



Message from Ved Jain, Founder

The evolving economic and geopolitical scenario across the globe is throwing up new challenges and opportunities to one and all. The year 2017 witnessed broad based recovery in most of the developed and

emerging economies with GDP growth of 3.7 percent and global trade increasing by 4.7 percent. There are, however, concerns which need to be kept in mind while looking into the future.

The rise in protectionism, the ongoing trade wars, especially between US and China, Geo-political developments, uptrend in oil prices, slowdown in China, the final shape of BREXIT, highly volatile currency markets, changing demographics and increasing joblessness have to be viewed cautiously while making any futuristic projections.

Against this, how do we view India in the years ahead!

Most of the national and International institutions are appreciative of the various initiatives taken by the Government to create an enabling environment for sustainable and inclusive growth. The overall growth is

projected to be around 7-7.5 percent, but major concerns facing the country, inter alia, include infrastructure, education, healthcare, unemployment, oil prices, weakening rupee and regulatory environment.

The Government, businesses and other stakeholders have to be in a continuous engagement mode to identify bottlenecks and act fast on remedial measures to ensure better business environment.

While domestic industry need to be provided an enabling environment for investments, we also need create optimal policy mix for attracting foreign investment – for the kind of growth we need will require supplementing domestic resources with International investments.

We, at VJA Legal, are firmly committed to associate ourselves with all the stakeholders for accelerating the growth process.

Through this monthly Newsletter, we endeavour to keep you updated on the evolving global economic scenario, the latest developments in the Indian economy, especially important business and legal news, and the emerging trends.

We hope you will find it useful and interesting! Your feedback will be of great value to us.

Ved Jain
(Ved Jain)

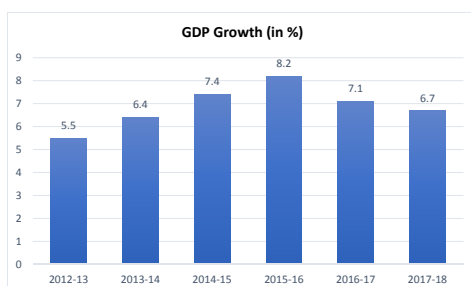
The Economy

There is a general consensus among national and International institutions as also Government and businesses that the economy is doing well with overall growth projected to be over 7% in the current fiscal.

Key economic indicators

GDP : 7-7.5% in FY19 against 6.7% in the last FY.

Gross Domestic Product

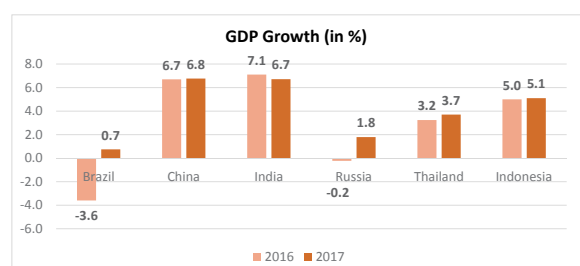


	Q1 FY 18	Q2 FY 18	Q3 FY 18	Q4 FY 18	Q1 FY 18
GDP Growth	5.6	6.3	7.0	7.7	7.9*

IMF lauds India's reforms, forecasts country's GDP to grow at 7.5% in FY20 in its report; near-term macroeconomic outlook for India to be "broadly favourable" and growth to rise to 7.3 per cent in fiscal year 2018-19 and 7.5 per cent in 2019-20 on strengthening investment and robust private consumption. Better monsoons leading to improved rural demand and better

Optimistic Growth Outlook

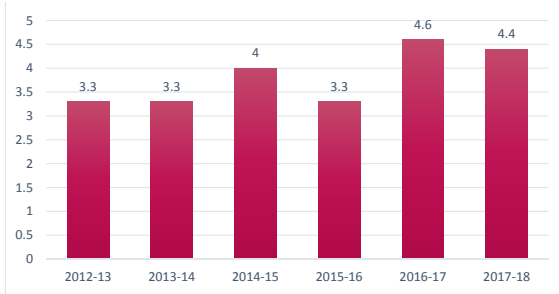
India's GDP Growth Projections (in %) by Multilateral Organizations			
	2017	2018	2019
Asian Development Bank (July 2018)	6.7	7.3	7.6
International Monetary Fund (July 2018)	6.7	7.3	7.5
World Bank (June 2018)	6.7	7.3	7.5
Organization for Economic Cooperation and Development (May 2018)	6.5	7.4	7.5



industrial growth will support growth, while major areas of concern would be high oil prices and inward looking trade policies being pursued by many countries, which may impact exports in spite of Rupee losing ground against US Dollar.

