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India Update

Part 2 of 2020

Quarterly newsletter highlighting and analyzing legal, regulatory and policy developments in Indian Jurisdiction

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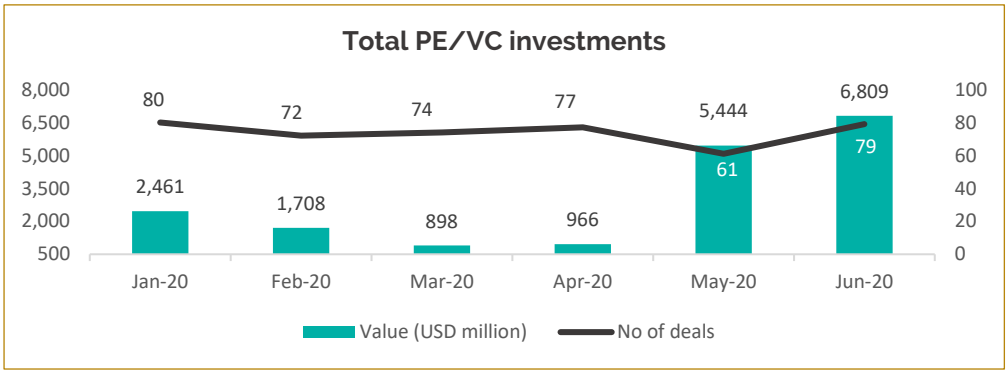
TABLE OF CONTENTS

INVESTMENT AND DEAL
ACTIVITY ANALYSIS

Despite covid-19 severely hampering economic activity in the last three months, the April-June period saw the Indian stock markets clock their best quarterly gains since the September quarter of 2009.

On a half yearly basis, investments in 1H 2020 declined by 10% in terms of value compared to 1H19 (USD 18.3 billion in 1H20 v. USD 20.4 billion in 1H19). The first half was propped up by PE investment of USD 9.6 billion in Jio Platforms.

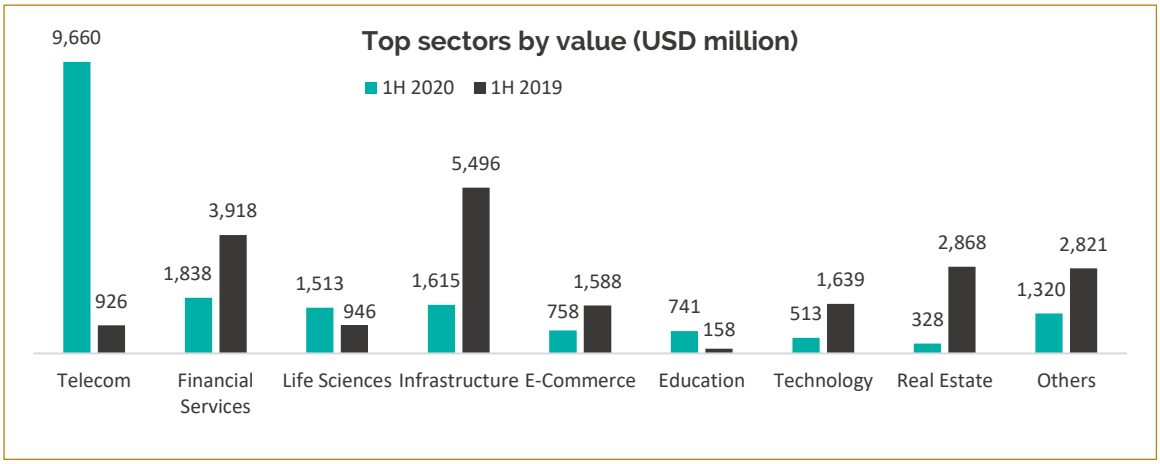
In terms of buyouts, 1H20 recorded 14 buyouts worth USD 794 million which is lowest since 2014. Growth deals were the highest with USD 12.7 billion invested across 93 deals, followed by start-up investments at USD 12.7 billion across 266 deals, credit investments worth USD 1.2 billion across 40 deals and PIPE investments worth USD 882 million across 30 deals. Other large deals in 1H20 include Carlyle's USD 490 million investment in Piramal Pharma for 20% stake and its buyout of 74% stake in SeQuent Scientific Ltd for USD 210 million.



Source: IVC Association and Ernst & Young PE/VC Roundup, June 2020
*A total of USD 9.6 billion was invested in Jio Platforms in May and June 2020

From a sectoral perspective, telecom and life sciences were the only sectors to record increase in investments. Telecom was the top sector with USD 9.6 billion investment across 11 deals followed by financial services with USD 1.8 billion invested across 74 deals and life sciences with USD 1.5 billion invested across 43 deals.

While cross-border transactions look grim at this stage, investors/acquirers looking to take advantage of lower valuations (including for stressed assets) can seize several opportunities for high return on capital in the long term. The fundraising spree by Jio Platforms in midst of coronavirus pandemic is a reflection of the faith that foreign companies have in Indian economy's potential and future growth.



