

NIRC-ICSI

PANIPAT

CHAPTER



CORPORATE LAWS

A Knowledge Booster

MANAGEMENT COMMITTEE 2020-21

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Panipat Chapter, NIRC-ICSI Newsletter

- ◆ Panipat Chapter, NIRC-ICSI Newsletter is generally published on quarterly basis.
- ◆ Articles on subjects of interest to Company Secretaries are welcome.
- ◆ Views expressed by contributors are their own and the Panipat Chapter, NIRC-ICSI does not accept any responsibility.
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- ◆ The write-ups of this newsletter are also available on the website of the Panipat Chapter, NIRC-ICSI.



Motto

सत्यं वद। धर्मं चर।
इष्टं कुरु तत्रातेः शोकेन ह्यु तैः कुरु।

Vision

"To be a global leader in promoting good corporate governance"

Mission

"To develop high calibre professionals facilitating good corporate governance"



“Professionalism is not the job you do, it’s how you do the job.”

Dear Professional Colleagues,

As members of the Institute of Company Secretaries of India, as Company Secretaries, as Governance Professionals, the onus is on us to maintain a conduct, and pursue our roles and responsibilities in a manner befitting the magnanimity of both the Institute and the profession.

For us, portraying professionalism, should not and cannot be limited to the roles and responsibilities dispensed off by us as regards India Inc. but needs to be imbibed in ourselves much more holistically.

I congratulate the Chairman, the Management Committee as well as all the members connected with the Panipat Chapter on the launch of this first edition of the Quarterly Newsletter. I hope that the members shall reap maximum benefit by connecting with each other through this medium and enhance their knowledge as well.

Best of luck!!!

CS Ashish Garg

President

The Institute of Company Secretaries of India



Initiative is to success what a lighted match is to a candle.

- Orlando Aloysius Battista

Dear Professional Colleagues,

I am very happy to know that, Panipat Chapter of NIRC of ICSI is releasing its newsletter for the members.

I congratulate CS Sumit Grover, Chairman Panipat Chapter and the whole management committee for taking this initiative of releasing chapter's Quarterly Newsletter, which is definitely going to add value to the members, chapters and the Northern Region of ICSI.

I also wish that you and your family members are safe in these unprecedented times. ICSI is there for its members always, please feel free to connect if we can be of any help.

Wishing the newsletter a grand success.

Yours Own,

CS Suresh Pandey

Chairman – NIRC-ICSI

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The person can become whatever, if he reflects on the desired object with confidence

व्यक्ति जो चाहे बन सकता है यदि वह विश्वास के साथ इच्छित वस्तु पर चिंतन करें ।

– Bhagavad Gita

Dear Professional Colleagues,

I hope you all are safe and healthy in this COVID-19 Pandemic situation. I believe that today we stand together for a common purpose to re-shape our Mother Earth amidst the reeling under the impact of Covid-19.

With adopting social distancing and other protective measures for due cause, there arise greater responsibilities on part of professionals in the areas of legal practices that encompass the duties not only for our profession but also for the society by making them aware to follow measures notified or prescribed by the Governments at Centre and State level. As professional in legal practice it is expected from us to follow all the guidelines and regulations for amelioration of our Institute, stakeholders and society.

My biggest gratitude goes to the team of Panipat Chapter of NIRC of ICSI and Chairman of NIRC for believing and having faith on me. I pay my sincere gratitude to the entire Panipat Chapter Team for the hard work and dedication they have shown in this difficult time of global pandemic for well-being of members, students and all other stakeholders. It is a matter of great pleasure and satisfaction that, inter alia, Panipat Chapter of ICSI has taken initiatives towards digitalization by organising meetings through video conference, by planning to publish its First Quarter Newsletter, by making sub-committees to enhance the involvement of members in the Chapter and to aware its members for the CSBF Scheme of ICSI and its benefits, to make their loved ones life secure.

At this time not only few people but our whole country needs our help to strengthen its back to help

for those who are victims and those who are needy. The initiative of Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) taken on 28th March, 2020 will play a significant role in combating and providing relief against the novel COVID-19 outbreak. Possessing conveniences of minimum donation being ₹ 10, exemption of taxes, falling under Corporate Social Responsibility, it has been felt that every one of us should contribute to support our Country in this difficult time.

“The key is in not spending time, but in investing it”- Stephen R. Covey

All we have to do is to be patient and will devote just few weeks of our lives in making these extraordinary adjustments for the sake of Our Profession, Our Stakeholders, Our Country, Our Mother Earth! Because the two most powerful warriors are patience and time.

VISION OF ICSI

To be a Global Leader in promoting good Corporate Governance

We are working towards the accomplishment of vision of ICSI with honesty and faith.

Although the month of March, 2020 was not good for all of us, many seminars and training programs were cancelled / postponed due to spread of COVID-19 epidemic and lockdown across the Country. We understand this situation will continue in the month of April, 2020 to fight with novel COVID-19 as lockdown has been extended by Government till 03rd May, 2020 which was necessary for safety of Humankind.

“Don't spend time beating on a wall, hoping to transform it into a door.”

We are putting all our efforts, strength, time and faith for the activities for betterment of Aspirants,

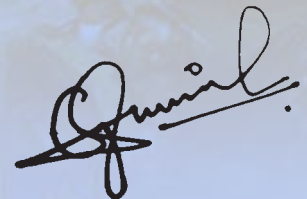
Students, Members and Stakeholders by organizing meetings with members and students through Video Conferences. Few activities taken at our end are as follows:-

1. Organized programs, seminars and conferences or any other program organized by the Institute for Members and Students;
2. informed the members about CSBF scheme of ICSI and its benefits;
3. Organized various Training Program for students;
4. Organizing Oral Classes for Students;
5. Constituted Sub-Committees;
6. Organizing CAP (Carrier Awareness Programmes) and many others.

Our team at Panipat Chapter of ICSI continuously working on the activities for betterment of profession. I assure that with your support we will be able to achieve VISION OF ICSI.

We are pleased to welcome your valuable suggestions and feedback. Feel free to interact with me at chairman.panipat@icsi.edu

With Best Regards,



CS Sumit Grover

Chairman
Panipat Chapter, NIRC-ICSI
M. 8285950949
chairman.panipat@icsi.edu

Dear Professional Companions,

I am pleased to share the list of initiatives taken by Panipat Chapter for betterment of Profession along with glimpse:-

26TH JANUARY CELEBRATION

The Chapter has conducted its First Programme on 26th January in presence of CS G.S. Sarin [Immediate Past Chairman of NIRC] and Sh. Rampal Chhoker [Retd. Captain Army Ventran and Kargil War Hero].



[CS G.S. Sarin and Sh. Rampal Chhoker in Chapter Premises on occasion of Republic Day addressing members/ Students of Chapter]

Chapter also conducted a Seminar on “New Avenue for Company Secretary” which was delivered by CS G.S. Sarin.

STUDENTS PROGRAMMES

In the first Quarter, Chapter has conducted various Programmes of Students and also for completion of their Compulsory Training. “Panipat Chapter has proud of Students for their dedication and hard Work”.



4 DAYS MASTER CLASSES

In addition to the various Seminars which were conducted by Chapter, 4 days Master Classes were also conducted by Chapter for betterment of its Members.

**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

**PANIPAT
CHAPTER**

Cordially Invites you for

4 DAYS MASTER CLASS

15 February to 18 February 2020
Timings : 5.30pm to 8.00pm

Venue : PANIPAT CHAPTER OF NIRC OF ICSI
1st Floor, Left Portion, Above JSR Trading, Geeta Mandir Road,
PANIPAT-132103

15.02.2020	Drafting & Pleadings before NCLT	CS SP Singh Chawla <small>(S.L.B. ACS, I.C.M.NLU/DELHI/ICPM, UG.)</small>
16.02.2020	Companies Act, 2013 - Practice & Procedures	CS Harish Popli <small>(ACS, LL.B.)</small>
17.02.2020	GST - Assessments & Refund Procedures	CA Navya Malhotra <small>(ACA, DSA, M.Com, B.Com (H))</small>
18.02.2020	Practical Aspects on Insolvency & Bankruptcy Code	CS Rajiv Bajaj <small>(Insolvency Professional)</small>

Fee : Rs. 1000 for 4 days in advance & Rs. 300 per day (inclusive of GST)

Programme Credit Hours : 02 Per Day

Followed by Refreshments
With Best Regards

PANIPAT CHAPTER OF NIRC OF ICSI

CS Sumit Grover <small>Chairman</small>	CS Prabhjot Kaur <small>Vice-Chairperson</small>	CS Devesh Uppal <small>Secretary</small>	CS Lavneesh Baraja <small>Treasurer</small>
CS Sachin Saluja <small>Member</small>	CS Raman Sharma <small>Member</small>	CS Abhishek Sharma <small>Member</small>	

VISION
"To be a global leader in providing quality company secretarial services"

ICSI Motto
सत्यं धर्मं चरतुः। *uphold the truth abide by the law*

MISSION
"To develop high calibre professionals facilitating and improving business"

[Notice of 4 Days Master Classes with details of topic and name of Speaker]

All the speakers have high experience in their field and they shared their experience with members for their wellbeing.

