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Corporate & Commercial

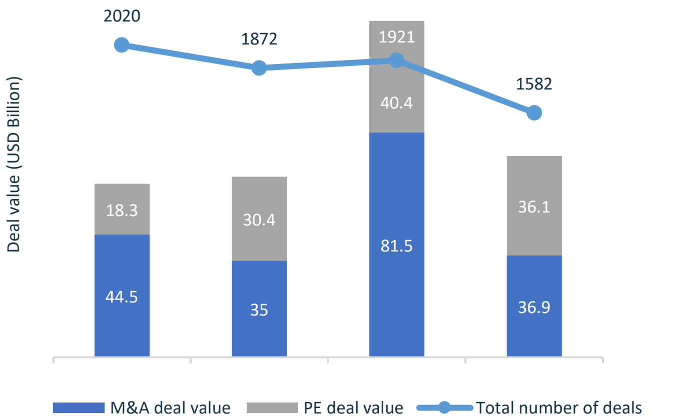
Quarterly Update

PART 1 OF 2020

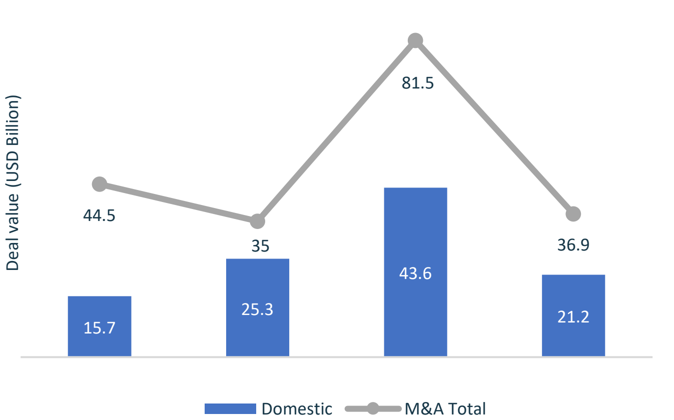
M&A and Private Equity Deal Insights: 2019

- **While PE activity remained robust, M&A deals were off to a good start during the first six months of the year and experienced notable slowdown in the later half**
- **Macroeconomic indicators have led to a lack of buoyancy in the capital markets, which in turn has posed challenges to future growth and set up a steep climb in 2020**

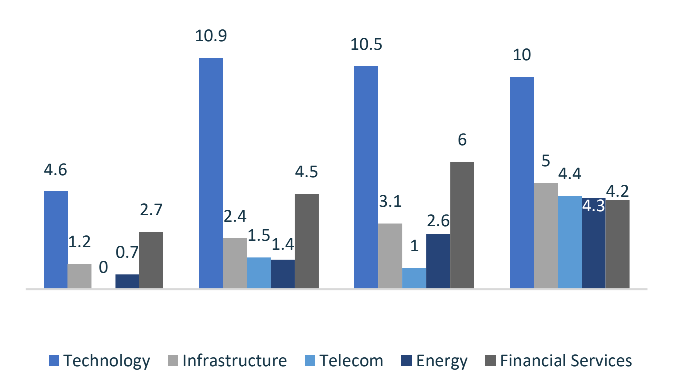
Deal activity in India



Domestic deals contribution to M&A activity



Top 5 sectors attracting PE investment (USD Billion)



Source: VCCEdge (M&A), Venture Intelligence (PE) and PwC Analysis

- After a record 2018, M&A activity in India halved in value in 2019, reflecting fewer billion-dollar deals. The year saw 765 deals worth USD 37 Billion. Only 11 deals valued at over USD 1 Billion each in 2019, compared with 2018 which saw 25 mega deals with highlight being Walmart Inc's USD 16 Billion acquisition of Flipkart.
- Adopting new technologies and scaling up operations are some of the factors driving consolidation as 2019 recorded domestic deals worth over USD 21 Billion, which accounted for over 57% of the M&A deal value this year.
- An interesting trend is the broad basing of deal activity across multiple sectors, including financial services, steel, infrastructure, energy and hotels. Likewise, the year also witnessed the acquisition of stressed steel companies by bigger competitors in order to expand their outreach.

