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From the desk of the Chairman

CA. Gautham Pai D.
Chairman – ICAI Mangaluru

Dear Members

The month of July has kept each one of us packed in our own way & we at the Branch too have had a memorable month, which shall be highlighted in the annals of the Branch. The month of July begins the heavy tax season for most of the Members & considering the occupancy of offices the month was planned in a way to be very effective.

76th CA Day was celebrated on July 1st in a grand manner across the country & we at Mangaluru Branch also celebrated the occasion in an effective manner by inviting Dr. Padmanabha Kamath, a renowned Cardiologist as the Chief Guest & he emphasized on the need to stay healthy for all professionals & how present-day work, stress & lifestyle is taking a hit on all of us. The month also witnessed the inauguration of the renovated premises at Mahendra Arcade on July 15th in the gracious presence of the Hon'ble Vice President of ICAI, CA. Charanjot Singh Nanda Ji. He was very impressed upon seeing a state-of-the-art facility in our city & reckoned it to be one of the finest ICAI Bhawan the Institute presently has. He also addressed the Member & Student fraternity on this occasion & gave a roadmap as to how the profession is progressing & the vision of ICAI. We also had the presence of CA. C. V. Chitale, the Convenor of Estate Development Directorate of ICAI, CA. Cotha S. Srinivas, Central Council Member & CA. Geetha A. B., the SIRC Chairperson, on this happy occasion. Post the Inaugural ceremony, we also celebrated World Youth Skills Day & we had CA. C. V. Chitale & CA. Mohan R. Lavi who engaged sessions of relevance for all the Members present. We also collaborated with Shine Foundation & organized the third edition of Start-up CA Series for the benefit of Start-up Eco system at large & we had good participation from Start-ups & incubators, who have made the best use of this initiative.

The month of August is a time to hone our skills further & equip ourselves with requisite knowledge to approach the Tax Audit Season & we have organized sessions accordingly. The Union Budget was placed before the country on July 23rd & in-depth analysis of the same will be done at the Branch on August 2nd. SIRC Regional Conference is scheduled on August 9th & 10th at Bengaluru & we request all the members to take part & benefit from the qualitative sessions. We shall also have a tax Audit Seminar & Company Audit session during the month & we shall indulge in a very knowledgeable month. This month will also see the celebration of Independence Day on August 15th.

We request Members to make the best use of all the sessions & make use of the wisdom of the best of the resource persons. Your active participation gives us all the motivation we seek & collectively we shall ensure we provide the best exposure to our Members.

Thank you

The ELI Scheme - Eccentric & Ludicrous Incentive Scheme

Article by CA. Pavan Sharma

Alert: I must, in advance, seek your apologies. My writing in this post is critical & at times, sarcastic. It may seem excessive to readers, but I take shelter under this reason - my faith in our policymakers has been tested repeatedly & on reading the ELI conditions I feel acutely betrayed. At a time when the youth of our country is struggling to find jobs, the Employment Linked Incentive Scheme, in its present form, comes across as a mockery.

So, read this with a pinch (or maybe a ton) of salt.

For the youth of this nation, we must make representations to the Finance Ministry to revisit the ELI scheme. Maybe the change we need will come. Maybe a shred of hope in me still remains alive.

"The essence of government is control, or the attempt to control" -

This might seem like a strange way to begin an article explaining the Employment Linked Incentive Scheme introduced in the Budget 2024. As you read on, however, I am fairly certain you will recognise the significance of these words by Benjamin Tucker, who said so way back in the 19th Century. A colonial legacy - government control - is the primary reason why the Indian economy has been so slow to move forward. The drafting of the ELI Scheme is another example of the lawmaker's unwillingness to unclench his fist.

The government introduced 4 key schemes to improve the dire unemployment situation we're presently facing. The objective of these schemes is the 'recognition of first-time employees, and [provide] support to employees and employers. The schemes are as follows:

- One-month wage subsidy of up to Rs. 15,000 to first time employees in all formal sectors. This is supposed to benefit 2.1 Cr. youth.
- Incentive, linked to first-time employment, provided in the manufacturing sector. This scheme is supposed to benefit 30 lakh youth.
- Reimbursement of employer's contribution to provident fund up to Rs. 3,000 per month for 2 years, for each additional employee added. This scheme is to benefit 50 lakh persons (not just 'youth').
- Internships in India's top 500 companies through which our youth will gain exposure for 12 months to real-life business environment. This scheme is supposed to benefit 1 Cr. youth over 5 years.