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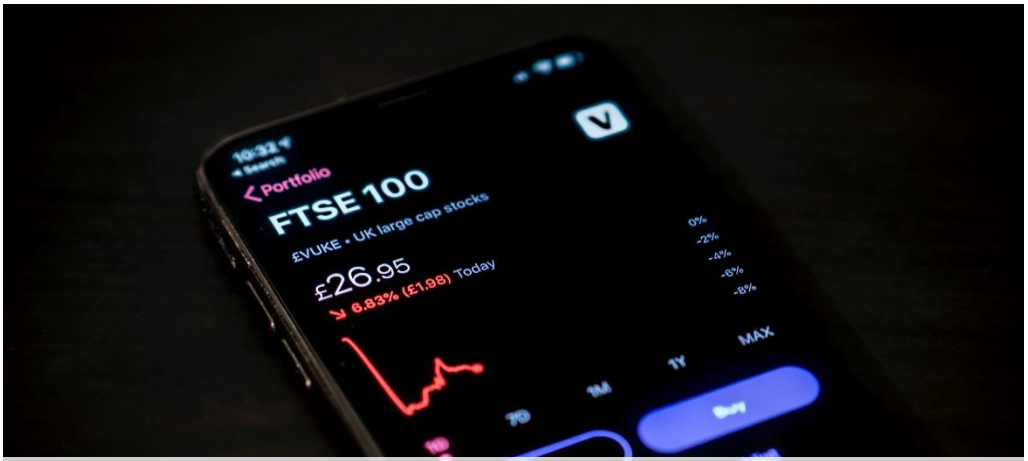


DIRECT OVERSEAS LISTING BY INDIAN COMPANIES

On May 17, 2020, Ministry of Finance, Government of India (**MoF**) announced that Indian companies would now be allowed to list their shares directly on foreign stock exchanges. While consequent amendments and clarifications in legal and regulatory regime are awaited, the move would now allow Indian companies access to multiple jurisdictions for raising capital, with differing costs and listing conditions. At present, direct listing of Indian companies shares on foreign bourses is not permitted and possible options to raise capital from listed options were restricted to American Depository Receipts (**ADRs**) and Global Depository Receipts (**GDRs**) which were increasingly becoming less popular with the Indian corporates. Government of India and Securities and Exchange Board of India (**SEBI**) have been exploring options so that Indian corporates could access a larger pool of foreign capital.

Policy shift towards direct listing of shares abroad stems from report of a Committee constituted by SEBI in 2018 for listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges (**Committee Report**), which had recommended permissible jurisdictions for listing of equity shares of an Indian company based on following principles:

- Countries which are a member of Board of International Organization of Securities Commissions (**IOSCO**) and whose securities market regulator is either a signatory to the IOSCO's multilateral memorandum of understanding or is a signatory to a bilateral memorandum of understanding with SEBI for information sharing arrangements
- Countries which are members of the Financial Action Task Force (**FATF**)
- Countries not identified in the public statement of the FATF as:
  - A jurisdiction having strategic anti-money laundering or combating the financing of terrorism deficiencies to which countermeasures apply
  - A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies
  - Any other jurisdiction notified by Central Government in consultation with SEBI and/or other regulatory authorities, following an overall review and evaluation of such jurisdiction's capital markets regulations

The criteria for listing in permissible jurisdictions are akin to those of the listing of rupee denominated bonds (commonly referred as '**Masala Bonds**') in foreign exchanges which were introduced in past by Reserve Bank of India. An initial list of 10 jurisdictions were identified as permissible jurisdictions in Committee Report which included United States, China, Japan, South Korea, United Kingdom, Hong Kong, France, Germany, Canada and Switzerland.

While this is a welcome move, actual implementation of the policy would require amendment to several regulations including Foreign Exchange Management (Non-debt Instruments) Rules, 2019; Companies Act, 2013 including rules thereunder; and SEBI regulations related to listing and disclosures, in addition amendment in taxation laws.

SEBI INVESTMENT ADVISERS **AMENDMENT REGULATIONS**

The Securities and Exchange Board of India (**SEBI**) has issued the SEBI (Investment Advisers) Regulations, 2013 (**IA Regulations**) laying down the framework for functioning of Investment Advisers (**IA**), who act in a fiduciary capacity towards their clients. Under these regulations, an IA is required to comply with various requirements such as qualification and experience criteria, capital adequacy norms, risk profiling of clients, disclosure requirements etc.

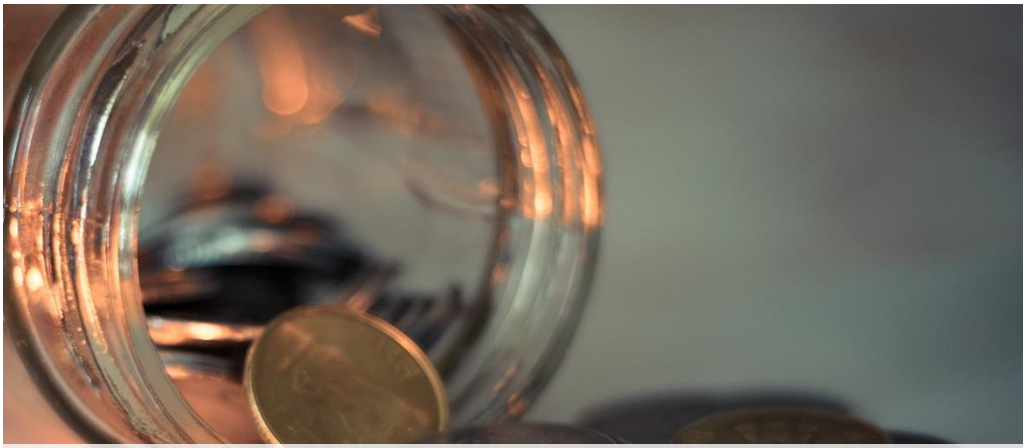
On July 03, 2020 SEBI notified the SEBI (Investment Advisers) (Amendment) Regulations, 2020 (**Amendment Regulations**) which are effective from September 30, 2020. Existing IAs have been given three years from date of commencement to comply with the Amendment Regulations

