Seth Dua & Associates
Solicitors & Advocates

April 2016-September 2016

Editorial:

Mid Term Report Card

Two and a half years have elapsed since the ruling Prime Minister Modi powered BJP party to a landslide victory. The Government led by Prime Minister Modi started a regime of whirlwind reforms which still continues whereby new reforms are ushered in time to time to make India a fast-paced economy comparable to other contemporary powers. The fundamentals of the transformation have been rationalization of laws, relaxation of approval processes along with the efforts to rake up necessary infrastructure with major emphasis on information technology. The changes brought about by the present government are manifold and transcend from social to business as well as legal sector and beyond. The aforesaid changes are likely to provide the required momentum to amplify the growth and development. The social reforms brought forward have been inclusive, complementary as well as broader in nature. Efforts have been made to include the poor within the economic circle by means of various social schemes.

The present government has had business and economy as the focal point of its policy reforms. India has had a slight boost in the ease of doing business index while gaining four places to rest at 130 owing to reduced policy related roadblocks and increased digitization. The present government has seen a significant rise in FDI inflow with 2015-16 being the year which recorded the highest FDI . The Foreign Currency Reserves have been steadily increasing, presently resting at around US$367 billion, with almost a US$67 billion rise since 2014 . The current account deficit has also narrowed by a small margin . Poverty rate has fallen from 21% in 2011 to 12.4% in 2015 as per a World Bank study. The policy campaigns such as Make in India comprising of Skill India and Digital India have been brought with the aim to create knowledge based economy and provide good governance. An array of e-governance measures such as digital locker and feedbacks through mygov.in are some noteworthy initiatives.

A certain number of legislative reforms have been contemplated and put forth by the government so as to achieve effective governance and rationalization of taxation along with other laws and rules. The booming real estate industry was given a law of its own which provides for Real Estate regulatory authority and would help in boosting confidence of home buyers and real estate investors in the long run. The GST reforms passed by both the houses could be touted to be a landmark achievement of the present government which consolidates and centralizes the provisions for levy of taxes on Goods and Services.

Despite the positives, the present government is not without predicaments of its own. The falling of exports with rising inflation is an important issue before the present government with the exports falling as much as 15.5% in 2015-16 . The impression arises that industrial growth has stymied with the CPI based inflation and unemployment on a rise. Though amendment of bankruptcy laws were brought about, the pending policy decisions on bank amalgamation scheme have sent non-performing assets out on a rise, hence causing significant losses to the nationalized banking institutions. The Centre's inability to build a consensus with respect to its Land Acquisition Bill, 2015 is still posing hurdles in opening of new projects and businesses. It is also apprehended that Make in India remains a mere slogan without being backed by a required optimal policy structure. Other issues which could be visibly identified are corruption, delay in getting approvals and hurdles in getting environmental clearance.

The policies and initiatives of the present government is a work in progress which needs to be followed through with the same intensity and vigor. Though the government has brought fundamental policy changes thereby infusing liberal reforms and diluting the regulatory mechanisms, the full impact of the changes remains to be seen.

April 2016-September 2016

NEW LEGISLATIONS

1. The Insolvency and Bankruptcy Code, 2016 ("Code")

The Code received presidential assent and was notified on May 28th, 2016. The Code creates a uniform, comprehensive insolvency legislation which applies to all forms of entities.

i. Scope: The Code is wide ranging in scope, applying to companies, LLPs, partnership firms, individuals and incorporated entities in relation to insolvency, bankruptcy or liquidation.

ii. Applicability threshold: In order for the provisions of the Code to apply, there must be a minimum default of Rs.100,000 (Rupees One Hundred Thousand Only)

iii. Insolvency Resolution Process: The Code provides for the initiation of an insolvency resolution process at the National Company Law Tribunal by creditors (as opposed to by the debtor, which was the case under previous applicable law). This process can also be initiated by the defaulting corporate debtor, its shareholders or employees. After the initiation of the process, the NCLT is empowered to order a moratorium on the debtor's operations for the period of the IRP, during which period proceedings for recovery, enforcement of security interest, sale or transfer of assets etc are barred. The IRP Process is administered by an insolvency professional appointed by the NCLT., whose role is to take over the management of the corporate debtor. The creditors are thus given the power to control the business of the debtor. The code provides for the creation of a creditors' committee, the decisions of which are binding on the corporate debtor and all the creditors. The purpose of the creditors' committee is to consider options for revival of the debtor and/or proceed for liquidation of the corporate debtor.

iv. Liquidation: A corporate debtor may be compelled to undergo liquidation if:
   a. The creditors' committee, by 75% majority, opts for liquidation during the IRP;
   b. The creditors' committee does not approve a resolution plan within 180 days (or within the extended 90 days);
   c. The NCLT rejects the resolution plan submitted to it; or
   d. The debtor does not comply with the agreed resolution plan and an affected person makes an application to the NCLT for liquidation of the corporate debtor.

v. Priority of payments: The Code provides the following order of payments in a liquidation of a corporate debtor:
   a. the insolvency resolution process costs and the liquidation costs paid in full;
   b. workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and debts owed to a secured creditor
   c. wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
   d. financial debts owed to unsecured creditors;
   e. amounts due to the Central or state government in respect of the whole or any part of the period of two years preceding the liquidation commencement date and debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
   f. any remaining debts and dues;
   g. preference shareholders, if any; and
   h. equity shareholders or partners.

vi. Fast track insolvency process: The Code allows for fast track insolvency process in case of a corporate debtor with assets and income below a level to be notified or with such class of creditors or such amount of debt to be notified. The fast track process is to be completed within 90 (ninety) days from the initiation of the insolvency proceedings. The process can be initiated by either the debtor or the creditor.

vii. Insolvency for individuals/partnership firms: The threshold for application of the Code in case of individuals/partnerships is INR 1000. The Code provides for two processes i.e. fresh start and insolvency resolution. Under the fresh start process, eligible debtors may apply to the Debt Recovery Tribunal for discharge from certain debts not exceeding a specified threshold, allowing them to start afresh. Alternatively, a debtor may opt for a insolvency resolution process, under which the debtor is required to prepare a repayment plan and have the same approved by its creditors. This plan is then legally sanctioned by the debt recovery tribunal.

2. The Mines and Minerals (Development and Regulation) Amendment Act, 2016 (MMDR Amendment Act")

The MMDR Amendment Act received assent on May 6th, 2016 and was notified on May 9th, 2016. The legislation adds a proviso to Section 12A of the Mines and Minerals (Development and Regulation) Act, 1957 in terms of which a mining lease which has been granted other than through auction, and in respect of which minerals are used for captive purpose, may be transferred subject to conditions to be prescribed. The expression "used for captive purpose" is defined as the use of the entire quantity of mineral extracted from the mining lease in a manufacturing unit owned by the lessee. The objective of the amendment is to facilitate mergers and acquisitions of mining companies.

3. Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016

This legislation received presidential assent on August 12, 2016 and was notified on August 16th, 2016. Its purpose is to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI"), the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899, and the Depositories Act, 1996. The Act makes the following amendments:

Amendments to the SARFAESI Act:

i. Procedural changes: The Act provides that the process of taking possession of secured collateral for a loan by creditors upon a default in repayment will have to be completed by the District Magistrate within 30 days.
ii. The Act empowers the District Magistrate to assist banks in taking over the management of a company which has defaulted in its loans, in cases where the banks convert their outstanding debt into equity shares, and obtain a stake of 51% or more in the company.
iii. Changes to ARC: The Act enables the Reserve Bank of India to carry out audit and inspection of Asset Reconstruction Companies (ARCs) and penalize them if they fail to comply with any of its directions, including by way of removal of the chairman/director, appointment of additional directors or other personnel.
iv. Stamp duty: The Act also provides that stamp duty will not be payable on transactions pertaining to transfer of financial assets (loans and collaterals) in favour of asset reconstruction companies.
v. Central Registry: All secured creditors (including creditors who do not have enforcement privileges under the SARFAESI Act) are required to register their security interests with the Central Registry of Securitization Asset Reconstruction and Security Interests of India (Central Registry).
vi. Expanded list of eligible lenders: While earlier, the benefits of the SARFAESI Act were available to a limited group of lenders – i.e. scheduled commercial banks, International Finance Corporation, Asian Development Bank and identified Housing Finance Companies, post amendment, debenture trustees in respect of listed debt securities are included in the definition of "secured creditors:. Thus, lenders who do not have rights under the SARFAESI Act

in their own capacity can benefit from the SARFAESI Act when acting through a debenture trustee. Further, it may be noted that the government has notified non-banking financial companies (NBFCs) with an asset size of more than Rs. 500 crores, as eligible lenders under SARFAESI.

vii. Procedural changes in SARFAESI and DRT: The Act has made several procedural changes to the SARFAESI and DRT. Timelines have been reduced in respect of various stages in the judicial process eg. filing of written statements, passing of orders, appeals, etc. The Act has also de-incentivised delay by the borrowers by requiring them to deposit at least 25% of the outstanding amounts with the debt recovery appellate tribunal in proceedings under the DRT before preferring an appeal.

National Civil Aviation Policy, 2016

The Indian government on June 15, 2016 approved a new civil aviation policy ("Policy") aimed at increasing regional connectivity, boosting cargo operations and making it easier and possibly cheaper for passengers to fly. The policy is very comprehensive, covering 22 areas of the Civil Aviation sector. The salient features of the Policy are as follows:

5/20 Rule

As per the erstwhile rule created by Union Cabinet stipulation in 2004 (popularly known as the 5/20 Rule), an Indian airline was required to fly a minimum of 5 years on domestic routes and have a fleet of 20 aircrafts for it to be allowed to fly to international sectors.
As per the Policy, the 5/20 rule has been amended not scrapped completely. Under the new rule termed (0/20), all airlines can commence international operations provided they deploy 20 aircraft or 20 percent of the total capacity (in terms of average number of seats on all departures put together) whichever is higher, for domestic operations. The abolition of the 5/20 rule had been lobbied for especially by the new Airlines such as Vistara and Air Asia India.

Regional Connectivity Scheme

The Regional Connectivity Scheme ("RCS") will come into effect in the second quarter of the year 2016-17. The Ministry of Civil Aviation ("MoCA") will target an indicative airfare of Rs. 2,500 per passenger approximately, indexed to inflation, for a significant part of the capacity of the aircraft for a distance of 500 kms to 600 kms on RCS routes (equivalent to about one hour of flight). The RCS will be implemented by way of:

- Revival of un-served or under-served airports/ routes;
- Concessions by different stakeholders;
- Viability Gap Funding (VGF) for operators under RCS;
- Cost-effective security solutions by Bureau of Civil Aviation Security ("BCAS") and State Government;
- RCS applicable to states which reduce VAT on Aviation Turbine Fuel to 1% or less;
- State government to give land free of cost and encumbrance;
- No airport charges under RCS for 10 years;
- Service tax on tickets to be 10% of the taxable value. Excise duty on ATF drawn by cargo operators from RCS airports to be 2% for 3 years;
- Free police and fire services at airports by state government.

Ground Handling Policy

The Ground Handling Policy/ Instructions/Regulations will be replaced by a new framework:

• The airport operator will ensure that there will be three Ground Handling Agencies (GHA) including Air India's subsidiary/JV at all major airports as defined in AERA Act to ensure fair competition.
• At non-major airports, the airport operator to decide on the number of ground handling agencies, based on the traffic output, airside and terminal building capacity.
• In case of third party ground handling, Air India's subsidiary/JV will match the royalty/ revenue share offered by the other ground handling agency. In case there are more than 1 ground handlers, Air India will match the lowest royalty/revenue offered by the other ground handlers.
• All domestic scheduled airline operators including helicopter operators will be free to carry out self-handling at all airports through their regular employees. Self-handling includes the ground handling services of its own aircraft operations, using equipment owned or taken on lease.
• Hiring of employees through manpower supplier or contract workers will not be permitted for security reasons.

This segment has finally seen long awaited policy attention. However, more clarity is required on the structure of how airline joint ventures will operate. Further, for non-major airports, clarity on the standardized principle used by airport operators to determine the number of handlers, traffic and capacity is required.

Code Share Agreements
A Code-Share Agreement between two airlines allows one airline ('Marketing airline') to sell seats on a flight operated by another airline ('Administrating airline'), with the airline code and flight number of the marketing airlines. Liberalization of the code share regime and the removal of the need for approval of the MoCA for designated carriers is a welcome development.

In this regard, the Policy will be as follows:
• Domestic Codeshare Points in India shall be liberalized within the framework of the Air Service Agreements ("ASA").
• Indian carriers will be free to enter into domestic code-share agreements with foreign carriers to any point in India available under the respective ASA.
• For the designated carriers of India, international code share arrangements with foreign carriers will be liberalized as per the provisions relating to code-share arrangements in the ASA, and no prior approval from MoCA will be required. The designated carriers of India simply need to inform MoCA 30 days prior to starting the code share flights. However, if it is found at any point of time that the code share agreement violates the ASA, the same shall be disallowed, notwithstanding prior intimation given to MoCA.
• A review will be carried out as and when required on need basis and at least once in 5 years to consider the requirement of further liberalization in code-share agreements.

Maintenance, Repair, Overhaul (Mro)

The MRO business of Indian carriers is around Rs. 5000 crore, 90% of which is currently spent outside India. In the budget for 2016-17, customs duty has been rationalized and the procedure for clearance of goods has been simplified.
In order to tap India's huge MRO potential, the Policy stipulates as follows;
• Service tax on output services of MRO companies will be zero-rated aircraft maintenance tools and toolkits will be exempt from custom duty;
• The process for clearance of MRO parts will be simplified by allowing for self-attestation by MRO's;
• The period for which the spare parts imported by MRO's can be stored tax free has been extended to three years from one year to enable economies of scale;

• Foreign aircraft brought to India for MRO work will be allowed to stay for the entire period of maintenance for up to six months, whoever is less, provided it doesn't undertake any commercial flights during the stay period;
• State governments will be persuaded to make value added tax zero-rated on MRO services.