In addition to these schemes, there is talk about rejuvenation of 1,000 Industrial Training Institutes, interest subvention on education loans by 3%, and the introduction of a Model Skill Loan Scheme. For the purpose of this article, I've limited myself to the 4 key schemes listed above. The annexure to the Finance Minister's Budget speech has explained how these schemes would work, the conditions one has to fulfil, and the period of coverage. Let's look at each of them.

Employment Linked Incentive Scheme A: First Timers
Under this scheme, the government will provide an incentive equal to one month's wage, capped to Rs. 15,000, to first time employees, newly entering the workforce. The employee should be earning a salary of less than Rs. 100,000 per month to qualify for the incentive. All sectors will be covered by this incentive. The employee must become a contributor to the EPF to be eligible - maybe that's how the government can identify if the employee is a first-timer or not. The scheme is valid for 2 years.

My teacher, Mr Ashim Kumar Jana asked me a question that stumped me. He asked - "Tell me... the government plans to incentivize the person who has been hired. He will now start getting a salary. Why does he need an incentive? Shouldn't the government incentivize those who don't get hired? Why is the government giving more money to someone who now already has means to earn a living?" - Let that sink in.

Maybe the answer to that question lies in the subtext. While the title of the scheme is 'incentive' the subtext says this will operate as a 'subsidy'. Here's what it says "First timers have a learning curve before they become fully productive; subsidy is to assist employees and employers in hiring first timers". Does this make any sense? If the subsidy is to assist employers, then shouldn't they be receiving it? If the subsidy is to make employees more productive, shouldn't this 'incentive' be invested to enhance their skills 'before' they can be hired?

Here are additional conditions:
- The subsidy will be paid in three instalments of Rs. 5,000 each.
- The employee must undergo compulsory online Financial Literacy course before claiming the second instalment.
- Subsidy to be refunded by the employer if the employment to the first-timer ends within 12 months of recruitment.

I have so many questions:
- Which body will conduct the Financial Literacy course?
- Will the course be conducted by the government online or offline?
- Will the course be conducted through a public-private partnership?
- Will there be any pass marks to the course or will it be a formality?
- Can the course be taken anytime in the year?
- Can the employer deduct the incentive from the CTC, as it's a subsidy?
- Should the employer check with the employee each month if the Financial Literacy course has been completed to determine what the net pay should be?
- What if the employee decides to take up higher education (India needs a more skilled workforce) & quits employment within 12 months - should the employer refund the subsidy?

- What if the employment is terminated for cause - should the employer refund the subsidy?
- Given that both parties know that the subsidy must be refunded on termination within 12 months, would appraisals be conducted differently?

The bigger question - Would employers be hesitant to hire freshers with this overhang? Would these meaningless conditions actually hurt the chances of our youth looking for employment?

Employment Linked Incentive Scheme B: Job creation in manufacturing

For those in the manufacturing industry, this scheme offers an incentive to employees and employers over a period of 4 years. The scheme is valid for 2 years, and will be in addition to Scheme A.

The hallmark of this scheme is its complex maths which I find hard to digest. Even the great Einstein distilled his enormous work into an elegant 3 letter formula!

Here's what the scheme says:
- The incentive shall be calculated as a % on the wage earned by the employee. The incentive so calculated shall be shared equally between the employer and the employee.
- The incentive shall be offered over a period of 4 years, at a reducing rate basis. For the first two years, the incentive shall be 24% of the wage, 16% in the third year and 8% in the fourth. The total incentive works out to 72% of the wage.
- Eligible employers fall under two categories - (a) companies, (b) non-corporate entities with a three year track record of EPFO.
- To be eligible, the employer must hire at least (a) 50 or (b) 25% of previous year's EPFO baseline employee count, whichever is lower.
- Those hired should be previously non-EPFO enrolled workers
- Employer must maintain threshold level of enhanced employment throughout, failing which subsidy benefit will stop
- Incentive will be calculated on a maximum wage limit of Rs. 25,000 per month
- Again, subsidy to be refunded by the employer if the employment to the first-timer ends within 12 months of recruitment.

Again, many questions arise:
- It is important to note that non-corporates (or the 'unorganised sector') are the backbone of the Indian economy; I'm unsure as to how many of them are registered with EPFO.
- Why should the employee be deprived of an incentive if the employer is unable to or unwilling to hire the requisite number to be eligible for the scheme?
- Further, why would the employer's hiring plans be influenced by this scheme, especially when (a) 100% of wage could should be borned from Day 1, in the 'hope' of receiving capped benefits over 4 years, (b) there is an obligation to refund the incentive?
- Who tracks 'enhanced employment failing which subsidy benefit will stop'? What does the phrase 'enhanced employment' even mean?

