

Edition 154

February 2017



Mysore Chapter

eMagazine

Issuance and allotment of shares.....05

Quick round up on Insolvency and Bankruptcy code 2016.....07

Columns:

From Chairman's Desk ..02|

Chapter Activities...03|

Brainy Bits....04|

Words Worth Millions...06|

living Room ..12 |

News Room...13|



CS VJ Balakrishnan

Chairman,

Mysore Chapter

Greetings,

It gives me immense pleasure to greet you all after assuming the prestigious office of the Chairman of the ICSI Mysore Chapter. I express my sincere gratitude to all of you and the members of the chapter for reposing confidence in me. My predecessors have set high expectation in the minds of the stake holders through their commendable performance. I seek your involvement, guidance, and support to execute my duty as the chairman of the institute with confidence.

The Union Budget 2017 has focused on boosting the rural economy. The budget is progressive and we hope it helps the economy grow.

The results of the CS Executive and Professional examinations are expected this month end, I wish all the students the best of luck. Students of Mysore are gearing up for the annual event of the chapter Umang 2017 scheduled on 18th March 2017. I request all the members and students to take part actively in the event. Hope to see you all in the event in good numbers.

Wishing you all a **Happy Shivarathri**

:- Editorial Team :-

CS Vijaya Rao

CS Sherene

CS Prachetha M

CS Ajay Madhaiah

CS Veerash

CS Madhur N Agrawal

Join

5100+ members' strong

"CSMysore" eParivaar

<http://www.groups.google.com/group/csmysore>

Now it's easy to receive the eMagazine directly into your personal mail id.

Click <http://goo.gl/PV9Olr> and fill-in simple info.

You may send this link to your friends too!

Please write your comments and feedback to us:

enewsletter.icsimysore@gmail.com

Disclaimer

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.

Special Thanks to:

CS Dattatri H M

CS Omkar Gayatri

Chapter Activities

1. Career Awareness Programmes

Chapter conducted 5 Career Awareness Programmes in Mandya District through Counsellor during the month.

S.NO	NAME OF THE SCHOOL/COLLEGE WITH ADDRESS	ADDRESSED BY	NO. OF STUDENTS	DATE
1	GOVERNMENT PU COLLEGE, MADDUR	MR. RAVI KUMAR S	63	11.01.17
2	GOVERNMENT PU COLLEGE, MANDYA	MR. RAVI KUMAR S	70	11.01.17
3	HOMBALEGOWDA PU COLLEGE, MANDYA DT.	MR. RAVI KUMAR S	63	12.01.17
4	ROTARY PU COLLEGE, MANDYA	MR. RAVI KUMAR S	61	12.01.17
5	GOVERNMENT PU COLLEGE, EX MUNICIPAL, MANDYA	MR. RAVI KUMAR S	61	13.01.17

2. Inauguration of Oral Coaching Classes

The Mysore Chapter organized an inaugural session of its Oral Coaching Classes for Executive & Foundation program on 02.01.17 & 09.01.17 respectively for the ensuing June 2017 examination.



CS Bhansali M C, Chairman, Mysore Chapter welcomed the students. In his welcome address, he explained the importance of CS profession and advised the students on the various method of preparation for the CS Examination. The regular classes commenced immediately after conclusion of the inaugural session.

3. Study Circle Meeting

On 21.01.2017, Chapter organized a study circle meeting on Simplification of Procedures under Companies Act, 2013. The members discussed on various areas suggested by the Institute for the possibilities of simplification. The session was well attended by Members of Mysore Chapter.

4. Session on Insight into GST

ICSI Mysore Chapter in association with Department of Commercial Taxes, Federation of Karnataka Chamber of Commerce and Industry (FKCCI), in co-ordination with Mysore Chamber of Commerce and Industry (MCCI) and Confederation of Indian Industry (CII), together with Trade, Industry Associations and Professionals of Mysuru, had organised a programme titled 'Insight into GST (Goods and Services Tax)' at B.N. Bahadur Institute of Management Sciences, Manasagangothri, on 23.01.2017.

Inaugurating the programme, MLA S.R. Mahesh opined that awareness on GST should be created among rural people. He appreciated the concept of GST which would channelise funds to the Government in a better way but expected the government to provide good infrastructure to industrial sector in return.

Briefing the gathering, Additional Commissioner for Commercial Taxes B.V. Ravi said that GST would merge 17 existing taxes into a single system for the benefit of tax payers. He added that GST would ensure uniform pricing of products throughout the country.



Republic Day Celebrations

On 26.01.2017, ICSI-Mysore Chapter celebrated Republic Day in Chapter Premises. Mr. M G Byndoor, President, hoisted the National Flag and delivered the Republic Day address. CS Balakrishnan V.J., Chairman, welcomed the gathering. Managing Committee Members and the Students of Mysore Chapter participated.



