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CMAs' INDUSTRY BULLETIN

APRIL 2019

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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President's Message

I am pleased to note that the Members in Industry Committee of the Institute is releasing the April 2019 edition of 'CMAs Industry Bulletin'. The purpose of this Bulletin is to keep the members abreast with the latest developments in various Industries.

This edition is focused on Healthcare, Retail and Ports Industry in terms of the market size, investment, recent achievements of these Industries and major initiatives taken by the government of India to promote these industries and way forward. It also includes an article from Industry expert on Liability of a Survey and Insolvency & Bankruptcy Code, 2016.

I would like to acknowledge the efforts of Members in Industry Committee and support of resource persons for their valuable inputs in releasing this Bulletin.

With Warm Regards,

CMA Amit A. Apte
30th April, 2019

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LIABILITY OF A SURVEY AND INSOLVENCY & BANKRUPTCY CODE, 2016

Mr. Hareesh Kumar Kolichala
Chief Manager (Law)
Union Bank of India, Kolkata

In the case of **State Bank of India Vs. V. Ramakrishnan & ors.** the Hon'ble Supreme Court of India held that there was no bar for a creditor to proceed against a surety for recovery of dues even during the moratorium period declared under Section 14 of the Insolvency & Bankruptcy Code,2016 (Code).

The factual backdrop of the case is that V. Ramakrishan was the Managing Director of the corporate debtor, namely, the Veeson Energy Systems Ltd. and also the personal guarantor in respect of credit facilities that had been availed from the Appellant State Bank of India. As the said Company defaulted in repayment of the debts, the account of Company was classified as a non-performing asset. Consequent thereto, the Appellant issued a notice dated under Section 13(2) of the SARFAESI Act demanding an outstanding amount from the said borrowers within the statutory period of 60 days. As no payment was forthcoming, a possession notice Under Section 13(4) of the SARFAESI Act was issued on 18.11.2016. In the meanwhile, an application was filed by the said corporate debtor, under Section 10 of the Code to initiate the Corporate Insolvency Resolution Process (CIRP) against itself and the same was admitted, followed by the moratorium that was imposed statutorily by Section 14 of the Code. While the said proceedings were pending, an interim application was filed by Ramakrishnan as personal guarantor to the corporate debtor, in which he took up the plea that Section 14 of the Code would apply to the personal guarantor as well, as a result of which proceedings against the personal guarantor and his property would have to be stayed. The National Company Law Tribunal, by its order dated 18.09.2017, held that, as per Section 31 of the Code, a Resolution Plan approved would bind the personal guarantor as well, and since after the creditor is proceeded against, the guarantor stands in the shoes of the creditor and therefore Section 14 would apply in favour of the personal guarantor as well. The interim application filed by him was thus allowed, and the State Bank of India was restrained from moving against him.

The SBI had carried the matter in appeal before the National Company Law Appellate Tribunal (NCLAT) which resulted in the appeal being dismissed. The Appellate Tribunal relied upon Section 60(2) and (3) of the Code as well as Section 31 of the Code to find that the moratorium imposed under Section 14 would apply also to the personal guarantor. The reasoning was that since the personal guarantor also forms part of a Resolution Plan which is binding on him, he is very much part of the insolvency process against the corporate debtor, and that, therefore, the moratorium imposed under Section 14 should apply to the personal guarantor as well. The Allahabad High Court expressed a similar view as NCLT & NCLAT in Sanjeev Shriya Vs. State Bank of India [2017(9) ADJ 723]. The rationale being that if a CIRP is going on against the corporate debtor, then the debt owed by the corporate debtor is not final till the resolution plan is approved, and thus the liability of the surety would also be unclear. The Court took the view that until debt of the corporate debtor is crystallised, the guarantor's liability may not be triggered and hence the guarantor cannot be proceeded against during the moratorium period.

The Supreme Court of India had, in the further appeal filed by SBI, overturned the decisions of the NCLT and NCLAT and settled the position of law.

When the Code was enacted originally, there was no provision, as introduced now by Section 14(3) of the Code, explicitly providing that Moratorium as envisaged under section 14(1) was not applicable to sureties to the Corporate Debtors. Earlier, as discussed above, the NCLT, NCLAT and Allahabad High Court had decided that the moratorium was applicable to guarantors as well. The repealed Sick Industrial Companies Act, 1985 prohibited recovery action against a Corporate Debtor as well as personal guarantors after filing of reference before the BIFR (Board) constituted under the said Act.

In the meanwhile, the Insolvency Law Committee, appointed by the Ministry of Corporate Affairs, by its Report dated 26.03.2018, made important recommendations, one of which was as under:

"To clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-à-vis the moratorium on the assets of the corporate debtor, it has been recommended to clarify by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code;"

The Committee observed as under:

5.5 Section 14 provides for a moratorium or a stay on institution or continuation of proceedings, suits, etc. against the corporate debtor and its assets. There have been contradicting views on the scope of moratorium regarding its application to third parties affected by the debt of the corporate debtor, like guarantors or sureties. While some courts have taken the view that section 14 may be interpreted literally to mean that it only restricts actions against the assets of the corporate debtor, a few others have taken an interpretation that the stay applies on enforcement of guarantee as well, if a CIRP is going on against the corporate debtor.

The Committee deliberated and noted that this would mean that surety's liabilities are put on hold if a CIRP is going on against the corporate debtor, and such an interpretation may lead to the contracts of guarantee being infructuous, and not serving the purpose for which they have been entered into.

