ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Analysis: Economic Stimulus Package

(May 13-May 17,2020)

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Coal and Minerals

ANNOUNCEMENT

The Finance Minister (**FM**) in her speech, announced several structural and policy reforms in the coal and minerals sector as part of the Atma Nirbhar Bharat Abhiyan relief measures. The following key changes have been proposed:

Coal

- The Government will now usher in commercial mining in the coal sector (thus ending its monopoly in the sector) with the aim of increasing self-reliance in coal production. Private participation in coal mining is to be encouraged with the introduction of a revenue sharing model instead of the current fixed rupee per ton model. The FM also stated that nearly 50 new coal blocks are to be immediately offered for commercial mining.
- Entry norms are also to be liberalized with the removal of eligibility conditions, and the introduction of an upfront payment (capped by a ceiling). Rebates in the revenue share are to be offered in order to incentivize the production of coal before schedule and the gasification/liquefaction of coal so as to reduce environmental impacts.
- Untapped coal beds that are currently with Coal India Limited (**CIL**) are also to be auctioned to private participants for the extraction of Coal Bed Methane.
- INR 50,000 crore is to be invested into the development and creation of evacuation infrastructure so as to evacuate mined coal and to meet CIL's new target of producing 1 billion tons of coal in addition to the coal produced from private blocks. INR 18,000 crore is to be invested into the mechanized transfer of coal through conveyor belts from mines to railway sidings.
- In order to encourage private participation in the exploration of coal, partially explored coal blocks are now to be auctioned as opposed to the current regime of auctioning only fully explored coal blocks. Mining plans are to be simplified, shortened, and made conducive to loading online and are to allow for a 40% increase in annual production.
- Other policy reforms include concessions in commercial terms given to CIL's consumers (relief worth INR 5000 crore offered); reserve price in auctions for non-power consumers reduced; credit terms eased; and the enhancement of the lifting period.

Minerals

- A seamless composite exploration-cum-mining-cum-production license is to be introduced, aimed at mitigating the uncertainty with respect to financial investment in exploration, mining and production separately. The composite license is part of the Government's effort to streamline the sector to make it attractive for private investment.
- 500 blocks are to be offered for mining through an open and transparent auction process.
- Joint auctions will be introduced to allow participants to ensure certainty in the procurement of all the raw materials required for the production of minerals. Taking the aluminum industry as an example, the FM stated that there will now be joint auctions for bauxite and coal blocks to enhance the competitiveness of the industry and reduce electricity costs (recognition of the fact that regulations and mismatched policies cause private players to look abroad for aluminum production).

- The distinction between captive and non-captive mines is to be removed to allow for the transfer of mining leases and sale of surplus and unused minerals. This is aimed at improving efficiency in mining and production.
- The Ministry of Mines is in the process of creating a Mineral Index categorizing different minerals available in India.
- Stamp duty payable at the time of award of mining leases is to be rationalized.

ELP COMMENTS:

The structural and policy reforms announced by the FM are targeted at increasing and incentivizing private participation in the mining of coal and other minerals. During this period of economic slowdown, the reforms are a recognition of the fact that India needs to look to its private sector for increasing the quantum of minerals mined and the efficiency with which they are utilized. With respect to coal, we hope that the end of the Government's monopoly on coal mining and production will be met with enthusiasm from the private sector (although certain coal blocks offered for auction recently did not receive enough interest despite setting of lower floor price).

While the FM has announced several incentives as mentioned above, she also stated that coal mining will be commercialized with appropriate regulation. With the removal of the eligibility criterion and the amendments to the Mines and Minerals Development Regulation Act, 1957, foreign mining companies and other domestic non-mining companies are also likely to participate in any potential auctions. However, removal of the eligibility criteria may raise concerns around the competence of the participants and sustainable development of the mines.

With respect to the mining of other minerals, the introduction of a composite license for exploration, mining and production seems like a good idea as it could significantly reduce the uncertainty associated with entering the mining sector, especially that of grant of mining licenses post the exploration phase. However, it would be premature to comment on the same unless detailed guidelines are introduced. While the above reforms in the coal and minerals sector are aimed at greater private participation, it remains to be seen whether the Government's enthusiasm is reciprocated during and after this period of uncertainty created by the outbreak of COVID-19.

Company Law

ANNOUNCEMENT

Decriminalization of Companies Act, 2013 violations involving minor technical and procedural defaults

- It is proposed that various provisions under the Companies Act, 2013, which involve technical/procedural defaults will be decriminalized. The announcements include examples like shortcomings in reporting related to corporate social responsibility (**CSR**), inadequacies in board's report, filing defaults, delay in holding annual general meetings (**AGMs**).
- It is proposed that majority of compoundable offences sections will be shifted to Internal Adjudication Mechanism (**IAM**) and powers of Regional Directors (**RD**) for compounding will be enhanced.
- 58 sections will be dealt under IAM as compared to 18 earlier.
- It is proposed that majority of compoundable offences sections will be shifted to IAM and powers of RD for compounding will be enhanced.
- 58 sections will be dealt under IAM as compared to 18 earlier.
- Amendment to de-clog the criminal courts and national company law tribunals (NCLTs).
- 7 compoundable offences altogether dropped and 5 to be dealt with under alterative framework.

RELEVANT PROVISION CHANGES

It is expected that the Government will introduce the aforementioned changes by way of an ordinance to the Companies Act, 2013 and related rules.

COVERAGE (WHO IS BENEFITED)

- Companies at large which were suffering due to minor/technical violations
- Officials of such companies, including, directors, independent directors and key managerial personnel.
- NCLTs and courts which were burdened with cases related to such violations.
- The Companies (Amendment) Bill, 2020 is contemplating introducing a provision to decriminalize certain offences under the Companies Act, 2013 in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve the larger public interest.

ELP COMMENTS:

The announcements made by the Government are in furtherance of provisions introduced in the Companies (Amendment) Bill, 2020, which was introduced in Lok Sabha on March 17, 2020. One of the key provisions of the Companies (Amendment) Bill, 2020 was to decriminalize offences in case of defaults which can be determined objectively and which, otherwise, lack the element of fraud or do not involve larger public interest. These provisions were taken on board from the recommendations made by the Committee formed for the purpose which had submitted its report on 14 November 2019. The text of the notification/ordinance/amendment that will be introduced is awaited - to see if it is an enforcement of the already pending provisions of the Companies (Amendment) Bill, 2020 or it will be in modification to that.

ANNOUNCEMENT

Direct listing of securities by Indian public companies in permissible foreign jurisdictions

Private companies which list their non-convertible debentures (NCDs) on stock exchanges will not be regarded as listed companies

Inclusion of provisions of Part IXA of the Companies Act, 1956, related to producer companies in the Companies Act, 2013

Power to create additional/specialized benches for National Company Law Appellate Tribunal (NCLAT)

Lower penalties for all defaults for small companies, one-person companies (OPCs), producer companies and start-ups

RELEVANT PROVISION CHANGES

It is expected that the Government will introduce the aforementioned changes by way of an ordinance to the Companies Act, 2013 and related rules.

COVERAGE (WHO IS BENEFITED)

- Direct listing offshore will help Indian companies to ease raising of funds abroad, allow foreign residents/companies to directly access the Indian securities market without having to come to India. The Companies (Amendment) Bill, 2020 has a contemplation of power to allow class of public companies which may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.
- Private companies which have listed their NCDs will benefit from exclusion from being treated as listed companies. The Companies (Amendment) Bill, 2020 has a contemplation that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.
- Part IXA of the Companies Act, 1956 once introduced under the Companies Act, 2013, will help the producer companies to understand composite legal provisions applicable to them. The Companies (Amendment) Bill, 2020 has a contemplation to insert a new Chapter as Chapter XXIA relating to Producer Companies on similar lines as provided in the Companies Act, 1956.
- Recently a bench of NCLAT was created in Chennai on March 18, 2020, to hear the appeals against the orders of the Benches of the National Company Law Tribunal (**NCLT**) having jurisdiction of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, Telangana, Lakshadweep and Puducherry. The step to introduce more benches of NCLAT across the country will reduce the cost of litigation and inconvenience to litigants. The Companies (Amendment) Bill, 2020 has a contemplation to set up additional benches of NCLAT.
- Also, the proposal to create specialized NCLAT benches will see quick disposal of cases involving matters as may be notified by the Government. The Companies (Amendment) Bill, 2020, has a contemplation of creation of NCLAT benches to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016;

- Lowering penalties for defaults by small companies, OPCs, producer companies and start-ups is in continuation of Government's initiative to decriminalize the Companies Act, 2013, and will benefit these set of companies. The Companies (Amendment) Bill, 2020, has a contemplation of extending applicability of section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups.

