

ACQUISORY

NEWS CHRONICLE

JUNE, 2018

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“

failing
TO TRY IS
trying
TO FAIL

”

Editor: **Sunaina Jhingan**
(Knowledge Manager with Acquisory)

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AT A GLANCE

ACQUISORY NEWS CHRONICLE JUNE, 2018

ARTICLE

GST: Taxation Simplified

One of the biggest reform since independence, the Goods and Service Tax (GST) has successfully completed one year of its implementation on July 1, 2018.

In a major initiative to ease the tax system of the country, the government launched GST on July 1, 2017. Under the GST regime, a regulated tax system was introduced in the country. With the introduction of this 'one nation one tax' regime, the country's business landscape saw a widespread makeover. The roll-out of GST was accompanied with frequent changes in rules, which was welcomed by few and deemed complex by others. The launch of GST stirred a lot of hubbub in the corporate sector. India Inc gave a mixed response to this indirect tax system.

SEBI Revises Norms On Various Regulations

SEBI in its Board Meeting held on 21st June, 2018 has approved the amendments to some of the major regulations. The Board has approved the changes to takeover regulations wherein entities would get additional time for upward revision of open offer price during share tendering period. Besides, buyback regulations would also be amended.

According to the regulator, the amendments are mainly aimed at simplifying the language, removing redundant provisions and inconsistencies as well as update references to Companies Act, 2013. In this regard, changes would be made to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Also, the watchdog would be reframing buyback regulations, with inclusion of definition of buyback period.

LEGAL UPDATES

RBI introduces Single Master Form for all types of Reporting w.r.t Foreign Investment in India -

RBI introduces Single Master Form for all types of Reporting w.r.t Foreign Investment in India. Reserve Bank, with the objective of integrating the extant reporting structures of various types of foreign investment in India, will introduce a Single Master Form (SMF). The SMF would be filed online. SMF would provide a facility for reporting total foreign investment in an Indian entity {as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, as also investment by persons resident outside India in an Investment Vehicle.

PAN Mandatory for all remittances under Liberalised

Remittance Scheme - RBI has decided that furnishing of Permanent Account Number (PAN) has been made mandatory for making all remittances under Liberalized Remittance Scheme (LRS).

MCA introduces DIR-3 KYC Form for conducting KYC of all Directors of all Companies Annually -

As part of updating its registry, MCA would be conducting KYC of all Directors of all companies annually through a new eform viz. DIR-3 KYC to be notified and deployed shortly. Accordingly, every Director who has been allotted DIN on or before 31st March, 2018 and whose DIN is in 'Approved' status, would be mandatorily required to file form DIR-3 KYC on or before 31st August, 2018.

GST: Taxation Simplified

India has taken a huge stride towards Increasing Compliance, Formalization, Productivity, Transparency and Ease of Doing Business with the implementation of Goods and Service Tax (GST). The advent of GST from 1 July, 2017, is one of the crucial reforms in the history of the Indian economy since 1947. The overall process of implementation was viewed as an uphill task. Now with the first anniversary of this landmark reform behind us, it is pertinent to study the impact of GST on businesses as well as on the economy as a whole. At this juncture, it will also benefit all stakeholders to identify the existing bottlenecks and obstacles in the implementation of GST, along with suggestions for its improvements to make it a 'successful reform'.

ONE NATION ONE TAX



Image source: <https://www.gsthelplineindia.com/>

Impact of GST – At a Glance

- ✓ **Increasing Ease of Doing Business**
 - Simplified Common procedures for registration, duty payment, return filing and refund of taxes
 - Enhanced Export Competitiveness due to effective neutralization of taxes.
- ✓ **Increasing Transparency**
 - Online Compliance, reducing manual discretion and error, and improving transparency and efficiency.
 - From Returns to Refund, everything now happens online
- ✓ **Increasing Productivity**
 - Implementation of E-way Bill ensures easy movement across the country
 - As a result GST has led to abolition of check posts at State borders, saving significant time for movement of freight. This has resulted in tremendous gains for the logistics sector.
- ✓ **Increasing Opportunities for Small & Medium Entrepreneurs**
 - Manufacturer/ Service Provider/Trader whose annual turnover is below Rs. 20 Lakhs are exempted from GST
 - Simplified Composition Scheme with concessional rate for taxpayers with annual turnover upto Rs. 1 crore
 - Entities with turnover upto Rs. 1.5 Crore to file returns in GSTR-1 form only on quarterly basis.
 - No GST to be paid on advances received for supply of Goods.
- ✓ **Decreasing prices Helping Poor & Middle Class**
 - With GST, no more cascading of various central & state taxes & thus lower effective taxes
 - Large number of items of daily usage are either exempted or in 5% slabs
 - 95% items fall in below 18% slab

GST: Taxation Simplified

Key benefits of GST

Flat Single Tax System

GST has subsumed almost all indirect taxes at the Central and state levels, thereby reducing the multiplicity of taxes. This has helped in creating a simplified tax regime to promote ease of doing business. At the initiation of the new regime, there were concerns about the likely impact of GST on inflation. However, food items with a larger weightage in the CPI basket were seen to be largely exempted from GST, leading to a minuscule impact on CPI inflation. The integration of the unorganised sector can also be seen as another major achievement of GST implementation.

Expansion of Tax Base

From the fiscal perspective, GST is expected to expand the tax net in the long run, resulting in increased tax revenue. This would lead to strong government finances.

Increase in Tax Collection

The GST collection mark of over Rs. 1 trillion, for the first time for April 2018, points towards a positive trend in GST revenue collection. Moreover, the introduction of GST and the e-way bill will reduce the time and cost for the movement of goods across the country, benefiting the logistics sector as well.