HOLI CELEBRATION AND WOMEN DAY CELEBRATION

Holi is a festival which Indian like the most because it is colourful and full of enjoyment.

The Chapter had decided to celebrate Holi for enjoyment of their members. Not only members but also families were also invited to participate in that celebration.



[Holi and Women's Day Celebration at Sky Lark Resort]

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः ।

Means wherever women are given their due respect, even the deities like to reside there.

Panipat Chapter respect all the Women , with this honored gesture we celebrated women day with member.



[Cake cutting Ceremony on the occasion of Holi and Women's Day Celebration by Panipat Female members at Sky Lark Resort]

In addition to this, to make the event fruitful we also conducted a seminar on topic of –“Excel Commands- A need of Today” for ease of our members.

MEETING THROUGH VIDEO CONFERENCING

In the time of lockdown, when everyone is busy in thinking of their time, we invest that time for betterment of our Chapter, profession and other stakeholders. In the period of Lockdown it is not possible to hold a meeting at Chapter Premises thus; we conduct a meeting through Video conference.



[Initiating Video Conferencing Facility by Management Committee of Panipat Chapter for Interaction with CS Members of Panipat City.]

There's never enough time to do all the nothing you want.

– Bill Watterson.

CONSTITUTION OF SUB-COMMITTEES

Chapter has constituted following committees for smooth functioning of Chapter Activities:-

1	Member Facilitation Sub- Committee
2	Student Facilitation Sub- Committee
3	PDPC (Professional Development and Program Coordination Committee) Sub-Committee
4	Sports Sub-Committee
5	Purchase, Finance and Infrastructure Sub-Committee
6	Career Counseling/CAP (Carrier Awareness Program) Sub-Committee
7	CSBF (Company Secretaries Benevolent Fund) Sub-Committee
8	Information Technology Sub-Committee

CSBF (COMPANY SECRETARIES BENEVOLENT FUND)

The Chapter has informed its members about CSBF Scheme of ICSI for secure future of the member and family.

A committee has been also constituted by Chapter for helping members who want to enroll in this scheme or for any other help.



Presidential meet with CS Ashish Garg (President, ICSI), CS Nagendra D. Rao (Vice-President, ICSI) and CS Ranjeet Pandey (Immediate Past President, ICSI) with Panipat CS members.



Interaction by Central Council Members and Regional Council Members with the Panipat CS Members.



Interaction by Central Council Members/Regional Council Members with Panipat CS Members.



Warmed Welcome of CS Ashish Garg (President, ICSI) by CS Sumit Grover (Chairman of Panipat Chapter) for their visit in Panipat.



Felicitation of CS Suman Bansal speaker on the topic of GST Amendments by CS Sumit Grover (Chairman of Panipat Chapter) in august presence of CS Hitender Mehta (Central Council Member) and CS Devesh Uppal (Secretary of Panipat Chapter)



Felicitation of Adv. Sumit Wadhwa for their successful session on the topic “Contract drafting, Reviewing and Negotiation” in the presence of CS Surya Kant Gupta (Regional Council member, NIRC) by CS Sumit Grover (Chairman of Panipat Chapter) and Management Committee Members.



Interaction with CS Surya Kant Gupta (Regional Council Member, NIRC) as a Chief Guest in Panipat Chapter and delivery of session by Adv Sumit Wadhwa on topic “Contract drafting, Reviewing and Negotiation”



Felicitation of CS Rajiv Bajaj on 4th day of master class speaker of Insolvency Bankruptcy Code by CS Sumit Grover (Chairman of Panipat Chapter) and other CS members of Panipat Chapter



Felicitation of Adv. Venket Rao, Speaker on topic “RERA” by CS Sumit Grover(Chairman of Panipat Chapter); CS Devesh Uppal (Secretary of Panipat Chapter).



Glimpses of session taken by CA Amit Budhiraja and CA Nitin Kanwar with members at Panipat Chapter on topic of Start-up Incentives, Equity infusion and Government Scheme and budget-2020



Felicitation of CS Harish Popli by the CS R.K. Bhargava and CS Naresh Garg, Past Chairmans of Panipat Chapter along with other Management Committee members on the topic "Companies Act, 2013-Practice & Procedure" on second day of 4 days Master Classes.



Felicitation of CA Nitin Kanwar speaker of the Topic "Budget 2020 Highlights" by CS Sumit Grover (Chairman of Panipat Chapter) and other Management Committee Members.



Felicitation of Adv. S.P. Singh Chawla for 4 days master classes on the topic "NCLT-Practice & Procedures" by CS Sumit Grover (Chairman of Panipat Chapter) and Management committee members.



Felicitation of CS Kulbhusahan Parashar and CS Amit Puri by CS Sumit Grover (Chairman of Panipat Chapter) and CA Nitin Guglani for their successful session on the topic "CS as a Registered Valuer".



Felicitation of CS Harish Popli by CS Sumit Grover (Chairman of Panipat Chapter) and CS Sachin Saluja for their successful session on the topic "SEBI LODR Regulation, 2015".



Felicitation of CA Kapil Jain by CS Sumit Grover (Chairman of Panipat Chapter), CS R.K. Bhargav and CS Naresh Garg, Past Chairmen of Panipat Chapter along with other Management Committee for his fruitful session in Master Classes on topic "GST-Amendments and refund procedure".



Felicitation of CA Shubham Bansal by CS Sumit Grover (Chairman of Panipat Chapter), CS Prabhjot Kaur (Vice-Chairperson of Panipat Chapter), CS Devesh Uppal (Secretary of Panipat Chapter) and CS Raman Sharma (Member of Management Committee) for his session on "Excel Commands- A need of Today"



Facilitation of Rank holder in Panipat Chapter by Chairman-CS Sumit Grover.



CS G.S. Sarin (Immediate Past Chairman of NIRC-ICSI) and Sh. Rampal Chhoker (Retd. Captain Army Veteran & Kargil War Hero) addressing the CS member and Students on 26th January, 2020



Certificate Distribution to students for Completion of One Day Orientation Program by CS Abhishek Sharma, Treasurer of Panipat Chapter and CS Gunjan Dhamija



Holi & Women Day Celebration in Presence of Speaker CA Shubham Jain.



Students taking session at Panipat Chapter for One Day Orientation Programmes.



Clarification In Respect of Issues under Gst Law for Companies under Insolvency and Bankruptcy Code, 2016

OVERVIEW

Insolvency and Bankruptcy Code, 2016 (IBC) is an evolving legislation, still being interpreted by courts in order to harmonize IBC with our related legal policy.

The Hon'ble Supreme Court in the matter of State Bank Of India vs V. Ramakrishnan held that the protection under IBC from coercive measures of recovery during moratorium period inures only to the Corporate Debtor, and not to the assets of the guarantors.

As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or Resolution Professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT") approving the resolution plan.

IRP / RP vested with an array of statutory and legal duties and powers as per the provisions of the IBC.

He / she exercises the powers of the Board of Directors of the corporate debtor undergoing resolution and manage operations as a going concern, protects the value of its property and complies with applicable laws on its behalf.

Since, there is a moratorium under the IBC, therefore, the companies under CIRP do not have to pay past taxes, including GST. The GST software doesn't allow companies to pay current or future taxes without clearing dues from earlier years.

In this regard, various representations were made by the trade and industry seeking clarification on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016.

Section 148 of the Central Goods and Services Tax Act, 2017

Section 148 of the CGST Act, 2017 provides that the Government may, on the recommendation of the Council and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedure to be followed by such persons including those with regard to registration, furnishing of returns, payment of tax and administration of such persons.

NOTIFICATION NO.11/2020 – CENTRAL TAX DATED MARCH 21, 2020

The Central Government on the recommendations of the Council has notified those registered persons (hereinafter referred to as the erstwhile registered person), who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by IRP or RP, as the class of persons who shall follow the special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process. The said Notification inter-alia provides that-

- (i) the said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor;
- (ii) they shall be liable to take a new registration in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP;
- (iii) In cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP;
- (iii) To file the first return under Section 40 of the CGST Act, 2017 from the date on which he becomes liable to registration till the date on which registration has been granted;
- (iv) The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the prescribed conditions of Chapter V of the CGST Act, 2017 and the rules made thereunder, except the provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the Central Goods and Service Tax Rules, 2017;
- (v) Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person;

(vi) Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

CIRCULAR NO.134/04/2020-GST DATED MARCH 23, 2020

In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, 2017 hereby clarifies various issues in the table below:-

S.No.	ISSUE	CLARIFICATION
1.	How are dues under GST for pre-CIRP period be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.
2.	Should the GST registration of corporate debtor be cancelled?	It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.
3.	Is IRP/RP liable to file returns of pre-CIRP period?	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.
4.	Should a new registration be taken by the corporate debtor during the CIRP period?	The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020- Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP.
5.	How to file First Return after obtaining new registration?	The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.
6.	How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP ?	The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40. The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020- Central Tax, dated 21.03.2020. This exception is made only for the first return filed under section 40 of the CGST Act.
7.	How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?	Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-rule (4) of rule 36 of the CGST Rules.
8.	Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?	Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent.



