

VJA LEGAL WISHES ITS READERS A VERY HAPPY AND PROSPEROUS 2019

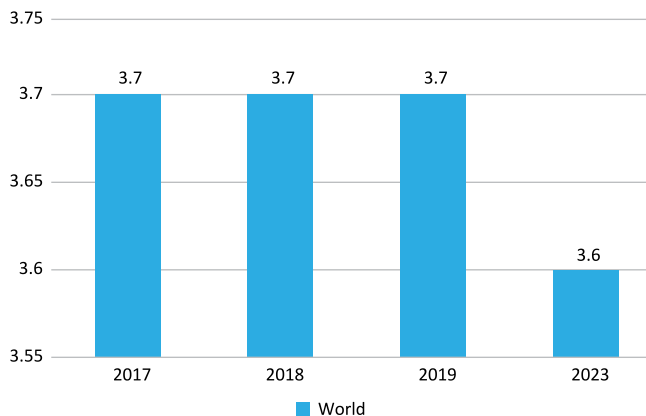
The Economy

Economy on track...

As we step into 2019, it is important to see where we are, recount our achievements and identify the areas where we need to work more intensely and move forward.

At the global level, the steady expansion underway since mid-2016 continues with world growth for 2018-19 projected to remain at its 2017 level of 3.7 per cent, according to the IMF latest economic outlook. This shows the resilience of the global economic activity in spite of the ongoing trade conflicts, especially U.S. and China, protectionism raising its head again, slowdown in world trade volume and tightening financial conditions. Besides, financial market volatility has increased as investors continue to reassess the impact of unfolding events. The inflation outlook has also deteriorated in many advanced and emerging economies. Oil prices continue to be volatile touching as much as U.S. Dollar 86 per barrel lately and then coming down to less than \$60/barrel. Increasing interest rates in the U.S. have led to outflow of investments from emerging economies to safer havens. Geo-political tensions continue to impact business scenario across the globe. Overall growth, though maintaining a steady pace, has been uneven- strong activity in North America and several parts in Asia and Africa, but weaker in Europe, China, Latin America and Sub-Saharan Africa.

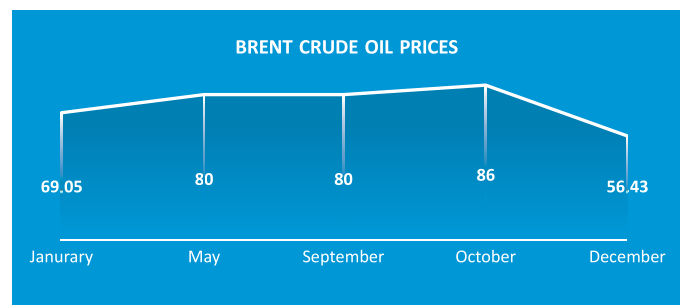
GLOBAL GROWTH
(Annual % change)



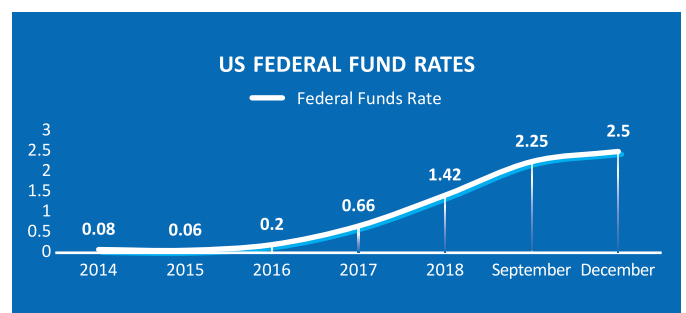
The Aggregate GDP of various world economic outlook groups

Classification by World Economic Outlook Groups and Their Shares in Aggregate GDP (Percent of total for world)				
	2017	2018	2019	2023
Advanced Economies	2.3	2.4	2.1	1.5
United States	2.2	2.9	2.5	1.4
Emerging Market and Developing Economies	4.7	4.7	4.7	4.8
China	6.9	6.6	6.2	5.6
India	6.7	7.3	7.4	7.7
Latin America and the Caribbean	1.3	1.2	2.2	2.9
Sub-Saharan Africa	2.7	3.1	3.8	4.1

Brent crude oil prices have come down below \$60/barrel after a sharp rise past \$86/barrel on 3rd October 2018 and is expected to remain around \$60/barrel.



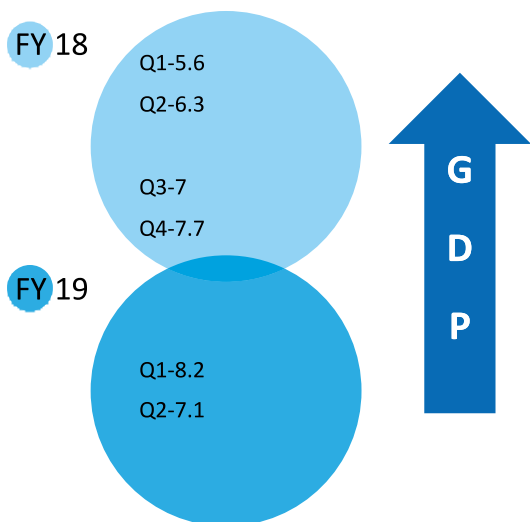
The US Federal Reserve hiked interest rates by 0.25% from 2.25 to 2.50 on 19th December 2018- fourth hike during the year. The rates actually went up by over 250% in the current year.



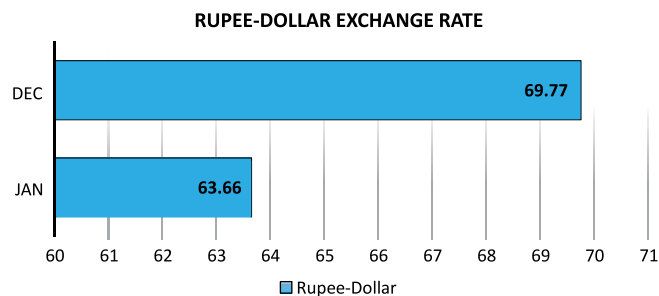
Against this, India has continued to move forward with its GDP projected to grow between 7 to 8 per cent in the years ahead. It is now the world's 6th largest economy and has seen major transformation in policies being pursued by the Government. Some of the landmark reforms initiated in the recent past include GST and IBC, increased emphasis on infrastructure development, digitalisation, and skill development and so on. While GST and IBC are transforming the economic landscape of the country, infrastructure development is being pushed at a faster pace. NPAs showed a downward trend in June and then in September quarter. Gross NPA's have gone down from Rs. 10.03 trillion in June quarter to Rs. 9.99 in September quarter. RBI's financial stability report says the gross NPA ratios of the banking system could reach 12.2 per cent of the loan book by March 2019. Highways construction target has been setup at 40 km/day in 2018-2019 from 27 kms/day in 2017-2018. With the Government taking various initiatives to make India business friendly, India has moved up on the World Bank "ease of doing business index" to 77 from 100 in the previous year. The government is committed to taking the country further up to be within the first 50 as early as possible.

The following graphs compare India's growth indicators since the beginning of 2017 and now. These include GDP, foreign trade, foreign-exchange reserves, foreign direct investments, inflation, foreign portfolio investment, fiscal deficit, current account deficit, the rupee-dollar exchange rate and Index of Industrial Production.

