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SPARSH.....

Touches

JANUARY, 2016

In this Issue:

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- 📖 Our Articles Published
- 📖 Sessions/ Lectures taken by
Mr. Vinod Kothari &
Company
- 📖 Our Corner



Editorial

T:Together
E:Everyone
A:Achieves
M:More



“The best way to predict the future is to create it.”

-Peter Drucker

We, at VKCPL & VK & Co., believe in hard work, determination and perfection. We put in our best into each and every act done by us which results into success and appreciation by all.

We also believe in sharing capabilities and achievements of our people to share happiness among ourselves. If you have any such achievements or feelings to share, please feel free to write to us so that we stay connected through Sparsh.

With this thought of dedication and hard work, we come again with “Sparsh”.

Stay in touch with us through SPARSH!!

Editor:

- Megha Saraf

editor@vinodkothari.com



Articles Published

- Article on “Whether CSR Expenditure is Appropriation of Profits?” by Mr. Vinod Kothari got published on IndiaCorp Law.
- Article on “RBI mulls over peer to peer lending; may publish a discussion paper” by Ms. Nidhi Bothra got published in Conclave on Banking magazine by ACAE Chartered Accountants’ Study Circle- EIRC.
- Article on “Primer on External Commercial Borrowings (ECBs)” by Ms. Vinita Nair, Mr. Vignesh Iyer and Ms. Arundhuthi Bose got published on Taxguru.
- Article on “Karnataka High Court succor directors from case u/s 447 by vigorous shareholder” by Ms. Aditi Jhunjunwala got published in Manupatra.
- Article on “SEBI fails to address doubts over Listing Regulations” by Ms. Nitu Poddar got published on Moneylife.
- Article on “Office held by non-executive director can’t be regarded as ‘holding of office or place of profit’: Delhi HC” by Mr. Aman Nijhawan got published in CPT magazine.
- Article on “MCA Establishes Central Registration Centre for Reservation of Names” by Ms. Nikita Snehl got published on IndiaCorp Law.
- Article on “Secondment of employees- an understanding” by Ms. Pammy Jaiswal got published on Taxguru.
- Article on “Crowd-funding- Evolution and Management” by Ms. Pammy Jaiswal got published in the souvenir issued by ICSI on the occasion of Udaï Diwas.
- Article on “Two New Subsidies: Sweet Spot for NBFCs and Asset Leasing Companies” by Mr. Ameet Roy got published on Taxguru.
- Article on “Crowd Funding” by Mr. Ameet Roy got published in Conclave on Banking magazine by ACAE Chartered Accountants’ Study Circle- EIRC.
- Article on “India Plans to Tap into Green Bonds” by Ms. Arundhuthi Bose got published on IndiaCorp Law.
- Article on “ECB Norms Made Simpler - Now Eligible Borrowers Have A Reason To Cheer” by Ms. Arundhuthi Bose got published in SCL magazine.



Sessions/Lectures taken/Events attended

- *Mr. Vinod Kothari took session on “Related Party Transactions” at the Institute of Company Secretaries of India- Northern India Regional Council on January 29, 2016.*
- *Mr. Vinod Kothari took session on “Listing Obligations and Disclosure Requirements” at the Institute of Chartered Accountants of India- Eastern India Regional Council on January 04, 2016.*
- *Mr. Vinod Kothari took session on “Secretarial standards on Listing Obligations and Disclosure Requirements” at Kolkata on January 30, 2016.*
- *Mr. Vinod Kothari was the speaker at “26th Regional Conference of Company Secretaries” at the Institute of Company Secretaries of India- Eastern India Regional Council on January 16, 2016.*
- *Ms. Nidhi Bothra took session on “Master Directions in FEMA” at the seminar hosted by Chartered Accountants Study Circle- Eastern India Regional Council on January 20, 2016.*
- *Mr. Abhirup Ghosh took session on “Basics of Company Law” at CKIL on January 31, 2016.*

Workshops

Workshop Conducted

- Cash-flow Modeling for Securitisation, **Morocco**

Upcoming Workshop

- Workshop on Changed Legal Environment Challenges and Opportunities for Financial Entities, **TBA**
- Workshop on Leasing and Asset-Backed Lending, **Mumbai**

Articles Published

Article on “Whether CSR Expenditure is Appropriation of Profits?”