Note on retrenchment during Covid-19

Pursuant to contain the disease of COVID19 the Cabinet Secretary Government of India, on 11 March 2020, issued direction that state governments shall invoke the provisions of Epidemic Diseases Act 1897 and State Governments in pursuance thereto issued respective orders / advisories advising not to terminate their employees/ workers particularly casual / contractual workers from their jobs and not to deduct their wages/salary. Further, it has been advised that the employees / workers of such unit may be treated as "On duty and be paid in full" if the place of employment has been made non-operational due to COVID-19 by any order/ Advisory of the Government. Similarly recently Ministry of Home Affairs has issued order No 40-3/2020-DM-1(A) Dated 29.03.2020, wherein the chairperson, National Executive Committee, has issued order in exercise of power conferred under section 10(2) of DMA to the Ministries/ Departments of Government of India, State / Union Territory/ Governments and State/ union territory with direction to implement lockdown measures for containment of spread of COVID-19 in the country. Furthermore, the Principal Secretary, Labour Department of Haryana Government also issued an advisory vide letter No. 7047-7127 Dated 23.03.2020 on the same guidelines.

The Querist in light of the above orders/ advisories issued under Disaster Management Act 2005 (in short DMA") and Epidemic Diseases Act 1897 (in short 'EDA") has raised a below query:-

Whether the Company can reduce the strength of its employees be it permanent, fixed term casual, contractual, apprentice during the present period of lockdown imposed due to outbreak of Covid-19?

The relevant provisions are Section 2(1) and 3 of EDA and Section 10 (2) & Section 72 of DMA and are reproduced herein below for ready reference:-

Disaster Management Act 2005

Section 10 (2) of DMA Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may—

(d) lay down guidelines for preparing disaster management plans by different Ministries or Departments of the Government of India and the State Authorities;

(g) monitor the implementation of the guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the Ministries or Departments in their development plans and projects;

(h) monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government;

(i) evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or

disaster and give directions, where necessary, for enhancing such preparedness;

(l) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster;

Section 72 Act to have overriding effect.—The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Epidemic Diseases Act 1897

Section 2. Power to take special measures and prescribe regulations as to dangerous epidemic disease:

(1) When at any time, the (State Government) is satisfied that (the State) or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the (State Government), if (it) thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as (it) shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed."

Section 3 of the aforesaid Act deals with penalty for breach. It provides that any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).

Objective & Intent of Epidemic Diseases Act 1897

In 1896, Mumbai earlier Bombay faced a plague that killed thousands of people and same as the current situation like Coronavirus very little was known about the disease at that time, it was said to be transmitted through bacteria and it was unknown from where this disease came. To restrict the mass movement and gathering of people, the EDA was enacted on 4th Feb 1897, which conferred power upon the British Indian government to restrict people from gathering large numbers.

The preamble of the statute states that as "better prevention of Spread of Dangerous Epidemic Diseases.

On March 11, 2020 Karnataka was the first State which implemented this legislation, followed by Haryana, Maharashtra, Delhi, Goa.

Powers of the State Government under EDA

Section 2 (1) of this Act provides for special powers to the State, if the State's Government thinks that ordinary powers of the State are insufficient for curbing the impact of the dangerous epidemic disease then the State Government can take any such measures and provide for regulations which it deems necessary to prevent and determined in what manner and by whom expenses incurred shall be defrayed.

Objective & Intent of Disaster Management Act, 2005

The intention of the legislation is to give support to the affected community and the people of the affected area and the objective is to provide an efficient mechanism to deal with such an eventualities which occurs due to such disaster. Disaster has been defined under Section 2(d) as any form of grave occurrence which arises either from natural or manmade causes and leads to substantial loss of life and property including environment, where local community is unable to cope with occurrence.

Powers under Disaster Management Act, 2005

Section 3 provides that National Disaster Management Authority is required to set up under Chairmanship of the Prime Minister and as per Section 14 State Disaster Management Authority is chaired by Chief Minister likewise District chaired either by Collector or District Magistrate or Deputy Commissioner of that District. The National Disaster Management Authority would be the nodal body and lay down all the plans and policies assisted by the Secretaries and various Ministers and department heads.

Further the legislature provides an overriding effects to the provisions of the DMA, 2005 so that there could make an efficient tool deal in a manner that caters the object of the Act.

In WP(C) 26377/ 2015 Dr. Biju Ramesh V. State of Kerala, The Kerala High Court held that DMA has an overriding effect.

The District Management Authority directed for demolition of the construction belonging to a private individual standing on an underground canal so as to carry out renovation and repair works of the said canal which became imminent due to the fact that the structure of the canal has outlived its life and would have led to a disaster within the meaning of the 2005 Act? The Private individual challenged the same.

Court held that -The Disaster Management Act, 2005 is enacted with a definite object. Various powers have been given to the different authorities, including the DDMA to achieve the objects of the Act. Various statutory plans are to be prepared for Disaster Management. In event it is to be accepted that with regard to taking any action with regard to a premises which is in occupation/possession/ownership of a private person, the authorities have first to draw proceedings under the Land Acquisition Act and then issue any order under the 2005 Act... defeat the entire purpose and object of the 2005 Act. The legislature being well aware of the legal consequences have already engrafted Section 72 of the Act which gives overriding effect to the provisions of the 2005 Act, notwithstanding anything consistent therewith contained in any other law.

The Kerala High Court while pronouncing the judgment relied upon the law laid down by the Apex Court in Union of India and Another v. G.M.Kokil and Others [1984 (Suppl) Supreme Court Cases 196] held that

“It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.

Similarly the Apex Court in State (NCT of Delhi) v. Sanjay [(2014) 9 Supreme Court Cases 772] held

“It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.”

Thus, in view of above Section 72 of DMA, it shall have an overriding effect over other legislations as well being enacted to deal with extraordinary situations.

Reply to Queries

Whether the Company can reduce the strength of its employees be it permanent, fixed term casual, contractual, apprentice during the present period of lockdown imposed due to outbreak of Covid-19?

The Government of India has invoked the provisions of EDA & DMA and as aforesaid DMA, has an overriding effect over other laws of land and Ministry of Home affairs while invoking Section 10 (2) has issued direction to the State Government / Union territory Authorities to take necessary action and to issue necessary orders including making payment of wages to workers without any deduction for the period their establishment are under closure during the lockdown by all employer be it industry or in Shops & Establishment Act.

In view of the above, at the first instance the language as used in the notifications looks only as an advisory but at the same time directs that employees who will not report for their duties should be treated on paid leave and these directions are given also in respect of casual employees and contract labour. Looking at the substance of the notification, the interests of the employees be permanent, temporary, contractual, casual, apprentice cannot be adversely affected at this stage. Though there is no mention of word apprentice under the said orders, however, apprentice have been considered at par with other employees under various labour laws, thus would be considered as employees during this lockdown period and would get protection as other employees under the orders / notification issued from time to time.

Non- Compliance:

The Government of India has invoked the provisions of Epidemic Diseases Act 1897 & Disaster Management Act, 2005 and subsequently passed various notifications and guidelines for compliance. The state Governments and union Territories have followed the directions of the central Govt. and required compliance inter-alia on payment of wages/Salary to all the casual, contract and permanent employees and not to terminate their services. The breach or non-compliance of these notifications will be an offence punishable under section 188 of the Indian Penal Code (45 of 1860 and similarly Section 51 to Section 60 of the DMA, 2005 lays down the penalties.

Suggestion:

The apprentice whether appointed under Apprenticeship Act or working otherwise stipend should not be reduced at this stage. The situation can be immediately reviewed post Lock-down.

RBI's COVID-19 Regulatory Package



A day after Finance Minister Nirmala Sitharaman unveiled a Rs 1.7 lakh crore economic welfare package for the poor in the backdrop of the coronavirus pandemic, the Reserve Bank of India (RBI) Governor Shaktikanta Das has announced a press conference at 10 am on March 27.

Beginning March 25, for a period of three weeks, India is under a complete lock-down to curb the spread of the COVID-19. This will have an impact across key economic segments including manufacturing, services, construction and tourism. On March 26, the government announced a mix of measures including direct cash transfers and distribution of free food grains for a period of three months to help the economically weaker sections of the society tide over the crisis phase. Now, it is RBI's turn.

Reserve Bank of India (RBI) on March 27, 2020 announced a Regulatory Package on COVID-19 to tackle the impact of deadly Corona virus on Indian Economy. From Repo Rate & CRR Cuts to 3-months moratorium on term loans, RBI Governor Shaktikanta Das announced several measures while addressing the media after the release of Seventh Bi-monthly Monetary Policy Statement 2019-20.