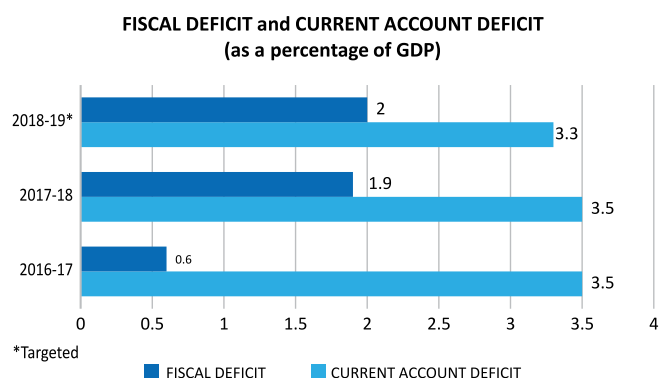
India's economy grew at a slower-than-expected pace in the September quarter. Despite the slight easing, India is still the fastest-growing major economy ahead of China, which reported a 6.5% rise in the July-September quarter. As per the Niti Aayog strategy, the growth in the coming years will be around 8%.



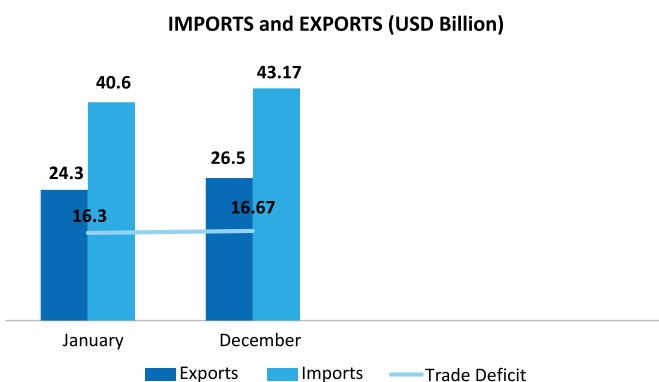
The Indian rupee breached the 74 mark against the \$US in October 2018 and is currently around 69.77 – a decline of around 10% during the year. This has been mainly due to increased oil prices, tightening monetary policy in the US and global contagion. Our analysis reveals that rupee will continue to be in a similar range next year or may even gain as oil prices are likely to be around \$60/barrel.



The government is determined to keep fiscal deficit within the budgeted level of 3.3 per cent of GDP as the country cannot afford to have a twin deficit problem. India's current account deficit widened to \$19.1 billion (2.9%) in the July-September 2018 quarter against \$6.9 billion (1.1%) in the year-ago quarter, primarily on account of a higher trade deficit. However, the recent spate of farm loan waivers and likely sops before the general elections may disturb the equation.

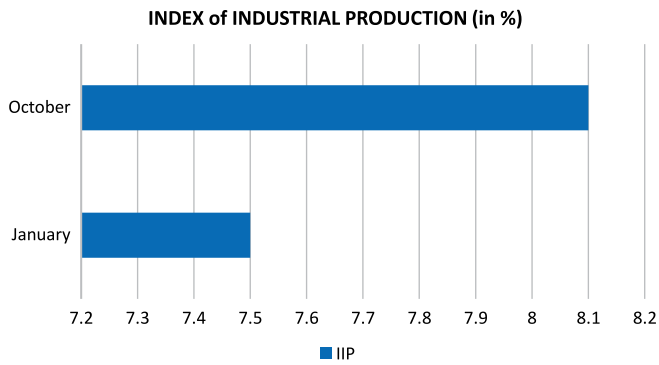


India's November trade deficit narrowed to \$16.67 billion due to a fall in gold imports, according to the country's trade ministry. Growth in exports slumped to 0.8% in November from 17.86% in October, while that of imports fell to 4.3% from 17.62% in the previous month. The overall trade deficit remained almost the same during the year. However, going forward, we need to make special efforts in view of the slowdown predicted in world trade volume and rising protectionist tendencies across the globe.

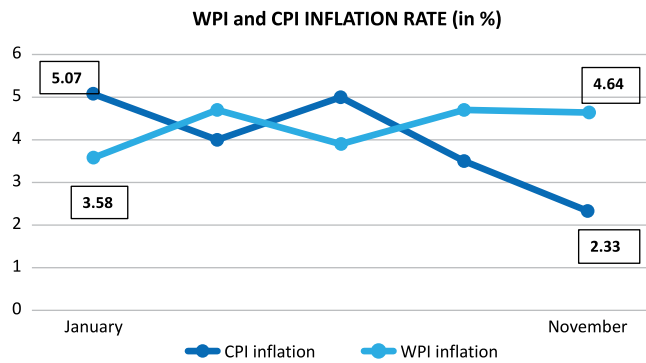


India's Index of Industrial Production (IIP) grew at an 11-month high of 8.1 per cent in October mainly on the back of mining,

power and manufacturing sectors coupled with higher offtake of capital as well as consumer durable goods, according to the Central Statistics Office (CSO).

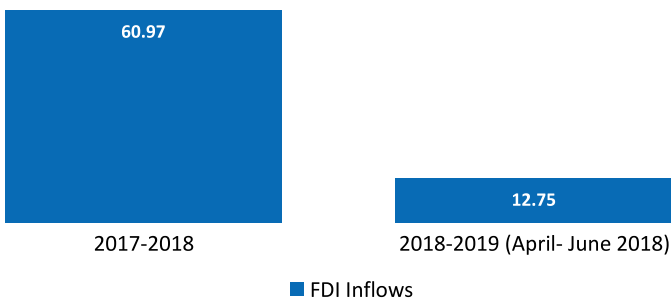


On the inflation front, prices seem to be under control with RBI keeping a close tab on the developments. The consumer price index (CPI) fell to 2.33 per cent in November from 5.07% in January. Wholesale food prices fell at a sharper rate to 4.64 per cent against 3.58% in January.



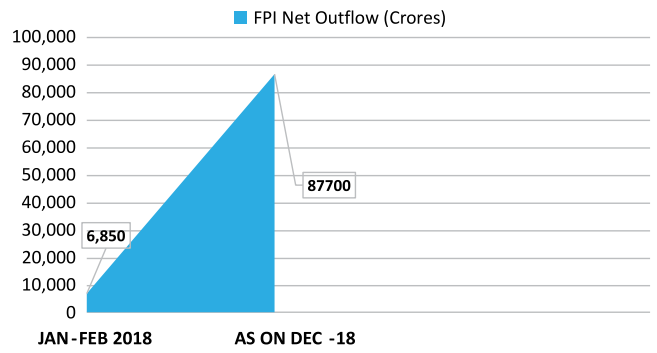
To boost the investment environment and to bring in foreign investments in the country, the Government has brought in FDI related reforms and liberalized policies in various sectors of the economy. Government plays an active role in investment promotion through dissemination of information on the investment climate and opportunities in India, and by advising prospective investors about investment policies.

FDI INFLOWS



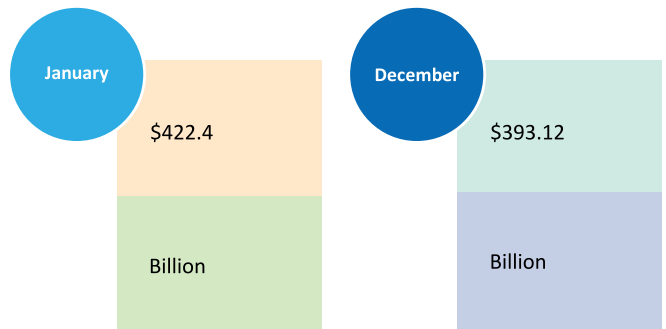
The net outflow by FPIs in the debt market is already more than \$7.6 billion (nearly Rs 52,700 crore) this year, while equities have seen a net outflow of \$4.6 billion (about Rs 35,000 crore).

