCD or warrants).

SEBI had proposed to discontinue segregated offerings of NCDs along with warrants to institutional investors under the (QIP) mechanism. Further, it was suggested that staple offerings of NCDs along with warrants to institutions investors may be retained with the ability to segregate the instruments after the issuance or allotment.

NSE to introduce trading in US stocks at GIFT

The NSE International Exchange, a subsidiary of the National Stock Exchange (NSE), plans to launch trading in

US stocks at GIFT City, an international financial services centre (IFSC).

Domestic retail investors will be able to transact on the platform under the liberalised remittance scheme (LRS) limits prescribed by the Reserve Bank of India (RBI), which allows an individual resident to remit up to \$250,000 (1.86 Crore) each financial year.

SEBI in process to set up backstop facility for corporate debt market

The backstop facility will be an entity that can trade in relatively illiquid investment grade corporate bonds and be readily available in times of stress to buy such bonds from various market participants in the secondary market.

Income Tax

New definition of 'start-up'- Up to 10-yr old companies with turnover up to Rs 100 Crore can be called 'start-up'.

Conditions for 'start-up'

DPIIT, through a gazette notification dated February 19, 2019, had amended the definition of 'start-up'.

The first condition said that an entity will be considered a 'start-up' up to a period of 10 years from the date of incorporation or registration. It can be a private limited company, a partnership firm or a limited liability partnership.

The second condition is that the turnover of the entity for any financial year since incorporation or registration should not exceed Rs 100 Crore.

The third condition prescribed that the entity is "working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation".

Supreme Court permit interest payments by debentures

SC approves deduction of interest paid via debentures

The Supreme Court (SC) has allowed MM Aqua Technologies to deduct interest paid via issue of debentures from its income for the purpose of income tax calculation.

The court held that the interest was "actually paid" by the assessee through issuance of debentures, which has extinguished its liability to pay interest. To reach this conclusion, the court relied on the fact that the accounts of the bank reflected the amount received by way of debentures as its business income for the assessment year in question.

Double Taxation Sword Hangs Over Big Tech

FB, Google, Twitter could end up with tax bills on same revenue in multiple jurisdictions

India's equalisation levy, for instance, India charges 6% tax on any advertising revenue of multinational firms if the advertiser is based in the country. There is also a 2% equalisation levy even if the advertisers or multinationals are not based in India, but the advertisement is visible in India.

UK that levies DST (digital service tax) on business users or advertisers and these ELs (equalisation levies)/ DSTs being non-creditable in the home jurisdiction,

This essentially means that EL becomes a cost and companies will have to pay tax in their home country on entire profit, including the revenues on which tax has already been paid in India.

IRPS, RPS and liquidators can now appear before taxman, rules CBDT

Interim resolution professionals (IRPs) and resolution professionals (RPs) have now got the formal recognition of income-tax authorities for dealing with the tax matters of the corporates that are undergoing Corporate Insolvency Resolution Process (CIRP) of the Insolvency and Bankruptcy Code (IBC).

Finally, an end to the draconian retro tax

The issue of taxability of gains arising from the transfer of assets located in India through the transfer of the shares of a foreign company (commonly understood as "in direct transfer of Indian assets") was a subject matter of protracted litigation prior to 2012. The Supreme Court, in a landmark decision in Vodafone International BV v Union of India (341 ITR 1), delivered in January 2012, had ruled that the Revenue does not have an authority to tax an offshore transaction between two non-resident companies where a non-resident company is purchased in the transaction in order to control the interest in an Indian resident company.

While the Supreme Court ruling should have settled the controversy on this issue not just for the tax-payer involved in this litigation, but for all other taxpayers involved in similar transactions, that was not to be. As the ruling was perceived to be inconsistent with the legislative intent of the Indian tax law, the Finance Act, 2012 introduced an amendment not only nullifying the apex court ruling but also giving the amendment retrospective effect. The amendment purported to clarify that gains arising from sale of share of a foreign company is taxable in India if such share, directly or indirectly, derives its value substantially from the assets in India.

The arbitration was unanimously decided against the Government.