5.8 In State Bank of India v. V. Ramakrishnan and Veeson Energy Systems, the NCLAT took a broad interpretation of section 14 and held that it would bar proceedings or actions against sureties. While doing so, it did not refer to any of the above judgments but instead held that proceedings against guarantors would affect the CIRP and may thus be barred by moratorium. The Committee felt that such a broad interpretation of the moratorium may curtail significant rights of the creditor which are intrinsic to a contract of guarantee.

5.9 A contract of guarantee is between the creditor, the principal debtor and the surety, where under the creditor has a remedy in relation to his debt against both the principal debtor and the surety55. The surety here may be a corporate or a natural person and the liability of such person goes as far the liability of the principal debtor. As per section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor and the creditor may go against either the principal debtor, or the surety, or both, in no particular sequence56.Though this may be limited by the terms of the contract of guarantee, the general principle of such contracts is that the liability of the principal debtor and the surety is co-extensive and is joint and several. The Committee noted that this characteristic of such contracts i.e. of having remedy against both the surety and the corporate debtor, without the obligation to exhaust the remedy against one of the parties before proceeding against the other, is of utmost important for the creditor and is the hallmark of a guarantee contract, and the availability of such remedy is in most cases the basis on which the loan may have been extended.

5.10 The Committee further noted that a literal interpretation of Section 14 is prudent, and a broader interpretation may not be necessary in the above context. The assets of the surety are separate from those of the corporate debtor, and proceedings against the corporate debtor may not be seriously impacted by the actions against assets of third parties like sureties. Additionally, enforcement of guarantee may not have a significant impact on the debt of the corporate debtor as the right of the creditor against the principal debtor is merely shifted to the surety, to the extent of payment by the surety. Thus, contractual principles of guarantee require being respected even during a moratorium and an alternate interpretation may not have been the intention of the Code, as is clear from a plain reading of section 14.

5.11 Further, since many guarantees for loans of corporates are given by its promoters in the form of personal guarantees, if there is a stay on actions against their assets during a CIRP, such promoters (who are also corporate applicants) may file frivolous applications to merely take advantage of the stay and guard their assets. In the judgments analysed in this relation, many have been filed by the corporate applicant under section 10 of the Code and this may corroborate the above apprehension of abuse of the moratorium provision. The Committee concluded that section 14 does not intend to bar actions against assets of the corporate debtor and recommended that an explanation to clarify this may be inserted in section 14 of the Code. The scope of the moratorium may be restricted to the assets of the corporate debtor only".

Thereafter, the Parliament had amended Section 14 and introduced sub-section (3) to it which reads as under:

(3) The provisions of Sub-section (1) shall not apply to–

(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(b) a surety in a contract of guarantee to a corporate debtor.

Supreme Court held that the moratorium would not apply to a surety especially in view of the fact that the amendment made to the Code was retrospective in nature and the same only a clarification.

Section 128 of the Indian Contracts Act, 1872 provides that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. If the Resolution Plan approved by the COC discharges the Corporate Debtor, then, whether the liability of the surety is also extinguished as per the law contained in Section 128? In the case of Jagannath Ganeshram Agarwala Vs. Shivnarayan Bhagirath [AIR 1940 BOM 247], the High Court of Bombay held that as a result of bankruptcy, the debt due by the principal debtor may become unenforceable against the debtor (by operation of law), but the liability of the surety is not thereby discharged. Relying on the above judgment, in the case of Maharashtra State Electricity Board Vs. Official Liquidator [AIR 1982 SC 1497], the Hon'ble Supreme Court held that a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability.

However, in the case of Shri Kundanmal Dabriwala vs. Haryana Financial Corporation and another [(2012)171CompCas94(P&H)], a Scheme of arrangement under Section 391 of the Companies Act, 1956 was sanctioned by the Company Court. Since the Corporation was not paid the entire loan amount recoverable from the company, the respondent Corporation issued notice dated 7.10.2008 under Section 32(G) of the State Financial Corporation Act, 1951 against the promoters/guarantors/directors of the Company. The question that arose before the Court was "Whether the revival scheme submitted by the Petitioner under Section 391 and 394 of the Companies Act, 1956 and accepted by court amounts to compounding with the principal debtor leading to the discharge of the surety within the meaning of Section 134 and 135 of the Contract Act, 1872?". The Punjab & Haryana High Court held that the as under:

"Present is a case, which leads to extinction of principal debtor's liability in terms of scheme of arrangement sanctioned by this Court. Such scheme is binding on all the creditors including non consenting creditors such as the Corporation. Under Section 135 of the Act, a contract between the creditor and the principal debtor by which the creditor compounds with the principal debtor, discharges the surety. It shall include a binding arrangement sanctioned by the Court under Section 391 of the Companies Act, 1956. It is a case of a deemed and binding contract though by operation of law, but such contract extinguishes the liability of the principal debtor. **With such extinction of the liability of the principal debtor, the surety cannot recover the amount of debt paid, from the debtor.** Therefore, it cannot be said that the surety will continue to be liable for payment of debt due to the creditor prior to settlement."

The arrangement sanctioned by Companies Court under Section 391 of the erstwhile Companies Act, 1956 is similar to the Resolution Plan approved by the COC and Adjudicating Authority under IBC, 2016 and as such it appears that it amounts to extinction of the remaining claim of the Creditor. By ratio of the above judgment, since, on such extinction of the claim of the creditor, the surety stands discharged for the reason that he cannot step into the shoes of the creditor and sue the debtor for the recovery of the amount paid by the surety in terms of Section 140 of the Indian Contract Act.