Overall Performance

Immediate reaction to GST was negative from many stakeholders, who wanted to preserve status quo. The pre-GST preparation of Government of India was commendable considering the volume of change that was introduced. The scope of GST is so large that anticipating all the problems at the beginning on or before of implementation was impossible. Yet, we believe, through our frequent interactions with stakeholders that by and large GST has been a successful reform. The efforts of the GST Council are appreciable in this matter. The council continuously endeavors to remove the difficulties faced by the taxpayers though for this purpose the council has to continuously amend the procedures introduced by it with the introduction of GST. GST is a consensus driven process and therefore bodes well for its future.

It is accepted by the Council that the system needs further simplification as the implementation of return filing procedures is still an issue because of bottlenecks and subsequent delays. The introduction of GST that led to a substantial system migration, brought along some issues and short-term disruptions among businesses across the country. In the initial phase, GST had its share of implementation challenges such as filling tax returns, securing timely refund of duties, and technical glitches related to the GST portal. The time taken to remove this hurdle should be curtailed down for ensuring the success of GST.

In view of these technical bottlenecks, the GST network has worked proactively to resolve certain issues, such as the electronic filing of letters of undertaking (LoUs) and automatic adjustment of tax liability with credit or cash. However, problems like slow response rates and errors faced around due dates for filing returns still remain, and need to be resolved to provide respite to taxpayers.

GST: Taxation Simplified

Besides, refunds under GST have remained a key concern for businesses. Many exporters were unable to file refunds for input tax credits, which adversely impacted their cash flows. To address this concern, the government had organised a special refund fortnight drive in June 2018 to clear pending applications for GST refunds.

There is a positive trend in collection under GST. However, at this stage we cannot analyze the full impact of GST on the revenue because of the effect of earlier credit of Central excise and VAT taken by the dealers with further scores of refunds still pending.

Resolving GST issues

In view of the implementation challenges of the new tax regime, the GST council has been working towards simplifying various laws and procedures as well as rationalizing tax rates. The GST council has already reduced rates for more than 175 items. Further, the GST panel has identified almost 180 issues and put forward its suggestions before the GST Council.

Some of the key suggestions include single registration for a taxpayer across India, change in the definition of 'supply' under Section 7 of the CGST Act, cutting off input tax credit from the negative list, further simplification of return filing, and the inclusion of petroleum products under GST.

Yet, a few gaps continue to remain that the government and the GST Council needs to bridge for the ease of doing business and for achieving a simplified tax structure which will truly reflect the spirit of One Nation – One Tax.

SEBI Revises norms on Various Regulations

SEBI in its meeting held on 21st June, 2018 decided to overhaul majorly all significant SEBI Regulations with an aim to simplify the language by eliminating redundant provisions and inconsistencies, by updating the references to the Companies Act, 2013 and by resolving the practical issues faced while implementing the provisions laid down therein, making it more easy readable and understandable for the issuers as well as for the investors. A new set of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 will be notified simplifying the norms for Initial Public Offerings and Rights Issues, also, a new set of SEBI (Buy-back of Securities) Regulations, 2018 will be notified which would be in line of the Companies Act, 2013. Major amendments will be notified in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and other miscellaneous Regulations which presently have various inconsistencies.

Subject/ Regulations	Amendments										
Review of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	<p>Board issued a discussion paper on 28th March, 2018 soliciting public comments for reviewing SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 which mainly aimed to simplify the language, eliminating redundant provisions and inconsistencies, updating the references to the Companies Act, 2013 / other new SEBI Regulations, and incorporating the relevant circulars, FAQs, informal guidance in the Regulations.</p> <p>In reference to the same, Board has decided to grant additional time for upward revision of open offer price till one working day before the commencement of the tendering period.</p> <p>In addition, following were the other proposals which formed part of discussion paper and might have been approved by the Board in the amended Regulations:</p>										
	<table border="1"> <thead> <tr> <th style="text-align: center;">Provisions</th> <th style="text-align: center;">Existing Provision</th> <th style="text-align: center;">Proposed changes</th> <th style="text-align: center;">Impact if amended in Regulations</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> Exemption for acquisition of shares or voting rights or control in inter-se transfer amongst group companies </td> <td style="vertical-align: top;"> Inter-se transfer of shares or voting rights or control amongst the Target Company or, its subsidiaries, its holding, other subsidiaries of such holding company, or any other entity where such persons holds atleast 50% of the equity shares is presently exempted under the Regulations. </td> <td style="vertical-align: top;"> Explanation to the exemption has been inserted specifying to include a body corporate, whether Indian or foreign in the definition of company for this specific exemption. </td> <td style="vertical-align: top;"> With the insertion of explanation including a body corporate whether Indian or foreign, any group entity would also get an automatic exemption on transfer of shares or voting rights or control over the Target Company. </td> </tr> </tbody> </table>	Provisions	Existing Provision	Proposed changes	Impact if amended in Regulations	Exemption for acquisition of shares or voting rights or control in inter-se transfer amongst group companies	Inter-se transfer of shares or voting rights or control amongst the Target Company or, its subsidiaries, its holding, other subsidiaries of such holding company, or any other entity where such persons holds atleast 50% of the equity shares is presently exempted under the Regulations.	Explanation to the exemption has been inserted specifying to include a body corporate, whether Indian or foreign in the definition of company for this specific exemption.	With the insertion of explanation including a body corporate whether Indian or foreign, any group entity would also get an automatic exemption on transfer of shares or voting rights or control over the Target Company.		
Provisions	Existing Provision	Proposed changes	Impact if amended in Regulations								
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SEBI Revises norms on Various Regulations