Employment Linked Incentive Scheme C: Support to employers

This scheme has been designed as a reimbursement of employer's contribution to provident fund. Eligible employers shall be entitled to receive up to Rs. 3,000 per month for additional employees hired in the previous year. The reason why 'previous year' is used (maybe?) is that the reimbursement shall be released only next year. Employers who create more than 1,000 jobs will receive the refund on a quarterly basis.

Only those employers who increase employment above the baseline (i.e. previous year's EPFO employee count) shall be eligible. Again (& just to simplify), a differentiated approach has been proposed: employers with
- less than 50 employees, should increase the count by at least 2 employees, and
- those with more than 50 employees, should increase the count by at least 5.
- and both categories should "sustain the higher level", i.e. cannot bring down the count

Scheme C is in addition to Scheme A, but those covered under Scheme B don't qualify. In other words, Scheme C is for the non-manufacturing sector. Again the language used to explain the scheme is a travesty; I'm trying my best to make sense of it.

Internship in Top Companies

This is the icing on the cake - or rather the burnt crust of a mouldy toast.

The government plans to skill 1 Cr. youth over a period of 5 years in India's top companies. That's 20 Lakh youth per year in India's top 500 companies. Or 4,000 youth per top company, per year. All the best with that!

Here is how the scheme is designed
- Youth aged between 21 and 24 will be eligible to apply to the Prime Minister's Internship Scheme, through an online portal.
- Companies may volunteer into the scheme (so, it may not be all 500 of the top companies envisaged in the Finance Minister's speech, further skewing the intake per company per year)
- The company should select from a 'shortlist'. The short listing will be based on "objective criteria with emphasis on those with lower employability" (whatever this means)
- The intern will be given an allowance of Rs.5,000 per month. The allowance shall be shared between (a) the central government - 90%, and (b) the company - 10%, which can be paid from its CSR funds.
- The cost of training can be paid out of the CSR funds as well.
- The central government will additionally offer Rs. 6,000 as 'grant for incidentals' - but the scheme isn't clear as to who gets this sum, the intern or the company
- If the company is unable to absorb the interns, it is required to tie-up with its 'forward and backward supply chain' or 'other group companies' to meet the said target!

Not everyone is eligible to benefit from the scheme. Those ineligible are:
- Candidates who have IIT, IIM, IISER, CA, CMA etc. as qualification – this is understandable.
- If any member of the family is assessed for Income Tax - this makes no sense (& what does 'family' cover - would an applicant be denied because of a cousin who files income tax returns?)
- If any member of the family is a government employee, etc. - this is infuriating, not because the condition is meaningless, but because of the laziness with which it is drafted - what does 'etc.' here even mean?? Would the scheme not apply to anyone whose 'family' has a job?

It appears that this scheme is available only to those applicants whose family does not include any member who files tax returns (could be a NIL return too) or who has a job (government or 'etc.').

Let the madness of it all sink in

60% of our working population is self-employed. Over 40% of graduates are unemployed. A large portion of our educated youth are unemployable because of a broken educational system. And these are the schemes on offer to 'uplift our youth'.

I leave you with a question asked by a prominent leader from North India - "Will reservation be given for these short-term employment initiatives"
PS: I should go back to writing about the economy of our past. Maybe the exuberance of the 1990 reforms will return my tranquillity. That's coming up next week.

Whether ITC is Eligible on Plant being an Immovable Property?

Article by CA. Akshay Hiregange, Partner, H N A & Co LLP

There have been various disputes w.r.t credit eligibility on a 'Plant' being in the nature of an immovable property. In GST regime the issue remains, with various interpretations arising out of Section 17(5)(c) &
(d) of CGST Act 2017 along with relevant explanations in the law.

We have seen disputes raised in the form of credit restriction on expenses relating to construction of commercial building under section 17(5) in M/s.Safari Retreatscase which is now pending with the Hon'ble Supreme Court.

This issue was recently discussed again by way of CBIC Circular 219/13/2024-GST dated 26th June 2024 to clarify credit eligibility in the case of ducts and manholes used in the telecommunication sector.

Applicable GST provisions:

Section 17(5) CGST Act:-

(c) Work contract services when supplied for construction of an immovable property(other than plant and machinery) except where it is an input service for further supply of works contract service.