Key takeaways

 **NET WORTH**	▪ For individual IA, minimum net worth has been increased to INR 0.5 million from INR 0.1 million. ▪ For non-individual IA (Body Corporate) minimum net worth has been increased to INR 5 million from INR 2.5 million and for non-individual (Partnership Firm) minimum value of net tangible assets of INR 0.1 million has been substituted with minimum net worth of INR 5 million.
 **QUALIFICATIONS**	▪ Presently, the IA Regulations require that an individual IA or partners/representative of an IA have any one of the following minimum qualifications at all times: – Qualification requirement: A professional qualification or post-graduate degree or diploma in relevant subjects; or – Experience requirement: A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products/securities/fund/asset/portfolio management. ▪ Additionally, the said personnel need to possess, at all times, a certification on financial planning/fund/asset/portfolio management/investment advisory services from prescribed institutions including National Institute of Securities Market. ▪ Two new key terms have been introduced by the Amendment Regulations – 'principal officer' and 'persons associated with investment advice' (**PAIA**) which replace the term 'representative'. ▪ Further, now individual IA, the principal officer of non-individual IA and PAIA should satisfy both (cumulative), the Qualification requirement as well as the Experience requirement (Experience requirement in case of PAIA is two years
 **SEGREGATION OF ADVISORY AND DISTRIBUTION ACTIVITIES**	▪ Pursuant to the amendment, an individual providing the services of an IA shall not provide distribution services as a distributor. ▪ Further, the family of an individual IA shall not provide distribution services to a client advised by such individual IA and no individual IA shall provide advice to a client who is receiving distribution services from its family members. ▪ A non-individual IA shall have client level segregation at group level for investment advisory and distribution services and maintain an arm's length relationship between its activities by providing advisory services through a separately identifiable department or division.
IMPLEMENTATION/ EXECUTION SERVICES	▪ IAs are allowed to provide implementation/execution services through direct schemes/products in the securities market. However, no consideration can be received directly or indirectly, at investment adviser's group (if non-individual) or family (if individual) level for these services.
 **AGREEMENT WITH CLIENTS AND FEES**	▪ Investment advisers have also been mandated to enter into written agreements with their clients, and maintain records thereof, for ensuring greater transparency with reference to advisory activities. ▪ The fees charged which may be charged by an investment adviser for providing investment advice to a client shall be now specified by SEBI.

Principal Officer means the managing director or designated director or managing partner or executive chairman of the board or equivalent management body who is responsible for overall function of the business and operations of non-individual IA.

PAIA means any member, partner, officer, director or employee of an IA, including persons occupying a similar status or performing a similar function, who is engaged in providing investment advisory services to the clients of IA.



UNION CABINET SUSPENDS IBC

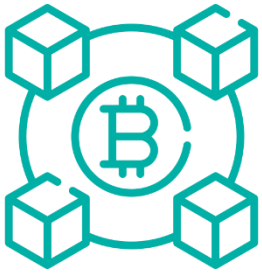
As part of the Atmanirbhar Bharat Package announced in May 2020, the Finance Minister declared an exemption of all Covid-19 related debts from ambit of 'default' under Insolvency and Bankruptcy Code (**IBC**) and suspension of initiation of any fresh insolvency proceedings under Sections 7, 9 and 10 of IBC for a period of up to one year. However, Government did not announce relevant dates for aforesaid initiatives.

On June 05, 2020, President of India promulgated Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (Ordinance). The salient features of the Ordinance are as under:

- It provides for insertion of Section 10A to IBC which states that no application for initiation of CIRP shall be filed for any default arising on or after March 25, 2020 for a period of six months or for a further period, up to one year, as may be notified.
- Proviso to Section 10A provides that no application for initiation of CIRP can ever be filed for a default occurring during above-mentioned period. Therefore, such defaults have been excluded from ambit of 'default' under Section 3(12) of IBC. Consequently, any default arising on or after March 25, 2020 would be exempted from rigors of IBC for period of six months i.e. up to September 25, 2020. This period can be further extended up to one year if the Government decides to do so.
- To clarify, this does not mean that insolvency proceedings cannot be filed during this period, but rather means that any default that takes place during this period will continue to be exempted from the rigors of the IBC. As such, defaults, committed during this period will continue to be immune to insolvency proceedings.
- Further the Ordinance would not apply to any default arising before March 25, 2020. Therefore, application for initiation of CIRP can still be filed where default occurs before March 25, 2020.
- Section 66(3) has been inserted which provides for an absolute restraint on Resolution Professionals for filing applications pertaining to fraudulent trading or wrongful trading transactions in respect of such defaults against which initiation of CIRP is suspended as per Section 10A of IBC.

