

**CS NEWS**

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**2017**



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**J Sundharesan & Associates**  
***Governance & Compliance Advisors***

63/1, Makam Plaza, 3rd Floor, West Wing, 3rd Main Road,  
18th Cross, Malleshwaram, Bengaluru - 560055

Phone: +91- 80 – 2344 0238/ 39, Cell: +919880026296

[www.jsundharesan.com](http://www.jsundharesan.com)

**2017 – "The year of Transparency". Substance or Form**  
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**BOARD ANATOMY – book authored by J. Sundharesan is now available at [amazon.in](http://amazon.in)**

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### **REVIVAL PROCEDURE FOR STRIKE-OFF COMPANIES**

Pursuant to the powers exercised under section 252 (3) of the Companies Act, 2013 (“the Act”) the Registrar of Companies (“RoC”) has started exercising the right to strike off the name of the companies from the Register of those companies that have not filed its Annual Return and Annual Accounts for the preceding three financial years. If these companies require to restore its name, the procedure to restore the name of the company is given below:

#### **Procedure for restoration of the name of company:**

The Company shall make an appeal to the National Company Law Tribunal (NCLT) to revive the name and shall adhere to the following steps in order to make the appeal.

The Company shall convene a meeting of the Board of Directors and pass a Board resolution to revive the company and thereafter make an application to the National Company Law Tribunal (herein after referred to as “NCLT”).

#### **A. Pass a resolution in the meeting of Board of Directors:**

The company shall convene a board meeting and pass the following resolutions:

- To restore the name of the company in the Registrar of Companies.
- To approve the Memorandum of appearance in favour of any person to appear before the NCLT in the matters of restoration of name of company.

#### **B. Make an application to the NCLT:**

1. A Director or member or creditor of the company shall make an application by way of a petition to the NCLT before the expiry of 20 years from the publication of notice of strike off of the company in the Official Gazette by the RoC under section 248 (5) of the Act.
2. Every application shall be made by filing Form No. NCLT. 1.
3. A general heading in all proceedings before the Tribunal shall be filed in Form No. NCLT.4
4. The applicant shall file an application in Form No. NCLT.9 with or without modifications along with the following documents:
  - Affidavit verifying the petition in Form No. NCLT 6 (all the affidavits shall be notarised from a public notary and apostilled).

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- Payment of fee as may be prescribed to be made by way of a demand draft in favour of “Pay and Accounts Officer”, Ministry of Corporate Affairs, payable at Chennai.
- To submit copies of the Memorandum of appearance along with the Board Resolution.
- Any other document supporting the case.
- A copy of the application shall be submitted to the RoC, not less than 14 days before the date fixed for hearing of the application before the NCLT.
- The NCLT shall hear the petitioner and if it is satisfied, it can order the restoration of name of the company in the record of the RoC.

Note: all documents in original are required to be submitted in triplicate to the NCLT.

**C. To File the order issued by NCLT to the ROC:**

1. Upon receipt of the order issued by the NCLT, the Company is required to file e-form INC-28 with the RoC to restore the name of the company in the register of companies along with a Certified true copy of the resolution and a copy of the order of the NCLT to the RoC within 30 days from the date of order.
2. RoC shall thereafter change the status from strike off to active and the name of the Company shall be restored.
3. The Company shall thereafter file the pending financial statements and annual returns with the Registrar of Companies and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.