Industrial growth: expected 6.7% in FY 2019. There has been a pickup in the recent past but risks remain on account of high cost of credit and high commodity prices.

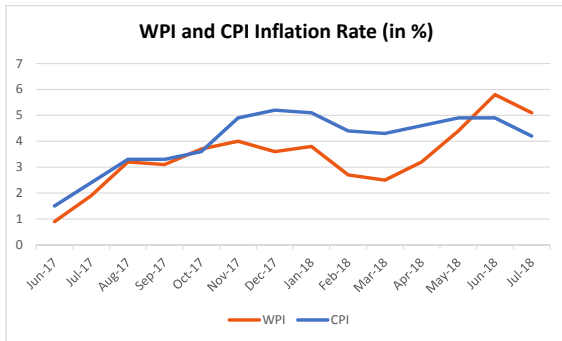
Index of Industrial Production



	May - 17	Mar - 18	Apr - 18	May - 18	Jun - 18
Monthly IIP Growth (% y-o-y)	2.9	4.6	4.8	3.2	7.0

Inflation: Consumer Price Index (CPI) is likely to be around 5% with RBI constantly monitoring the price movements and adjusting rates accordingly. According to RBI, the inflation risks continue to remain elevated and governed by factors such as MSP, crude oil, monsoon, farm loan waivers, expected pick up in rural demand and GST.

Inflation

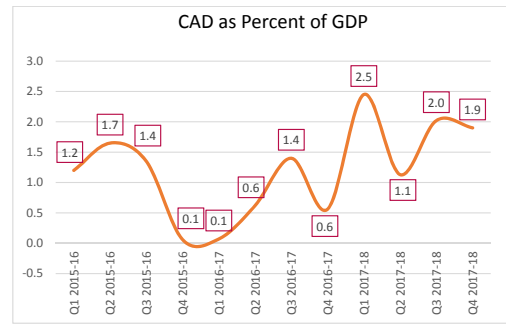
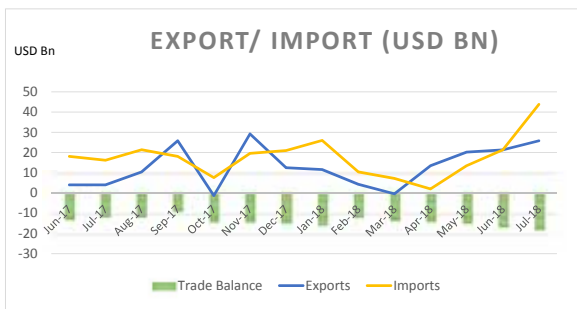


Inflation Target:
4% with a band of +/-2.0%

Inflation largely been range bound and is within RBI's indicative trajectory
RBI expects inflation to be within:
4.8-4.9 percent in H1 2018-19
4.7 percent in H2 2018-19

Exports: Rupee depreciation against Dollar may help exports but a lot will also depend on comparative depreciation of currencies of competing countries and greater shift towards protectionism.