		<p>However, as per the Regulations, company means a company incorporated under the provisions of this Act or any other previous company law and does not specifically covers any other form of entity which is in the group whether Indian or Foreign. For such group entities, a separate application to seek exemption has to be made with Board.</p>		
	Calculation of trading status	<p>The trading status of shares of the Target Company shall be calculated on the date on which open offer is made.</p>	<p>The trading status of shares of the Target Company shall be calculated on the date on which open offer is required to be made</p>	<p>In all cases of delayed open offer, calculation of trading status would be done on the date open offer was required to be made.</p>
	Interest bearing Escrow account	<p>Presently, Acquirer loses interest on the funds submitted in Escrow account during the open offer period.</p>	<p>Proposed that escrow account may be maintained on interest bearing basis.</p>	<p>This step would lower the actual cost for the Acquirers, as they would not lose significant interest portion on the funds submitted.</p>
	Despatch of Letter of offer through electronic mode	<p>Presently, there is no route to despatch the letter of offer through electronic mode</p>	<p>Proposed to allow despatch of letter of offer through electronic mode in parlance with the provisions of Companies Act, 2013.</p>	<p>This would in consistency of Companies Act, 2013. This would reduce the cost and would ensure timely delivery of the Letter of offer.</p>

SEBI Revises norms on Various Regulations

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<p>Review of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009</p>	<p>Board decided to come out with new SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, wherein the contents of Regulation would be streamlined in a simplified manner with eliminating the inconsistencies in the present Regulations, making it more easy readable and understandable.</p> <p>The Board while approving ICDR Regulations have considered and approved proposals of Primary Market Advisory Committee, the key proposals approved are as follows:</p> <ul style="list-style-type: none"> ▪ Reduced the requirement to announce price band to 2 working days from 5 working days before opening of the issue; ▪ Reduced the period for disclosure of financial information in case public issues and rights issues to 3 years instead of 5 years, that too on consolidated basis as earlier required to be made on both standalone as well as consolidated basis, incorporating the principles governing disclosures of Indian Accounting Standards (IndAS) on Indian GAAP (IGAAP) Financials; ▪ In case public issues and rights issues, an additional requirement to disclose audited standalone financials of the issuer and material subsidiaries on the website of the issuer has been inserted; 								

SEBI Revises norms on Various Regulations

- The threshold limit to submit draft letter of offer with the Board in cases of rights issues has been increased from INR 50 lacs to INR 10 crores;
- Allowed institutional investors such as foreign venture capital investors, scheduled commercial banks, public financial institutions, insurance companies and Alternative Investment Funds to subscribe the shortfall of upto 10% in minimum promoters' contribution, without being identified as Promoters of the issuer;
- Disallowed the companies having audit qualifications or adverse opinion to be eligible for fast track right issues;
- Deleted chapter on Institutional Placement Programme and provisions relating to Safety net and IPO grading;
- In case of SME-IPO, the minimum anchor investor size has been reduced from INR 10 Crores to INR 2 Crores;
- Amended the definition of Promoter Group, wherein in case promoter is a body corporate, the shareholding threshold for identifying promoter group has been revised to **20 percent as the earlier was of 10 percent**. Also, while identifying whether a group of individuals or companies or combinations thereof, which holds 20 percent or more of the equity share capital in any body corporate and also holds **20 percent or more** of the issuer can be classified as promoter group **only if they are acting in concert**;
- Inserted the definition of Group Companies which shall include such companies (other than promoter(s) and subsidiary (ies)) with which there were related party transactions during the period for which financial information is disclosed in last 3 years, as covered under the applicable accounting standards and also other companies as considered material by the board of the issuer;
- Permitted Insurance Companies and Foreign Portfolio Investors except for Category – III promoted by entities related to the lead manager to participate in the Anchor Investor category, in addition to mutual funds which was already allowed;
- The requirement to underwrite 100% of the issue size in case of Initial Public Offer has been reduced to 90%, as for an IPO to be successful minimum subscription shall be of 90% only.

The new set of regulations are yet to be notified.

SEBI Revises norms on Various Regulations

<p>Replacing SEBI (Buy-back of Securities) Regulations, 1998 with new SEBI (Buy-back of Securities) Regulations, 2018</p>	<p>Board issued a discussion paper on 28th March, 2018 soliciting public comments for reviewing SEBI (Buy-back of Securities) Regulations, 1998 which mainly aimed to simplify the language, eliminating redundant provisions and inconsistencies, updating the references to the Companies Act, 2013 / other new SEBI Regulations, and incorporating the relevant circulars, FAQs, informal guidance in the Regulations.</p> <p>In reference to the same, Board has decided <i>to define the buy back period which will commence from the date between Board of Directors resolution or the date of result for special resolution authorizing the buy back of shares and the date on which payment consideration is made to the shareholders.</i></p> <p>The new set of regulations are yet to be notified.</p>
<p>Decision on review of regulation and relevant circulars pertaining to Stock Exchanges, Clearing Corporations and Depositories ('Market Infrastructure Institutions')</p>	<p>In order to bring parity and harmonize the provisions of regulation and relevant circulars governing Market Infrastructure Institution ('MIIs') i.e. Stock Exchanges, Clearing Corporations and Depositories, the Board has approved proposals as recommended by the Gandhi Committee constituted by the Board to 'Review of regulation and relevant circulars pertaining to MIIs'. The Board has approved proposed Following proposed amendments have been approved:</p> <ul style="list-style-type: none"> • Eligible domestic and foreign entities allowed to hold upto 15% equity in Depository and Clearing cooperation and shareholding of these MII will be likewise to Stock Exchanges; • Changes have been approved in the provisions related to Public Interest Directors in all MIIs including restricting their tenure across MII to be not more than 3 terms of 3 years each; • Composition of Governing Board and Regulatory committees of all MIIs have been modified; • Changes proposed to bring transparency in the utilization of resources by all MIIs; • Requirement of Regulatory approval given away for activities in the nature of treasury investment, if as per investment policy approved by the Governing Board. For other deployment of funds, approvals of Regulator would be needed; • The definition and disclosure requirements with respect to KMP of MIIs modified; • Various committees of MIIs have been restructured, reducing the number of committee from existing 15 to 7; • Methodology for Computation of Networth of a Clearing Corporation modified.

