

Info Capsule

Tuesday
September 28, 2021

President : CS Nagendra D. Rao

Vice President : CS Devendra V. Deshpande

❖ Ministry of Corporate Affairs

Extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014-reg. (September 27, 2021)

In view of the extraordinary disruption caused due to COVID-19 pandemic, the MCA has decided that if cost audit report for the financial year 2020-21 by the cost auditor to the Board of Directors of the Companies is submitted by October 31, 2021 then the same would not be viewed as violation of Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014. Consequently, the cost audit report for the financial year ended on March 31, 2021 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company.

However, in case a Company has availed extension of time for holding Annual General Meeting, then e-form CRA-4 may be filed within the timeline provided under the proviso to Rule 6(6) of the Companies (Cost Records and Audit) Rules, 2014.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mids=KGIUmY7RepuZpkNfr7ThCw%253D%253D&type=open>



THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)



❖ Securities Laws & Capital Markets

SEBI News

- **SEBI revises risk management framework for mutual funds (September 28, 2021)**

To protect the interests of investors and to ensure that mutual funds render high standard of service, SEBI has come out with a revised risk management framework.

SEBI's new RMF terms risk management as an independent and specific function of the asset management company. For each risk such as investment risk, compliance risk, operational risk, and cyber security the asset management company should appoint a dedicated risk officer. In addition to these officials, there should be a chief risk officer (CRO) in each asset management company.

The RMF seeks to clearly define the roles of risk personnel and mention the same on the fund house's website. Though the CRO is responsible for the overall risk, along with the management, both board of AMC and trustees should also be responsible.

For details:

<https://www.moneycontrol.com/news/business/personal-finance/sebi-revises-risk-management-framework-for-mutual-funds-7514231.html>

- **SEBI proposes higher net worth for brokers to tackle possible risks (September 27, 2021)**

SEBI has proposed hiking the net worth requirement for trading members to at least ₹1 crore in two years as well as the net worth thresholds for clearing members. These proposals are part of efforts to mitigate possible risks amid increasing investor participation in the securities market.

For details:

<https://www.livemint.com/news/india/sebi-proposes-higher-net-worth-for-brokers-to-tackle-possible-risks-11632756352342.html>

❖ Terminology for today

Beggar-Thy-Neighbour Policy

In economic terms, this refers to the trading policy that employs currency devaluations and other protective barriers in an effort to mitigate a country's economic hardship at the expense of other countries.

❖ **Business and Economic News**

• **Rating Agency ICRA Revises GDP Growth Forecast to 9% for 2021-22 (September 27, 2021)**

The economic growth during the current financial year i.e. in 2021-22 has been revised to 9 per cent from its earlier estimate of 8.5 per cent by rating agency ICRA, mainly due to a rise in Coronavirus vaccination drive across the country and encouraging advanced estimates of kharif crops.

In a statement issued by ICRA on Monday, the agency said that gradually widening coverage of vaccination against the Coronavirus-induced infection is expected to propel confidence, which in turn will boost demand for “contact-intensive services”. The 9 per cent growth projection given by ICRA, is slightly below the expectations of the Reserve Bank of India (RBI), which foresees the economy to grow at 9.5 per cent during the current fiscal.

For details:

<https://www.ndtv.com/business/rating-agency-icra-revises-gdp-growth-forecast-to-9-for-2021-22-2555479>

• **Exports at \$185 bn till Sept 21, FTP extended till next March: Piyush Goyal (September 28, 2021)**

Commerce and industry minister Piyush Goyal on September 27, 2021 said that India has exported goods worth \$185 billion since the beginning of the financial year, according to latest data collated by the government.

“Export figures have hit \$185 billion as of September 21. These figures are very encouraging and I compliment the exporters community for this,” Goyal said at an event organised by the Federation of India Export Organizations (FIEO). The current fiscal’s export target is \$400 billion.

The minister also said that the current foreign trade policy (FTP) is slated to be extended by another six months - 31 March, 2022. FTP is an elaborate policy guideline and strategy to promote goods and services export, while addressing domestic and global constraints.

