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2019 – "Year of Conflicts" - Overtly or Covertly

"Governance is being eminent, not effective"

Update on ARFLA and DIR-3 KYC

ARFLA:

The present email-based reporting system for submission of the FLA return will be replaced by the web-based system online reporting portal.

Following are the main features of the revised Foreign Liabilities and Assets Information Reporting (FLAIR) system:

a) Reserve Bank would provide a web-portal interface https://flair.rbi.org.in to the reporting entities for submitting "User Registration Form" (containing entity identification and business user details, where LLPs and AIFs will no longer required to use dummy CIN). The successful registration on web-portal will enable users to generate RBI-provided login-name and password for using FLA submission gateway and would include system-driven validation checks on submitted data.

b) The form will seek investor-wise direct investment and other financial details on fiscal year basis as hitherto, where all reporting entities are required to provide information on FATS related variables (it was mandatory only for subsidiary companies earlier). In addition, the revised form seeks information on first year of receipt of FDI/ODI and disinvestment.

c) Reporting entities will get system-generated acknowledgement receipt upon successful submission of the form.

d) They can revise the data, if required, and view/download the information submitted.

e) Entities can submit FLA information for earlier year/s after receiving RBI confirmation on their request email.

f) The existing mechanism of email-based submission of FLA forms will be discontinued.

DIR-3 KYC:

As per the General Circular Number 07/2019 dated June 27, 2019 released by the Ministry of Corporate Affairs,

1. It is being proposed that every person who has already filed DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service, with pre-filled data based on the records in the registry, for ease of verification by the person concerned.

However, in case a person wishes to update his mobile no. or e-mail address, he would be required to file e-form DIR-3 KYC, as this facility of updation is not being proposed in the web-based service. In case of updation in any other personal detail, e-form DIR-6 may be filed for updation of the same before completion of KYC through the web-based service.

2. The amendment in the relevant rules including the amendment related to extension of time (allowing for adequate time) for completion of KYC through e-form DIR-3 KYC or the web-based service, as the case may be, is being notified shortly.

HEADS UP ON EVENTS THAT LED TO HEADS TURN IN JUNE 2019

SEBI mishandles NSE co-location case

The move by the Securities and Appellate Tribunal (SAT) to grant an interim stay on SEBI's strictures against the National Stock Exchange (NSE) and the 12-key accused, which include brokers, in the 'preferential access' scandal shows the market regulator in poor light. The seeming lack of thoroughness in the investigation stands out. The key question is why SEBI did not conduct any investigation into collusion and fraud at the NSE. The co-location case points to market rigging, through a 'deliberate procedural lapse' in the trading systems at the NSE. But SEBI has viewed this merely as a 'violation of code of conduct' norms. SEBI's ₹1,000 crore disgorgement order does not measure up to the scale of wrongdoing.

A more serious charge under Prevention of Fraudulent and Unfair Trade Practices (PFUTP) was dropped by SEBI against NSE and its officials in the co-location case. In its order, SEBI said, "alleging fraud against the exchange, in this scenario, (is) tantamount to attributing intention or knowledge of which there is no proof." Instead of joining the dots, such as linking NSE's defective co-location systems, which lacked essential safeguards, with the sharing of key data with conflicted researchers, SEBI seems to have broken down the colossal case of preferential access into several isolated instances and concluded that procedural lapse cannot be termed as 'fraud.' Previous scams: History shows that the origin of any markets scam can be traced to a 'procedural lapse' at varying levels. The Harshad Mehta and Ketan Parekhscams, for instance, involved a procedural lapse in the banking system. But a criminal probe conduced after the initial leads resulted in the unearthing of mega scandals. SEBI says it dropped the PFUTP charge in the co-location case due to "absence of facts pointing towards collusion of employees with trading members (TMs), or proof of specific discrimination towards any specific TM... or accrual of monetary benefits/ unjust enrichment to any employee or TM." The issue here is whether SEBI can justifiably arrive at these conclusions without a thorough probe. Curiously, the key mandate of forensic auditors against the NSE was just to check systemic lapse; the emphasis was never on detecting fraud. How can SEBI be certain that there was no fraud when no investigation was conducted to determine the same? Also, there are complaints of conflict of interest between the forensic auditors and the NSE. Was the co-location issue a mere code of conduct violation? Years ago, SEBI had registered a criminal complaint regarding forgery of a letter involving PR executives of Pyramid Saimira. In that case, it took police assistance to conclude there was price rigging. Why not adopt the same approach for the current preferential access case? SEBI's Technical Advisory Committee, in its report, had said the NSE architecture was prone to manipulation, market abuse, and that some TMs got preferential access, an advantage