Noteworthy transaction: M&A

Siemens' acquisition of C&S Electric

Acquirer: Siemens Ltd

Target: C&S Electric (a leading manufacturer of electrical equipments and India's largest exporter of industrial switchgear and power busbar products)

Sector: Manufacturing

Deal size: Euro 267 Million

Deal specifics:

- As a part of transaction Siemens Ltd. will acquire approximately 99% of the equity share capital of C&S Electric Ltd.
- The scope of acquisition comprises India operations of C&S Electric's low-voltage switchgear components and panels, low and medium voltage power busbars as well as protection and metering devices businesses. Other businesses of the company such as medium voltage switchgear and package sub-station, lighting, diesel generating sets, EPC (Engineering, Procurement and Construction) and the Etacom busbars business will be retained by the owners.
- The combination of the portfolios of the two companies will enhance Siemens position in the business, enabling it to better serve customers requiring electrification in areas including construction, data centers, smart campuses and other city infrastructure.

- Private equity (**PE**) investments almost retained their earlier momentum and saw 11% decline in terms of value compared to last year recording deals worth USD 36 Billion.
- Buyout activity in 2019 broke all previous records as the year witnessed 45 buyout deals worth nearly USD 12 Billion. However, concerns around transparency have been creating a trust deficit among investors, who are becoming more cautious.
- Sovereign Wealth Funds (**SWFs**) were at the forefront of the deal activity last year. SWFs from Singapore, Abu Dhabi and Canada have been part of some of the largest PE investments this year, playing a significant role across key segments, including infrastructure and renewables. SWFs have also played an active role in late-stage start-up space, providing growth funding to e-commerce players across segments such as logistics and pharmaceuticals. This indicative of the growing interest of SWFs in India but also, more importantly, their growing risk appetite.
- From a sectoral perspective, despite a marginal decline in deal volumes, the technology sector retained its position as the most attractive segment for PE investors. Technology witnessed investments worth nearly USD 10 Billion in 2019, accounting 28% of the investment value this year. A significant position of this was focused on growth funding for late-stage start-ups.
- Technology was followed by infrastructure sector whereas renewables continued to dominate investments in the energy segment. Financial services witnessed sizeable investments primarily across insurance and non-banking financial companies (**NBFCs**).

Noteworthy transaction: PE

Tiger Global invests USD 200 Million in BYJU's

Investor: Tiger Global Management (a New York based venture capital investment firm with USD 36 Billion AUM)

Investee: BYJU's (brand name for Think and Learn Pvt Ltd., a Bengaluru based educational and online tutoring firm)

Sector: Education-Tech

Investment size: USD 200 Million at a valuation of USD 8 Billion

Investment specifics:

- The transaction was a part of private equity round.
- BYJU's, which is the only profitable consumer internet unicorn in India.
- India's online learning market is not limited to collating study materials anymore but has been shaped into grueling, career shaping tool. The recent proposal of finance minister in Union Budget 2020-21 to start degree level full-fledged online education programmes will be a very significant huge business opportunity and will also change the mindsets of universities, students and employers and provide online education a legitimacy. It can prove to be a massive breakthrough for the industry.

Our view

- Going forward we expect deal activity to stay steady due to an increasing number of stressed assets seeking investment and the government's disinvestment focus. Secondaries and deleveraging will also contribute towards the uptick in buyouts and likely to drive PE activity in 2020.
- Despite some headwinds, foreign investors are evidently still bullish about India. However, whether this enthusiasm extends into near future will depend on both domestic and global volatility as well as government reforms.
- Broadly speaking, investors have traditionally displayed a medium to long term perspective on India and the current market slowdown may not result in a sense of urgency or concern for most. However, with a risk of recession on the horizon and continuing trade concerns, growth levels could be tepid for a while. A more conducive deal environment backed by effective reforms and better governance would certainly boost sentiment and attract investments.