- by Mr. Vinod Kothari got published on [IndiaCorp Law](http://IndiaCorpLaw.com)



The screenshot shows the IndiaCorpLaw blog interface. At the top, the title "IndiaCorpLaw" is displayed in a large, stylized font. Below it, a subtitle reads "A blawg containing a periodic review of topics of interest in corporate and commercial law that impact business." The date "Tuesday, January 19, 2016" is shown on the left. The main article title "Whether CSR Expenditure is Appropriation of Profits?" is prominently displayed. A note indicates the post is contributed by Vinod Kothari of Vinod Kothari & Co. The article text discusses a circular from the Ministry of Corporate Affairs (MCA) dated 12 January 2016, which clarifies that CSR expenditure is not deductible as a business expenditure for tax purposes. It also mentions that the expenditure is based on profits before tax (PBT). The article further explores the question of whether CSR spending is an appropriation of profits or a charge against profits, and how this affects the profit and loss account and earnings per share (EPS). A sidebar on the right contains a search bar, a list of contributors (Jayant Thakur, Mihir Naniwadekar, Shantanu Naravane, Somasekhar Sundaresan, Umakanth Varottil, V. Niranjan), and a section for Twitter updates.

IndiaCorpLaw

A blawg containing a periodic review of topics of interest in corporate and commercial law that impact business.

Tuesday, January 19, 2016

Whether CSR Expenditure is Appropriation of Profits?

[The following post is contributed by **Vinod Kothari** of Vinod Kothari & Co. The author may be contacted at vinod@vinodkothari.com]

A circular of the Ministry of Corporate Affairs (MCA), with a set of FAQs along with response dated 12 January 2016 through **general circular no. 01/2016** has clarified that the expenditure on corporate social responsibility (CSR) is not deductible as a business expenditure for tax purposes. The MCA circular has also clarified that the expenditure is based on the profits before tax (PBT) of the entity.

There is a question as to whether the CSR spending is an appropriation of profits, or a charge against profits? If it is an appropriation of profits, the spending is not debited as an expense to the profit and loss account; it will be treated a distribution of profits or application thereof, and accordingly, will not be recognised for the purpose of reporting of earnings of the entity, including earnings per share (EPS). On the contrary, if it is an expense, it is a charge to the profit and loss account. While the computation may be based on PBT, it will yet be an expense item, and the actual PBT will be determined after debiting the CSR spending.

This post examines the question. There are arguments on both sides of the motion. We discuss those.

Arguments for treating CSR spending as an appropriation:

Contributors

- Jayant Thakur
- Mihir Naniwadekar
- Shantanu Naravane
- Somasekhar Sundaresan
- Umakanth Varottil
- V. Niranjan

Twitter Updates

To view full article click [here](http://IndiaCorpLaw.com)

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Article on “RBI mulls over peer to peer lending; may publish a discussion paper”

- by Ms. Nidhi Bothra got published in [Conclave on Banking magazine](#)

CONCLAVE ON BANKING
Banking Sector's Emerging Role of Professionals

ARTICLES

On another front, recently, RBI allowed public and private sector banks in India that are authorized to deal in foreign exchange to set up banking units in the proposed international finance service centers (IFSC). As per the new guidelines, each eligible bank would be permitted to establish only one banking unit in each IFSC. IFSC banking units (IBUs) will be subject to prudential regulations like adopting credit risk management policy, liquidity and interest rate risk management policies and will be supervised and regulated by RBI. IBUs are envisaged on the lines of the international finance centers in Singapore and Dubai. Relatively easier regulations and lower operational costs make them an attractive proposition for

RBI allowed public and private sector banks in India that are authorized to deal in foreign exchange to set up banking units in the proposed international finance service centers (IFSC). As per the new guidelines, each eligible bank would be permitted to establish only one banking unit in each IFSC.