IBC has been a successful initiative for resolution of stressed assets and has brought an end to endless recovery proceedings and instead, ushered an era of time bound resolution, which not only balances interests of all stakeholders, but also ensures maximization of value of Corporate Debtor. The suspension of initiation of new proceedings under the IBC for defaults arising during a specific period might not be the best way forward unless it is also coupled with other initiatives by government to revive stressed companies. Moreover, suspension of Section 10 of IBC is especially unwarranted since it would refrain companies which voluntarily opt for resolution, to approach the NCLTs for desired outcome.

SUPREME COURT'S LANDMARK DECISION
LEGALIZING CRYPTOCURRENCY



Reserve Bank of India (**RBI**) had banned financial institutions providing banking services to cryptocurrency businesses on April 06, 2018. Primary reasons ascribed to this were potential of significant losses to investors arising from speculative and volatile pricing of such currencies, usage in money laundering, tax evasion and fraud due to untraceable nature, legal and financial risks associated with dealing in virtual currencies as legal status of exchange platforms established in several jurisdictions was not clear.

RBI had repeatedly 'cautioned users, holders, and traders of virtual currencies, including bitcoins, regarding various risks associated in dealing with such virtual currencies. As a follow-up to those warnings, it had barred all entities which are regulated by RBI from either dealing in virtual currencies or providing services to those dealing in such currencies.

This was challenged by Internet and Mobile Association of India (**IAMAI**) in Supreme Court (**SC**).

While disposing of the Civil Writ Petition in the case of *IAMAI v RBI*[1], SC on March 04, 2020 set aside the ban which RBI had put on financial institutions providing banking services to cryptocurrency businesses on the grounds that the RBI's measure violated Article 19 (1) (g) for virtual currency exchanges.

As part of the proceedings, RBI accepted the fact that it never implemented a ban on Bitcoin but rather 'instructed' banks to simply refrain from dealing with cryptocurrency exchanges. RBI's core defence included arguments claiming that cryptocurrencies pose a significant threat to the nation's monetary system and overall stability, and that digital currencies were being used mainly by bad actors for money laundering, tax evasion, financing of terrorism-related activities, and so on. Lastly, RBI's legal counsel argued that crypto should be banned simply because a number of high-profile finance experts and economists such as Warren Buffet are against it.

The Court held that RBI's circular, which prevented regulated entities from providing banking services to those engaged in the trading or facilitating the trading in virtual currencies, was liable to be set aside on the ground of proportionality and stated that 'when the consistent stand of RBI is that they have not banned virtual currencies and when the government of India is unable to take a call despite several committees coming up with several proposals, including two draft bills, both of which advocated exactly opposite positions, it is not possible for us to hold that the impugned measure is proportionate.'

The Court took note of three factors while setting aside the circular:

- Over the last 5 years and more, the activities of Virtual Currency exchanges to have actually adversely impacted the functioning of other entities regulated by RBI
- The consistent stand taken by RBI is that RBI has not prohibited Virtual Currencies in the country and even the Inter-Ministerial Committee constituted on November 02, 2017, which initially recommended a specific legal framework including the introduction of a new law namely, Crypto-token Regulation Bill 2018, was of the opinion that a ban might be an extreme tool and that the same objectives can be achieved through regulatory measures
- The court also referred to cryptocurrencies as a 'by-product' of blockchain technology and said the government could separate the two.

Our viewpoint

Bitcoins regulation would create several encumbrances in following forms. Firstly, determining nature of the bitcoins could be a problem for RBI would contend that it should come under it by virtue of it being a currency whereas SEBI would contend that it is a security. Secondly, functional definition of Bitcoin or wallet would not come under the ambit of IT Act 2000. Thirdly, even if a separate statute is enacted, provisions to combat crimes of distinct nature would cause problems and challenges will arise with respect to imputation of criminal liability in light of jurisdictional determination, cumbersome process of Code of Criminal Procedure section 166A and 166B would further delay the process of investigation, lack of technologically skilled investigating officers and weak infrastructure pertaining to cyber offences, etc.

While this judgment is being widely hailed by start-up and fintech community, future of crypto currency in India remains uncertain. While Court raised several red flags in this judgment, a draft bill released on February 28, 2020 proposed banning use of cryptocurrency as legal tender in India as well as prohibiting mining, buying, holding, selling, dealing in, issuance, disposal or use of cryptocurrency.

[1] Writ Petition (Civil) No. 528 of 2018.