Aeronautical 'make in india'
As per the Policy, the MoCA will be nodal agency for developing commercial aero-related manufacturing and its eco-system in India. The MoCA and MoD will work together to ensure that commercial aero manufacturing is covered under defence offset requirements.
Further, as per the Policy, the government will encourage global OEMs to establish aircraft assembly plants in India along with its ancillary industries and areas where aero-manufacturing takes place will be notified as SEZ after following the due process. The government will provide fiscal and monetary incentives and fast-track clearances to global OEMs and their ancillary suppliers. In case the cost of made-in-India aircraft and components work out to be higher than those supplied from their original sources, the Government will consider an incentive package to nullify the cost differential.

Single-window system:
A transparent single-window system is proposed to be created for all aviation related transactions, queries and issues. The services rendered by Director General of Civil Aviation will be fully automated by implementing eGCA project on priority. Conspicuously, the policy omits any reference to the much awaited Civil Aviation Authority that would have replaced the Director General of Civil Aviation.

DEFENCE & AVIATION SECTOR

CHANGES IN FOREIGN DIRECT INVESTMENT ("FDI") POLICY IN THE DEFENCE SECTOR

FDI Policy

FDI in India is inter alia regulated by the Foreign Direct Investment Policy issued by the Department of Industrial Policy and Promotion ("DIPP"), Ministry of Commerce and Industry, Government of India ("FDI Policy"). The Press Note No. 5 (2016 series) issued by DIPP on June 24, 2016 reflects the revised FDI Policy in the defence sector.

FDI in Defence Sector as per the latest FDI Policy

As per clause 5.2.6.1 of the said Press Note No. 5 (2016 series), FDI in defence sector is permitted up to 100% equity. Investment up to 49% is under the "Automatic" entry route. Beyond 49%, FDI is permitted through the "Government Approval" route, on a case to case basis; wherever it is likely to result in access to 'Modern Technology' or for other reasons to be recorded.
Further, FDI in defence sector is subject to obtaining an Industrial License from the DIPP.
Clause 5.2.6.2 of Press Note No. 5 (2016 series) also sets out the following "other conditions" for FDI in the defence sector:

1. Infusion of fresh foreign investment within the permitted automatic route level, in a company not seeking industrial license, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Foreign Investment Promotion Board's ("FIPB") approval. [This would apply in situations where the Indian company already has an Industrial License.]
2. Industrial License applications will be considered and licenses will be given by DIPP, in consultation with Ministry of Defence and Ministry of External Affairs.
3. Foreign Investment in the defence sector is subject to security clearance and guidelines of the Ministry of Defence.
4. Investee Company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility should also have maintenance and life cycle support facility of the product being manufactured in India.

Highlights of key changes made to the FDI Policy in defence sector vide Press Note No. 5 (2016) w.e.f June 24, 2016:

1. Investment up to 49% is permitted under the "Automatic" entry route i.e. without any prior approval of FIPB. Beyond 49%, FDI is permitted through the "Government Approval" route, on a case-to-case basis; "wherever it is likely to result in access to 'Modern Technology' or for any other reasons to be recorded".

2. Prior to the above change, FDI beyond 49% was permitted under the Government Approval route on a case-to-case basis, wherever it was likely to result in access to modern and 'state-of-art' technology in the country. Now under the new policy, reference to state-of-art technology has been deleted. Thus, the applicable parameter is only "access to modern technology or for other reasons to be recorded."

CORPORATE LAWS

CORPORATE LEGAL UPDATES

Notification of Companies (Share Capital and Debentures) Third Amendment Rules, 2016

The Ministry of Corporate Affairs ("MCA") has vide its notification dated July 19, 2016 amended certain provisions of the Companies (Share Capital and Debentures) Rules 2014 ("Rules"). These Rules broadly regulate issuance of Shares and Debentures and the procedural guidelines and Compliance involved thereof. The amendments given, inter alia, comprise of the following:

1. **Equity shares with differential rights:** Previously, companies that defaulted in the payment of dividend on preference shares or repayment of any term loan from financial institutions or dues with respect to statutory payments pertaining to its employees or default in crediting amount to specified Funds could not issue equity shares with differential rights. However, in accordance with the amended Rules Companies are permitted to issue equity shares with differential rights subject to expiry of five years from year the default was made good.
2. **Issuance of Sweat Equity shares by Start-up Companies:** Start-up Companies are allowed to issue sweat equity shares not exceeding fifty per cent of its paid – up capital up to five years from the date of incorporation.
3. **Convertible shares offered on a preferential basis:** The Rules previously stated that convertible shares offered on a preferential basis with an option to apply for and get equity shares allotted; the price of the resultant shares was required to be determined beforehand on the basis of a valuation report by a registered valuer. However, the amended Rules now permits such valuation either directly when the offer of convertible securities is made or within a period of 30 days to the date when the holder of convertible security becomes entitled to apply for shares on the basis of valuation report of the registered valuer and not earlier than 60 days provided such decision shall be taken at the time of offer of convertible security itself and on making of disclosure for the same.
4. **Issuance of secured Debentures:** Prior to this notification issuance of secured debenture would amount to creation of charge limited strictly to theproperties or assets of the company. However with effect to this amendment, debentures shall also be secured by the creation of a charge on the property of its holding company or subsidiaries or associate companies.

Clarification regarding applicability of Companies Act, 2013 in case of issuance of rupee bonds to overseas investors by Indian companies.

On receiving several references from Stakeholders regarding applicability of provisions as specified in the part III of Companies Act, 2013 ("CA13") and Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 ("Debenture Rules")at the time of issuance of rupee denominated bonds by Indian Companies to persons residing outside India, the MCA has released certain clarifications vide its notification dated August 3, 2016. The clarifications given, inter alia, states the matter pertaining to

issue rupee denominated bonds is regulated by Reserve Bank of India ("RBI") as part of External Commercial Borrowing ("ECB") Policy framework in accordance with the applicable sectoral regulatory provisions and that Chapter III of CA, 13(pertaining to Prospectus and Allotment of Securities) and Rule 18 of the Debenture Rules would not apply to issue of Rupee Bonds, made exclusively to person outside India.

Notification of Companies (Acceptance on Deposit) Amendment Rules, 2016

MCA vide a notification dated June 29, 2016 amended the provisions of the Companies (Acceptance of Deposits) Rules, 2014 ("Deposit Rules"). The amendment has expanded the specified limits for acceptance of deposits from members under Rule 3, sub-Rule 3. Now, limits for accepting and renewing any deposit from members of a public company has been increased from 25% of the aggregate paid – up share capital and free reserves of the company to 35%.A separate limit has been prescribed for acceptance of deposits from its members by a Private Company. Private companies may now accept from its members, deposits not exceeding 100% of the aggregate of the paid up share capital, free reserves and securities premium account.
The amended Rule 4 now requires advertisements inviting deposits by Companies should be in form DPT-1. Such Advertisement shall be displayed in the English language in an English newspaper and in vernacular language in a vernacular newspaper in the jurisdiction in which the registered office of the company is situated. It is now mandatory that such advertisement shall be shall be displayed on website of the company.
Further the amended Rule 16A now requires disclosures in its financial statements, by way of notes, about the money received from the director in case of Companies other than Private companies. In case of private companies disclosure in financial statements, by way of notes, shall be applicable with respect to money received from the directors, or relatives of directors.
The notification amends Rule 2 (1)(c) and states that compulsorily convertible bonds or debentures, convertible within a period of ten years to be included in the category of 'exempt Deposits'.
Further, an amount of Rs. 2.5 Million or more received by a start-up company by way of convertible note (convertible into equity shares or repayable within a period not exceeding 5 years from date of issue) in a single tranche is exempted from the definition of deposit which shall be beneficial for start – ups in raising funds.

Framing of Companies (Mediation and Conciliation) Rules, 2016

In exercise of the powers conferred under section 442 read with section 449 of the CA, 13 the Central Government vide Notification dated September 09, 2016 has framed Companies (Mediation and Conciliation) Rules, 2016("Rules") with the objective of regulating the panel of mediators and conciliators. The objective of the Rules is to ensure amicable settlement. Such rule prescribes about the appointment, qualification, disqualification of the mediator.
The Panel of Mediator and Conciliator shall comprise of a qualified persons such as legal practitioners, legal experts, Chartered Accountants, Company Secretaries and is an expert in mediation or conciliation. The Rules broadly establishes the procedure for referring a matter for mediation or conciliation. The mediators or Conciliators may be appointed by both Parties amongst themselves. In case of disagreement they may appoint the Central Government or the Tribunal or the Appellate Tribunal may direct each party to nominate the mediator or conciliator or the concerned Authorities may suo moto appoint the mediator or conciliator. The Rules ensure that the mediators and conciliators shall at all times be unprejudiced towards the Parties and if there is any reasonable doubt cast upon his independence of impartiality may withdraw his appointment.
The Rule also prescribes the duty of panel and the procedure for disposal of matters. Form MDC – 2 shall be filed for referring the matter to the panel pertaining the proceeding. However, following are the matters that cannot be referred to mediation or conciliation, namely matter's relating to defaults or offences for which request for compounding have been made, Cases involving serious and specific allegations including but not limited to fraud, fabrication of documents, forgery, impersonation,

coercion etc., Cases involving prosecution for criminal and non-compoundable offences and Cases which involve public interest or interest of a group of individuals who are not parties before the Central Government or the Tribunal or the AppellateTribunal.
The Rules ensure that the Parties act in good faith and have a bonafide intention to settle the dispute. These Rules establish the ethics protocol that should be followed by the members of the Panel that include upholding the principles of fairness and natural justice and having regard to the rights and obligations of the parties. The Rules are a welcome step to ensuring an alternative and time efficient dispute resolution mechanism.

Notification on Companies (Incorporation) Third Amendment Rules, 2016

MCA vide its notification dated July 27, 2016 has amended rule 16 of Companies (Incorporation) Rule, 2014. Prior to this amendment, every subscriber was to provide a proof of identity to the Registrar of Companies ("ROC") at the time of incorporation. Such proof of identity included, inter – alia, PAN Card, Voter's Identity Card, Passport, Driving License, and Unique Identification Number ("UIN"). However, amended rules now exempt subscribers to provide any proof of identity in case he holds a valid Director Identification Number ("DIN").
In accordance with the Rules a person is not permitted from being a member of more than a one person Company ("OPC") and the said person shall not be nominee of more than a OPC.
Further, every Company having a website for conducting online services or otherwise shall disclose /publish its name, address of its registered office, the Corporate Identification Number ("CIN"), telephone number, fax number if any, e – mail and the name of the person to be contacted in case of any queries or grievances on the landing/home page of the website.
Previously Companies against whom any inquiry, inspection or investigation had been initiated or any prosecution pending were refrained from shifting their registered office. The amended Rules now permit such shifting on due completion of such inquiry, inspection or investigation as a consequence of which no prosecution is anticipated or no prosecution is pending.
Additionally, the No Objection Certification ("NOC") from the Reserve Bank of India ("RBI") has to be mandatorily obtained by a Non – Banking Financial Company ("NBFC") and has to be filed to the Central Government along for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from on State Government or Union Territory to another.
MCA vide its notification has inserted an additional rule regulating conversion of unlimited liability company into limited liability company by shares or guarantee. Following are the procedure to be complied for effecting such conversion:

- Passing of special resolution in a general meeting and thereafter, an application shall be filed in Form No. INC – 27.
- Notice of such proposed conversion shall be published in two newspapers (one in English and one in vernacular language) and on the website of the company within seven days from the date of passing of the special resolution, and seeking objections if any, from the persons interested in its affairs and a cause of copy to be dispatched to its creditors and debenture holders duly stating that the objections, if any, may be intimated to the ROC and the company indicating nature of interest and grounds of opposition within twenty – seven days of the date of publication of the notice.
- An application along with the related documents shall be filed with ROC for such proposed conversion within forty – five days of passing such special resolution.
- Declaration indicating that no complaints are pending against the company or its Directors or officers.
- Certificate of incorporation consequent to conversion shall be issued by ROC in Form INC – 11A.

The amended Rules now stipulates conditions to be complied by the Company after conversion being that it shall not change its name for a period of one year post such conversion and that the company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations incurred or contracts entered before such conversion.
Correspondingly as per the new Rules an Unlimited Liability Company shall not be permitted to convert in the following cases:

- its net worth is negative,
- an application is pending against the Company for striking off its name, or
- the company is in default of any of its Annual Returns or financial statements
- a petition for winding up is pending against the company or
- the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or
- An inquiry, inspection or investigation is pending against the company.

SECURITIES LAWS

FEMA, SEBI AND OTHER LAWS RELATED TO SECURITIES

Foreign Exchange Laws

Foreign investment in units of Real Estate Investment Trusts ("REITs") registered with Securities Exchange Board of India ("SEBI") won't be treated as investment in real estate sector

Reserve Bank of India ("RBI"), in consultation with Government of India ("GoI") has decided to allow foreign investment in the units of Investment Vehicles registered and regulated by the SEBI or any other competent authority. At present, such Investment Vehicles include the following:

a. Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014;
b. Infrastructure Investment Trusts (InvITs) registered and regulated under the SEBI (InvITs) Regulations, 2014;
c. Alternative Investment Funds (AIFs) registered and regulated under the SEBI (AIFs) Regulations, 2012.