For details:

https://www.business-standard.com/article/economy-policy/exports-at-185-bn-till-sept-21-ftp-extended-till-next-march-piyush-goyal-121092701110_1.html

• **PM Modi launches Ayushman Bharat Digital Mission, health ID for every citizen (September 28, 2021)**

Almost a year after it was implemented on pilot basis in six Union Territories, Prime Minister Narendra Modi launched the Ayushman Bharat Digital Mission for the entire country. It involves creation of not just a unique health ID for every citizen, but also creation of digital healthcare professionals and facilities registry.

For details:

<https://indianexpress.com/article/india/narendra-modi-pradhan-mantri-ayushman-bharat-digital-health-mission-7536669/>

- **Government intends to complete BPCL disinvestment by March-end : Company chairman (September 28, 2021)**

The disinvestment of Bharat Petroleum Corporation (BPCL) is intended to be completed by March 2022 according to company Chairman, Arun Kumar Singh.

For details:

https://www.business-standard.com/article/companies/govt-intends-to-complete-bpcl-disinvestment-by-march-end-company-chairman-121092700972_1.html

❖ **Ethics and Governance News**

Proxy advisory firms flag corporate governance issues ahead of Finolex Cables AGM (September 27, 2021)

Two proxy advisory firms, Stakeholder Empowerment Services (SES) and Ingovern Research have flagged many corporate governance issues at Finolex Cables and have advised shareholders to vote down the appointments of three directors at the annual general meeting slated for Tuesday. The Proxy advisory firms have accused the Pune-based company headed by Deepak Chhabria of taking its shareholders for a ride by violating many provisions of the Companies Act and SEBI norms and have advised shareholders to reject the appointments of these directors.

For details:

<https://economictimes.indiatimes.com/news/company/corporate-trends/proxy-advisory-firms-flag-corporate-governance-issues-ahead-of-finolex-cables-agm/articleshow/86553606.cms>

❖ **Market Watch**

Stock Market Indices as on 28.09.2021

S & P BSE Sensex	59667.60 (-410.28)
Nifty 50	17748.60 (-106.50)

Foreign Exchange Rates as on 27.09.2021

(<https://www.geojit.com/currency-futures/rbi-reference-rate>)

INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR/ 1 JPY
73.64	86.30	100.64	0.66

❖ *Pronouncements*

1.	21.09.2021	<i>Deputy Commissioner of Income Tax vs. Leena Power Tech Engineers Pvt. Ltd.</i>	<i>ITAT Mumbai</i>
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Using 'shell' companies to launder money or dodge tax will become tougher with a tribunal ruling shifting the 'burden of proof' from the income tax (I-T) department to the taxpayer dealing with such private entities which, though legal, simply serve as conduits for fund transfers.

Facts of the Case:

The assessee 'Leena Power Tech Engineers' is a private limited company stated to be engaged in the business as 'investment company'. Its assessment under section 143(3) was completed on 27th February 2014 at Rs 4,64,80,490. On 28th March 2018, however, the assessment was reopened on the basis of certain information so received indicated that the assessee has received monies, in the form of share application money, from an entity 'Rohini Vyapar Pvt Ltd' but that money, though subjected to routing through several layers, ultimately has its source in of huge cash deposits in one of the branches of ICICI Bank. It was found that high value cash deposits, just below Rs 10,00,000, were regularly deposited in 19 different bank accounts maintained with ICICI Bank and the amount so deposited in cash, in ICIC Bank alone, aggregated to Rs 241.50 crores.

The assessee was asked to "prove identity, capacity and genuineness (of its share application money) even if confirmations are filed and the persons are assessed to tax". The assessee was then asked as to why the amounts so received from Rohini Vyapar Pvt Ltd not be brought to tax, in his hands, under section 68 of the Act.