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## HEADS UP ON EVENTS THAT LED TO HEADS TURN IN AUGUST 2017

### RBI flags concern over rising cyber attacks

While migration to digital payments bodes well for the country, both in terms of cutting the cost of printing currency as well as leaving a trail of all such transactions leading to better tax compliance, it also opens new risk frontiers as digital payment channels are introduced to people with varying economic background and literacy levels, according to Reserve Bank of India. The central bank's observations comes in the context of the rise in cyber attacks over the last few years. It elaborated that recent incidents such as misuse/compromise of a number of cards by launching ingenious attacks on an ATM infrastructure, remote cyber attack on a bank from an overseas vendor location and attack on a cross border fund transfer system (albeit no loss was incurred due to timely alert) pose serious concerns on the potential impact of such attacks on financial stability, if left unmitigated. "Not only simple attacks using phishing, vishing and social engineering, but also increasingly audacious attacks by organised gangs with or without backing by State players have come to light," the RBI said in its latest Financial Stability Report. The report observed that increasing confluence of demographic change and technological breakthroughs are forcing banks to adopt delivery channels such as ATMs, Internet and mobile banking, which are transforming them into faceless entities. The recent push for digitisation of financial transactions has led to growth in use of digital products, particularly the wallets and Unified Payments Interface (UPI). In April, the Government announced rolling out of the Bharat Interface for Money (BHIM) app across the country and exhorted people at large to adopt digital ways of payments and receipts. In such a scenario, no system can be considered safe unless the entire ecosystem is secure, which is very challenging to ensure, the central bank said. "Two aspects need to be appreciated in this context. One, technology has reached a section of population which is not yet fully geared to adopt technology in a risk-aware manner. Two, the vendor risk faced by the banks have become more complex with multiple levels of outsourcing, leading to sophisticated technical support being ultimately provided by lowly paid and often unskilled manpower," the RBI said. These need to be addressed quickly by spreading awareness on the risks and ensuring that technical services are provided only by technically skilled resources, it added. The report elaborated that a cyber security incident could threaten financial stability through three channels — incidents can (i) disrupt the operations of a financial firm that provides critical services, (ii) reduce confidence in firms and markets, and (iii) damage the integrity of key data

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**Taxman to attach shares if Cairn does not pay ₹10,395-crore tax**

The tax department has slapped a fresh notice on UK's Cairn Energy Plc seeking to take over the firm's residual 9.8 per cent stake in its erstwhile Indian subsidiary to recover ₹10,395 crores in a retrospective tax demand. The tax department had, in an unprecedented move, last month appropriated ₹1,500 crores of a tax refund due to Cairn Energy and another ₹666 crore of dividend income due to it for three years from its erstwhile subsidiary Cairn India (now Vedanta Ltd) to recover the ₹10,247 crore of tax plus interest. It has again written to Cairn Energy on June 26 asking it to repay the balance tax due, failing which it will take over its 9.8 per cent shareholding in Cairn India, a source said requesting not to be named as the information is not yet public. **15 days' notice** In the notice, the Income Tax Department gave the British firm 15 days to repay or face attachment of shares. The department moved to recover the tax after Cairn Energy lost an appeal against the retrospective tax demand in tax tribunal ITAT. On March 31 it issued a notice seeking ₹10,247 crore tax by June 15. As the company failed to pay, it went ahead to take over the refund and dividend income. The source said about ₹2,200 crore recovered so far does not even fully cover the interest due on the principal tax demand of ₹10,247 crore, which was levied over alleged capital gains the company had made in 2006 when it transferred India assets to a newly created firm, Cairn India, and listed in on stock exchanges. The outstanding tax demand is ₹10,395 crores, he said, adding an interest at the rate of 1 per cent will keep adding up every month on the tax demand. "Cairn Energy has time till July 11 to reply to the notice sent by tax recovery officer under Income Tax Certificate Proceedings rules. If the company does not reply, then the department is likely to issue warrant, which will be followed by a formal share attachment notice," the source said. **Wait and watch mode** The tax department, the source said, may go a little slow on selling of the shares as it is waiting to see whether Cairn Energy approaches the Delhi High Court challenging the ITAT order, which upheld the ₹10,247 crore tax demand on the British firm. The company has time till mid-July to appeal against the order in high court. The tax department has already filed a caveat in the Delhi High Court asking that before any judgement is passed on the case, the tax department should be heard. As many as 18.41 crore equity shares of Cairn India are under the attachment of Income Tax department. Another 73.65 crore preferential shares are also attached. These shares, when sold, could fetch the government around ₹5,990 crores at the current market price. The source said that on the date of attachment of shares on June 16, Cairn India shares were valued at ₹241 apiece. Cairn India shares closed at ₹285.40 on the BSE on Friday.