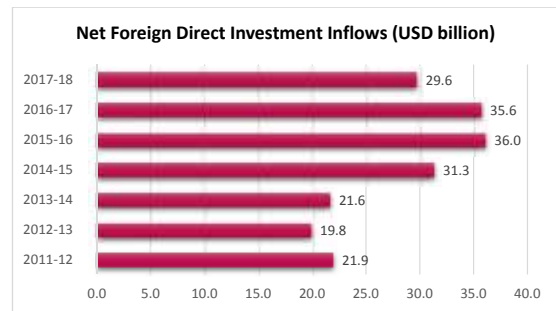
External Sector Performance



Global trade prospects for 2018 much better
Recently announced Mid-term Review of Foreign Trade Policy focuses on export promotion
India focusing on integrated development of logistics sector
However, recent surge in oil prices poses a risk to India's current account

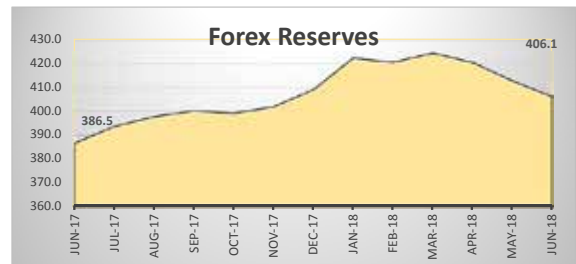
FDI and FPI flows: India continues to draw sizable inflows of foreign direct and portfolio investments, but the likely increase in rates by US Fed will be an area of concern.

External Sector Performance



Net FDI Inflows between 2014-15 & 2016-17: crossed USD 100 billion

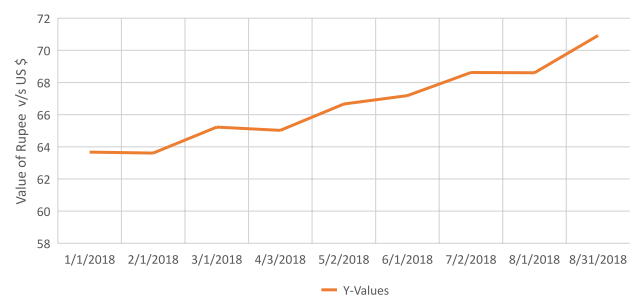
FDI reforms remain a priority



India's forex reserves at record high...crossed USD 400 billion in September 2017 & holding steady.
India: Among Top Ten Forex Reserve Holders
Import cover more than year

Rupee decline: From January 1, 2018 to August 30, Rupee has depreciated by over 11% vis-à-vis US \$ - from Rs 63.66 to Rs 70.74. Increase in oil prices as well as global developments will continue to remain two critical factors in the months ahead.

The Rupee - Dollar Exchange Rate



Legally Speaking

Enforcement of the Insolvency and Bankruptcy Code

The Insolvency and Bankruptcy Code, 2015 (IBC) was passed by the Central Government to provide for an effective and adequate framework for insolvency and bankruptcy. The code creates time bound processes for insolvency resolution of companies and individuals. A dedicated board (IBBI) is set up as a regulatory body and tribunals are constituted for adjudicating insolvency resolution for companies. The provisions relating to corporate insolvency resolution process are fully in force. However, provisions relating to insolvency resolution and bankruptcy for individuals and partnership firms are yet to be implemented.

Although, inception of IBC was envisaged as a historical moment in the Indian corporate sector. Certain issues have arisen due to judicial adjudication. One such interesting case which raises many important issues relates to the insolvency proceedings against Jaypee Infratech Ltd. initiated by IDBI.

The NCLT Allahabad, by its order dated 9.08.2017, admitted the proceeding against Jaypee Infratech. This insolvency process was challenged by some of the flat buyers alleging that their interest is being compromised and the provisions of IBC violate their rights. Supreme Court admitted the petitions and directed that the order passed by NCLT shall remain stayed.

In the meanwhile, the Central Government amended the provisions of the Insolvency and Bankruptcy Code bringing the flat buyers at par with the secured creditors. Provisions were also made for their representation in the Committee of Creditors.

After a year of prolonged litigation in the Supreme Court in which number of interim orders were passed, the Supreme Court ordered that all insolvency cases of Jaypee Infratech be returned to the NCLT and the entire process, including the bidding of assets, be restarted.