Banks. These units will help banks access international financial markets and also aid their corporate banking clients who are seeking foreign currency funding. In July this year, YES Bank received approval from RBI to set up IBU in Gujarat International Finance Tec City (GIFT). RBI from time to time also issued regulatory guidelines on other areas such as Corporate Governance, Fit & Proper, Know Your Customer/Anti Money Laundering, Credit Information Sharing, Customer Service in addition to specific guidance on credit, market and operational risk management etc., to strengthen the overall risk management culture in Indian banks.



RBI mulls over peer to peer lending; may publish a discussion paper

By CS Nidhi Bothra
nidhi@nidhibothra.com

It is quite evident that the e-commerce space in India is growing exponentially despite huge issues faced by the existing players. A natural extension to online trade and transactions is financial intermediation. While the country does not have a dedicated law for peer to peer lending, but the common laws of the country are well placed to embrace the virtual market place for financial intermediation¹.

Globally there are several peer to peer lending platforms that are active and are churning volumes of business virtually². Closer home as well, there are several platforms that have been established in the absence of regulations, but aimed to replicate the global model for changing the face of financial intermediation and making physical presence redundant completely. A Siamese to peer to peer is crowd funding which also is enjoying traction in India³. SEBI has also released a draft paper for regulating crowd funding transactions in India⁴.

In a recent news, considering the growing strength of peer

to peer lending platforms being established with a slight concentration in the Delhi-NCR, RBI is now mulling putting out a discussion paper on peer to peer lending platforms⁵. RBI may also carve out a new class of NBFCs for P2P lending arrangements. Several entities that have been interested in building on a P2P interface have felt the absence of dedicated regulation as a hindrance. RBI's intentions on bringing out a discussion paper for the business model is a welcome move and they propound the need to set up platforms sooner.

¹ http://www.india-financing.com/india-finance/P2P_Lending.pdf

² http://www.india-financing.com/india-finance/P2P_Lending_Peer_to_Peer_Lending_Business_Model.pdf

³ <http://www.ketto.org/>

⁴ http://www.sebi.gov.in/sebi_data/attachdocs/1408090815029.pdf

⁵ Currently, there are 30 P2P platforms functioning in India as per the data provided in <http://www.besant.in/P2P.html>. http://p2pindia.com/india-finance/P2P_Lending_Peer_to_Peer_Lending_Business_Model.pdf

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Article on “Primer on External Commercial Borrowings (ECBs)”

- by Ms. Vinita Nair, Mr. Vignesh Iyer and Ms. Arundhuthi Bose got published on [Taxguru](#)


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Primer on External Commercial Borrowings (ECBs)

Article ID 73748 | Posted In RBI / FEMA | Articles | 0 Comments  **Print**

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1. How does ECB compare with domestic borrowings in terms of costs?
2. What is the key difference between ECB and FDI?
3. What all instruments of borrowings /debt instruments are covered by the definition of “ECBs”?
4. What is the key difference between automatic route and approval route for ECBs?
5. What is the recent amendment made in ECB?
6. What impact will the revised framework have on the ECBs already availed under the erstwhile framework?
7. What will be the nature of ECB that can be availed?
8. What are the End-use restrictions in case of ECB?
9. Is ECB allowed for working capital or general corporate purposes?
10. Is ECB allowed for capital expenditure?

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Article on “Karnataka High Court succor directors from case u/s 447 by vigorous shareholder”

- by Ms. Aditi Jhunjunwala got published in [Manupatra](https://www.manupatra.com/)



Karnataka High Court succor directors from case u/s 447 by vigorous shareholder

Aditi Jhunjunwala*

Companies Act, 2013 (hereinafter referred to as the “Act, 2013”) has another judicial interpretation to its collection. Recently the Karnataka High Court (hereinafter referred to as the “Hon’ble High Court/Court”) quashed the criminal proceeding filed u/s 447 of the Act, 2013 against BEML Ltd. and its directors, who are appointed by the President of India, on the ground that the litigation has been filed out of personal motive and does not constitute a prima facie offence against the accused persons.