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**Apex court gives Britannia, ITC chance to settle dispute out of court**

The Supreme Court today gave an opportunity to Britannia Industries Limited and ITC Limited to settle their dispute regarding the alleged deceptive packaging of their digestive biscuits out of court. “The matter is adjourned sine die to enable the parties to effect an out-of-court settlement,” a bench of Justices Ranjan Gogoi and Navin Sinha said. The order to this effect was passed as the two companies sought time to try to amicably settle the dispute. ITC has moved the apex court challenging the Delhi High Court’s March 10 verdict allowing Britannia to use its earlier blue and yellow coloured package for selling its ‘Nutri Choice Digestive Zero’ biscuits. The order by a division bench of the high court had come on Britannia Industries Ltd’s plea challenging its single judge’s decision which had said the blue and yellow package was “deceptively similar” to that of ITC’s ‘Sunfeast Farmlite Digestive All Good’ The division bench had allowed the appeal saying that in the short span from 2016, when ITC first started selling its digestive biscuits in a package of blue-yellow colour, the combination could not have become identified with the company. The single judge had on September 6 last year granted relief to ITC Ltd by stopping rival Britannia Industries Ltd from selling its ‘Nutri Choice Zero’ digestive biscuits in a package having the blue-yellow colour combination. Britannia had thereafter approached the larger bench against the order, saying it was “erroneous” as the single judge had not considered the fact that their packaging was different from that of ITC’s. The single judge’s order had come on a plea filed by ITC Ltd seeking to restrain Britannia from violating its rights in packaging or trade dress of ‘Sunfeast Farmlite Digestive-All Good’ biscuits by allegedly using a “deceptively and confusingly” similar trade dress for ‘Nutri Choice Digestive Zero’ biscuits.

**Cyrus Mistry to face criminal defamation charges**

A Mumbai court on Tuesday admitted a criminal defamation complaint filed by Ramachandran Venkataramanan, the managing trustee of Tata Trusts, against former Tata Group chairman Cyrus Mistry, his brother Shapoor Mistry and their firms, seeking Rs 500 crore in damages and an unconditional apology. Venkataramanan, also known as Venkat, has accused the ousted Tata Sons chairman and others of making false statements against him, damaging his reputation. This is the first salvo fired from the Tata camp, which so far has been defending itself against charges made by Mistry. Other people who have been accused of wrongdoings by Mistry are also likely to take similar steps, sources in the know of the matter said. Mistry’s office called filing of the petition an “ill-advised and immature proxy battle” by the Tata camp through Venkat to “muzzle and interfere with legal proceedings” he has initiated against it, and said the

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former chairman will “continue to do the right thing” to protect the Tata Group from “oppressive conduct and mismanagement”. On Tuesday, additional chief metropolitan magistrate Krishna Paldewar ordered issue of notices to the accused — the Mistry brothers and directors of their companies, Cyrus Investments Pvt Ltd and Sterling Investments Pvt Ltd — directing them to appear before the court and execute bail bonds. The next hearing is scheduled for August 24. The brothers, through their investment firms, own about 18.4% of Tata Sons, the holding firm of the \$100-billion-plus Tata Group. They can move the high court seeking quashing of the complaint. Venkat claimed that an email that Mistry sent to Tata Sons directors and Tata Trusts trustees on October 25, 2016 contained “defamatory statements” about him. In the email, written a day after the Tata Sons board voted him out as chairman, Mistry had alleged about “certain fraudulent transactions of Rs 22 crore” involving non-existent parties in India and Singapore at AirAsia India, which is partly owned by Tata Sons, and stated that Venkat considered as “non-material” and “didn’t encourage any further study” of it. Mistry had also alluded to some foreign bank accounts in some of his statements. According to Venkat’s complaint, the email, which found its way to the media, caused “irreparable” damages to his reputation among his colleagues, family, friends and society. It also accused Mistry of making “false, malicious and derogatory” allegations against Venkat in filings with the National Company Law Tribunal in Mumbai.

In his filings, Mistry stated that Venkat had asked Tata Capital to offer loans to C Sivasankaran (a close friend Ratan Tata), which had turned bad. “I’ve been defamed in the eyes of the public at large,” Venkat said in his complaint. Venkat’s complaint came even as the National Company Law Appellate Tribunal is hearing an appeal between Mistry and Tata Sons. “Cyrus in his desperation and under bad advice, levelled baseless allegations against Venkat and others. Venkat had to respond to this and hence this complaint. This in an attempt to expose the truth, within the boundaries of law,” said Zulfiquar Memon of MzM Legal, the law firm representing Venkat and Tata Trusts. Cyrus Investments and Sterling Investment had moved the Mumbai tribunal against what they termed the oppression of minority shareholders and mismanagement at Tata companies.