Similarly, in the case of Union Bank of India Vs. Chairperson, Debts Recovery Appellate Tribunal, the Allahabad High Court [2008 (8)ADJ 506] had held that liability of the surety gets automatically terminated when liability of principal debtor is extinguished while observing as under:

"This submission of Sri Kushal Kant, learned Counsel for the Bank cannot be accepted. The Company had been wound up and the Official Liquidator had been appointed. The Official Liquidator had filed report No. 301 of 2002 before the Company Judge with a prayer that he may be allowed to disburse Rs.78,16,428.42 to the Bank towards full and final settlement of the claim of the Bank submitted before the Official Liquidator. The Bank had filed an application supported by an affidavit of the Branch Manager that the report of the Official Liquidator may be accepted and the Official Liquidator may be directed to disburse Rs.78,16,428.42 to the Bank towards full and final settlement of the claim of the Bank before the Official Liquidator. The Company Judge accepted the report and passed an order that since the Bank had agreed to accept the said amount towards full and final settlement of the claim, the Official Liquidator shall make the amount. This amount was subsequently paid by the Official Liquidator to the Bank. It cannot, therefore, be urged by the Bank that in view of Section 134 of the Contract Act, the surety is not discharged. The Official Liquidator had stepped into the shoes of the Company when it was wound up. The decision in the case of United Bank of India (supra) relied upon by learned Counsel for the Bank is not applicable to the facts of the present case.

16. The second submission of learned Counsel for the Bank that discharge of the principal borrower by operation of the Bankruptcy Law will not discharge the guarantors is also without any force and needs to be rejected. The Bank had accepted the amount towards full and final settlement of its claim submitted before the Company Judge and the principal borrower did not stand discharged because of operation of law. The decision of the Supreme Court in Maharashtra State Electricity Board (supra), therefore, does not help the Petitioner-Bank. On the other hand, the submission of Sri R.P. Agarwal, learned Counsel for the Respondents that the liability of the surety gets automatically terminated when liability of principal debtor is extinguished, deserves to be accepted"

These decisions had been rendered even after referring to the decision of the Supreme Court in the case of Maharshtra State Electricity Board Vs. Official Liquidator (cited supra) and may not have been decided correctly.

In a recent case of G.K.Investments Ltd. Vs. Vistra ITCL (India) Ltd., in the context of IBC, 2016, it was held by High Court of Calcutta as under:

"That the creditors may give up some of their claims with or without conditions in an expectation that such concessions and rearrangement would be beneficial for the continued existence of the corporate debtor. The creditors in doing so may not in all situations give up their right to enforce other securities so as to recover the deficit which has been done in the instant case and reflected in the reinstated plan but in no case can realize more than it had agreed. Once the debt is crystallized to the extent the unsustainable portion of the debt has remained unrealized the secured creditors may realize such sums after giving adjustment of all sums received under the plan. Keeping in view the object of the Code and the terms of the restated plan, it prima facie appears that the creditors have not given up the right to recover the differential amount that has resulted due to the reduction in the value of shares. The object and purpose of the plan needs to be read, understood and considered in that context. On such considerations, I am unable to accept that the restated plan has extinguished the liability of the pledgors".

In view of the above, if the debt of the Corporate Debtor is extinguished by operation of law like CIRP proceedings, surety's liability continues and such recovery proceedings may be initiated against a surety even during the moratorium declared by the Adjudicating Authority.

However, the amendment and the decisions of the Courts throw up important questions of law which are discussed in this article as under:

<u>SUBROGATION:</u>

As per Section 140 of the Indian Contract Act, 1872, where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. It means that the surety steps into the shoes of the Creditor upon payment of the amount to the Creditor which is called as Subrogation. Therefore, the other important question that arises, whether the Surety, on payment of entire amount to a Financial Creditor during the course of CIRP, can exercise his right of subrogation, step into the shoes of the Financial Creditor and replace the Financial Creditor in the COC? Whether, on payment of the part of the amount to the Creditor, a surety can exercise his right of subrogation to the extent of the amount paid to the Creditor and file a claim for the same with the Interim Resolution Professional or Resolution Professional as the case may be? In the event of part-payment of the amount by the surety during the CIRP, whether both Financial Creditor and Surety can form part of the COC? The Code is silent on this issue.

In view of what is provided under Section 14(3), a Financial Creditor or an Operational Creditor may proceed against a surety for recovery even during moratorium and after conclusion of CIRP However, it is not clear if the Creditor recovers full amount from the Guarantor before conclusion of CIRP, whether the Financial Creditor has to be excluded from the Committee of Creditors and the percentage of shares of other members of the COC has to be worked out again?

Regulation 28(1) & (2) of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016 provides as under:

"In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee. (2) The resolution professional shall notify each participant and the Adjudicating Authority of any resultant change in the committee within two days of such change".

It appears from the above that a Financial Creditor may be replaced by the Surety in the Committee of Creditors and may be able to exercise his right of subrogation and be entitled to be paid as per the Resolution Plan, if the Surety pays the amount to the said Financial Creditor during the course of CIRP. However, on the question as to whether, on payment of the part of the amount to the Creditor, a surety can exercise his right of subrogation to the extent of the amount paid to the Creditor and file a claim for the same with the Interim Resolution Professional or Resolution Professional as the case may be? In the event of part-payment of the amount by the surety during the CIRP, whether both Financial Creditor and Surety can form part of the COC? As per the above cited regulations, the answer appears to be that both may form part of the COC, but the Code is silent on this issue.

