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The First Edition of KMG Times is a dedication to my Mentor CA. Vinod Jain (FCA, FCS, LLB).

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## FINANCE

### 1.0 Bad debt norms post Hon'ble Supreme Court Judgment

The Reserve Bank of India is expected to approach the Election Commission to put in place a new circular on bad debt resolution, paving the way for smooth implementation of the Insolvency & Bankruptcy Code and loan restructuring by banks. The move is seen as crucial since the Supreme Court had set aside the controversial 12<sup>th</sup> February, 2018 circular issue by RBI.

### 2.0 Extension of ombudsman scheme to non-deposit taking Non-Banking Financial Company (NBFCs)

The Reserve Bank of India has announced to extend the ambit of Ombudsman scheme for NBFCs to all eligible non-deposit taking NBFCs, with effect from 26th April, 2019. The scheme lays down rules for redressal mechanism in cases of customer complaints was earlier applicable only to deposit-taking NBFCs.

All Non-Deposit Taking Non-Banking Financial Companies having customer interface, with assets size of Rupees 100 crore

or above will come within the ambit, and shall comply with the provisions of the Ombudsman Scheme for Non-Banking Financial Companies.

The Non-Banking Financial Company-Infrastructure Finance Company (NBFC-IFC), Core Investment Company (CIC), Infrastructure Debt Fund-Non-banking Financial Company (IDFNBF) and an NBFC under liquidation, are excluded from the ambit of the Scheme.

### 3.0 Proposed Banning of Cryptocurrencies

The proposed Banning of Cryptocurrencies and Regulation of Official Digital Currencies Bill 2019, draft has been circulated to relevant government departments. The government had formed a panel to draft regulations for cryptocurrencies last year. A final law will be proposed to the next government that takes charge after elections at the end of May.

### 4.0 Divergence in the asset classification and provisioning

Reserve Bank of India has vide Notification dated April 01, 2019 notified that the banks should disclose divergences, if either or both of the following conditions are satisfied:

- The additional provisioning for NPAs assessed by RBI exceeds 10 per cent of

the reported profit before provisions and contingencies for the reference period, and

- The additional Gross NPAs identified by RBI exceed 15 per cent of the published incremental Gross NPAs for the reference period.

## Insolvency and Bankruptcy Code

### 1.0 Bankruptcy Regulator's bold move to hard sell stressed asset

The Insolvency and Bankruptcy Board of India (IBBI) chairman MS Sahoo led a 10-member team to Hong Kong to individually meet over a dozen investors with dedicated focus on stressed assets. The delegation met with top funds.

The funds are also being encouraged to invest in corporate bonds of companies including the ones whose recovery mechanism is supported by the Insolvency and Bankruptcy Code (IBC).

### 2.0 Compliance with regulations 7 (2) (ca) and 13 (2) (ca) of the IBBI (Insolvency Professionals) Regulations, 2016

The IBBI has vide Circular dated 12th April, 2019, clarified that-

- Form E / Form G for the year 2018-19 shall be submitted electronically by an IP / IPE before 30th April, 2019 and
- Form E / Form G shall be submitted by every IP / IPE even if he has not earned any professional fee or does not have turnover during 2018-19.

## Corporate Laws

### 1.0 Authority to Govern Insolvency Professional

NCLAT has stated in its order that IBBI and not NCLT, is the competent body to act against resolution professional. The NCLAT order will encourage more and more professionals to adopt insolvency resolution as a profession.

### 2.0 Irregularities found in Audit of Companies under Insolvency

Forensic audit of more than 200 companies facing corporate insolvency resolution action under the Insolvency and Bankruptcy Code (IBC) has revealed irregularities of more than Rs 1 lakh crore, including possible diversion of funds. MCA is expected to initiate action against the promoters, directors and even auditors in some cases.

### 3.0 Filing of one time return in DPT -3 Form

MCA have vide Circular 12<sup>th</sup> April, 2019 notified 30<sup>th</sup> April, 2019 to be the date as on which one time return on outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 starting from the 01st April, 2014. Further it has clarified that the ninety days specified for filing the E-form will start from 31st March, 2019.