FPI OUTFLOWS (Lakh Crores)



India's Forex reserves decrease to \$393.71 billion in November from \$422.4 billion in January because of market intervention by RBI to contain depreciation of the rupee.

Forex Reserves



The way ahead: NITI Aayog, in its recent report entitled Strategy for New India @ 75 has defined the strategy for 2022-23 across 41 areas. The emphasis will be on achieving and sustaining a high rate of GDP growth for the next 3 decades to meet the rising aspirations of young population. In the near future, the goal is for India to be a U.S. Dollar 4 trillion economy by 2022-23 with a GDP growth rate of 8 per cent per annum. Besides, the strategy will focus on inclusive, sustained and clean growth. The investments will be raised from 29 per cent to 36 per cent of GDP and exports of goods and services from U.S. \$ 478 Billion in 2017-18 to U.S. \$ 800 Billion by 2022-23. India's tax – GDP ratio will be targeted to increase from 17 per cent to at least 22 per cent during the period, with a focus on easing the tax compliance burden and eliminating direct interface between tax-payers and tax-officials using technology.

The report also, inter alia, highlights strategy for employment and labour reforms, technology and innovation, manufacturing, doubling farmers' incomes, financial inclusion, housing for all, mining, energy, travel and tourism, transportation including surface transport, railways, civil aviation, ports and shipping, logistics, digital connectivity, smart cities, health, education, legal, judicial and police reforms.

These targets are achievable and the strategies to get to the desired results seem to have the right focus. Most of "the to-do initiatives" have been highlighted time and again over

many years – the key is implementation. Our analysis reveals that India needs to move fast on many parameters including education, health, agriculture, employment, competitiveness, investments, domestic and foreign, moving up on the gender gap index, among others. This will require fresh approaches and quick action. The demographic dividend needs to be tapped through relevant education policies and skilling and reskilling youth to avoid emergence of social tensions and channelizing their energy for an inclusive growth trajectory. Governance has to be among top priorities in sync with the declared objective of minimum Government, maximum governance. There is need to bridge the trust deficit between Government and business.

We need to be proactive in our approach. There has to be a continuous interaction between all stakeholders to identify our shortcomings and initiate remedial measures. We need to foresee the challenges and adapt our policies to remain competitive and be the growth engine of the world.

Legally Speaking

IMPLICATION OF CONFIDENTIALITY CLAUSE UNDER ARBITRATION & CONCILIATION (AMENDMENT) BILL, 2018.

The current international and domestic commercial transactions are seeing a major inclination towards the out of court dispute resolution mechanisms. One of the main reasons why arbitration is preferred over litigation is because of the confidentiality of proceedings. It maintains the autonomy of the parties and prevents them from unwanted publicity. However, many international rules and national statutes do not discuss the issue of confidentiality because of unresolved areas like-whether confidentiality is implied in a contract of commercial arbitration, if the witnesses are also bound by confidentiality or whether privacy and confidentiality mean the same?

Through judicial decisions, some nations have settled these contentions; while others are yet to do so. It is also being argued that confidentiality often impairs transparency in arbitration proceedings and there must be limited disclosure in public interest. There are some grey areas that need to be addressed in order to bring about clarity in this regard.

The arbitration procedure is based on party autonomy, where both the parties decide the procedure as well as the circumstances under which an arbitration is sought. Generally it is made in the form of a contract which is formulated much before the dispute actually arises. The “rules of the game”, such as applicable law, the seat of arbitration, the language of the proceedings may also include a provision to govern confidentiality issues.

The Arbitration and Conciliation (Amendment) Bill, 2018 proposes introduction of a non-derogable provision (i.e. section 42A) for maintaining confidentiality of arbitral proceedings. This provision mandates that the arbitrator, arbitral institution and the parties shall maintain the confidentiality of the proceedings. However, instead of bringing clarity on the issue of confidentiality, it creates room for confusion. The Committee constituted for suggesting Amendment to the Act suggested inclusion of the following exceptions to obligations

to ensure confidentiality:

- Disclosure required by a legal duty
- Disclosure to protect or enforce a legal right
- To enforce or challenge an award before court or judicial authority.

However, the Bill only expressly includes the third aspect as an exception to confidentiality, i.e. where the disclosure is required for enforcement and implementation of the award. There are multiple other situations where a party may be required to disclose the award or the details of the arbitral proceedings. For example, while challenging an award, seeking interim relief from court, appealing against an interim order of the arbitrator, appointment of arbitrators by court, termination of mandate of arbitrator or while seeking court’s assistance for taking evidence. It is not clear whether the confidentiality remains even when the proceedings reach the Court under Section 34 of the Act and the Court requisitions the arbitral record.

Further, there may be statutory mandates requiring a party to disclose details pertaining to the arbitration such as under the regulations framed by SEBI. These are more straightforward circumstances where it may be argued that the disclosure is permitted, given that there are provisions in law entitling a party to exercise such rights and the confidentiality provision did not intend to take away such rights expressly granted under law. Questions of public interest, for example, where one of the parties is the government, or interests of fair disposal of disputes may also justify waiver of confidentiality obligations. However, the answer may not be so easily forthcoming in other circumstances such as:

- Where the information is provided to a third-party expert for the arbitration;
- Where the information such as the award is required to be disclosed for protection against an action by a third person;
- Where the information is provided as part of a due diligence exercise;
- Where the information is provided to a third-party funder;
- Where the information is required to be disclosed pursuant to a discovery/production of document request in a subsequent arbitration or legal proceeding.

Other countries which have express provisions on confidentiality in their legislation usually provide for broader exceptions such as, where a party is obliged to make a disclosure under law or where the disclosure is made to a professional or other advisors to the party. The amendment ought to be reconsidered and not bind the parties to an arbitration agreement to such broad-term confidentiality obligations. Reference in this regard may be made to exceptions to the principle of confidentiality enunciated by English courts, viz:

- (i) Consent i.e. where disclosure is made with the express or implied consent of the party who originally produced the material;
- (ii) Order/ Leave of the Court, an obvious example of which is an order for disclosure of documents generated by an arbitration for the purposes of a later court action;

(iii) Disclosure when, and to the extent to which, it is reasonably necessary for the protection of the legitimate interests of an arbitrating party.

Thus, it is suggested that the said provision be amended to include exceptions to confidentiality obligations to ensure that the provision is not too widely-termed. Such exceptions should not be exhaustive but only be illustrative of the commonly accepted exceptions to the rule of confidentiality. The possibility of inclusion of consequences of the breach of such confidentiality may also be considered. Further, it is suggested that such provision of confidentiality should be derogable i.e. parties should have the ability to define their own limits of confidentiality.

By Mr. P K Malhotra, Senior Legal Consultant, VJA Legal and Former Law Secretary, Govt. of India

MAJOR JUDGMENTS ON ARBITRATION LAW IN 2018

BOARD OF CONTROL FOR CRICKET IN INDIA V. KOCHI CRICKET PVT. LIMITED, [CIVIL APPEAL Nos. 2879-2880 of 2018 decided on 15.03.2018]

The dispute pertains to a franchisee agreement dated 12.03.2011. A sole arbitrator was appointed, who delivered two arbitral awards dated 22.06.2015 against the appellant and in favor of the respondents. On 16.09.2015, the appellants filed an application under Section 34 of the Act in the Bombay High Court challenging the aforesaid arbitral awards. On 26.11.2015, the respondents filed two execution applications in the High Court for payment of the amounts awarded under the two awards, pending enforcement of such awards. These were resisted by two chamber summons filed by the appellants praying for dismissal of the aforesaid execution applications stating that the old Section 36 would be applicable, and, therefore, there would be an automatic stay of the awards until Section 34 proceedings are decided. The chamber summons were argued before a Single Judge, who dismissed the aforesaid chamber summons and found that the amended Section 36 would be applicable in the facts of this case.

