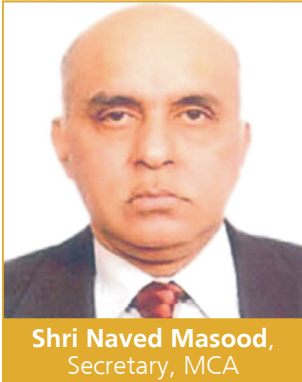




Monthly Newsletter

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Shri Naved Masood,
Secretary, MCA

From The Secretary's Desk

'Business sentiment' in India has improved in recent months. The Composite Leading Indicator (CLI) designed by the OECD to anticipate turning points in economic activity, indicates that the Indian economy is gaining growth momentum. It is also reassuring to note that the US economy is turning around with 4% growth rate in the second quarter of 2014, highest in the last 5 years. This development

would benefit all Emerging Market Economies (EME), including India.

The Industrial Outlook Survey for India conducted by RBI indicates improvement to business expectations in the Second Quarter of this fiscal. RBI has predicted real GDP growth of 5.3% in 2014-15, and 6.5% in 2015-16. This is premised on the recent pick-up in industrial activity and ongoing fiscal consolidation efforts of the government.

While the growth of industrial output in June 2014, was modest at 3.4%, index of capital goods production surged by 23%. During the first quarter of this fiscal, industrial output in capital goods sector increased by 13.9% indicating revival in investment growth. Performance of the corporate sector in the first quarter also points to a turnaround across the board.

Headline inflation still remains above the comfort zone of 5%, with food inflation remaining a cause of concern, constraining RBI to cut down the policy rate. However, reduction in Statutory Liquidity Ratio (SLR) by 50 basis point as announced by RBI recently, would improve liquidity in the system and unleash funds for investment.

As a follow up to the Union Budget 2014 announcement of setting up Infrastructure Investment Trusts (InvITS) and Real Estate Investment Trusts (REITS), the Securities & Exchange Board of India (SEBI) has issued guidelines for setting up and listing of InvITs and REITs. InvITs will invest in infrastructure projects, either directly or through a SPV. REITs provide investors with an avenue to invest in completed properties which provide regular income from the rentals received from such properties. I hope this arrangement would encourage small investors to participate in the growth process in a significant way.

As you are aware, the Companies Act, 2013 lays down stricter regime for companies defaulting in filing statutory returns, with higher additional fees and penalties. In order to provide an opportunity to defaulting

companies to make good their default, MCA has announced a 'Company Law Settlement Scheme 2014' (CLSS-2014), which condones delays in late filing, by granting immunity from prosecution and reduced additional fee. The scheme will remain in force up to 15th October, 2014. I hope companies would come forward to avail this opportunity and ensure compliance of the legal provisions.

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Cost Records and Audit Rules Notified: Section 148 of the Act, which was notified on 27.03.2014, prescribes maintenance of cost records in books of accounts and cost auditing for certain class of companies. The Companies (Cost Records and Audit) Rules, 2014, has been notified on 30.06.2014 and came into force with immediate effect. These Rules provide for the maintenance of cost records and conducting cost audits by companies as per the Companies Act, 2013.

As per these Rules, four categories of companies are required to maintain cost records in their books of accounts. They are as follows: (i) Companies engaged in production of strategic goods such as defence, space, radar apparatus etc; (ii) Companies engaged in an industry regulated by a sectoral regulator or a Ministry/Department of Central Government such as port services, telecommunication services, generation/transmission/ distribution/supply of electricity etc; (iii) companies operating in areas involving public interest such as railways, mineral products, cement, jute, edible oil, construction industry, health services, education services etc; and (iv) companies engaged in the production/import/supply/trading of medical devices. A minimum threshold level in terms of turnover and net worth has also been prescribed for these companies to be eligible to be covered under Section 148.

The Rules also prescribe categories of companies who have to get their cost records audited. A prescribed class of companies from categories mentioned in the above para, are required to get their cost records audited under the relevant provisions of the Act and the Rules.