RBI's Regulatory Package is addressed to all the commercial banks, co-operative banks, financial institutions and Non-Banking Finance Companies (NBFCs) in the wake of COVID-19 outbreak. The financial package aims to mitigate the impact of Coronavirus on debt markets, infuse liquidity and ensure the functioning of possible businesses.



Let's have a look at the measures announced by the RBI:

3-Months Moratorium on Term Loans

All the lending institutions including commercial banks, RRBs, co-operative banks, NBFCs and Financial Institutions have been asked to grant 3-months moratorium on the payment of installments under

all term loans outstanding as on March 1, 2020.

What does it imply? - Now, the installments of term loans which were due on March 1, 2020 can be paid until May 31, 2020. The extension of payment is valid on installment as well as interest. The Interest will continue to add on the outstanding amount during the moratorium period.

Type of Payments covered under Moratorium: Principal, Interest, EMIs and Credit Card dues

Which loans are included under Term Loans?- Retail Loans, Agricultural Term And Crop Loans

Note: Retail Loans cover home loans, auto loans, personal loans, education loans and EMIs on purchase of mobiles, fridge, TV and gadgets, etc.

Deferment of interest payments for Business loans

The central bank has deferred the payment of interest for all business loans or working capital loans outstanding as on March 1, 2020 up to May 31, 2020. Businesses will be required to pay off the entire accumulated interest after the expiry of moratorium or deferment period.

Working Capital facilities: Loans granted in the form of cash credit or overdraft

Easing of Working Capital funding through recalculation of Drawing Power

Borrowers facing stress on repayment of working capital loans granted in the form of cash credit and overdraft due to Coronavirus outbreak will now be allowed to recalculate their drawing power. The drawing power can be reassessed by reducing the profit margins or working capital cycle. This relief will be granted until May 31, 2020.

Businesses which will be granted relief under this package will be placed under supervisory review to ensure that the economic fallout is due to the COVID-19 pandemic.

Moratorium & Recalculation of Drawing Power will not result in Asset Classification downgrade

As the central bank is granting the moratorium or deferment or recalculation of drawing power facility due to economic slowdown caused by COVID-19 pandemic, this would not lead to reclassification of asset or asset classification downgrade. As this relief will not be considered as a concession or change in terms of loan agreements.

Asset Classification as NPA & SMA

The asset classification as Non-Performing Asset (NPA) and Special Mention Account (SMA) of term loans granted moratorium will be done on the basis of revised payment schedule of installments. On the other hand, the asset classification of working capital loans will be carried out on the basis of total accumulated interest.

Reschedule of loan repayment to not impact credit score

The revised schedule of payment of installments and interest will not be considered as a default. This will not adversely impact the credit score or history of the borrowers.

Banks & Lending Institutions to frame policies for COVID-19 Package

All the lending institutions including commercial banks and NBFCs need to frame policies, approved by the Board, to provide relief under the COVID-19 Regulatory Package to eligible borrowers.

Banks to prepare MIS Report if loan amount is over Rs 5 Crore

If the pending loan amount is over Rs 5 crore as on March 1, 2020, the banks and lending institutions will have to prepare an MIS Report containing the details of relief granted and borrower-wise details.



Other Measures announced in Bi-monthly Monetary Policy statement

- ✦ The repo rate cut by 75 basis points to 4.4 percent.
- ✦ The reverse repo rate reduced to 4 percent.
- ✦ Cash Reserve Ratio (CRR) reduced by 100 basis points to 3 percent to inject liquidity.
- ✦ Liquidity of Rs 3.74 lakh crore injected

Now, Have a look at these questions and answers to clarify your doubts related to the relief granted under the package:

Q1. When will RBI's COVID-19 regulatory package come into effect?

Answer: RBI'S rescue package to contain the economic slowdown caused by COVID-19 comes into effect from March 27, 2020 itself.

Q2. Who all will be able to enjoy moratorium under the RBI's regulatory package?

Answer: Home loan borrowers, car loan borrowers, personal loan borrowers, education loan borrowers, agricultural loan borrowers, crop loan borrowers

Q3. Does Moratorium apply to EMIs and Credit Card dues?

Answer: Yes, the 3-month moratorium applies to Equated Monthly Installments (EMIs) and Credit Card dues.

Q4. Is the RBI's regulatory package applicable to all private and public sector banks?

Answer: Yes, the package applies to all the commercial banks including the private and public sector banks. However, each bank has to frame its own policy in regard with the package.

Q5. What is Drawing Power?

Answer: The Drawing power is the limit of amount that can be withdrawn by a business from the sanctioned working capital limit. This amount is calculated on the basis of firm's primary security less profit margin.

Q6. What is Working Capital?

Answer: Working Capital is the amount required by businesses to carry out their day-to-day operations. The Working Capital is calculated as Current Assets less Current

DISCLAIMER- This write-up is based on the understanding and interpretation of the author and the same is not intended to be professional advice.



Note on MCA Circular dated 08.04.2020

You're going to go through tough times - that's life. But I say, 'Nothing happens to you, it happens for you.' See the positive in negative events.

- Joel Osteen

Conducting General Meetings through Video Conferencing (VC) or Other Audio Visual Means (OAVM) - MCA General Circular No. 14/2020 dated 08.04.2020

Background

We all are aware that there is no provision under the Companies Act, 2013 ("the Act") regarding holding of General Meetings through Video Conferencing (VC) or Other Audio Visual Means (OAVM). Keeping in view the difficulties being faced by the Companies in passing ordinary and special resolution on account of the threat posed by COVID-19, the Ministry of Corporate Affairs ("MCA") has issued a General Circular (No. 14/2020) dated April 08, 2020 vide which the MCA has given an option to the Companies to conduct the Extra-Ordinary General Meeting(s) which is / are unavoidable through VC and OAVM by complying a detailed procedure given in said Circular and any other requirement provided in the Act or the rules made thereunder.

The said Circular provides separate procedure for –

- (i) companies which are required to provide the facility of e-voting or any other company which has opted such facility;
- (ii) companies which are not required to provide the facility of e-voting

in case holding of EGMs is considered as unavoidable

The Circular has clearly clarified that the companies can take all decisions of urgent nature requiring the approval of members, other than items of ordinary business or business where any person has a right to be heard through Postal Ballot / e-voting as per the provisions of the Act.

Therefore, it is amply clear that companies may take approval of its members for urgent matters (which are permissible through Postal Ballot / e-voting), if EGM could be avoided, otherwise, companies need to adopt the procedure as set out in the said Circular.

This Circular shall be applicable only on those Extra-Ordinary General Meeting(s) held on or before June 30, 2020.

For ease of reference, the tabulated key details are as under:

S. No.	Points	For Companies which are required to provide the facility of e-voting under the Act (i.e. listed company or company having at least 1000 members) or any other company which has opted for such facility	For Companies which are not required to provide the facility of e-voting under the Act
	Period till this circular shall be effective	June 30, 2020	June 30, 2020
	Notice of General Meeting	The notice for general meeting should contain the following information: a) Instruction as to how the members can access and participate in such meeting; b) Helpline number of Registrar and Transfer Agent and technology provider for assistance of members; Further, copy of notice shall be displayed on the website of the Company and also intimation shall be given to stock exchange, in case of listed company.	The notice for general meeting should contain the following information: a) Instruction as to how the members can access and participate in such meeting; b) Helpline number of Registrar and Transfer Agent and technology provider for assistance of members; c) A designated e-mail address so that members can convey their vote, if a poll is required to be taken in the meeting. Further, copy of notice shall be displayed on the website of the company