South Indian Bank Ltd. vs. Commissioner of Income Tax

As per Section 14A of Income Tax Act, 1961, no expense is allowed for deduction from total income which has been incurred for earning exempt income. Assessing officer has the right to disallow such expense if assessee has claimed deduction of these expenses from total income.

The Hon'ble Supreme Court held in case of "South Indian Bank Ltd. vs. Commissioner of Income Tax" that proportionate disallowance of interest is not warranted, under section 14A of Income Tax Act for investments made in tax-free securities which yield tax-free dividend and interest to Assessee Banks in those situations where, interest free own funds available with the Assessee, exceeded their investments.

[Source: [2021] 130 taxmann.com 178 (SC) South Indian Bank Ltd. v. Commissioner of Income-tax*]

The Income Tax Officer Ward 1(2)(1) vs. Late Bhupendra Bhikhalal Desai (Since Decd.)

The High Court held in case of "The Income Tax Officer Ward 1(2)(1) vs. Late Bhupendra Bhikhalal Desai (Since Decd.)" that the issuance of the notice to a dead assessee and the consequent proceedings pursuant thereto would be without jurisdiction and, therefore, null and void.

A notice issued under Section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection.

[Source: [2021] 130 taxmann.com 196 (Gujarat) The Income Tax Officer Ward 1(2)(1) V. Late Bhupendra Bhikhalal Desai (Since Decd.)]

GST

Double Tax for NFTs: Deals may Attract GST, Equalisation Levy

After cryptocurrencies, the non-fungible token or NFT has attracted the taxman's attention as any purchase of the block chain digital file will attract equalisation levy and goods and services tax (GST).

This would mean that any NFT bought could become dearer by a few percentage points. The tax department is set to slap a 2% equalisation levy on these transactions. Also, the indirect tax department would seek that the exchanges pay GST on the transaction value.

NFT arrived in India a few months back and this means that Indians can now buy art, digital goods, YouTube videos or audio files in the format.

NFT, just like cryptocurrency, will attract the 2% equalisation levy as well as GST.

Pooled funds may attract GST on Services

A ruling by an indirect tax tribunal pertaining to venture capital funds could open Pandora's box for all forms of pooled investment vehicles structured as trusts, including real estate investment trusts (REITs), infrastructure investment trusts (InvITs), mutual funds (MFS), and even provident funds.

Going by the ruling, trusts could be seen as entities providing fund management services to contributors or unit holders, implying that the expenses incurred by them would be subject to goods and services tax (GST). These expenses typically include fund management fees, trustee fees, legal fees, and audit fees, which are deducted from the investments made by

the investor.

A trust is a special purpose vehicle created under SEBI guidelines and serves as a pooling vehicle. These vehicles are structured as trusts to avail of tax pass through status, which is the global standard for taxation of investment funds.

Traders of e-vouchers to pay 18% GST: AAR

Karnataka based Authority for Advance Rulings (AAR) has tried to sort out a tricky issue of levying goods and services tax (GST) on the supply of e-vouchers by sales promotion firms to other companies.

It ruled that sales promotion companies, which trade in vouchers, will have to pay GST at the rate of 18% and mention it on its monthly or Quarterly sales returns.

Division Bench of Karnataka HC stays verdict on levy of GST on race clubs

A Division Bench of the High Court of Karnataka stayed the operation of a single-judge bench's order, which had declared that race clubs are liable to pay GST only on the commission and not on the entire face value of the bet or amount paid into the totaliser.

GST returns: Self-certification not Audit

The reconciliation statement in Form GSTR-9C for 2020-21 will be required to be filed by taxpayers with an annual aggregate turnover above 5 crores.

Earlier, this reconciliation statement needed to be certified by an Auditor or a Chartered Accountant or a Certified Management Accountant (CMA).

Corporate Laws

LLP Amendment Bill passed in LS

The Bill defines a "small LLP" as a limited liability partnership where the contribution does not exceed Rs 25 lakh or such higher amount- not exceeding Rs 5 Crore- as may be prescribed; and the turnover in the preceding financial year does not exceed Rs 40 lakh or such higher amount- not exceeding Rs 50 Crore as may be prescribed.