ELP COMMENTS:

The aforementioned announcements made by the Government are in furtherance of provisions introduced in the Companies (Amendment) Bill, 2020, which was introduced in Lok Sabha on March 17, 2020. The text of the notification/ordinance/amendment that will be introduced is awaited - to see if it is an enforcement of already pending provisions of the Companies (Amendment) Bill, 2020 or it will be in modification to that.

DEFENCE & AEROSPACE

ANNOUNCEMENT

Reforms to the Defence Sector

- Import of specific weapons/weapons platforms into India will be banned with year-wise timelines – list to be issued.
- Indigenization of imported spare parts for weapons, vehicles and planes.
- Separate budget provision to be introduced for domestic capital procurement.
- Foreign Direct Investment (**FDI**) Limit in Defence Manufacturing under the automatic route raised from 49% to 74%.
- Corporatization of Ordnance Factory Board **(OFB).**
- Establishment of a Project Management Unit to speed up the procurement process and ensure time-bound and faster decision-making.
- 'Realistic' General Staff Qualitative Requirements (**GSQR**) for defence procurement.
- Overhaul of weapon trial and testing procedures.
- India being positioned to be global hub for Aircraft Maintenance, Repair and Overhaul (**MRO**) and for this purpose convergence between Military and Civil Aircrafts MRO will be established to create economies of scale.

RELEVANT PROVISION CHANGES

- The currently prevailing Defence Procurement Procedure 2016 (with all the amendments) (**DPP 2016**) will be revised under Defence Procurement Procedure 2020 (**DPP 2020**). A draft of DPP 2020 was circulated by Department of Defence Production, Ministry of Defence (**MoD**) for public comments. This draft will need to be revised to effect the reforms announced on 16th May 2020 by the Hon'ble FM.
- Previously, FDI in defence manufacturing was allowed only up to 49% under the automatic route and above 49% under government route wherever it was likely to result in access to modern technology or for other reasons to be recorded. FDI under the automatic route excludes investment by China and other nations that share a border with India. This will need to be updated.
- A list of weapons/weapons platforms being banned for import into India shall be prepared and revised every year by the MoD. Items banned for imports can only be purchased from within the country. A separate budget for this is being planned.
- There will be a complete overhaul of the existing weapon trial and testing procedures in order to speed up the procurement process. Further, it was announced that GSQRs shall be made more 'realistic', making it easier for the Government to purchase defence equipment.

COVERAGE (WHO IS BENEFITED)

- India's burgeoning Defence Import Bill
- Domestic Defence Industry, particularly MSMEs

- Foreign OEMs selling their military platforms / products to India
- Ordnance Factory Board
- Aircraft Operators requiring MRO facilities

SUPPORT TO COMMON MAN

- Creation of jobs and business opportunities
- Self-reliance in military – national security

SCHEMES ADDRESSING ALL THE CONCERNS

ELP COMMENTS:

With a view to revive the economy, FM Nirmala Sitharaman as part of the Economy Stimulus Package has announced a number of reforms to the defence sector that addresses the long standing need and desire of boosting domestic procurement in the country in a timely manner.

Firstly, with a view to promulgate its much heralded 'Make-in-India' policy, the Government has now begun to limit the number of weapons and weapons systems that would be eligible for import. This would serve to progressively reduce dependence on foreign manufacturers and indigenously develop comprehensive capabilities in the defence sector. While essential weapons not produced here will be sourced from abroad, a negative list will be generated yearly and notified for which all imports that meet the required standards of the Armed Forces, will be banned. This list will be generated by the Ministry of Defence and will have year wise timelines to reduce import dependency. With a specific focus to indigenize spare parts for foreign systems that are already in service, this will immensely benefit the Indian Industry, in particular the MSMEs. With this announcement, the ball is now in the Indian Industry's court to create the necessary products and platforms meeting the required General Qualitative Staff Requirements (**GSQR**) to ensure that this list being compiled is exhaustive and expansive. While MoD has made efforts from time to time to focus on indigenization of its purchases, this is the first time that the FM has spoken of creating a separate budget for domestic capital procurement. The defence capital budget in recent years has often being criticized for not providing sufficient budget for new acquisitions and more importantly for domestic new acquisitions[1]. This announcement addresses this major consideration to incentivize Indian Industry to kick-start investments into the sector to build capability and capacity. However, we believe industry will await details of this negative list and the domestic capital procurement budget before making any strategic calls.

This initiative of indigenization is supplemented by major reform of increasing FDI limit in defence from the present 49% to 74% under automatic route. This will plug the gap of knowledge transfer between foreign technology holders and Indian manufacturers. India has struggled with attracting sufficient foreign investment in its defence sector. Till date, as per FDI limits of 49%, unless the foreign OEM was willing to part with its modern technology, it would not be entitled to more than 49% control over the Indian company. Thus, by increasing its FDI limit to 74% under the automatic route, the Government is opening its doors and welcoming these foreign OEMs to establish manufacturing facilities in India through either FDI, Joint Ventures or the defence offset route. This move will particularly benefit the MSMEs which will find investment and flow of technology coming in at a rather faster pace and lower cost. One implication of increase in FDI in defence sector would also mean that the Indian companies with foreign ownership (however with control by Indian residents as per Draft DPP 2020 definition of Indian Vendor) will also be able to participate in Indian Programs such as Buy (Indian), Buy (IDDM), Buy & Make (Indian) etc. And that brings us to one issue that has delayed this step of increase in FDI so far has been national security since now the ownership of Indian

[1]https://economictimes.indiatimes.com/news/defence/marginal-increase-in-defence-budget-could-mar-new-acquisitions/articleshow/73839394.cms?from=mdr

defence companies to the extent of 74% can be with foreigners. This issue can be addressed if India can come up with a set of rules to ensure the control of technology/production in India remains in India by means of specific rules such as appointment of Indian Key Management Personnel, Reserved Matters to enable use and production of the technology in times of events like a war, regulations to restrict the technology in India with any export duly covered under SCOMET (not just item but also knowledge). This will create a win-win situation for the nation and all the stakeholders in the sector. We hope the Government has taken all the necessary steps to address this issue and we look forward to seeing the final notifications in this regard.

The FM also announced the corporatization of the Ordnance Factories Board by which the Government plans to convert Ordnance Factories under the OFB into 100% Government owned public sector units. The aim of this move is to provide functional and financial autonomy and managerial flexibility that would enable the organization to grow at a faster pace and play a greater role in defence preparedness of the country while also adequately safeguarding the interests of the workers. Corporatization of OFB will bring OFB at par with other Defence Public Sector Undertakings (**DPSUs**) of MoD. Over the past few years, the Government has been continuously trying to strengthen the functioning of OFB, including having taken several steps to modernize the factories, carry out capital upgradation, re-train and re-skill OFB employees at Government costs, and enabling development of products and components with indigenous technology. It is believed that corporatization will help to improve the autonomy, transparency and efficiency in ordnance supplies, allowing these ordinance factories to be better managed. The FM also iterated her desire to someday see these ordinance factories listed on the stock market, with ordinary Indian citizens having the opportunity to purchase its shares or view its books of accounts thus ensuring better processes, decision making and output.