(d) Construction of immovable property (other than plant and machinery) " on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation -'plant and machinery' means apparatus, equipmentand machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes

1. land, building or any other civil structures,
2. telecommunication towers; and
3. pipelines laid outside the factory premises

Summary of the Circular

ITC was being denied by GST authorities on ducts and manholes used in network of optical fibre cables (OFC) laid on the ground, being in the nature of immovable property.
Ducts and manholes are basic components of OFC network use to provide telecommunication services.
Generally laid with PVC ducts/sheaths are integral for laying the OFC and also for its upkeep and maintenance.
Circular issued to avoid unwarranted litigation in the telecommunication sector
Section 17(5)(c) & (d) highlighted along with explanation to 'Plant & Machinery' at end of ITC chapter in CGST Act.
Clarified that ducts & manholes are not specifically excluded from the 'Plant & Machinery' definition given in the GST law.

Specifically clarified that it is not in the nature of civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.
Concluded that ducts and manholes are 'plant & machinery' and therefore, even if it results in an immovable property, ITC would be eligible and is not restricted u/s 17(5) of CGST Act.

Open issues based on Circular 219/2024

1. When cement/ iron based pipes (RRC/DWC/GI pipes) are used instead of PVC ducts or sheaths would ITC be restricted?

Author comments: No, as the utility of OFC is linked to that of a plant and machinery. The implication of it being immovable in nature does not affect the eligibility of ITC anymore.

2. Would the OFC not be considered as 'pipelines laid outside the factory premises' and therefore excluded from Plant & Machinery under GST?

Author comments: In the circular it is specifically clarified that it is not a pipeline laid outside the factory premises. As this is a beneficial circular and is binding on the GST authorities, the ITC position for the telecommunication sector on OFCs is safe. Although, pipelines outside factory which were held not to be Plant and Machinery in GST period as follows:

Western Concessions Private Limited – Maharshtra AAAR – Tie-in-pipeline to deliver regasified LNG to cross country pipeline/national grid.
Mumbai Aviation Fuel Farm Facility Pvt Ltd – Maharshtra AAAR – Connector pipeline from fuel farm to hydrant network used to fuel airlines.

The fact that pipelines gain the nature of immovable property and hence are not eligible to ITC must be done away with, taking cue of the above Circular. Representations from affected Industries/Associations are recommended to overcome such ITC restriction especially when the laying of pipelines outside factory is indispensable for manufacturing/business process. Alternatively, CBIC could issue the notification similar to NN 13/2016-CE(NT).

3. What are the situations that warrant credit eligibility reassessment?

Author Comments:

1. Specially designed structures/equipment fastened to the earth treated as immovable property instead of plant & machinery.
2. Water/Sewage/Effluent treatment plant where ITC could be eligible.
3. Civil/construction activity performed for installation or functioning of plant & machinery. ITC eligibility to be studied.
4. Lift/HVAC related credits
5. P&M projects

Taxpayers are recommended to review their ITC eligibility. The fact that the plant or machinery attains the nature of immovable property, or the department disputes it is civil structure or otherwise, the pith and substance of various decisions amplify the ITC eligibility when the plant & machinery nexus to business is clearly established. Obtaining professional expert opinion, claiming credit and reversing under protest/applying for refund where applicable can be explored.

Useful decisions

Input tax credit admissible w.r.t Cement used for laying foundation and erection of cement manufacturing plant & machinery [J.K Cement Works Vs State of Karnataka]

Wires and cables are covered under the expression "Plant" as the same was necessary for the assessee to carry on his business.

Silos constructed out of cement & steel are not civil structures and forms integral part of machinery

[Ambuja Cements Ltd.]

Steel items used for construction of plant & machinery, credit admissible [Kallakurichi Co-op Sugar Mills Ltd]

CENVAT Credit on pipes used for laying of pipelines for bringing water to the factory and services used for laying and maintenance of pipeline are admissible.[Torrent Pharmaceuticals Ltd Vs CCE, Ahmedabad –III]

Cenvat credit of capital goods used in mining area eligible.[Madras Cements Ltd vs CCE, Trichy

Crushers and conveyor belts, ropeway spares used for transportation of goods admissible ITC. [Raj Cement vs UOI (Raj), Birla Corporation Ltd vs CCE, Raipur]

The main test to call a thing to be plant is without it business cannot be carried on[Harijan Evam Nirbal Varg Avas Nigam Ltd]

The term 'Plant' includes whatever apparatus or instruments are used by a business is carried on. It includes all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. [CIT v. Bank of India].

Disqualifications for appointment of director u/s 164 of Cos. Act – Practical relevance from the perspective of Statutory Auditors

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The provisions relating to 'disqualification of directors' are appliable only when a person or candidate is proposed to be appointed as director in private company or public company. The said provisions are also important and equally relevant when a director of the company is proposed to be re-appointed as director in the company. The said provisions are different than 'vacation of office of directors', because the provisions relating to 'vacation of office of directors' are applicable only when a person is already appointed as director and there are certain events or non-compliances because of which the said director has to vacate his / her office. Disqualification of directors falls under the provisions of section 164 of the Companies Act, 2013 and the vacation of office of directors falls under section 167 of the Companies Act, 2013.
This article is an analysis of the provisions of section 164 of the Companies Act, 2013 in relation to the practical relevance and compliances to be checked by Statutory Auditors of the company. The provisions are applicable to all types of companies.