Hot Topics

- **Takeover of unlisted companies**
- **Amendments to Indian Stamp Act, 1899**
- **The new Winding up Rules notified by Government of India**
- **Disinvestment of public sector undertakings**
- **Key takeaways for foreign investors**

Takeover of Unlisted Companies

- The following provisions have been brought into effect with effect from February 3, 2020 (collectively, **Takeover Amendments**):
  - Section 230 (11) and 230 (12) of Companies Act, 2013
  - Rule 3(5) of Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020
  - National Company Law Tribunal (Amendment) Rules, 2020

Key aspects of the Takeover Amendments

- Any shareholder (along with others) holding at least three-fourths of value of the shares in the company shall initiate a compromise or arrangement for acquiring the shares of the remaining shareholders by making an application to the tribunal.
- Such application must contain a report by a registered valuer disclosing details of the valuation of shares after considering (a) the highest price at which any person or group of persons has paid for acquisition of shares in the previous 12 months and (b) the fair value of the shares determined considering valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-a-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.
- The acquirer must deposit into a bank account at least half of the total consideration for the takeover.
- With regards to the 'Power to Compromise or Make Arrangements with Creditors and Members' as mentioned in Section 230 of Companies Act, 2013 (Act), the Takeover Amendments provide for
  - Change in application fees for the purposes of Section 230 (1) to INR 5,000
  - Fees of INR 5,000 under Section 230 (12) (for application by a person aggrieved by acquisition of shares under Section 230 (11))
  - List of documents to be attached along with the application under Section 230 (12)

Our view

- It may be pertinent to note that the Takeover Amendments nowhere stipulate an obligation on the part of the offeree shareholders to mandatorily sell their shares.
- Furthermore, the amendments also do not stipulate that acquisition of shares under Section 230 (11) shall be exempt from any direction of the tribunal for calling a meeting of a class of members (which class may constitute of the offeree minority shareholders) under Section 230 (1) of the Act.
- In this scenario, while the Takeover Amendments are being hailed as provisions for a compulsory minority squeeze out, companies may still prefer taking recourse to a selective reduction of capital under Section 66, which requires only a special resolution and has been in the past used for minority squeeze out.
- Thus, further clarity and development of the law through amendments and/ or judicial decisions may be required for the purpose of fortifying the Takeover Amendments as a compulsory minority squeeze out.

AMENDMENTS TO INDIAN STAMP ACT, 1899

- The Finance Act, 2019 (**Finance Act**) proposed noteworthy amendments to the Indian Stamp Act, 1899 (**Act**). The proposed changes were notified by the Ministry of Finance (**MoF**) on December 10, 2019 and were proposed to come into force from January 9, 2020. However, the MoF vide notification dated January 8, 2020 extended the effective date to April 1, 2020.

Objectives

- Bring uniformity in the levy of stamp duty on securities, whether through physical or dematerialized form and minimize the cost of collection thereby enhancing revenue productivity
- Increase revenue generation by introducing and amending various definitions which, in turn, shall cover other securities earlier not covered under the ambit of stamp duty
- Introduce Centralised Collection Mechanism (**CCM**) for collection of stamp duty through authorised entities for the issuance and the transfer of securities followed by the subsequent distribution of the collected duties to respective States

Amendments in the Act

- **New Rates and the Burden of duty**: The amendment proposes new rates on the instruments which will be applicable pursuant to the notification dated January 8, 2020 and specifies the parties who will bear the burden of payment. The details are as follows:

<table>
<tr><th>STAMP DUTY ON INSTRUMENTS</th><th>NEW RATES</th><th>BURDEN OF PAYMENT</th></tr>
<tr><td>Issue of debentures</td><td>0.005%</td><td rowspan="13">▪ Issue of security whether through a stock exchange or depository or otherwise – Issuer
▪ Sale of security through stock exchange – Buyer
▪ Sale of security otherwise than through a stock exchange – Seller
▪ Transfer of security through a stock exchange or depository or any other means – Transferor
▪ In any other case – Payable by person making, drawing or executing such instrument</td></tr>
<tr><td>Transfer and re-issue of debentures</td><td>0.0001%</td></tr>
<tr><td>Stamp Duty on security Other than debentures</td><td>0.005%</td></tr>
<tr><td>Transfer of security on delivery basis</td><td>0.015%</td></tr>
<tr><td>Transfer of security on non-delivery basis</td><td>0.003%</td></tr>
<tr><td>Government securities</td><td>0%</td></tr>
<tr><td>Repo on corporate bonds</td><td>0.00001%</td></tr>
<tr><td colspan="2">DERIVATIVES</td></tr>
<tr><td>Futures - equity and commodity</td><td>0.002%</td></tr>
<tr><td>Options - equity and commodity</td><td>0.003%</td></tr>
<tr><td>Currency and interest rate derivatives</td><td>0.0001%</td></tr>
<tr><td>Other derivatives</td><td>0.002%</td></tr>
</table>