When the matter came in appeal before the Supreme Court, the court observed that under Section 36 of the 1996 Act, the award is deemed to be a decree and shall be enforced under the Code of Civil Procedure as such. It further observed that “enforcement” in Section 36 is to treat the award as if it were a decree and enforce it as such under the Code of Civil Procedure, which would only mean that such decree has to be executed in the manner indicated. Also, a stray sentence in a judgment in a particular context cannot be torn out of such context and applied in a situation where it has been argued that enforcement and execution are one and the same, at least for the purpose of the 1996 Act.

KANDLA EXPORT CORPORATION Vs. M/S. OCI CORPORATION & ANR. [CIVIL APPEAL NO. 1661-1663 of 2018 decided on 07.02.2018]

In this case an important question as to whether an appeal, not maintainable under Section 50 of the Arbitration and Conciliation Act, 1996, is nonetheless maintainable under Section 13(1) of the Commercial Courts Act, 2015 was raised.

The issue involved in this case was in relation to the Foreign Award. The Supreme Court held that in all arbitration cases

of enforcement of foreign awards, it is Section 50 alone that provides an appeal. Having provided for an appeal, the forum of appeal is left “to the Court authorized by law to hear appeals from such orders”. Section 50 properly read would, therefore, mean that if an appeal lies under the said provision, then alone would Section 13(1) of the Commercial Courts Act be attracted as laying down the forum which will hear and decide such an appeal.

K. KISHAN V. VIJAY NIRMAN COMPANY, [CIVIL APPEAL NO. 21824 OF 2017, decided on AUGUST 14, 2018]

The question before the Supreme Court in this case was whether the Insolvency and Bankruptcy Code, 2016 can be invoked in respect of an operational debt where an arbitral award has been passed against the operational debtor, which has not yet been finally adjudicated upon. The Supreme Court inter alia held that filing of a petition under Section 34 of the Act against an arbitral award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an Award, continues even after the Award, at least till the final adjudicatory process under Sections 34 and 37 has taken place.

The Court further observed:

- That there may be cases where a Section 34 petition challenging an Arbitral Award may clearly and unequivocally be barred by limitation, in that it can be demonstrated to the Court that the period of 90 days plus the discretionary period of 30 days has clearly expired, after which either no petition under Section 34 has been filed or a belated petition under Section 34 has been filed. It is only in such clear cases that the insolvency process may then be put into operation.
- That there may also be other cases where a Section 34 petition may have been instituted in the wrong court, as a result of which the petitioner may claim the application of Section 14 of the Limitation Act to get over the bar of limitation laid down in Section 34(3) of the Arbitration Act. In such cases also, it is obvious that the insolvency process cannot be put into operation without an adjudication on the applicability of Section 14 of the Limitation Act.
- Section 238 of the Code would apply in case there is an inconsistency between the Code and the Arbitration Act. In the present case, we see no such inconsistency. On the contrary, the Award passed under the Arbitration Act together with the steps taken for its challenge would only make it clear that the operational debt, in the present case, happens to be a disputed one.
- Even if it be clear that there be a record of an operational debt, it is important that the said debt be not disputed. If disputed within the parameters laid down in Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353, an insolvency petition cannot be proceeded with further.”

STATE OF BIHAR V. BIHAR RAJYA BHUMI VIKAS BANK SAMITI [CIVIL APPEAL NO. 7314 of 2018, decided on JULY 30, 2018]

The amended Section 34(5) of the Act, inserted by Amending Act 3 of 2016, provides that an application to set aside arbitral award shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied

by an affidavit by the applicant endorsing compliance with the said requirement.

In the present case, a Section 34 petition challenging an award was filed on 05.04.2016 before the Patna High Court, in which notice was issued to the opposite party by the Court on 18.07.2016. Despite the coming into force of Section 34(5), the common ground between the parties was that no prior notice was issued to the other party in terms of the said Section, nor was the application under Section 34 accompanied by an affidavit that was required by the said sub-section. The Single Judge of the Patna High Court, held that the provision contained in Section 34(5) was only directory.

A Letters Patent Appeal to a Division Bench yielded the impugned order by which it was held that the mandatory language of Section 34(5), together with its object, made it clear that the sub-section was a condition precedent to the filing of a proper application under Section 34, and, on the analogy of a notice issued under Section 80 of the Code of Civil Procedure, 1908, being a condition precedent to the filing of a suit against the Government. The Division Bench held that since this mandatory requirement had not been complied with, and as the period of 120 days had run out, the Section 34 application itself would have to be dismissed. It allowed the appeal and set aside the judgment of the Single Judge.

The question before the Supreme Court was whether Section 34(5) of the Arbitration and Conciliation Act, 1996 is mandatory or directory.

The Supreme Court, inter alia, held that to construe such a provision as being mandatory would defeat the advancement of justice as it would provide the consequence of dismissing an application filed without adhering to the requirements of Section 34(5), thereby scuttling the process of justice by burying the element of fairness. It was further held that the provision is procedural, the object behind which is to dispose of applications under Section 34 expeditiously.

The Court however added that it shall be the endeavor of every Court in which a Section 34 application is filed, to stick to the time limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every Court shall endeavor to dispose of the Section 34 application within a period of one year from the date of filing of the said application.

IMPORTANT JUDGMENTS on INSOLVENCY LAW in 2018

B.K EDUCATIONAL SERVICES (P) LTD. Vs. PARAG GUPTA AND ASSOCIATES CIVIL APPEAL No. 23988 of 2017

This case arose from a batch of matters in which the National Company Law Appellate Tribunal (“NCLAT”) had held that the Limitation Act does not apply to applications made under Sec.7 and Sec.9 of IBC from the date of commencement of IBC, (i.e., 01.12.2016) till the date on which IBC was amended to incorporate Sec. 238A, IBC i.e., 06.06.2018.

The NCLAT had held that even if it was to be assumed that Limitation Act is applicable to filing of an application to initiate insolvency proceedings under IBC, since IBC commenced on 01.12.2016 three years have not elapsed from the date when the right to apply accrued.

The Supreme Court held that:

- An application filed after the IBC came into force in 2016, cannot revive a debt which is no longer due, having become time- barred.
- The amendment of Sec. 238A would not serve its object unless it is construed as being retrospective. Otherwise, applications seeking to resurrect time-barred claims would have to be allowed, not being governed by the law of limitation.
- It is clear from a reference to the Insolvency Law Committee Report of March, 2018, that the legislature did not contemplate enabling a creditor who has allowed the period of limitation to set in to allow such delayed claims through the mechanism of IBC.
- Section 433 of the Companies Act, 2013 which makes the provisions of Limitation Act applicable to proceedings or appeals before the NCLT or NCLAT, was applicable from the very inception of IBC.
- The expression “debt due” in the definition sections of IBC has already been interpreted by the Supreme Court to mean debts that are “due and payable” in law, i.e., the debts that are not time-barred. The Supreme Court has referred to its judgment in *Innovative Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407* wherein it had held that “a debt may not be due if it is not payable in law or in fact.
- Since the Limitation Act is applicable to applications filed under Sections 7 and 9 of IBC from the inception of IBC, Article 137 of the Limitation Act gets attracted. Article 137 of the Limitation Act provides the period of limitation in case of “any other application for which no period of limitation is provided elsewhere” as three years from the time when the right to apply accrues. “The right to sue”, therefore, accrues when a default occurs.
- If the default has occurred over three years prior to the date of filing of application under IBC, the application would be barred under Article 137 of the Limitation Act, except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applicable to condone the delay in filing such application.