over others. But SEBI has pinned this to "flouting principles underlying the conduct of the business of a stock exchange." The fact that NSE ignored complaints of misuse of its architecture has been conveniently ignored too. SEBI holds researchers Ajay Shah, trading software seller Sunita Thomas and her company Infotech Financial at fault for violating PFUTP rules in order to extract data from the exchange for 'commercial gains'.

But a full trail of their alleged collusion with NSE bosses is left unexplored. The regulator did not issue any paper for public comment, as it does before announcing any major initiative, when NSE launched co-location in 2009. Was a thorough proposal seeking permission to start co-location submitted by NSE to SEBI and did the exchange allow any inspection of its systems to the regulator? The NSE could well argue in court that its profit from co-location can't be termed as 'ill-gotten wealth' as there is no charge of 'fraud' against it, and hence no huge disgorgement is required. The same goes for brokers. Since there is no 'fraud' at NSE, what wrong could brokers have done? Why should they agree to 'disgorge' even a penny? SEBI's method of calculating NSE's 'ill-gotten wealth' that is marked for disgorgement is questionable. By its logic, the NSE earned ₹1,000 crore from co-location, but all the accused, including brokers who got preferential access to the exchange systems, did not even make ₹100 crore. Also, the NSE and its officials who could not be charged with violation of PFUTP in one case of preferential access were subject to 'fraud' and charged with violation of PFUTP (by attributing intention or knowledge) in another case involving dark fibre cable network. Dark fibre and co-location are just two aspects of preferential access or connectivity to the exchange. In the dark fibre case, SEBI has asked NSE to deposit ₹62 crore of estimated 'ill-gotten wealth', but where is the estimate of the money the exchange officials made? The move by CBI, which inforrmed the Delhi High Court that its investigation was not restricted to the FIR which was initially registered, is welcome. Unfortunately, it took a PIL to get an investigating agency to promise that it will examine all entities, irrespective of the seniority of those allegedly involved.

Source:https://www.thehindubusinessline.com/opinion/sebi-mishandles-nse-co-location-case/article27406339.ece

SAT's no order in PW case puts firms, SEBI, auditor in a spot

The case involving auditor Price Waterhouse (PW), which was said to be country's biggest accounting scandal, has put many listed companies and market regulator SEBI in a dilemma. PW had been barred by SEBI from auditing listed companies in India for two years over charges of its collusion with directors and employees of Satyam Computer Services. But the Securities and Appellate Tribunal (SAT) had allowed PW to conduct audit till March 2019.

Though, it has been nearly 10 weeks now after SAT had concluded its hearing in the PW matter, no sign of a final order from it has put SEBI and companies in a Catch-22 situation over the status of PW as an auditor, sources close to the development told Business Line. “It is difficult to decide for companies and SEBI on the status of PW after March and many are wondering if the auditor should be allowed to carry on its business as usual. Companies are asking SEBI (the same),” a regulatory official said. While there is no time limit for tribunals to issue their orders after a hearing in the matter is concluded, SAT has usually issued its directions in around a couple of weeks, lawyers dealing with the tribunal said. Presiding Officer’s recusal: In January 2018, SEBI had said that PW could only service existing clients up to March 31, 2018. But SAT, which heard the appeal against the orders passed by SEBI, extended the deadline by a year or until a new SAT bench is formed, whichever was earlier. SAT Presiding Officer Justice JP Devadhar had recused himself from the PW case. Another member Jog Singh demitted office in February, leaving only CKG Nair, to hear the pleas. A single member cannot hear cases or pass final orders since the working of SAT requires a proper quorum. There are two other officials at SAT — Tarun Agarwala and MT Joshi — who joined the tribunal only a few months back and conducted the hearing. An order in the PW matter is now eagerly awaited for further action, legal experts said. Price Waterhouse had filed two appeals against SEBI in February. One of these was a plea to allow it to continue its audit activity until March 2020. The SAT had temporarily allowed PW to carry on its business until March 2019 and had even denied further extension.