- **Creation of CCM:** It is meant to streamline the collection and disbursal of collected revenues to State governments. Certain pertinent aspects are as follows:
  - The CCM will collect the stamp duty on behalf of State Governments, through the relevant stock exchanges, clearing corporation or depositories (**Agencies**) as per the rates mentioned in Schedule I
  - The duty collected by the CCM pursuant to deduction of facilitation charges payable to Agencies, will be then transferred to the relevant State Government where the buyer resides
  - Stamp duty on issue of securities which are not routed through a stock exchange or depository will have to be paid by the issuer of securities at the place where the registered office of the issuer is located
  - No duty will be charged on the instruments from the stock exchanges and depositories established in any International Financial Services Centre which is set up under section 18 of the Special Economic Zones Act, 2005
  - In case the Agencies fail to collect or transfer the collected stamp duty under the CCM, they will be subject to a fine ranging from INR 1 Lakh up to 1% of the amounts to be collected or to be transferred to the State Governments

- **Amendments in definitions**
  - The amendment has defined and broadened the scope of 'Securities' which now includes the following:
    - 'Securities' as defined under the Securities Contract (Regulation) Act, 1956
    - 'Derivative' as defined under the Reserve Bank of India Act, 1934
    - Certificates of deposit, commercial usance bills, commercial papers, repos on corporate bonds and other debt instruments of original or initial maturity up to one year
    - Any other instrument declared by the Central Government
  - The term 'Debenture' is defined in the amendment which includes the following:
    - Debenture stock, bonds or any other instrument of a company that evidences debt
    - Bonds in the nature of debentures issued by companies and body corporates
    - Certificates of deposit, commercial usance bill, commercial paper and other debt instruments of original or initial maturity up to one year
    - Securitized debt instruments
    - Other debt instruments specified by the SEBI from time to time

Our view

- The amendment serves a multitude of goals meant to improve Stamp Duty collection and disbursal to States, reduce cases of avoidance or evasion of stamp duty and plug the leakage of revenues for the Government. The amendment will lead to reduction in the cost of collection and will boost the revenue productivity for the respective states. However, only the time will tell how well the CCM is implemented by the agencies for collection of the stamp duty specially in cases where securities transaction are not routed through a stock exchange.

THE NEW WINDING UP RULES NOTIFIED BY THE GOVERNMENT OF INDIA

- On January 24, 2020, the Ministry of Corporate Affairs, Government of India (**MCA**) has notified the rules for winding-up of companies (**Winding up Rules**), making it easier for small firms to close their businesses without going to the NCLT. The Winding up Rules have been notified under the provisions of Section 469 of the Companies Act, 2013 and would be effective from April 1, 2020.
- The Winding up Rules would be applicable to companies that fulfil the following criterion as per the last audited balance sheet of the company:
  - Having assets of book value less than INR 10 Lakh; or having deposits less than INR 25 Lakh; or having total outstanding including secured loans less than INR 50 Lakh or turnover less than INR 50 Crore or paid up capital less than INR 1 Crore
- The provisions of the rules related to filing and audit of the Company Liquidator's accounts and its procedure (Rule 91 to 99 of the Rules) and disposing of assets (Rule 165 to 167 of the Rules) shall be applicable to above class of companies with modification that the word "Tribunal" shall be considered as "Central Government". In essence, the Winding up Rules state that the Central Government will provide requisite approvals to all such companies for winding up instead of NCLT.
- Currently, the procedure of winding up by a company is primarily governed by the Insolvency and Bankruptcy Code, 2016 (**IBC**) which deals with scenarios such as 'voluntary winding up' and 'liquidation on account of inability to pay debts' and other cases of insolvency are being dealt under Companies Act, 2013. Under both the statues the companies undergo the dilatory process of the approval of NCLT for the purposes of liquidation. The promulgation of the Winding up Rules is widely considered in furtherance of 'Ease of Doing Business in India' and have also provided an easy way out for many conglomerates, both Indian and international, to liquidate their non- functional/ unused companies in India.
- Having said that, under the Winding up Rules a large part of the procedure applicable to regular companies continue to be applicable to the companies that can opt for the summary procedure. It is therefore unclear and something to 'wait and watch' if the process will be fast tracked merely by shifting the jurisdiction to the Central Government from NCLT.
- Some of the other key procedural aspects of the Winding up Rules are:
  - It lays down the process for meeting of creditors and contributories of the Company, and specify the scenarios in which creditors can and cannot vote and also mandates that all the money lying in the bank account of company liquidator which is not immediately required for the purposes of winding up, to be invested in government securities or in interest bearing deposits in any scheduled bank