The case is important as well as a remarkable judgment insofar the Hon’ble High Court has brought about that the litigation filed was abuse of the process of law and that “complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable” by referring to the decision of National Small Industries vs Harmeet Singh Paintal and Another.

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The case is important as well as a remarkable judgment insofar the Hon’ble High Court has brought about that the litigation filed was abuse of the process of law and that “complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable” by referring to the decision of National Small Industries vs Harmeet Singh Paintal and Another². The Court also relied on the judgment of the Apex Court in the case of Satish Mehra v. State of (NCT of Delhi) and Another

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Article on “SEBI fails to address doubts over Listing Regulations”

- by Ms. Nitu Poddar got published on [Moneylife](#)

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SEBI fails to address doubts over Listing Regulations

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The FAQs released by SEBI on the new listing regulations, does not address any of the issues the industry was grappling with

Ever since the Listing Obligations and Disclosure Requirements Regulations, 2015 (LODR or Regulations) has replaced the existing Listing Agreements vide notification on 2

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Article on “Office held by non-executive director can’t be regarded as ‘holding of office or place of profit’: Delhi HC”

- by Mr. Aman Nijhawan got published in [CPT magazine](#)

Office held by non-executive director can’t be regarded as ‘holding of office or place of profit’: Delhi HC



AMAN NIJHAWAN
CS

Introduction

1. A company is a legal person in the eyes of law. It’s a creation of law which lacks both body and mind. It cannot act just like a human being. It can act only through some human agency. Directors are those persons through whom company acts and does business. Directors who are involved in the executive machinery of the Company are termed as Executive Directors while directors who are not involved in day-to-day affairs of the company and are appointed just to provide creative inputs to the board by providing independent ideas are termed as Non-Executive Directors (NEDs). Hence, it is not mandatory for the company to pay any remuneration to NEDs except sitting fees or commission.

The present article discusses in details the recent case of *Jagran Prakashan Ltd. v. Union of India*¹ wherein the Delhi High Court settled a question, whether a non-executive director can be said to be in **employment** or holding a **place of profit** in

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Article on “MCA Establishes Central Registration Centre for Reservation of Names”

- by Ms. Nikita Snehil got published on [IndiaCorp Law](#)


The screenshot displays the IndiaCorpLaw website. At the top, the site's name "IndiaCorpLaw" is written in a large, stylized font. Below it, a tagline reads: "A blawg containing a periodic review of topics of interest in corporate and commercial law that impact business." The date "Saturday, January 30, 2016" is shown on the left. The main article title is "MCA Establishes Central Registration Centre for Reservation of Names". A sub-headline states: "[The following guest post is contributed by Nikita Snehil of Vinod Kothari & Co.]". The article text begins: "By way of a Notification dated 22nd January 2016 and in order to encourage incorporation of companies, the MCA has established a Central Registration Centre (CRC) having territorial jurisdiction all over India for discharging or carrying out the function of processing and disposal of applications for reservation of names under the provisions of the Companies Act, 2013. The CRC shall be located at Indian Institute of Corporate Affairs (IICA)[1]. The CRC has been established to facilitate smoother functioning and fastening the processing of incorporation applications, it is expected to look into the applications for name availability (INC-1 e-forms) submitted online across the country and to process the same by the end of the very next working day. Thus, CRC not only promotes uniformity in application of incorporation rules but also encourages incorporation of companies." The text continues: "The CRC shall function under the administrative control of Registrar of Companies, Delhi (ROC Delhi), who shall act as the Registrar of the CRC until a separate Registrar is appointed to the CRC. The CRC shall process applications for reservation of name i.e., e-Form No. INC-1 filed along with the prescribed fee as provided in the Companies (Registration of Offices and Fees) Rules, 2014. Processing and approval of name or names proposed in e-Form No. INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction over incorporation of companies under the Companies Act, 2013 in accordance with the provisions". On the right side of the page, there is a search bar labeled "Search this Site" with a "Google Custom Search" button. Below the search bar is a "Contributors" section listing: Jayant Thakur, Mihir Naniwadekar, Shantanu Naravane, Somasekhar Sundaresan, Umakanth Varottil, and V. Niranjan. At the bottom right, there is a "Twitter Updates" section.