The tribunal dismissed the petition saying the investment firms have insufficient shareholding to seek a legal recourse. It also declined to grant a waiver on the maintainability of the petition. The companies then appealed the tribunal's order at NCLAT, New Delhi, which is being heard now. Mistry’s office in an email added: “The move by the Tata trustees to attempt to muzzle and interfere with legal proceedings faced by them, now before the NCLAT, will be effectively and

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appropriately dealt with. We believe in the nation's legal system and know such subversion of justice systems will meet its fate. The petitioners in the NCLAT proceedings and Mr Mistry will continue to do the right thing ... and protect it (Tata Group) from oppressive conduct and mismanagement." The magistrate's court upheld arguments of Venkat's counsel from MZM Legal that Article 21 of the Constitution on right to life is inclusive of the right to live with dignity and that a millionaire and Mason are equal in the eyes of law under Article 14 — which provides for equality before the law and equal protection. "All such allegations were hurled irresponsibly against Venkat, Ratan Tata, Tata Sons and others only after his (Mistry's) unceremonious ouster from Tata Sons. Why was he otherwise silent for his entire tenure, not to speak about several of his wrongdoings against which Tata Sons may have its own cause of action," Venkat's counsel argued.

### **Bengaluru court orders attachment of former AirAsia India CEO Mittu Chandilya assets**

A Bengaluru court ordered the attachment of property belonging to former AirAsia India CEO Mittu Chandilya following a complaint filed by the airline that accused him of fund diversion. The court said in a June 29 order that moveable and immovable property be seized until Chandilya appears before it. It also asked him to explain why he should not be asked to furnish security to the tune of Rs 24.32 crore. Chandilya didn't respond to questions but an associate told ET he wasn't guilty of any wrongdoing and was being needlessly dragged into the Tata group's battle with ousted Tata Sons chairman Cyrus Mistry. AirAsia India, promoted by Tony Fernandes' AirAsia and the Tata Group, had sought recovery of the amount cited above at 18% interest from Chandilya from the date of its "siphoning" off till the date of actual payment. The airline said Chandilya had been evading legal processes and had not appeared before the Enforcement Directorate, which issued a notice calling for an inquiry. Chandilya is said to be out of India. ET reported on November 5 last year that a Deloitte Touche audit of AirAsia India appeared to show financial irregularities.

The initial findings suggested that Chandilya ordered payments to a Singapore based entity for bogus services and to an Indian firm that didn't exist in government records. The payments totalled about Rs 22 crore, the report said. The person close to Chandilya said he was being made a scapegoat in the Tata-Mistry battle. He said Chandilya will file a counter suit and seek a hearing to set aside the ex parte order. The person said Chandilya could prove his innocence and that all transactions had the approval of the AirAsia India board. After the transactions came to light, AirAsia India appointed retired police officer D Sivanandan to help with

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investigations. The transactions came to the light when Mistry, a day after being sacked as chairman of Tata Sons, sent a letter to board members and Tata Trusts trustees on October 25, 2016, alleging “certain fraudulent transactions of Rs 22 crore” involving non-existent parties in India and Singapore at AirAsia India. In that letter, Mistry said Tata Trusts managing trustee Ramachandran Venkataramanan, also a member of the AirAsia India board, considered the transactions as “non-material” and “didn't encourage any further study.” Mistry had also alluded to foreign bank accounts in some of his statements. On July 4, a Mumbai court admitted a criminal defamation complaint filed by Venkataramanan, the managing trustee of Tata Trusts, against Mistry, his brother Shapoor Mistry and their firms, seeking `500 crore in damages and an unconditional apology for the accusations against him.

### **Tech Mahindra CEO takes home more than entire boards of TCS, Infosys & Wipro**

In February, Tech Mahindra BSE 0.96 % suspended the appraisal cycle for employees with more than six years of experience pending a management review, as the IT industry grapples with several challenges. The affected employees—who are typically team leaders and above—will have to wait at least two quarters before they are told if they should expect a wage increase. However, Tech Mahindra Ltd has been the best paymaster when it comes to top executives for the last three years. It has offered a total remuneration of Rs 150.7 crore to CP Gurnani, managing director and CEO. Gurnani's total compensation for the year ended March 31, 2017, is more than the pay packet of the entire boards of TCS BSE -0.54 %, Infosys BSE -1.21 % and Wipro BSE -0.19 %, India's top three IT services firms, according to a VC Circle report on highest paid executives at public companies.