Source:https://www.thehindubusinessline.com/markets/sebi-in-a-spot-over-tribunals-delay-in-passing-order-in-pw-case/article27426282.ece

Independent directors will soon have to take exams before appointment

Independent directors on company boards will soon have to clear an exam before they can be appointed, said Injeti Srinivas, the top bureaucrat in charge of corporate affairs. Who will watch the watchdogs has become a burning question in India, which has in the past year charged a jeweller with defrauding a state-run lender of more than $2 billion, seen defaults at non-bank financiers send its financial system to the brink of a crisis, and and watched as billionaires toppled into bankruptcy. Observers say the companies’ independent overseers should have detected signs of trouble even before they manifested. “We want to demolish the myth that independent directors don’t have any fiduciary duty,” Srinivas said in an interview in New Delhi on June 6. “We want to propagate corporate literacy to make them aware of their duties, roles and responsibilities.” The exam will be an online assessment covering the basics of Indian company law, ethics, and capital market norms among other areas, Srinivas said.

While aspiring directors will have a fixed time frame within which they have to clear the exam, they will be allowed an unlimited number of attempts, he said. Experienced directors who have already been on boards for several years will be exempt from the test but will have to register themselves on a database the government is preparing. This compilation will be a one-stop platform where companies looking for independent directors can meet those willing to serve, Srinivas said. According to existing law, every company listed in India has to have independent directors accounting for at least a third of its board strength. Their main duty is to act as overseers outside the influence of the firm, safeguarding the interests of minority shareholders. Recent experience has shown lapses. Top banks are grappling with allegations of improper lending and the banking regulator banned SR Batliboi & Co., an affiliate of EY, from bank audits for 12 months. Credit rating companies failed to warn of impending defaults at IL&FS Group, and the Corporate Affairs Ministry has sought a five-year ban on Deloitte saying that they failed to enquire into IL&FS loans.

Source:https://www.thehindubusinessline.com/economy/policy/independent-directors-will-soon-have-to-take-exams-before-appointment/article27891039.ece

PwC resigns as statutory auditor of RCap, Reliance Home Finance

After the rating downgrades of Reliance ADA Group companies, a statutory auditor has resigned from Reliance Capital (RCap), a systemically important non-deposit taking NBFC, and its subsidiary Reliance Home Finance (RHF). Price Waterhouse & Co (PwC) has resigned as one the statutory auditors of RCap with effect from June 11. The reason cited by PwC, via separate stock exchange filings by RCap and RHF, is that as part of the ongoing audit for FY19, it noted certain observations/transactions which, in its assessment, if not resolved satisfactorily, might be significant or material to the financial statements, and that it did not receive satisfactory response to its queries. Both the Reliance companies said PwC cited their failure to convene audit committee meetings within the expected time, despite multiple letters of intent sent to them, as one of the reasons for the resignation. “According to PwC, these actions by the company have prevented it from performing its duties as statutory auditors and exercising independent judgment in making a report to the members of the company, and impaired its independence, and hence, it is no longer in a position to complete the audit and instead feels compelled to withdraw from the audit engagement and resign,” said the individual filings. RCap and RHF said they do not agree with the reasons given by PwC for the resignation. They duly responded to the various queries and letters of PwC and also convened a meeting of the audit committee on June 12, they added. “The company expected PwC to have participated in the meeting of the audit committee and not resigned on the eve thereof,” said the filings.

The companies said they will ensure that PwC's observations are fully examined by the continuing statutory auditor — Pathak HD & Associates for RCap and a new statutory auditor for RHF — before finalising the audit for the accounting year ended March 31, 2019. They further said they might initiate legal proceedings against PwC. RCap shares closed at ₹87.50 on Wednesday, down 6.82 per cent, on the BSE. RHF shares closed at ₹17.05, down 3.94 per cent. Major setback: ICICI Securities, in a report, said that following the recent rating downgrade of subsidiaries to 'default', the resignation of the auditor comes as a major setback for the parent company. PwC's resignation comes in the backdrop of Chairman Anil Ambani on Tuesday emphatically stating that the group is servicing its debt payments and will continue to reduce its arrears.