– Lays down the procedure for maintenance of registers and books of accounts by the company liquidator; the rules outline the procedure for creditors to prove their debts and claims against the company and also provides for provision and process to make an appeal to tribunal if such proof gets rejected by the company liquidator.

Our view

- While the actual shortening of the timeline for the liquidation process is an outcome which only would be evident after sometime, the Winding up Rules are surely expected to curb the burden from the NCLT and positively effect the timelines of the other matters pending before the NCLT.

Disinvestment of Public Sector Undertakings (PSUs)

Disinvestment of Life Insurance Corporation of India (LIC)

- The budget proposes to sell a part of its holding in LIC by way of an IPO. It is one of the most successful PSUs, and the IPO should be an attractive opportunity for investors.
- The Government has recently made efforts to make disinvestments in Coal India and Air India. Some of the recent successful disinvestments by the Government through IPO include the Rail Vikas Nigam Limited (**RVNL**) and Indian Railway Catering and Tourism Corporation (**IRCTC**).

Industrial Development Bank of India (IDBI Bank) disinvestment

- It has been proposed to sell the balance holding of Government of India in IDBI Bank to private, retail and institutional investors through stock exchange.
- IDBI Bank is a listed private sector bank, in which the Public own 2.54% shares. LIC is the largest shareholder in IDBI owning 51% shareholding. The Central Government's shareholding in IDBI is 46.46%, some of which the Government now proposes to sell by way of a secondary sale through stock exchanges. The above shareholding percentages are as per the shareholding pattern of IDBI as on 30 June 2019 available on its website.

Key takeaways for Foreign Investors

Investment by Foreign Portfolio Investors (FPIs) in corporate bonds

- The limit for FPIs in corporate bonds, currently at 9% of outstanding stock (as per RBI's circular on Investment by FPI in Government Securities Medium Term Framework dated March 27, 2019), will be increased to 15% of the outstanding stock in corporate bonds.
- While this move is clearly aimed at increasing FPI investment in Indian corporate bond market, we would need to wait and watch as to whether there will be further foreign investments made into the corporate bond market as a result of this enabling provision.

Elimination of Dividend Distribution Tax (DDT)

- The union budget has proposed the abolition of DDT regime and reintroduce the classic method of taxing dividends. The dividends will be directly taxed in the hands of the shareholders and the company would be required to withhold applicable tax on the same. (10% for residents and 20% for non-residents).
- Further, it also proposes to allow a corporate shareholder to claim deduction for dividends received from other domestic companies, to the extent of dividends declared by such shareholder company prior to prescribed date.
- This proposal is a major positive step for foreign taxpayers as it will allow them to take advantage of Double Taxation Avoidance Agreements (**DTAAs**) and claim credit for the tax paid in India, against the tax payable in the country of their residence.

Recent Judgements

- Sun Pharmaceutical Industries Ltd
- Oswal Greentech v. Mr. Pankaj Oswal
- Hari Shankaran v. Union of India
- Vinod Tarachand Agrawal v. Registrar of Companies, Gujarat

Sun Pharmaceutical Industries Limited

CP(CAA) No. 79 of 2019 in CA(CAA) No. 38/NCLT/AHM/2019

Background

- De-merged company Sun Pharmaceuticals Limited filed a petition before NCLT, Ahmedabad seeking for de-merger and transfer of two specified investment undertakings of Sun Pharmaceutical Industries Limited (**SPIL**) to two overseas companies incorporated in USA and Netherlands respectively.
- Both resulting companies are directly and indirectly wholly owned subsidiaries of SPIL and thus, the scheme involves out bound cross-border arrangement.

Issue at hand

- Whether only cross-border mergers and amalgamations are permitted under Section 234 of the Companies Act, 2013 (**Act**), or whether the provision also covers cross-border demergers and other similar transactions within its ambit?