However, most of Gurnani's remuneration — Rs 147.17 crore— comes from the value of the stock options, which were granted to him earlier and exercised last year. His salary and the company's contribution to provident fund together were just Rs 2.56 crore. The total compensation of bosses of two of the top three IT firms in India rose. Former CEO of TCS, N Chandrasekaran, who is now chairman of Tata Sons, saw his remuneration rise to Rs 30.15 crore; CEO of Infosys, Vishal Sikka, took a minor pay cut to Rs 45.11 crore after walking home with a 10-fold hike in pay packet in FY2015-16; and Wipro chief too got a pay hike, according to the report. However, the current challenges are forcing Indian IT companies to spend more at the bottom of the staff pyramid. Indian IT firms are beginning to take a second look at their existing cost structures as they focus on defending their margins against higher visa costs and

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clients who demand pricing cuts. One of the ways to accomplish this is to broaden the pyramid by having more fresh talent than experienced employees who cost more.

### **NCLT reinstates Vikram Bakshi as MD of Connaught Plaza Restaurant (McDonald Case)**

In a big blow to McDonald's in its fight with its estranged joint venture partner, the National Company Law Tribunal on Thursday reinstated Vikram Bakshi as managing director of Connaught Plaza Restaurants (CPRL), the 50:50 local joint venture between Bakshi and the US-headquartered McDonald's that operates the fast food chain in north and east India. In its ruling passed on Thursday afternoon, Chief Justice MM Kumar held that all steps taken in pursuance of non-election of Vikram Bakshi as managing director are 'illegal, unlawful, unjust and malicious.' The status of Vikram Bakshi as managing director of Connaught Plaza is restored, the order stated. The proceedings of the meetings of the Board of Directors held on August 6, 2013, relating to re-election of Vikram Bakshi as managing director of the company are set aside, and declared illegal, unjust and mala fide, the order added. "I stand completely vindicated," said an elated Bakshi, who was dramatically ousted as managing director of CPRL in August 2013, and since then has been embroiled in a protracted legal fight with McDonald's, dragging the world's largest fast food chain to CLB in September 2013. McDonald's has been pursuing arbitration against Bakshi in the London Court of International Arbitration, which is likely to announce the verdict soon. Reacting to the order, McDonald's India Private Limited (MIPL) said "We respect the decision of the NCLT. We are examining the judgement and exploring our legal options in the matter."

The tribunal also appointed former Supreme Court judge Justice GS Singhvi as administrator to break the deadlock in the 50:50 joint venture of CPRL. The administrator will also have the power to vote in the meeting of Board of Directors. Late last month, CPRL shut down 43 out of 55 restaurants in Delhi as it failed to get the mandatory regulatory health licences renewed because of the infighting between Bakshi and McDonald's. "Reopening the outlets would be my biggest priority," said Bakshi, when asked about the timeframe to open the restaurants in Delhi. CPRL operates 168 restaurants in North and East India.

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**Vijay Mallya laundered over Rs 1,300 crore through 13 shell companies abroad: ED**

The Enforcement Directorate has said that liquor baron Vijay Mallya laundered over Rs 1,300 crore through 13 shell companies in US, Ireland, Mauritius and France. The agency has made this indictment against Mallya in its charge sheet filed on June 14 in the money laundering case involving a loan of about Rs 900 crore from IDBI-KFA bank. The charge sheet has indicted eight other persons too for their alleged roles in the case. The 57-page charge sheet or prosecution complaint, with voluminous annexures, was filed under various sections of the Prevention of Money Laundering Act (PMLA) before a special anti-money laundering court here. The ED has also said that these shell companies had no actual activities and was fully controlled by Mallya with former employees of UB group being its directors. The agency said the only purpose of these companies were to either obtain loan or launder money. The agency also said Mallya has huge property in the US in the name of his daughters - Leana and Tanya. The Enforcement Directorate had registered a criminal case in this deal last year under the PMLA and has attached assets worth over Rs 9,600 crore till now. The total loan sanctioned and disbursed by the IDBI bank to KFA was Rs 860.92 crore. The ED said its "money trail analysis revealed that out of the total loan of Rs 860.92 crore, sanctioned and disbursed by IDBI, Rs 423 crore has been remitted out of India. The said payments were shown to be made towards aircraft rental leasing and maintenance, servicing and spare parts." The agency is expected to soon file a supplementary charge sheet in this case. He has been in the UK since March 2016 and was arrested by Scotland Yard on an extradition warrant on April 18 this year. The CBI is also probing IDBI loan fraud case.