In addition to these reforms, the Government will also be fast-tracking the procurement processes by setting up a Project Management Unit (**PMU**) to support contract management, preparing more realistic GSQRs, reducing the procedures for weapons trial and testing. This is another major step in the right direction to address the notorious delays this sector is known for. Often finalization of contracts to contract amendments take years to conclude and these delays not only affect bidders/contracted party but also the military needs of the nation. We hope the final details of the proposed PMU will ensure specific timelines are met with by the MoD and systemic deterrents are built in to avoid any delays in ultimate weapon/ platform procurement.

Finally, Government has also pronounced its intention to make India a global hub for MRO. Having revised the tax rates from earlier 18% to now 5%, pooling of defence and civil aircrafts will create economies of scale necessary for making a viable business case for the Industry.

EMPLOYEE PROVIDENT FUND SUPPORT

EMPLOYEE PROVIDENT FUND SUPPORT EXTENDED FOR ANOTHER THREE MONTHS

The Government of India, on March 26, 2020 announced a package under the Pradhan Mantri Garib Kalyan Yojana by which the Central Government proposed to pay 24 % of the monthly wages, into the employees' provident fund accounts, for 3 months, of those wage-earners earning less than INR 15,000 thousand per month. These wage earners should be employed in an establishment or factory (i) already covered and registered under the Employees' Provident Funds & Misc. Provisions Act, 1952 and (ii) having up to 100 employees, with 90% or more of such employees earning monthly wages less than INR 15,000.

The above scheme is in operation for the wage months March 2020, April 2020 and May 2020. It is now proposed to extend the above scheme for another three wage months, i.e. June 2020, July 2020 and August 2020.

ELP COMMENTS:

Under the proposed scheme since the Government will pay the employer's as well as the employee's contribution to the employees' provident fund upon meeting eligibility criteria, it will lead to greater liquidity in the hands of the employers and the employees covered under this scheme without affecting the savings of the employees.

The employees' provident fund contribution is proposed to be reduced for employers and employees for 3 months.

The Statutory provident fund contribution of both employers and employees is proposed to be reduced to 10% each from existing 12% each for next 3 months for all establishments covered by employees' provident fund organization but not eligible for benefit under the provident fund scheme proposed under the Pradhan Mantri Garib Kalyan Yojana.

ELP COMMENTS:

The reduced contribution will lead to additional liquidity in the hands of the employers and the employees. However, the savings in the provident fund account will reduce to that extent. Further in most cases, the employer's contribution to the provident fund scheme is a part of the CTC (cost to company) of the employee. If the employer does not transfer the 2% benefit to the employees, this will lead to reduction in CTC of the employees for the period of 3 months.

INFRASTRUCTURE

EXTENSION OF TIME TO CONTRACTORS, EXTENSION OF CONCESSION PERIOD IN PPP CONTRACTS AND RELEASE OF PERFORMANCE SECURITY

It has been indicated that all Government of India agencies would provide an extension of time (*upto a maximum period of 6 months*) to contractors without costs. It was also indicated that the concession period in public private partnership (**PPP**) contracts would be extended. Further, to ease cash flow concerns, Government agencies would also partially release bank guarantees to the extent the contracts were partially completed.

To give effect to the aforesaid announcements, the Department of Expenditure, Ministry of Finance (**DoE**), has issued two office memorandums (**OM**) dated May 13, 2020 (available here and here). It may be noted that prior to this, the DoE had issued an OM dated February 19, 2020 (available here) clarifying that the disruption of supply chains due to the spread of coronavirus (**COVID-19**) should be considered as a case of natural calamity. Accordingly, it states that force majeure clause (**FMC**) could be invoked under the Manual of Procurement of Goods, 2017, wherever appropriate.

A. Extension of Time to Contractors and Extension of Concession Period in PPP Contracts

- ***Extension of Time***: Parties to PPP concession contracts and contracts for construction/works and goods and services with Government Agencies (**Eligible Contracts**) can invoke the FMC after following due procedure wherever applicable.

  If the FMC is invoked, if any contractual obligations had to be completed on or after February 20, 2020 (**Cut-Off Date**), the date for completion of such obligations would stand extended for a minimum period of 3 months and a maximum period of 6 months without imposition of any costs/penalty on the contractor/concessionaire.

- ***Extension of Concession Period***: If the concession period in PPP contracts was to end on or after the Cut-Off Date, such period would be extended for a minimum period of 3 months and a maximum period of 6 months.

  The period of extension would be determined on a case-to-case basis and would be dependent on the period for which the performance was affected by the force majeure events.

- ***Conditionality*****:** The invocation of the FMC is permitted only where the parties to the contract were not in default of their contractual obligations as on February 19, 2020. Further, such invocation would only absolve parties from non-performance of such contractual obligations as are attributable to a lockdown situation, restrictions imposed under any statute, or executive order of the Government/s on account of COVID-19.

ELP COMMENTS:

The aforesaid extensions should provide some relief to contractors/concessionaires. However, given that the extension of time under Eligible Contracts has been linked to invocation of the FMC, if the Eligible Contracts did not have a FMC or where the FMC was not triggered on account of the specified circumstances being the lockdown or government orders, a difficulty may arise. Wherever the FMC was triggered, the contractors would have already applied for relief and the authorities would have been obligated under contract to provide such relief. If the intent of the Government was to provide a blanket extension in all cases (except contractors with prior defaults), then the Government should not have linked such extension to the FMC. Further, it would be important to see whether contractors pass on the relief provided to them to the sub-contractors. Since, large infrastructure contracts often entail the appointment of sub-contractors, it would be important that the relief is passed down to the sub-contractors as well.

B. Release of Performance Security

- ***Background:*** As per Rule 171 of the General Financial Rules, 2017 (**GFR**) issued by the DoE to ensure due performance of the contract, performance security is to be obtained from the successful bidder to whom a goods and works contract has been awarded. Such security ranges from 5% to 10% of the value of the contract as specified in the bid documents. The security remains valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier including warranty obligations.
- ***Release:*** If (a) a contractor applies, or (b) where the FMC is invoked by a contractor and the requirements of the FMC are fulfilled, the Government Department/Agency may return the value of the performance security to the contractor/supplier as is proportional to the supplies made/contract work completed to the total contract value.

  Such relief would be made available only if the contractor/supplier is not in default of any contractual obligations. Further, the relief would only apply in respect of non-performance as can be attributable to a lockdown situation, restrictions imposed under any statute, or executive order of the Government/s on account of COVID-19.

ELP COMMENTS:

This is a welcome move by the DoE and should aid in providing liquidity to contractors. If contractors engaged in a goods and works contracts have not already invoked the FMC, they may consider making an application for release of the performance security. However, in our view, if the contractor's goods or works were covered under essential services and were unaffected by the present lockdown, the Government Department/Authority could turn down the request as it has not been mandated to release the security in all cases.

RELIEF FOR DISCOMS

- Owing to the lockdown and reduction in demand, state distribution companies (**DISCOMs**) have been facing a severe cash crunch and are thus unable to pay the generating companies and transmission companies (**Power Producers**). Observing that the DISCOMs owe around INR 94,000 crore to the Power Producers, the FM observed that it was important to infuse liquidity to DISCOMs so that the Power Producers are in turn financially equipped to pay for the production of power. Accordingly, it has been indicated that the Power Finance Corporation (**PFC**) and the Rural Electrification Corporation (**REC**) will infuse INR 90,000 crore of liquidity to DISCOMs against receivables.
- It was further indicated that loans would be provided against State guarantees for the exclusive purpose of discharging liabilities of the DISCOMS to the Power Producers.
- To reduce financial and operational losses, DISCOMs could provide digital payment facilities for consumers and liquidation of outstanding dues of State Governments. It was also indicated that Central Public Sector Generation Companies will provide rebates to DISCOMs which are required to be passed on to the final consumers (i.e. the industries).