### 4.0 Due date for filing of Active Form

The Ministry of Corporate affairs vide Notification dated 25<sup>th</sup> April, 2019, has extended the deadline for Filling of E-Form

Active, which also provides mandatory uploading of photos of business premises to June 15, 2019 giving Companies more time to comply with the provisions which is aimed at deducting shell companies.

#### 5.0 Relaxation of additional fees and extension of last date of filing E-form CRA-2

The Ministry of Corporate affairs after receiving various representation has vide Notification dated 04th April, 2019 extended the last date for filing of e-form CRA-2, for Companies which have been mandated to get their cost records audited for the first time under Companies Act, 2013, without payment of additional fees up to 31<sup>st</sup> May, 2019.

#### 6.0 Extension for filing DIR KYC for the Financial Year 2018-19

The Ministry of Corporate affairs vide Notification dated 30th April, 2019, has modified Rule 12 A of Companies (Appointment and qualification of Directors) Rules 2014 and has extended the date for filing of DIR KYC to on or before 30<sup>th</sup> June of immediate next financial year, earlier it was to be filed by 30<sup>th</sup> April of immediate next financial year.

#### 7.0 Introduction of E-form AGILE

MCA has inserted Rule 38A and has mandated that the E-form SPICE for incorporation of a company shall be accompanied by a linked e-form AGILE (Application for registration of the Goods and Services Tax Identification Number (GSTIN), Employees' State Insurance

Corporation (ESIC) registration PLUS Employees' Provident Fund Organisation (EPFO) registration) containing an application for registration of the GSTIN with effect from 31st March, 2019, EPFO with effect from 8th April, 2019 and ESIC with effect from 15th April, 2019.

#### 8.0 Ministry of Corporate Affairs withdraws Office memo dated 06.03.2019

Ministry of Corporate Affairs had issued Office Memo dated 06.03.2019 vide which Manufacturing & allied activities were restricted in LLPs vide OM No. CRC/LLP/e-Forms. The Ministry has clarified that it has withdrawn the OM invoking the restriction regarding manufacturing & allied activities.

#### 9.0 Clarification regarding Filing of affidavits from each of the subscribers

The Ministry of Corporate affairs has clarified that the filing of Filing of affidavits from each of the subscribers to the memorandum and from persons named as the first directors as per Section 7(1)(c) of the Companies Act, 2013 read with rule 15 of the Companies (Incorporation) Third Amendment Rules has been dispensed with vide the Companies (Amendment) Act, 2017- from 27th July 2018. Only declaration by first subscriber(s) and director(s) in INC-9 is mandatory.

## TAXATION

### 1.0 Detailed Format for Income Tax Return Form Notified

The Income Tax Department has released the New Tax Return Form in which Assessors must provide details of any investment they have made and any directorial positions they may hold, in unlisted companies in their respective tax returns.

The new ITR Forms also require that the salary income reported in ITR must be matched with TDS certificate issued by employer in Form 16.

### 2.0 Clarification regarding exercise of option to pay tax under notification No. 2/2019

The Central Board of Indirect Taxes and Customs (CBIC) issued Clarification dated 05<sup>th</sup> April, 2019, regarding exercise of option to pay tax under notification No. 2/2019- CT(R) dt 07.03.2019 i.e. payment of central tax @ 3%. The option can be availed by filing intimation in the manner specified in FORM GST CMP-02 by selecting the category of registered person as "Any other supplier eligible for composition levy" as listed at Sl. No. 5(iii) of the said form, latest by 30<sup>th</sup> April, 2019.

### 3.0 Proposal to consider GST Fraud under Money laundering Act:

The Central Economic Intelligence Bureau (CEIB) is of the view that use of the stringent Prevention of Money Laundering Act could be considered to curb and deter fraudulent input credit tax, claimed by companies generating fake invoices of Goods and Services Tax.

The fraudulent claim of input tax credit by suppliers based on fake GST invoices is

contravention of Section 16 of the GST Act, which the agency has proposed to be made a predicate offence so that the ED or any other agency can book such entities under the PMLA and attach their properties and those of their associates.

### 4.0 Electronic Invoicing may begin under GST

The GST Council has set up a committee to look into the feasibility of e-invoicing under goods and services tax. The option is being considered to clamp down on tax evasion.