ARCELORMITTAL INDIA PRIVATE LIMITED Vs. SATISH KUMAR GUPTA & ORS.

The Supreme Court exercised its extraordinary power under Article 142 of the Constitution and granted one more opportunity to mining major ArcelorMittal and Russia’s VTB Capital-backed NuMetal to bid for Essar Steel if they clear their (NPA) dues in two weeks.

A bench comprising Justices R F Nariman and Indu Malhotra held that both the firms were ineligible under Section 29 A (c) Insolvency and Bankruptcy Code to bid for the firm but granted them a fresh opportunity after taking note of the plea of Committee of Creditors that it does not want liquidation of Essar Steel.

The top court held that if nothing materializes within eight weeks then Essar Steel shall go into liquidation.

It also said that time lost in National Company Law Tribunal

(NCLT), National Company Law Appellate Tribunal (NCLAT) and apex court in dealing with cases under insolvency code shall be excluded from mandatory 270 days resolution period. In a way, the Apex Court, while exercising its extra ordinary power under Article 142 of the constitution diluted the statutory provisions.

PR. COMMISSIONER OF INCOME TAX Vs. MONNET ISPAT AND ENERGY LTD.

Upholding an order of the Delhi High Court, the Hon'ble Supreme Court held that in view of section 238 of the IBC Code, 2016, the provisions in the Code will override anything inconsistent contained in any other enactment, including Income-Tax Act. [SLP No. 6483 of 2018]

In Jaipur Metal and Electricals Employees Organization vs Jaipur Metal and Electricals Ltd, the bench comprising of Justices R.F Nariman and M.R Shah held that until or unless an Application u/s. 434(1)(c) of the Companies Act, 2013 is made for transfer is filed by the party, the winding up proceedings under Sick Industrial Companies(Special Provisions) Act 1985 shall continue in the High Court and not the National Company Law Tribunal.

SHAH BROTHERS ISPAT PVT. LTD. Vs. P. MOHANRAJ & ORS.

The question arose for consideration was whether the order of moratorium covers a criminal proceeding under section 138 of the Negotiable Instruments Act, 1881 which provides punishment of imprisonment for a term which may extend to 3 years or with fine which may extend to twice the amount of cheque or with both. The NCLAT held that section 138 is a penal provision, which empowers the court of competent jurisdiction to pass order of imprisonment or fine, which cannot be held to be proceeding or any judgment or decree of money claim. Imposition of fine cannot be held to be a money claim or recovery against the CD nor order of imprisonment, if passed by the court of competent jurisdiction on the Directors, they cannot come within the purview of section 14 of the Code. It observed: "In fact no criminal proceeding is covered under Section 14 of I&B Code [CA (AT) (Insolvency) No. 306 of 2018]

MR. SURESH NARAYAN SINGH Vs. TAYO ROLLS LTD .

The Adjudicating Authority rejected, vide order dated 3 January, 2018, the application filed by the authorized representative of 284 workers of 'Tayo Rolls' under section 9 of the Code as it was filed jointly by the OCs, and not individually. While setting aside the said order on appeal, the NCLAT observed: "Section 5(20) read with Section 5(21) of the 'I&B Code' makes it clear that the workmen of a Company come within the meaning of 'Operational Creditor'. If Sections 8 & 9 are read with Form-5, it will be clear that the person authorized to act on behalf of the 'Operational Creditor' is entitled to file an application under Section 9. Therefore, where workmen/employees are 'Operational Creditors', the application may be made either by an 'Operational Creditor' in an individual capacity or as a joint capacity by one of them who is duly authorized for such purpose." It also held that if there is a 'debt' and there is a 'default', the application being complete, the AA should have entertained it, instead of raising a technical ground that it was filed on behalf of 284 workmen. [CA (AT) (Insolvency) No. 112 of 2018]

STATE BANK OF INDIA Vs. SHAKTI BHOG FOODS LIMITED 83 / 2018

The Appellant had filed an application under Section-7 of IBC, 2016 before the NCLT-Principal Bench, New Delhi. The NCLT had rejected the application on the ground that the High-Court had already admitted the winding-up petition against the same Respondent.

The Appellant challenged the order of NCLT on the basis of Section 238 of IBC, 2016. It was submitted that the IBC, 2016 has an overriding effect and thus pendency of proceedings before the High Court is not a bar to initiate CIRP.

The NCLAT observed that similar issue had taken place in the case of Unigreen Global Private Limited Vs. Punjab National Bank & Ors (AT), wherein it was held that when any winding up proceedings are initiated against the Debtor by the High Court/ Tribunal in such case CIRP cannot be initiated.

The NCLAT held that the High Court had already admitted the winding up proceedings and ordered for winding-up of the Respondent and henceforth CIRP cannot be initiated against the same.

STATE BANK OF INDIA Vs. D. S. RAJENDER KUMAR

The AA vide an order dated 23 January, 2018, did not allow the financial creditors to proceed against the personal guarantors till the moratorium period came to an end. While disposing of the appeal against the said order, the NCLAT reiterated its decision in the matter of **State Bank of India Vs. V. Ramakrishnan & Ors.** It, however, made clear that order of moratorium would be applicable only to the proceedings against the CD and the personal guarantor, if pending before any court of law/tribunal or authority. The order of moratorium will not be applicable for filing application for triggering CIRP under sections 7, 9 or 10 of the Code against the guarantor or the personal guarantor under section 60 (2). If CIRP has been initiated against the CD, the insolvency and bankruptcy process against the personal guarantor can be filed under section 60 (2) before the same NCLT and not before the Debt Recovery Tribunal. [CA (AT) (Insolvency) No. 87 to 91/2018]

QUINN LOGISTICS INDIA PVT. LTD. Vs. MACK SOFT TECH PVT. LTD. & ORS.

In this matter, the CIRP remained stayed for about 166 days due to an interim order passed by the AA. The AA failed to exclude the period of 166 days from the CIRP period. The NCLAT observed that it is always open to the AA to exclude certain period for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances. It listed out the following good grounds and unforeseen circumstances, for excluding the intervening period for counting of the total period of 270 days:- (a) If the CIRP is stayed by a court of law or the AA or the Tribunal or the Supreme Court; (b) If no RP is functioning for one or other reason during the CIRP, such as removal; (c) The period between the date of order of admission/moratorium is passed and the actual date on which the RP takes charge for completing the CIRP; (d) On hearing a case, if the AA or the Appellate Tribunal or the Hon'ble Supreme Court reserved the order and finally passed order enabling the RP to complete the CIRP; (e) If the CIRP is set aside by the Appellate Tribunal

or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored; and (f) Any other circumstances which justifies exclusion of certain period. Accordingly, the NCLAT excluded 166 days from the CIRP period in this matter. **[CA (AT) (Insolvency) No. 185 of 2018]**

Taxation matters

Goods and Services Tax (GST)

- Maharashtra AAR held that security services provided to Pimpri Chinchwad Municipal Corporation (PCMC) for providing security guards is exempted as it falls under Notification No. 12/2017- Central Tax (Rate). AAR clarified that providing such assistance to security guards of PCMC shall be covered under various functions entrusted to a Municipality under Article 243W of the Constitution. Though, the security guards provided are working under overall supervision of security guards who are on the establishment of PCMC, however, they are not mere assistants/helpers because they are fully responsible for security of entire premises and suppose to handle emergency situation and co-ordinate with important organization. AAR held that applicant is providing pure services to PCMC, as being enumerated under S.No. 3 of the notification.