If a Creditor recovers only a part of his dues after conclusion of CIRP and as per the Resolution Plan approved by the Adjudicating Authority, as per the above precedents, he can recover the balance amount from the Guarantor. On payment of the balance amount, whether a surety has the right to be subrogated and proceed against the Corporate Debtor for exercising his right of subrogation? If a surety is allowed to exercise his right of subrogation against the Principal Debtor/corporate Debtor, then the purpose of the Code is lost. If the Surety is not allowed to exercise his right of subrogation, it is repugnant to the principles of law of guarantee. In the above said case of State Bank of India Vs. V. Ramakrishnan, the National Company Law Tribunal, Chennai, by its order dated 18.09.2017, held that if the Financial Creditor, during the Corporate Insolvency Resolution Process and declaration of the moratorium is permitted to proceed against the personal guarantor of the Corporate Debtor for recovery of the outstanding debt to the extent of the personal guarantee given, then, the security interest, if any, of the Financial Creditor shall get transferred to the guarantor which will be in violation of Section 14(1)(b) of the I & B Code, 2016, indicating that the guarantor will step into the shoes of the Creditor.

In the case of Maharashtra State Electricity Board Vs. Official Liquidator (cited above), the Supreme Court had clearly stated that on payment of the guaranteed amount, the guarantor Bank shall have recourse to the securities obtained by it from the company which is in liquidation. But, the case of a company in liquidation is different and the case of a corporate debtor just taken over by the Resolution Applicant is different. In case of a company under liquidation, the guarantor may be able to lodge his claim with the Liquidator by exercising his right of subrogation. The issue is whether a corporate debtor that is taken over by the Resolution Applicant, on payment of the agreed amount to the creditors as approved under the Resolution Plan, is liable to the guarantor of the creditor to pay him the amount that is paid to the Creditor of the Corporate debtor? This issue has not been decided by the Supreme Court while dealing with the issue as to moratorium was applicable to a guarantor or not.

Section 238 of the Code provides that the Code shall have an overriding effect over all other laws which are inconsistent with the Code which reads as under:

Section 238: *"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

Similarly, Section 31(1) provides that if the Adjudicating Authority is satisfied that the resolution plan as approved by the Committee of Creditors under Sub-section (4) of Section 30 meets the requirements as referred to in Sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

What is the scope of Section 31(1) which states that the Resolution Plan approved by the CoC is binding on, inter alia, guarantors? In the case of State Bank of India Vs.V.Ramakrishnan, it was explained by the Supreme Court as under:

"Section 31 of the Act was also strongly relied upon by the Respondents. This Section only states that once a Resolution Plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Indian Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment".

Therefore, Section 31 is only to overcome the rigour of Section 133 of the Contract Act and to bind the guarantor for the changed debt and nothing else. But, whether these provisions fetter the right of a Guarantor/surety from exercising his right of subrogation on payment of the balance amount to the Creditor? Though the Code by Section 238 provides that the provisions of the Code shall have overriding effect to anything inconsistent contained in any other law, yet, nowhere in the Code it is provided that right of subrogation of a guarantors of the Corporate Debtor would cease on approval of the Resolution Plan. Therefore, it appears that a guarantor may exercise his right of subrogation on payment of the balance amount to the creditors. But, such a situation would lead weird consequences and make the Resolution Applicant liable to pay to the guarantors all over once again which is not the intention of the Parliament and hence there is a need to amend the law and to provide that the right of subrogation would not be available to a guarantor on approval of the Resolution Plan. The law is still evolving and hoped that these issues will be settled in due course.

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Industry Focus - Healthcare

Introduction

Healthcare has become one of India's largest sectors - both in terms of revenue and employment. Healthcare comprises hospitals, medical devices, clinical trials, outsourcing, telemedicine, medical tourism, health insurance and medical equipment. The Indian healthcare sector is growing at a brisk pace due to its strengthening coverage, services and increasing expenditure by public as well private players.

Indian healthcare delivery system is categorised into two major components - public and private. The Government, i.e. public healthcare system comprises limited secondary and tertiary care institutions in key cities and focuses on providing basic healthcare facilities in the form of primary healthcare centres (PHCs) in rural areas. The private sector provides majority of secondary, tertiary and quaternary care institutions with a major concentration in metros, tier I and tier II cities.

India's competitive advantage lies in its large pool of well-trained medical professionals. India is also cost competitive compared to its peers in Asia and Western countries. The cost of surgery in India is about one-tenth of that in the US or Western Europe.

Market Size

The healthcare market can increase three fold to Rs 8.6 trillion (US$ 133.44 billion) by 2022.

India is experiencing 22-25 per cent growth in medical tourism and the industry is expected to double its size from present (April 2017) US$ 3 billion to US$ 6 billion by 2018.

There is a significant scope for enhancing healthcare services considering that healthcare spending as a percentage of Gross Domestic Product (GDP) is rising. The government's expenditure on the health sector has grown to 1.4 per cent in FY18E from 1.2 per cent in FY14. The Government of India is planning to increase public health spending to 2.5 per cent of the country's GDP by 2025.

Investment

The hospital and diagnostic centers attracted Foreign Direct Investment (FDI) worth US$ 5.25 billion between April 2000 and June 2018, according to data released by the Department of Industrial Policy and Promotion (DIPP). Some of the recent investments in the Indian healthcare industry are as follows:

- Healthcare sector in India witnessed 23 deals worth US$ 679 million in H12018.
- India and Cuba have signed a Memorandum of Understanding (MoU) to increase cooperation in the areas of health and medicine, according to Ministry of Health and Family Welfare, Government of India.
- Fortis Healthcare has approved the de-merger of its hospital business with Manipal Hospital Enterprises. TPG and Dr. Ranjan Pal could invest Rs. 3,900 crore (US$ 602.41 million) in Manipal Hospital Enterprise.