The salient features of the new investment regime are:

i. A person resident outside India including a Registered Foreign Portfolio Investor (RFPI) and a Non-Resident Indian (NRI) may invest in units of Investment Vehicles.
ii. The payment for the units of an Investment Vehicle acquired by a person resident or registered / incorporated outside India shall be made by an inward remittance through the normal banking channel.
iii. A person resident outside India who has acquired or purchased units in accordance with the regulations may sell or transfer in any manner or redeem the units as per regulations framed by SEBI or directions issued by RBI.
iv. Downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled' as defined in Regulation 14 of the principal regulations.
v. In case the sponsors or managers or investment managers are organized in a form other than companies or Limited Liability Partnership (LLPs), SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

vi. The extent of foreign investment in the corpus of the Investment Vehicle will not be a factor to determine as to whether downstream investment of the Investment Vehicle concerned is foreign investment or not.
vii. Downstream investment by an Investment Vehicle that is reckoned as foreign investment shall have to conform to the sectoral caps and conditions / restrictions, if any, as applicable to the company in which the downstream investment is made as per the Foreign Direct Investment (FDI) Policy or Schedule 1 of the Principal Regulations.
viii. Downstream investment in an LLP by an Investment Vehicle that is reckoned as foreign investment has to conform to the provisions of Schedule 9 of the principal regulations as well as the extant FDI policy for foreign investment in LLPs.
ix. An Alternative Investment Fund Category III with foreign investment shall make portfolio investment in only those securities or instruments in which a RFPI is allowed to invest.

The Investment Vehicle receiving foreign investment shall be required to make such report and in such format to RBI or to SEBI as may be prescribed by them from time to time.

RBI notifies new norms for receipt and payment in terms of Forex

RBI has notified the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 which deals with the manner of receipt and payment to a person resident outside India and transactions in Indian rupees with residents of Nepal and Bhutan. These regulations supersede Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000.

Manner of payment in case of imports of goods has been revised to include payment in rupees from International credit card/ debit card through the credit/ debit card servicing bank in India against the charge slip signed by the importer, as prescribed by RBI from time to time.

Regulation 6(2) has also been inserted which provides guidelines for payment by person resident in India as under:

- In rupees towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India who is on a visit to India.
- By means of a crossed cheque or a draft.
- A company or resident of India may make payment in rupees to its non-whole time director who is resident outside India and is on a visit to India for the company's work, in accordance with the provisions contained in the company's memorandum of association or articles of association or in any agreement or in any resolution passed by the company in general meeting or by its board of directors.

Government permits 100% foreign investment under automatic route in Asset Reconstruction Companies ("ARCs").

In order to effectively deal with the escalating bad debts in the Indian banking system, the Government has permitted 100% FDI in Asset Reconstruction Companies under the automatic route. Further, Foreign Institutional Investor (FII's)/Foreign Portfolio Investor (FPI's) have now been allowed to invest in the Security Receipts (SRs) issued by ARCs registered with RBI.

Earlier, FDI up to 49% in ARCs was allowed through automatic route and investors are required to take prior government's approval to increase their stake beyond 49%.

RBI permits foreign venture capital investors to invest in start-ups

RBI has amended the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 ('Regulations'). Amendment has been made to Regulation 2 whereby new definitions have been inserted as under:

Category I Alternative Investment Fund (Cat-I AIF) means an Alternative Investment Fund registered under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

for raising money and invests in such funds or sectors or activities or areas in accordance with the said Regulations.

Further amendment has been made to Regulation 5(5) whereby Foreign Venture Capital Investor registered with SEBI may make investment has been permitted to make investment in the manner and subject to the terms and conditions specified in Schedule 6 of the Regulations.

Above amendments will allow foreign venture capital investors to invest in the start-ups.

RBI proposes public disclosure of compounding orders and guidelines on amount imposed during compounding under FEMA

In order to ensure more transparency and greater disclosure, RBI has decided to disseminate the information pertaining to compounding orders and to host the compounding orders passed on or after June 1, 2016 on the RBI website and shall be updated at monthly intervals. Further, the amount imposed is calculated based on guidance note. It may, however, be noted that the guidance note is meant only for the purpose of broadly indicating the basis on which the amount to be imposed is derived by the compounding authorities in RBI. The actual amount imposed may sometimes vary, depending on the circumstances of the case taking into account the factors prescribed.

Permitting writing of options against contracted exposures by Indian Residents

The RBI prescribes permitted products and operational guidelines for Over the Counter ("OTC") foreign exchange derivative contracts that can be transacted by various categories of persons' resident in India, for hedging different categories of foreign exchange exposures. Such derivatives include foreign exchange forward contracts, foreign currency- INR options, cross currency options and cross currency swaps.

With a view to encourage participation in the OTC currency options market and improve its liquidity, RBI has permitted resident exporters and importers of goods and services to write (sell) standalone plain vanilla European call or put option contracts against their contracted exposure, i.e. covered call or covered put respectively, to any Authorised Dealer Category-I bank in India subject to the prescribed optional guidelines, terms and conditions.

External Commercial Borrowings (ECB) – Approval Route cases

ECB cases coming under the approval route were required to be considered by an Empowered Committee set up by the Reserve Bank based on the parameters stated. It has been decided that ECB proposals received by RBI above a certain threshold limit (re-fixed from time to time) will be placed before the Empowered Committee. The RBI will take a final decision in the cases taking into account the recommendation of the Empowered Committee.

Overseas Direct Investment (ODI) – Rationalization and reporting of ODI Forms

The liberalisation in the policy on overseas investments has enabled many Indian corporate and Resident Individuals to establish presence in overseas markets, redefining the global outreach of Indian entities.

In order to facilitate reporting of Overseas Direct Investment (ODI) forms and rationalize the same, the RBI has issued circulars on rationalization and the operationalization of the online reporting system of ODI Forms.

A new reporting format has also been introduced for Venture Capital Fund / Alternate Investment Fund, Portfolio Investment and overseas investment by Mutual Funds

Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015

RBI has decided that an Indian startup, having an overseas subsidiary, may open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of export/sales made by the said startup or its overseas subsidiary.

Also, payments received in foreign exchange by an Indian startup arising out of sales/export made by the startup or its overseas subsidiaries will be a permissible credit to the Exchange Earners Foreign Currency (EEFC) account maintained in India by the start-up.

FDI in stock exchanges increased from 5% to 15%

To attract more investments in India, GoI has approved of the proposal to increase foreign shareholding in domestic stock exchanges from 5% to 15%. This option will be available to the stock exchanges, depositories, banking and insurance companies and commodity derivative exchanges.

Further, it has approved a proposal to allow foreign portfolio investors to acquire shares through initial allotment, beside secondary market, in the stock exchange.

Remittance of assets regulations revised

The RBI has replaced the Foreign Exchange Management (Remittance of Assets) Regulations, 2000 with Foreign Exchange Management (Remittance of Assets) Regulations, 2016.

The salient features of the revised regulations are given as under:

a. Remittance of capital assets in India held by a person whether resident in or outside India would require the approval of RBI except to the extent provided in the Act or Rules or Regulations made under the Act.
b. Authorised Dealer (AD) may allow remittance of assets, up to USD 1 million per financial year, by a foreign national (not being a PIO or a citizen of Nepal or Bhutan), on submission of documentary evidence, in case:
    i. the person has retired from employment in India;
    ii. the person has inherited the assets from a person referred to in section 6(5) of the Act;
    iii. the person is a non-resident widow/ widower and has inherited assets from the person's deceased spouse who was an Indian citizen resident in India. In case the remittance is made in more than one installment, the remittance of all installments should be made through the same AD.
c. ADs may allow remittance of balance amount, held by a foreign student in a bank account in India, after completion of his/her studies/training in India.
d. ADs may allow Non Resident Indians (NRIs) and Person of Indian Origin (PIOs), on submission of documentary evidence, to remit up to USD 1 million, per financial year:
    i. out of balances held in their Non-Resident (Ordinary) Accounts (NRO accounts)/ sale proceeds of assets/ assets acquired in India by way of inheritance/ legacy;
    ii. out of assets acquired under a deed of settlement made by either of his parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler.
    In case the remittance is made in more than one installment, the remittance of all installments should be made through the same AD.
e. ADs may allow remittances by Indian companies under liquidation on directions issued by a Court in India.
f. ADs may also allow Indian entities to remit their contribution towards the provident fund/ superannuation/ pension fund in respect of their expatriate staff resident in India but "not permanently resident" in India.
g. ADs may permit remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office) as per Reserve Bank's directions from time to time.
h. Any remittance of assets on hardship ground and remittances by NRIs and PIOs in excess of USD 1 million/financial year would require the prior approval of RBI.
i. Any transaction involving remittance of assets under these regulations are subject to the applicable tax laws in India.

Deposit regulations modified

RBI has notified the Foreign Exchange Management (Deposit) Regulations 2016 (New Deposit Regulations) in suppression of the erstwhile Foreign Exchange Management (Deposit) Regulations 2000 (Old Deposit Regulations).

The New Deposit Regulations rationalize and consolidate the extant regulatory framework in relation to the acceptance of deposits and the various accounts that may be opened by non-residents in India.

The key changes introduced by the New Deposit Regulations and their likely impact are as follows:

E**scrow Arrangements:** In 2007, the RBI permitted non-resident acquirers to open escrow accounts and special accounts for the acquisition of shares and convertible debentures through open offers,

delisting/exit offers and buybacks in accordance with regulations issued by the Securities and Exchange Board of India ("SEBI"). Subsequently, the RBI allowed resident and non-resident acquirers to open non-interest bearing escrow accounts for the facilitation of closings for transactions under the FDI route, where consideration towards the issuance or transfer of shares of an Indian company could be held in escrow for a period of up to six months. Any escrow arrangements exceeding the above period required the prior approval of the RBI.

The New Deposit Regulations now permit escrow arrangements of up to 25% of the total sale consideration in respect of share transfers involving non-residents, for a period of up to 18 months from the date of the transfer agreement. This relaxation follows a press release issued by the RBI, which discusses the relaxations announced for start-ups in India, including a proposal to permit escrow arrangements for an extended period and deferred consideration in FDI transactions.

Definition of NRI and PIO: The Old Deposit Regulations defined a NRI as a person resident outside India who is a citizen of India or a PIO. In January 2015, the Government of India merged the definition of PIOs with Overseas Citizens of India. The RBI subsequently amended the definition of NRI under the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) 2000 to exclude PIOs and include an 'Overseas Citizen of India' cardholder within its ambit.

The New Deposit Regulations attempts to align the definition of NRI. NRI has been defined to include a person resident outside India and who is a citizen of India and PIOs have been separately defined to include 'Overseas Citizen of India' cardholders. The re jigging of these definitions should not negatively impact PIOs, as all the benefits available to NRIs have been extended to PIOs.

Permissible Deposits: Minimal changes have been introduced to the key existing bank account schemes under which authorized dealer banks in India (AD Banks) and companies were permitted to accept deposits from NRIs and non-residents (such as the Foreign Currency Non-Resident (Bank) Account Scheme, Non-Resident (External) Rupee Account Scheme, and the Non-Resident Ordinary Rupee Account Scheme). However, the Non-Resident (Non-Repatriable) Rupee Deposit Scheme and Non-Resident (Special) Rupee Account Scheme have now been discontinued.

Further, unlike the Old Deposit Regulations, the New Deposit Regulations do not permit foreign portfolio investors (FPIs) and NRIs to open single non-interest bearing Indian Rupee accounts for routing certain investments into India (such as eligible portfolio investments by FPIs and on-market purchases of shares by NRIs).

A new bank account scheme for non-residents having a business interest in India has been permitted, namely the non-interest bearing Special Non-Resident Rupee Account (SNRR account). SNRR accounts may be used for effecting bona fide transactions in Indian Rupees. The debits and credits to the SNRR account must be specific or incidental to the business proposed to be undertaken by the non-resident account holder in India. Further, the tenure of the SNRR account must be concurrent with the tenure of the contract or period of business operation of the non-resident account holder, and in any event, must not exceed seven years. The balances are required to be commensurate with the business operations and are permitted to be repatriated outside India.

AD Banks have also been permitted to allow unincorporated joint ventures of non-residents to open and maintain non-interest bearing foreign currency accounts and SNRR accounts for purposes of undertaking transactions in the ordinary course of business. The debits and credits to such accounts should be incidental to the business requirement of the unincorporated joint venture and the tenure of such accounts must be concurrent to the tenure of the contract or period of operations in India.

Issuance of Rupee denominated bonds ("RDB") overseas

The RBI has modified certain provisions related to the issue of RDBs overseas.

The current limit of USD 51 billion for foreign investment in corporate debt has been fixed in Rupee terms at INR 2443.23 billion. Issuance of RDBs will be within this aggregate limit of foreign investment in corporate debt.

The maximum amount which now can be borrowed by an entity in a financial year under the automatic route by issuance of these bonds is INR 50 billion. Proposals beyond this amount in one financial year would require prior approval of the RBI.

The criteria for investors and location of these bonds has also been changed in order to have consistency as regards the eligibility of foreign investors in corporate debt, and the minimum for RDBs has been reduced to three years now.

Also, any borrowers issuing RDBs overseas should be incorporating a clause in the agreement or the offer document so as to enable them to obtain the list of primary bond holders and provide the same to the regulatory authorities in India as and when required.

Overseas Direct Investment - Submission of Annual Performance Report ("APR")

The RBI has moved to combat a trend of Indians investing directly in overseas ventures failing to submit the APR for such investments. To the consternation of the RBI, Indian investors were either delaying submitting the APR or foregoing it altogether; Authorized Dealer banks facilitated their remittances and financial commitments despite absence of the APR.

Accordingly, RBI has modified the online OID form to enable the nodal office of the AD bank viewing the outstanding position of APR; the same will have to ensure full compliance with APRs before it can undertake any transaction for its customer. APRs to be submitted by Indians are not strictly required to be certified by the Statutory Auditor or Chartered Accountant, instead self-certification is acceptable.

RBI also revised Form ODI, with Form ODI II being subsumed within ODI Part I. Other changes include a new reporting format for Funds and other overseas investments.

Acceptance of deposits by Indian companies from a person resident outside India for nomination as Director

The RBI recently cleared the ambiguous position on deposits made by a person or on behalf of any other person residing outside India for nomination as a director in an Indian company. The clarification was given in regard to Regulation 3 of the Foreign Exchange Management (Deposit) Regulations, 2016 which states that no person resident in India shall accept a deposit from, or make any deposit with, a person resident outside India without the prior permission of RBI.RBI has cleared the ambiguity by stating that, the deposits made by any person to nominate himself or any other person for the position of Director with the company, does not need any specific approval from RBI. This is in accordance with the Companies Act, 2013 wherein, any such deposit made would be considered a current account (payment) transaction and as such, does not require any approval from the Reserve Bank. Also, the refunds of such deposits arising in event of selection of person as director or getting more than twenty-five percent shares shall be treated similarly.