Applicability to those companies, who have already issued a notice for meeting prior to this Circular	<p>Yes, if a company complies the following two conditions:</p> <p>a) Consent from the members shall be obtained in accordance with Section 101(1) of the Act ; and</p> <p>b) A fresh shorter notice in accordance with this circular shall be issued to members.</p>	<p>Yes, if a company complies the following two conditions:</p> <p>a) Consent from the members shall be obtained in accordance with Section 101(1) of the Act ; and</p> <p>b) A fresh shorter notice in accordance with this circular shall be issued to members.</p>
Facility for remote e-voting before the meeting	Provided	Not provided
Business/Items which can be transacted	<p>All business/items can be transacted except-</p> <p>a) Ordinary Business</p> <p>b) Business in which any person has right to be heard.</p>	<p>All business/items can be transacted in this meeting except</p> <p>a) Ordinary Business</p> <p>b) Business in which any person has right to be heard.</p>
Minimum Capacity of Members to whom facility shall be provided	<p>This facility must have a capacity to allow 1000 members to participate on a first come first served basis.</p> <p>However, the following person can attend the meeting without the restriction on account of first come first served basis principle:</p> <p>a) Shareholders holding 2% or more shareholding;</p> <p>b) Promoters,</p> <p>c) Institutional investors;</p> <p>d) Directors;</p> <p>e) KMP;</p> <p>f) Chairperson of Audit Committee, Nomination & Remuneration Committee and Stakeholder Relationship Committee; and</p> <p>g) Auditors</p>	<p>This facility must have a capacity to allow 500 members or members equal to total number of members of the company, whichever is lower to participate on a first come first served basis.</p> <p>However, the following person can attend the meeting without the restriction on account of first come first served basis principle:</p> <p>a) Shareholders holding 2% or more shareholding;</p> <p>b) Promoters,</p> <p>c) Institutional investors;</p> <p>d) Directors;</p> <p>e) KMP;</p> <p>f) Chairperson of Audit Committee, Nomination & Remuneration Committee and Stakeholder Relationship Committee; and</p> <p>g) Auditors</p>
Person required to compulsorily attend the meeting	<p>a) At least one Independent Director(if any);</p> <p>b) Auditor or his authorized representative.</p> <p>Further, where institutional investors are member of Company, they must be encouraged to attend and vote in the meeting held through VC or OAVM.</p>	<p>a) At least one Independent Director(if any);</p> <p>b) Auditor or his authorized representative.</p> <p>Further, where institutional investors are member of Company, they must be encouraged to attend and vote in the meeting held through VC or OAVM.</p>
Time for joining the meeting	The facility for joining meeting shall be kept open at least 15 minutes before the scheduled time of the meeting and shall be remain open till the expiry of 15 minutes of the scheduled time of the meeting.	The facility for joining meeting shall be kept open at least 15 minutes before the scheduled time of the meeting and shall be remain open till the expiry of 15 minutes of the scheduled time of the meeting.
Proxy	Proxy cannot be appointed for this meeting.	Proxy cannot be appointed for this meeting.

Authorised Representatives	Authorised Representatives under Section 112 and Section 113 can be appointed for this meeting.	Authorised Representatives under Section 112 and Section 113 can be appointed for this meeting.
Appointment of Chairman of the Meeting	<p>a) If the members present in meeting are less than 50, then Chairman shall be appointed in accordance with Section 104 of the Act; and</p> <p>b) If the members present in the meeting are 50 or more than 50, then Chairman shall be appointed by a poll conducted through e-voting system.</p>	<p>a) If the members present in meeting are less than 50, then Chairman shall be appointed in accordance with Section 104 of the Act; and</p> <p>b) If the members present in the meeting are 50 or more than 50, then Chairman shall be appointed by a poll conducted in the manner provided in point 12.</p>
Manner of Voting	<p>a) If the members present in meeting are less than 50, then voting may be conducted either through e-voting system or by show of hands.</p> <p>However, a demand for poll is made under Section 109 of the Act, then meeting shall be conducted through e-voting only not by show of hands.</p> <p>b) If the members present in the meeting are 50 or more than 50, then voting shall be conducted only through e-voting not by show of hands.</p>	<p>a) If the members present in meeting are less than 50, then voting may be conducted by show of hands.</p> <p>However, a demand for poll is made under Section 109 of the Act, then the members shall cast their vote only by sending e-mail at designated e-mail address provided in the notice through their e-mail address which are registered with the Company.</p> <p>b) If the members present in the meeting are 50 or more than 50, then the members shall cast their vote only by sending e-mail at designated e-mail address provided in the notice through their e-mail address which are registered with the company.</p>
Members who are entitled for voting in the meeting	Only those members who are present in the meeting through VC or OAVM and have not casted their votes on resolutions through remote e-voting, will be allowed to vote in the meeting through e-voting or by show of hands, as the case may be.	All members are entitled to vote in this meeting.
Transcript of meeting	After concluding the meeting, Recorded transcript of the meeting shall be maintained in safe custody of the Company. In case of public company, recorded transcript of meeting shall be available on the website of the Company, if any.	After concluding the meeting, Recorded transcript of the meeting shall be maintained in safe custody of the Company. In case of public company, recorded transcript of meeting shall be available on the website of the Company, if any.
Resolution filed to ROC	All resolution passed in accordance with this mechanism shall be filed with Registrar of Companies within 60 days of the meeting and clearly indicating therein that the mechanism provided in this circular along with other provisions of the Act and rule are duly complied with.	All resolution passed in accordance with this mechanism shall be filed with Registrar of Companies within 60 days of the meeting and clearly indicating therein that the mechanism provided in this circular along with other provisions of the Act and rule are duly complied with.

DISCLAIMER:-

The entire contents of this note are solely for information purpose and have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation by the Author. Kindly consider this note for informative purpose. There is no Professional Advise is given to anyone. In no event the Author shall be responsible for any loss or damage in any circumstances whatsoever resulting from or arising out of or in connection with the use of aforesaid information.

Source: Press Briefing of Mrs. Nirmala Sitharaman, Finance Minister dt 24th March 2020



The Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman today announced several important relief measures on statutory and regulatory compliance matters related to several sectors due to COVID 19 & Lock Downs. The briefing covers relief under Income Tax, GST, Customs & Central Excise, Corporate Affairs, Insolvency & Bankruptcy Code (IBC) Fisheries, Banking Sector, and Commerce. However, this information bite will cover relief granted under the Companies Act to Corporate India only.

Relief given:

1. No additional fees shall be charged for late filing during a moratorium period from 01st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies/LLPs at large, but also enable long-standing non-compliant companies/LLPs to make a 'fresh start'

Conclusion: Complete fees waiver for all the filings made during the moratorium period from 01st April to 30th September 2020.

2. The mandatory requirement of holding meetings of the Board of the companies within prescribed interval provided in the Companies Act (120 days), 2013, shall be extended by a period of 60 days till next two quarters i.e., till 30th September;

Conclusion: The gap between board meetings held till 30th September, 2020 may have an interval of 180 days instead of 120 days. For Example: If a Board Meeting held on 31.12.2019 then in normal circumstances second board meeting should have been held by 29.04.2020, but now a Company may defer a Board Meeting till 28.06.2020 (180 days from last Board Meeting). So, We need to check 180 days from last board meeting held as per the provision of the Act. However, if the deadline to hold a Board Meeting ends before 31.03.2020 then according to the wordings, those cases might not be covered by this relaxation as relaxation is good for next two quarters only commencing from 1st April, 2020. Clarification is required in this regard.

3. Applicability of Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021 instead of from 2019-2020 notified earlier. This will significantly ease the burden on companies & their auditors for the year 2019-20.

Conclusion: The MCA vide its notification dated 25th February 2020 has notified Companies (Auditor's Report) Order (CARO), 2020 in supersession of Companies (Auditor's Report) Order 2016 which has far more elaborate reporting as compared to its predecessor (i.e CARO 2016) for the Financial year 2019-20. Postponing the implementation to 2020-21 of CARO, 2020 will reduce the burden and pressure from the auditor as well as the auditee Company and ensure full compliance of government social distancing and lockdown policy.

4. As per Schedule 4 to the Companies Act, 2013, Independent Directors are required to hold at least one meeting without the attendance of non-independent directors and members of management. For the year 2019-20, if the IDs of a company have not been able to hold even one meeting, the same shall not be viewed as a violation

Conclusion: As per Schedule 4 of Companies Act 2013, Independent Directors are required to hold at least one separate meeting in Financial Year and which are generally lined up in March, so that I.Ds can share their views and discuss the working of the Company for the last 11-12 months

.However such meeting is not necessary for the FY 19-20, if such meeting is not already held.

5. Requirement to create a Deposit reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020.

and

Requirement to invest 15% of debentures maturing during a particular year in specified instruments before 30th April 2020, may be done so before 30th June 2020.

Conclusion: Relaxation of 2 months has been given to deposit the mandatory amount in eligible liquid assets by the Companies.

6. Newly incorporated companies are required to file a declaration for Commencement of Business within 6 months of incorporation. An additional time of 6 more months shall be allowed.

Conclusion: As per rule 23A of The Companies (Incorporation) Rules, 2014, declaration for the Commencement of Business by a newly incorporated company in EFORM INC 20A is required to be filed with R.O.C within 6 months from date of Incorporation, Now relaxation has been made for filing of the same with R.O.C within 12 months (i.e 6+6 months) from the date of Incorporation. MCA will notify appropriate cut off date for the companies which are incorporated after such cut off date and eligible for this exemption.

7. Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, under Section 149 of the Companies Act, shall not be treated as a violation.

Conclusion: As per Section 149 (3), Every Company must have at-least one Resident Director (who stayed in India for at-least 182 days in India in previous FY), This requirement has been relaxed due to the travel restriction and Lock down imposed by Government.

8. Due to the emerging financial distress faced by most companies on account of the large-scale economic distress caused by COVID 19, it has been decided to raise the threshold of default under section 4 of the IBC 2016 to Rs 1 crore (from the existing threshold of Rs 1 lakh). This will be by and large prevent triggering of insolvency proceedings against MSMEs. If the current situation continues beyond 30th of April 2020, we may consider suspending section 7, 9 and 10 of the IBC 2016 for a period of 6 months so as to stop companies at large from being forced into insolvency proceedings in such force majeure causes of default.