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Article on “Secondment of employees- an understanding”


- by Ms. Pammy Jaiswal got published on [Taxguru](https://www.taxguru.com)

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Secondment of employees: An understanding
Article ID 73122 | Posted In Corporate Law | Articles | 3 Comments 

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Introduction
Secondment of employees, as a concept, has evolved in the era of global commercial mobility. Secondment is where an employee of one organization is working for one or more other organization(s), basis a mutual understanding between the organizations.
There are various concerns associated with secondment of employees like the payroll, employer-employee relationship status, control over the employee and several related

issues.
Considering the growing popularity of this concept in India, owing to the advent of the multi-national organization in the country, this article has been drawn up to conceptualize and try and find answer to queries pertaining to the concept, taxation aspects, legal aspects etc.

What is secondment?
Secondment is a temporary phase of arrangement where an employee is transferred from one job to another, usually in the same group of company for a definite period of time for the mutual benefit of all parties involved in the arrangement. Although the term has not been legally

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Article on “Crowd-funding- Evolution and Management”

- by Ms. Pammy Jaiswal got published in the souvenir issued by ICSI on the occasion of [Udai Diwas](#)

Crowd Funding – Evolution and Management

Pammy Jaiswal*

Introduction

With globalization and technological interface increasing by the day, the next logical innovation in the internet platform is financial intermediation.

Virtual presence allows facilitating financial intermediation connecting the haves with the have nots. Globally the phenomena is common, where virtual platforms have been set up to bring together lenders and borrowers increasing access to funds globally and making the geographical limitations for lending/ borrowing relation redundant.

This has prompted the regulators in India such as Securities and Exchange Board of India (SEBI) to introduce regulations pertaining to crowd funding. In June 2014, SEBI released a discussion paper on crowd funding¹. Under the crowd funding concept, lenders aggregate to meet the funding requirements of a borrower. It is like consortium lending proposition by banks but undertaken by individuals and through a virtual interface.

This write-up covers the basic understanding of crowd funding along with its regulatory regime in the international jurisdictions and in India.

What is Crowd funding

Crowd funding is the solicitation of funds (usually small amount) from several investors through online platform or social networking site for a particular project, business venture or a social cause. Raising of funds could be for any creative project (for example, music, film, book publication), benevolent or public-interest cause (for instance, a community based social or co-operative initiative) or a business undertaking, through small financial contributions

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Article on “Two New Subsidies: Sweet Spot for NBFCs and Asset Leasing Companies”

- by Mr. Ameet Roy got published on [Taxguru](#)

The screenshot shows the Taxguru website interface. At the top, there are banners for 'Taxguru Complete Tax Solution', 'SuperProfs CA', and 'SURE SHOT GUIDE TO BECOME A CA' with a 'FREE DOWNLOAD' button. Below the banners is a navigation bar with links like 'Home', 'ITax', 'BUDGET', 'Submit Articles', 'ITR', 'S. Tax', 'Excise', 'C. Law', 'Judiciary', 'Deductions', 'GST', 'Partnership', 'CA CS CMA', 'Empanelment', and 'Download'. The main content area features the article 'Two New Subsidies: Sweet Spot for NBFCs and Asset Leasing Companies' by Mr. Ameet Roy, dated Jan 05, 2016. The article includes a sub-headline 'Alaska's 1st Accelerator' and a brief description: 'Launch : Alaska seeking startups! 90-day program + \$25,000 + Mentors'. A large blue arrow button points to the right. To the right of the article text, there is a sidebar with a search bar and a 'PPFAS Long Term Value Fund' advertisement. The advertisement text reads: 'PPFAS Long Term Value Fund', 'An Equity Scheme for genuine long-term investors!', and 'THIS SCHEME IS SUITABLE FOR INVESTORS WHO CAN REMAIN INVESTED FOR THE LONG TERM.'.