ELP COMMENTS:

The power sector is beleaguered with losses and the proposals made by the FM should help the sector recover losses to a certain extent. However, the following issues remain unaddressed:

- Given that the Ministry of Power has already provided a 3 month moratorium to DISCOMs for payment to the Power Producers, we would need to examine whether such moratorium would be withdrawn so as to ensure that the liquidity provided by the Government actually benefits the Power Producers.
- Where DISCOMs had claimed force majeure under contracts with the Power Producers and suspended payment obligations, it would have to be examined whether the DISCOMs would still need to pay the Power Producers.

- There is no clarity on whether there would be an eligibility criterion for the Power Producers whose dues would be cleared (such as exclusion of unviable plants) or whether a part or all dues of the Power Producers would be cleared. Further, timelines should also be laid down for payment of such dues.
- We understand that the payments to the Power Producers would be made by the PFC/RECs directly and would be reflected as a debt in the books of the DISCOMs. There ought to be clarity on the manner in which DISCOM's would be able to make future payments considering the additional debt from the PFC/RECs. Further, the payment securities from the DISCOMs in many cases, have not yet been released. The relief package merely provides for clearance of dues causing load on the public exchequer. This does not set up a guideline on revival of the DISCOMs.
- The announcement does provide any relief to the Power Producers for losses caused due to failure to generate power as a result of disruption of supply lines. There is no clarity as to whether DISCOMs ought to continue to pay capacity charges in such a scenario or whether despite the existing power purchase agreements, tariff readjustments would be permitted.
- No moratorium is applicable for foreign loans taken by the Power Producers. Thus, any money released, to them may first be used for repayment of such loans which would be counterproductive.
- An extension of timelines for setting up/achievement of commercial operation dates for projects has not been provided like in case of other PPP projects.
- Given that supply chain disruptions may continue even post utilization of the relief provided, the Government may need to chalk out a road map for the future.

AVIATION REFORMS

- On May 16, 2020, the FM announced certain policy reforms in the aviation sector, under 3 broad heads:
  - **Efficient Airspace Management**
    - The FM observed that only 60% of the Indian airspace was freely available. As a result, aircrafts had to fly through longer routes which resulted in both an increase in flying time and costs.
    - Accordingly, the FM indicated that restrictions on utilization of the Indian airspace would be eased to ensure optimum use. This would ensure reduction in both fuel costs and travel time. It is estimated that the proposed measure may result in the sector benefitting to an amount of close to INR 1000 crore per year.
  - **More Airports through PPP mode**
    - As per the FM, Airports Authority of India (**AAI**) has awarded 3 airports out of 6 that were bid for operation and maintenance on a PPP basis. The annual revenue of such 6 airports in the 1st round would be INR 1000 crore (against current profit of INR 540 crore per year). AAI would also get a down payment of INR 2300 crore for such airports.
    - The FM indicated that 6 more airports have been identified for the 2nd round of bidding and the bidding process would commence immediately.
    - The additional investment by private players in 12 airports in 1st and 2nd rounds is estimated to be around INR 13,000 crore.

    In addition to the above, bids would be invited for 6 more airports.
  - **Maintenance, Repair and Overhaul (MRO) Hub**
    - The FM indicated that the Government intends that India become a MRO hub as it has the requisite resources to cater to such a proposal. She also highlighted that Indian aircrafts are sent abroad for MRO

and this could be done within the country once the MRO hub is operationalized. Indian airlines would thus have to bear lesser costs for MRO within the country.

- It is also expected that the move would lead to major engineering manufacturers setting up MRO facilities in India.
- The FM indicated that convergence between defence sector and the civil MROs would be established to create economies of scale.
- Aircraft component repairs and airframe maintenance to increase from INR 800 crore to INR 2,000 crore in 3 years.

ELP COMMENTS:

The optimum utilization of airspace should benefit the Government and the private sector as fuel costs would reduce and for fliers, the flying costs may reduce. Further, as the FM indicated, shorter routes would also be beneficial for the environment and fliers as it would reduce travel time.

The creation of additional world-class airports through the PPP mode and the idea of India as a MRO hub are both a welcome move. However, given the present exigencies, the survival of existing airports has become a more pressing issue. So far, no measures have been announced to address the plight of such airports which are hard-pressed on account of the lockdown.

The need of the hour was an injection of funds to ensure liquidity and enable survival of the existing airport stakeholders. The aviation industry is an employment intensive industry and a lack of revenue may make it extremely challenging for the employer to continue paying wages.

Even once the lockdown is lifted, passenger traffic volumes may not be the same as before. Additionally, to ensure safety of all, airports and airplanes may have to spend more to incorporate adequate processes as per Government advisories.

Perhaps, it would have been helpful for there to be a waiver/deferment of concession charges to the AAI and taxes, subsidies and incentives, and infusion of funds to ease the financial stress for both airports and airlines.

Given the uncertainties associated with COVID-19, it may be difficult for the bids for new airports to garner interest from private players or the bids may be a lot more conservative than those previously made – aggressive bidding has been a hallmark of Indian PPP players and this may finally change.

As for the MRO, one would have to wait for the actual proposal from the Government. Some sort of policy encouragement would be required to encourage original equipment makers to set shop in India. Further, given the importance of defence aircrafts, it would have to be seen how the Government proposes a convergence of the MRO for civil and defence related aircrafts.

ENHANCED VIABILITY GAP FUNDING FOR SOCIAL INFRASTRUCTURE PROJECTS

- Recognizing that social infrastructure projects suffer from poor viability, the FM on May 16, 2020 announced the allocation of INR 81 billion as viability gap funding for the development of social infrastructure.
- This announcement comes in the backdrop of the extant Viability Gap Funding Scheme of the Central Government (**VGFS**) notified in 2006 which extends to PPPs undertaken by the Government or its agencies, where the private sector sponsor is selected through open competitive public bidding.
- Under the VGFS, financial assistance upto 20% of project cost is provided by the Central Government to PPP projects undertaken by the Central Ministry, State Government, statutory entity or local body. The FM in her speech has signaled the enhancement of the quantum of viability gap funding by the Centre and State/statutory bodies from the aforesaid threshold of 20% to 30% each of the total project cost of social infrastructure projects.
- No clarity has yet been provided on the nature of social infrastructure projects that would be covered. However, on the basis of the extant classification by the Government, social infrastructure projects could include educational institutions and hospitals (including medical colleges, para medical training institutes and diagnostics centers).

ELP COMMENTS:

The current scenario has undoubtedly heightened the lack of financial viability of along with the need for more robust social infrastructure projects, especially in the healthcare space. In this backdrop, the grant of financial assistance is an important step towards sustaining PPPs in social infrastructure and encouraging more private investment, bringing along with it best practices and efficiencies.

ATOMIC ENERGY RELATED REFORMS

- On May 16, 2020, the FM announced that they would establish a research reactor in PPP mode for production of medical isotopes. This is intended to promote welfare of humanity through affordable treatment for cancer and other diseases.
- It was further announced that facilities would be established in PPP mode to use irradiation technology for food preservation, in order to compliment agricultural reforms and assist farmers.
- India's robust start-up ecosystem is proposed to be linked to the nuclear sector. Further, technology development cum incubation centers are proposed to be set up for fostering synergy between research facilities and tech-entrepreneurs.

ELP COMMENTS:

Setting up research reactors in PPP mode in order to promote welfare of humanity through affordable treatment of cancer and other diseases would benefit both India and countries to whom India supplies medical isotopes.

Usually, perishable items because of their short shelf life are sold at a less price or are left to rot. If used properly irradiation technology will enhance shelf life pf perishable food items, reduce post-harvest losses, help increase export of several horticulture commodities and increase the farmers' income. Certain plants have already been set up in India for use of irradiation technology in preserving products like onions, potato and phytosanitary treatment of fruits. This move will spare farmers from resorting to distress sale and will also enhance India's export potential of fruits and vegetables.

