19 ECONOMY

₹38,804

₹71.03

Tata Sons-Mistry case: Not

differed, till SC overruled

the first when NCLT, NCLAT



\$66.79

SENSEX: 41,673.92 ▲ 115.35 NIFTY: 12,259.70 ▲ 38.05 NIKKEI: 23,864.85 ▼ 69.58 HANG SENG: 27,800.49 ▼ 83.72 FTSE: 7,561.37 ▲ 20.62 DAX: 13,178.30 ▼ 43.86

PRE-BUDGET CONSULTATIONS: SUGGESTIONS GIVEN ON M&As, TAXES Industry seeks further 'ease of doing biz', better rate transmission at meet with FM

ENSECONOMIC BUREAU NEW DELHI. DECEMBER 19

IMPROVEMENT IN ease of doing business, policy stability, income tax cuts, better transmission of interest rate cuts, ways to boost consumption to support growth were some of the issues taken up by industry leaders, including Bharti Enterprises chairman Sunil Bharti Mittal, CII president Vikram Kirloskar and Assocham president Balkrishna Goenka during their pre-Budget consultations with Finance Minister Nirmala Sitharaman Thursday.

Mittal said making business easy was his main suggestion to the government, adding that a combination of low tariffs and high consumption is affecting the telecom industry and the Telecom Regulatory Authority of India (Trai) needs to intervene to strike a balance between protecting investments and consumer interest. "I have come here today to discuss only one thing: make doing business easy in the country. That was what my thrust was," he added. Mittal further said the issue has been on investments side and new technologies have to be put in, 5G has to be ushered into this country, adding that average revenue per user (ARPU) should go up from Rs 200.

"My view is Rs 200 is to eventually going to Rs 300 ... at the lower end, Rs 100 for a customer over a month of consuming rich data, voice and other services and on the upper end Rs 450-500 ... therefore, blended eventual landing point of Rs 300 a month, which will still be \$4 a month ... by far, the lowest anywhere in the world and yet consuming two or three times more data than anywhere else in the world.

Unions urge FM

to hike I-T ceiling,

New Delhi: In a pre-Budget consul-

tation with Finance Minister

Nirmala Sitharaman on Thursday,

trade unions urged the govern-

ment to provide minimum wage

of Rs 21,000, minimum pension of

Rs 6,000 under Employees'

Pension Scheme and tax exemp-

tion on annual income of up to Rs

10 lakh. The unions have also

raised concerns over rising unem-

ployment in the country, saying

"employment generation has

During the meeting, they sug-

gested that massive public in-

vestment in infrastructure, social

sectors and agriculture would

generate employment and the

Union Budget should give it a pri-

ority and allocate necessary

funds for this. They also de-

manded that vacant sanctioned

posts in various government de-

partments should be filled

through fresh recruitment. **ENS**

nose-dived in recent period".

minimum wages

Union Finance Minister Nirmala Sitharaman along with senior officials at a pre-Budget meeting with industrialists, in New Delhi, on Thursday. PTI

"That's the balance we need to get to try and Trai has to work on this because the industry has not been able to have an orderly mechanism to get to that point via getting this industry in a manner which is not conducive for industry and that's why we need Trai intervention," he said.

Suggestions around mergers and acquisitions (M&As), demerger, National Company Law Tribunal (NCLT) process, certain sections of income tax which were coming in the way of M&A or slowing them down were also made during the meeting.

Assocham president Balkrishna Goenka said for "ease of doing business, states have to play an important role" and last mile issues are there that need to be resolved. Confederation of Indian Industry (CII) president Vikram Kirloskar said, "We talked about the ease of doing business, which are the issues concerning many industries."

The industry body also raised the issue of delayed payments and contract enforcement, along with raising the issue of how price controls lead to uncertainty and lack of confidence in the functioning of markets. RP-Sanjiv Goenka Group chairman Sanjiv Goenka said the discussions "centred more around what can be done to stimulate growth, to facilitate the ease of doing business".

On the current slowdown and its impact on capacity utilisation across industries, he said, "We all recognised that it is going to take a couple of quarters, three quarters, four quarters, before this capacity gets utilised. We understand that, and that is the reality of the situation."