Some of the important issues which arose out of this litigation are:

1. The timelines provided by law in IBC for completion of resolution process and initiation of insolvency proceedings has been given a go bye. This gives an indication that timelines under the law are not mandatory. This will defeat the objective of the time bound resolution under the Act.
2. The home buyers were brought at par with the secured creditors by an amendment with the law in June 2018 when the litigation was pending. The Parliament did not give retrospective effect to the amendment. However, the Supreme Court mandated the NCLT to take into consideration the amended law giving it retrospective effect.
3. The resolution process will start from a scratch and resolution professional gets 180 days afresh to complete the resolution.
4. The Supreme Court has also allowed insolvency proceedings against Jaypee Associates Ltd., the parent

company, thereby lifting the corporate veil and holding parent company also answerable for acts and omissions of its subsidiary.

All directions given by the Supreme Court are in exercise of its powers under Article 142 of the Constitution of India. It will be of interest to watch further proceeding in this matter as statutory provisions have been given a go bye in this case in the larger public interest. But if we look at the case closely, in this litigation, neither the home buyers nor the creditors gained anything. It is only the company which got an advantage by way of additional time to negotiate its resolution process.

By Mr. PK Malhotra, Senior Legal Consultant, VJA Legal and Formerly Law Secretary, Govt. of India

Taxation matters

Income Tax

a) a) **CBDT issues clarification on computation of admissible deduction under Section 10A of Income Tax Act, 1961**

The Central Board for Direct Taxes (CBDT) has clarified that telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover" while working out deduction under Section 10A of the Act. Board has further clarified that expenses incurred in foreign exchange for providing technical services outside India are also to be excluded from both "export turnover" and "total turnover". CBDT has stated that appeals should not be filed by the Department on this issue and the appeals pending on this issue should be withdrawn or not pressed upon.

[CBDT Circular No. 04/2018 dated 14.08.2018]

b) **Section 14A could not be invoked if no exempt income was earned during the year: Supreme Court dismisses SLP**

Dismissing an SLP filed by the Department, the Supreme Court confirmed that where no exempt income, i.e., dividend, was earned in a relevant assessment year by assessee, disallowance under Section 14A cannot be invoked. The SLP was filed by the Department against the order of the High Court which held that Section 14A can only be triggered if assessee seeks to square off expenditure against income which does not form part of total income under the Act.

[CIT v. Chettinad Logistics (P.) Ltd. – Supreme Court] (95 taxmann.com 250)

c) **No addition under Section 68 if assessee failed to produce persons who had applied as shareholders: Supreme Court dismisses SLP**

Assessee filed details of share application money before Assessing Officer (AO). AO required assessee to produce all persons/share applicants for examination. Assessee expressed its inability to produce share applicants. High Court in its order held that the deletion of addition by ITAT was just and proper as assessee could not have been assessed to tax to find out the persons who had applied as shareholders. SLP filed by the Department

before the Supreme Court against the order of High Court has been dismissed.

[CIT v. Jalan Hard Coke Ltd. – Supreme Court] (95 taxmann.com 331)

d) No addition could be made relying upon District Valuation Officer's valuation report in course of search proceedings: Supreme Court dismisses SLP

In course of search proceedings under Section 158BC of the Act, AO found that assessee had not maintained its books of accounts and thus, referred the matter to District Valuation Officer (DVO) to verify the cost of construction of building. Consequently, he made an addition under Section 69C on account of difference between cost of construction determined by DVO and as shown by assessee. High Court held that since no undisclosed income was detected as a result of search, enquiry, if any, in respect of valuation of building was permissible only in course of regular assessment proceedings. Considering the above facts, Supreme Court has dismissed the SLP filed against above order of High Court.

[Pr. CIT v. Rajni Developers (P.) Ltd. – Supreme Court] (96 taxmann.com 221)

e) An assessee who has availed deduction under Section 80-IC of 100% of profits for five years is entitled to deduction of only 25% on further expansion at 25% in subsequent years

The Supreme Court in this case, reversing the view adopted by High Court, has held that once the assessee has started claiming deduction under Section 80-IC of the Act and initial assessment year has commenced with the period of 10 years, there cannot be another initial assessment year. The Apex Court has further held that even if there has been substantial expansion, 100% deduction could not be allowed again for another five years, when sub-section (2) of Section 80-IC, in no uncertain terms, provides for deduction @ 25% only after the initial period of 5 years.