As for linkage of the start-up ecosystem with the nuclear system, we will need to analyze the policies issued by the Government for such linkage. It would be important for the Government to incentivize private players so as to engage in research and develop`pment of technology whilst at the same time ensuring that Government control is retained given the sensitivity around nuclear power.

On the whole, the Government has given the atomic energy sector a major overhaul through the aforesaid announcements which will benefit the famers, entrepreneurs as well as the common man. Focus on the 'Make-in-India' will soon ensure that India becomes self-sufficient.

PRIVATIZATION OF DISCOMS IN UNION TERRITORIES (UTS)

The FM announced on May 16, 2020 that the Power Departments/ Utilities in Union Territories would be privatized. This initiative by the Government has been made in order to improve efficiency and attract investment. Currently, the Central Government directly administers the DISCOMs in UTs as opposed to the states. The Government in its official statement said that they will put in place a distribution system which is based on totally open, transparent, competitive, commercial principles.

The generation and transmission project developers would be selected through competitive bidding. It will also provide for direct benefit transfer of subsidies for better targeting of subsidies and instilling financial discipline at DISCOMs. Additionally, prepaid smart meters will be made mandatory across the power distribution chain.

It was indicated that a revised power tariff policy will be issued which would focus on consumer rights, promotion of industry and sustainability of the power sector. As per the revised policy, DISCOMs will not be allowed to pass on their inefficiencies and losses to consumers. DISCOMs will also have to maintain certain service standards and would be penalized for load shedding, except in cases of natural calamities or technical failures.

ELP COMMENTS:

The aforesaid announcement should lead to better service to consumers and help improve operational and financial efficiency in distribution. The initiative should ensure continuous supply of power, by promoting competition and negating tariff gaps. However, as highlighted in our above analysis regarding relief to DISCOMs, several issues still remain unaddressed.

The response from the private sector on the privatization of DISCOMs also remains to be seen and will depend in large part on how the Government envisions that historical liabilities be dealt with.

INSOLVENCY AND BANKRUPTCY CODE, 2016

EASE OF DOING BUSINESS THROUGH INSOLVENCY AND BANKRUPTCY CODE, 2016 RELATED MEASURES

In its final tranche of announcements, the FM laid out that the following changes shall be made to IBC:

- Minimum threshold for the default amount to initiate insolvency proceedings being raised from INR 1 lakh to INR 1 crore.
- Special insolvency resolution framework for MSMEs proposed to be notified under Section 240A of IBC.
- Suspension of fresh initiation of insolvency proceedings up to 1 year depending upon the pandemic situation instead of the earlier proposed 6 months.
- Exclusion of COVID-19 related debt from the definition of "default" under IBC for triggering insolvency proceedings.

ELP COMMENTS:

Building upon the relaxations already granted for the MSMEs, the FM further announced the above measures under the IBC in its final tranche. The proposed increase in the threshold to INR 1 crore and special resolution framework for MSMEs are welcome moves and it will help ease the backlog of cases under the IBC. Next, the suspension of initiation of new IBC proceedings is not likely to affect those proceedings which are already underway though arguably it will also bar insolvency resolution proceedings instituted by the corporate debtor himself under section 10 of the IBC.

The main question that emerges is what would constitute a "COVID-19 related debt" and how will a default, which is excluded from IBC, be treated by the RBI and various lenders. Another query would be why this additional measure is being proposed, when fresh initiation of insolvency proceedings itself is proposed to be suspended for up to 1 year depending upon the pandemic situation and should it not be "COVID-19 related default".

Additionally, the implications that such measures may have over asset classification and treatment of NPAs also remains to be seen. It has been indicated by the FM that clarifications regarding what will constitute "COVID-19 related debt" or the relevant dates in this regard will soon be notified. Whereas, suspension of IBC may help business affected by the COVID-19 outbreak, it would not be misplaced to mention that IBC has yielded good results for lenders since its implementation and has been a most viable option as compared to other recovery, enforcement or restructuring options. Hence, temporary suspension of fresh initiation of insolvency proceedings would once again compel the lenders to adopt other recovery, enforcement or restructuring.

MICRO, SMALL AND MEDIUM ENTERPRISES & BUSINESSES (MSME)

SCHEMES ANNOUNCED FOR MSMES/ BUSINESSES

Liquidity

Emergency Credit Line to Businesses / MSMEs from Banks and NBFCs

The FM in the Financial Package announced collateral free automatic loans of INR 300,000 crore, for businesses/MSMEs with standard loan accounts. Salient features of this scheme are as follows:

- **Validity of Scheme**: Loans under this scheme may be availed till October 31, 2020
- **Eligible Lenders**: Banks and NBFCs
- **Eligible Borrowers:** Businesses/MSMEs
- **Eligibility Criterion:** Borrowers with up to INR 25 crore outstanding and INR 100 crore turnover will be eligible under this scheme
- **Type of Loan:** Working capital finance in form of term loan
- **Loan Amount:** Loan under this scheme will be capped at 20% (twenty percent) of the entire outstanding credit as on February 29, 2020
- **Tenor of Loan:** 4 years with 1 year moratorium on the repayment of the principal amount.
- **Rate of Interest:** Capped concessional rate of interest
- **Collateral:** No guarantee fee, no fresh collateral. The Government of India shall provide 100% credit guarantee cover to the banks and NBFCs on the principal and interest.

ELP COMMENTS:

The scheme for collateral free government backed loans would ensure that aid is available to MSMEs/businesses in meeting liquidity requirements for procurement of raw material and other operating costs required for continuing with their businesses. This measure may help such standard eligible accounts from slipping into NPAs.

Subordinated Debt for Stressed MSMEs

For addressing the requirement of equity infusion in functioning MSMEs whose loan accounts have become NPAs or which have stressed loan accounts, the Government of India will facilitate subordinate debt under this Scheme to the tune of INR 20,000 Crore.

Following are the salient features of this Scheme:

- **Eligible Lenders:** Banks
- **Eligible Borrowers:** The promoters of such functioning MSMEs (whose accounts are NPAs or are stressed)
- **Loan Amount:** Equal to 15% of promoter's existing stake in the unit subject to a maximum of INR 75 lakh
- **End use of borrowed funds**: Equity infusion in the functioning MSMEs (which are NPAs or are stressed)

- **Credit Guarantee Support to Banks:** Government of India will provide support of INR 4,000 crore to Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) which will in turn provide partial credit guarantee support to banks for such subordinate debts.

ELP COMMENTS:

In addition to providing liquidity and relief to stressed MSMEs by way of equity infusion, this scheme ensures that promoters remain liable for repayment of loans with their 'skin in the game' intact. This would also ensure that the public money is properly utilized with higher responsibility on the promoters to repay the loans and provide additional efforts in revitalizing stressed MSMEs. This scheme will definitely be attractive for promoters seeking to revitalize their MSME units. ***There appears to be a major shift in the approach towards lending activities in two ways – one lending to a stressed account and another by way of promoter funding as both are uncommon. It remains to be seen how such funding is being utilized to revive a stressed account rather than to postpone the classification as NPA. One has to await further detailing from RBI.***

Equity Infusion for MSMEs through Fund of Funds

FM announced setting up of fund of funds (**FoF**) with a corpus of INR 10,000 crore which is proposed to be operated through a mother fund and various daughter funds. Salient features of this scheme are as below:

- Equity funding for MSMEs doing viable business with potential for growth
- FoF will be operated through a Mother Fund and few daughter funds
- FoF is proposed to be structured in a manner that the leverage of 1:4 at the level of daughter funds would be able to mobilize equity of INR 50,000 crore at the daughter funds level.

This would help MSMEs expand and grow and may be listed on the stock exchanges with encouragement from the Government.