Ficci president Sandip Somany said the industry representatives gave suggestions to the Finance Minister "to reduce income tax for those who earn less than Rs 20 lakh in a year so that there is more disposable in the hands of consumers and the economy benefits".

He added, "We have also asked the FM to take measures about reducing EMIs (equated monthly installments), which can happen only if the banks reduce the interest rates on loans."

Stating that while the Reserve Bank of India has cut 135 basis

points (bps), banks have reduced only 45 bps, Somany said, "If there can be more transmission of RBI's cut to consumers, then the EMIs will be reduced and it will also im-

prove consumption."

"During the interactive session lasting over two hours, prominent industrialists spoke about improving regulatory environment to safeguard investments through ease of doing business, increasing export competitiveness, reviving private investment and kick-starting growth measures," a Finance Ministry statement said.

In the pre-Budget consultations in connection with the forthcoming General Budget 2020-21, industrialists also suggested many ways to boost the rural economy, especially to increase consumption, the statement further said.

Other suggestions included improvement in insolvency process in relation to NCLTs and banks; faster M&As and demerger processes, ways to reduce time for foreign direct investment (FDI) approval; structural changes in laws for effective and stable business environment; and timebound decisions for augmenting

Focus on reviving pvt investment, growth

IMPROVING REGULATORY environment to safeguard investments through ease of doing business, increasing export competitiveness, reviving private investment and kickstarting growth measures, were particularly in focus at the meeting.

Issues related to mergers and acquisitions (M&As), demergers, National Company Law Tribunal (NCLT) process, certain Sections of income tax which were coming in the way of M&As or slowing them down, were also flagged.

ease of doing business both at the central and state levels.

Other industry leaders who took part in the consultations were GMR Group chairman BVN Rao, Ashok Leyland managing director and chief executive officer Vipin Sondhi, Wipro Global chief financial officer Jatin Dalal, K Raheja Corp Group president Ravi Raheja and Patanjali Ayurved Ltd chairman Acharya Balkrishan, among others.

AASHISHARYAN NEW DELHI. DECEMBER 19

THE NATIONAL Company Law Appellate Tribunal's (NCLAT) Wednesday order to reinstate

Cyrus Mistry as the executive chairman of Tata Sons diametrically reverses a judgment delivered by the Mumbai bench of the National Company Law Tribunal (NCLT) in July 2017. As the issue is now headed for the Supreme Court, the Tata Sons case is not the first instance where the NCLT and its appellate authority — NCLAT have delivered sharply different verdicts. The Tata Sons case is one in a series of cases where the tribunal, the appellate court and the SC have had completely different views on the same issue, leading to cascading reversals in sequential verdicts in the same case.

Consider the case of Essar Steel: the case was finally put to rest with a Supreme Court judgment clearing Arcelor Mittal's bid this November after more than 835 days in litigation. Multiple intervention applications filed by stakeholders apart, the non-linear understanding and interpretation of Insolvency and Bankruptcy Code(IBC) by the different forums contributed to the delay, with wide vacillations on the question of the powers of committee of creditors (CoC) and issues such as the supremacy of operational or financial creditors, till it was settled by the apex courts November.

Initially, the Ahmadabad bench of NCLT had — while approving the plan for Essar Steel — "suggested" that the funds from ArcelorMittal be distributed in 85:15 ratio. The NCLAT censured this observation and held that operational creditors must be given equal footing. It went ahead and changed the terms of ArcelorMittal's bid to give all creditors 60.7 per cent of their admitted claims. Then, the SC, on a subsequent appeal, held that there must be an absolute "judicial hands-off" and that the supremacy of lenders was non-negotiable. It then went on to restore the original payment structure for lenders.

The difference in interpretation of IBC, experts concur, could be due to the nascent stage at which the insolvency resolution process currently is. Others, however, say that there must be "an internally coherent view" of commercial courts on IBC.