SEBI Revises norms on Various Regulations

<p>Role of Sub-broker vis-a-vis Authorized Person</p>	<p>Board has now decided to discontinue the category of sub-broker as Market Intermediaries and for this no fresh registration shall now be granted. The already registered sub-brokers will have to choose to migrate either to Authorized Persons or Trading Members and in case migration is not made within the time, as may be specified, it shall be deemed that the registration has been surrendered.</p>
<p>Consultation Paper for the Amendment of various SEBI Regulations in respect of entities undertaking Third Party Assignment under securities laws</p>	<p>Presently, fiduciaries like Merchant Bankers, Credit Rating Agencies, Custodian, Debenture Trustees, Registrar to an Issue, etc. are registered with Board under respective regulations, but certain other fiduciaries such as Practicing Chartered Accountants, Practicing Company Secretaries, Cost Accountants, Valuers, Monitoring Agencies, etc. who undertake third party fiduciary duty/assignment/engagement from Issuers or Intermediaries as required under various SEBI Regulations, are not registered with SEBI. Board in order to maintain investor confidence and to ensure reliable reporting of disclosure, financial information, and compliance with securities regulations, would issue a Consultation Paper to amend various regulations in respect of entities who undertake third party fiduciary duty/assignment/engagement under the securities laws, in respect of any Issuer, Pooled Investment Vehicle, Intermediaries and Market Infrastructure Entities.</p>
<p>Establishment of National Centre for Financial Education (NCFE) as Section 8 Company – subscription to its Share Capital</p>	<p>Board has approved the establishment of National Centre for Financial Education (‘NCFE’) under Section 8 of the Companies Act, 2013 and approved subscription of 30% of the paid-up capital of the company amounting to INR 30 crores.</p>

RBI Update

External Commercial Borrowings (ECBs) – Monthly reporting through ECB 2 Return

RBI has decided to capture the details of the hedges for ECBs through a simplified format of ECB 2 Return. Part E of the Return, accordingly, is modified so as to include only standard information on hedged/unhedged ECB exposure.

Details of hedging in Part E.1 of the Return and foreign exchange earnings and expenditure in Part E.2 of the Return should be furnished in additive format. Further, for reporting in respect of natural hedge, provisions contained in paragraph 2 (iii) of A.P. (DIR Series) Circular No. 15 dated November 07, 2016 should be followed.

Revised monthly reporting format of ECB 2 Return would be applicable from month-end June 2018. It is reiterated that any lapse at the time of reporting through this return and / or failure to adhere to the time line of its submission and / or any lapse at the time of reporting through Form 83 is a contravention of the provision of Foreign Exchange Management Act, 1999 (42 of 1999).

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11296&Mode=0>

RBI to introduce Single Master Form for all types of Reporting w.r.t Foreign Investment in India

RBI to introduce Single Master Form for all types of Reporting w.r.t Foreign Investment in India. Reserve Bank, with the objective of integrating the extant reporting structures of various types of foreign investment in India, will introduce a Single Master Form (SMF). The SMF would be filed online. SMF would provide a facility for reporting total foreign investment in an Indian entity {as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, as also investment by persons resident outside India in an Investment Vehicle. Prior to the implementation of the SMF, Reserve Bank would provide an interface to the Indian entities, to input the data on total foreign investment in a specified format. The interface will be available on RBI website from June 28, 2018 to July 12, 2018. Indian entities not complying with this pre-requisite will not be able to

receive foreign investment (including indirect foreign investment) and will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made thereunder.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11297&Mode=0>

PAN Mandatory for all remittances under Liberalised Remittance Scheme

RBI has decided that furnishing of Permanent Account Number (PAN) has been made mandatory for making all remittances under Liberalized Remittance Scheme (LRS).

Further, in the context of remittances allowed under LRS for maintenance of close relatives, it has been decided, in consultation with Government, to align the definition of 'relative' with the definition given in Companies Act, 2013 instead of Companies Act, 1956.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11309&Mode=0>

RBI revises the guidelines prescribing eligibility criteria of housing loans for classification under priority sector, which shall come into effect from the date of the Circular i.e 19-06-2018

RBI has revised the guidelines prescribing eligibility criteria of housing loans for classification under priority sector, which shall come into effect from the date of the Circular i.e 19-06-2018. With a view to bringing convergence of the Priority Sector Lending guidelines for housing loans with the Affordable Housing Scheme, and to give a filip to low-cost housing for the Economically Weaker Sections and Low Income Groups, the housing loan limits for eligibility under priority sector lending will be revised to ₹ 35 lakh in metropolitan centres (with population of ten lakh and above), and ₹ 25 lakh in other centres, provided the overall cost of the dwelling unit in the metropolitan centre and at other centres does not exceed ₹ 45 lakh and ₹ 30 lakh, respectively. Furthermore, the existing family income limit of ₹ 2 lakh per annum, prescribed under Para 10.4 of the above Master

RBI Update

Direction, for loans to housing projects exclusively for the purpose of construction of houses for Economically Weaker Sections (EWS) and Low Income Groups (LIG), is revised to ₹ 3 lakh per annum for EWS and ₹ 6 lakh per annum for LIG, in alignment with the income criteria specified under the Pradhan Mantri Awas Yojana. All other terms and conditions specified under the Master Direction shall remain unchanged.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=1130&Mode=0>

MCA Update

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 has got the approval of Hon'ble President of India