Change in MSME's Definition

FM announced change in the definition of MSME. The revision in the definition are as follows:

- Upward revision in the investment limits for qualification of MSMEs,
- Introduction of a new criterion of turnover
- Removal of differences in threshold limits between the Manufacturing and Service Enterprises for classification as MSME

The below table shows the comparison between the existing and proposed criteria for an enterprise to qualify as MSME.

Classification	Existing Thresholds*		Proposed Change# (Common for Manufacturing and Service Enterprise)	
	Manufacturing Enterprise	Service Enterprise	Investment	Turnover (Criteria newly introduced)
Micro	Investment ≤ INR 25 lakh	Investment ≤ INR 10 lakh	Investment ≤ INR 1 crore	Turnover ≤ INR 5 crore
Small	Investment ≤ INR 5 crore	Investment ≤ INR 2 crore	Investment ≤ INR 10 crore	Turnover ≤ INR 50 crore
Medium	Investment ≤ INR 10 crore	Investment ≤ INR 5 crore	Investment ≤ INR 20 crore	Turnover ≤ INR 100 crore

*Criteria: Investment in Plant & Machinery or Equipment
#Composite Criteria: Investment and Annual Turnover

ELP COMMENTS:

The packages seeking infusion of equity vide FoFs and the change in the definition of MSMEs with increased classification threshold limits would incentivize promoters of MSMEs to infuse more equity in MSME units and ensure that the MSMEs are more focused towards growth - while ensuring that such growth does not result in them losing the status of MSME and they continue to gain the benefits available to MSMEs in India. FoFs would also address the shortage in availability of capital for MSMEs who are unable to raise funds/capital for growth from private equity funds, venture capitalists and other private investors. If certain MSMEs would grow in size and are listed on the stock exchanges, this would encourage such businesses to go public and trade through the stock exchange and capital markets in India.

No Global Tenders upto INR 200 crore: The FM mentioned that the global tenders would be disallowed for Government procurement tenders up to INR 200 crore. This is being done with an intent to help MSMEs increase their business and ensure that they are eligible for more Government tenders since presently MSMEs in most cases do not meet the eligibility criteria for global tenders and are left to face competition from large corporates, foreign companies and MNCs.

ELP COMMENTS:

The restriction on global tenders up to INR 200 crore would provide a further push to the Make in India movement and in achieving a self-reliant India by providing increased business opportunities and a level playing field to MSMEs.

Added Support:

With the intention to provide operational and liquidity support for business continuity to MSMEs, FM also announced the following:

- Promotion of e-market linkage for promotional activities of MSMEs as trade fares and exhibitions may not be possible during the COVID-19 pandemic and for some time thereafter.
- Release of all receivables of MSMEs from the Government and CPSEs within 45 (forty-five) days.
- Increased usage of fintech to enhance transaction-based lending using the data generated by the e-marketplace.

NBFCs, HFCs AND MFIs

SCHEMES ANNOUNCED FOR NBFCs, MFIs AND HFCs

Special Liquidity Scheme

- While recognizing the difficulties being faced by NBFCs, HFCs and MFIs in raising money in debt markets, the FM announced the launch of a special liquidity scheme of INR 30,000 crore for NBFCs, HFCs and MFIs as an added supplement to the existing measures announced by RBI. Investment under the special liquidity scheme shall be made in both primary and secondary markets in investment grade debt papers of NBFCs, HFCs and MFIs. Such securities would also be fully backed by guarantee from the Government of India.

ELP COMMENTS:

The Special Liquidity Scheme, working in tandem with various other measures already announced by RBI, will further help in addressing the liquidity crunch being faced by NBFCs, HFCs and MFIs in India including the ones not having high ratings (but merely investment grade ratings) to their loans/debt instruments and the guarantee by the government would help strengthen the confidence and improve market sentiments in respect of such securities/debt papers. A sovereign backing of this nature to secure such fund raising by NBFCs, HFCs and MFIs which may be privately owned, is unique and relevant in these unprecedented times.

Partial Credit Guarantee Scheme 2.0

- Acknowledging the requirement of liquidity for fresh lending to MSMEs and individuals by NBFCs, HFCs and MFIs having low credit ratings, FM announced the extension of existing Partial Credit Guarantee Scheme which would result in liquidity of INR 45,000 crore to NBFCs, HFCs and MFIs. This is an extension of the existing Partial Credit Guarantee Scheme which would now cover borrowings vide issuance of bonds/commercial papers by NBFCs, HFCs and MFIs. This scheme would now also help MFIs since investment under this scheme is permitted for instruments which are rated AA or lower rating or are unrated.
- To ensure confidence in such NBFCs, HFCs and MFIs not having high ratings, the Government of India would provide 20% first loss sovereign guarantee to public sector banks who would be making such investments.

ELP COMMENTS:

The 'confidence crisis' the NBFCs are facing post few major NBFCs committing default and the liquidity crunch confronting the NBFCs was exacerbated by the COVID—19 pandemic. These schemes would act as an aid to NBFCs, HFCs and MFIs including the ones not having high investment ratings or the ones who are unrated. Further, the guarantees being provided by the Government of India would help strengthen the confidence of investors and will also help in ensuring debt availability to MSMEs and individuals through such NBFCs, HFCs and MFIs.

Real Estate

COVID 19 TO BE TREATED AS 'FORCE MAJEURE' EVENT UNDER RERA

The FM announced on May 13, 2020 that the Ministry of Housing and Urban Affairs shall be advising States/UTs and their Regulatory Authorities (under RERA) to treat COVID-19 as an event of 'Force Majeure' (as provided for under Section 6 of RERA) and to suo-moto (without individual application) extend the registration and completion dates of projects expiring on or after March 25, 2020 by 6 months and to issue fresh project registration certificates with revised timelines. Regulatory Authority (under RERA) of respective States, may at their discretion for reasons to be recorded in writing, further extend the aforesaid timelines for additional period of up to 3 months, if the situation in their respective State or any part thereof, needs such special consideration in view of the Covid-19 pandemic. Accordingly, the timelines for various statutory compliances under RERA shall also concurrently stand extended. In this regard, the Ministry of Housing and Urban Affairs has issued an office memorandum on May 13, 2020 bearing Ref No. O-17024/230/2018-Housing-UD/EFS-9056405 based on the recommendations of the Central Advisory Council.

ELP COMMENTS:

The extension in timelines provides further relief to the promoters of real estate projects (further to the announcements made by the RERA authorities in certain states including Maharashtra, Gujarat, Karnataka, Uttar Pradesh and Tamil Nadu for extension of timelines by 3 (three) to 5 (five) months). In effect, this announcement shall provide a much-needed respite to the real estate developers who stood at the risk of defaulting in completion of the projects due to various reasons including reverse migration of laborers to their native places and break in supply chain of construction materials caused due to the Covid-19 pandemic. Whether this timeline of 6 to 9 months is sufficient to bring back the construction activities to normal, needs to be observed.

AFFORDABLE RENTAL HOUSING COMPLEXES FOR MIGRANT WORKERS/URBAN POOR

The FM announced on May 14, 2020, that the Government will launch a scheme for providing affordable rental housing complexes (ARHC) for migrant workers/labourers & the urban poor under Pradhan Mantri Awas Yojana (PMAY). The announcement has been made considering the challenges faced by migrant workers and the urban poor to obtain houses at affordable rent. This scheme will be launched with the following course of action:

- Government funded housing in the cities shall be converted into ARHC under a public-private partnership (PPP) arrangement, with concessionaire model.
- Incentives shall be provided to manufacturing units, industries, institutions and associations to develop ARHC on their private lands and operate.
- Further, incentives shall also be provided to State Government Agencies/ Central Government Agencies to develop ARHC, for the aforementioned purposes.

The Ministry of Housing and Urban Affairs shall issue detailed guidelines in this regard.

ELP COMMENTS:

This is in addition to the existing affordable housing schemes launched by the Government under the PMAY, which, shall provide a better quality of life and also much-needed respite to the migrant workers/labor and the urban poor who have suffered adversely due to the onset of COVID-19 and simultaneously also incentivize manufacturing units, industries, institutions and associations.