The insolvency of New Delhibased Rave Scans, similarly, took two U-turns before being decided. Lenders to Rave Scans, one of the first firms to be taken to NCLT under the IBC, had initially rejected all four bids that came for the firm. After a nudge from the NCLT, they reconsidered one plan, which was later approved. That plan too, however, ran into trouble as one of the financial creditors, Hero Fin Corp. dissented and claimed a higher payout. The NCLT rejected Hero Fin's contentions, which

DIFFERENT FORUMS, VARIED VERDICTS

SC: Reversed NCLAT

decision, held that since

was already in place, it

CASE: SEVENHILLS

HOSPITALS

FORUM

resolution plan and process

could not have been altered

NCLT: Held that Municipal

pleas are self contradictory,

NCLAT: Barred MCGM from

Corp of Greater Mumbai

approved resolution plan

taking action, including

would hamper the

resolution process

claiming land as own, said

SC: Held that MCGM must

uphold its public duty and

claim over BMC land, set

aside the resolution plan

approved by NCLT, NCLAT

CASE: BK EDUCATIONAL

NCLT: Held that the filing of

insolvency could not have

NCLAT: Reversed the NCLT

was no scope of rejection of

decision, held that there

insolvency application if

there was a continuous

effort to recover debt

SC: Reversed NCLAT

decision, said laws of

limitation applicable to

insolvency applications

plea was barred by

limitation and thus

been initiated

SERVICES

FORUM

CASE: ESSAR STEEL FORUM

NCLT: Approved Suggested Rs 42,000 crore be distributed among financial and operational creditors in 85:15 ratio

NCLAT: Modified plan to give higher payout to operational creditors, fixed pay for everyone at 60.7% SC: Reversed NCLAT

decision, upheld primacy of CoC, restored original payout planned by CoC **CASE: LA FIN FINANCIAL**

FORUM NCLT: Allowed insolvency proceedings filed by IFIN against La Fin

NCLAT: Upheld NCLT judgment, said plea by IFIN filed within time

SC: Reversed both NCLT & NCLAT judgment, said case filed after limitation period exhausted, disallowed insolvency

CASE: RAVE SCANS FORUM

NCLT: Approved resolution

plan, rejected plea for equal pay by dissenting creditor, the Hero Fin Corp

NCLAT: Reversed NCLT decision, said CoC must treat Hero Fin Corp on par with other financial creditors, give 45% of admitted dues

then approached the NCLAT.

The NCLAT upheld the plea

and added that if Hero Fin was not

given the same treatment as other

financial creditors within a

month, the resolution plan would

stand set aside. Subsequently,

when the matter went to the SC, a

two-judge Bench of Justices Arun

Mishra and S Ravindra Bhat over-

turned the NCLAT's decision by

simply holding that the resolution

process had begun well before the

amended regulation (which gave

equal footing to dissenting finan-

cial creditors in IBC), and thus the

appellate tribunal's decision

interpretations, many are related

to issues of contingent liability,

treatment of guarantees, payout

to operational creditors, and scope

of moratorium, Suharsh Sinha,

partner at AZB & Partners, said,

adding that on most of these is-

sues the case laws had been in-

moted La Fin Financial Services

threw up another instance of con-

trasting interpretation of the well-

settled law of limitations. IL&FS

Financial Services (IFIN) had

moved an insolvency plea against

The case of Jignesh Shah-pro-

Apart from inconsistencies in

would be set aside.

consistent.

La Fin, which the latter challenged citing that the insolvency plea was barred by limitation. In their respective judgments,

the NCLT and NCLAT held that IFIN's plea was not barred by limitation as it was filed well within the time limit of three years from December 1, 2016, when IBC was introduced. The SC, however overturned the decision and said that IFIN's plea was barred by limitation as it was filed well beyond three years from August 2012. when the first default occurred. It also held that IFIN had approached the courts only when La Fin saw its net worth erode in 2015. "That does not mean there is no prospect of the company ever making a profit in the future. It does not also mean that the company abandoned its business and therefore will not be able to pay,"

the apex court had said. Experts point out that the difference in interpretation could be as these laws have to be read in consistency with the IBC. "Even for laws that are well established, for example, the ones on laws of limitation are not being read in isolation. They have to be read with the code," said Karan Mitroo, partner at L&L Partners.

'GST compensation of 9 states could double in FY20'

GST compensation payment of nine select states, including Gujarat, Maharashtra and Kerala, is expected to double to ₹60,000-70,000 crore in 2019-20, according to a report by ICRA

The timing of release of such grants by the Government of India (GoI) to these states would critically affect their cash flows, ICRA said in a report.