[CIT v. Classic Binding Industries – Supreme Court] (Civil Appeal No. 7208 of 2018 dated 20.08.2018)

I. International Taxation

a) No TDS required on commission paid to non-resident for procuring sales orders from parties outside India

Assessee was paying commission to non-resident agents and since, commission paid by assessee was attributable to orders booked by agents and not to any other service, assessee was of the view that provisions of TDS were not attracted. AO, however, was of the view that amount paid as commission was actually in the nature of fees for consultancy services and thus, income of such parties accrued through a business connection in India. ITAT upheld the view adopted by assessee on the ground that AO was unable to bring any cogent material on record to establish that the non-resident commission agents had rendered any technical, consultancy or managerial services.

[DCIT v. Taj International (P) Ltd. – ITAT Delhi] (96 taxmann.com 222)

b) Request for remand to the assessment stage for an AMP issue cannot be a matter of routine

Tribunal in this case held that in the absence of material to suggest that there was an arrangement, understanding or action in concert with respect of the AMP expenditure incurred by the assessee, the Transfer Pricing Officer (TPO) was not justified in coming to the conclusion that there was an international transaction under Section 92B of the Act and that the assessee should have recovered an amount from its Associated Enterprise (AE). The Tribunal further held that the request of the Department for a remand to the TPO was not acceptable as remand to the assessment stage cannot be a matter of routine and it has to be so done only when there is anything in the facts and circumstances to so warrant or justify.

[Moet Hennessy India Pvt. Ltd. v. ACIT – ITAT Delhi] (ITA No. 1906/Del/2014 dated 23.08.2018)

II. Goods & Services Tax (GST)

a) GST Amendment Bills passed and enacted

CGST Act, IGST Act, UTGST Act & Compensation to States Act) have been passed by the Legislature and enacted on 29th August, 2018 after receiving the Presidential assent. This has been done to give effect to the amendments suggested in 28th GST Council meeting held on 21st July, 2018. Few Key amendments are as follows:-

- It has been provided that if any activity constitute supply under Section 7(1) (a), (b) and (c), then only schedule II is to be referred to further determine nature of supply, i.e. whether it is supply of goods or supply of services.
- The Bill seeks to raise the statutory threshold of turnover for a taxpayer to be eligible for the composition scheme from one crore rupees to one crore and fifty lakh rupees, and to allow the composition taxpayers to supply services (other than restaurant services), for up to a value not exceeding ten per cent of turnover in the preceding financial year, or five lakh rupees, whichever is higher.
- The bill has also introduced Bill to Ship to model for services. Now the person to whom service invoice has been billed can take Input Tax Credit (ITC) even if service is shipped to another person on his direction.
- Scope of Section 17(5) of the CGST Act (Blocked credits) has been reduced. Now, GST Credit is available for Motor Vehicles for transportation of persons with seating capacity more than or equal to 13 (including driver) without any condition.
- Amendment to Schedule I of CGST Act: Any person availing services from its Associated Enterprise (AE) outside India, i.e. a related person, will be treated as supply even without consideration. IGST needs to be paid under RCM. Earlier, this was applicable for Taxable Person. Now, it is proposed to cover every person,

hence making registration mandatory to expand the revenue base.

- Amendment to Schedule III of CGST Act: No GST on High Sea Sales and Sale of Warehoused goods before custom clearance.
- The Bill inserts a provision specifying the amount of pre-deposit payable for filing appeals. In cases where the appeal is to be filed before the Appellate Authority, the maximum amount payable will be Rs.50 Crores. Further, in cases where the appeal is to be filed before the Appellate Tribunal, the maximum amount payable will be Rs.100 Crores.

b) Employee's services in corporate office for managing distinct units constitute supply under Schedule I

Laying down a very controversial precedence, Karnataka AAR in the case of Columbia Asia Hospitals Pvt. Ltd. held that activities performed by employees at corporate office in course of or in relation to employment such as accounting, other administrative and IT system maintenance for units located in other States i.e. distinct persons as per Section 25(4) of CGST Act, shall be treated as "supply" in terms of Entry 2 of Schedule I of CGST Act. This will have significant effect for businesses operating in multiple states especially for those where complete input credit of GST is not available such as power companies, oil and gas companies and liquor companies.