The Bill, which proposes to decriminalize as many as 12 offences in the existing law. Introducing the concept of "small limited liability partnership" in line with the concept of "small company" under the Companies Act 2013, the bill also seeks to convert several offences specified in the LLP Act 2008 into civil defaults and convert the nature of punishment from fines to monetary penalties.

No reservation in Judges Appointment

Appointment of judges of the Supreme Court and High Courts is made under Articles 124, 217 and 224 of the Constitution of India, which do not provide for reservation for any caste or class of persons.

Burden of law

The Indian judiciary seems to be groaning under the burden of litigation. According to data provided by the Ministry of Law and Justice, there are 69,212 cases pending with the Supreme Court, 58,76,632 cases with the 25 High Courts, and 3,93,30,952 cases with the 37 Subordinate Courts in the country.

Insolvency Resolution Professional institute recommended:

The Standing Committee on Finance has also recommended that an Institute of Resolution Professionals may be established to oversee and regulate the functioning of RPs. The committee said a professional self-regulator for resolution professionals (RPS) that functions like the Institute of Chartered Accountants of India (ICAI) should be put in place. The committee, therefore, recommended that an Institute of Resolution Professionals be established to oversee and regulate the functioning of RPs so that there are appropriate standards and fair self-regulation. Also recommended appointment of retired /serving High Court Judges to the NCLT Bench.

SC refuses to stay NCLAT order that discoms can't terminate PPAs during insolvency process

The Supreme Court refused to stay the National Company Law Appellate Tribunal's (NCLAT's) decision that ruled that power distribution companies cannot terminate their power purchase agreement (PPA) with insolvent generating companies during the corporate insolvency resolution process (CIRP).

Companies under Liquidation can be sold as a 'Going Concern', Rules NCLAT

A company can run usual operations or as a "going concern" even if it is in the process of being wound up in an administered sale, the recent order by a bankruptcy appeals court, boosting recovery prospects for lenders seeking to maximise value on soured loans.

The principal bench of the National Company Law Appellate Tribunal (NCLAT), New Delhi comprising two judges overruled an order by the National Company Law Tribunal (NCLT).

As to the going concern concept, the CIRP (Corporate Insolvency Resolution Plan) and CoC (Committee of Creditors) will put their maximum efforts to derive maximum value from the corporate debtor.

The order was passed in the case of 'M/s Mohan Gems & Jewels Pvt Ltd versus Vijay Verma&Anr' stating that the sale of corporate debtor as a going concern during the liquidation process is valid under the Insolvency and Bankruptcy Code (IBC).

CSR

CSR VIOLATIONS

All CSR-related defaults are compoundable. So far, sanction for prosecution has been accorded in 366 cases. Of these, 148 applications for compounding have been made and 75 cases have been compounded.

India Inc Seeks Clarity Over ITC on CSR Spends

Industry has petitioned the finance ministry on the issue, seeking clarity on availability of input tax credit on goods purchased as part of the CSR spending. The provision was clear in terms of non-availability of the credit.

ITC can be claimed under GST only if the output supply is taxable. It cannot be availed of on gifts or free samples. The Industry has argued that these were not free, and were carried out as part of activity mandated by the government for furtherance of business.

SEBI

AIFs:

SEBI amends rules for AIFS, stock exchanges, other MIIS

AIFs under category I and venture capital funds (VCFS) will have to invest at least 75% of investable funds in unlisted equity shares and equity-linked instruments of venture capital undertakings or in companies listed or proposed to be listed on an SME exchange or the SME segment of an exchange.

The existing investment restrictions on the residual portion of investable funds of VCFs have been done away with.

Further, the minimum grant of 25 lakh stipulated for category I AIFs-social venture funds will not apply to grants received from accredited investors.

TAKEOVER CODE: SEBI to scrap certain disclosure requirements for promoters upon share acquisition

Certain disclosure obligations for the acquirers / promoters etc, pertaining to acquisition or disposal of shares aggregating to

5% and any change of 2% thereafter, annual shareholding disclosures and creation/invocation/ release of encumbrance registered in depository systems under takeover regulations" would be done away with from April 1, 2022.