Relevance & reference of section 164 of the Companies Act in other related provisions:

1. Section 167 of the Companies Act provides for 'vacation of office of director'. According to sub-section (1) of section 167 of the Act, the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164 of the Act (i.e. under sub-section (1) and (2) of section 164, both). Section 167 of the Act further provides that where the said director incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under sub section (2) of section 164 of the Companies Act;

2. Under clause (g) of section 143(3) of the Companies Act, the Statutory Auditor of the company shall also state that – whether any director is disqualified from being appointed as a director under sub-section (2) of section 164 of the Act.

Introduction of section 164 of the Companies Act

Section 164 of the Companies Act, 2013 relates to 'Disqualifications for appointment of director'. According to clause (a) of sub-section (1) of section 164 of the Companies Act, a person shall not be eligible for appointment as a director of a company, if any of the conditions (as prescribed – discussed below) are not satisfied. Such disqualification, as discussed before, is applicable at the time of appointment or re-appointment and not during the term of the director.

Under sub-section (2) of section 164 of the Companies Act, no person who is or has been a director of a company which:
(a) has not filed financial statements or annual returns for any continuous period of three (3) financial years; OR
(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one (1) year or more.

According to the provisions of the Act, in such cases the said person shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five (5) years from the date on which the said company fails to do so.
The provisions further state that where a person is appointed as a director of a company which is in default of clause (a) or clause (b) – as mentioned above, the said person shall not incur the disqualification for a period of six (6) months from the date of his appointment.

Sub-section (2) of section 164 of the Companies Act protects the companies from having on its board, the directors who have defaulted in other companies w.r.t. the filing of annual financial statements or annual returns for three (3) consecutive years. Basically it prevents defaulting directors to be a director of a company for a certain period of time.

Disqualifications for appointment of director under section 164(1) of the Companies Act:

According to sub-section (1) of section 164 of the Companies Act, a person shall not be eligible for appointment as a director of a company, if:
(a) He is of unsound mind and stands so declared by a competent court;
(b) He is an undischarged insolvent;
(c) He has applied to be adjudicated as an insolvent and his application is pending;
(d) He has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence. However, if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;
(e) An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
(f) He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and 6 months have elapsed from the last day fixed for the payment of the call;
(g) He has been convicted of the offence dealing with related party transactions (under section 188 of the Companies Act) at any time during the last preceding 5 years

(h) He has not complied with sub-section (3) of section 152 (according to the said provisions – A person shall not be appointed as a director of a company unless he has been allotted Director Identification Number or any other number as may be prescribed under section 153 of the Companies Act);
(i) He has not complied with the provisions of sub-section (1) of section 165 (this provision relates to total number of directorships).

Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014:

Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014 relates to 'disqualification of directors under sub-section (2) of section 164 of the Companies Act', every director shall inform to the company concerned about his disqualification under sub-section (1) or sub-section (2) of section 164, if any, in Form DIR – 8 before he is appointed or re-appointed. Such intimation of information relates to only disqualification and not in case of compliance of the provisions of the laws. Considering the fact that the Statutory Auditor of a company has to audit the financial statements at the end of the financial year, such compliance is be ensured as March 31 of every financial year. If the director is not a disqualified director, then he would give a declaration to that effect in Form DIR – 8.

The Rules further provide whenever a company receives the information in Form DIR-8, company shall, within 30 days of such receipt, file Form DIR-9 with the Registrar of Companies.
The Rules further provide that whenever a company:
(a) fails to file the financial statements or annual returns, or
(b) fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in sub-section (2) of section 164,
- in such case, the company shall immediately file Form DIR-9, to the Registrar of Companies furnishing therein the names and addresses of all the directors of the company during the relevant financial years.

When a company fails to file the Form DIR-9 within a period of 30 days of the failure that would attract the disqualification under sub-section (2) of section 164 of the Companies Act, officers of the company specified in clause (60) of section 2 of the Act shall be the officers in default.
The Rules further provide that upon receipt of the Form DIR – 9, the Registrar of Companies shall immediately register the document and place it in the document file for public inspection.
The Rules further provide that any application for removal of disqualification of directors shall be made in Form DIR – 10 and filed before the Regional Director.