[Columbia Asia Hospitals (P.) Ltd. – AAR Karnataka] (96 taxmann.com 245)

c) Input tax credit availed for vans carrying cash is to be disallowed

Maharashtra Appellate Authority for Advance Ruling (AAAR) in case of CMS Info Systems Ltd held that Input Tax Credit is not available on purchase of motor vehicles, i.e. cash carrying vans, which are used for cash management business and disposed thereafter as 'scrap'. Input tax credit is allowed if the motor car is used for transportation of goods or passengers. Perusing definitions of 'goods' and 'money' contained u/s 2(52) and 2(75) of CGST Act, AAAR remarks, "Since the cash carry vehicles are deployed to carry cash and bullion for other than numismatic purposes, the cash carried by them is to be construed as money and not goods". Thus, AAAR held that since money is not considered as 'goods' under the GST Act, credit of cash carrying vans will not be allowed.

[CMS Info Systems Ltd. – AAAR Maharashtra] (96taxmann.com 292)

d) No zero-rating benefit for coffee supplied through vending machines at SEZ units

Karnataka AAR in the case of Coffee Day Global Limited held that supply of non-alcoholic beverages / ingredients to SEZ units using coffee vending machines, does not qualify as "zero rated supply" as defined u/s 16 of IGST Act. AAR observes that activities to be carried out have to be strictly in consonance with authorized operations certified by proper officer of SEZ and as applicant in present case has not made a case

that its activity is certified as an authorized operation, same would not qualify to be zero-rated supply.

[Coffee Day Global Ltd. – AAR Karnataka] (96 taxmann.com 247)

III. Prevention of Money Laundering (PMLA)

a) After paying entire consideration for purchase of property in a project developed by Vijay Mallaya, appellant's property not being involved in money laundering could not be attached

In the attachment order there was no finding at all as to whether the amount which was received by the appellant was from the alleged tainted money. The Tribunal observed that if the provisional attachment order and prosecution complaint were read together, merely general reasons were given that the amount received by appellant was generated from the proceeds of crime and it amounts to money laundering. The Tribunal held there were no reasons or findings that on the date of receipt of loan, the appellant was aware that the loan was out of proceeds of crime. Therefore, the provisional attachment order was quashed.

[Ms. Kiran Mazumdar v. Dy. Director, Directorate of Enforcement – Appellate Tribunal, PMLA, Mumbai] (96 taxmann.com 365)

b) No case of money laundering against consortium of banks with whom property was mortgaged

Enforcement Directorate (ED) attached properties mortgaged with consortium of banks on loan account of three companies. The Tribunal observed that these properties were purchased by mortgagors much before sanctioning of loan and much prior to events of funds diversion and fraud committed by borrowers. Thus, it was concluded that no case of money laundering could be made out against consortium of banks that had sanctioned amount which was untainted and pure money.

[Standard Chartered Bank v. Dy. Director, Directorate of Enforcement – Appellate Tribunal, PMLA, New Delhi] (96 taxmann.com 110)

News Round up

Trade

Trump tariff fallout: India becomes steel dumping ground; imports from China jump 67%, Japan 47% and Korea 35%

India seems to have turned a favourite destination for steel makers from not just China but also Japan and South Korea, which are diverting supplies from the US and the EU in massive volumes to neutralize the impact of a tariff war initiated by the Trump administration. India has reportedly initiated probe into alleged dumping of a certain type of steel imported from Brazil, China and Germany following a complaint by a domestic player. Directorate General of Trade Remedies (DGTR) has stated that there is an evidence of injury to the domestic industry caused by dumped "High Speed Steel of Non Cobalt Grade" from these three

countries. Graphite India Ltd has filed an application before the DGTR for imposition of anti-dumping duty on imports of the product from Brazil, China and Germany. This steel is used for making high speed steel cutting tools, according to media reports.