Findings of NCLT

- While going through the provisions of the Act, NCLT observed that the Act takes a broad approach in terms of domestic transactions under Section 230 and 232 by using words 'compromise' and/or 'arrangement' both of which are inclusive of the term 'demerger'.
- However, in case of cross border mergers of Indian companies with foreign companies, a narrower approach is provided under Section 234 of the Act wherein only 'merger' and/or 'amalgamation' have been used. Thus, it was held that only cross border mergers and amalgamations are recognized under the Act.

Our view

- The NCLT Order suffers from a flawed and regressive interpretation of the Companies Act, 2013 and is expected to have tremendous ramifications across various industries. The NCLT has adopted a literal interpretation of the Act, without taking into consideration the economic reality of the country and its need to keep up with increasing globalization.
- The rationale for differential treatment of cross-border mergers and cross-border demergers is absurd and backsliding. The NCLT's ruling to disallow a cross-border demerger will mean that SPIL will have to pause its consolidation exercise for now.
- This is bound to have huge implications and several setbacks on Indian companies that have undertaken restructuring exercises of similar nature. Therefore, companies that have undertaken demergers with foreign-held subsidiaries for diverse reasons such as raising money or tax management, will all be adversely affected by this ruling

OSWAL GREENTECH V. MR PANKAJ OSWAL AND ORS

COMPANY APPEAL (AT) NO. 410 OF 2018

Background

- Mr Abhey Kumar Oswal, the original shareholder in M/s Oswal Agro Mills Limited, made a nomination against his shares in favour of Mrs Aruna Oswal as per Section 72 of the Companies Act, 2013 (**Act**). The said nomination specifically provided that it shall supersede any prior nomination made and also any testamentary document that has been executed. Following death of original shareholder, nominee made a request to be registered as the holder of the shares, which was approved by the company.
- One of the legal heirs filed a petition before NCLT alleging acts of oppression and mismanagement in the affairs of the company on the premise that company transmitted the shares to the nominee in contravention of law, as legal heirs of the original shareholder were entitled to the shares. NCLT appreciated the contention of the legal heir that by virtue of him being one of the legal heirs of the original shareholder and thereby being entitled to 1/4th of his estate including shares, he effectively, held more than 10% of the shareholding in the company and is eligible under the Act to file such a petition and held that the petition was maintainable.
- Aggrieved by the decision of NCLT, the company filed an appeal before NCLAT.

Issue at hand

- Whether the legal heirs have any claim over shares which have been nominated by original shareholder in favour of a nominee and if so whether he is entitled to file a petition for oppression and mismanagement which is a statutory right under the Act?

Findings of NCLAT

- NCLAT placed its reliance on decision of Supreme Court in *M/s World Wide Agencies Private Limited* wherein it was held that a legal heir of a deceased shareholder would possess the same rights as the shareholder and such rights cannot be denied to the legal heir. Further, insisting on the addition of the names of the legal heirs in the register of members as a pre-condition to make such a petition would defeat the purpose of the petition.
- Based on above, it was held that a right arising out of an instrument does not vest with nominee automatically on death of the original holder of the instrument. Nominee does not mean that the amount or the share belongs to the nominee. On death of the holder of the instrument, the share vests with legal heirs and the nominee merely holds it till the matter of vesting is decided in favour of the legal heirs.

Our view

- This decision of the NCLAT is consistent with various judicial precedents and reiterates the principle that the legal heir is the ultimate rightful owner of the property of a deceased individual. Further, the ruling makes it amply clear that a nomination does not amount to beneficial ownership to an asset and the nominee merely holds the asset as a trustee for and on behalf of the legal heirs of the deceased, until the matter of succession or inheritance is decided and implemented.
- In order to avoid such a situation, it is advised that an individual, despite making nominations, also creates a Will. It is also wise to ensure that the contents of the Will in harmony with the nominees and the legal heirs under the Will.