LIMITATION ON
EXECUTION OF FOREIGN DECREE

Supreme Court (**SC**) in *Bank of Baroda v. Kotak Mahindra Bank Ltd*[2] clarified that the period of limitation for executing a foreign decree, under section 44A of Code of Civil Procedure, 1908 (**CPC**), passed by a superior court of a reciprocating country (**Causa Country**) will be the limitation prescribed under the laws of the Causa Country. Once the period of limitation prescribed in the Causa Country is over, no execution proceedings could be filed in India. Where the execution proceedings are initiated in India pursuant to the decree passed in the Causa Country, the limitation period for such proceedings shall be governed by Article 137 of the Limitation Act, 1963

Background facts

Bank of Baroda (**Appellant**) filed a suit against Vysya Bank (**Respondent**) which was predecessor of Kotak Mahindra Bank for recovery of dues on April 04, 1993 in London. The suit was decreed by High Court of Justice, Queen's Bench, Divisional Commercial Court of London (**London Court**) on February 20, 1995 and a decree for USD 1,267,909.26 along with interest thereon was passed in favor of the Appellant Bank. This decree was not challenged and, thus, became final.

On August 05, 2009, Appellant filed an execution petition (14 years after the decree was passed by the London Court) in terms of Section 44A read with Order 21 Rule 3 of the CPC for recovery of INR 16,43,88,187.86. Additional City Civil and Sessions Judge, Bangalore dismissed the execution petition as it held to be time-barred in terms of Article 136 of Limitation Act, 1963 and that it should have been filed within 12 years of the decree being passed by the London Court. The Appellant approached the High Court, which vide judgment dated November 13, 2014 upheld the view of the trial court.

Issues at hand

- Does Section 44A of the CPC merely provide for the manner of execution of foreign decrees or does it also indicate the period of limitation?
- What is the period of limitation for executing a decree passed by a foreign court of a reciprocating country in India?
- From which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India?

Findings of the Court

- SC has held that Section 44A of the CPC only enables District Courts to execute the decree and that District Courts shall follow the same procedure as it follows while executing an Indian decree, however, it does not lay down or indicate period of limitation for filing an execution petition.
- The limitation period for executing a decree in India passed by a foreign court (from a reciprocating country) will be the limitation period as prescribed under the reciprocating foreign country, which will, however, be subject to the decree being executable in terms of Section 13 of the CPC.
- The period of limitation would start running from the date the decree was passed in the foreign court of reciprocating country. It further held that if the decree holder takes steps-in-aid to execute the decree in the causa country[3], and the decree is not fully satisfied, then the decree holder can file an execution petition in India within a period of three years[4] from the finalization of the execution proceedings in the causa country.

Our viewpoint

The ruling puts an end to grey area of applicable limitation period for executing a foreign decree in India. Though the Apex Court has upheld the orders passed by subordinate courts, however, different reasons have been given for holding that limitation period for filing an execution petition has expired in view of the fact that applicable law of limitation shall be as per law of the causa country.

This judgment holds much relevance for the increasing number of cross-border disputes that have started to crop up, as it categorically indicates to the decree holder as to when the limitation clock starts to tick, this being the date on which the decree is passed in the causa country. It gives the decree holder a clear timeline that must be followed in order to avoid its execution petition to be time-barred before the Indian courts.

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[2] Civil Appeal No. 2175 of 2020.

[3] Country where the decree was issued.

[4] The Apex Court is of the view that such an execution application (foreign decree from a reciprocating country) will be an application covered under Article 137 of the Limitation Act and in view of that, the applicable limitation would be 3 years.

MCA INTRODUCES
FRESH START SCHEME

In order to support the companies against the economic disruption caused due to Covid-19, Government of India, Ministry of Corporate Affairs on March 30, 2020 introduced Companies Fresh Start Scheme, 2020" (**CFSS, 2020**). CFSS, 2020 provides an opportunity to companies which have defaulted in filing of any of the documents, statements, returns etc. including annual statutory documents to the MCA-21 Registry (**Defaulting Company**), to make good their past filing related non compliances and enable the company to start on a clean slate. CFSS, 2020 came into force on April 1, 2020 and will be available till September 30, 2020.