SEBI said the relaxations would be done due to implementation of System Driven Disclosure (SDD). Under SDD, relevant disclosures are disseminated by the stock exchanges based on aggregation of data from the depositories without human intervention.

SEBI decides on marking lien on Demat accounts

Market Regulator SEBI has decided that a lien will be marked in the demat accounts against the shares of the shareholders participating in the tender offers made following open offers, buy back offers and delisting of securities. Upon finalization of the entitlement, only accepted quantity of shares will be debited from the demat account of the shareholders and the lien marked against unaccepted shares will be released.

Audit

Forensic Audit

ICAI proposes seven new Standards for forensic audits

The Digital Accounting and Assurance Board of the Institute of

Chartered Accountants of India have proposed seven new Forensic Accounting and Investigation Standards (FAIS).

Audit

Delhi high court seeks centre's view on probe

The Delhi High Court on Monday issued directions to the Centre to respond to a petition praying for investigation into data breaches in online apps, including those of big basket, Domino's, Mobikwik and Air India, which compromised personal and financial information of users.

NFRA plans rules for audit oversight

National Financial Reporting Authority (NFRA) considering to recommend a new and more comprehensive legal framework for audit oversight, securing for itself wider regulatory powers and financial autonomy.



Banking

RBI index shows better access to financial services

PROGRESS REPORT	Mar 2010	Dec 2019	Dec, 2020
Basic savings bank accounts (million).	73.5	596.7	649.2
Amount in BSBAS (in Crore).	5,500	1,52,826	2,03,061
Banking outlets in villages.	67,694	5,70,798	12,95,322

RBI empowered to regulate UCB Management for UCBs

The September 2020 amendment to the Banking Regulation Act, 1949, gives the central bank full control over the function of UCB.

RBI's new 24x7 bulk clearing facility kick in

The Reserve Bank of India's (RBI's) new directions on making available the facility of bulk clearing round the clock have now become effective.

ECONOMY

RBI holds rates steady, ups inflation forecast

The six-member Monetary Policy Committee (MPC) voted unanimously to keep the repo rate unchanged at 4%.

Economic cases

The National Company Law Tribunal (NCLT), Chennai, has rejected the debt resolution proposal of Siva Industries which was earlier cleared by IDBI Bank-led Committee of Creditors (CoC). According to the plan approved by the CoC, lenders were taking a massive haircut by agreeing to 328 Crore as settlement amount, as against claims worth 4,864 Crore made by them.

NCLT said the commercial wisdom of the CoC cannot be called in question by the court only when the said decision has been taken in conformity within the framework of IBC, 2016.

However, in the present case, instead, without even receiving a single penny from the promoter of the debtor (Siva Industries), the CoC has voted under Section 12A of IBC, 2016, for the withdrawal of the bankruptcy process which is a settlement simpliciter rather than a business restructuring plan. The NCLT also said while the withdrawal of the bankruptcy process was cleared by the CoC with 94.3% votes, nowhere in the minutes of meetings shows that the CoC has voted for the settlement plan.

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.17463	0.14088	0.11888	0.1285
SENSEX	57684.79	60138.46	57338.21	51934.88
NIFTY	17166.90	17929.65	17076.25	15574.85
CRR (%)	4.00	4.00	4.00	3.50
REPO (%)	4.00	4.00	4.00	4.00
REVERSE REPO (%)	3.35	3.35	3.35	3.35
Gold (per 10 gm)	47510	47740	47380	47900
Silver (per kg)	61700	64400	63000	72600
Crude (USD/bbl)	68.95	84.7	71.38	70.1
INR/USD	74.9163	74.9298	72.9589	72.7714
INR/Euro	84.9166	86.7464	86.4195	88.9587
INR/100 Yen	65.96	65.59	66.18	66.48
INR/RMB	0.08479	0.08529	0.08839	0.08774
INR/Pound	99.8554	102.484	100.3448	103.4906
MCX Aluminium (per kg)	53674.35	48076.85	35282.69	72661.86
MCX Copper (per kg)	236884.4	196456.8	222509.4	222509.4

* As on December 1, 2021

(Source: MoneyControl, NSE, BSE, RBI, FBIC, MCX)

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