HARI SHANKARAN V. UNION OF INDIA AND ORS

MANU/SC/0802

Background

- On October 10, 2018, the Central Government through MCA filed a petition before NCLAT under Section 241 and 242 of Companies Act, 2013 (**Act**) alleging mismanagement by the board of IL&FS and that the affairs of IL&FS were being conducted in a manner prejudicial to public interest.
- To unearth the irregularities committed by IL&FS and its companies, the provisions of Section 212(1)(c) of the Act were invoked for investigation into the affairs of the company carried out by Serious Fraud Investigation Office (**SFIO**). An interim report dated November 30, 2018 was submitted to the Central Government placing on record that the affairs in respect of IL&FS group companies were mis-managed.

- The company challenged the order passed by NCLAT under Section 130 of the Act for reopening of the accounts of the company before the Supreme Court.

Issue at hand

- Whether sections 130; 211/212 and 241/242 of the Act, operate in different fields and under different circumstances?

Findings of the court

- The court rejected the contention that Sections 130; 211/212 and 241/242 operate in different fields and in different circumstances since they are in the different chapters and therefore any observation made while passing the order with respect to a particular provision may not be considered while passing order under other relevant provisions. It further noted that all the provisions are required to be considered conjointly. While passing an order with respect to particular provision, the endeavor should be made to give furtherance to order passed under other provisions of the Act.
- The court stated that the tribunal may, under section 130 of the act, pass an order for reopening of accounts if either of the two conditions provided have been complied with. It went on to clarify that observations of NCLT under Section 241 and 242 of the Act can be referred to in making an order under Section 130. Thus, observations of the tribunal along with reports by the SFIO is sufficient ground to re-open the accounts of the last 5 years of IL&FS.

Our view

- The order to reopen the books of account and recast financial statements of the company may be of interest to business owners and executives and is expected to increase transparency and disclosure – the key elements of a robust corporate governance framework.

VINOD TARACHAND AGRAWAL V. REGISTRAR OF COMPANIES, GUJARAT

CO. APPEAL NO. 53/252(3)/NCLT/AHM/2019

Background

- A petition was filed under Section 9 of Insolvency and Bankruptcy Code, 2016 against M/s J R Diamonds Private Limited under which Mr. Vinod Tarachand Agrawal (**Appellant**) was appointed as the resolution professional and subsequently liquidator for the company.
- Vide a letter dated December 20, 2018, the appellant informed the Registrar of Companies, Gujarat (**Respondent**) of the order passed by NCLT, Ahmedabad for liquidation of the company, to which no response was received from the respondent.
- While the status of the company, at the time of initiation of CIRP was being shown as 'active', the appellant subsequently discovered that the name of the company had been struck off from the register of companies maintained by the respondent during the pendency of the liquidation process pursuant to an order dated August 6, 2018 passed by Registrar of Companies.
- The present appeal was filed towards seeking restoration of the name of the company in the register of companies maintained by the respondent.

Findings of NCLT

- It was observed that when the name of the company had been struck off the by the order dated August 6,2018, whereas the insolvency petition had already been admitted in February 13, 2018 and a moratorium had been declared in relation to the company. Accordingly, it is well established that no proceeding against it could have been legally initiated nor the provisions of Section 248 of the Act could have been invoked during such moratorium period.
- The Tribunal also referred to the decision of the Andhra Pradesh High Court in *Velamati Chandrasekhara Janardan Rao v. M/s. Sree Raja Rajeswari Paper Mills Limited and Anr* where it was held that under Section 560(6) of the Companies Act 1956, the company court has the power to order restoration of a company's name to the register of companies either on an application made by such company or its members or creditors or when it appears to the company court that it is 'otherwise just' that the name of such company be restored in the register.

- Considering the same the Tribunal allowed for the restoration of the name in the register of companies subject to the following conditions:
  - The Appellant would file all overdue statutory returns on behalf of the Company with fees and imposed penalties, if any, within ninety days from the receipt of the NCLT order;
  - The Appellant would publish a notice in leading newspapers circulating in the district as well as in the official gazette of the Government of India about the restoration of the name of the company in the register of companies; and
  - Before compliance of the statutory requirements of the Respondent, the Appellant would verify and settle the statutory requirements of the IBC.

Our view

- The Registrar of Companies cannot strike off the name of a company during the pendency of Corporate Insolvency Resolution Process (CIRP) and the decision reiterates the overriding effect of the IBC.
- The decision invalidates any action by the Registrar of Companies, which does not fall in conformity with the provisions of the IBC especially during the pendency of CIRP.

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