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 has got the approval of Hon'ble President of India. The Ordinance provides significant relief to home buyers by recognizing their status as financial creditors. This would give them due representation in the Committee of Creditors and make them an integral part of the decision making process. It will also enable home buyers to invoke Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 against errant developers. Another major beneficiary would be Micro, Small and Medium Sector Enterprises (MSME), which form the backbone of the Indian economy as the biggest employer, next only to the agriculture sector. The immediate benefit it provides is that, it does not disqualify the promoter to bid for his enterprise undergoing Corporate Insolvency Resolution Process (CIRP) provided he is not a willful defaulter and does not attract other disqualifications not related to default. The Ordinance also provides for a mechanism to allow participation of security holders, deposit holders and all other classes of financial creditors that exceed a certain number, in meetings of the Committee of Creditors, through the authorized representation. The other changes brought about by the Ordinance include non-applicability of moratorium period to enforcement of guarantee; introducing the requirement of special resolution for corporate debtors to themselves trigger insolvency resolution under the Code; liberalizing terms and conditions of interim finance to facilitate financing of corporate debtor during CIRP period; and giving the IBBI a specific development role along with powers to levy fee in respect of services rendered. The above mentioned changes are expected to further strengthen the Insolvency Resolution Framework in the country and produce better outcomes in terms of resolution as opposed to liquidation, time taken, cost incurred and recovery rate.

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/President%20Approves%20Promulgation%20of%20the%20Insolvency%20and%20Bankruptcy%20Code%20\(Amendment\)%20Ordinance,%202018%2018-06-06%2021:10:49.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/President%20Approves%20Promulgation%20of%20the%20Insolvency%20and%20Bankruptcy%20Code%20(Amendment)%20Ordinance,%202018%2018-06-06%2021:10:49.pdf)

Insolvency and Bankruptcy Board of India (IBB) has issued Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018 to streamline the procedure for recommendation and appointment of Interim Resolution Professional (IRP) or liquidator

Insolvency and Bankruptcy Board of India (IBB) has issued Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018 to streamline the procedure for recommendation and appointment of Interim Resolution Professional (IRP) or liquidator. These guidelines shall replace the existing guidelines already in place. Where an application is made by operational credit to Adjudicating Authority (AA) for Corporate Insolvency Resolution Process (CIRP) and has not proposed any IRP, the AA makes reference to IBBI to recommend Insolvency Professional to act as IRP under Section 16 (3) (a) of Insolvency and Bankruptcy Code, 2016. Similarly, Section 34(4) of the Code requires the AA to replace the resolution professional, in such cases, the AA may direct the Board under section 34(5) of the Code to propose the name of another IP to be appointed as a liquidator. The Board is required under section 34(6) to propose the name of another IP within ten days of the direction issued by the AA. The Board used to invite expression of interest from eligible IPs and had an internal committee to appraise interests to identify an IP for recommendation to the AA. It takes some time also for the recommendation of the Board to reach the AA, after which the AA can appoint the recommended IP. According to the guideline, the IBBI will prepare a Panel of IPs for appointment as IRP or Liquidator and share the said Panel with all benches of National Company Law Tribunal, as per their jurisdiction. The NCLT may pick up any name from the Panel for appointment of IRP or Liquidator for a CIRP or Liquidation, as the case may be.

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/May/31st%20May%202018%20Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20\(Recommendation\)%20Guidelines%202018-05-31%2011:16:31.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/May/31st%20May%202018%20Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20(Recommendation)%20Guidelines%202018-05-31%2011:16:31.pdf)

MCA Update

IBBI - releases a circular prescribing fee and other expenses incurred for Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy of India (IBBI) released a circular prescribing fee and other expenses incurred for Corporate Insolvency Resolution Process. In April, the Board released a discussion paper on regulation of fee payable to insolvency professionals and other process costs under Corporate Insolvency Resolution Process and invited comments on the same. In view of the comments received from the stakeholders, the Board directed the Insolvency Professionals to ensure that the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable; fee or other expenses incurred by him are directly related to and necessary for the CIRP; the fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence; written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained, supporting records of fee and other expenses incurred are maintained at least for three years from the competition of the CIRP; approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required. It was directed to ensure that no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC. The circular further clarified that the IRPC shall not include any fee or other expense not directly related to CIRP, any fee or other expense beyond the amount approved by CoC, where such approval is required, any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP, any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP and any penalty imposed on the corporate debtor for non-compliance with applicable laws during the CIRP.

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20%5BJune%202018%5D_2018-06-](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20%5BJune%202018%5D_2018-06-12%2017:21:28.pdf)

[12%2017:21:28.pdf](http://www.mca.gov.in/Ministry/pdf/Cmp3rdAmndRul31206_13062018.pdf)

MCA notifies Companies (Appointment and Qualification of Directors) 3rd Amendment Rules, 2018.

MCA has made amendment to Companies (Appointment and Qualification of Directors) Rules, 2014, the amendment has been made w.r.t. Form DIR 3 and Form DIR 6.

http://www.mca.gov.in/Ministry/pdf/Cmp3rdAmndRul31206_13062018.pdf

MCA notifies Limited Liability Partnership (Amendment) Rules, 2018

MCA notifies Limited Liability Partnership (Amendment) Rules, 2018, the amendment has been made w.r.t. Every individual, who intends to be appointed as a designated partner of an existing limited liability partnership, shall make an application electronically in Form DIR-3 under the Companies (Appointment and Qualifications of Directors) Rules, 2014 for obtaining DPIN under the Limited Liability Partnership Act, 2008 and such DIN shall be sufficient for being appointed as designated partner under the Limited Liability Partnership Act, 2008.

http://www.mca.gov.in/Ministry/pdf/LLPAmndRule1206_13062018.pdf

MCA notifies commencement of some of the provisions of the Companies Act, 2017 w.e.f. 13th June, 2018