Government Initiatives

Some of the major initiatives taken by the Government of India to promote Indian healthcare industry are as follows:

- On September 23, 2018, Government of India launched Pradhan Mantri Jan Arogya Yojana (PMJAY), to provide health insurance worth Rs 500,000 (US$ 7,124.54) to over 100 million families every year.
- In August 2018, the Government of India has approved Ayushman Bharat-National Health Protection Mission as a centrally Sponsored Scheme contributed by both center and state government at a ratio of 60:40 for all States, 90:10 for hilly North Eastern States and 60:40 for Union Territories with legislature. The center will contribute 100 per cent for Union Territories without legislature.
- The Government of India has launched Mission Indradhanush with the aim of improving coverage of immunisation in the country. It aims to achieve at least 90 per cent immunisation coverage by December 2018 which will cover unvaccinated and partially vaccinated children in rural and urban areas of India.

Achievements

Following are the achievements of the government in the year 2017:

- In 2017, the Government of India approved National Nutrition Mission (NNM), a joint effort of Ministry of Health and Family Welfare (MoHFW) and the Ministry of Women and Child development (WCD) towards a life cycle approach for interrupting the intergenerational cycle of under nutrition.
- As of September 23, 2018, the world's largest government funded healthcare scheme, Ayushman Bharat was launched.
- As of November 15, 2017, 4.45 million patients were benefitted from Affordable Medicines and Reasonable Implants for Treatment (AMRIT) Pharmacies.
- As of December 15, 2017, the Government of India approved the National Medical Commission Bill 2017; it aims to promote area of medical education reform.

Road Ahead

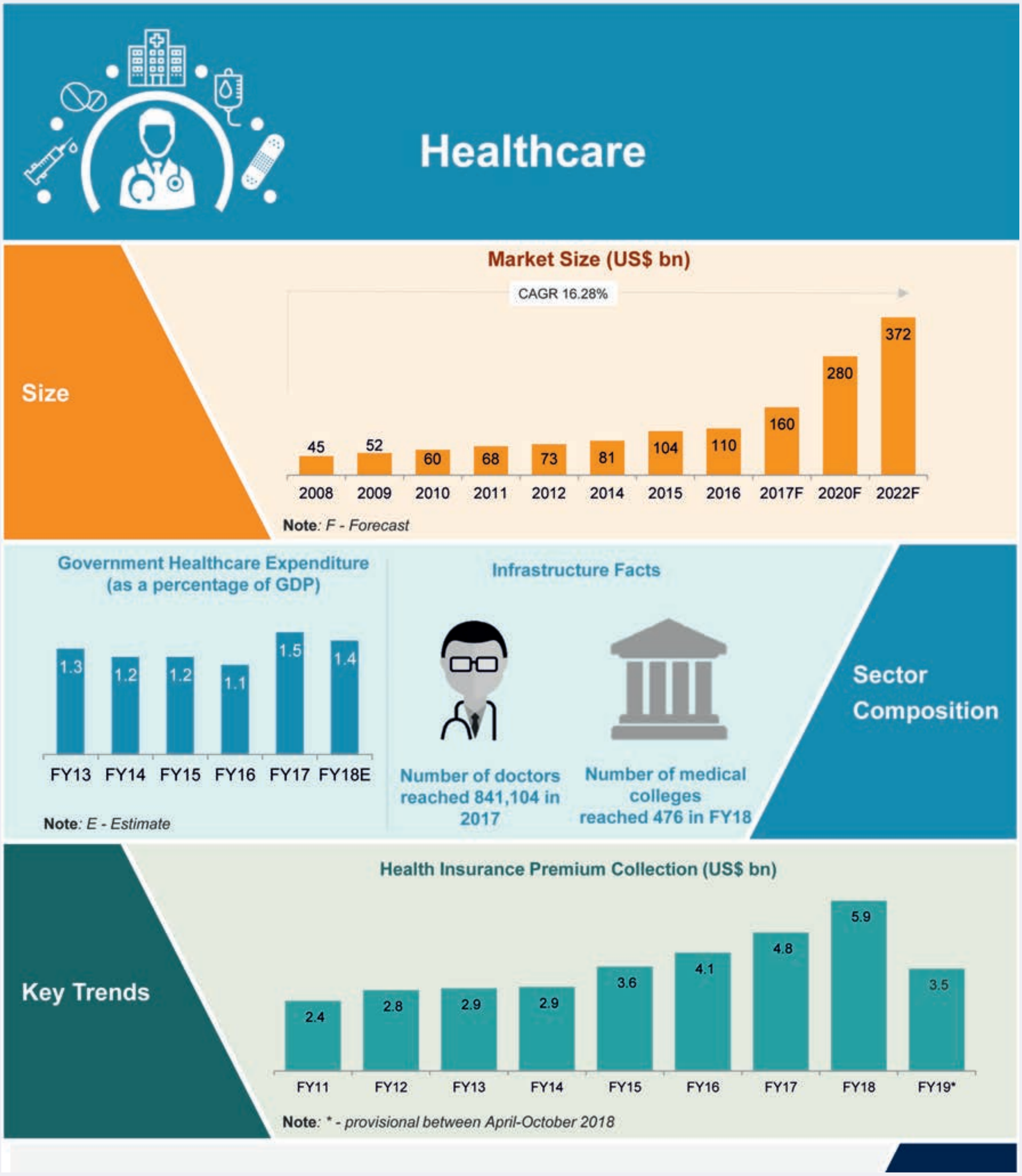
India is a land full of opportunities for players in the medical devices industry. India's healthcare industry is one of the fastest growing sectors and it is expected to reach $280 billion by 2020. The country has also become one of the leading destinations for high-end diagnostic services with tremendous capital investment for advanced diagnostic facilities, thus catering to a greater proportion of population. Besides, Indian medical service consumers have become more conscious towards their healthcare upkeep.