Case Laws

Foreign currency received without RBI's approval was liable to be confiscated:

Apex Court

Jatin C. Jhaveri v. Union of India

Where appellant had initially disowned foreign currency seized from 'A' but later on claimed the same on the ground that it had been received by him from USA, appellant having failed to produce permission of RBI for acquisition of foreign currency had contravened provisions of foreign exchange laws and currency in question was liable to be confiscated.

Securities Laws

Delisting proposal must be approved by at least 90% of public shareholders for small cos., SEBI clarifies

SEBI has released Frequently Asked Questions (FAQs) on SEBI (Delisting of Equity Shares) Regulations 2009 whereby it has been clarified that the promoters of a small company would be considered to have complied with the conditions under Regulation 27(3) (d) of the SEBI (Delisting of Equity Shares) Regulations, 2009, if the public shareholders irrespective of their numbers, holding 90% or more of the shareholding give their positive consent in writing to the proposal of delisting.

Regulation 27(3) (d) of delisting norms provides that, delisting of equity shares may be made if at least 90% of such public shareholders give their positive consent in writing to the proposal of delisting, and consent to either sell their equity shares at the price offered by the promoter or to remain holders of the equity shares even if they are delisted.

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SEBI bans wilful defaulter from raising funds from the market
SEBI has made the necessary amendment in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 whereby wilful defaulters have been barred from raising public funds through stocks and bonds.

Also the amended norm debars wilful defaulters from taking board position at listed companies. In other words, a company who is in default to banks and financial institutions have no chance of survival by raising further capital.

Under the existing framework, a wilful defaulter is allowed to come out with an initial public offering (IPO) of equity merely by making adequate disclosures in the offer document. Offer documents, normally contain all information, including promoters' financial record and pending litigation.

Now listed Cos. have to disclose impact of audit qualification in a separate format, SEBI clarifies
SEBI has required listed entities to disclose the cumulative impact of all audit qualifications on relevant financial items in a separate from called 'Statement on Impact of Audit Qualifications' instead of the present form. Such disclosures will have to be made along with annual audited financial results filed in compliance with the listing regulations.

The new mechanism will be applicable for all the annual audited standalone/consolidated financial results submitted by the listed entities for the period ended March 31, 2016 and thereafter.

Revised Formats for Financial Results and implementation of Indian accounting standards by listed entities which have listed their debt securities and/or non-cumulative redeemable preference shares

SEBI has issued a revised format for publishing financial accounts in compliance with Indian Accounting Standards. Following relaxations are being given for adoption of said accounting standards:

i. The timeline for submitting the said financial results would be extended by one month.
ii. With regard to the comparative financial results for the corresponding half year in the preceding year, the limited review or audit of such comparative half yearly results is not mandatory.
iii. With regard to the comparative financial results for the preceding full year, the submission of such comparative full year results is not mandatory. However, if the listed entity opts to submit such comparative full year results, then limited review or audit of such comparative full year results is not mandatory.

Restrictions on promoters and whole-time directors of compulsorily delisted companies pending fulfilment of exit offers to the shareholders
Under the existing delisting norms, a recognized stock exchange has power to delist the equity shares of listed company on certain grounds. The whole time directors and promoters of Company (which has been compulsory delisted) are debarred from accessing the securities markets for a period of 10 years from the date of compulsory delisting.

The existing delisting Regulations provides that pursuant to compulsory delisting of a company, the promoter shall acquire delisted equity shares from the public shareholders, subject to their option of retaining their equity shares, by paying them the fair value.

SEBI has imposed new restrictions on promoters and whole time directors of company to ensure effective enforcement of exit option to the public shareholders in case of compulsory delisting of company. Accordingly, SEBI hereby directs that in case of such companies whose fair value is positive: -

i. Such a company and the depositories shall not effect transfer of any of the equity shares and corporate benefits (like dividend, rights, bonus shares, etc.) shall be frozen, for all the equity shares, held by the promoters/promoter group till the promoters of such company provide an exit option to the public shareholders in compliance with delisting Regulations;
ii. The promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option is provided.

Case Laws

In case of fully convertible zero coupon debentures, open offer is triggered on date of conversion under Takeover code

Victor Fernandes v. SEBI [2016] (SAT- Mumbai)

Securities Appellate Tribunal has clarified that when a person subscribes to Zero Coupon Optionally and Fully Convertible Debentures (ZOCDs) under a ZOCD agreement without a fixed date for conversion of ZOCDs into equity shares, then that person is said to have acquired shares of that company only on date on which option for conversion of ZOCDs into equity shares is exercised and open offer obligation, under Takeover Regulations if any, gets triggered on date on which such option is exercised.

BANKING AND FINANCE

A. Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016

The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (hereinafter referred to as the "Act") was notified on August 12, 2016 to bolster debt recovery laws in the country by making amendments to the following four laws:

i. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI");
ii. Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("DRT Act");
iii. Indian Stamp Act, 1899; and
iv. Depositories Act, 1996.

1. Amendments to SARFAESI:

a) The restrictions on the shareholding of sponsor in the Asset Reconstruction Company ("ARC") and that on nomination of directors by the sponson
b) on the board of the ARC have been removed.
c) The documents executed by the banks or financial institutions for transfer of financial assets to

ARCs for the purposes of asset reconstruction or securitisation will be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899.
d) The Reserve Bank has been empowered to carry out audits and inspections of ARC and impose penalties on companies that fail to comply with any directions issued by it, in this regard.
e) The secured creditors have been allowed to take over the secured assets, against which a loan had been provided upon a default in repayment, within 30 days of making the application for enforcement of security.
f) In case any secured creditor(s) or any assignee has acquired controlling stake in the borrower company by virtue of conversion of the debt into the shares of the borrower company, then such secured creditors shall not be liable to restore the management of the business to the borrower.
g) The Act provides for introduction of a central database by integrating the registration records under various registration systems of the Central and State Governments with the records of the existing Central Registry, as established under SARFAESI. This includes integration of registrations made under the Companies Act, 2013, Registration Act, 1908 and Motor Vehicles Act, 1988.
h) The Act further provides that the secured creditors shall be entitled to enforce the securities only if the security interest created by the borrower in favor of the secured creditor has been registered with the Central registry.
i) The Act has ensured priority to debts due to secured creditors over all others debts, revenues, taxes, cesses and rates payable to Central Government, State Government or any other local authority.

2. Amendments to DRT Act:

a) In addition to the existing limits of jurisdiction, the Act has now permitted banks and financial institutions to make applications to tribunals having jurisdiction over the area of bank branch where such debt is pending.
b) The Tribunal has been empowered to restrain the defendant from dealing with or disposing of assets and properties, pending the hearing and disposal of the application for attachment of such properties.
c) Filing of recovery applications, documents and written statements for the purposes of the DRT Act will now be undertaken in electronic form.
d) The time period for filing an appeal against the order of the Tribunal has been reduced from 45 days to 30 days. Further, the amount to be deposited by the borrower with the Appellate Tribunal, while preferring an appeal has been reduced from 75% to 50% of the amount of debt. And the Tribunal has been given the power to reduce the amount of such deposit to 25%.
e) The Act provides detailed procedures to be followed by the Tribunals and the parties in the debt recovery proceedings. These include submission of true copies of all documents relied upon by the applicant specifying the particulars of debt and the assets owned by the borrower, submission of applications, written statements and counter claims by the defendant supported by an affidavit sworn in by the applicant or the defendant etc.

3. Amendments to Indian Stamp Act, 1899:
For the purposes of payment of stamp duty, the Act provides that any agreement or document for transfer or assignment of rights or interest in financial assets of banks and financial institutions, in favor of any ARC, shall not be liable for payment of stamp duty.

4. Amendments to the Depositories Act, 1996:
The Depositories have been allowed to register:
a) transfer of securities in favour of an ARC arising out of transfer of any financial asset of any bank or financial institution;
b) issue of shares in favour of any bank, financial institution of ARC, arising out of conversion of a part of any debt into shares pursuant to reconstruction.
B. Policy on foreign investment in ARC's – amendment of paragraph 6.2.18.1 of

April 2016-September 2016

'Consolidated FDI Policy of 2015'

The Department of Industrial Policy and Promotion has, vide Press Note no. 4 (2016 Series), increased the cap on permissible foreign investment in ARC's

under the automatic route to 100% subject to certain conditions.

C. List of month wise notifications, circulars, orders issued by the reserve bank of India from April, 2016- Sep, 2016
April 2016

Date	**Notification/ Circular/ Order No.**	**Gist**
April 01, 2016	Notification No. FEMA 13 (R)/2016-RB read with Notification No. RBI/2015-16/384	In supersession of the erstwhile regulations dealing with the remittance of assets outside India by both, persons residing in India and persons residing outside India, the Reserve Bank has notified the Foreign Exchange Management (Remittance of Assets) Regulations, 2016 to deal with the aforesaid subject.
April 01, 2016	Notification No. FEMA 5(R)/2016-RB	In supersession of the erstwhile regulations relating to deposits between a person resident in India and a person resident outside India, the Reserve Bank has notified the Foreign Exchange Management (Deposit) Regulations, 2016 to deal with the aforesaid subject.
April 13, 2016	RBI//2015-16/374 A.P (DIR Series) Circular No. 62	The Reserve Bank has made the following amendments in the reporting procedure of Overseas Direct Investment ("**ODI**"): • The existing ODI form comprising of six sections has now been rationalized and revised to comprise of five sections. • A new reporting format for venture capital fund /alternate investment fund ,portfolio investment and overseas investment by mutual funds has been prescribed • A new requirement of reporting post investment

		changes after the allotment of UIN has been prescribed. • The existing online OID application has been modified to reduce dependence and gradually replace the traditional paper based filing system. Concepts such as AD maker, AD checker and AD authorizer have also been introduced to initiate and verify the transaction before submission to the Reserve Bank.
April 13, 2016	RBI/2015-16/371 A.P. (DIR Series) Circular No. 59	In accordance with Section 160 of the CA, 2013, the Reserve Bank has clarified that acceptance of deposits by an Indian company by a person resident outside India, for nomination as director is a current account transaction and does not require any approval from the Reserve Bank.
April 13, 2016	RBI/2015-16/373 A.P. (DIR Series) Circular No. 61	The Reserve Bank, vide this circular, has modified the online OID application to enable authorized dealer banks to track the submission of Annual Performance Report ("**APR**") by Indian party or Resident Individual ("**RI**"). Further, the APR's can be self-certified by the RI's and need not be certified by the statutory auditor or the chartered accountant.
April 21, 2016	RBI/2015-16/377 A.P. (DIR Series) Circular No. 63	The Reserve Bank has allowed foreign investment in the units of investment vehicles registered and regulated by SEBI or any other competent authority, including: • Real Estate Investment Trusts ("**REIT's**") • Infrastructure Investment Trusts;

		• Alternative Investment Funds It is further clarified that foreign investment in units of REIT's registered and regulated under the SEBI (REIT's) Regulations, 2014 will not be included in "real estate business" for the purpose of these regulations.
April 21, 2016	RBI/2015-16/381 DNBR(PD).CC.No.079/03.10.001/2015-16	The Reserve Bank has permitted infrastructure debt funds sponsored by NBFC's to raise funds through shorter tenor bonds and commercial papers from the domestic market to the extent of 10 % of their total outstanding borrowings.
April 21, 2016	RBI/2015-16/379 D.B.R. No. FSD.BC.94/24.01.026/2015-16	The Reserve Bank has prohibited banks from undertaking any Investment Advisory Services ("**IAS**"), departmentally. However if the banks are desirous of undertaking IAS, the Reserve Bank allows them to do so by setting up a separate subsidiary for this purpose or through any of its existing subsidiaries after ensuring that there is an arm's length relationship between the bank and the subsidiary. It has further been specified that the subsidiaries set up for providing IAS, have to be mandatorily registered SEBI.
April 28, 2016	Notification No. FEMA.363/2016-RB	The Reserve Bank has made certain amendments in the FEM (Transfer of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time. • The terms "Category I Alternative Investment Fund" and "Startup" has been defined. • A registered foreign venture capital investor has been allowed to invest in startups, irrespective of

		the sector in which it is engaged and the units of a Venture Capital Fund or of a Category I Alternative Investment Fund ("**Cat-I AIF**") or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF.

May 2016

Date	Notification/Circular/ Order No.	Gist
May 02, 2016	Notification No. FEMA 14(R)/2016-RB	In supersession of the erstwhile regulations dealing with the manner and receipt of payment and notifications dealing with receipt from and payment to a person resident outside India and with transactions in Indian rupees with residents of Nepal and Bhutan, the Reserve Bank has notified the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 to deal with the aforesaid subjects.
May 12, 2016	RBI/2015-16/397 A.P. (DIR Series) Circular No.69 [(1)/22(R)]	The Reserve Bank has, by means of this Circular, issued procedural guidelines to the Authorized Dealers Category- I Banks for registration of branch offices("**BO**"), liaison offices ("**LO**") and project offices ("**PO**") in India, eligibility criteria for registration, their validity and extension of approval thereof, registration of additional BO/PO/LOs, extension of fund and non-fund based facilities, remittance of profits/surplus by BO/POs and closure of the said BO/PO/LOs.
May 19, 2016	RBI/2015-16/404 DBR.No.Ret.BC.100/12.07.124A/2015-16	The Reserve Bank on May 19, 2016 declared that UBS-AG has ceased to be banking company within the meaning of sub-section (2) of Section 36(A) of the Banking Regulation Act, 1949.
May 20, 2016	Notification No.FEMA.368/2016-RB	A new regulation 10A has been inserted in the existing FEM (TISPRO) Regulations, 2004 (as amended from time to time), to limit the payment of

		consideration for transfer of shares, to be paid by a resident buyer to a non resident seller, on a deferred basis to 25% of the total consideration, within a period not exceeding 18 months from the date of transfer agreement.