MCA has issued Notification regarding commencement of some of the provisions of the Companies Amendment Act, 2017. The Central Government has appointed 13th June, 2018 as the date on which the provisions of Section 22 (Section 90 of the Companies Act, 2013 - Register of Significant beneficial Owners in a Company); Section 24 (Section 93 [omitted] of the Companies Act, 2013 - Return to be filed with Registrar in case

MCA Update

of promoter stake changes); Section 25 (Section 94 of the Companies Act, 2013 - Place of keeping and inspection of registers and returns etc.); Section 26 (Section 96 of the Companies Act, 2013 - Annual General Meeting) and Section 71 (Section 216 of the Companies Act, 2013 - Section 216 Investigation of ownership of Company) of the said Act shall come into force.

http://www.mca.gov.in/Ministry/pdf/CommNotificatio1306_14062018.pdf

MCA notifies the Companies (Management and Administration) Second Amendment Rules, 2018 which shall come into force w.e.f. 13th June, 2018

MCA has notified the Companies (Management and Administration) Second Amendment Rules, 2018 which shall come into force on the date of their publication in the Official Gazette i.e 13th June, 2018. Corresponding Rules of amended provisions of the Companies Act, 2013 are also amended to give effect to the commencement notification. Accordingly, Rule 13, Rule 15(6), and Rule 18(3), Explanation after clause (ix), shall be omitted. Rule 22(16), is amended to provide that any items of business, if required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under Section 108, in the manner provided in that section. Further, One Person Companies and other companies having members upto two hundred are not required to transact any business through postal ballot.

http://www.mca.gov.in/Ministry/pdf/Company2ndAmndRule13062018_14062018.pdf

MCA issues Companies (Accounting Standards) Amendment Rules, 2018

MCA has issued Notification w.r.t. Amendment in Accounting Standard (AS) – 11. An enterprise may dispose of its interest in a non-integral foreign operation through sale, liquidation, repayment of share capital, or abandonment of all, or part of,

that operation. The payment of a dividend forms part of a disposal only when it constitutes a return of the investment. In the case of a partial disposal, only the proportionate share of the related accumulated exchange differences is included in the gain or loss. A write-down of the carrying amount of a non-integral foreign operation does not constitute a partial disposal. Accordingly, no part of the deferred foreign exchange gain or loss is recognised at the time of a write-down.

http://www.mca.gov.in/Ministry/pdf/CompanyAmendmentRule1806_19062018.pdf

MCA invites comments from stakeholders on introductory note and draft on Cross-Border Insolvency

The Ministry of Corporate Affairs (MCA), Government of India, invites comments and views from stakeholders on introductory note and draft on Cross-Border Insolvency. The MCA is keen to introduce a globally accepted and well-recognised cross-border insolvency framework, fine-tuned to suit the needs of aspirational Indian economy. The Government has taken initiative for Cross-Border Insolvency within the Insolvency & Bankruptcy Code, 2016 (the Code) to provide a comprehensive legal framework.

Inclusion of cross-border insolvency framework will further enhance ease of doing business, provide a mechanism of cooperation between India and other countries in the area of insolvency resolution, and protect creditors in the global scenario. Furthermore, it will make India an attractive investment destination for foreign creditors given the increased predictability and certainty of the insolvency framework.

Introductory note and draft on Cross-Border Insolvency have been uploaded on MCA website mca.gov.in. Suggestions on the draft on Cross-Border Insolvency are invited from the stakeholders to further enhance the same and ensure views after wider consultation are incorporated. Suggestions in the format prescribed in public notice on MCA website may be mailed to the email id: crossborder@mca.gov.in till 30.06.2018.

MCA Update

MCA to introduce a chapter on Cross-Border Insolvency within the Insolvency & Bankruptcy Code, 2016

respect of such deactivated DINs shall be allowed upon payment of a specified fee only, without prejudice to any other action that may be taken.

The Ministry of Corporate Affairs, has taken an initiative to introduce a chapter on Cross-Border Insolvency within the Insolvency & Bankruptcy Code, 2016 to provide a comprehensive legal framework, considering the fact that corporates transact businesses in more than one jurisdiction and also have assets across many jurisdictions. The MCA has presented Introductory note and draft chapter for Suggestions from the stakeholders at large. Suggestions on the draft chapter on Cross Border Insolvency are invited to further enhance the same and ensure that wider consultation/views are incorporated. Suggestions in the format prescribed below may be mailed to the email id "crossborder@mca.gov.in till 30.06.2018.

http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Public%20Notice%20on%20Cross%20Border_2018-06-20%2019:24:36.pdf

MCA introduces DIR-3 KYC Form for conducting KYC of all Directors of all Companies Annually

As part of updating its registry, MCA would be conducting **KYC of all Directors** of all companies annually through a new eform viz. **DIR-3 KYC** to be notified and deployed shortly. Accordingly, every Director who has been allotted DIN on or before 31st March, 2018 and whose DIN is in 'Approved' status, would be mandatorily required to file form DIR-3 KYC on or before **31st August, 2018**. While filing the form, the **Unique Personal Mobile Number and Personal Email ID** would have to be mandatorily indicated and would be duly verified by **One Time Password (OTP)**. The form should be filed by every Director using his own DSC and should be duly certified by a practicing professional (CA/CS/CMA). Filing of DIR-3 KYC would be mandatory for **Disqualified Directors** also.