Interpretation of section 164(2) of the Companies Act:

Specifically in relation to section 164 of the Companies Act (and other related provisions), in Bhagavan Das Dhananjaya Das v. Union of India [2018] 96 taxmann.com 189 (Madras), the Madras High Court made the following important observations:

(a) Careful reading of section 274(1)(g) of the 1956 Act clearly states that 'three financial years commencing on and after the first day of April, 1999', whereas Section 164(2)(a) of the Companies Act, 2013 uses the expression 'for any continous period of 3 financial years'. Therefore, when section 164(2)(a) of the Companies Act, 2013 was made effective from 1-4-2014, as per section 2(41) of the Companies Act, the first financial year for the purpose of section 164 would be 31-3-2015 viz., from 1-4-2014 to 31-3-2015. Therefore, the second financial year would be from 1-4-2015 to 31-3-2016 and the third financial year would be from 1-4-2016 to 31-3-2017;

(b) When section 164 of the Companies Act was made effective only from 1-4-2014 and section 2(41) of the said Act defines the term 'financial year'. The first financial year commences only from 1-4-2014 to 31-3-2015. Therefore, the first and second respondents have wrongly taken the previous financial year i.e., 1-4-2013 that is not contemplated in section 164(2)(a) either expressly or by implication that the financial year would be from 1-4-2013. The Registrar of Companies being a statutory body cannot be allowed to misconstrue the provisions of a statute which infringes the fundamental rights of the petitioners.

(c) Even the disqualification cannot be given retrospective effect, as admittedly the provisions of the Act came into effect from 1-4-2014. The grievance of the petitioners shows that the Registrar of Companies has given effect to the provisions of the Act with retrospective effect and disqualified the petitioners from 1-11-2016 itself. As section 164(2)(a) also refers to the annual return or financial statement, section 92(4) of the new Act has given 60 days time limit to file the annual return from the annual general meeting or the last date on which the annual general meeting to be held viz., on or before 29-11-2017;

(d) In the light of the section 92(4) of the Companies Act, when the annual general meeting for the year ending 31-3-2017 can be conducted within 6 months from the closing date of financial year i.e., 30-9-2017 for private companies, the third financial year would be ending on 31-3-2017 and the last date for convening the annual general meeting is 30-9-2017. Again the last date for filing the annual return is 29-10-2017 and the balance sheet could be filed on 30-10-2017. When this is the legal position, as per section 164 the disqualification of directors of a private company can get trigerred only on or after 30-10-2017, hence, the list of disqualified directors published on the website of the MCA in September, 2017 has no legal legs to stand up to the scrutiny of the Court under article 226 of the Constitution of India.

There are similar judgments of other High Courts on this matter. This is a very important judgment under section 164 of the Companies, which will have an impact on one of the auditing requirements.

Recently, the Supreme Court has expressed prima facie agreement with a judgment of the Allahabad High Court that section 164(2) of the Companies Act has no retrospective application to the periods preceding Financial Year 2014 – 2015. The Supreme Court noted that while High Courts of Allahabad, Gujarat, Kerala and Karnataka, which had held section 164(2), will have prospective applicability, the High Court of Delhi held that the said section can apply prior to 2014 (Source – LiveLaw). The Supreme Court has re-listed this matter in the week commencing December 2, 2024.
The judgments of the High Court and subsequent observations of the Supreme Court would be of great help to Statutory Auditors when interpreting and applying the provisions of section 164(2) of the Companies Act in the Audit Report (sec. 143 of the Companies Act).

The Art and Science of Stock Picking.

Mr. Prabhakar Kudva, Director, Samvitti Capital
- A Computer Science Engineer and a Business Management Graduate
- Astute active Investor and Trader since 15 years.
- One among 40 under 40 Investment managers by AIWMI
(Association of International Wealth Management of India).
- Principal Officer and Fund Manager of the PMS Schemes that Samvitti manages.

In the complex world of investing, stock picking remains both an art and a science. It's a skill that combines rigorous analysis with intuition, market understanding with company-specific insights. As someone who has spent a few decades in the financial markets, I've come to appreciate the delicate balance between these two aspects. In this article, we'll explore the key principles and strategies that can help investors, particularly in the Indian market, become more adept at selecting winning stocks.

The Foundation: Understanding the Business

The cornerstone of successful stock picking is a deep understanding of the businesses you're investing in. It's not enough to look at charts, ratios, or market trends. You need to comprehend what the company does, how it makes money, and its competitive position in the industry. One of the key principles is to only invest in a business you have developed an understanding in. This doesn't mean you should only invest in your own industry, but rather that you should be able to explain the business model of any company you invest in to a 10-year-old in two minutes or less. If you can't do this, you probably don't understand the business well enough to invest in it.