June 2016

Date	Notification/Circular/ Order No.	Gist
June 01, 2016	Notification No. FEMA 10 (R)/(1)/2016-RB read with RBI/2015-16/430 A.P. (DIR Series) Circular No. 77 [(2)/10(R)]	By means of the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2016, the Reserve Bank has allowed the following: 1. Insurance Companies registered with IRDA have been allowed to open, hold and maintain a Foreign Currency Account with a bank outside India for business purposes; 1. Indian startups having an overseas subsidiary have been allowed to open a foreign currency account with a bank outside India in order to credit the foreign exchange earnings arising out of the sales made the said subsidiary, subject to the condition of repatriation of the said proceeds within the prescribed time period; 1. Indian startups have further been allowed to credit its foreign exchange earnings arising out of the sales/exports made by the startup or its overseas subsidiary, to the EEFC Account with an authorized

April 2016-September 2016

		dealer in India.
June 02, 2016	RBI/2015-16/417 DNBR.CC.PD.No.082/03.10.001/2015-16	The Reserve Bank has placed the NBFCs at the same footing as banks for refinancing of project loans and the NBFCs have consequently been allowed to refinance any existing infrastructure and other project loans by way of take-out financing even without a pre-determined agreement with other lenders, and fix a longer repayment period, subject to certain conditions.
June 30, 2016	A.P. (DIR Series) Circular No. 80	An Empowered Committee set up by the Reserve Bank was earlier authorized to approve the ECB proposals coming under the approval route. The Circular has prescribed a separate approval framework for the ECB Proposals under the approval route beyond a specified threshold limit. The Circular provides that the approval route ECB Proposals above a prescribed threshold limit will be placed before the aforesaid Empowered Committee at first instance. The recommendations of the said Empowered Committee will then be forwarded to the Reserve Bank, which will then take the final decision in such cases.

July 2016

Date	**Notification/Circular/ Order No.**	**Gist**
July 07, 2016	RBI/2016-17/8 A.P. (DIR Series) Circular No. 1	The submission of report containing details about invocation of bank guarantee for service imports by the authorized banks has been discontinued and the banks have been advised to maintain records of such invocations and furnish the same to the Reserve Bank whenever sought by the Reserve Bank.

April 2016-September 2016

August 2016

Date	Notification/Circular/Order No.	Gist
August 04, 2016	RBI/2016-17/33 DBR.No.Leg.BC.3/09.07.005/2016-17	RBI has modified the prescribed procedure to be followed by the scheduled banks in the event of dishonour of cheques of value of Rs. 1 crore and above and authorized the banks to determine their response to dishonour of cheques of the account holders and take the necessary actions.

September 2016

Date	Notification/Circular/ Order No.	Gist
September 1, 2016	RBI/2016-17/56 DBR.No.BP.BC.9/21.04.048/2016-17	The Reserve Bank has improvised the existing framework of sale of distressed assets and prescribed detailed guidelines governing sale of such assets by banks to securitization companies reconstruction companies/other banks/NBFC's /financial institutions etc.
September 08, 2016		The Reserve Bank has amended Schedule I of the FEM (Deposit) Regulations, 2016, to modify the definition of the term "loans outside India" in order to remove end use restrictions on the loans provided by their branches/correspondents outside India.
September 09, 2016	Notification No.FEMA.375/2016-RB	Schedule I of Annexure B to the FEM (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000(as amended from time to time) has been amended to substitute the existing paragraph F.8 with a new entry "other financial services".

STARTUP INDIA INITIATIVE

Startup India, a flagship initiative of the present Government, was introduced on January 16, 2016 in an event called 'Startup India, Stand up India'. The initiative is aimed at encouraging entrepreneurship in the country and ultimately raising the level of employment generation and wealth creation. A comprehensive action plan was announced by the Government and several new schemes and benefits providing an impetus to the growth of startups in different sectors were introduced.

A number of amendments have been brought in under various laws to give effect to the start up initiative, a gist of which is given below:

1. Companies Act, 2013

A. Amendment in Companies (Share Capital and Debentures) Rules, 2014:
The Central Government has, by introduction of Companies (Share Capital and Debentures) Third Amendment Rules, 2016 ("Rules") amended the erstwhile rules to the following effect:

i. The start- up companies, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, have been allowed to issue sweat equity shares not exceeding fifty per cent of its paid up capital upto five years from the date of its incorporation or registration.
ii. The promoters or persons belonging to the promoter group and the directors holding more than 10% of the outstanding equity shares, directly or indirectly, of the start- up company, have been included in the definition of employees of the start-up companies for a period of five years from the date of its incorporation or registration, for the purpose of grant of ESOPs.

B. Amendment in Companies (Acceptance of Deposit) Rules, 2014
An amount of INR 25 Lakhs or more, received by a start-up company by issue of convertible notes (convertible into equity shares or repayable within a period not exceeding 5 years from the date of issue) in a single tranche from a person has been specifically excluded from the definition of the term deposits.

2. Notifications/ circulars/ orders issued by the Reserve Bank of India:

A. Notification No. FEMA.363/2016-RB dated April 28, 2016
Foreign Venture Capital Investors have now been allowed to invest in startups, irrespective of the sector in which the start-up company is engaged under Schedule 6 provisions of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations. Schedule 6 of the said regulations permits FVCI's to invest in certain sectors (now including startups) directly irrespective of the FDI policy and restrictions contained therein as to sectoral caps, pricing guidelines etc.

B. Notification No. FEMA 10 (R)/(1)/2016-RB dated June 01, 2016
Indian start-ups having overseas subsidiaries have been given operational flexibility, having been allowed to open foreign currency accounts with banks outside India in order to credit the foreign exchange earnings arising out of the sales made by said subsidiaries, subject to the condition as to repatriation of proceeds within the prescribed time period.

The notification has further allowed Indian start-ups to credit its foreign exchange earnings arising out of the sales/exports made by the startup or its overseas subsidiary, to the EEFC Account maintained with an authorized dealer bank in India.

3. Relaxations in Labour Laws:
The Ministry of Labour and Employment has, in pursuance of the Government's Start up Initiative, exempted the start-ups from inspections under the following 6 labour laws for the first year after their incorporation:

a) The Building and other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996;
b) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
c) The Payment of Gratuity Act 1972;
d) The Contract Labour (Regulation and Abolition) Act, 1970;
e) The Employees Provident Fund and Miscellaneous Provisions Act, 1952;
f) The Employees State Insurance Act, 1948.

However the start-ups may be required to submit a self declaration in a prescribed format, in respect of the compliances made by the start-ups under the aforesaid laws.

4. Startup India on Intellectual Property Rights (IPR):
Recently the Government of India has, with the objective of promoting awareness and adoption of IPR's by start-ups, decided to provide high quality IPR related services to start-ups which will include not only fast processing or assistance on filing of Patent Applications but will also include rebate in fees for filing of Patent Applications by start up. Following are some of the services which will be provided by the Indian Government to start ups under the Startup Initiative:

(i) Fast tracking of Startup patent application: The patent applications of startups shall be fast tracked for examination and disposal, so that the startups can realize the value of their IPR's at the earliest.
(ii) Panel of Facilitators to assist in filing of IP applications: The startups will now be able to seek assistance with regard to filing and promoting of IPRs from the facilitators appointed under the Startup Initiative. The facilitators appointed under the initiative will be responsible for providing general advisory on different IPRs and also information on protecting and promoting IPRs in other countries. Facilitators will also be providing assistance in filing and disposal of the IP applications related to Patent, Design and Trademark under relevant laws, including appearing and contesting on behalf of the start-ups at hearing and till the final disposal of the IPR application.
(iii) Government to bear facilitation cost: The entire fees of facilitators with regard to filing of any number of patent, trademark and design applications by the start-ups shall be borne by the Indian Government and the start-ups will only have to bear the statutory fees payable.
(iv) Rebate on filing of applications: Under the Startup Initiative, startups will be provided an 80% rebate in filing of patents vis-à-vis other companies. This move will help startups to save cost in the crucial formative years.
(v) The scheme to provide assistance to start-ups in filing and protecting of IPRs through facilitators has been launched initially on a pilot basis for 1 year and based on the feedback of the beneficiaries, further steps will be taken by the Indian Government.

Facilitators appointed under startup India Project

As proposed in the Startup Initiative, a panel of facilitators has been constituted to assist the startups in filing of the patent, trademark and design applications the controller general of patent, design and trademarks (CGPDTM). The list of the facilitators for patents as well as the list of the facilitators for trademark state wise is available on the website of Department of Industrial Policy and Promotion and also on the website of IP India website.

5. Insolvency and Bankruptcy Code, 2016 ("Code"):
The insolvency and bankruptcy laws in India were too lengthy and outdated for the companies struggling with financial distress and seeking an easy and cost effective exit.

Moreover, start-ups are based on innovation and new ideas and a lot of start-ups are bound to fail owing to an element of uncertainty of outcomes. As quoted in the action plan dated January 16, 2016 - "Given the innovative nature of startups, a significant percentage fail to succeed". The aforesaid highlights the link between innovations, growth of entrepreneurship and an easy exit option and thereby emphasizes on the need for a time bound and cost effective insolvency resolution process.

The new Code on insolvency resolution was introduced in May 2016 to provide for a unified legislation governing the insolvency and bankruptcy resolution process in a speedy manner, which is in line with the objectives of the Start-up Initiative.

The most striking feature of the new Code is the introduction of a fast track corporate insolvency resolution process which provides for completion of the resolution process within a period of 90 days, extendable by a further period of 45 days by an order of adjudicating authority under the Code. An assurance vis-a-vis a time bound and cost effective exit will surely act as a catalyst in the growth of entrepreneurship.

Conclusion:

A 'fund of funds' of INR 10,000 crores has been set up for startups. The fund will invest in SEBI registered Alternative Investment Funds (AIFs) which, in turn, will invest in start-ups.

7 proposals for research parks, 16 proposals for technology business incubators and 13 proposals for startup centres have been recommended by the National Expert Advisory Committee.

As an outcome of the measures taken by the Government in pursuance of its Startup Initiative, a total of 363 companies have registered as start-ups to avail the benefits granted by the Government to start-ups to mark the success of the said initiative and ultimately resulting in growth of entrepreneurship, employment generation and wealth creation.

Some prominent deals of investment in startups during last 6 months are listed below (Source VCCircle):

1. Swiggy raises $7 million more from Norwest, DST Global, Accel Partners and others (May 10, 2016)
Bangalore-based Bundl Technologies Pvt. Ltd, which owns and operates online food ordering platform Swiggy, has raised additional Rs 47 crore (around $7 million) from existing investors, including Norwest Venture Partners, DST Global and Accel Partners.

The Economic Times, which first reported the development citing the company's filings with Registrar of Companies (RoC), said the investment round has valued the startup at INR 865 crore (around $130 million).

2. Scale Ventures invests in goods exchange platform Let's Barter:
Delhi-based venture capital firm Scale Ventures has invested an undisclosed amount in Let's Barter, an online platform to barter goods and services. Let's Barter is a platform for customer-to-customer exchanges for used goods and barter of services.

3. PropTiger acquires real estate data provider PropRates (September 06, 2016)
Online real estate firm PropTiger has acquired Mumbai-based startup PropRates, which provides data related to real estate transactions, for an undisclosed amount. The acquisition will enable PropTiger to provide consumers price-related information on the property market, the company said in a statement. The company said it will introduce PropRates' services first in Mumbai, followed by nine

more cities.

This is the second buyout by PropTiger, which also owns real estate portal Makaan.com, in as many months. It had acquired Gurgaon-based augmented reality and 3D visualisation startup 3DPhy last month.

4. Pepperfry raises $31 million from Goldman Sachs, Norwest Venture, others (September 21, 2016)
Furniture e-tailer Pepperfry has raised Rs 210 crore ($31.3 million) from existing investors including Goldman Sachs Group Inc., as it looks to expand its network and open more offline outlets to better compete with rivals.

Pepperfry, run by TrendSutra Services Pvt. Ltd, said it will use the new capital to grow its logistics and service network and expand the footprint of Pepperfry Studios, its physical concept stores.

5. KellyGamma, Lead Angels back healthcare record manager PurpleDocs:
Gujarat-based PurpleDocs, a healthcare records management startup, has raised an undisclosed amount of funding from investors including KellyGamma, Lead Angels and a few high net-worth individuals (HNIs).

The startup will use the funds to expand its operations in the national capital region (NCR), Maharashtra and Karnataka and to enhance its technology.

6. Fresh veg supplier Lawrencedale raises funding from BESTSELLER, Unitus Impact
Ooty-based Lawrencedale Agro Processing India Pvt. Ltd, which supplies farm fresh vegetables to organised retailers in south India under the brand 'Leaf', has raised an undisclosed amount in a fresh fundraising from Denmark-based BESTSELLER FOUNDATION and US-based venture capital fund Unitus Impact.

COMPETITION LAW

CCI initiated investigation against Monsanto Mahyco Monsanto Biotech (I) Limited & Others
Information was filed by Kaveri Seed Company limited, Ankur Seeds Private Limited and Ajeet Seeds Private Limited ("Informants"). It was inter alia alleged that Mahyco Monsanto Biotech (I) Limited, Monsanto Holdings Private Ltd., Monsanto Inc., U.S.A. and Maharashtra Hybrid Seeds Company Ltd. (collectively "Opposite Parties") were abusing the dominant position by imposing unfair and discriminatory conditions, charging unfair trait value; limiting scientific development and denied market access. Informants further alleged that the Opposite Parties have entered into exclusive supply agreement, refused to deal with Indian seed manufacturers and reserved the right to fix price of seeds in certain circumstances, in contravention of provisions of Section 3 (4) of the Competition Act, 2002 ("Act").