Expert Committee on Cost Records and Audit Rules: Subsequent to notification of the Companies (Cost Records and Audit) Rules, 2014, the Institute of Cost Accountants of India (ICoAI) expressed concerns regarding applicability of certain provisions of the Rules, particularly those relating to coverage of sectors of the economy under Section 148. In order to address these concerns, the Ministry of Corporate Affairs has constituted an Expert Committee on 19.07.2014, headed by Shri R. S. Sharma, former Chairman and Managing Director, Oil and Natural Gas Corporation Limited (ONGC), to look into the matter. The Members of the Committee include Shri R.K. Jain, Additional Secretary, Ministry of Health & Family Welfare, Shri Chandra Wadhwa, former President, ICWAI. Smt. Aruna Sethi, Adviser (Cost), Ministry of Corporate Affairs is its convener. This Committee is required to submit its report within three months.

ICAI Celebrated Its 65 Years of Professional Excellence: Commemorating the establishment of the Institute of Chartered Accountants of India (ICAI) in 1949 on the same date, Chartered Accountants' Day was held in New Delhi on 01.07.2014. Hon'ble Union Minister of Finance, Defence and Corporate Affairs, Shri Arun Jaitley was the Chief Guest. Other dignitaries who graced the occasion included, *inter alia*, Shri Naved Masood, Secretary, Ministry of Corporate Affairs and Mr. Warren Allen, President of the International Federation of Accountants (IFAC). Shri

Arun Jaitley, Hon'ble Minister, in his Address appreciated the role of ICAI as a partner in nation building. During the function, Cloud Campus, ICAI Digital Library and Video Podcast Series were released.



Hon'ble Union Minister of Finance, Defence and Corporate Affairs, Shri. Arun Jaitley inaugurating the CA Day function in the presence of CA.K.Raghu, President, ICAI and CA. Manoj Fadnis at New Delhi.

Clarifications on Implementation of Companies Act, 2013: In its ongoing efforts to remove ambiguities expressed by various stakeholders in the implementation of the Companies Act, 2013, the Ministry has issued a series of Notifications and General Circulars in July, 2014 to provide better guidance and clarity to stakeholders in the implementation of the new Act. They are as follows:

Modification of Clauses Relating to Definitions of 'Related Party': The Government of India has issued three Notifications in July, 2014, modifying the definition of 'related party' under the Companies Act, 2013. They are as follows:

- i). Section 2(76) of the Companies Act, 2013 defines 'related party' with reference to a company. Clause (v) of the Section 2(76) defines 'related party' with reference to a company as 'a public company in which a director or manager is a director or holds along with his relatives, more than two per cent of its paid-up share capital'. In this definition, the word 'or' has appeared inadvertently defeating the intention of that clause. With the Notification **Vide S.O. 1820(E) dated 09.07.2014**, words 'or holds' is substituted with the words 'and holds'. This Notification came into force from 09.07.2014.
- ii). Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014, notified on 31.03.2014 provided an additional clause to the definition of 'related party'. The same has been further amended vide Notification G.S.R. **507(E) dated 17.07.2014**. Now Rule 3 reads as: "a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party". This Notification came into force from 17.07.2014.

iii). Clause (iv) of the Section 2(76) of the Companies Act, 2013, defines 'related party' with reference to a company. Vide Notification **S.O. 1894(E) dated 24.07.2014**, after the word "manager", the words "or his relative" is inserted. With this amendment, Section 2(76)(iv) of Act now reads as: 'a private company in which a director or manager or his relative is a member or director'. This Notification came into force from 24.07.2014.

Amendment to the Companies (Miscellaneous) Rules, 2014: Rule 11 was inserted in the Companies (Miscellaneous) Rules, 2014, which says that any application or form filed with the Regional Director or Registrar prior to the commencement of the Companies (Miscellaneous) Rules, 2014, but not disposed of for want of any information, will be disposed of in accordance with the Rules made under the Companies Act, 1956. This Notification came into force from 17.07.2014 [**G.S.R. 506(E) dated 17.07.2014**].