(National Securities Limited, Maharashtra AAR)

- Maharashtra AAR has stated that no registration is required where amount is collected by individual clubs for convenience of members. Such amount is collected for paying meeting expenses and communications expenses, being deposited in single bank account. Such fees collected are used for social causes and to meet expenses incurred in furtherance of objectives i.e. to perform social relevant activities. AAR concluded that from such fees there is no supply been made under the GST Act.

[Lions Club of Poona Kothrud, Maharashtra AAR]

- Maharashtra AAAR supports AAR decision that tea procured from public tea auctions or manufacturers of tea in 50 kg bags, after undergoing various stages of processing shall not be considered as an 'agricultural produce'. Thus, all services of warehousing, loading, unloading, packing and storage in relation thereto not exempt under Sr. No. 54(e) of Notification 12/2017 - Central Tax (Rate). AAAR stated that the tea procured stored in warehouses was with different name, character and uses that from green tea leaves which are cultivated in tea gardens. The tea procured is a produce of plants, which is obtained after manufacturing of agricultural produce which changes the characteristics of green tea leaves, thus amounts to "manufacture" as per definition provided u/s 2(72) of CGST Act, 2017. AAAR clarified that the blending of tea of various qualities into different proportions as depending upon requirement of overseas customers may be construed as manufacturing process, as the blended and packaged product is not the primary markets as envisaged in the definition of the agricultural markets. Reference was made to SC decision in Belgachit Tea Co and Brook Bond Lipton India Ltd. while distinguishing SC judgment in D.S. Bist.

[Nutan Warehousing Company Pvt Ltd, Maharashtra AAAR]

- Where the applicant is engaged in recruitment of shipping personnel for Foreign Ship Owner (FSO), he shall not be liable to pay GST on salary amount received and disbursing the amount to the Crew. AAR observed that amount received as salary of Crew of FSO is deposited directly in the bank account of applicant and same is transferred to the bank account of Crews by the bank. Since, the amount received as salary of Crew is disbursed as such, AAR concluded that the applicant is acting as a 'pure agent' of FSO. Also, the applicant will be receiving a fixed fee separately as service charges and no other amounts which are not authorized shall be handled through this account. **[DRS Marine Services Private Limited, Maharashtra AAR]**

- Maharashtra AAR held that amortized value of tools provided on FOC basis from customer shall not be included while considering the value of finished goods manufactured. Here, AAR referred to the clarification issued by CBIC vide Circular No. 47/21/2018-GST dated June 08, 2018 which states that in absence of any consideration for the goods owned by OEM which are provided to a component manufacturer on FOC basis does not amount to supply. Further, from the agreement and purchase copy, it was found that the tools supplied to manufacturer (applicant) are on payment of GST and thus are owned by OEM and supplied to manufacturer on FOC basis for manufacturing process. AAR elucidated that as the obligation to provide the tools on FOC basis is on customer, therefore amortized value of tools shall not be added. However, the situation is reversed where the obligation to use tools is on the applicant. Thus, AAR accepted applicant's plea that the said transaction shall fall out of the provisions of Section 15(2) of CGST Act, 2017.

[Lear Automotive India Private Limited, Maharashtra AAR]

Direct Tax

- **Subsequent amendments can't re-open concluded proceedings; 16 years re-assessment time-limit, prospective**

Delhi HC quashes re-assessment initiation for AY 1998-99 on assessee-individual (who was non-resident for subject AY), as it was barred by limitation u/s. 149;

In this case, AO had issued notice u/s 148 in March, 2015 thereby proposing to tax the amount of US \$ 2-3 million contributed by assessee for settling a trust in foreign country. Hon'ble HC observed that assessment for subject assessment year A.Y. 1998-99 could not be reopened beyond 31-3-2005 in terms of provisions of section 149 as applicable at the relevant time.

The subsequent amendment by Finance Act, 2012, which extended the limitation to sixteen years, could not be resorted for reopening concluded proceedings, in respect of which limitation had already expired/ lapsed before the date the amendment became effective.

[Brahm Datt v. ACIT {W.P. (C) 1109/2016} – Delhi High Court]

- **HC rejects stamp-duty valuation u/s. 50C for computing capital-gains on assignment of development rights**

Bombay HC, rules that capital gains arising to assessee during AY 2005-06 on assignment of development rights, in respect of the immovable property, to a builder is to be computed based on the amount actually received by assessee, rejects adoption of stamp duty valuation u/s. 50C of the Income Tax Act.

[**PCIT v. The Executor of Estate of Late Smt. Manjula A. Shah (ITA No. 859 of 2016) - Bombay High Court**]

- **Issue of Search warrant in respect of assessee's locker was unjustified when DIT failed to prove such locker contained undisclosed income.**

Search and seizure operations were conducted on premises of KSJ, who was cousin of assessee. During search, keys of 3 lockers belonging to assessee were found at premises of KSJ. Addl. DIT issued a warrant of search authorization along with satisfaction note in name of assessee to search said lockers. On opening 2 of those lockers, nothing was found and in one locker jewellery was found. It was noted that Addl. DIT had not disclosed any material or information on basis of which he had entertained belief that lockers contained jewellery or other articles representing undisclosed income. It was also taken note of that the satisfaction note did not state that any attempt was made to verify and ascertain facts in respect of assessee's lockers post discovery of locker keys. It was observed by the Court that there was no business connection, link and association established between assessee and KSJ, who was subjected to search and seizure operations. In view of these facts, the HC concluded that the issuance of search warrant in respect of assessee's lockers was unjustified and same was to be set aside

[**Shah E Naaz v. Addl. CIT (WP (C) No. 5937/2016) – Delhi High Court**]

- **Online payment of TDS due will relate to the date of online payment , not the date of debiting the account**

Hon'ble ITAT Delhi Bench clarified that when the assessee has made payment of TDS on 07.07.2014 by way of online payment and the same was debited from his account on 08.07.2014, the same is to relate back with date of online payment i.e. 07.07.2014 and not 08.07.2014, as online payment is on better footing than payment made by cheque and thus no interest is chargeable under section 201(1A) of the Income Tax Act.

[**Interocean Shipping (India) Pvt. Ltd. v DCIT (ITA No.3637/3638/Del/2016) – ITAT Delhi**]

- **Sec. 194-IA TDS on property purchases applicable qua each transferee, not sale-deed value**

Delhi ITAT holds assessee-individual (transferee) not liable to deduct TDS u/s. 194-IA as the property purchase consideration qua assessee being less than (Rs. 50 lakhs) threshold prescribed u/s. 194-IA(2) of the Income Tax Act. Tribunal has clarified that Sec. 194-IA (as introduced by Finance Act, 2013) is applicable only with respect to the

amount related to each transferee and not with reference to the amount as per sale deed, cites.

Memorandum explaining Finance Bill, 2013 provisions stated that each transferee is a separate income tax entity therefore, the law has to be applied with reference to each transferee; Since the sale consideration w.r.t. each transferee is less than Rs. 50 lakh, ITAT concludes that Sec. 194-IA was not applicable.