The Competition Commission of India ("the CCI") formed a prima facie opinion and directed the Director General ("DG") to initiate an investigation against the Opposite Parties with respect to the alleged violations and submit its report within 60 days.

CCI closes case against Nissan Motor India Private Limited
Information was filed by an individual named Smt. Jolly Diclause ("Informant") against Nissan Motor India Private Limited and its authorised dealer ("Opposite Parties"). It was inter alia alleged that Opposite Parties in terms of Section 4 of the Competition Act, 2002 ("Act") are abusing their dominant position by not repairing the defects and damages in the Informant's car, which she claims to be in warranty.

The Competition Commission of India ("CCI") on perusal of the information on record and the facts narrated by the Informant formed a considered opinion that the Informant, except alleging contravention of the provisions of Section 4 of the Act, has not indicated any relevant market where any of the Opposite Parties is shown to be dominant. In fact, looking at the nature of allegations as enumerated above, the CCI was of the view that the grievances made by the Informant essentially pertain to alleged deficiency in services and none of the abusive instances as alleged in the information comes within the purview of Section 4(2) of the Act and the information was ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

CCI vide its two separate majority orders initiated investigation against Jaiprakash Associates Limited

The ("the CCI") vide its two separate majority orders dated September 14, 2016 directed an investigation to be made by the Director General ("DG") against Jaiprakash Associates Limited ("Opposite Party") for the alleged abuse of dominant position in terms of Section 4 of the Competition Act 2002 ("Act") and imposition of 'unfair' conditions as alleged by Dharam Vir and Aditya Umang Vir & Vivek Chandra ("Informants") respectively.

In the first case it was inter alia alleged that certain clauses of the application form for a residential unit were unfair, onerous, one-sided and tilted favourably towards the Opposite Party. In the second case the Informant was aggrieved of the alleged abusive terms imposed by the Opposite Party in respect of the apartment booked by the Informant in the project KUBE, Jaypee Greens developed by the Opposite Party at Noida.

The CCI observed the abusive conduct on the part of the Opposite Party and accordingly called for the detailed investigation by the DG under Section 26(1) of the Act. It may be interested to note that the CCI took a contrary view from its earlier majority order and delineated a different relevant market as "provision of services for development and sale of residential/ dwelling units in integrated townships in Noida and Greater Noida". However, two other members of CCI have given a dissent order for these cases, while referring to an earlier order by the CCI wherein it had closed the matters against Jaiprakash Associates by holding the company "to be not dominant in the relevant market".

CCI closes a bid-rigging case filed by North Western Railway

A Reference was filed by Chief Materials Manager-I, North Western Railway, Jaipur ("Informant") under Section 19(1)(b) of the Competition Act, 2002 ("Act") against three Railway suppliers alleging cartelisation in the tenders floated by North Western Railway ("NWR") for supply of 'PVC Flooring (Vinyl) width 1620/mm minimum length 14 meters thickness 2/mm roll to RDSO specification No. RDSO/2006/CG-12 ("product") in contravention of the provisions of Section 3 of the Act.

The Competition Commission of India ("CCI") vide its order passed under Section 26 (1) of the Act, directed the Director General ("DG") to investigate the case and submit an investigation report. The DG report inter alia concluded that during the course of investigation, no evidence was found which could substantiate the allegation of anti-competitive conduct of the three Railway suppliers in violation of Section 3(3)(a) or Section 3(3)(d) read with Section 3(1) of the Act.

The CCI perused the material available on record and heard the learned counsel for the three Railway suppliers. The CCI was of the opinion that the allegation of the Informant that the three Railway suppliers had entered into an anticompetitive agreement to quote higher rates for the Product and determined the price of the Product could not be established from the evidence and material available on record. The matter was thus, closed under the provisions of Section 26 (6) of the Act.

CCI imposes penalty on Karnataka Chemists & Druggists Association and Lupin limited for violation of Section 3 of the Act

Information was filed by M/s Maruti & Co., Bangalore, ("Informant") under Section 19(1)(a) of the

Competition Act, 2002 ("the Act") inter alia against Karnataka Chemists & Druggists Association ("KCDA") and Lupin Diabetes Care Unit of Lupin Ltd. ("Lupin") alleging that it was not supplied with drugs against an order placed by it with Lupin in August 2013, as it failed to obtain an No Objection Certificate ("NOC") from KCDA.

The Competition Commission of India ("CCI") after considering the material available on record was of the opinion that there existed a prima facie case of contravention of the provisions of Section 3 of the Act. Accordingly, vide order passed by the CCI under Section 26(1) of the Act, the Director General ("DG") was directed to cause an investigation into the matter and submit an investigation report.

The DG in its investigation report held that KCDA, by making NOC mandatory prior to supplies being made by pharmaceutical companies to their newly appointed stockists, had contravened the provisions of Section 3(3)(b) read with Section 3(1) of the Act. The DG also submitted a Report on Cross Examination.

The CCI perused the information, the Main Investigation Report as well as the Report on cross-examination and the suggestions/objections to the DG reports made by the parties and other material available on record and inter alia directed KCDA, Lupin and their office bearers/officials, found to be responsible under Section 48 of the Act, to cease and desist from indulging in the practice of mandating NOC, which has been held to be anti-competitive in terms of the provisions of Section 3 of the Act. The CCI inter alia also imposed a penalty of Rs. 8, 60,321/-, calculated at the rate of 10 of the average income of KCDA and Rs. 729.6 million, calculated at the rate of 1% of the average turnover of Lupin.

CCI imposed fine of Rs. 67 Billion on Cement manufacturers for cartelisation in India
Information was filed by the Builders' Association of India ("the Informant"/ "BAI") against Cement Manufacturers' Association ("CMA") and 11 cement manufacturing companies ("Opposite Parties") for violation of the provisions of Sections 3 and 4 of the Competition Act,2002 ("Act") before the Competition Commission of India ("the CCI") inter alia alleging that the Opposite Parties under the umbrella of CMA indulged directly and indirectly in monopolistic and restrictive trade practices, in an effort to control the price of cement by limiting and restricting the production and supply of cement as against the available capacity of production.

The CCI after considering the entire material available on record vide its prima facie order under Section 26(1) of the Act directed the Director General ("DG") to cause an investigation to be made into the matter. The DG based upon the findings of its investigation concluded that it was established that the Opposite Parties were controlling the supply of cement in the market by way of some tacit agreement. It was also concluded that the Opposite Parties have indulged in collusive price fixing and therefore, the act and conduct of the Opposite Parties were noted as anti-competitive in contravention of the provisions of Section 3(1), 3(3)(a), 3(3)(b) of the Act.

The CCI vide its order under Section 27 of the Act found the Opposite Parties in contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act. Apart from imposing monetary penalty upon the Opposite Parties, the CCI inter alia directed the Opposite Parties to cease and desist from indulging in any anti-competitive activity.

Subsequently, the CMA and the Opposite Parties preferred a statutory appeal before the Competition Appellate Tribunal ("the Tribunal") against the order dated June 20, 2012 passed by the CCI. The Tribunal without going into the merits of the case, while setting aside the said order under Section 27 of the Act of the CCI inter alia directed that the CCI shall hear the advocates/ representatives of the Cement Manufacturers and BAI and pass fresh order in accordance with law.

Pursuant to the aforesaid directions of the Tribunal, the matter was heard at length when the counsel

appearing for the parties made elaborate submissions on preliminary issues as well as merits of the case.

The CCI upon a careful perusal of the information filed by BAI, the investigation report of the DG, replies/ objections filed and submissions made by the parties and other materials available on record inter alia was of the opinion that the Opposite Parties used the platform provided by CMA and shared details relating to prices, capacity utilisation, production and dispatch and thereby restricted production and supplies in the market contravening the provisions of Section 3(1) read with Section 3(3)(b) of the Act. Further, the conduct of the Opposite Parties not only exhibited mere price parallelism as the evidence on record establishes that they were acting in concert to fix prices of cement in contravention of the provisions of Section 3(1) read with Section 3(3)(a) of the Act resulting in high prices for consumers and high profit margins for producers.

Accordingly, the Opposite Parties were directed to cease and desist from indulging in any activity relating to agreement, understanding or arrangement on prices, production and supply of cement in the market. CMA was directed to disengage and disassociate itself from collecting wholesale and retail prices through the member cement companies or otherwise. The CCI was of considered opinion that the case is fit to invoke the proviso to Section 27(b) of the Act and imposed a penalty of 0.5 times of the net profits for 2009-10 (from 20.05.2009) and 2010-11 on each of the Opposite Parties. A penalty at the rate of 10% of total receipts for the three years in terms of Section 27(b) was also imposed upon CMA. The total penalty amounted to Rupees 63.17 Billion, being the highest penalty imposed by CCI till date.

COMPAT dismissed complaint against M/s Swatantra Land & Finance Private Limited for Unfair Trade Practices on the ground of no jurisdiction

A complaint before the Monopolistic and Restrictive Trade Practices Commission ("MRTP Commission") was filed by 21 Complainant against M/s Swatantra Land & Finance Private Limited ("Respondent") on the issue of Unfair Trade Practices ("UTPs") on sale of plots in free hold colony known as "Indraprasth Residential colony" covering an area of about 100 acres of land of Village Itmadpur, Faridabad.

A complaint on the same issues was also filed before the State Commission and an Appeal against the order of the State Commission was pending before the National Consumer Disputes Redressal Commission ("National Commission"). Thereafter, MRTP Commission adjourned the matter sine-die on the ground of pendency of the appeal before the National Commission in the year 1999.

In January 2013, the application was listed before the Competition Appellate Tribunal ("COMPAT") because in the meanwhile, the 1969 Act was repealed by Section 66 of the Competition Act, 2002 ("the Act"), the cases involving allegations of UTPs were treated as transferred to the COMPAT.

The question before the COMPAT was that whether the Notice of Enquiry issued by the erstwhile Monopolies and Restrictive Trade Practices Commission (for short, 'the Commission') is not maintainable on the ground that the averments/ allegations contained in the complaints do not constitute UTPs as defined in Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (for short, 'the 1969 Act') and also on the ground that the complaints are barred by time.

By applying the ratio of the judgements of the Supreme Court and Delhi High Court the COMPAT held that the complaints filed by the complainants in alleging that the Respondent had indulged in UTPs by issuing misleading brochure/advertisements were barred by time and the COMPAT cannot issue a direction to Respondent to deliver possession of the plots booked by the complainants. In other words, the main effective relief cannot be granted to the complainants. In the result, the complaints were dismissed with the direction to Respondent to refund the amounts deposited by the complainants, and also pay interest @ 12% per annum from the date of deposit till the date of actual refund.

COMPAT set aside the order of the CCI and the penalty imposed on Indian Jute Mils Association and Gunny Trade Association

An Appeal was filed before the Competition Appellate Tribunal ("COMPAT") by the Indian Jute Mils Association and the Gunny Trade Association ("Appellants") against the order passed by the Competition Commission of India ("CCI"). The COMPAT vide its order dated July 01, 2016 over-ruled the order of the CCI and set aside the penalty imposed at the rate of 5% on the average turnover of the last three years on the Appellant.

It was alleged before the CCI that the jute manufacturers have cartelized the market for packaging material for sugar thereby infringing Section 3(3) of the Competition Act, 2002 ("Act") by jointly deciding sale prices and limiting technical development of the industry and hiked the prices of jute bags. The CCI considered the same as prima-facie violation of Section 3(3)(a) of the Act and ordered an investigation into the same.

The Director General ("DG") submitted its investigation report after detailed investigation and found that the Appellants were utilizing their platform to discuss the jute bags prices to be published to discuss the jute bags prices to be published Daily Price Bulletin ("DPB") clearly indicate the involvement of IJMA in fixation and publication of prices of jute bags.

The CCI agreed with the findings of the DG. The actual transactions in the market were taking place almost near to the DPB price meaning thereby that the DPB prices were actually being followed. Such conduct of the Appellants was held to be in violation of Section 3(3)(a) and Section 3(3)(b) of the Act. The CCI penalized the Appellants along with 25 members of the Appellants.

In the Appeal, the COMPAT inter alia observed that the CCI failed to analyse the findings of the DG and none of the correspondence referred between the Appellants were proved to be entered into an agreement for increase in the price of the jute bags, hence the findings are unsustainable and deserves to be set

TECHNOLOGY, MEDIA AND TELECOMMUNICATION

TRAI issues consultation paper on broadcasting framework of TV services distributed through Addressable Systems

TV distribution platforms in India vary from cable-TV to Direct-to-Home (DTH) and Head in the Sky (HITS). Each Distributive Platform Operator (DPO) has access to satellite TV channels which they transmit, and are common to most other operators. Hence, by better utilization and sharing of infrastructure, the cost of remitting channels can be reduced for operators and subscribers. TRAI issued a consultation paper on September 21st, 2016 to address some of these issues.

The aim of the paper was to give suggestions to the government for improving its policy for infrastructure sharing for TV broadcasting by DPO and to acknowledge changes in the Cable TV Act, "license conditions of DPOs in order to facilitate infrastructure sharing on a voluntary basis." Some issues during the consultation were also put forward such as, what more can be shared by the operators in order to utilize infrastructure more effectively, further technical, operational or commercial issues which need to be addressed, consequences and modes of separation of network and service provider at base level and the requirement of change in the license policy.

Infrastructure sharing will also benefit competition in the field of broadcasting and will encourage new operators to enter by removing some entry barriers. This may also make access to rural areas cheaper and faster. However, there are some possible obstacles like ensuring proper licensing and sharing regulations which must be achieved before the infrastructure sharing can be made operational.

DoT conducts Spectrum Auction in 2016

April 2016-September 2016

The Department of Telecommunications (DoT) issued a notice opening auction for Spectrum in 700 MHz, 800 MHz, 900 MHz, 1800 MHz, 2100 MHz, 2300 MHz and 2500 MHz of mobile frequencies. The objectives were defined as ensuring efficient use of spectrum and avoid hoarding, facilitating fair competition in the sector while promoting rollout of respective services and maximizing revenue from the auction. The DoT has even amended its NIA to achieve this. To fetch higher sales and liberalizing the auction, DoT has reduced eligibility points in prime areas like Delhi, Mumbai and Karnataka.