After expiry of the due date by which the KYC form is to be filed, the MCA21 system will mark all approved DINs (allotted on or before 31st March 2018) against which DIR-3 KYC form has not been filed as '**Deactivated**' with reason as 'Non-filing of DIR-3 KYC'. After the due date filing of DIR-3 KYC in

SEBI Update

SEBI notifies the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018

SEBI has notified the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018 which shall come into force on the date of their publication in the Official Gazette. Amendment is carried out to insert a new proviso to Regulation 3 (2), after the first proviso, to streamline the acquisition as proposed through the Resolution Plan under IBC. The acquisition pursuant to a resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3 w.r.t Substantial acquisition of shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target Company.

https://www.sebi.gov.in/legal/regulations/jun-2018/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2018_39191.html

SEBI amends Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

SEBI has made Amendments to Prevention of Money-laundering (Maintenance of Records) Rules, 2005. Recently SEBI has notified Prevention of Money - laundering (Maintenance of Records) Second Amendment Rules, 2017 (PML Second Amendment Rules) on June 01, 2017 making the Aadhaar number and Permanent Account Number (PAN) mandatory for both new and existing accounts with the financial market intermediaries including securities market intermediaries. The Stock Exchanges and Depositories are accordingly directed to bring the provisions of this circular to the notice of the Stock Brokers and DPs; make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another; monitor the compliance of this circular through half-yearly internal audits and inspections; and communicate to SEBI, the status of the implementation of the provisions of this circular. Further, in case

of Mutual Funds, compliance of this circular shall be monitored by the Boards of Asset Management Companies and the Trustees and in case of other intermediaries by their Board of Directors.

https://www.sebi.gov.in/legal/circulars/jun-2018/amendments-to-prevention-of-money-laundering-maintenance-of-records-rules-2005_39207.html

NSE & BSE issues circular w.r.t. Compliance and Disclosure Requirements for Listed Companies undergoing Corporate Insolvency Resolution Process (CIRP)

NSE & BSE have issued a circular on all Listed Companies w.r.t Compliance and Disclosure Requirements for Listed Companies undergoing Corporate Insolvency Resolution Process (CIRP). Pursuant to these circulars, Listed companies are required to make prompt disclosures to the stock exchanges in relation to the events under the CIRP of the listed Company; Participants in the CIRP of a listed company (including the relevant RP and COC) are required to maintain confidentiality of the information received by them and are required to put in place a robust framework to maintain such confidentiality and Listed companies undergoing CIRP are also required to provide clarifications to the stock exchanges in relation to news regarding the CIRP of such listed company which are not announced by the listed company.

https://www.nseindia.com/content/equities/NSE_Circular_0606_2018.pdf

SEBI issues Circular w.r.t. Review of Investment by Foreign Portfolio Investors (FPI) in Debt

SEBI issues Circular w.r.t. Review of Investment by Foreign Portfolio Investors (FPI) in Debt. It has been decided to withdraw minimum residual maturity restriction of three years for investment by FPIs in G-Secs and SDLs. Further, the auction process being carried out by BSE/ NSE shall be discontinued from the date of the circular.

It is clarified that the primary responsibility of complying

SEBI Update

with monitoring the corporate debt investment limits is with the FPIs on whose behalf depositories will monitor the investment limits. As the depositories are maintaining the data on investor group level, depositories shall monitor the investments at the investor group level. Custodians shall be responsible for monitoring their own clients.

https://www.sebi.gov.in/legal/circulars/jun-2018/review-of-investment-by-foreign-portfolio-investors-fpi-in-debt_39284.html

SEBI Board Meeting Decisions

The SEBI Board in its recent meeting had taken various decisions in the best interest of the stakeholders. On review of various Regulation, it has been decided to grant additional time for upward revision of open offer price till one working day before the commencement of the tendering period as prescribed under SEBI (Substantial Acquisition of Shares and (Takeovers) Regulations, 2011. Relevant provisions outlined under Sections 68 and 70 of the Companies Act, 2013 have been incorporated in the new Buyback Regulations to make it self-contained and to sync with the Companies Act, 2013. Further, the Board approved the SEBI (Issue of Capital and Disclosure Requirements) Regulations, (“ICDR Regulations”) 2018 through which the requirement of announcing price band five working days before opening of the issue has been reduced to two working days before opening of the issue; Financial disclosures in case of public issues / rights issues to be made for 3 years as against the present duration of 5 years; Restated and audited financial disclosures in the offer document to be made on consolidated basis only and Audited standalone financials of the issuer and material subsidiaries to be disclosed on the website of the issuer Company; For a company to be eligible to make a fast track rights issue, it should not have any audit qualifications or adverse opinion.

https://www.sebi.gov.in/media/press-releases/jun-2018/sebi-board-meeting_39324.html

Taxation Update

GST - Government clarifies GST applicability on financial services by issuing FAQ's.

Government clarifies GST applicability on financial services by issuing FAQ's. The detailed clarifications for the financial services sector issued in the form of frequently asked questions (FAQs) seeks to address some pertinent issues relating to the industry such as levy of tax on free services. The FAQs issued late Saturday night cover banking, insurance and capital markets. For banks, automated tellers machines or ATMs will not constitute place of business and will not trigger GST registration, the government said. In case services are provided by multiple branches to a customer, the branch where the account is opened will pay GST and other branches will be deemed to provide services to the main branch. In case of import of gold, integrated GST will apply once, on import, and not again when it is appropriated by banks. Services provided by banks to the Reserve Bank of India will be taxable as these are not covered by any of the exemptions or excluded from the purview of GST. However, the repo rate or reverse repo rate are exempt from GST, as per the clarifications issued. The issuance of detailed FAQs on taxability of various revenue streams, place of supply, procedural relaxations in registrations, nature of various documents to be issued, etc., would definitely provide lot of clarity to the banking industry and should result in adoption of standard practices within the industry.

http://gstcouncil.gov.in/sites/default/files/faq/FAQs_on_Financial_Services_Sector.pdf

CBDT launches the Benami Transactions Informants Reward Scheme, 2018

CBDT has launched the Benami Transactions Informants Reward Scheme, 2018. It was found in many cases that black money was invested in properties in the names of others, even though benefits were enjoyed by the investor concealing his beneficial ownership in his tax returns. With the objective of obtaining people's participation in the Income Tax Department's efforts to unearth black money and to reduce tax evasion, a new reward scheme titled "Benami Transactions Informants Reward Scheme, 2018", has been issued by the Income Tax Department. Under the Benami Transactions Informants Reward Scheme,

2018, a person can get reward upto Rs. One crore for giving specific information in prescribed manner to the Joint or Additional Commissioners of Benami Prohibition Units (BPU) in Investigation Directorates of Income Tax Department about benami transactions and properties as well as proceeds from such properties which are actionable under Benami Property Transactions Act, 1988, as amended by Benami Transactions (Prohibition) Amendment Act, 2016. Foreigners will also be eligible for such reward. Identity of the persons giving information will not be disclosed and strict confidentiality shall be maintained.