3.70/**o** Rise in headline GST collections in April-November 2019, which was muted due to subdued economic growth and reductions in GST rates

2.70/o Year-on-year contraction recorded in CTD to all 29 states in April-October 2019

Deputy Governor of Reserve Bank

of India (RBI), Chief Statistician of

India (CSI) as other members and

Chief Economic Advisor, Ministry

of Finance, as the ex-officio mem-

ber. The Chairman and the mem-

bers of the Commission shall be

appointed by the central govern-

ment on the recommendation of

a search committee, as prescribed,

it said, adding that no appoint-

ment of a Chairperson or any

member of the Commission shall

be "invalid merely by reason of ab-

sence of any member in the meet-

central government may, from

time to time, issue directions to

the Commission as it may think

"necessary in the interest of the

sovereignty and integrity of India,

the security of the State, friendly

relations with foreign states, pub-

Commission "shall in exercise of

its powers or the performance of

its functions, be bound by such di-

rections or questions as the Central

Government may give in writing

to it from time to time. Provided

that the Commission shall, as far

as practicable, be given an oppor-

It also said that the

lic order, decency or morality".

The draft Bill stated that the

ings of the search committee".



₹59.500-77.000 CRORE:

Amount by which central tax devolution (CTD) to these states in 2019-20 would be lower than what central government has budgeted, which has emerged as a key revenue risk for the states in this fiscal

CAPEX BELOW BUDGETED **LEVEL:** A reduction in capital expenditure, or capex, below the

budgeted level appears imminent in the current fiscal **CONSIDERABLY LOWER SGST**

COLLECTIONS: The actual SGST collections this current fiscal will likely be considerably lower than the level of revenues protected under the GST (Compensation to States) Act, 2017

RISE IN GST COMPENSATION **GRANTS:** The lower collections would necessitate a significant rise in the GST compensation grants required by the states from the Centre

Source: PTI

DEMAND WEAKENED FOR MANUFACTURING

Draft Bill proposes autonomy for National Statistical Commission, gives govt power to make final decision

Advisory nature of NSC retained

AANCHAL MAGAZINE NEW DELHI. DECEMBER 19

STATING THE need for creation for an independent "apex advisory body for official statistics", the government has placed a draft National Statistical Commission (NSC) Bill for public comments that seeks to establish NSC as the nodal and autonomous body for all core statistical activities. Along with retaining the advisory nature of NSC, the draft Bill states that the decision of the central government, whether a question is of policy or not, shall be final, a proposal which experts say goes against the long pending demand to grant more powers to the NSC.

In a crucial change, the draft Bill also seeks to change the composition of the Commission by replacing NITI Aayog Chief Executive Officer with the Finance Ministry's Chief Economic Advisor as the exofficio member along with giving member status to Chief Statistician of India from the current status of secretary to the NSC.

As per the draft Bill, the NSC will have a Chairperson, five whole time members along with

VIEWS SOUGHT

■ NSC will have a Chairperson, five whole time members along with Deputy Governor, RBI, Chief Statistician of India as other members and CEA as ex-officio member

tunity to express its views before any direction is given."

The draft Bill states that the government shall seek advice from the Commission on any matter relating to official statistics. However, central government or a state government may issue directions as necessary to any government agency under its administrative control along with a report on reasons for not accepting any advice to the commission. A report on reasons for not accepting any advice of the commission shall be laid before Parliament or a state legislature for a total period of thirty days. Outlining the general powers of the NSC, the draft Bill states that the NSC shall have power to review the statistical system of any government agency in

the light of concepts, definitions,

standards, methodologies and es-

tablished policies, and recommend measures for enhanced performance; to prescribe a code of practice. Also, the Commission shall participate in, and in consultation with the central government coordinate with, national statistical organisations on matters of statistical standards, methodologies and classifications. All nodal officers designated in

central ministries/departments

/state government shall be professionally responsible to Chief Statistician of India on core statistics, the Bill said. The Ministry of Statistics and Programme Implementation (MoSPI) has sought comments and suggestions from the public on the draft Bill by January 19, 2020. The Bill comes at a time when several statistical reports such as the unemployment survey were withheld and consumption expenditure survey was decided to be not released by the government. In January this year, the then acting chairman of NSC, PCMohanan, a career statistician, and IV Meenakshi, Professor at the Delhi School of Economics, had resigned from NSC protesting

against the withholding of the

NSSO's first Annual Survey on

Employment and Unemployment

for the year 2017-18.