Salient features of fresh start scheme

- **Non applicability of CFSS, 2020** – The CFSS, 2020 is not applicable in following circumstances:
  - Companies against which action for final notice for striking off the name under section 248 of the Companies Act, 2013 (**CA, 2013**) has already been initiated by designated authority
  - Where an application has already been filed by company for action of striking off name of the company from Registrar of Companies
  - Companies which have amalgamated under scheme of arrangement or compromise
  - Where application has already been filed for obtaining dormant status before CFSS, 2020
  - Vanishing companies
  - Where any increase in authorized share capital is involved and also to charge related documents
- **Normal fees for belated filing of document(s)** – No additional fee is required to be paid for belated filing of document(s) under CFSS, 2020. Every Defaulting Company is only required to pay normal fees as prescribed under Companies (Registration Offices and Fee) Rules, 2014 (**Companies Fee Rules, 2014**) for such belated filing.
- **Immunity against prosecution or proceedings** – It provides an opportunity to Defaulting Company to seek immunity against any prosecution or proceedings for belated filings of documents made under CFSS, 2020, by filing e-Form CFSS 2020 within 6 months post closure of CFSS, 2020. However, any consequential proceedings, including any proceedings involving interests of any shareholders or any other person qua the company or its directors or key managerial personnel are not covered. This immunity is not available for management disputes pending before any court of law or tribunal. Further, immunity shall not be provided in cases where court has ordered conviction in the matter or an order imposing penalty has been passed by adjudicating authority under CA, 2013/CA, 1956 and no appeal has been preferred against order under CFSS, 2020. After issuance of immunity certificate, designated authority will be obligated to withdraw prosecution(s) pending, before the concerned court(s) and proceedings for adjudication of penalties under section 454 of CA, 2013.
- **Precondition to seek immunity** – If Defaulting Company desires to seek immunity against prosecution or proceedings for belated filing made under CFSS, 2020, it will have to withdraw any appeal that has been filed against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under CA, 2013, before competent court or authority for violation of the provisions under CA, 2013/CA, 1956. Applicant is required to withdraw appeal and furnish proof of the same before filing an application for issue of immunity certificate.
- **Special measures for cases where the order of adjudicating authority was passed but appeal was not filed** – In cases where due to delay in filing of document(s), penalties were imposed by adjudicating officer under CA, 2013/CA, 1956 and no appeal was preferred by Defaulting Company or its officers before regional director under section 454(6) of CA, 2013 as on date of CFSS, 2020, the following would apply:
  - Where last date for filing for an appeal against order of adjudicating authority under section 454(6) of CA, 2013 falls between March 1, 2020 to May 31, 2020 (both days included), a period of 120 additional days is allowed with effect from such last date to all companies and their officers for filing an appeal before concerned regional directors;
  - During such additional period, prosecution under 454(8) of CA, 2013 for non-compliance of order of adjudicating authority, insofar as it relates to delay associated in filing of any documents, statement of returns, etc. in MCA-21 Registry shall not be initiated against company or their officers.
- **Benefit for inactive companies** – Defaulting Company that is inactive while filing due document(s) under CFSS,2020 may simultaneously either
  - Apply to get themselves declared as dormant company under section 455 of CA, 2013 by filing e-form MSC-1 at a normal fee on said form.
  - Apply for striking off name of the company by filing e-Form STK-2 by paying fee payable on form STK-2.

NEW CLASSIFICATION OF MSMEs

Government of India enacted Micro, Small and Medium Enterprises Development Act, 2005 (**MSME Act**) under which classification of micro, small and medium enterprises (**MSME**) was dependent on two factors: (i) investment in plant and machinery; and (ii) turnover of the enterprise. It is also pertinent to note that different thresholds were prescribed for being classified as an MSME based on the aforesaid factors, for enterprises engaged in manufacturing and services sector.

However, recently, under Aatmanirbhar Bharat Abhiyan (**ABA**), Ministry of Micro, Small and Medium Enterprises, vide its notification dated June 1, 2020, revised MSME classification by inserting a composite criterion for both investment in plant and machinery and annual turnover of enterprises. Also, the distinction between the manufacturing and the services sectors under erstwhile MSME definition has been done away with. This removal will create parity between the sectors.

A comparison of the erstwhile MSME classification to the revised classification where the investment and annual turnover, both are to be considered for classification of an enterprise as an MSME, is set out below:

Erstwhile MSME Classification **Criteria: Investment in Plant and Machinery/Equipment**			
Classification	**Micro**	**Small**	**Medium**
Manufacturing Enterprises	Investment not more than INR 25 lakhs	Investment not more than INR 5 crores	Investment not more than INR 10 crores
Enterprises rendering Services	Investment not more than INR 10 lakhs	Investment not more than INR 2 crores	Investment not more than INR 5 crores
Revised MSME Classification (w.e.f. July 1, 2020) **Composite Criteria: Investment in Plant and Machinery/Equipment and Annual Turnover**			
Classification	**Micro**	**Small**	**Medium**
Manufacturing Enterprises and Enterprises rendering Services	Investment in P&M/Equipment not more than INR 1 crore and Annual Turnover not more than INR 5 crores	Investment in P&M/Equipment not more than INR 10 crores and Annual Turnover not more than INR 50 crores	Investment in P&M/Equipment not more than INR 50 crores & Annual Turnover not more than INR 250 crores

The new classification of MSME's shall be effective from July 1, 2020. This new classification has been introduced by the Government to boost businesses and put to rest the growing fear among MSMEs of losing benefits granted under the MSME Act on account of outgrowing the erstwhile thresholds of classification. While this is a welcome initiative by the Government, various questions remain unanswered, namely - what constitutes "plant and machinery", will the previous guidelines on calculation of investment towards plant and machinery still be applicable.

Further, it is pertinent to note that Finance Minister has clarified that start-ups are eligible to avail relief measures announced for MSME under the ABA. While start-ups are not explicitly covered under the definition of MSMEs, start-ups operating and engaged in the manufacturing and services sector may consider registering themselves as an MSME on the Udyog Aadhar Portal (considering the revised classification of MSMEs). By registering as an MSMEs, start-ups can avail the various other benefits offered to MSMEs under the ABA. Official notifications, in this regard are waited.

GOVERNMENT NOTIFIES
IBC (AMENDMENT) ACT, 2020

On March 13, 2020, the Insolvency and Bankruptcy Code (Amendment) Bill, 2020, which was passed by both the houses of the Parliament, received President's assent to become a law in form of Insolvency and Bankruptcy Code (Amendment) Act, 2020 (**Amendment Act**).