CBDT has launched the Revised Income Tax Informants Reward Scheme, 2018

CBDT has launched the Revised Income Tax Informants Reward Scheme, 2018. With the objective of obtaining people's participation in the Income Tax Department's efforts to unearth black money and reduce tax evasion, a new reward scheme titled "Income Tax Informants Reward Scheme, 2018" has been issued by the Income Tax Department, superseding the earlier reward scheme issued in 2007. Under the revised scheme, a person can get reward up to Rs. 50 lakh for giving specific information in prescribed manner to the designated officers of Investigation Directorates in Income Tax Department about substantial evasion of tax on income or assets in India which are actionable under the Income-tax Act, 1961. Further, with the objective of attracting and encouraging people to give information about such income and assets actionable under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, reward up to Rs. 5 crore has been introduced in the new reward scheme. The amount has been kept high to make it attractive to potential sources in foreign countries. Under this Scheme, a person can get reward for giving specific information in prescribed manner about substantial tax evasion on income and assets abroad which are actionable under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Identity of the persons giving information will not be disclosed and strict confidentiality shall be maintained.

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/714/Press-Release-Revised-Income-Tax-Informants-Reward-Scheme-2018-New-1-6-2018.pdf>

Taxation Update

CBDT notifies Cost Inflation Index for Financial Year 2018-19 as 280

CBDT has notified Cost Inflation Index for Financial Year 2018-19 as 280. This Cost Inflation Index is required for the purpose of computation of Capital Gains while providing benefit to the assessee for the cost incurred in the previous years. This notification shall come into force with effect from 1st day of April, 2019 and shall accordingly apply to the Assessment Year 2019-20 and subsequent years. Earlier Government has specified that the Cost Inflation Index for the Financial Years shall be calculated taking the base year as 2001-02 instead of the earlier base of financial year 1980-1981.

https://www.incometaxindia.gov.in/communications/notification/notification26_2018.pdf

GST - CBIC notifies the Central Goods and Services Tax (Sixth Amendment) Rules, 2018 - FORM GST ENR-02 for Multi State Transporters to apply unique common enrolment number

The Central Board of Indirect Taxes and Customs has notified the Central Goods and Services Tax (Sixth Amendment) Rules, 2018 which shall come into force on the date of their publication in the Official Gazette. Amendment is made in Rule 58, to allow transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, to register for, unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his Goods and Services Tax Identification Numbers. Further, on allotment of unique common enrolment number, the transporter shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI. In this regard, the Form GST ENR-02 which is an Application for obtaining unique common enrolment number is also made available and notified.

http://www.cbic.gov.in/resources/htdocs-cbec/gst/Notification-28-2018-central_tax-English.pdf

DGFT allows Submission of application seeking authorization for import / export of restricted items through e-mail

DGFT has allowed submission of application seeking authorization for import / export of restricted items, after making online application, through e-mail instead of physical papers after payment of applicable fees. Physical processing of documents takes considerable time and generally delays the process of Import or Export, accordingly it has been decided that the applicant shall forward the online application along with all supporting documents in PDF, fee acknowledgment to the dedicated email id's for processing of the case. Applications are required to be submitted in prescribed pro-forma ANF-2M (for import license) and ANF- 2N (for export license) along with ANF-1 (Applicant's Importer Exporter Profile), copy of IEC and other supporting documents. Further, in case the applicant firm has received the NOC from the concerned administrative Ministry, the same should invariably be attached with the application.

<http://dgft.gov.in/Exim/2000/TN/TN18/Trade%20Notice%2018.pdf>

Glossary

CBDT	Central Board of Direct Taxes	MCA	Ministry of Corporate Affairs
CGST	Central Goods and Service Tax	MoU	Memorandum of Understanding
CA 2013	Companies Act 2013	MSME	Micro Small and Medium Enterprises
DIN	Director Identification Number	NCLAT	National Company Law Appellate Tribunal
ETF	Exchange Traded Fund	NCLT	National Company Law Tribunal
FPI	Foreign Portfolio Investors	NBFC	Non Banking Financial Company
FRDI	Financial Resolution & Deposit Insurance	NPA	Non-Performing Assets
FDI	Foreign Direct Investment	NRI	Non resident Indian
GST	Goods and Services Tax	OTP	One Time Password
GIC	GST Implementation Committee	OCI	Overseas Citizens of India
ICDS	Income Computation and Disclosure Standards	PAN	Permanent Account Number
IGST	Integrated Goods and Services Tax	PIO	Person of Indian Origin
ITC	Input tax Credit	RBI	Reserve Bank Of India
IFRS	International Financial Reporting Standards	ROC	Registrar of Companies
ITR	Income Tax Return	SEBI	Securities and Exchange Board of India
IBC	Insolvency and Bankruptcy Code	TAN	Tax Account Number
IPs	Insolvency Professionals	UTGST	Union Territory Goods and Service Tax
Ind AS	Indian Accounting Standards	VAT	Value Added Tax
IBBI	Insolvency and Bankruptcy Board of India	IEPF	Investor Education and Protection Fund
IUs	Information Utilities	ISD	Input Service Distributer

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