Section 2(110) of the Revised Model SGST/CGST Acts defines Works Contract as under:

"Works Contract" means a contract wherein transfer of property in goods is involved in the execution of such contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any -immovable property;

Does it mean that any maintenance of movable property (e.g. painting a motor vehicle) is not a works contract?

Or, do you think, that the part of the definition starting from includes is only a clarification which cannot restrict the meaning of the first part of the definition?

LAST MONTHS OPINION

The assessee will insist that the taxable event is application of the deposit to rep, i.e., 30th September 2017. The revenue will reason that the actual receipt being 1st April 2017, the tax should be levied as on 1st April 2017. The matter is open to judicial interpretation.



Issuance and Allotment of Shares

How many times have you been confused between the terms Issue and Allotment? It is very important for us, Company Secretaries, to understand the similarities that these two terms share and differences that set them apart. We need to understand the spirit of the law and make sure that it is interpreted in a way that does not hinder the proper and appropriate interpretation. Next would be to support the interpretation with evidence of case laws.

Here I present to you the matter of Issue and Allotment based on my view and experience. Please feel free to reach out to me with constructive feedback and comments.

Let's first understand what the law says

Issuance and allotment of shares

As per Section 179 (1) (c), the issue of securities can only be approved by the Board of Directors in the Board meeting or can be delegated to the Committee or Managing Director/ Principal officer / Manager of the Company, it is prohibited to be passed by circulation. But the question arises here, Can we pass circular resolution for allotment of shares?

Issuance and allotment of shares are generally read as one & same, and used interchangeably many times. Companies Act 2013 has attempted to bring some clarity and same is discussed herein below. The Companies Act 2013 has provided the definition of issued capital i.e. **'issued capital' means such capital as the company issues from time to time for subscription [refer Section 2(50) of the Companies Act 2013].**

However, allotment of shares has not been defined even under the Companies Act 2013.

Further Thought

As per definition, subscription follows issue/ offer made by the Company and then allotment after subscription is complete. Issuance of shares is nothing but an offer made to the shareholders. In that case, it cannot be allotment because allotment is last task of the contract before issuance of share certificate to complete the contract.

In a wider sense, issuance of shares includes subscription and allotment of shares as well, but, the interpretation varies amongst professionals. In this regard, attention is drawn to the relevant extracts of the famous case law ***Shree Gopal Paper Mills Ltd. vs Commissioner Of Income-Tax, ... on 5th February, 1965*** wherein, the difference between issuance and allotment was discussed in detail, the essence of the case is discussed here below:

Issuance and allotment of shares can be read as an offer, an acceptance and a communication of the acceptance under the Contract Act to constitute a contract. Therefore, the same requisites are necessary for a completion of the agreement to take shares in the Companies Act, the offer is made generally when an application for share is signed by the applicant. It has been held however that an application by words of mouth is equally effective. It is accepted when the Board of

Directors allot the shares. It is however not sufficient to constitute a contract then. It is only when an allotment is communicated to the, prospective shareholders that it becomes a completed contract.

There are decisions on the point which incidentally considered the meaning of the word Issue. It is the case of ***Sri. Gopal Jalan & CO. v. Calcutta Stock Exchange Association Ltd.,*** (recent case: *Khoday Distilleries v. CIT,*) where the question was whether the sale or the re-allotment or the re-issue of issued shares is an allotment of shares within the meaning of Sub-section (1) of Section 75 of the Companies Act, 1956. ***There, Bachawat J. observed inter alia that the allotment of shares precedes all issues. Allotment of share means appropriation of unissued shares to a specified number of persons.***

Thus

Issue of shares is something distinct from allotment and is some subsequent act whereby the title of the allottee becomes complete.

Therefore, having regard to the words "issued to the shareholders" in the phrase "shares issued to the shareholders" it is clear that the share is used in the narrowest sense, that is to say when it is in the womb or shell of the company and is divorced from a shareholder. It follows that when a share is issued to the shareholder, it bears an extensive meaning indicating that the share has reached its destination of an existing shareholder who may have partly or fully paid-up share or shares in the company.

As per the above discussion, it is very apparent that issuance is different from allotment of share and per my understanding and interpretation on reading of the aforesaid case law, the issue and allotment is not same and can be used accordingly.

Words worth Million

We want deeper sincerity of motive, a greater courage in speech and earnestness in action.