[**Vinod Soni v. ITO (ITA No.2736/ Del/2015) – ITAT Delhi**]

News round up for the year

The year 2018 witnessed some major announcements by the Government in diverse areas including finance, infrastructure, health, agriculture, housing, skill development and governance. Major developments during the year were as follows.

Agriculture

The main concern for farmers in 2018 was prices for their produce leading to agitations across India. Farm prices continued to fall below the minimum support price. Farmers in Maharashtra and Gujarat were also hit by drought. The government, however, set its sights higher and announced an ambitious plan to double farm incomes by 2022-23.

Export Policy: The Union cabinet approved the export policy for agriculture, lifting all restrictions on organic and processed food, to help the government's efforts to double farmers' income by 2022. The 'Agriculture Export Policy, 2018' seeks to double farm exports to \$60 billion by 2022 from \$30 billion last year and invest Rs.1,400 crore to set up specialized clusters in different states for different produce to push exports. The policy will also seek to attract private investment into production and processing.

Automobiles

After a robust first half, auto companies saw softening of sales from August, primarily due to high fuel prices and cost of finance. Even steep discounts and attractive offers did little to attract buyers. As most companies are expected to increase prices from January, sales may come under further pressure.

The slowing sales had an impact on the Bombay Stock Exchange auto index, which crashed 22 per cent during the year – the worst among all sectoral indices. However, benign raw material prices helped auto firms report a healthy earnings before interest, tax, depreciation and amortization (Ebitda).

Aviation

Due to higher Aviation Turbine Fuel (ATF) prices, some of the airlines came under financial stress while others continued to perform well. The market leader Interglobe Aviation, or Indigo, added its 200th aircraft in December. Jet Airways is scouting for capital infusion to stay afloat and is negotiating with Etihad. The plan of the Government for disinvestment in Air India could not succeed. Alternate measures are being worked out to create 'Special Purpose Vehicle' to park off some of AI's debt. With the fall in ATF prices lately, the losses of some of the airlines have declined on a month-on-month basis.

With the inauguration of the first airport in Sikkim in September 2018, the number of functional airports in India went up to 100. The airport would be linked to the Union government's UDAN (Ude Desh Ka Aam Nagrik) regional connectivity scheme and the airfare for about an hour would come to Rs.2,500. India has plans for 100 new airports to be built in the next 10 to 15 years with investments of almost close to USD 60 billion. India is also expected to overtake Germany, Japan, Spain and the UK within the next ten years to become the world's third largest air passenger market.

Budget 2018

In the Union Budget for 2018-19, the corporate tax rate of 25 per cent was extended to companies with turnover up to Rs. 250 crores in the financial year 2016-17. The target for fiscal deficit was lowered to 3.3 per cent of GDP against 3.5 per cent last year. No changes in the personal income tax were proposed. Another major announcement was made related to National Health Protection Scheme (Ayushman Bharat) under which an annual health insurance cover of Rs 5 lakh is to be provided to nearly 1/3 of the households. The Scheme has been implemented. The budget also included the continuation of Securities Transaction Tax (STT) while reintroducing LTCG.

Corporate Governance

The **Kotak Committee** on Corporate Governance was constituted on June 2, 2017, under the chairmanship of Uday Kotak with the primary objective of improving standards concerning corporate governance of listed companies in India that access capital from domestic and international investors to fund their growth. The Committee has since submitted its report to Stock and Exchange Board of India (SEBI), which decided to accept several recommendations of the Committee without any modifications, including the following:

- Reduction in the maximum number of listed entity directorships from 10 to 8 by April 01, 2019 and to 7 by April 1, 2020;
- Expanding the eligibility criteria for independent directors;
- Enhanced role of the Audit Committee, Nomination and Remuneration Committee and Risk Management Committee;
- Disclosure of utilization of funds from Qualified institutional placement (QIP)/preferential issue;
- Disclosures of auditor credentials, audit fee, reasons for resignation of auditors, etc.
- Disclosure of expertise/skills of directors;
- Enhanced disclosure of Related Party Transactions (RPTs) and related parties to be permitted to vote against RPTs;
- Mandatory disclosure of consolidated quarterly results with effect from FY 2019-20;
- Enhanced obligations on the listed entities with respect to subsidiaries; and
- Secretarial Audit to be mandatory for listed entities and their material unlisted subsidiaries under SEBI Listing Obligations and Disclosure Requirements (LODR) Regulations.

The regulator's board also decided to accept several recommendations with modifications, which included the following:

- Minimum 6 directors in the top 1000 listed entities by market capitalization by April 1, 2019 and in the top 2000 listed entities by April 1, 2020;
- At least one woman independent director in the top 500 listed entities by market capitalization by April 1, 2019 and in the top 1000 listed entities by April 1, 2020;
- Separation of CEO/MD and Chairperson (to be initially made applicable to the top 500 listed entities by market capitalization w.e.f. April 1, 2020);
- Quorum for Board meetings (1/3rd of the size of the Board or 3 members, whichever is higher) in the top 1000 listed entities by market capitalization by April 1, 2019 and in the top 2000 listed entities by April 1, 2020;
- Top 100 entities to hold AGMs within 5 months after the end of FY 2018-19 i.e. by August 31, 2019;
- Webcast of AGMs will be compulsory for top 100 entities by market capitalization w.e.f. FY 2018-19; and
- Shareholder approval (majority of minority) for royalty/brand payments to related party exceeding 2 percent of consolidated turnover (instead of the proposed 5 percent).

Ease of Doing Business

India climbed 23 spots from a year ago to rank 77 out of 190 countries in the World Bank's latest report on the ease of doing business. India stood among the top 10 most improved economies. The ease of doing business in India improved notably after a series of reforms made it easier for companies to start business, obtain construction permits, pay taxes and conduct trade across borders. The Insolvency and Bankruptcy Code (IBC) was a major reform that strengthened access to credit as according to the World Bank report, "secured creditors are now given absolute priority over other claims within insolvency proceedings."

GDP back series data

The GDP back series data was released with the new base year of 2011-12. In July, an expert committee set up by the National Statistical Commission released a series to show that GDP grew even faster than was estimated for some years under the United Progressive Alliance (UPA). However, in November, a reassessment under the aegis of the NITI Aayog lowered the estimates for some of the same years. The GDP growth rate during UPA's ten-year term averaged 6.7 per cent annually compared with the National Democratic Alliance (NDA's) average of 7.35 per cent.

Investments

An improvement in the global investor sentiment saw the benchmark indices climb to new all-time highs in August. However, the subsequent two months turned out to be rough for investors. In September and October, the Sensex fell as much as 15 per cent on worries that macro-economic conditions were deteriorating amid a plunge in the rupee and spike in Brent crude prices.

Globally too, investor sentiment towards the emerging markets (EM) hit a nadir with the US dollar gaining strength after the yield on the 10-year treasury hit 3.24 per cent mid-August. As the Treasury pierced the three-per cent mark, EMs started witnessing huge capital outflows.

For the two-months ending October, domestic debt and equity markets saw outflows of \$3 billion and \$5 billion, respectively, weighing on asset prices.

FDI: For the first time in two decades, India received more foreign investment than China. In 2018, India saw more than \$38 billion of inbound deals compared with China's \$32 billion, buoyed by stable fundamentals, a bankruptcy code and fresh opportunities in sunrise sectors.

India's Foreign Direct Investment (FDI) was the highest ever with 235 deals amounting to \$37.76 billion this calendar year, according to data from Dealogic, a global M&A and capital markets data provider, beating China, which has historically been the favorite for emerging market bets. China's trade standoff with the US is seen as a major reason for the slowdown.