For investors, this might mean starting with companies you interact with in your daily life. Are you a frequent user of a particular mobile payment app? Do you shop at a specific retail chain? These everyday experiences can be the starting point for your investment research and often produce big winners. Think Dmart, HDFC Bank and Titan.
In the market there are also "story stocks" - companies that capture the imagination of investors with a compelling narrative about future growth or innovation. While these can be exciting, it's crucial to separate the story from the underlying business fundamentals. A great story doesn't always translate to a great investment.

The Science: Financial Analysis

While understanding the business is crucial, it's equally important to analyze the company's financial health and performance. This is where the "science" part of stock picking comes into play.

Key Financial Metrics

1. Price-to-Earnings (P/E) Ratio: This fundamental metric helps you understand how the market values a company relative to its earnings. However, remember that P/E ratios can vary significantly across industries, so always compare a company's P/E to its industry peers.
2. Debt-to-Equity Ratio: In the Indian context, where many companies are family-owned or have significant promoter stakes, understanding the debt structure is crucial. A high debt-to-equity ratio might indicate financial risk, especially in times of economic uncertainty.
3. Return on Equity (ROE): This metric helps you understand how efficiently a company is using its shareholders' money to generate profits. Look for consistently high ROE over several years.
4. Free Cash Flow: Cash is king, and companies that consistently generate strong free cash flow are often in a better position to weather economic storms and fund future growth.

Growth Rates and Sustainability

When analyzing Indian companies, pay close attention to growth rates. The Indian economy has been one of the fastest-growing major economies in the world, which can lead to impressive growth figures for many companies. However, it's essential to assess whether this growth is sustainable.

Look at:
- Historical growth rates
- Industry growth projections
- The company's market share and potential for expansion
- Any regulatory or economic factors that might impact future growth

Remember, the key is not just finding companies with high growth rates, but those that can sustain growth over the long term.

The Art: Qualitative Analysis

While numbers are important, some of the most crucial factors in stock picking can't be quantified. This is where the "art" of stock picking comes into play.

Management Quality

In my experience, the quality of a company's management is one of the most critical factors in its long-term success. For Indian investors, this is particularly important given the prevalence of family-owned businesses and conglomerates.

Look for:
- Management's track record of executing on plans
- Their ability to allocate capital efficiently
- Transparency in communication with shareholders
- Alignment of management interests with minority shareholders

Competitive Advantage

Warren Buffett calls it a "moat" - the sustainable competitive advantage that allows a company to maintain its market position and profitability over time. In the Indian context, this could be:
- Strong brand recognition (think of companies like Tata or Reliance)
- Proprietary technology
- Cost advantages due to scale or unique processes

- Network effects (particularly relevant for tech companies in India's growing digital economy)

Industry Trends and Tailwinds

Understanding broader industry and economic trends is crucial. India's demographic dividend, growing middle class, and increasing digitalization are creating opportunities in various sectors. Identify companies that are well-positioned to benefit from these long-term trends.

Practical Strategies for Indian Investors

Diversify, but Don't Di-worsify

While diversification is important, don't spread yourself too thin. I've always believed that it's better to have a focused portfolio of companies you understand well, rather than a large portfolio of companies you know little about. For Indian investors, this might mean focusing on 20-30 high-quality companies across different sectors.

Think Long-Term

The Indian stock market, like many emerging markets, can be volatile in the short term. Adopt a long-term perspective. Look for companies that you'd be comfortable holding for at least 3-5 years, if not longer.

Keep Up with Business News

The Indian market is dynamic and constantly evolving. Stay informed about economic policies, regulatory changes, and industry trends. Read annual reports, attend shareholder meetings (many Indian companies now offer virtual attendance options), and keep up with business news.

Be Wary of Hot Tips

In the age of social media and online forums, it's easy to come across "hot stock tips." Be extremely cautious of these. Always do your own research and understand why you're buying a particular stock.

Don't Ignore Small and Mid-Cap Stocks

While large-cap stocks often get the most attention, some of the best opportunities in the Indian market might be found in the small and mid-cap space. These companies often have more room for growth and might be less extensively covered by analysts, creating opportunities for diligent investors.

The Importance of Patience and Discipline

Perhaps the most challenging aspect of stock picking is maintaining patience and discipline. The stock market can be emotional, and it's easy to get swayed by short-term fluctuations or market sentiment.

Avoid Overtrading

One of the biggest mistakes investors make is overtrading. Every transaction comes with costs, both in terms of fees and potential tax implications. Moreover, frequent trading can lead to emotional decision-making. Once you've identified a good company at a reasonable price, have the patience to hold onto it.