Conclusion: This is a welcome move, as due to lock down MSMEs are largely affected because their production cycle has been disrupted and more prone to make a default. These MSMEs which includes organized and unorganized sector generate large scale employment for the people and revenue for government. By increasing the limit or by suspending the Sections 7, 9 and 10 of IBC government will not only save these MSME's from going into Insolvency but the country at large. Bailout packages will be given accordingly to revive these MSMEs.

9. Detailed notifications/circulars in this regard shall be issued by the Ministry of Corporate Affairs separately.

Conclusion: Wait for the relevant amendment and Notification.



Insolvency and Bankruptcy Code (Amendment) Act, 2020



In the current scenario, Insolvency and Bankruptcy Code (Hereinafter called "Code") declined towards recovery instead of fulfilling the core objectives of this code. "Recovery is incidental under the Code. Its primary objective is rescuing companies in distress." – Dr. M.S. Sahoo (Chairperson, Insolvency and Bankruptcy Board of India) The above quoted words of Dr. Sahoo from his article in the print edition of Indian Express on March 14, 2020 under the title: 'The real reform', form the underlying theme of the Insolvency and Bankruptcy Code (Amendment) Act, 2020 (Hereinafter called "Code 2020")

The Code 2020 was passed by the Lower House of the Parliament on March 6, 2020 and by the Upper House on March 12, 2020.

After receiving the assent of the President, the Amending Statute was published in the Official Gazette on March 13, 2020.

This Article attempts to underscore and unfold the changes introduced in the Code by the Code 2020.

MAJOR KEY HIGHLIGHTS OF THE AMENDMENT

The Code 2020 aims to provide a time bound completion of the insolvency process, confers preference upon secured financial creditors over operational creditors in the matter of distribution of assets upon resolution of a corporate debtor, and lays down the manner of voting by an authorized representative on behalf of the class of financial creditors.

Insolvency commencement date

Under Section 2 of the Code 2020, deletes the proviso from the definition of "insolvency commencement date" u/s 5(12) of the Code such that the insolvency resolution process commences from the date of admission an application for initiating corporate insolvency resolution process (CIRP), and not when the Interim Resolution Professional (IRP) is appointed by the adjudicating authority (Hereinafter called as "AA"). The corresponding change brought out in Section 16(1) of the Code mandates the AA to appoint the IRP on the insolvency commencement date, withdrawing the leeway of 14 days from the insolvency commencement date for the

appointment of IRP. The above amendment curtails the anticipated delay in completion of resolution to the extent of 14 days.

Expansion in Definition of interim finance

The legislature has expanded the ambit of 'interim finance' u/s 5(15) of the Code by insertion of the words "and such other debt as may be notified" at the end of its definition. Interim finance essentially refers to short-term loans required to keep a company under the CIRP running as a going concern. The Code allows an IRP/RP to raise interim finance in order to protect and preserve the value of the property of a corporate debtor ("CD") and to manage its operations as a going concern. In the Code, the term 'insolvency resolution process cost' includes any interim finance raised for a corporate debtor along with the cost of raising such interim finance. The distribution waterfall u/s 53 of the Code provides for the highest priority to be given to insolvency resolution process costs, which includes such interim finance.

Section 7 - initiation of corporate insolvency resolution process by financial creditor

The Code, 2020 raises the minimum threshold for certain classes of financial creditors for initiating CIRP, prescribing that the application by these creditors u/s 7(1) of the Code should be filed jointly by at least 100 such creditors or 10% of their total number, whichever is less. These classes include real estate allottees and security or deposit holders represented by a trustee/agent. The amendment also clarifies that where such an application for initiating the CIRP against a CD has not been admitted by the AA before the commencement of the Code, 2020, such application shall be modified to comply with the aforesaid requirements within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

This can easily be touted as the most far-reaching amendment to the IBC' 2016 which is likely to be greeted with a constitutional challenge by the homebuyers. It is noteworthy that through the Second Amendment Act of 2018, the government, by inserting an explanation to Section 5(8)(f) of the IBC, had accorded homebuyers the status of financial creditor in order to empower them to be part of the Committee of Creditors ("CoC"). However, builders had challenged the constitutional validity of that amendment before the Apex Court in in Pioneer Urban Land and Infrastructure Limited vs. Union of India. The Apex Court, vide its judgment dated August 9, 2019 held the amendment to be constitutional and rejected the developers' plea. In this matter, the builders had suggested introduction of a minimum threshold for homebuyers to trigger the Code but that was not accepted by the Court on the ground that, «the doctrine of reading down would apply only when general words used in a statute or regulation can be confined in a particular manner so as not to infringe a constitutional right.» Hence, the Apex Court having

rejected the matter of minimum threshold in view of a perceived legislative lacuna, the legislature has incorporated such requirement in the Code sans over-reaching the Pioneer judgment.

While the legislature has sought to placate the developers from over-exposure to remedial and welfare legislations, the concerns of homebuyers remain with respect to implementation of the amendment. The minimum threshold criteria is fraught with practical difficulties since sale is a continuous process, and how will a homebuyer know how many units have been sold to determine the 10% of total number of units sold in real estate project, especially when 10% is less than 100. That said, the aggrieved homebuyers can still look elsewhere (RERA or COPRA) for redressal of their complaints against the developers and builders.

Corporate debtors entitled to make application

Under section 4 of the Code, 2020 inserts an explanation u/s 11 of the Code which stipulates that a corporate debtor undergoing CIRP or having completed CIRP 12 months preceding the date of making of the application or in respect of whom a liquidation order has been made, etc. shall be entitled to make an application to initiate CIRP against other corporate debtors. This step is likely to enhance the maximisation of value of a corporate debtor. It is pertinent to note that NCLT, Mumbai and NCLT, Delhi had adopted two divergent views in *Jai Ambe Enterprise vs. S. N. Plumbings Pvt. Ltd.* and *Asian Plumbings and Mandhana Industries Ltd. vs. Instyle Exports Pvt. Ltd.* respectively, and there was a pressing need for clarification. Now, with the newly inserted explanation to Section 11, the legislature has settled the debate in agreeing with the NCLT, Mumbai and upholding its viewpoint that it is one of the duties of the RP to recover the outstanding debts of a CD against whom the CIRP is already in progress and it is a right course of action for managing the affairs of the financially stressed company.

Mashrooming the ambit of moratorium

Under Section 5 of the Code, 2020 inserts an explanation to Section 14(1) of the Code which extends the the moratorium under IBC to protect the license, permit, registration, quota, concessions, clearances and other similar grants or rights given by the Central or State Government, local authority, sectoral regulator or any other authority from suspension and termination during the CIRP, unless there is a default in payment of the current dues for its use or continuation during the moratorium period. This amendment was necessary in view of the Supreme Court ruling in *Embassy Property Development Pvt. Ltd. v. State of Karnataka*, Civil Appeal No. 9170 of 2019, dated December 3, 2019, wherein it dealt with the issue of deemed extension of lease granted by the government. It was observed by the Apex Court that the purpose of moratorium is only to preserve the status quo and not to create a new right, and that Section 14(1)(d) only prohibits the right not to be dispossessed, but not the right to have renewal of the lease of such property. The newly inserted explanation to Section 14(1) augments the hopes of a CD facing CIRP, and advances the intent of IBC to preserve the status of a CD as a going concern. It also does well to premise such protection on the payment of current dues. The amended Section 14(3)(a) protects not only the transactions from moratorium now, but also agreements or other arrangements notified by the Central Government.

Section 23 management Of operation of CD

The substitution of the Proviso u/s 23(1) of the Code clarifies that a RP shall continue to manage the affairs of the CD till the Resolution

Plan is approved by the AA u/s 31(1) till the appointment of a liquidator u/s 34 by the AA in the event of rejection of the resolution plan for failure to meet requirements mentioned in Section 30. This is expected to ease the functioning of a RP and dispenses with the requirement of filing endless applications seeking suitable direction/s. It also expressly authorises management of affairs by RP during the interregnum from the rejection to RP till appointment of liquidator.

Introduction of Section 32 A in this code

The insertion of Section 32A in the Code is the most significant amendment brought out by the Government, that strives to shield the successful resolution applicants and their property from the threat of criminal proceedings qua the offences committed by the former promoters of the CD.

provides that the liability of a CD for an offence committed prior to the commencement of the CIRP shall cease and the CD shall not be prosecuted for such an offence from the date on which the resolution plan has been approved by the AA u/s 31 of the Code.

Also, the proviso to Section 32A(1) provides for discharge of a previous prosecution, instituted during the CIRP against such CD, from the date of approval of the resolution plan.

Notwithstanding the immunity given, Section 32A makes it mandatory for the CD and/ or any person who may be required to assist or co-operate with any authority investigating an offence committed prior to the commencement of the CIRP, to provide necessary assistance and co-operation.