Some of the salient features of the Amendment Act are as under:

- The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 has been repealed. The Amendment Act also provides that it shall be deemed to have come in force on December 28, 2019.
- Proviso to Section 5(12) of IBC has been deleted thereby making it clear that even in cases where the IRP is not appointed by the NCLT in the order for admission of the application for initiation of insolvency proceedings, the insolvency commencement date would be the date of admission of an application for initiating insolvency proceedings by the NCLT under Sections 7, 9 or 10.
- Section 7 of IBC has been amended and a minimum threshold for initiating CIRP for a certain category of financial creditors has been put in place. Consequently, financial creditors who are allottees under a real estate project may initiate CIRP against corporate debtor by filing a joint application comprising of not less than 100 such allottees under same real estate project or not less than 10% of the total number of such allottees under same real estate project, whichever is less.
- Further, the financial creditors falling in the category of creditors referred to in Section 21(6A) (a) and (b) may file a joint application for initiating CIRP against the corporate debtor comprising of not less than one hundred of such creditors in the same class or not less than 10% of the total number of such creditors in the same class, whichever is less.
- Explanation II has been inserted to Section 11 of the IBC, consequent to which, a corporate debtor is now permitted to initiate CIRP proceedings against other corporate debtors.
- An explanation has been inserted to Section 14 of IBC, consequent to which, a license, permit, registration, quota, concession, clearances or a similar grant or right etc. given by the Central Government, State Government, or any other authority shall not be suspended or terminated on grounds of insolvency, subject to there being no default in payment of current dues arising for use or continuation of license, permit, etc. during moratorium period.
- Sub-section (2A) has been inserted to Section 14 of IBC, consequent to which, where IRP/RP considers supply of goods/services critical to protect and preserve value of corporate debtor and manage operations of such corporate debtor as a going concern, then supply of such goods or services shall not be terminated or interrupted during moratorium, except where corporate debtor has not paid dues arising from supply during moratorium.
- Section 16(1) of IBC has been amended, consequent to which NCLT has to appoint an IRP on insolvency commencement date itself. Earlier, NCLT had to appoint an IRP within 14 days from insolvency commencement date.
- The proviso to Section 23(1) of IBC has been amended to the effect that it clarifies that RP shall continue to manage the operations of the corporate debtor after the expiry of the CIRP period, until an order approving the resolution plan or appointing a liquidator is passed by the NCLT
- Section 32A has been inserted which provides that the corporate debtor will not be liable for an offence committed prior to the commencement of CIRP from the date the resolution plan is approved by the NCLT. However, the approved resolution plan must result in change in the management or control of the corporate debtor as prescribed in Section 32A. The said Section further discharges the corporate debtor from any prosecution that has been instituted against it during the CIRP on the approval of the resolution plan, however, the officer who is default in case of a company and a designated partner in case of an LLP shall continue to be liable for any such offence committed by the corporate debtor. In respect to such a scenario, this Section also safeguards the property of the corporate debtor from actions such as attachment, seizure, retention or confiscation of such property.

SECTORS TO **LOOKOUT FOR**

Renewables

Each country is dealing with the impact caused by obstruction in economic growth due to the pandemic as per their capabilities and requirements. GoI has taken many proactive fiscal measures like Repo rate cut to 4.4%, 6 months moratorium on principal and interest repayment for term loan and working capital facilities.

For the Renewables sector, MNRE has come out with advisories for project completion and timeline extensions because of force majeure, must run status of RE plants, regular payments to companies operating RE plants and digital signatures on invoices etc. The pandemic has also shown many positive aspects as working from home was not normal in RE Industry however this 'New Normal' working from offsite location has now become norm.

India's progress since FY 2014 shows its commitment to energy transition. The country's ambitious target of 175 GW of renewable power by 2022 and 500 GW by 2030 is one of the world's largest renewable energy development program. A well-developed ecosystem of stakeholders, certainty of returns through long-term offtake agreements and an enabling regulatory framework make this a distinct investment opportunity for investors.

While several bids in this space were successfully closed during the lockdown, India's move towards domestic solar module generation is a welcome step. Recently in June 2020 Adani Green Energy Ltd. bagged manufacturing linked solar contract from the Solar Energy Corporation of India (**SECI**) to develop 2 GW of additional solar cell and module manufacturing capacity.

Multilateral and bilateral agencies, as well as sovereign wealth funds, have pumped significant FDI into Indian green energy space, spread across solar and wind power generation firms, electronic vehicles and storage projects, and the sector is well poised to attract and leverage the emerging tailwinds.

Pharmaceuticals

In post coronavirus world, healthcare would, almost certainly, emerge as a major focal point of attention for many nations across the world. Indian Pharma industry has been world leader in generics, both globally and in domestic markets, contributing significantly to the global demand for generics in terms of volume. India also operates more 250 US Food and Drug Administration (**FDA**) and UK Medicine and Healthcare products Regulatory Agency (**MHRA**) approved plants.