Ecommerce

Draft ecommerce policy lands with PMO

The proposed ecommerce policy continues to evolve and is now with the PMO as Ministries and Departments questioned the role of the Department of Commerce and also some of the provisions of the policy. There are reports that Industry and individual companies have raised concerns over clauses related to data localisation, contradictions in Press Note 3, deep discounts, preference to RuPay and digital products in the draft ecommerce policy. Data Security Council of India, it is understood, has opposed a clause that seeks to retain policy space for granting preferential treatment to digital products created within India in the context of international trade negotiations. Traders' body CAIT has reportedly demanded that basic fundamentals of the e-commerce policy draft should not be diluted and it must entail restrictions on discounts and freebies offered by e-commerce platforms. Meanwhile, NITI Aayog CEO has reportedly said the government should not look at micro issues of discounts and pricing and instead focus on attracting investments and creating jobs in the sector.

Insolvency and Bankruptcy Code has put recovery process on fast track, says FICCI Survey

Insolvency and Bankruptcy Code (IBC) has put the debt recovery process on fast track and improved the position of banks, according to a FICCI survey. Survey highlighted that IBC has also increased promoters' willingness to come forward for resolution at an early stage of default. Bankers participating in Survey, suggested further enhancing of capacity, strengthening of the judiciary and empowerment of local level government officials. Participating in the survey, 22 bankers suggested that extension of moratorium beyond 270 days should not be permitted.

Government proposes additional 180 days for resolution of stressed power firms

Additional 180 days could be provided for resolution of 34 stressed power projects with a view to avoiding potential value erosion of operating plants, according to a government report. As per the current RBI norms, banks need to restructure stressed assets within 180 days or six months. If recommendations of the report which was in compliance

of the order of Allahabad High Court are accepted, banks would get about a year for restructuring their power sector loans of about Rs 1740 billion.

Telecom

Trai rejects COAI concerns on spectrum prices

The telecom regulator has rejected industry concerns over spectrum pricing for the next auctions, saying it followed international benchmarks and that it expects demand for both 5G and 700 MHz airwaves, which can also be used to offer next-generation services.

DoT amends licences of telcos to incorporate net neutrality rules

The Department of Telecommunications (DoT) has amended the licences of telecom operators and internet service providers to incorporate net neutrality rules, which means that no service provider can now restrict or discriminate in the treatment of content by blocking, slowing down or granting preferential speeds in providing internet access.

5G panel suggests opening of new spectrum bands

The steering committee set up to chart India's 5G road map has reportedly recommended additional spectrum for fuelling the next-generation of wireless services, and suggested that the allocation of the first tranche of such radio waves be announced this year. The economic impact of 5G is expected to be over 1 trillion dollars.

M&As in 2018*

M&A transactions involving Indian companies have reached over US \$100 billion in 2018. The trend may continue and it may be over US\$100 billion again in 2019. The Insolvency and Bankruptcy Code (IBC) has triggered M&A on an unprecedented pace. This year's mega M&A would be the acquisition of a 77 percent interest in Flipkart Group by Walmart. The deal has been reportedly finalized and it would be the largest-ever M&A transaction involving India, and the biggest Asia Pacific Retail M&A deal on record. Another mega deal this year was purchase of Bhushan steel Ltd for over US\$ 5 billion by Tata Steel Limited. Alibaba Group Holding Ltd. and Tencent Holdings Ltd. are also acquiring stakes in local companies to increase their India presence, while Warren Buffett's Berkshire Hathaway Inc. agreed in August 2018 to invest in Paytm. There are other acquisitions on the cards in the remaining month of this year. Sale of Essar steel and Kraft Heinz Co. are some of them.

*(till August,2018)

VJA | Legal

100, Babar Road, Opp. Hotel Lalit, New Delhi - 110001

Tel.: +91 11 43504546

E-mail: mail@vjalegal.com