Indian healthcare sector is much diversified and is full of opportunities in every segment which includes providers, payers and medical technology. With the increase in the competition, businesses are looking to explore for the latest dynamics and trends which will have positive impact on their business. The hospital industry in India is forecasted to increase to Rs 8.6 trillion (US$ 132.84 billion) by FY22 from Rs 4 trillion (US$ 61.79 billion) in FY17 at a CAGR of 16-17 per cent.

India's competitive advantage also lies in the increased success rate of Indian companies in getting Abbreviated New Drug Application (ANDA) approvals. India also offers vast opportunities in R&D as well as medical tourism. To sum up, there are vast opportunities for investment in healthcare infrastructure in both urban and rural India.

References: Department of Industrial Policy and Promotion (DIPP), Media Reports, Press Information Bureau (PIB), IBEF, RNCOS Reports.

Disclaimer: This information has been collected through secondary research and the Institute is not responsible for any errors in the same.



Industry Focus - Retail

Introduction

The Indian retail industry has emerged as one of the most dynamic and fast-paced industries due to the entry of several new players. Total consumption expenditure is expected to reach nearly US$ 3,600 billion by 2020 from US$ 1,824 billion in 2017. It accounts for over 10 per cent of the country's Gross Domestic Product (GDP) and around 8 per cent of the employment. India is the world's fifth-largest global destination in the retail space.

Market Size

India's retail market is expected to increase by 60 per cent to reach US$ 1.1 trillion by 2020, on the back of factors like rising incomes and lifestyle changes by middle class and increased digital connectivity. Online retail sales are forecasted to grow at the rate of 31 per cent year-on-year to reach US$ 32.70 billion in 2018.

India is expected to become the world's fastest growing e-commerce market, driven by robust investment in the sector and rapid increase in the number of internet users. Various agencies have high expectations about growth of Indian e-commerce markets.

Luxury market of India is expected to grow to US$ 30 billion by the end of 2018 from US$ 23.8 billion 2017 supported by growing exposure of international brands amongst Indian youth and higher purchasing power of the upper class in tier 2 and 3 cities, according to Assocham.

Investments

The Indian retail trading has received Foreign Direct Investment (FDI) equity inflows totalling US$ 1.42 billion during April 2000–June 2018, according to the Department of Industrial Policies and Promotion (DIPP).

With the rising need for consumer goods in different sectors including consumer electronics and home appliances, many companies have invested in the Indian retail space in the past few months.

- Beccos, a South Korean designer brand is set to enter the Indian market with an investment of about Rs 1.00 billion (US$ 14.25 million) and open 50 stores by June 2019.
- Walmart Investments Cooperative U.A has invested Rs 2.75 billion (US$ 37.68 million) in Wal-Mart India Pvt Ltd.

Government Initiatives

The Government of India has taken various initiatives to improve the retail industry in India. Some of them are listed below:

- The Government of India may change the Foreign Direct Investment (FDI) rules in food processing, in a bid to permit e-commerce companies and foreign retailers to sell Made in India consumer products.
- Government of India has allowed 100 per cent Foreign Direct Investment (FDI) in online retail of goods and services through the automatic route, thereby providing clarity on the existing businesses of e-commerce companies operating in India.

Road Ahead

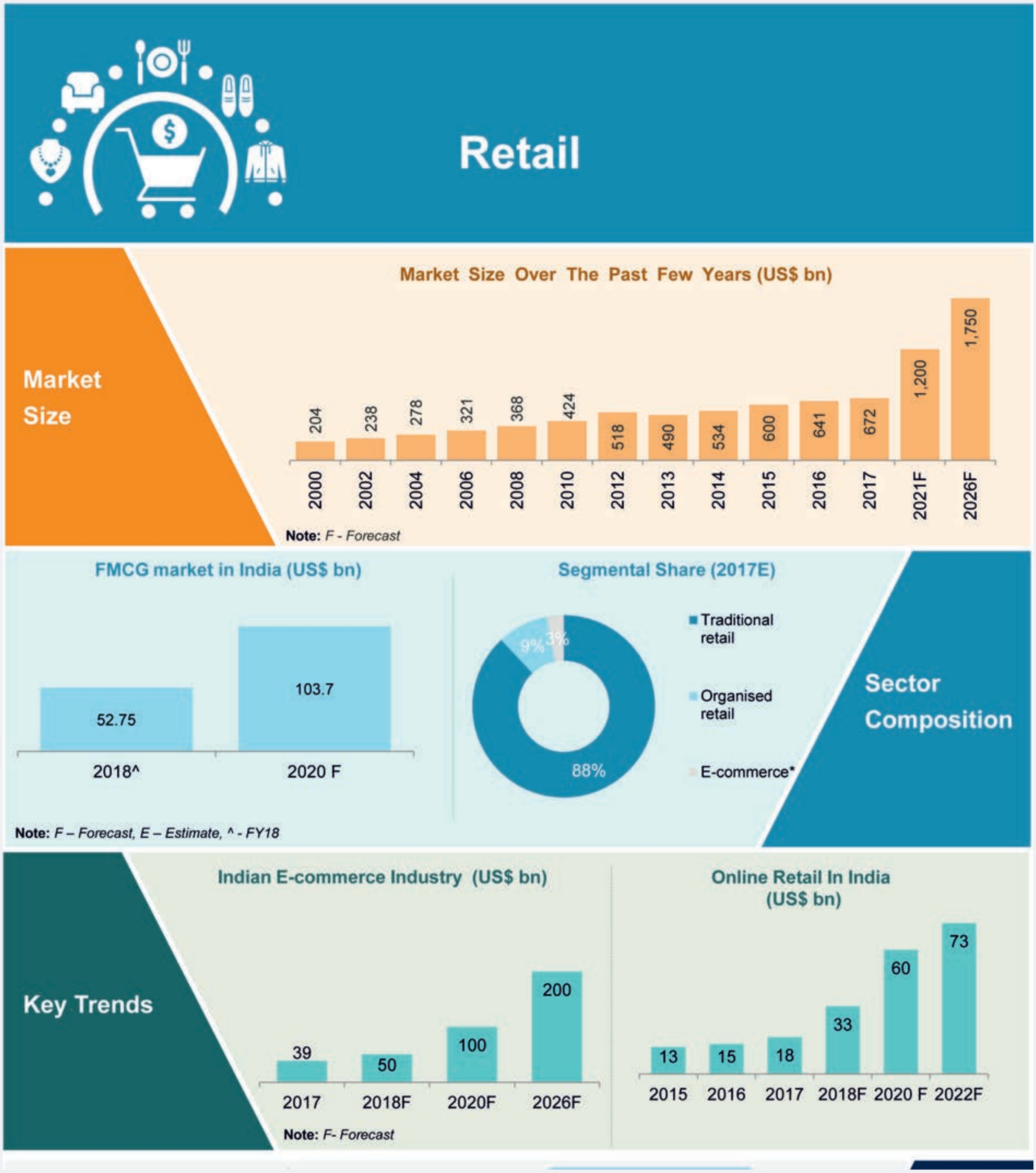
E-commerce is expanding steadily in the country. Customers have the ever increasing choice of products at the lowest rates. E-commerce is probably creating the biggest revolution in the retail industry, and this trend would continue in the years to come. India's e-commerce industry is forecasted to reach US$ 53 billion by 2018. Retailers should leverage the digital retail channels (e-commerce), which would enable them to spend less money on real estate while reaching out to more customers in tier-2 and tier-3 cities.