Source:https://www.thehindubusinessline.com/companies/pwc-resigns-as-statutory-auditor-of-reliance-capital-reliance-home-finance/article27838562.ece

No plans to make a comeback on YES Bank board: Rana Kapoor

YES Bank founder Rana Kapoor, on Thursday, said he does not want to come back on the board, and expressed full confidence in the new Managing Director and CEO Ravneet Gill. The private sector lender's shares, however, fell nearly 13 per cent on Thursday. "The Rana Kapoor promoter group fully supported and voted in favour of all 19 resolutions at the 15th AGM on June 12. The YES Bank leadership team, MD and CEO Ravneet Gill, and board of directors have my fullest support," Kapoor said in a series of tweets. He also denied that he is attempting a comeback to the board. "I reiterate that I have fullest confidence and conviction in the management under Ravneet Gill's leadership and board of directors. YES Bank is an embodiment of Indian professional entrepreneurship, and the ongoing 'Hanumanian' efforts will overcome this transitional phase," he further said. His comments come a day after the bank's annual general meeting which he did not attend. Kapoor's term as MD and CEO of YES Bank came to an end on January 31 after the RBI did not agree to a proposal for a longer tenure. At the AGM on Wednesday, shareholders of YES Bank were keen on knowing the bank's strategy to improve its financials, as well as plans of the top management, although there were not too many questions on the re-entry of the private sector lender's founder Managing Director and CEO Rana Kapoor. "The management clarified the board-level exits in the last one week. Downgrades were also discussed, but it is up to the rating agencies. The management said that once there is performance in one or two quarters, the rating will be changed," said Dinesh Bang, a CA and a shareholder of YES Bank, who attended the AGM. He further said that not much was discussed on the re-entry of Kapoor. "I think, once the RBI has cut short the term, backdoor entry is not possible," he said, adding that shareholders wanted to know about the new management.

Scrip falls: The YES Bank scrip fell 12.96 per cent on the BSE on Thursday to close at ₹117.20 apiece. This could possibly be a reaction to a report by Swiss brokerage UBS, which sharply cut its price estimate on the stock, saying the risk of NPA is higher than current expectations.

Source:https://www.thehindubusinessline.com/money-and-banking/no-plans-to-make-a-comeback-on-yes-bank-board-rana-kapoor/article27901582.ece

Prannoy, Radhika Roy barred from key positions at NDTV

Prannoy and Radhika Roy, founders and Directors of NDTV, can no longer hold any key managerial position in the television media company. SEBI on Friday also barred the Roys and RRPR Holdings, the company through which they own a stake in NDTV, from accessing, or even associating with, the capital markets for two years. The duo cannot exit any of their equity or mutual fund holdings during the period, as these assets will remain frozen. SEBI passed these strictures against the Roys for their alleged failure to disclose material information to the markets. SEBI said it had received complaints in 2017 from Quantum Securities, a shareholder of NDTV, alleging that RRPR Holdings and the Roys omitted to make disclosures on material information about their loan agreements with Vishvapradhan Commercial Pvt Ltd (VCPL). ₹350-crore loan: SEBI's investigations found that Prannoy Roy had taken a loan of ₹350 crore from VCPL in July 2009 to repay a loan from ICICI Bank taken in October 2008. VCPL's loan to Roy did not carry any interest, whereas the loan from ICICI Bank carried 19 per cent interest. SEBI found there were pre-conditions in the VCPL loan agreement. "What is more noteworthy is the fact that in Schedule 3 of (the) VCPL Loan Agreement1, it was mandated that certain matters pertaining to NDTV or NDTV Group, viz: any matter pertaining to equity shares of NDTV that reduces the aggregate valuation of NDTV to less than ₹1,346 crore (valuation at which VCPL put money into the company), buyback of equity shares by NDTV, merger, amalgamation or consolidation of NDTV with any other entity etc., required prior approval of VCPL, thereby, potentially affecting the interest of public shareholders of NDTV. Therefore, the VCPL Loan Agreement-1 was alleged to be material and price-sensitive in nature which ought to have been disclosed by Notices to NDTV who in turn should have disclosed the same to the stock exchanges," SEBI said in its order. Investigation also found that the VCPL Loan Agreement-1 was not in the public domain and the information was alleged to have been concealed by Notices from the public shareholders of NDTV.