Section 227 Financial service provider

The newly inserted explanation to Section 227 of the Code provides that the proceedings for insolvency and liquidation for financial service providers or categories of financial service providers may be conducted with such modifications and in such manner as may be prescribed.

This comes in the wake of notification of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 in November last year.

Conclusion

The Insolvency and Bankruptcy Code, 2016 has played a game-changer in way the rest of world perceives India as a purely commercial destination. In India has jumped several ranks crossed several hurdles to fare well in the global indexes and parameters of "Ease of Doing Business". This is primarily attributable to dynamism and resilience demonstrated by the present regime to adapt the arbitration act and insolvency code with the evolving scenario-landscape and changing demands of India's corporate sector.

Of the many reforms the Code, 2020 introduces, it inaugurally equips the CD to initiate CIRP against other CDs, the ambit of Section 14, and inserts Section 32A to immune the CD and its new management post the resolution process. The Code, just like any other fledgling legislation, grappled with divergent views of the Courts, and other stakeholders on its interpretation and implementation.



Coronavirus outbreak: What should equity investors do in current volatile market scenario

“I will tell you How To Become RICH. Be fearful when others are greedy and Be greedy when others are Fearful”.

- Warren Buffet

Introduction

The coronavirus (COVID-19) outbreak is causing widespread concern and economic hardship for consumers, businesses and communities across the globe. The world is experiencing social distancing, travel restriction, restricted travel, scaling down of business operation, disruption of supply chain, reduced demand and an overall contraction of economic activity.

Fears of a global Covid-19 pandemic have battered the stock market and the strain of the virus is sending ripples through the stock market, business, and world economy.

Indian equity markets have corrected significantly over the last one month (Nifty down ~26% from its 52-week high of 12,362 to the lows of 16th March 20) in tandem with global equity markets due to headwinds from the Covid-19 outbreak across multiple countries

The brutality of the stock market crash has caught everyone off guard. Within 20 trading days, starting 24 February, the Sensex has declined nearly 15,000 points

Nifty going down to multi-month lows, investors are struggling to find the right stocks for investing. There is a bearish sentiment in the market and hence, it is imperative to note that what investor do in the current scenarios.

The Psychology of Investment

Ben Graham, widely known as father of financial analysis, has taught three generation how to navigate the market. Graham observed that an investor's worst enemy was not stock market but oneself.

Imagine that you and Mr. Market (“Nifty/Sensex”) are partners

in a private business. Each day, without fail, Mr. Market quotes a price at which he is willing to either to buy your interest or sell his.

The business you both own is fortunate to have stable economics characteristics, but. You see, Mr. Market is emotionally unstable. Some day he is cheerful and can only see brighter days ahead. On these days, he quotes a very high price for share in your business. On the other, hand Mr. Market is discouraged and, seeing nothing but trouble ahead, quotes a very low price. If Mr. Market's quotes are ignored, he will be back again tomorrow with new quote. However, If Mr. Market is in drunken mood, you are free to ignore him or take the advantage of him.

Analysis of Mr. Market and Impact of Coronavirus

In the past couple of years, the Gross Domestic Product (“GDP”) in local current prices has grown at annual rate of 16 % over the 5 years. Please note the GDP rate includes the effect of price inflation and it is NOT the real GDP. Further, it is imperative to note that the P/E (“Price- Earning Ratio”) since 5 months was in in range bound 25-28. Whereas, in last couple of weeks due to the pandemic Coronavirus shaved of the one third of the market cap and hit dramatically. Consequently, P/E ratio scourge to 17-19. Thus, considering the Current scenario we may say that to earn Rs.1 we need the investment of Rs. 17

P/E Ratio = Price/ Earning = 17/1

Assuming that due to pandemic Coronavirus the earnings would brutally whipped out, there is going to be a slowdown of business operations, there would be NPA issues, some of the sectors would virtually down, and some of them will be on the verge of bankruptcy.

Considering the fact, thus, assuming that earnings would fall from 1 to 0.5 and followed by the principle of Efficient-market hypothesis, assuming that price would be reflected at 8.5. Therefore, the P/E ratio would be 17. P/E Ratio = 8.5/0.5.

Now further, assuming the fact that down the line 5 years, Indian economy strives to recover from a slowdown and the earning

would start recovering, and GDP would start surging at annual rate of 15% Compounded annually. Consequently, the earning would be double from Rs.1 to 2 and Mr. Market again start trading at the P/E Ratio of 25.

Explaining the mathematical pristine of the P/E ratio considering the aforesaid assumption as follows:

$P/E \text{ ratio} = \text{Price} / \text{Earning}$

$25 = \text{Price} / 2, \text{ Price} = P/e * \text{earning Price} = 50.$

Thus, based on aforesaid assumption we may conclude that to earn Rs. 2 we need the investment of Rs. 50.

Now Synchronizing, the current scenario of the market with the aforesaid assumption we may conclude that if we Invest Rs.17 in the current market and assuming that the Mr. Market recover all the loss aversion and rationally correct itself in the next 5 years and left over all the physical and mental languishments of coronavirus the price would be Rs.50.

Therefore, conclude that Rs. 17 invest in current market would be payoff the Rs.50. Perhaps clear demonstrate the Mr. Market may compound at the rate of 25% from current scenarios.

A simple illustration let us imagine that you are running a business and you are earning Rs. 1 Crore annually from your business, and market price of your business is Rs.25 Crore. Thus, P/e ratio of your business exhibited at 25. Then suddenly the pandemic coronavirus hit dramatically on economic hardship of your business and your business earnings would start fading out goes to 0.5 Crore, having said that the price would rationally followed, thereby assuming the price would be 8.5 Crore. Concluding that P/e ratio is 17. Now my question to you would you sell your business.

If answer is no, assuming the crisis of outbreak of pandemic is over and economy start recovering and your business again start paying off and down the line 5 years the business start paying the earning of 2 Crore followed by the market price of your business is Rs.50 Crore.

Market cap to GDP (also known as the Buffett Indicator)

A common metric of measuring whether market is overvalued or undervalued is to gauged by the Indicator warren Buffet Indicator

The Warren Buffet Indicators defined as total value of a market relative to the economy GDP. A value below 100 per cent suggests the market is undervalued and is due for recovery.

Market Cap to GDP Ratio

$$= \frac{\text{Value of all public stocks in a country}}{\text{The gross domestic product of a country}} \times 100$$

Ratio of total market cap over GDP: Maximum - 158%; Minimum - 40% Considering the present scenario

Current Annual GDP: \$2,879 billion US dollars or 216,455 in billions of national currency and market cap on 26th March, 2020 is 97,728.60 billions of national currency (Source NSE)

$= 97,728.60 / 216,455 * 100$

$= 45.15\%$

Interpretation

✦ If the Ratio is :

1. 50% to 75%, the market is said to be modestly undervalued
2. 75% to 90%, the market may be fair valued
3. 90% to 115%, the market is said to be modestly overvalued

Concluding, that Mr. Market is displaying a collective frenzy leading to a disruption in price discovery and sharp differences in bid-ask rates.

Key takeaways from market cap to GDP

1. In current Equity market outlook as on March 26, 2020, India's Market Cap to GDP ratio sharply at 45.15% clearly shows that the Mr. Market is trading certainly low and undervalued.
2. The current Equity market is trading at the significant margin of safety of more than 50%
3. The current market is trading significantly below to its intrinsic value.
4. When the cycle of greed and fear plays itself out over and Mr. Market start recovering, it may certainly surge to 100%. Therefore, the clear indication of more than 50% up trend from this point.

Conversion of a partnership firm into a company

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Introduction

Conversion of a partnership firm into a company is known as Corporatization, which is the need of the hour. The entire world is gradually becoming a global market, while every world leader is trying to reduce any kind of trade barrier which might be existing. A small unincorporated organization which only has a few partners will not be able to grow on a large scale until and unless it is incorporates itself.

Conversion of Partnership firm into a Private Limited Company is a good option for anyone who wishes to expand small and medium scale enterprises to a large scale one, or for infusion of equity capital.

Ministry of Corporate Affairs allowed conversion of Partnership Firm into Company under Companies Act, 2013. Now, with the advent of Companies (Amendment) Act, 2017, the criteria of requiring minimum seven members for any entity to be converted into a Private Limited Company has been done with. Under the amended Section 366 of the Companies Act, 2013, any entity be it a LLP, partnership firm, co-operative society or any other business entity formed under any other law, with minimum two members can be registered under Companies Act, 2013 as an Unlimited Company, as a Company Limited by Shares or as a Company Limited by Guarantee. Such conversion to take place is to be satisfied with other requirements such as securing approval from all partners and secured creditors for such conversion, a notice in newspaper to be issued in one English and one vernacular language seeking objections and finally followed by the incorporation process of Company.

Now, in this article we will discuss in detail about the benefits, regulatory requirements and procedure for conversion of partnership firm into Company.