GEORGE MATHEW & SANDEEPSINGH

> THE ONGOING economic slowdown hit the corporate sector badly with a group of 2,696 firms reporting a 54.3 per cent fall in net profit for the second quarter ended September 2019 as "demand conditions facing the manufacturing sector weakened, with contraction in nominal sales that became broad based across industries".

A big factor in the drop in ag-50,922 crore for the quarter.

profit for the quarter.

Corporate profits fall 54.3% as demand drops: RBI

MUMBAI/NEW DELHI, DEC 19

gregate profits has been the huge losses announced by Bharti Airtel and Vodafone Idea Limited (VIL) during the quarter on account of provisioning for adjusted gross revenue (AGR). While Bharti Airtel announced a loss of Rs 23,045 crore, VIL announced a loss of Rs

While the group of 1,706 companies in the manufacturing sector saw their sales decline 7.7 per cent, their profits grew by 17.4 per cent. A group of 505 companies in the services sector had an aggregate loss of Rs 53,167 crore and 166 companies in the IT sector announced a 8.4 per cent rise in net

The RBI said softening of commodity prices resulted in lower in-

MAJOR FACTOR IN DROP WAS AIRTEL, VIL LOSSES

■ A big factor in the drop in aggregate profits has been losses announced by Bharti Airtel and Vodafone Idea (VIL) during the quarter due to provisioning for adjusted gross revenue. While Bharti announced a loss of Rs 23,045 crore, VIL announced a loss of Rs 50,922 crore

put costs (including cost of raw materials), which partly offset the decline in sales of manufacturing companies. The raw material cost

11.5 per cent during the quarter. According to data released by the Reserve Bank of India (RBI), the fall in profits was steep as these companies had posted a 41.7 per cent rise in profits in the same period of last year (September 2018). The RBI said the study is based on abridged quarterly financial results of 2,696 listed non-government non-financial (NGNF) companies. Sales of these companies fell by 4.5 per cent in September 2019 as against a rise of 18.2 per cent in the previous year. On December 5, the RBI slashed the real GDP growth

sector saw sales decline 7.7%, their profits grew by 17.4%. A group of 505 companies in the services sector had an aggregate loss of Rs 53,167 crore and 166 firms in IT

sector announced a 8.4% rise

per cent in the October policy to 5

in net profit for the quarter

■While the group of 1,706

firms in manufacturing

per cent, saying that it can even go down to 4.9 per cent. The lowering of growth rate by the RBI for manufacturing companies fell which has a strong research department — has come after the government said the GDP growth in September 2019 quarter had plunged to a six-year low of 4.5 per cent, the lowest since the three months ended March 2013. India's industrial output contracted 3.8 percent in October, against a 4.3 per cent contraction in September, according to the Index of Industrial Production (IIP) data released by the Centre on December 12.

"Operating profit of the manufacturing sector contracted by 11.8 per cent, mainly due to the production slowdown. Non-IT for 2019-20 downwards from 6.1 services companies, especially in and transport and storage services registered sharp declines in operating profit," said the RBI study on private corporate business sector for the second quarter of 2019-20. According to the RBI study, the operating profit margin dipped

marginally for manufacturing companies, though their net profit margin increased, largely on account of lower tax provisions. IT companies maintained pricing power as reflected in stable profit margins. Non-IT services companies, however, registered a contraction in profit margins due to heavy losses recorded by telecommunication companies, it said. Sales growth moderated in the services sector (both IT and non-IT), especially in real estate, wholesale and retail trade companies.

RBI said that the funds mobilised by listed private manufacturing companies during the first half of FY20, were mainly used for fixed assets formation and deleveraging (reduction of debt) "These companies were investing in financial instruments such as investment and extending loans and advances during the last couple of vears in the face of subdued demand. This shift in investment was found to be broad based," it said.