According to a report on the Indian pharmaceutical industry, the source of APIs is a crucial part of the pharma industry's strategic plan to combat the Covid-19 pandemic. The majority of APIs for generic drug manufacturing across the globe are sourced from India, which also supplies approximately 30% of the generic APIs used in the US. However, Indian manufacturers rely heavily on APIs from China for the production of their medicine formulations, procuring around 70 percent from China, the top global producer and exporter of APIs by volume.

The Indian government has started taking important steps to remove technical and financial barriers that will spur the pharmaceutical industry to ramp up API production, reducing the dependency of the pharmaceutical industry as a whole on the Chinese market. The government recently proposed an incentive package of USD 181 million for promotion of domestic manufacturing of critical starting materials, drug intermediates, APIs and medical devices.

This sector will likely witness significant deal and investment activity going forward, with companies actively scouting for greenfield and brownfield expansion opportunities. The top hundred pharma companies collectively have only INR 40,000 crore debt capital[5], which implies that they are very underleveraged. This presents a significant opportunity for capital-raising and expansion.

[5] https://www.businesstoday.in/magazine/features/top-pharma-companies-inorganic-growth-opportunities-debt/story/244675.html

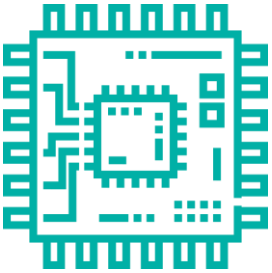
Manufacturing

With the mounting pressure to reduce dependency of China in global supply chains, companies have started exploring new places to relocate.

Companies from sectors such as mobile phones, electronics, medical devices, textiles and synthetic fabrics have already made preparations to set up their units in India and have started negotiations with Indian government. Japan has already announced a mega package of USD 2 billion dollars for its companies willing to shift their plants and factories outside China.

What makes India a manufacturing discussion

- **Overall economic factors** – Indian economy signifies large growth opportunities and stability due to relative protection from various geopolitical events (like ongoing trade wars, crude oil shocks), macroeconomic stability and external sector stability.
- **Contract manufacturers/collaborators and availability of skilled labor** – Large number of Indian manufacturers with required competence across various sectors. Availability of skilled labor is also India's competitive advantage. Coupled with the government's intention to simplify the labor laws and reduce compliance costs has allowed companies across sectors to hire workers for fixed term
- **Favorable business regulatory environment** – India has Comprehensive Economic Partnership Agreement and Free Trade Agreements with many countries also providing preferential tariffs for trade. Department of Industry and Internal Trade has adopted 'Plug and Play' policy and launched a platform to facilitate large investors for investment in industries along 21,000 acres Delhi-Mumbai Industrial Corridor.
- **FDI policy** – 100% FDI permitted under automatic route for manufacturing companies, though sectors like defence, telecom, media, pharmaceuticals, and insurance need government approval.
- **Competitive taxation** – Indian government reduced the rate of Corporate Tax from 30% to about 25%, while the same has been reduced to 15% for those companies that want to set up new factories. It is noteworthy that India's Corporate Tax is one of the lowest in Southeast Asia.[6]



Technology

During the pandemic, the ability to be online has been a lifetime for so many of us. Google in its annual event online announced its plan to invest USD 10 billion in India in next five to seven years as the search giant looks deepen presence in the world's second largest internet market by users. The investment will be made through 'Google for India Digitization Fund' through a mix of equity investments, partnerships and operational, infrastructure and ecosystem investments.

Google said there are more than 500 million active internet users and more than 450 million smartphones users in the country. About 26 million small and medium businesses are now discoverable on search and Maps, driving connections with more than 150 million users every month.

Video collaboration platform Zoom rose from 10 million to 200 million daily meeting participants in just three months. In comparison the legend Instagram secured 100 million monthly active users (**MMAUs**) in around two years and Fortnite snagging 100 MMAUs in around 18 months.[7] We need to understand that every sector will move towards digitization and automation. As the work from home is beginning to become the new normal, more workloads will have to be migrated to the cloud to ensure that businesses can function as usual.

Technology is also going to evolve as backbone of e-commerce which has emerged as an increasingly potent platform after the outbreak of virus.[8] Interestingly, among the world's leading developing economies such as China, Brazil, Indonesia, Thailand and the Philippines, India showed a sharper surge in preference for the online channel.[9] According to research, 52% of consumers are avoiding crowded marketplaces and development of contactless payments/delivery models has resulted in a shift in consumer behavior. As a result, digital payments platforms are expected to grow up to 60% from 22%.[10]

Going forward, digitization, cloud computing, machine learning and artificial intelligence will dominate the technology space. Businesses mainly in services sector such as banking and other financial services, education, retail, healthcare, food and grocery delivery will further embrace technology and automation to better leverage growth. The expanding IT industry in India, along with the rising trend of digitization will continue to be the key factor that will continue to drive the growth of the sector.

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[6] Singapore with 17% tax rate, and Vietnam, Thailand, Cambodia and Taiwan with 20% base tax rates are the only countries offering lower rates than India.
[7] Our new world, A report by Bond Capital.
[8] As per analysis report of Unicommerce, e-commerce sector has recovered by over 90% as compared to its pre-lockdown order volume.
[9] Turn the Tide – Unlock the new normal, A report by Facebook and Boston Global Consulting.
[10] Ibid.

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