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Article on “Crowd Funding”

- by Mr. Ameet Roy got published in [Conclave on Banking magazine](#)

ARTICLES

CONCLAVE ON BANKING
Banking Services - Emerging Role of Professionals



Crowd Funding

By Shri Ameet Roy
ameet@conclavonbanking.com



Introduction:
Crowd funding is the new buzz word finding headway in charity, travel, education, financial intermediation and more. Crowd funding as a concept originated from the United States of America but is slowly gaining traction in India as well. In layman terms, it is a virtual way of bringing about syndication of funds for various purposes and encashing on technology to broaden the outreach for aggregation of funds.

Crowd funding can be defined as:-

1. Accumulating funds for business ideas through multiple avenues that involves networking in any possible way, and
2. The process by which a group (the general public) collectively provides money for artists, researchers, businesses and more.

As the definition says, crowd funding is the process of generating funds from the public and utilizing the funds in one's innovative ideas or business venture.

Emergence of Crowd Funding
The concept of crowd funding pre-dates the internet. The earliest reference of crowd funding can be traced back to time during the construction of one of the world's most famous landmarks - "The Statue of Liberty", which was partially funded by the people of America when the committee set up for arranging funds for the Statue failed. It was the people of America who funded the construction of the Statue of Liberty.

Even in India the phenomenon of crowd funding is not new, as temples and mosques have been built in the Indian sub-continent by accumulating funds from the public from

the ancient era, it is the internet which has given a new face to the phenomenon of crowd funding, with the introduction of better and improved technology and falling cost of communication, people have started to see crowd funding as an alternative source of finance apart from the traditional way of approaching banks and financial institutions to fund one's business idea.

Advantages of Crowd Funding:
The advantages of crowd funding is large and everlasting, with crowd funding one can undertake various activities for assessing the economic viability of a business idea. Stated under are some benefits of crowd funding:

- **Provides access to capital** - Crowd funding is a great alternative way to fund a venture, and it can be done without giving up equity or accumulating debt.
- **Hedges risks** - Launching a crowd funding campaign hedges the risks associated with start-up ventures and serves as a valuable learning experience and helps diversify the risk.
- **Serves as a marketing tool** - An active crowd funding campaign is a good way to introduce a venture's overall mission and vision to the market.
- **Gives proof of concept** - A good way to gain some respect and credibility in the market is to be able to show the market that the proposed venture had a successful crowd funding campaign.
- **Allows crowdsourcing of brainstorming** - By having a crowd funding campaign, the entrepreneur has the ability to engage the crowd and receive comments, feedback, and ideas for his proposed enterprise.
- **Introduces prospective loyal customers** - People who

The earliest reference of crowd funding can be traced back to time during the construction of one of the world's most famous landmarks - "The Statue of Liberty", which was partially funded by the people of America when the committee set up for arranging funds for the Statue failed.

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Article on “India Plans to Tap into Green Bonds”

- by Ms. Arundhuthi Bose got published on [IndiaCorp Law](http://IndiaCorpLaw.com)