Source:https://www.thehindubusinessline.com/companies/prannoy-radhika-roy-barred-from-key-positions-at-ndtv/article27943049.ece

UCO Bank declares Yashovardhan Birla as wilful defaulter

State-owned lender UCO Bank has declared Yashovardhan Birla as wilful defaulter for non-payment of Rs 67.55 crore given to Birla Surya Ltd. The loan was given by UCO Bank as part of consortium including State Bank of India, Punjab National Bank and United Bank of India. The bank has a filed suit to recover the amount from the defaulter, according to the information made public by the bank on its website. According to a public notice, Birla Surya Ltd was sanctioned a credit limit of Rs 100 crore for fund-based facilities, for the purpose of manufacturing multi-crystalline solar photovoltaic cells, from UCO Bank's corporate branch at Nariman Point, Mumbai. "Due to the non-repayment of dues to the bank, the account was declared as an non-performing asset (NPA) on June 3, 2013. The borrower has not repaid the dues owed to the bank, despite several notices. The borrower company and its directors, promoters, guarantors were declared as wilful defaulters by the bank and their name reported to the credit information companies for public information," the notice said. Once declared a wilful defaulter, as per RBI's instructions, the borrower is not sanctioned any additional facilities by banks or financial institutions and the unit is debarred from floating new ventures for five years and lenders may initiate criminal proceedings against the company and its directors. The Kolkata-based lender has issued a list 665 wilful defaulters and the amount outstanding that they owe to the bank, as part of a name and shame exercise. Other prominent wilful defaulters released by the bank include Zoom Developers with outstanding loan amount of Rs 309.50 crore, First Leasing Company of India with Rs 142.94 crore, Moser Baer India with Rs 122.15 crore and Surya Vinayak Industries with NPA of Rs 107.81 crore.

Source:https://www.thehindubusinessline.com/money-and-banking/uco-bank-declares-yashovardhan-birla-as-wilful-defaulter/article27993265.ece

ED arrests two former IL&FS executives

The Enforcement Directorate on Wednesday arrested two former executives in connection with its money laundering probe in the IL&FS alleged financial irregularities case, officials said. They said former joint MD of the company Arun K Saha and MD of transportation network K Ramchand were arrested late evening in Mumbai under the Prevention of Money Laundering Act (PMLA). These are the first arrests in this case by the Enforcement Directorate. The two will be produced before a special PMLA court in Mumbai on Thursday, they said. The central agency had filed a money laundering case in February this year and had twice raided a number of former executives in order to obtain additional evidence. The debt crisis at the infrastructure lender came to light following a series of defaults by its group companies beginning September 2018.

The ED's case is based on an FIR filed before the Economic Offences Wing (EOW) of the Delhi Police in December last year. Ashish Begwani, Director of Enso Infrastructures (P) Ltd, had filed the case against officials of IL&FS Rail Ltd for allegedly causing ₹70 crore loss to his company by fraudulent means.

Source:https://www.thehindubusinessline.com/companies/ed-arrests-two-former-ilfs-executives/article28077939.ece

Bank fraud case: ED attaches Sterling Biotech promoters' assets worth ₹9,778 crore