EXTENTION OF CREDIT LINK SUBSIDY SCHEME

The FM on May 14, 2020, announced that the Credit Linked Subsidy Scheme (**CLSS**) shall be extended up to March 2021. The CLSS was announced for the lower Middle Income Group (annual income: INR 6 to 18 lakh) and was operationalized from May 2017, and was extended up to March 31, 2020. The Government anticipates that the move will create a boost in the investment in the housing sector by over INR 70,000 crore.

ELP COMMENTS:

An increased demand for affordable housing may be expected due to the extension of CLSS. It shall also boost the overall construction industry and will positively stimulate a demand for steel, cement, transport and other construction materials and enable the real estate sector to get a good restart. Additionally, it is also expected to create job opportunities.

STREET VENDORS, SMALL BUSINESS OWNERS, SHOPKEEPERS AND FARMERS

INTEREST SUBVENTION SUPPORT FOR MUDRA SISHU LOAN

This Scheme involves a relief of INR 1,500 crore. Salient features of this scheme are as below:

- Interest subvention support of 2% will be provided by the Government of India for a period of next 12 months to borrower of Shishu loans under MUDRA scheme.
- This Scheme applies only to Shishu loans, which have maximum upper limit of INR 50,000. The current portfolio of such loans is INR 1.62 lakh crore.
- Scheme is stipulated to benefit 3 crore people.
- Only those borrowers who are prompt in repayment will be eligible under this Scheme.

ELP COMMENTS:

The loanees of Shishu loans are mostly small shopkeepers, vendors, truck operators, food-service units, repair shops, machine operators, small industries, artisans, food processors and others, in rural and urban areas. Due to the COVID outbreak and the consequent lockdown these small units/businesses are severely impacted. Given the significance and the number of these small units/businesses and the livelihoods dependent on them, this scheme will not only provide relief to such units/businesses and but will also aid repayment of loans (considering reduced interest burden) therefore preventing defaults and the domino effect it causes in the financial system.

SPECIAL CREDIT FACILITY FOR STREET VENDORS

A special scheme of INR 5,000 crore will be launched within a month to facilitate easy access to credit to street vendors. Salient features of this scheme are as below:

- Working capital up to INR 10,000 will be provided to the street vendor.
- Incentives will be provided for adopting digital payments.
- Enhanced working capital credit would made available to those making prompt repayments.
- It is expected that approximate 50 lakh street vendors will have easy access to credit under this scheme.

ELP COMMENTS:

Due to the COVID outbreak and the consequent lockdown, street vendors are severely impacted and are out of business. It has become difficult for them to earn a living. Leave aside preserving money for restarting their business post lifting of lock down, most street vendors may be in a hand to mouth situation. This scheme will cover urban as well as rural vendors doing business in the adjoining urban areas. This scheme will support such street vendors in re-starting their businesses and consequently help them again start earning livelihood. It will also allow them to maintain a better credit record, as well as improving the credit rating of these street vendors. This would make them eligible for availing loans in the future as well, permitting them to expand their business.

CONCESSIONAL CREDIT VIA KISAN CREDIT CARDS

The FM announced institutional credit at concessional rates amounting to INR 200,000 Crore for farmers under the Kisan Credit Card scheme. The Kisan Credit Card scheme lets farmers take both short term and long-term credit facilities such as term loans and cash credit facilities, at low/capped rates of interest. Salient features of this drive are as follows:

- Farmers involved in Agriculture, Fisheries and Animal Husbandry are included under this drive.
- The drive will cater to credit requirements of around 2.5 crore farmers.
- Access to additional credit at concessional rates.

ELP COMMENTS:

This scheme will inject additional liquidity in the agricultural sector. Moreover, now fishermen and animal husbandry farmers will also be benefited.

Under this additional drive, the Government will reach out to the 2.5 crore farmers who don't have Kisan Credit Card. This scheme will provide credit to such farmers involved in Agriculture, Fisheries and Animal Husbandry therefore resulting in additional liquidity in farming sector which will boost farming activity.

ADDITIONAL EMERGENCY WORKING CAPITAL FUNDING FOR FARMERS

Under this Scheme, NABARD will extend additional re-finance support of INR 30,000 crore for meeting crop loan requirement of Rural Cooperative Banks and Regional Rural Banks. Salient features of this scheme are as follows:

- This Scheme is over and above INR 90,000 crore that will be provided by NABARD to this sector through refinance in the normal course during this year.
- Refinance support to Rural Cooperative Banks and Regional Rural Banks for crop loan requirements.
- Front-loaded on-tap facility to 33 State Co-operative banks, 351 (three hundred fifty-one) District Co-operative banks and 43 (forty-three Regional Rural Banks.
- This Scheme will benefit 3 crore farmers.

ELP COMMENTS:

The scheme ensures that the farmers (mostly small and marginal) have enough capital to carry out farming activities and meet the approaching (Rabi season) and the current (Kharif season) harvest requirements. Further, the front-loading infusion in aforementioned banks will additionally benefit these banks in managing their capital needs for the year, while simultaneously boosting credit growth in the farming sector and filling the credit demand void which remains, given the pandemic and otherwise.

TAX

Reduction in rates of TDS & TCS - Providing liquidity through reduction in rate of Tax Deducted at Source ("TDS")/ Tax Collected at Source ("TCS")

- In order to provide more liquidity in the hands of resident taxpayers, the TDS rates for specified non-salaried payments to residents and TCS rates for the specified receipts are reduced by 25%.
- The reduced rates shall be applicable for the remaining part of FY 2020-21 (i.e. from May 14, 2020 to March 31, 2021).

COMPARATIVE ANALYSIS OF THE EXISTING TDS RATES VIS-À-VIS THE REVISED TDS RATES ARE AS UNDER -

Section	Nature of Payment	Existing % of TDS	Revised % of TDS
193	Interest on Securities	10%	7.5%
194	Dividend	10%	7.5%
194A	Interest other than interest on securities	10%	7.5%
194C	Payment to contractors and sub-contractors	• 1% - If such sum paid to individual/ HUF • 2% - If such sum paid to any other person	• 0.75% - If such sum paid to individual/ HUF • 1.5% - If such sum paid to any other person
194D	Insurance commission	5%	3.75%
194DA	Payment in respect of life insurance policy	5%	3.75%
194EE	Payments in respect of deposits under National Savings Scheme	10%	7.5%
194F	Payments on account of re-purchase of Units by Mutual Funds or UTI	20%	15%
194G	Commission, prize etc., on sale of lottery tickets	5%	3.75%
194H	Commission or Brokerage	5%	3.75%
194-I	Payment of rent	• 2% - Machinery, Plant or Equipment • 10% - Land or Building, furniture and fittings	• 1.5% - Machinery, Plant or Equipment • 7.5% - Land or Building, Furniture and fittings
194-IA	Payment of consideration on acquisition of immovable property	1%	0.75%
194-IB	Payment of rent by individual or HUF	5%	3.75%
194-IC	Payment for Joint Development Agreements	10%	7.5%

Section	Nature of Payment	Existing % of TDS	Revised % of TDS
194J	Fees for professional services, FTS, royalty	• 2% - FTS, royalty for sale, distribution or exhibition of cinematographic films, call centers, etc. • 10% - Professional fees and royalty (others)	• 1.5% - FTS, royalty for sale, distribution or exhibition of cinematographic films call centers, etc. • 7.5% - Professional fees and royalty (others)
194K	Payment of dividend by Mutual Funds	10%	7.5%
194LA	Payment of Compensation on acquisition of immovable property	10%	7.5%
194LBA (1)	Payment of income by Business trust	10%	7.5%
194LBB(i)	Payment of income by In-vestment fund	10%	7.5%
194LBC (1)	Income by securitisation trust	• Individual/HUF – 25% • Others – 30%	• Individual/HUF – 18.75% • Others – 22.5%
194M	Payment to commission, brokerage etc. by Individual and HUF	5%	3.75%
194-O	TDS on e-commerce Participants (w.e.f. October 1, 2020)	1%	0.75%