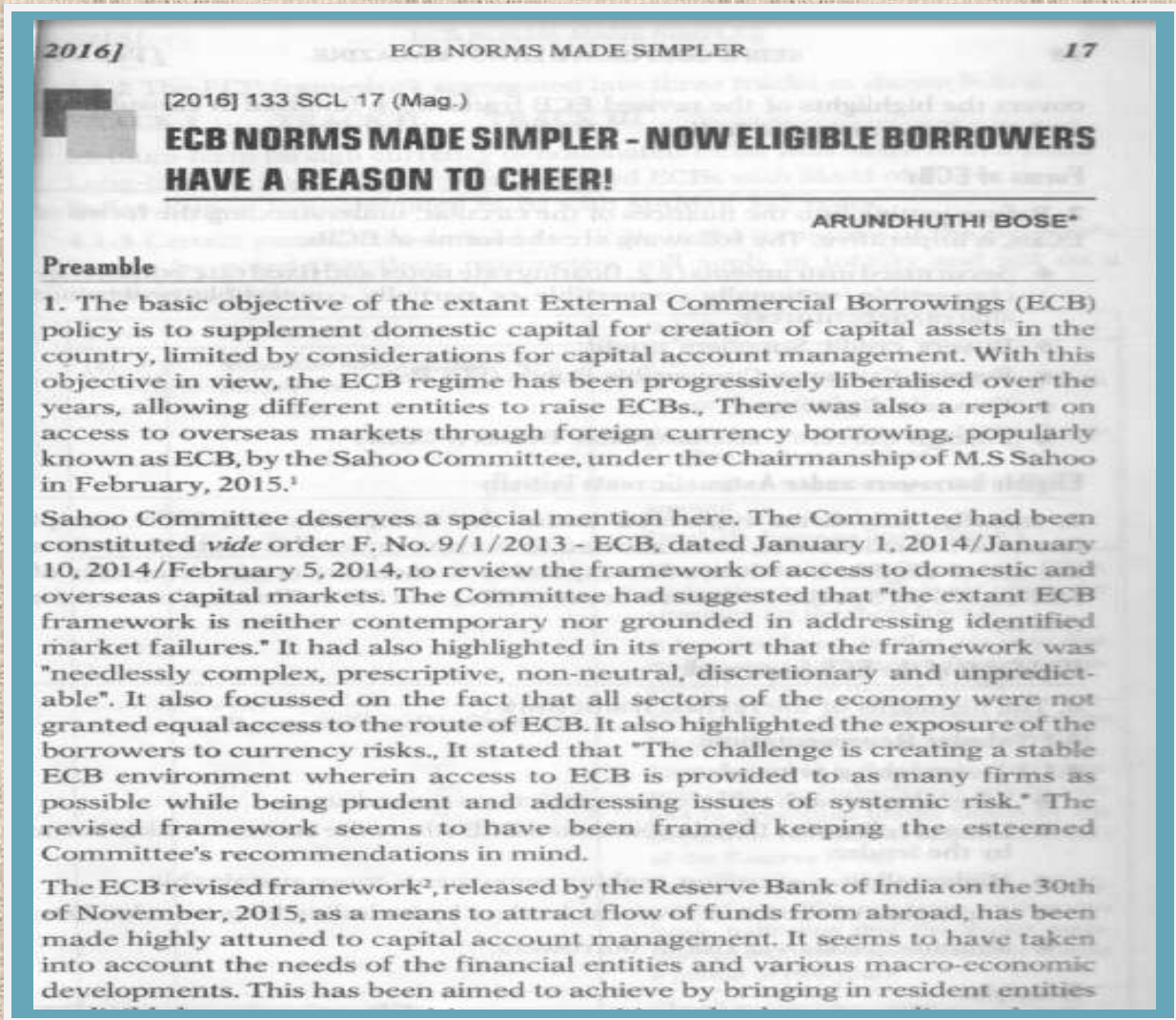
The screenshot shows the IndiaCorpLaw website. At the top is the logo "IndiaCorpLaw" in a large, stylized font. Below it is a tagline: "A blawg containing a periodic review of topics of interest in corporate and commercial law that impact business." The date "Monday, January 4, 2016" is displayed. The article title "India Plans to Tap into Green Bonds" is prominently featured. A note states: "[The following guest post is contributed by Arundhuthi Bose, who is an Executive at Vinod Kothari & Co.]". The article begins with an "Introduction" section, explaining that issuing bonds to raise funds is a common concept and that Green Bonds are used for financing 'green' projects. It also includes a section titled "What are 'Green Bonds'?" which references a paper released by PACE-D[1] in December 2014. On the right side of the page, there is a "Search this Site" box with a Google Custom Search link, a "Contributors" list including Jayant Thakur, Mihir Naniwadekar, Shantanu Naravane, Somasekhar Sundaresan, Umakanth Varottil, and V. Niranjan, and a "Twitter Updates" section.

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Article on “ECB Norms Made Simpler - Now Eligible Borrowers Have A Reason To Cheer”

- by Ms. Arundhuthi Bose got published in [SCL magazine](#)



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Our Corner

Birthday Celebration of Ms. Pammy Jaiswal



**Mr. Avinash Sancheti, an ex-employee stood AIR 3 in
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