The Enforcement Directorate (ED) has attached properties worth ₹9,778 crore in a case of cheating and bank fraud committed by Sterling Biotech Ltd (SBL) and the Sandesara Group. This includes four oil rigs and the oilfield OML 143 located in Nigeria,held by Sterling Energy Exploration Pvt Co Ltd (SEEPCO). The main promoters of the company — Nitin Sandesara, Chetan Sandesara and Deepti Sandesara — have been accused of siphoning bank loans for personal purposes, diverting them to their oil business in Nigeria and violating RBI rules, said an ED statement. Ships registered in Panama and held in the name of Atlantic Blue Water Services, a business jet registered in the US and held by SAIB LLC, and a residential flat in London have also been attached. Last year, the ED had attached ₹4,730-crore worth of properties after a case was registered by the CBI in 2017 for cheating and bank fraud to the tune of ₹5,383 crore against the company and its promoters. SBL had obtained loans in Indian and foreign currencies from a consortium of lenders including Andhra Bank, UCO Bank, State Bank of India, Allahabad Bank and Bank of India. "It is revealed during investigation that the loan funds were diverted for non-mandated purposes, layered and laundered through a web of multiple domestic as well as offshore entities. The main promoters have not only siphoned off loan funds to finance their Nigerian oil business, but also for their personal purposes," the ED stated. Multiple violations: Investigations also revealed that the group was engaged in round-tripping of standby letters of credit (SBLCs) funds to the tune of ₹4,500 crore, violating RBI norms. The SBLCs later on devolved on the guarantor banks. The promoters' strategy included incorporation of multiple shell companies, conducting circular transactions to artificially inflate the turnover of flagship companies, claiming higher depreciations on non-existent machinery to avoid tax liabilities, artificial share trading with the shell companies, and layering and laundering of the proceeds of crime in India and abroad through a web of shell companies. ED investigation has also revealed that the promoters used their employees' names and incorporated 249 domestic and 96 offshore shell companies.

The original PAN cards, stamps, seals, memorandum of association and signed blank cheque books of the shell companies have been seized by the ED from the promoters. The loan funds were diverted for non-mandated purposes, layered and laundered through a web of multiple domestic and offshore entities, said an ED statement

Source:https://www.thehindubusinessline.com/companies/sterling-biotech-pmla-case-ed-attaches-assets-worth-over-9000-cr/article28145193.ece

Govt may tighten disclosure norms for CSR spending

India Inc may soon have to make higher disclosures on their corporate social responsibility (CSR) spending, a government official said. A high-level panel on CSR is likely to propose increased disclosures to bring transparency in spending on these activities. All companies with a net worth of Rs 500 crore or more, turnover of Rs 1,000 crore or more, or net profit of Rs 5 crore or more are required to spend 2% of their average profit of the previous three years on CSR activities every year. “There is a view that disclosures need to be enhanced,” the official told ET, adding that this was needed to facilitate a “social audit”, or an examination of CSR spending. These could include disclosures on amounts spent on foundations or trusts related to companies and spending in the local area of the company relative to that in other areas. The move comes in the backdrop of reports of companies spending CSR funds on trusts related to the group. “The government has permitted companies to spend money in certain areas but the disclosure that is required is whether the expenditure is being done in foundations or organisations of your own company or related to your company,” said Pavan Vijay, founder of legal and corporate advisory firm Corporate Professionals. There has been a lot of criticism about companies spending large parts of their CSR budget far from their local areas, Vijay said. Companies are required to give preference to local areas and areas around their facilities for spending amounts earmarked for CSR under the Companies Act. At present, companies are required to disclose only their CSR policy and the composition of the CSR committee. The report will also make recommendations to deal with implementation issues related to CSR expenditure. The committee is expected to moot creation of an online exchange portal from where companies can pick projects pitched by district-level government officers and connect with implementation agencies that have been registered with the government, another government official said. The panel is expected to submit its report next month, said the official, who is privy to the talks. The government may also begin publishing an annual report on CSR spending by companies.

Source:http//economictimes.indiatimes.com/articleshow/69980256.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

The world now has three people worth more than $100 billion each

Bernard Arnault, Europe's richest person, just joined Jeff Bezos and Bill Gates in the world's most exclusive wealth club with a fortune of at least $100 billion. Arnault, chairman of LVMH, entered the ranks of centibillionaires on Tuesday as the luxury-goods maker climbed 2.9% to a record 368.80 euros a share. His net worth has increased almost $32 billion this year, the most on the 500-member Bloomberg Billionaires Index. France's multibillionaires have added the most wealth among European members of Bloomberg's ranking in 2019, with Arnault, Kering SA's Francois Pinault and cosmetics heir Francoise Bettencourt Meyers tacking on more than $40 billion between them. Meanwhile, the brothers behind the Chanel brand, Gerard and Alain Wertheimer, saw their fortunes soar $9.8 billion this week after the Parisian fragrance and fashion house reported its 2018 results. Arnault's fortune of $100.4 billion now equals more than 3% of France's economy, underscoring the wealth gap in his native country, where protesters have agitated this year for more benefits paid for by the rich. Even amid growing trade tensions, Chinese consumers' appetite for Louis Vuitton handbags and Hennessy cognac has bolstered results for LVMH, the owner of Dom Perignon Champagne and Tag Heuer watches. The company's shares have surged 43% this year, the third-best performer on France's CAC 40 Index.