It is projected that by 2021 traditional retail will hold a major share of 75 per cent, organised retail share will reach 18 per cent and e-commerce retail share will reach 7 per cent of the total retail market.

Nevertheless, the long-term outlook for the industry is positive, supported by rising incomes, favourable demographics, entry of foreign players, and increasing urbanisation.

References: Media Reports, Press Releases, Deloitte report, IBEF, Department of Industrial Policy and Promotion website, Union Budget 2017–18, Consumer Leads report by FICCI and Deloitte

Disclaimer: This information has been collected through secondary research and the Institute is not responsible for any errors in the same.


Retail
Market Size
Market Size Over The Past Few Years (US$ bn)
204 238 278 321 368 424 518 490 534 600 641 672 1,200 1,750
2000 2002 2004 2006 2008 2010 2012 2013 2014 2015 2016 2017 2021F 2026F
Note: F - Forecast
FMCG market in India (US$ bn)
52.75
103.7
2018^
2020 F
Segmental Share (2017E)
9%
3%
88%
Traditional retail
Organised retail
E-commerce*
Sector Composition
Note: F – Forecast, E – Estimate, ^ - FY18
Key Trends
Indian E-commerce Industry (US$ bn)
39 50 100 200
2017 2018F 2020F 2026F
Note: F- Forecast
Online Retail In India (US$ bn)
13 15 18 33 60 73
2015 2016 2017 2018F 2020 F 2022F

Industry Focus - Ports

Introduction

According to the Ministry of Shipping, around 95 per cent of India's trading by volume and 70 per cent by value is done through maritime transport.

India has 12 major and 205 notified minor and intermediate ports. Under the National Perspective Plan for Sagarmala, six new mega ports will be developed in the country. The Indian ports and shipping industry plays a vital role in sustaining growth in the country's trade and commerce. India is the sixteenth largest maritime country in the world, with a coastline of about 7,517 km. The Indian Government plays an important role in supporting the ports sector. It has allowed Foreign Direct Investment (FDI) of up to 100 per cent under the automatic route for port and harbour construction and maintenance projects. It has also facilitated a 10-year tax holiday to enterprises that develop, maintain and operate ports, inland waterways and inland ports.

Market Size

During FY18, cargo traffic at major ports in the country was reported at 679.36 million tonnes (MT). In FY19P (up to February 2019) traffic increased by 2.79 per cent year-on-year to reach 633.87 million tonnes. Cargo traffic at non-major ports was estimated at 491.95 million tonnes FY18 and grew at 9.2 per cent CAGR between FY07-18.

The major ports had a capacity of 1,452 million tonnes by FY18 end. The Maritime Agenda 2010-20 has a 2020 target of 3,130 MT of port capacity.

The government has taken several measures to improve operational efficiency through mechanisation, deepening the draft and speedy evacuations.

Investment/Development

- Essar Ports will invest US$ 70 million in Hazira port by 2020.
- The Indian Minister for Shipping, Road Transport and Highways, Mr Nitin Gadkari, announced a massive investment in India's ports and roads sector, which is likely to help boost the country's economy. The Indian government plans to develop 10 coastal economic regions as part of plans to revive the country's Sagarmala (string of ports) project.
- The zones would be converted into manufacturing hubs, supported by port modernisation projects, and could span 300–500 km of the coastline. The government is also looking to develop the inland waterway sector as an alternative to road and rail routes to transport goods to the nation's ports and hopes to attract private investment in the sector.
- Ports sector in India has received a cumulative FDI of US$ 1.64 billion between April 2000 and December 2018.
- Indian ports and shipping sector witnessed three M&A deals worth US$ 29 million in 2017.

Government Initiatives

Some of the major initiatives taken by the government to promote the ports sector in India are as follows:

- Net profit at major ports has increased from Rs 1,150 crore (US$ 178.4 million) in FY13 to Rs 3,413 crore (US$ 529.6 million) in FY18 while operating margin increased from 23 per cent to 44 per cent.
- In May 2018, Ministry of Shipping allowed foreign flagged ships to carry containers for transshipment.
- In March 2018, a revised Model Concession Agreement (MCA) was approved to make port projects more investor-friendly and make investment climate in the sector more attractive.