Labour Code

The labour code on wages proposes making minimum wage a statutory right for all workers. It empowers the Centre to set benchmark minimum wages for different regions across the country. The code, which will subsume four existing central labour legislations — the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976 — also proposes setting up of a committee which will set and revise the minimum wages from time to time. The wage code was introduced in the Lok Sabha in August 2017, but was referred to the parliamentary standing committee.

Mining

Commercial Coal Mining for Private Sector: In one of the major reforms, the Cabinet approved opening up of commercial coal mining for private sector, which will bring efficiency and competition in coal production, attract investments and best-in-class technology, and help create more jobs in the coal sector. The allocation will be through auction, whereby the bid parameter will be the price offer in Rs/tonne which will be paid to the State Government on the actual production of coal. There shall be no restriction on the sale and/or utilization of coal from the coal mine. Entire revenue from the auction of coal mines for sale of coal would accrue to the coal bearing States.

Draft National Mineral Policy, 2018: The central government on Feb 9, 2018, issued the draft National Mineral Policy (NMP), 2018. A long term export policy for the mineral sector would provide stability and prove to be an incentive for investing in large scale commercial mining activity. Assurances on export of minerals will be a key factor for investment decisions particularly on foreign direct investment (FDI) in the sector.

New Industrial Policy

The commerce and industry ministry has sent the final proposal of new industrial policy to the Cabinet for approval. The new industrial policy aims at boosting manufacturing

sector growth, promote foreign technology transfer and attract overseas investments. The policy would have some financial implications as the government may provide incentives for use of frontier technologies like artificial intelligence, Internet of things, and robotics. It aims at promoting emerging sectors and modernizing existing industries.

NPA's

The gross NPA of all listed banks jumped to Rs 10.25 trillion in the March quarter, from Rs 8.86 trillion in the December 2017 quarter. The March level was roughly 11.5 per cent of the total loan book. Adding restructured, and loans suspected to be falling into NPA, the share could be 13-14 per cent of the loan book. RBI's financial stability report said that the gross NPA ratios of the banking system could reach 12.2 per cent of the loan book by March 2019. The good news is that the gross NPAs showed a downward trend in June (Rs.10.03 trillion) and then in September (Rs.9.99 trillion) quarter. This is largely because of the strict Insolvency and Bankruptcy Code.

Renewable Energy Policy

The Ministry of New and Renewable Energy (MNRE) announced a new National Wind-Solar Hybrid Policy that provides a framework for the promotion of large grid-connected wind-solar Photovoltaics (PV) hybrid systems for efficient utilization of transmission infrastructure and land. The policy also aims at reducing the variability in renewable power generation and achieving better grid stability. This is subject to the condition that rated power capacity of one resource should be at least 25 per cent of the rated power capacity of other resource for it to be recognized hybrid project. The Directorate General of Trade Remedies (DGTR) had recommended levy of 25 percent safeguard duty on solar cell imports from China and Malaysia for the first year, followed by a phased down approach for a second year. In the first six months of the second year, a safeguard duty of 20 percent will be payable by exporters to India and in the latter half of the second year, exporters will pay a safeguard duty of 15 percent. The duty was imposed to encourage domestic manufacturing of solar cells. The Ministry of Commerce and Industry has issued a circular stating that Section 30 A of the SEZ Act of 2005 implies that safeguard duty will be levied on any goods/products released from SEZ to domestic tariff area (DTA).

Real Estate

Prior to FY 2018-19, on sale of immovable property, income from capital gains, business profits and other sources were taxed on higher of sale consideration as per contract and stamp duty value. From FY 2018-19 onwards, the contract value has been considered as sale consideration as long as the difference between stamp duty value and contract value is not more than 5% of the contract value.

Another pertinent change during the year was on inventory tax. According to the Memorandum to Finance Bill 2018, the absence of rules on taxing conversion of stock-in-trade into capital asset was leading to asymmetrical treatment and tax deferment. Despite more than 30 years of having no specific rules on this aspect, the Income Tax Law was amended to treat Fair Market Value (FMV) on conversion of inventory into

capital asset as business income of the taxpayer in the year of conversion (not on eventual sale).

Budget 2018 introduced Section 43CB in the Income tax Act to provide that business income in case of construction contracts and service contracts in specified cases, shall be determined on the basis of percentage completion method, which is in line with the provisions of Income Computation and Disclosure Standard ('ICDS').

Rupee

2018 was a volatile year for the rupee due to high oil prices, international trade wars and global contagion. Rupee weakened and reached a level of Rs. 74 on October 5 when oil peaked at US\$ 86 a barrel. The downward slide in oil prices has subsequently strengthened the Rupee, which is now Rs. 69.77.

Start-ups

2018 was an eventful year for Indian startups. A record number of startups, including Swiggy and Zomato, were valued at \$1 billion or more, which makes India home to the third most unicorns. The year also saw the biggest e-commerce deal with the Walmart's \$16 billion acquisition of Flipkart. Investors are now turning their focus to high-potential, high-value deals. A Bain & Co study shows why India is the second-most attractive country for startup investments.

Telecom

With the convergence of the telecom business with media and entertainment, it's been a rollercoaster ride for consumers. Prices have fallen dramatically for data as well as content, and new technologies like Over the Top (OTT) are changing viewing habits and making them more mobile.

National Digital Communications Policy, 2018: The National Communications Policy aims to accomplish the following Strategic Objectives by 2022:

1. Provisioning of Broadband for All;
2. Creating 4 Million additional jobs in the Digital Communications sector;
3. Enhancing the contribution of the Digital Communications sector to 8% of India's GDP from ~ 6% in 2017;
4. Propelling India to the Top 50 Nations in the ICT Development Index of ITU from 134 in 2017;
5. Enhancing India's contribution to Global Value Chains; and
6. Ensuring Digital Sovereignty.

Geopolitical developments and global economy

The global trade order may be under strain due to focus of the US on balancing of its trade with China, EU, Canada, Mexico, UK, India and other economies in Asia and push for revised bilateral/regional trade agreements. The re-jig of such trade relations may help the US, benefit some countries, but may impact economy of others negatively and the global economy as a whole if protectionist measures are pushed too far. World Trade Organization (WTO) may gradually lose its relevance with unilateral imposition of duties by the countries and not reporting to WTO.

After reciprocal measures with imposition of tariffs by the US and China on items of the bilateral trade, the talks between the two sides are taking place to conclude mutually acceptable deals. The talks would be difficult in view of huge trade imbalance between the US and China rising from US\$ 273 bn in 2010 to US\$ 375 bn in 2017 in favour of China (bilateral trade in 2017 was US\$ 506 bn).

The US has signed a revised NAFTA with Mexico and Canada on November 30 2018. Congress has to approve the deal before it can take effect.

The US has already removed 50 items from Generalized System of Preferences (GSP) for India, under which US provides concessions for 3500 items to India. The dialogue between India and the US has begun in September 2018 for trade deal. In view of the challenges posed by protectionism, our trade policy need to be tweaked suitably to expand the export basket; target new markets; and to conduct study/ track the revised bilateral agreements of the US with different countries/regions to identify products with export potential. The push by the US for the revised Agreements provides both the challenge and opportunity.

Any slowdown in Chinese economy may affect the global economy.

Low oil prices expected in 2019 may help emerging economies but may not find favour with countries like Saudi Arabia expecting oil prices to be above US\$80. Deeper oil production cuts and formation of OPEC+ including Russia and some non-OPEC countries may influence oil market more significantly than OPEC alone.

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