Source:https://economictimes.indiatimes.com/news/international/business/the-world-now-has-three-people-worth-more-than-100-billion-each/articleshow/69865041.cms

MNCs in a fix over likely ban on 2 audit firms in India

As the spectre of ban looms over KPMG and Deloitte, both multinationals (MNCs) and Indian companies with global operations are in a fix over their audits. Some of the top multinationals and global Indian companies are trying to figure out course of action in case of a domestic ban on their auditors — as that would impact their choice of auditor in other countries across the globe. Global MNCs prefer working with one auditor across geographies for consistent quality and quicker consolidation of audits, while the Indian multinationals like to rely on the global network of the Big Four firms in other geographies they do business in for the same reason. For instance, KPMG audits both Tata Steel and Tata Steel UK, while Deloitte audits IT majors like Infosys and Wipro. If the court enforces a ban on two auditors, this may complicate things for both sets of companies. The MNCs operating in India usually exercise an option to dissect the audit into two, the global reporting and the Indian audit, which was traditionally conducted by the same statutory auditor.

However, during the Companies Law mandated audit rotation in 2017, some listed companies were forced to change the Indian auditor while they continued to work with incumbent firm for the global audit. Now, the MNC clients of KPMG and Deloitte networks might have to walk through another, if the firms are banned.

Source:http//economictimes.indiatimes.com/articleshow/69818527.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Ministry of Corporate Affairs looks to freeze IL&FS ex-directors' properties

The Ministry of Corporate Affairs (MCA) is expected to move court for freezing the bank accounts and properties of some of the past directors of IL&FS group. The ministry would soon apply before the National Company Law Tribunal to widen the net in the IL&FS probe, said persons familiar with the matter. Till now, assets of executive directors of IL&FS group have been attached by the court. "Now, the MCA is likely to request the court to extend the earlier orders to cover past directors, probably including some of the non-executive board members former auditors may also be included," said a senior lawyer. The ministry had taken a similar action against directors of Gitanjali Group, which was charged with diverting funds from state-owned banks using unauthorised letters of undertaking or guarantees. The MCA had originally moved NCLT on October 1, 2018, seeking the replacement of IL&FS board of directors on the ground that a probe by the Registrar of Companies had prima facie concluded that mismanagement and compromise in corporate governance norms were perpetrated by indiscriminately raising short- and longterm borrowings. Once the court passes an interim order freezing the assets, limited withdrawal of funds is allowed for the sustenance of account holders.

Source:http//economictimes.indiatimes.com/articleshow/69818406.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

SEBI examines Infosys whistleblower letter on Panaya

Securities and Exchange Board of India (Sebi) has begun a preliminary examination of the allegations made by a whistleblower over inconsistency of Infosys board in Panaya acquisition. The markets regulator also has accepted a consent plea to settle charges of disclosure lapses by Infosys over the severance package paid to former chief financial officer Rajiv Bansal.

On Saturday, the anonymous whistleblower, who had earlier claimed to be an Infosys insider, asked market regulators in India and the US to take action against the Infosys board for its inconsistency within a year from defending the acquisition of Panaya and finally giving an approval to sell the company. In a letter, the person sought accountability of the board in this issue.

The regulator would take future course of action after concluding the preliminary enquiry based on the whistleblower's letter, people familiar with the development said. The same people also said that they have concluded discussions on the consent plea — for failing to disclose to the regulator the severance pay of Rs 17.38 crore paid to Bansal — by Infosys which in December had submitted a settlement agreement "based on an undertaking that the applicant will neither admit nor deny the findings of fact or conclusion of law". They said that a formal order was yet to be issued. ET Now Channel first reported the development of the Sebi consent plea on Monday. Bansal was sacked over differences with then chief executive Vishal Sikka over the acquisition of Israeli technology firm Panaya for $200 million.