Stay Rational in Irrational Markets

The Indian stock market, like all markets, can sometimes behave irrationally. During bull markets, there might be excessive optimism, while bear markets can bring undue pessimism. Your job as an investor is to stay rational. Use market volatility as an opportunity to buy great companies at reasonable prices.

Conclusion

Stock picking is indeed both an art and a science. It requires a blend of quantitative analysis, qualitative judgment, and emotional discipline. For Indian investors, the opportunity is vast. With a growing economy, a young population, and ongoing reforms, India presents a fertile ground for stock pickers. As you embark on or continue your stock picking journey, stay curious, remain humble, and never stop learning. The market is an excellent teacher for those willing to listen. Happy investing!

The month gone by – July 2024

CA Day - July 1st

Guru Vandana

One Day Seminar - World Youth Skills Day - July 15th

Inaugural of Renovated Premises at Mahendra Arcade - July 15th

Startup - CA Series - July 19th

Media Coverage

ಇಂದು ಐಸಿಎಐ 75 ನೇ ವರ್ಷಾಚರಣೆ

ಮಂಗಳೂರು: ದಿ ಇನ್‌ಸ್ಟಿಟ್ಯೂಟ್ ಆಫ್ ಚಾರ್ಟರ್ಡ್ ಅಕೌಂಟೆಂಟ್ಸ್ ಆಫ್ ಇಂಡಿಯಾ (ಐಸಿಎಐ) ಇದರ 75 ನೇ ವರ್ಷಾಚರಣೆ ಹಾಗೂ '76 ನೇ ಸಿಎ ಡೇ' ಸಮಾರಂಭ ನಗರದ ಪಡೀಲ್ ಐಸಿಎಐ ಭವನದಲ್ಲಿ ಜುಲೈ 1 ರಂದು ಬೆಳಗ್ಗೆ 10ಕ್ಕೆ ನಡೆಯಲಿದೆ. ಕೆಎಂಸಿ ಮಂಗಳೂರು ಆಸ್ಪತ್ರೆಯ ಹೃದ್ರೋಗ ವಿಭಾಗದ ಘಟಕ ಮುಖ್ಯಸ್ಥ ಡಾ.ಪದ್ಮನಾಭ ಕಾಮತ್ ಉಪಸ್ಥಿತರಿರುವರು ಎಂದು ಕಾರ್ಯಕ್ರಮ ಆಯೋಜಿಸಿರುವ ಐಸಿಎಐ ಮಂಗಳೂರು ಶಾಖೆ ಚೇರ್ಮನ್ ಸಿಎ ಗೌತಮ್ ಪೈ ಡಿ. ಮತ್ತು ಕಾರ್ಯದರ್ಶಿ ಸಿಎ ಡ್ಯಾನಿಯಲ್ ಮರ್ಫ್ ಪಿರೇರ ಪ್ರಕಟಣೆಯಲ್ಲಿ ತಿಳಿಸಿದ್ದಾರೆ.

ಉದಯವಾಣಿ

ದೇಶದ ಆರ್ಥಿಕ ಶಕ್ತಿಯಲ್ಲಿ ಸಿಎ ಅಮೂಲ್ಯ

ಲೆಕ್ಕಪರಿಶೋಧಕರ ದಿನಾಚರಣೆಯಲ್ಲಿ ಡಾ| ಪದ್ಮನಾಭ ಕಾಮತ್

VK ವಿಜಯ ಕರ್ನಾಟಕ 2-7-2024

ಸಿಎಗಳಿಗೆ ಆರೋಗ್ಯ ಕಾಳಜಿ ಅಗತ್ಯ

ಚಾರ್ಟರ್ಡ್ ಅಕೌಂಟೆಂಟ್ಸ್‌ಗಳ ದಿನಾಚರಣೆಯಲ್ಲಿ ಡಾ.ಪದ್ಮನಾಭ ಕಾಮತ್

ಪ್ರದೇಶ ಸಮಾಚಾರ 3

ಆರ್ಥಿಕ ವ್ಯವಸ್ಥೆಯಲ್ಲಿ ಲೆಕ್ಕಪರಿಶೋಧಕರ ಕೊಡುಗೆ ಅನನ್ಯ

ಹೃದ್ರೋಗ ತಜ್ಞ ಡಾ.ಪದ್ಮನಾಭ ಕಾಮತ್ ಅಭಿಮತ | 76ನೇ ಚಾರ್ಟರ್ಡ್ ಅಕೌಂಟೆಂಟ್ಸ್ ದಿನಾಚರಣೆ

Media Coverage