The Assessing Officer, not satisfied with the reply of assessee, thus proceeded to treat the entire share capital subscription, aggregating to Rs 8,13,29,600, as unexplained credit under section 68. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The stand of the Assessing Officer was reversed by the learned CIT(A). The Assessing Officer has challenged the correctness of the order passed by the learned CIT(A).

Judgement : "The Tribunal has categorically held that once there is doubt in the credentials of a transaction, the entire onus shifts on to the assessee to prove that the transactions are genuine and compliant". The burden is thus on the assessee to prove the nature and source of credits in his books of accounts, to the satisfaction of the Assessing Officer.

For details:

<https://www.itat.gov.in/files/uploads/categoryImage/1632226116-Leena%20Power%20Tech%20Final%20version.pdf>

2.	24.09.2021	<p><i>In Re: Alleged anti-competitive conduct in the Beer Market in India Against:</i></p> <ol style="list-style-type: none"> 1. <i>United Breweries Limited</i> 2. <i>Crown Beers India Private Limited (now a wholly owned subsidiary of Anheuser Busch InBev SA/NV)</i> 3. <i>SABMiller India Limited (now renamed as Anheuser Busch InBev India Ltd. after being acquired by Anheuser Busch InBev SA/NV)</i> 4. <i>Carlsberg India Private Limited</i> 5. <i>All India Brewers' Association</i> 	<p><i>Competition Commission of India</i></p> <p><i>Suo Motu Case No. 06 of 2017</i></p>
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Competition Commission of India imposes fines on United Breweries, Carlsberg (Beer Companies) in price fixing case.

Fact of the Case:

The present matter was initiated by the Commission suo motu, pursuant to the filing of an application dated 26.07.2017 under Section 46 of the Competition Act, 2002 (the 'Act') read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR') by Crown Beers India Private Limited ('OP-2') and SABMiller India Limited ('OP-3'), both ultimately held by Anheuser Busch InBev SA/NV ('Ab InBev'), against the captioned parties ('OPs'), for alleged cartelisation in relation to the production, marketing, distribution and sale of Beer in India.

The Commission passed an order dated 31.10.2017 under Section 26(1) of the Act, forming an opinion that prima facie, the conduct of the OPs appears to be in contravention of the provisions of Section 3(1) read with Section 3(3)(a) of the Act, and consequently, directed the Director General ('DG') to cause an investigation into the matter and submit a report. Thereafter, on 03.03.2020, the DG submitted the revised NCV qua OPs investigation report.

The DG concluded that OP-1, OP-3 and OP-4 indulged in the exchange of vital information amongst themselves about pricing and other confidential and business-sensitive information. They also mutually agreed on price revisions (both MRP as well as EBP) to be sought from the respective State Governments. There were a number of e-mail communications/WhatsApp messages/SMSs and even conference calls exchanged between the top managerial personnel of these three companies to decide upon the price revisions to be sought in their individual price revision requests, follow-up with State Government Authorities and even co-ordinating a common response to the Show-Cause Notices issued by certain State Excise Commissioners. These companies approached the State Governments collectively through the common platform of OP-5 to get price revisions to agreed levels so as to avoid price wars among themselves. As such, OP-1, OP-3, OP-4 and OP-5 have contravened the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

Judgement: The Competition Commission of India holds OP-1 and OP-3 guilty of contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with 3(1) of the Act from 2009 to at least October 2018. Further, the Commission holds OP-4 guilty of contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with 3(1) of the Act from 2012 to at least October 2018 and OP-5 guilty of contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with 3(1) of the Act from 2013 to at least October 2018.

The Commission, in terms of Section 27(a) of the Act, directs the parties to cease and desist in future from indulging in any practice/conduct/activity, which has been found in the present order to be in contravention of the provisions of Section 3 of the Act.

Further, under the provisions of Section 27(b) of the Act, the Commission directs the United Breweries Limited, Carlsberg India Private Limited etc. to pay the amounts of penalty and to deposit the respective penalty amounts within 60 days of the receipt of the present order.

For details:

<https://www.cci.gov.in/sites/default/files/06-of-2017.pdf>

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu, or call at 01204082116

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