Benefits of Converting Partnership Firm into Company

Corporatization always has its own advantages like limited liability, perpetual succession, easy access to funds, transferability of shares

and lot more.

Let us consider the key benefits of the converting Partnership Firm into a Corporate Entity.

1. **Automatic Transfer :** Firstly, there is automatic transfer i.e. all the assets and the liabilities of the firm, just before the conversion, become the assets and liabilities of the Company.
2. **No Stamp Duty :** There is no stamp duty on such transfer from Firm to Company. The entire movable and the immovable properties of the firm get vested into the Company automatically. There is no requirement of an instrument of transfer to be executed, so there is no stamp duty required to be paid.
3. **No Capital Gain Tax :** No capital gain tax is also charged on transfer of property from partnership firm to Company if the firm satisfies all the conditions provided under Section 47 of Income Tax Act, 1961.
4. **Continuation of Brand Value :** The goodwill of the partnership firm and its brand value is always kept intact and one can continue enjoying the previous success story with a better legal recognition.
5. **Carry Forward and Set off Losses and Unabsorbed Depreciation :** The accumulated loss and un-absorbed depreciation of partnership firm are considered to be loss/depreciation of the successor company for the previous year in which the conversion was done. This loss can be carried forward for the next eight years by the successor Company.

Mode of Conversion of Partnership firm into Company

Partnership firm can be converted into Company in the following two ways:

1. **Incorporation of a new corporate entity:**

Set up a separate Company and then get the entire business of

partnership firm transferred to the Company through a written agreement.

2. Conversion of existing partnership firm into Company: Registration of existing Partnership firm as a Company by complying the provisions of Companies Act, 2013.

The 2nd option of conversion of Partnership Firm into a corporate entity might be practical for the existing entities to switch over from one mode of business to another.

Now, we will discuss in detail about the second option i.e. Registration of Partnership firm as a Company by complying the provisions of Companies Act, 2013.

Regulatory Requirements

Ministry of Corporate Affairs allowed conversion of Partnership Firm into Company under Companies Act, 2013 ("the Act"). As per Section 366 of Companies Act, 2013, any partnership firm formed, whether before or after the commencement of this Act, consisting of two or more partners, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee. For such conversion there is need to prepare a list of documents and required to file the same with ROC in forms like URC-1, SPICe plus, e-MOA, e-AOA and AGILE Pro etc.

Further, the following Section and Rules of Companies Act, 2013 deals with conversion of existing partnership firm into Company:

1. Chapter XXI, Part I - Companies authorised to register under this Act: Section 366 to 374 of Companies Act 2013;
2. Companies (Authorized to Registered) Rules, 2014;
3. Section 7 of Companies Act, 2013 i.e. Incorporation of Company; and
4. Companies (Incorporation) Rules, 2014.

Procedure for Conversion of Partnership Firm into Company

First Step:- Hold a meeting of the partners

First of all, Partnership firm shall hold a meeting of its partners to take assent of its majority partners for the purpose of getting itself registered as a Company under Section 366 of the Companies Act, 2013.

However when a firm desires to register itself as a Limited Company, then the assent of at least three-fourth of the partners agreeing for registration, shall be required.

Second Step:- Obtain written consent or NOC from all secured creditors

If the Partnership firm has secured creditors, then it is required to take written consent or No Objection Certificate from all the secured

creditors of the Partnership firm.

Third Step:- Publish newspaper advertisement in Form URC-2

Pursuant to clause (b) of section 374 of the Act, firm seeking registration under Section 366 shall publish an advertisement about registration, seeking objections, if any within twenty one (21) clear days from the date of publication of notice and the said advertisement shall be in Form No. URC. 2, which shall be published in a newspaper, in English and in any vernacular language, circulating in the district in which partnership firm is situated

Fourth Step:- Filing of Notice to Registrar of Firms

A notice shall also be given by firm seeking registration under Section 366 to the concerned Registrar of Firm under which it was originally registered for seeking objections, if any.

Further, the concerned Registrar of Firm shall made its objections, if any, to the Registrar of Companies within a period of twenty-one days from the date of such notice, failing which it shall be presumed that they have no objection.

Fifth Step:- Obtaining the Name Approval in RUN for Proposed Company

An application needs to be filed with the Registrar of Companies (ROC) to obtain the name for the proposed company after conversion stating the fact that the partnership firm is proposed to be converted under the Companies Act, 2013.

Sixth Step:- Preparing following documents

After obtaining name approval, partnership firm has to prepare/ arrange the following below mentioned Documents:

a) For Form URC-1

For Form URC-1, following attachments shall be prepared:

1. list showing the names, addresses, and occupations of all persons named therein as partners with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along-with the source of consideration and distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than six clear days before the day of seeking registration, were partners of the firm.
2. a list showing the particulars of persons proposed as the first directors of the company, along with Director Identification Number (DIN), passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the Company.
3. Deed of partnership, bye-laws or other instrument constituting or regulating the firm and in case the deed of partnership was revised at any time in the past, copies of the principal and all

subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;

4. written consent or No Objection Certificate from all the secured creditors of the firm, if the firm has secured creditors.
5. written consent, from the majority of partners whether present in person or by proxy at meeting, agreeing for such registration.

However, at least consent of three fourth of the partners agreeing for registration is required if partnership firm desires to get registered itself as Limited Company.

6. an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 as applicable
7. a copy of the latest income tax return of Partnership firm
8. a statement of accounts of the partnership firm duly certified by auditor which is made as on a date not earlier than 15 days of the filing of Form URC-1 together with audited Financial Statements of previous year.
9. Affidavit, duly notarized, from all the partners that all the necessary documents or papers shall be submitted to the registering or other authority with which the partnership firm was earlier registered, for its dissolution as partnership firm.
10. a statement of proceedings, if any, by or against the Partnership Firm which are pending in any court or any other Authority.
11. declaration of two or more proposed directors verifying the particulars of all partners.
12. copy of newspaper advertisement and copy of notice served to Registrar of Firms along with proof of service
13. Certificate from a CA/CS/CWA certifying the compliance with all the provisions of Stamp Act, to the extent applicable.
14. No objection certificate from the concerned Registrar of Firms is mandatory to be attached.
15. Copy of resolution declaring the amount of guarantee, in case of partnership firm wants to get registered itself as a Company limited by guarantee.

b) For Form SPICe plus / e-MOA/ e-AOA/ AGILE Pro

For Form SPICe plus, following attachments shall be prepared:

1. Consent to act as director from proposed directors in Form DIR-2 along with Copy of Proof of Identity and residential address.
2. Declaration by first subscribers and directors in Form INC-9 (However, it will be auto generated in SPICe plus form except in some cases).
3. Disclosure for non-disqualification from proposed director in Form DIR-8.

4. NOC from the owner of the property or Proof of Office address (Conveyance/ Lease deed/ Rent Agreement along with rent receipts not older than one month);
5. Copy of the utility bills (not older than two months)
6. In case of proposed Director does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the proposed directors.
7. All the Subscribers should have Digital Signature.

Seventh Step: Filing of necessary forms with ROC

After preparing all documents as mentioned in sixth step, E-form URC-1 shall be filed along with SPICe plus, e-MOA, e-AOA and AGILE Pro within 20 days from the date of approval of RUN.

Eighth Step: Certificate of Incorporation

The Registrar of Companies shall, after considering the application and the objections, if any, received by him, within thirty days from the date of publication of advertisement, and after ensuring that the company has addressed the objections, suitably decide whether the registration should or should not be granted.

If the Registrar of Companies is satisfied on the basis of documents and information filed by the applicants, decides that the applicant should be registered, he shall issue a certificate of incorporation in Form No. INC.11.

Ninth Step: Dissolution of Partnership firm

After obtaining the certificate of registration under section 367 of the Act, an intimation to this effect shall be given within fifteen days of such registration to the concerned Registrar of Firms under which it was originally registered, along with documents for its dissolution as a firm.

Conclusion

As we already know, a partnership firm has various limitations and scope of expanding is very less as compared to a Company. Many partnership firms now a days convert itself into Companies.

It is a golden opportunity which has been given by Ministry of Corporate Affairs to the partnership firms to convert their existing business into a Corporate form by complying the provisions of Chapter XXI of the Companies Act 2013, Companies (Authorized to Registered) Rules 2014 and the provisions applicable to the Incorporation of Companies which is not only time saving but cost saving as well.

Disclaimer

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This is a proud moment for Panipat Chapter of NIRC, ICSI and for all the members and students as well that our accomplishments has make its place in Chartered Secretary for the month February, March and April published by ICSI. This is a result of dedication, understanding, and time of our Management Committee. For this, I would like to congratulate each and every member and student of Panipat Chapter. Here are few glimpse of Chartered Secretary for the month February, March and April 2020:-



Best Regards,

CS Sumit Grover
Chairman-Panipat Chapter of NIRC, ICSI