**Tata Motors MD Guenter Butschek writes impassioned letter to employees about the company's crisis**

Tata Motors BSE -1.42 % managing director Guenter Butschek has told employees in an impassioned letter that India's biggest truck maker is in a "crisis situation" at present, and that their collective focus must shift from a "transformation journey to a turnaround ambition." Writing to employees this week with what he described as the "utmost sense of urgency," the head of the country's biggest manufacturer of commercial vehicles singled out the division's lacklustre performance for immediate corrective action. "The performance of the CV business, which is the backbone of our company in terms of profitability and revenue, is really worrisome, as we have lost market share in all segments," Butschek said in the note, which ended with a reminder to his colleagues that "it is time to deliver." For the standalone entity, Mumbai-based Tata Motors

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closed FY17 with a loss of Rs 2,480 crore. The new fiscal year has also got off to an “extremely difficult start,” Butschek said, referring to the company’s muted truck sales performance offsetting the “early green shoots” visible in the car business. In FY17, Tata Motors’ commercial vehicle volumes increased by only 0.8%. Compared to this, the broader industry growth at 4%. Butschek called this dismal growth of the company “not a hallmark of a leader.” Part of the \$100-billion-plus Tata Group, the automotive company also owns the Jaguar and Land Rover brands. Tata Motors’ domestic mainstay is the commercial vehicles business, the fortunes of which are generally linked to economic cycles. Ashok Leyland, part of the Hinduja Group, is the biggest rival of Tata Motors in India’s truck industry. “Tata Motors is currently going through a turnaround phase, with a strong focus on improving the bottom line by rigorous cost reduction and sales enhancement, leveraging our superior range of new products,” a Tata Motors spokesperson told ET on the internal communication from the MD. “Our future product plans are also being periodically reviewed, based on the dynamic business situation.” host of causes, both external and internal, for the company’s inability to match rivals toe to toe in the truck business. **‘SURVIVAL OF THE FITTEST’**

The fact of the matter is we failed when it came to reading the market properly, to responding flexibly to changes, and to providing new products (advanced and white space) on time. The further deterioration of our performance in the last few weeks and the challenges that lie ahead of us confirm that we are in a crisis situation, where it is about survival of fittest,” he said. The company had made a provision of Rs 148 crore loss because of the BS III stock at the end of Q4, and the CV division’s dismal performance was also cited as a reason for the exit of Ravindra Pisharody, the unit’s executive director. The focus will now be on a rigorous cost reduction drive across all cost categories, regaining market share and driving volumes in the domestic CV business, zero tolerance on product launch delays, and addressing all supply constraints to meet the prevalent demand. He said the company is fully aligned with the board and is supported by the chairman, who has been closely working with the executive committee to mobilise the turnaround for our business. **‘STRETCHED TARGETS’** The next 3-6 months are absolutely critical for the company and employees will have to demonstrate high speed in taking corrective actions — to enhance sales, and to streamline supply issues by eliminating bottlenecks. “Our business plan is going to be extremely demanding with stretched targets, in terms of sales/market share and financial performance,” said the MD.

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Tata Motors has set an extremely aggressive and challenging task of improving the bottom line, firmly committed to our chairman and the board, he said. “This means that it will not be business as usual; it needs disruption. It requires a single minded obsession to deliver excellence and win back our leadership in the market place,” Butschek said.

### **RIL, Shell, ONGC asked to pay \$3 billion in penalty**

The government has ordered Reliance Industries (RIL), Shell and ONGC to pay a combined \$3 billion in penalty following an arbitration award in the Panna Mukta Tapti (PMT) oil field dispute that went in favour of the government, according to people familiar with the matter. RIL and Shell have appealed the arbitration award in a UK court. The oil ministry sent out a demand notice last month to Reliance and Shell, which own 30% each in the PMT fields off the Mumbai coast, as well as to ONGC that owns the balance 40% participating interest. The three companies have to pay the penalty proportionate to their stake in the fields. The arbitration panel had upheld the government view that the profit from the fields should be calculated after deducting the prevailing tax of 33%, and not the 50% rate that existed earlier. This will significantly increase the government’s share of profit petroleum. The tribunal also upheld the government’s position that marketing margin should be included in the price of gas, which would also increase its share of profit petroleum as well as a royalty payment. RIL, Shell and the oil ministry declined to comment. The dispute over state share of profit petroleum and royalty from the PMT fields raged for many years.