Its revised guidelines for signing of tripartite agreement on 3rd October, 2016, has emphasized on the Unified License guidelines which delink the Access Spectrum from the License and the right of the DoT to use the Access Spectrum obtained through public auction, liberalization or training, shall allow to keep the rights to use to Spectrum as security to obtain financial assistance from lenders.

A list of final bidders was issued on 23rd September, 2016, which included major players such as Idea Cellular Ltd., Vodafone India Ltd., Bharti Airtel Ltd., Aircel, Tata Teleservices Ltd., Reliance Communications and Reliance JIO Infocomm. The government expects about Rs.64,000/- crore upfront this financial year.

Draft on Consumer Protection 10th Amendment Regulations 2016
TRAI emphasized on the importance of protecting consumers who avail mobile data services from unaffordable tariffs and unattractive data packs. It recognized the success of I\internet access and its positive impact in other countries and narrowed down to low literacy levels, non-affordability of data services and lack of internet coverage as the main reasons for poor internet accessibility in India. Furthermore, new data users not consuming the entire data pack subscribed by them makes every Megabyte of the consumed data more expensive, which makes the service unaffordable for many users. To improve upon this, TRAI submitted a draft of the 10th Amendment of the said regulations.

TRAI on July 5th, 2016, issued a draft for the 10th Amendment said regulations in the interest of mobile data users, imposing a maximum validity period of data vouchers to be offered by network providers. TRAI laid down that the validity period for a data voucher shall not exceed a period of ninety days, provided a voucher is offered exclusively for data validity period for a maximum of 365 days. TRAI also imposed a restriction on the renewal of Special Tariff Voucher for SMS or data not exceeding seven days without the express consent of the consumer.

Requests for data-packs having longer validity have been received by TRAI, which it seeks to address. Hence the proposal to keep the maximum period of the data-only Special Tariff Vouchers as 365 days appears reasonable to TRAI. The amendment is expected to curtail the prices of data packs offered to customers along with ensuring fair competition in the sector.

TRAI issued consultation paper on 'Issues related to Quality of Services in Digital Addressable Systems and Consumer Protection'
TRAI, taking into consideration the interest of consumers, sought to improve Quality of Service (QoS) in platforms such as DTH, Cable TV etc. It recognized the need to make television distribution and broadcasting services more affordable and easily accessible, while ensuring fair competition in the sector.

The consultation paper published by TRAI on 18th May, 2016 covered certain objectives such as developing a common QoS framework for all TV platforms, protection of consumers by educating them about terms of service, subscription, redressal etc., ensuring growth and development of the sector and encouraging use of Information Communication Technologies to improve QoS. TRAI has previously issued regulations to control service, tariffs, quality of channels etc, but there is a need to have uniform regulations for resolving issues of QoS and consumer protection.

The present regulation lays down that if an operator drops a channel from the customer's package or

introduces a new similar channel is offered as a substitute, the customer must be intimated first and his consent must be obtained. TRAI has observed several complaints regarding disruption in service. The current regulation lays down for compensation mechanisms for customers in case the disruption lasts longer than 24 hours and that they should be suitably compensated and intimated at least 15 days prior in case of disruption due to maintenance activity.

TRAI on Free Data
TRAI issued a consultation paper on Free Data on 19th May, 2016 seeking comments on whether a Telecom Service Provider (TSP)- agnostic platform is permissible to increase choice of internet access to customers. It is aimed at giving customers more choice to access the internet, as opposed to certain content that offers free data or reimbursement to users by the regulator, which may lead to certain TSPs promoting some services or apps at a lower rate, which makes others automatically more expensive, thereby being anti-competitive. It recognized certain issues for consultation such as whether TSP-agnostic platform to provide free data or reimbursement is required without violating the principles of Differential Pricing for Data as per TRAI regulation, whether such platforms require TRAI regulation and if the free data provision should be applicable only to mobile data users or extended to broadband users as well.

The consultation suggests certain models with respect to free data. One model is to provide Reward-to customers through a TSP-agnostic platform where they download certain apps or content on a particular website. Another similar model is where 'instead of a recharge API, there could be an equivalent "don't charge" or toll free API'. Building on this, TRAI opened comments on these.

The Review of Regulatory Framework for the Use of USSD for Mobile Financial Services
TRAI has floated a consultation paper on 2nd August, 2016, seeking opinions on increasing usage of Unstructured Supplementary Service Data (USSD) for carrying out banking services on mobile phones and facilitating financial inclusion. It has observed a sluggish growth in USSD-based banking services among mobile users despite over 100 crore mobile subscribers, over 22 crore Jan-dhan accounts and nearly 100 crore Aadhar cards.

Along with deciphering key issues, the consultation paper highlights a 'comprehensive review' of the regulatory framework regarding USSD in mobile banking to ensure proper delivery of these services with full coverage. It has also suggested an increase in the number of stages and decreasing cost in a single session. It included questions regarding the ideal number of stages in a USSD session, appropriate methods for prescribing tariff and the need for a suitable mandate for service providers for levying charges on a USSD session. TRAI seeks suggestions on the tariff model to be adopted for USSD options on mobile banking considering the fact that both SMS and USSD services are carried on a low cost.

Unified Licensing Regime
TRAI and DoT, to take Unified Licensing forward, will be permitting a unified access service licensee to provide wireline as well as wireless services, in addition to Value Added Services. The License Agreement allows operators to provide all types of mobile services within their area including voice and non-voice messages, data services and Public Call Offices.

The revised guidelines of DoT for signing of tripartite agreement on 3rd October, 2016, has emphasized on the Unified License guidelines which delink the Access Spectrum from the License and the right of the DoT to use the Access Spectrum obtained through public auction, liberalization or training, shall allow to keep the rights to use to Spectrum as security to obtain financial assistance from lenders.

Unified Licensing guidelines and amendments
DoT has amended the Unified License regarding franchises dated 10th August, 2016. The existing

clause stated that the Licensee may appoint a Franchise for the purpose of setting up and operating rural telephone exchanges and last mile linkages. The amended clause states that the Licensee may appoint or employ a franchise, agent, distributor or employee for the provision of service.

DoT has also issued guidelines for granting UL for Virtual Network Operator (VNO) on 31st May, 2016. Apart from general guidelines, financial conditions such as a non-refundable entry fee for authorization for each service and service area, an annual license fee and Spectrum Usage Charges (SUC) as a percentage of AGR and the requirement of a bank guarantee have been mentioned. The UL for VNOs shall be non-exclusive for 10 years, subject to review. Further DoT has also highlighted certain equity and security conditions in order to obtain the license.

A list of 60 applications to the DoT to obtain VNO ULs under category B, such as Sanchar Tele network Bhavnagar, BI Ritz Telenet Surat, Richa Telecom Lucknow and AXN Telecom Faridabad is available.

TRAI floats consultation paper for SUC and Presumptive AGR for ISPs
TRAI issued a consultation paper on 19th August, 2016 for suggestions on levying Spectrum Usage Charges (SUC) based on Adjusted Gross Revenue (AGR) for internet service providers (ISP) and commercial very small aperture terminal (VSAT) service providers. This is done in regard with its observance that most ISPs do not have a spectrum in all cities in a licensed service area. The paper asked whether a minimum presumptive AGR be present in ISP license for charging SUC, no such provision currently exists.

The DoT has sought TRAI's recommendation on the new format of minimum presumptive AGR and its application on Broadband Wireless Access spectrum holders under Internet services. The new format of AGR was introduced but several service providers had not started service even after obtaining license, leading to loss of revenue. Therefore, the concept of AGR is released and discussed in order to facilitate service by service providers, along with imposition of a license fee and spectrum usage charges based on the decided AGR.

TRAI issues consultation for deciding tariff of TV channels
A consultation paper on 10th October, 2016 titled "The Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016" was floated by TRAI seeking suggestions on the tariffs imposed on TV channel subscribers by the cable operators, to come into force from April 1, 2017. The purpose of the draft was to ensure transparency and non-discrimination of stakeholders, affordable TV services for customers, adequate choice for subscribers and balancing the commercial interests of broadcasters and distributors in the television channel sector in terms of cost and content.

The tariff order included that every broadcaster declare the nature of a channel as 'pay' or 'free to air'. The broadcaster can offer channels as bouquets or on a-la-carte basis. Every channel is to be classified under one of the 11 categories defined by TRAI. These tariffs will be uniform throughout all platforms in a geographical area. Pay channels can be offered as bouquets but at less than 85 percent of the MRP of the channels comprising it. TRAI has made the distributors responsible for providing channels on a-la-carte at a minimum fee of Rs.130 per month for 100 SD channels.

This is the first draft legislation aiming to formulate a pricing policy for the conflicted TV distribution sector.

TRAI on "Recommendations on Sale/Rent of International Roaming S1M Cards/Global Calling Cards in India"
TRAI published a recommendation on 9th May, 2016, regarding charges imposed on customers accessing services by network providers on foreign land. It identified hefty charges levied by these providers on customers as the main complaint received by it and has therefore issued

recommendations in the interest of customers.

For providing clarity to the customers and operators, TRAI has recommended that tariff plans, contact details and the terms and conditions should be provided while issuing the SIM. All applicable tariff plans should be available on their website. Free or low cost customer care and itemized bill were also recommended, among others.

TRAI's recommendation paper on "Issues related to Radio Audience Measurement and Ratings in India"

TRAI, recognizing that "the importance and need for a credible, transparent and representative radio audience measurement system is recognized the world over", floated a recommendation on India's Radio Audience Measurement (RAM) and ratings on 15th September, 2016.

It recommended that all entities that are RAM should be registered under the Companies Act and have a minimum net worth of Rs.5 crore. As a light-touch approach, TRAI also asked for a regulatory framework for RAM entities and guidelines from the IBM. In an attempt to make radio ratings more transparent and efficient, recommendations regarding advertisements and revenue linked to listernership of radio channels were made.

Montana Developers Private Limited v Aditya Developers and Ors

Montana Developers Private Limited ('Petitioner') and Aditya Developers ('Respondent') had entered into an arbitration proceeding, wherein, a former Chief Justice of India was appointed as a sole arbitrator to adjudicate upon the disputes and differences between the parties. The evidence of Petitioner was closed and the evidence of the witnesses of the Respondent had commenced. However, during the pendency of the evidence of the Respondent, the Petitioner had filed an application before the Hon'ble Arbitral Tribunal, seeking permission to examine more witnesses and production of various documents. In response, the Respondent opposed the said application, however the Hon'ble Arbitral Tribunal granted approval to thePetitioner for filing an application under Section 27 of the Arbitration & Conciliation Act, 1996 ('the Act') before the Hon'ble Court for issuance of witness summons and for production of documents.

The Petitioner thus in parlance with the Hon'ble Arbitrator's direction, proceeded to file an application under Section 27 of the Act before the Hon'ble High Court of Bombay. The primary issue for consideration before the Hon'ble High Court of Bombay was whether under Section 27 of the Act, the Court has the power to determine the validity of the orders passed by an Arbitral Tribunal granting permission to a party for taking assistance to move an application before the Court seeking its assistance in recording evidence.

The Hon'ble High Court of Bombay while allowing the application of the Petitioner observed that in proceedings under Section 27 of the Act, the Respondent cannot challenge the order passed by the learned arbitrator allowing a party to approach the Court for taking assistance of the Court in recording evidence. The Court had agreed with the arguments put forward on behalf of the Petitioner that under Section 27 of the Act, a procedure is prescribed for taking assistance of the Court for issuance of witness summons in terms of the order passed by the arbitrator and the proceedings are not adjudicatory proceedings.

It was observed that even in the case of an ordinary Suit, in an application for issuance of witness summons or for production of document, the Respondent was not required to be heard by the Court. These principles would not change in the context of an Arbitral Tribunal, particularly when the Tribunal was not bound to follow the rigour of the Civil Procedure Code 1908 and the Indian Evidence Act 1872. The Hon'ble Court stated that once the Hon'ble Arbitral Tribunal was of the opinion that production of documents or witness was warranted in the facts and circumstances of a particular case, then at that stage, objection on merits of the order of the Hon'ble Arbitral Tribunal could not be raised.

Assignia-VIL JV Vs. Rail Vikas Nigam Limited
In the present case, Assignia-VIL JV ('Petitioner') had entered into a contract to carry out certain construction works for Rail Vikas Nigam Limited ('Respondent'). Thereafter certain disputes arose between the parties and subsequently, three distinct claims ('First Dispute') were referred to the Arbitral Tribunal. As per the arbitration clause in the contract, the Arbitral Tribunal had to be constituted after fulfilling various criteria, including age and specific qualifications. The arbitration clause also stated that arbitrators should be serving or retired officers of the Respondent or the Indian Railways Accounts Service.

However, during the pendency of the aforesaid arbitral proceeding, the Respondent had terminated the contract with the Petitioner ('Second Dispute') and during the pendency of the First Dispute, the Arbitration and Conciliation Amendment Act, 2015 ('Amended Act') had been notified and had come into force.

The Petitioner wanted an independent tribunal to be appointed to adjudicate the Second Dispute in view of the Amended Act and as there was a conflict of interest. On the contrary after the alleged illegal termination of the contract, the Respondent sought to refer the second dispute, which is entirely new dispute pertaining to the termination of the contract to the existing Arbitral Tribunal which was admittedly constituted only for the purpose of the First Dispute relating to three distinct claims. Aggrieved by this approach of the Respondent, the Petitioner proceeded to file an application under Section 11(6) read with Section 11(8) of the Amended Act before the Hon'ble Delhi High Court for assistance in appointing an Arbitral Tribunal to adjudicate over the Second Dispute.