Amendment to Companies (Management and Administration) Rules, 2014: Government of India vide **G.S.R. 537(E) dated 24.07.2014** notified the Companies (Management and Administration) Second Amendment Rules, 2014. The amendments, *inter alia*, included (a). Rule 9(3) of the Companies (Management and Administration) Rules, 2014 provides for intimating the Government matters relating to beneficial interest. With the present Notification, a proviso is inserted to Rule 9(3), exempting trusts which are created to set up a Mutual Fund or Venture Capital Fund or such other Fund as may be approved by SEBI; (b). Omission of words "either value or volume of the shares" and Explanation in rule 13; (c). As per Rule 23(1), 'a Special Notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice'. The words "not less than five lakh rupees" is substituted with "not more than five lakh rupees" etc. [**G.S.R. 537(E) dated 24.07.2014**].

General Circulars:

1. MGT-14 e-Form Through STP Mode: In order to simplify procedures and ensure timely disposal of e-Forms in the office of Registrars of Companies, e-form, MGT-14, except those related to change in name and object, resolution for issue of capital and conversion of companies, will be processed and taken on record using the Straight Through Process (STP) mode (**General Circular No. 28/2014 dated 09.07.2014**).

2. Registration of Companies Names in consonance with Emblems and Names Act: In continuation of General Circulars No. 02/2014 and 26/2014, the Ministry of Corporate Affairs has instructed the Registrar of Companies to take due care in ensuring that the names of Companies are not in contravention

of the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 (**General Circular No. 29/2014 dated 11.07.2014**).

3. Related Party Transactions: Government has issued following clarifications related to 'related party transactions' covered under Section 188 of the Companies Act, 2013: (i) Second proviso of Section 188(1) requires that no member of the company shall vote on a Special Resolution to approve the contract or arrangement referred to in the first proviso, if such a member is a related party. It is clarified that in this context 'related party' refers to the contract or arrangement for which the said Special Resolution is being passed. (ii) Transactions arising out of compromises, arrangements and amalgamations dealt under Companies Act, 1956 or 2013, will not attract the requirements of section 188 of the Companies Act, 2013. (iii) Contracts entered into by companies under Section 297 of the Companies Act, 1956, will not require fresh approval under Section 188 of the Companies Act, 2013 (**General Circular No. 30/2014 dated 17.07.2014**).

4. Extension of Validity of Reserved names: Reservation of names of companies is valid up to 30 days for intimation to the Ministry through e-form INC-1. System generated letters-of-intimation earlier issued to 9,552 companies, mentioned 60 days as the valid time period. However, for those stakeholders who could not use the reserved names within 30 days, the validity date had expired. This has caused inconvenience to stakeholders. In order to rectify this problem, validity of reservation of names for 1,930 companies, which had expired its validity on 19.07.2014, has been extended up to 18.08.2014. As regards, the remaining 6,864 cases where names were reserved and yet to be used, the expiry date is applicable as indicated in the letter of intimation (**General Circular No. 31/2014 dated 19.07.2014**).

5. Transition Period for Resolutions Passed by Companies: The Ministry has clarified that resolutions approved or passed by companies under relevant provisions of the Companies Act, 1956 during the period 1.09.2013 to 31.04.2013 can be implemented according to the same Act, subject to the condition (i) that the implementation of the resolution actually commenced before 01.04.2014 and (ii) that this transitional arrangement will be available up to expiry of one year from the passing of the resolution or six months from the commencement of the corresponding proviso in new Act whichever is later. It is also clarified that any amendment to the resolution must be in accordance with the relevant provision of the Companies Act, 2013 (**General Circular No. 32/2014 dated 23.07.2014**).

6. 'Deemed Government Companies' under Companies Act, 2013: Section 139(5) and 139(7) of the Companies Act, 2013, *inter alia*, deal with

the appointment of auditors by Government companies. A clarification was sought on whether 'Deemed Government Companies' (companies where ownership or control lies with two or more Government companies or corporations) referred in Section 619B of the Companies Act, 1956, are covered under Companies Act, 2013. It is clarified by the Ministry that Section 139(5)&(7) are to be read with the Section 2(27) of the Companies Act, 2013, which defines 'control'. Therefore, such companies are covered under the Companies Act, 2013. It is also clarified that regarding the communication to Comptroller and Auditor General of India (C&AG) for appointment of first auditor, it is primarily the responsibility of the company concerned to intimate the Office of C&AG about incorporation along with other details (**General Circular No. 33/2014 dated 31.07.2014**).