Late last year, a London-based tribunal of arbitrators issued a final partial award (FPA), upholding key contentions of the government. ONGC hasn’t been part of the arbitration or the current appeal. Shell became the operator of the field last year after taking over BG (formerly British Gas), the original operator of the field. Based on the outcome of the arbitration, the Directorate General of Hydrocarbons (DGH), an arm of the Oil Ministry, computed the money companies owe to the government and ordered them to pay. A decision by the UK court on the appeal by RIL and Shell will determine the future course of action. The PMT arbitration case is one of the many disputes Reliance is fighting with the government.

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## Corporate Development Judicial

<b>CASE LAW</b>	FX Enterprise Solutions India Pvt. Ltd v. Hyundai Motor India Ltd [CCI]
<b>DECIDED ON</b>	June 14, 2017
<b>LEGISLATION</b>	Competition Act, 2002- Section 3
<b>BRIEF FACTS</b>	Anti competition agreements- Resale price maintenance through discount control mechanism- cease and desist order passed penalty also imposed on HMIL.

**Facts:** The Informants alleged the following violations against HMIL. The OP enters into exclusive dealership arrangements with its dealers, and dealers are required to obtain prior consent of the OP before taking up dealerships of another brand. It is further alleged that HMIL's dealers are bound to procure spare parts, accessories and all other requirements, either directly from OP or through vendors approved by the OP. It is further alleged that the OP also imposes a "Discount Control Mechanism" through which dealers are only permitted to provide a maximum permissible discount and the dealers are not authorised to give discount which is above the recommended range. This is alleged to amount to "resale price maintenance" in contravention of Section 3(4) (e) of the Act. It is also alleged that HMIL is responsible for price collusion amongst competitors through a series of "hub - and - spoke" arrangements. The High Court has taken the view in favour of such people. Thus, aggrieved the NCT of Delhi and Delhi Development Authority are in appeals before this Court.

Informant-1 has alleged that HMIL perpetuates hub and spokes arrangement, wherein bilateral vertical agreements between supplier and dealers and horizontal agreements between dealers through the role played by a common supplier, results in price collusion. Finally, it is alleged that HMIL has control over the sources of supply for the dealer's products and ties the purchase of desired cars to the sale of high-priced and unwanted cars to its dealers and HMIL designates sources of supply for complementary goods for dealers as well as, which result in a "tie-in" arrangement in violation of Section 3(4) (a) of the Act.

**Decision:** Cease and desist order passed. Penalty imposed.

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<b>CASE LAW</b>	Delhi Metro Rail Corporation Ltd. V. Delhi Airport Metro Express Pvt. Ltd [del]
<b>DECIDED ON</b>	June 7, 2017
<b>LEGISLATION</b>	Arbitration and conciliation Act, 1966
<b>BRIEF FACTS</b>	Single judge directs deposit of Rs.65 crores with the bank of Respondent to cover interest charges- whether tenable- Held, Yes.

**Facts:** Disputes arose between the parties in respect of the contract relating to the airport metro line. The Arbitral Tribunal has rendered an Award in favour of the respondent in the sum of Rs.4670 crores including interest till the date of the Award. The appellant DMRC, moved the High court against the award.

In the order dated 30.05.2017 (hereinafter referred to as “the impugned order”) the learned Single Judge has directed the respondent/appellant herein to pay a sum of Rs.60 crores directly to Axis Bank who is stated to be the lead lending bank to the petitioner (before learned Single Judge and respondent herein) to protect the rights of the appellant herein, the respondent has been directed to furnish an unconditional bank guarantee to the extent of Rs. 65 crores which would cover the factor of interest at the rate of 12% per annum should the appellant herein succeed. The appellant challenged this order before the Division Bench.

**Decision:** Appeal dismissed

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## From the Government

### **Companies (Audit and Auditors) Second Amendment Rules 2017**

*[Issued by the Ministry of Corporate Affairs vide [F. No. 1/33/2013- CL-V (Vol.I)] dated 22.06.2017. Published in the Gazette of India, Extraordinary, Part-II, Section (3) Sub-section(i) vide GSR 621(E) dated 22.06.2017]*

In exercise of the powers conferred by section 139 read with subsections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014, namely: —

1. Short title and commencement -
  - (1) These rules may be called the Companies (Audit and Auditors) Second Amendment Rules, 2017.
  - (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Audit and Auditors) Rules, 2014, in rule 5, in clause (b), for the word “twenty”, the word “fifty” shall be substituted.