Source:http//economictimes.indiatimes.com/articleshow/63792825.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Case law	*JK Jute Mill Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Ltd & ORS [SC]*
Decided on	*April 30, 2019*
Legislation	*Insolvency and Bankruptcy Code, 2016*
Brief facts	*Whether trade union is an 'operational creditor' when representing the interests of the workmen- Held, Yes.*

Facts: The present appeal raises an important question as to whether a trade union could be said to be an operational creditor for the purpose of the Insolvency and Bankruptcy Code, 2016 ["Code"]. The facts of the present case reveal a long-drawn saga of a jute mill being closed and reopened several times until finally, it has been closed for good on 07.03.2014. Proceedings were pending under the Sick Industrial Companies (Special Provisions) Act, 1985. On 14.03.2017, the appellant issued a demand notice on behalf of roughly 3000 workers under Section 8 of the Code for outstanding dues of workers. This was replied to by respondent No.1 on 31.03.2017. The National Company Law Tribunal ["NCLT"], on 28.04.2017, after describing all the antecedent facts including suits that have been filed by respondent No.1 and referring to pending writ petitions in the High Court of Delhi, ultimately held that a trade union not being covered as an operational creditor, the petition would have to be dismissed. By the impugned order dated 12.09.2017, the National Company Law Appellate Tribunal ["NCLAT"] did
likewise and dismissed the appeal filed by the appellant before us, stating that each worker may file an individual application before the NCLT.

Decision: **Appeal allowed.**

Source: https://indiankanoon.org/doc/167617723/

Case law	*Therm Flow Engineers Pvt. Ltd v. SEBI [SAT]*
Decided on	*May 1, 2019*
Legislation	*SEBI takeover code read with SEBI Act*
Brief facts	*Takeover of company- acquisition of minuscule proportion above the permitted limit – transfer of shares between promoters via open market- no public announcement made- WTM directed public announcement- whether correct-Held, No.*

Facts: The appellant is aggrieved by the order of the Whole Time Member where under the present appellant was directed to make public announcement to acquire shares of M/s. Patel Airtemp (India) Limited (hereinafter referred to as "Target Company") within a period of 45 days from the date of the order and to pay interest at the rate of ten percent per annum as detailed in the order. The appellant is promoter of the Target Company consisting of a consortium of individual promoters.

Decision: **Appeal partly allowed.**

Source: https://indiankanoon.org/doc/87482333/

FROM THE GOVERNMENT

Companies Incorporation Fifth Amendment Rules, 2019

In exercise of the powers conferred by sub-sections (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 (Incorporation) Rules, 2014, namely: -

1. Short title and Commencement. -

(1) These rules may be called the Companies (Incorporation) Fifth Amendment Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014, for rule 8, the following rules shall be substituted, namely: -

"8. Names which resemble too nearly with name of existing company. -

(1) A name applied for shall be deemed to resemble too nearly with the name of an existing company, if, and only if, after comparing the name applied for with the name of an existing company by disregarding the matters set out in sub-rule (2), the names are same.

(2) The following matters are to be disregarded while comparing the names under sub-rule (1): -

(a) the words like Private, Pvt, Pvt., (P), OPC Pvt. Ltd., IFSC Limited, IFSC Pvt. Limited, Producer Limited, Limited, Unlimited, Ltd, Ltd., LLP, Limited Liability Partnership, company, and company, & co, & co., co., co, corporation, corp, corpn, corp or group;

(b) the plural or singular form of words in one or both names;

Source:http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationFifthAmendmentRules_12052019.pdf

SAVE OUR ENVIRONMENT

"Solar Powered Toothbrush Cleans Using Electrons"

Next time you're running low on toothpaste, switch to solar power. The Soladey-3 ionic toothbrush from Japan apparently busts plaque with electrons that work with saliva to remove it from your teeth. A solar panel attached to the handle absorbs electrons from light and transmits them to your teeth through ionized water and a titanium oxide semiconductor in the upper shaft of the toothbrush.

According to the Website, "This reaction is not felt by you, but it makes the plaque unstable and easy to remove." That is reassuring.

It's different from most electric toothbrushes, which vibrate and sometimes shoot water at your teeth, but still rely on toothpaste to help remove plaque. You could still use toothpaste, but Soladey claims it loosens plaque effectively using only electrons. And don't worry, night owls – it works with artificial light, too.

Source: https://techcrunch.com/2010/07/09/solar-powered-toothbrush/