REVISED TCS RATES APPLICABLE FOR THE PERIOD MAY 14, 2020 TO MARCH 31, 2021 ARE AS UNDER –

Type of Goods	Existing Rate	Revised Rate
Timber wood under a forest leased	2.5%	1.875%
Timber wood by any other mode than forest leased	2.5%	1.875%
Tendu leaves	5%	3.75%
A forest produces other than Tendu leaves and timber	2.5%	1.875%
Scrap	1%	0.75%
Minerals like lignite, coal and iron ore	1%	0.75%
Sale of Motor vehicle exceeding INR 10 lakh	1%	0.75%
Grant of lease, license, etc of Parking lot, Toll Plaza and Mining and Quarrying	2%	1.5%
Sale of any other goods (w.e.f October 1, 2020)	0.1%	0.75%

No reduction of TDS or TCS rates under Section 206AA

- It is clarified that there shall be no reduction in the rates of TDS and/ or TCS where tax is required to be deducted or collected at a higher rate due to non-furnishing of Permanent Account Number/Aadhaar Number

Due dates of compliances pertaining to FY 2019-20

Particulars	Existing due date	Revised due date
Income-tax return in non-audit cases	July 31, 2020	November 30, 2020
Tax audit report	September 30, 2020	October 31, 2020
Income-tax return in tax-audit cases	October 31, 2020	November 30, 2020
Transfer pricing audit report	November 30, 2020	November 30, 2020
Income-tax return in case of transfer pricing audits	November 30, 2020	November 30, 2020

Extension of time-barring proceedings

Particulars	Existing due date	Revised due date
Regular assessments for AY 2018-19	September 30, 2020	December 31, 2020
Regular assessments for AY 2019-20 and other assessments where the due date is March 31, 2021	March 31, 2021	September 30, 2021

- Accordingly, a three months extension has been granted for completion of regular assessment for AY 2018-19 and a six months extension has been granted for completion of regular assessment for AY 2019-20.
- However, no extension has been provided for regular assessment for AY 2017-18 in case where transfer pricing is applicable and will be barred by limitation by December 31, 2020.

Extension of timelines for applications and payments under the Direct Tax Vivad se Vishwas Act, 2020

Particulars	Existing due date	Revised due date
Application under the Direct Tax Vivad se Vishwas Act, 2020 without additional payments	March 31, 2020/ September 30, 2020	December 31, 2020

Refunds

- It is announced that all pending refunds for the following categories of taxpayers will be released immediately -
  - Charitable trusts
  - Non-corporate business and professions including proprietorship, partnership, LLP and co-operative societies

ELP COMMENTS:

Reduction of rates of TDS and TCS is a welcome move as it will enhance liquidity in the hands of businesses. That said, businesses will have to be mindful while computing their advance tax liability.

The deferral of due dates for filing tax returns, tax audits and assessments will provide much needed respite to taxpayers. Further, the extension of timelines under the Direct Tax Vivad Se Vishwas Act, 2020 will provide more time to taxpayers to evaluate their pending disputes and decide whether to avail the available option.

Further, expedited income-tax refunds tax for non-corporate taxpayers is a welcome move, however, such measures for corporate taxpayers would have ensured infusion of liquidity in businesses. Lastly, an income-tax investment allowance may have worked as a catalyst for attracting investments in India.

Overall, the direct tax measures are welcome and would certainly help businesses during such unprecedented times.

GLOSSARY OF TERMS

Abbreviation	Meaning
AD	Anti-Dumping
AE	Associated enterprise
AD Agreements	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.
AD Rules	Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
AIF	Alternative investment fund
ALP	Arm's length price
AMT	Alternate minimum tax
AO	Assessing officer
AOP	Association of persons
APA	Advanced pricing agreement
ARE	Alternate reporting entity
ASCM	Agreement on Subsidies and Countervailing Measures
AVGC	Animation, Visual effects, Gaming and Comics
AY	Assessment year
BBT	Buy-back tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base erosion and profit shifting project
Bill	Finance Bill 2020
BOI	Body of individuals
CAT	Common aptitude test
CBCR	Country by country reporting
CBDT	Central Board of Direct Taxes
CDRI	Coalition for Disaster Resilient Infrastructure
CGTMSE	Credit Guarantee Funds Trust for Micro and Small Enterprises
CGST Act	Central Goods and Services Tax Act, 2017
CPSE	Central Public Sector Enterprise
CTA	Customs Tariff Act, 1975
CVD	Countervailing Duty
CVD Rules	Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995
DDT	Dividend Distribution Tax
DGTR	Directorate General of Trade Remedies
DISCOMs	Distribution Companies
DPIIT	Department of Promotion for Industry and Internal Trade
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement entered into by India
EC	European Commission
ECB	External Commercial Borrowings
FAME	Faster Adoption and Manufacture of Hybrid and Electric Vehicles
FDI	Foreign Direct Investment

FTS	Fee for Technical Services
FII	Foreign Institutional Investors
FM	Finance Minister
FMV	Fair market value
FoFs	Fund of Funds
FPI	Foreign Portfolio Investors
FTA	Free Trade Agreement
FTP	Foreign trade policy
FY	Financial Year
G2B	Government to Business
GDP	Gross Domestic Product
G-Sec	Government securities
GST	Goods and Services Tax
HFC	Housing Finance Company
HNI	High net worth individual
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IDBI	Industrial Development Bank of India
IFSC	International Financial Services Centre
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
IIFCL	India Infrastructure Finance Company Limited
IIM	Indian Institute of Management
Ind AS	Indian Accounting Standards
INR	Indian Rupees
InvITs	Infrastructure Investment Trusts
IPO	Initial Public Offering
IT Act	The Income-tax Act, 1961
ITC	Input Tax Credit
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LRS	Liberalised Remittance Scheme
MAT	Minimum Alternate Tax
MFI	Micro Finance Institution
MNC	Multi-National Corporation
MoF	Ministry of Finance
MoC	Ministry of Commerce
MSME	Micro Small and Medium Enterprises
NABARD	National Bank for Agriculture and Rural Development
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent duty
NCLT	National Company Law Tribunal
NEFT	National Electronic Funds Transfer
NELP	New Exploration Licensing Policy
NHAI	National Highways Authority of India
NHB	National Housing Bank
NIIF	National Investment and Infrastructure Fund
NIP	National Infrastructure Pipeline
NPA	Non-performing assets
OECD	Organization for Economic Co-operation and Development
PAN	Permanent Account Number
PIB	Press Information Bureau
PMAY	Pradhan Mantri Awas Yojana

PPP	Public Private Partnership
PSU	Public sector undertaking
PTA	Purified Terephthalic Acid
QFIs	Qualified Foreign Investors
RBI	Reserve Bank of India
RBI Act	Reserve Bank of India, Act, 1934
RDB	Rupee Denominated Bond
REITs	Real Estate Investment Trusts
RERA	The Real Estate (Regulation and Development) Act, 2016
RIC	Road and Infrastructure Cess
ROO	Rules of Origin
RTGS	Real Time Gross Settlement
SAD	Special Additional Duty
SAED	Special Additional Excise Duty
SARFAESI	The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SDGs	Sustainable Development Goals
SEBI	Securities and Exchange Board of India
SEBI Act	Securities Exchange Board of India Act, 1992
SFT	Statement of financial transaction
TCS	Tax Collected at Source
TOT	Toll Operate Toll
TDS	Taxes Deducted at Source
TRQ	Tariff Rate Quota
UT	Union Territory
UTGST	Union Territory Goods and Services Tax
UDAN	Ude Desh ka Aam Naagrik
UDAY	Ujjwal DISCOM Assurance Yojana
UK	United Kingdom
USA	United States of America
WTO	World Trade Organisation

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