### **Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations”)**

*[Issued by the Securities And Exchange Board of India vide Circular [F. No. CIR/CFD/DIL/57/2017] dated 15.06.2017.]*

1. Regulations 111A and 111B of ICDR Regulations inter alia specify liability of a listed entity or any other person for contravention and actions which can be taken by the respective stock exchange and the revocation of such actions, in the manner specified by SEBI.
2. Stock exchanges shall impose fines on the companies for non-compliance with certain provisions of ICDR Regulations.
3. The amount of fine realized as per the above structure shall be credited to the “Investor Protection Fund” of the concerned recognized stock exchange.

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4. The recognized stock exchanges shall disseminate on their website the names of non-compliant listed entities that are liable to pay fine for non-compliance, the amount of fine imposed, details of fines received, etc.
5. The recognized stock exchange shall issue notice to the noncompliant listed entity to pay fine within 15 days from the date of the notice.
6. If any non-compliant listed entity fails to pay the fine, the recognized stock exchange may initiate appropriate enforcement action, including prosecution.
7. In consultation with the stock exchanges, it is further clarified with respect to bonus issue delays:
  - For the purpose of a bonus issue to be considered as 'implemented' under Regulation 95(1) of ICDR Regulations, the date of commencement of trading shall be considered.
  - The recognized stock exchange shall grant approvals to the bonus shares allotted to persons other than the promoter(s) in the interest of the investors, subject to compliance with other requirements.
  - The approvals for the promoters' bonus shares may be granted by the Stock Exchange after payment of the requisite fine by the company.
8. The Stock Exchanges are advised to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on its website.
9. This circular is issued under regulations 111A, 111B and 112 of ICDR Regulations.
10. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework/Circulars".

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**SAVE OUR ENVIRONMENT**

**WORLD'S CUTEST SOLAR FARM IN CHINA IS SHAPED LIKE A PANDA**

China has built a solar power farm in Datong in the shape of a giant panda. The 248-acre solar farm will have a capacity of 100MW, providing 3.2 billion kWh of green electricity in 25 years.



This one has been structured in the shape of a sitting panda whose eyes look in different directions. While monocrystalline silicone solar cells form the black parts of the panda, the white and gray parts are filled with thin film solar cells.

A 100MW Panda Power Plant can provide 3.2 billion [kilowatt-hours] of green electricity in 25 years, equivalent to saving 1.056 million tons of coal, or reducing 2.74 million tons of carbon dioxide emissions.

The project is backed by United Nations Development Programme (UNDP) and will play a crucial role to engage young people in sustainable development. The project will also help to reduce carbon emissions by around 2.74 million tons.

The project is part of a larger effort to raise awareness among young people in China about clean energy, the UNDP wrote in a statement. The groups are aiming to build more panda-shaped solar plants throughout the country in the coming years.

Source: <http://indianexpress.com/article/world/china-just-built-a-cute-solar-plant-shaped-like-a-panda-4741166/>

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**UPDATES****RBI UPDATES**

- Audit Committee of the Board of Directors”, wherein it has been advised that Audit Committee of the Board of Directors (ACB) should be chaired by any one of the non-executive/ non-official directors.
- The Reserve Bank of India had issued a Press Release on June 13, 2017 bearing reference number 2016-2017/3363 (“Press Release”) titled 'RBI identifies Accounts for

**MCA UPDATES**

- **Public Notice - Pursuant to the Rule 37(2) of the LLP Rules, 2009 –**

In the matter of striking off of LLPs under section 75 of the LLP Act, 2008 read with the Rule 37 of the LLP Rules, 2009. Notice given that the Registrar has a reasonable cause to believe that many LLPs listed by ROC, have not been carrying on any business or operation for a period of two immediately preceding financial years. And, therefore, proposes to remove/strike off the names of the above-mentioned LLPs from the register and dissolve them unless a cause is shown to the contrary, within one month from the date of the notice.

- **The following e-Forms have been revised during the month –**
  - E-Form – AOC-4
  - E-Form – CRA-2
  - E-Form – 21A
  - E-Form SPICE

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