Review of Corporate Sector:

- A. As on 31.07.2014, the number of companies registered under the Companies Act was 14.09 lakhs. Of these, 2.58 lakh companies were closed and 27,884 companies are in the process of being closed. As many as 1.42 lakh companies have not filed their Annual Returns/ Balance Sheets (i.e., Annual Statutory Filings) for more than three consecutive years, and hence, are classified as 'dormant'. In other words, there are about 9.81 lakh active companies, including 1.26 lakh companies which were incorporated within the preceding eighteen months (not due for filing).
- B. A total of 7,229 companies were registered under the Companies Act, 2013 during July, 2014 with authorized capital of Rs. 2,360.73 crore. Of these 7,199 Companies (including 183 One Person Companies) were registered as Companies Limited by Shares with authorized capital of Rs. 2,360.57 crore; 25 Companies Limited by Guarantees with authorized capital of Rs. 9 lakh and 5 Unlimited Companies with authorized capital of Rs. 7 lakh during the month. Under the category of companies registered as limited by shares, Maharashtra had maximum number of registrations (1,382) followed by Delhi (1,263) and Uttar Pradesh (633). Economic activity-wise maximum number of companies (3,088) were registered under Business Services (IT and R&D).
- C. For more statistical details about the growth of the corporate sector, the reader is invited to the Monthly Information Bulletin on Corporate Sector, at URL: mca.gov.in/MinistryV2/InformationBulletin.html

Major events at IICA:

1. **MoU Signed between MCA and IICA:** As per provisions of General Financial Rules, the Indian Institute of Corporate Affairs (IICA) has signed a MoU with the Ministry of Corporate Affairs regarding activities which IICA intends to implement during 2014-15.

2. **Summer School Programme on "Five Years of Antitrust Law Enforcement in India":** The Indian Institute of Corporate Affairs (IICA) in partnership with the Competition Commission of India (CCI) organized an 'Annual Antitrust Programme for Young Fellows on the theme "Five Years of Antitrust Law Enforcement in India" from July, 1-5, 2014 at IICA Campus, Manesar. The programme was aimed at encouraging students, researchers, practitioners seeking a career in Competition Law.

2. **IICA signs MoU with IAAD on CSR:** IICA signed a MoU with the IL&FS Academy of Applied Development (IAAD) at TERI University, New Delhi. The objective of the MoU was to foster partnership between IICA and IAAD to address areas of joint interest through activities including inter-alia, the promotion of CSR by building capacities, providing services and inculcating knowledge to support NGOs and Business Organizations, developing and implementing skills training programs, use of geo-databases, etc. The MoU was signed by Dr. Bhaskar Chatterjee, DG&CEO, IICA and Dr. Prasad Modak, Dean, IAAD.

3. **Delhi Business Innovation Meet-up:** Centre for Business Innovation of IICA organized the first Meet of the Delhi Business Innovation online community with innovators to discuss Contemporary Business Models on 25.07.2014 in the Scope Complex, New Delhi. Young entrepreneurs shared experience of challenges they faced while setting up innovative businesses, and expressed enthusiasm for learning sustainable business models. The Delhi Business Innovation Meet-up is an Online Community convened by the Centre for Business Innovation to connect entrepreneurs both at the stages of growth and maturity with aspiring entrepreneurs.

4. **Mid-Career Training Programme For ICLS Officers:** A five-day mid-career training programme was conducted for Junior Administrative Grade level officers of Indian Corporate Law Service during July, 7-11, 2014. The topics covered in this training programme related to takeover code, 2011, insider trading, analysis of balance sheet, National Financial Reporting Authority (NFRA), IFRS, Accounting Standards, Forensic Accounting/Auditing and Digital Forensic etc.

Major events at CCI:

1. A brainstorming session on Public Procurement was held on 2.07.2014 at Competition Commission of India (CCI). Useful interaction took place between the officials of various Ministries/Departments.
2. A workshop on Financial Analysis on 4.07.2014 and a workshop on Constitutional & Administrative Law was organized on 31.07.2014 for the officers of Competition Commission of India (CCI).