Achievements

- Following are the achievements of the government in the past four years:
- Five times more growth in major ports' traffic between 2014-18, compared to 2010-14.
- Increased efficiency has led three times increase in net profits of major ports between FY14-18.
- Turnaround time at major ports reduced to 64 hours in FY18 from 94 hours in Fy14.
- Project UNNATI has been started by Government of India to identify the opportunity areas for improvement in the operations of major ports. Under the project, 116 initiatives were identified out of which 91 initiatives have been implemented as of November 2018.

Road Ahead

- Increasing investments and cargo traffic point towards a healthy outlook for the Indian ports sector. Providers of services such as operation and maintenance (O&M), pilotage and harbouring and marine assets such as barges and dredgers are benefiting from these investments.
- The capacity addition at ports is expected to grow at a CAGR of 5-6 per cent till 2022, thereby adding 275-325 MT of capacity.
- Under the Sagarmala Programme, the government has envisioned a total of 189 projects for modernisation of ports involving an investment of Rs 1.42 trillion (US$ 22 billion) by the year 2035.
- Ministry of Shipping has set a target capacity of over 3,130 MMT by 2020, which would be driven by participation from the private sector. Non-major ports are expected to generate over 50 per cent of this capacity.
- India's cargo traffic handled by ports is expected to reach 1,695 million metric tonnes by 2021-22, according to a report of the National Transport Development Policy Committee.

- Within the ports sector, projects worth an investment of US$ 10 billion have been identified and will be awarded over the coming five years.

References:

Media Reports and Press Releases, IBEF, India Services Sector Report by Deloitte

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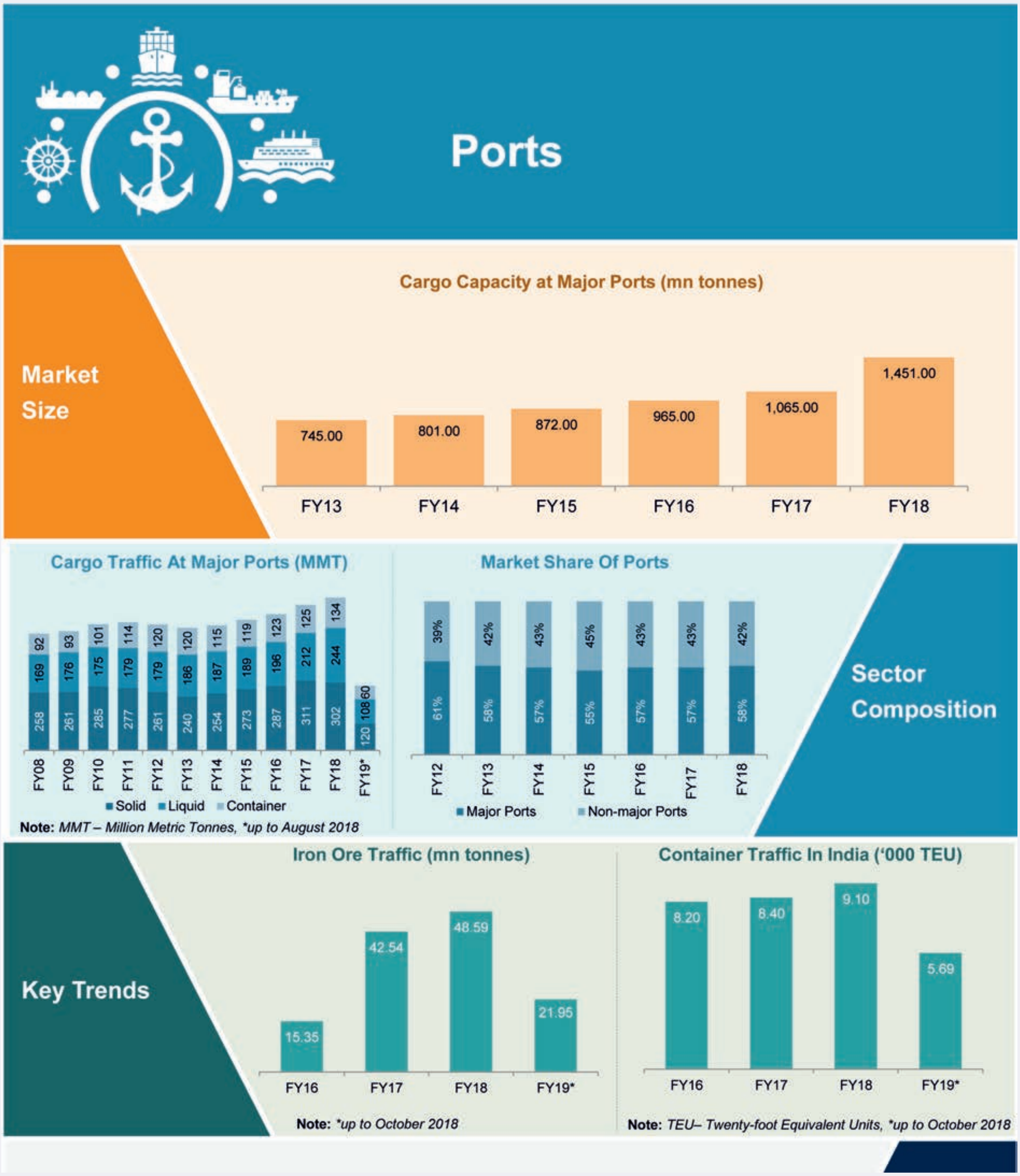

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