### 5.0 Businesses can use IGST credit to settle centre, state tax dues in any order or proportion

The Central Board of Indirect Taxes and Customs (CBIC) in March had allowed utilisation of input tax credit (ITC) of IGST towards the payment of Central GST and State GST, in any order subject to the condition that the entire IGST liability has been first discharged using the accumulated credit. The CBIC has further clarified that the IGST credit can be used in payment of CGST or SGST in any order or proportion.

On inter-state movement of goods as well as imports, an IGST is levied, which accrues to the centre. Ideally, there should be 'nil' balance in the IGST pool at the end of a fiscal since the amount should be used for payment of CGST and SGST.

### 6.0 Consequence of Non-Filing of GST return for two months

The Central Board of Indirect Taxes and Customs (CBIC) has notified June 21, 2019, as

the day from which any "consignor, consignee, transporter, e-commerce operator or courier agency" would be barred from generating electronic way or e-way bill for failure to file tax returns for the stipulated time period as mentioned in the GST rules.

As per rules, a composition scheme taxpayer who has not furnished the returns for two consecutive tax periods and a regular taxpayer who has not filed returns for a consecutive period of two months would be restricted from generating e-way bill.

#### 7.0 File GST returns on time or face penalty on entire tax liability

The Telangana High Court has rejected a writ challenging imposition of interest on total goods and services tax liability including input tax credit. The Court has said that until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. It is only after a claim is made in the return that the same gets credited in the electronic credit ledger, it said. Once payment is made from such electronic credit ledger, the Government gets a right over the money available in the ledger.

The GST Council had at its 31st meeting recommended change in the law to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax, however the same was not made effective by issuance an amendment.

## SEBI

### 1.0 Share pledging curb stumps companies, promoters:

Securities and Exchange Board of India (SEBI) has extended the period during which management and promoters aren't allowed to trade in their company's shares before earnings announcements. According to the Rules trading restrictions for company insiders start from the end of every quarter and are lifted 48 hours after the declaration of results.

### 2.0 SEBI reduces minimum subscription requirement for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)

SEBI has reduced the minimum subscription requirement as well as defined trading lots for REITs and InvITs vide notifications dated April 22, 2019.

REITs have to offer their units in lots worth at least ₹50,000 in initial and follow on public offers. The minimum value of a single lot should be ₹1 lakh in the case of InvITs.

### 3.0 SEBI extends UPI implementation for retail IPO investors till June 30

SEBI has vide circular dated April 03, 2019 extended the timeline for the implementation of phase 1 of Unified Payments Interface (UPI) as an alternative payment mechanism for retail investors buying shares in a public issue. It has extended the timeline for

implementation of Phase I by 3 months i.e. till June 30, 2019.

#### 4.0 Revision on Charge Structure related to Basic Services Demat Account (BSDA)

SEBI has revised the structure of charges for debt securities with effect from June 01, 2019 specifying that:

- No AMC shall be levied For debt securities worth up to Rs 1 lakh held through BSDA and maximum charge of Rs 100 would be levied if the value of holdings of Debt Security between Rs 1 lakh and Rs 2 lakh and
- No AMC shall be levied in case the value of holdings other than debt securities is below Rs. 50,000 and a maximum AMC of Rs. 100 shall be levied if the value of holdings other than debt securities is between Rs.50,001 and Rs.2,00,000.

#### 5.0 SEBI streamlines procedure to issue certified copies of orders, circulars

SEBI has issued Circular dated April 04, 2019, specifying that for the parties involved in the

proceedings, the certified copies of the orders passed by SEBI will be provided without charging any fee. However, for additional certified copies of the order, the applicants will have to pay fees. It has further provided procedure for issuance of certified copies of the Order or circular to applicants who are not directly related to the particular proceeding.

#### 6.0 SEBI fixes minimum net worth requirements for clearing corporations at International Financial Services Centre (IFSC)

SEBI has prescribed that all recognised clearing corporations in IFSC, need to maintain Rs 50 crore net worth in the form of liquid assets on commencement of operations.

Also, every such clearing corporation will raise over a period of three years from commencement of operations, its net worth, to be maintained in the form of liquid assets, to a minimum of Rs 100 crore or capital as determined in accordance with the Circular dated April 10.

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