The Hon'ble Court observed that the Fifth Schedule read with Section 12 (1) (b) of the Amended Act mandates that the appointment made by any party which would give rise to justifiable doubts as to the independence or impartiality of arbitrator, if he has relationship with the parties or counsel or the arbitrator is an employee, consultant, advisor or has any other past or present business relationship with the party, the same would give rise to justifiable doubts. Further the Hon'ble Court had observed that the Seventh Schedule read with Section 12(5) of the Amended Act mandates that there shall not be any arbitrator's relationship with parties or counsel, who should also not be an employee, consultant, advisor or has any other past or present business relationship with a party.

The Hon'ble High Court while relying upon the Amended Act held that amendments to the Arbitration Act would apply to this case as the request for arbitration of the Second Dispute was made after the amendment had come into force and the earlier pendency of the First Dispute relating to pre-existing disputes has no bearing on the maintainability of the present petition in as much as the present petition is concerned with the distinct and separate dispute arising out of the illegal termination of the contract by the Respondent. The Court also held that it was duty bound to secure the appointment of an independent and impartial arbitrator as per the Section 12 of the Amended Act and that appointing an employee of the Respondent in a matter to which the Respondent was a party would definitely give rise to justifiable doubt as to his independence and impartiality.

REAL ESTATE AND HOSPITALITY

Mere Co-holder of Immoveable Property not liable for Capital Gains Tax on Sale

Mumbai Income-Tax Appellate Tribunal ("ITAT") has held that if the spouse has not invested in purchase of an immovable property and is merely a co-holder, then on sale of such immovable property, she cannot be liable for tax on capital gains.

The ITAT gave the order while hearing a case of Mrs. Vandana Bhulchandani.

An income-tax ("IT") officer, based on information in his possession, noted that Mrs. Vandana Bhulchandani had not disclosed the capital gains arising from the sale of an immoveable property that she jointly held with her husband in her IT return for the financial year 2008-09.

She informed the IT officer that her husband had made the entire investment and the property was reflected in his books of accounts from the date of purchase till the date of sale. The IT officer also observed that Mrs. Vandana Bhulchandani's husband did not incur any IT liability on the capital gains arising from the sale as the husband had set off the short-term capital gains arising from the said immoveable property sale against the short-term capital losses incurred by him on the sale of shares. Under the IT Act, short-term capital losses can be set off against capital gains arising in the same financial year and only the surplus, if any, is taxable.

The IT officer claimed that the entire arrangement was done to avoid tax payment and held Mrs. Vandana Bhulchandani to be liable for 50% of the total short-term capital gains arising from the said immovable property sale and added the taxable amount to her taxable income.

The ITAT took into cognizance that the husband had bought the said immovable property out of his own funds, which was duly reflected in his books of accounts, and had also disclosed the details of the sale in his IT return. Mrs. Vandana Bhulchandani was a mere co-holder of the said immoveable property and held that she was not liable for paying short-term capital gains tax on the sale of the said immovable property.

"The ITAT order is clear and correct. It will provide clarity in cases of co-holding of property, where the spouse has not made any monetary investment," said Harish.

Investment-related Tax Benefits Available to Purchaser if Builder Delays the Project
The assessee sold a plot of land. The assessee has earned Long Term Capital Gains of upon sale of the said plot of land. The assessee invested a sum received for buying a residential flat under construction in a residential housing project. The builder allotted a flat to the assessee in the said project on the terms & conditions given in the letter of allotment issued to him by the builder. This investment was made by the assesse along with another person.

The issue to be decided before the ITAT was that when the assessee is not able to get the title of the said flat registered in his name or unable to get the possession of the flat, which is under construction, due to fault of the builder, can the assessee be denied deduction u/s 54F (capital gains) of the Income Tax Act.

It was held by ITAT that it is a fact that the assessee had invested the amount received from the sale of the said plot of land in purchase of the said flat within the stipulated period prescribed u/s 54F of the Income Act. But, it is not in the assessee's hand to get the flat completed or to get the flat registered in his name, because it was incomplete. The intention of the assessee is very clear that he had invested almost the entire sale amount received from the sale of the said plot of land in purchase of the said flat. It is another issue that the said flat could not be completed and the matter filed by the assessee against the builder is pending before the Hon'ble Bombay High Court for direction to the builder to complete the construction of the said flat. It is impossible for the assessee to complete other formalities, i.e. taking over possession for getting the said flat registered in his name and this cannot be the reason for denying the claim of the assessee for deduction u/s 54 of the Income Tax Act.

REITs – Relaxation of norms by SEBI
The Securities and Exchange Board of India ("SEBI") has relaxed rules on Real Estate Investment Trusts ("REITs") by allowing them to invest more in under-construction projects. SEBI has further rationalised unit holder consent on related party transactions and removed restrictions on special purpose vehicle ("SPV") to invest in other SPVs holding the assets.

The SEBI has also approved changes to portfolio manager regulations to allow a foreign fund manager to relocate to India as an eligible fund manager.

TAXATION

DIRECT TAXES

India inks revised Tax Treaty with Cyprus

India and Cyprus have recently concluded negotiations for entering into a revised Tax Treaty. The salient features of the new Tax Treaty are as under:

• India gets right to tax capital gains arising in the hands of Cyprus residents in respect of transfer of shares of an Indian company with effect from 01.04.2017;
• However, grandfathering clause would be there to exempt capital gains tax on shares acquired by a Cyprus resident prior to 01.04.2017, though, transferred after the said date;
• Expansion of scope of the term 'permanent establishment' to constitute construction PE on carrying construction operations for 6 months period instead of the 12 months period earlier;
• Reduction in tax rate tax rate on royalties and fees for technical services ('FTS') from 15% to 10%; and
• Rescinding of notification issued by India in 2013 declared as a 'notified jurisdiction' with harsh tax implications and non-application of India-Cyprus Tax Treaty (this has been done by India vide notification dated 14.12.2016).

The fine print of new India Cyprus Tax Treaty is yet to be issued/ displayed on Income-tax Department website by the Indian Government. Accordingly, the matter of presence of Limitation of Benefits ('LOB') clause in new India-Cyprus Tax Treaty (to deal with GAAR provided in domestic tax laws of India) is still debated.

India sign revised India Mauritius Tax Treaty

The Indian Government and Mauritius Government on the 10th of May, 2016, signed a Protocol for amending the Tax Treaty dated 24th August, 1982, between India and Mauritius. The significant features of the revised Protocol are as under:

• Introduction of source based taxation for capital gains arising on transfer of shares, i.e., Indian can tax capital gains arising in the hands of Mauritian residents in respect of transfer of shares of an Indian company with effect from 01.04.2017;
• Grandfathering of investments acquired by Mauritian residents before 01.04.2017, i.e., tax exemption on capital gains arising to Mauritian residents on transfer of shares of an Indian company, which were acquired before 01.04.2017
• Applicability of lower tax rate at 50% of the applicable capital gains tax rate in India on transfer of shares of an Indian company by a Mauritian resident, if shares acquired on or after 1 April, 2017 but transferred before 1 April, 2019, subject to satisfaction of LOB clause;
• LOB clause would be deemed to be satisfied, amongst others, if, operational expenditure of Mauritian company under consideration is more than Mauritian Rupees 1.5 million or Indian Rs.2.7 million during the period of 12 months preceding the date of transfer of shares of the Indian company;
• Lower tax rate of 7.5% on interest payment by an Indian resident to a Mauritian resident; and
• Introduction of service PE clause in Tax Treaty on provision of services for a period of more than 90 days

De-monetization of Rs.500/1000 currency notes in India

On 8th November 2016, the Government of India demonetized Rs.500 and Rs.1000 currency notes, i.e., the highest currency denominations in the country at that time, with effect from the midnight.

The principal reasons cited by the Government of India for making this move are as under:
• Circulation of counterfeit Indian Currency Notes which finances terrorism and other anti-national activities;
• To curb overflowing black money in India; and
• To make a step towards moving to digital/ cashless economy.

The Government of India also changed norms for mandatory furnishing of PAN on cash deposits in banks to Rs.50,000 in a day or an aggregate of Rs.2,50,000 or more during the period from 9th November 2016 to 30th December 2016.

Following demonetization, the following major changes have been made in the Income-tax Act, 1961:
• Tax rate on income in respect of unexplained cash credit, income, investment, expenditure etc. has been increased to 60% plus surcharge at the rate of 25%, aggregating to an effective tax rate of 75%; and
• The above rate of 75% can further be increased by the assessing officer to 85% by levying a discretionary penalty of 10%.

INDIRECT TAXES

Assent to Goods and Service Tax Bill ('GST Bill') by the President of India
The GST Bill, aimed at merging all major indirect taxes prevailing in India into one tax, was earlier passed by both Lok Sabha and Rajya Sabha. The same has been assented to by the President of India as well.

The GST Act seeks to do away with a host of Central taxes which include Excise, additional duties of Custom, SAD, Service tax, Sales tax, VAT etc. and instead levy one GST tax in relation to supply of goods and services. The intra state supply of goods and services would be liable for Central Goods and Service Tax ('CGST') and State Goods and Service Tax ('SGST').

On the other hand, inter-state supply of goods and services would be liable for Integrated Goods and Service Tax ('IGST'). Similarly, import of goods from outside India, in addition to the levy of Basic Customs Duty ('BCD'), would also be liable for IGST.

The threshold exemption limit for levy of GST has been agreed to by the GST Council at Rs.10 lacs for North Eastern States and at Rs.20 lacs for other Indian States.

The GST laws would be governed following three different statutes:
• The Goods and Services Tax Act, 2016;
• The Integrated Goods and Services Tax Act, 2016; and
• The Goods and Services Tax (Compensation to the State for Loss of Revenue) Act, 2016.

The Government of India seems committed to bring GST into operation with effect from 1st April 2017. However, the possibility of the same seems to be remote. Items such as alcohol, tobacco, tobacco products and petroleum products have been excluded from the purview of GST.

CASE LAWS

1. M/s. Madura Coats Limited v. M/s. Modi Rubber Limited &Anr.
Madura Coats Ltd. ("MCL"/ "Appellant") had filed a petition in Allahabad High Court ("HC") for winding up Modi Rubber Ltd. ("MRL"/ "Respondent") on the allegation that MRL was unable to pay its huge

undisputed debts. The Company Court passed an order holding MRL be wound up by virtue of non – payment of debts. Aggrieved by the verdict, MRL then preferred an appeal before the Division Bench of the HC. It was brought before the Bench that the Board of Directors of MRL has resolved to file a reference before the Board of Industrial and Financial Reconstruction ("BIFR") under the provisions of the Sick Industrial Companies Act, 1985 ("SICA"). An application in context to that was already filed before BIFR and duly registered. It is pertinent to note that while the application for making a reference was sent to theBIFR before the winding up order was passed by theCompany Court, the reference was actually registered afterthe winding up order was passed by the Company Court. It was the contention of MRL that in terms of section 22 of SICA, all proceedings in respect to the company ought to be stayed. Under the circumstances, Divisional Bench set aside the winding up order on February 24, 2006 and further directed that the proceedings shall remain in abeyance till the disposal of proceedings before BIFR of SICA.

Consequently, MCL preferred an Appeal to the Supreme Court on the ground that the date of registration shall be solely taken into consideration for contemplating the blanket relaxation provided under section 22 of SICA. Hence, such application was alleged to be premature and the maintainability of the reference to be questioned. The Supreme Court was of the opinion that whenever a reference is made to BIFR, the provisions of SICA would prevail over the provisions of Companies Act. They further concluded that the Company Court and the BIFR do not exercise concurrent jurisdiction. Till the company remains a sick company having regard to the provisions of sub-section (4) of Section 20 of SICA, BIFR alone shall have jurisdiction as regards sale of its assets. The SC while dismissing the Appeal did not differ from the view of the division bench of HC and agreed that the provisions of SICA would prevail.

2. Mr. Anil Kumar Poddar v. Bonanza Industries Limited

Mr. Anil Kumar Poddar ("Applicant") being a professional Investor had acquired a nominal number of shares in M/s Bonanza Industries Limited ("Respondents"). He invoking his statutory right as a shareholder claimed that he has the right to inspect the records and documents of the Company in the capacity of him being a Shareholder of the Company upon payment of requisite charges and that the Respondents are denying him from exercising the same. The Applicant thus filed an Application against the Respondents before the Company Law Board ("CLB") seeking an order directing the Respondent Company to allow inspection of statutory register and record of the Company upon payment of requisite charges and that the Respondents are denying him from exercising the same. The Applicant thus filed an Application against the Respondents before the Company Law Board ("CLB") seeking an order directing the Respondent Company to allow inspection of statutory register and record of the Company

In response to the allegations Respondent submitted that the Applicant in the given case holds approximately 5-10 shares in the various Public Companies and frequently in the lieu of exercising shareholders' rights, demands copies of the company records, registers, minutes, etc. The Respondent believes that the complaint is vexatious in nature and that the shareholders intentions are malicious. They further stated that the Applicant under the guise of sending Requisitions under Section 163 of the Companies Act, 1956 frequently demand inspection of various registers and minute books and also the copies of annual account for the previous years. This practice was adopted by the Applicant against the companies which were the Applicant's targets. According to the Respondent it is clearly the modus operandi of the Applicant to acquire nominal number of shares and then under the guise of shareholder activism, illegally harass and extort money from the Companies

On carefully hearing both parties and perusing the records, the CLB took the view that the conduct of the shareholder clearly amounted to harassment of the Respondent Company. The Bench placed reliance in the Calcutta High Court order in the matter of Phillips Carbon Black Limited &Ors. V. Anil Kumar Poddar & Anr., where the Applicant was restrained from exercising his rights as a shareholder. The CLB was of the opinion that the information sought by the Applicant was already a part of the

public domain and was available readily on the MCA portal for inspection. Correspondingly the Certified copies are readily available with the concerned ROC. The CLB taking on record the fact the 150 pending applications before the bench of the similar nature deduced that the Applicant is in the habit of filing such frivolous applications and therefore lacks any bonafide intent. The CLB has through its judgement laid down a strong foundation preventing fraudulent and mala fide practices of vexatious shareholders from abusing their rights.