-Sarojini Naidu





QUICK ROUND UP ON INSOLVENCY AND BANKRUPTCY CODE 2016

Introduction

It is stated in the preamble of the Code that the law is enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Fund, and for matters connected therewith or incidental thereto. Therefore upon the code becoming fully into force, various remedies as stated under the following laws will be coming under one roof:

- a) SICA, 1985
- b) Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- c) SARFAESI Act, 2002; and
- d) Companies Act, 2013

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

First and foremost it is pertinent to understand who can make an application and who is not eligible to make an application for Corporate Insolvency Resolution Process (CIRP)

Who can make an application (Section 6)

- Financial Creditor
- Operational Creditor
- Corporate Debtor



*Are you
eligible?*

Who cannot make an application (Section 11)

- Corporate Debtor undergoing a CIRP
- Corporate Debtor having completed CIRP 12 months preceding the date of making application;
- Corporate Debtor / Financial Creditor who has violated any of the terms of a Resolution process approved 12 months before the date of making the application;
- Corporate Debtor in respect of whom liquidation order has been made

➤ **HOW TO MAKE AN APPLICATION?**

Particulars	Financial Creditor	Operational Creditor	Corporate Applicant
Provision	u/s 7	u/s 9	u/s 10
Form	Form 1	Form 5	Form 6
Supporting documents	As specified u/s 7 and in the CIRP Regulations, 2016	As specified u/s 9 and in the CIRP Regulations, 2016	As specified u/s 10 and in the CIRP Regulations, 2016
Admission by NCLT	Within 14 days if satisfied with the application		
Rejection by NCLT	Within 7 days give notice and reject the application		
A copy of the applications filed before the NCLT as mentioned above shall also be forwarded to the Corporate Debtor			

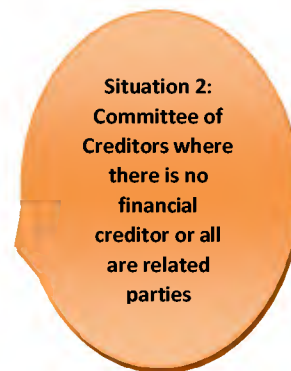
When it comes to filing of application by an Operational Creditor, a demand notice in Form 3 or a notice in Form 4 along with invoice copy shall be served by the Operational Creditor on the corporate debtor. Further such notice shall also be filed with an **Information Utility**, if any.

If the Operational Creditor does not hear from the Corporate Debtor even after 10 days of such delivery of notice, then he may file an application before NCLT as mentioned above.

COMMITTEE OF CREDITORS

The Interim Resolution Professional shall after collation of all the claims received and determination of the financial position of the corporate debtor, constitute a committee of creditors. The committee of creditors so formed shall comprise of all financial creditors and a related party shall not have any right to represent, participate or vote in the meeting of the committee.

Where the corporate debtor has no financial debt or where all financial creditors are related parties, then the committee of creditors shall be set up in accordance with the Insolvency Resolution Process for Corporate Persons Regulations, 2016.





FIRST MEETING OF THE COMMITTEE:

An Interim Resolution Professional shall

- ✚ within 30 days of his appointment file a report certifying the constitution of the committee to the NCLT;
- ✚ convene the 1st meeting of the Committee within 7 days of filing of the report mentioned above;

Subsequent Meetings:

Subsequent meetings can be convened:

- ✚ as and when the Resolution Professional considers necessary; and
- ✚ when a request is made by the members representing 33% of the voting rights;

Provisions relating to contents, service etc of the notice of the meeting, quorum of the meeting, meeting through video conferencing, e-voting etc are prescribed in the CIRP Regulations, 2016.

RESOLUTION PLAN

The Interim Resolution professional or the Resolution professional as the case may be, shall submit an **information memorandum** in electronic form to each member of the committee and any potential resolution applicant. 30 days before the expiry of the maximum period permitted under section 12 for the completion of the CIRP (180 days + 90 days, as the case may be) a resolution applicant shall prepare a resolution plan on the basis of the information memorandum and submit it to the resolution professional.

The resolution plan approved by the creditors shall be forwarded to the NCLT. The Resolution Professional shall forward a copy of the NCLT's order approving / rejecting the resolution plan to the participants and the resolution applicant

LIQUIDATION PROCESS

When the Resolution plan is rejected by the NCLT, the Liquidation Process begins. The Liquidator:

- ✚ shall make a **public announcement** within 5 days of his appointment;
- ✚ shall submit a **preliminary report** to the NCLT within 75 days from the liquidation commencement date;
- ✚ may apply for **early dissolution** if he deems fit;
- ✚ shall submit **Progress Reports** to the NCLT within 15 days after the end of each quarter;

The eligibility criteria for appointment as liquidator, liquidator's fees, powers and functions of a Liquidator, claims, realisation of assets, proceeds of liquidation and distribution of proceeds etc are prescribed in the Liquidation Process Regulations, 2016 issued on December 15, 2016.

Insolvency Professional Agency means any person registered with the Insolvency and Bankruptcy Board of India (the Board or the IBBI) under section 201 of the Insolvency and Bankruptcy Code 2016 (the Code) as an Insolvency Professional Agency. As on date the following 3 institutes have been registered as the Insolvency Professional Agencies:

The Institute of Chartered Accountants of India (ICAI);	Indian Institute of Insolvency Professionals of ICAI
The Institute of Company Secretaries of India (ICSI);	ICSI Insolvency Professionals Agency
Institute of Cost Accountants of India	Insolvency Professional Agency of Institute of Cost Accountants of India

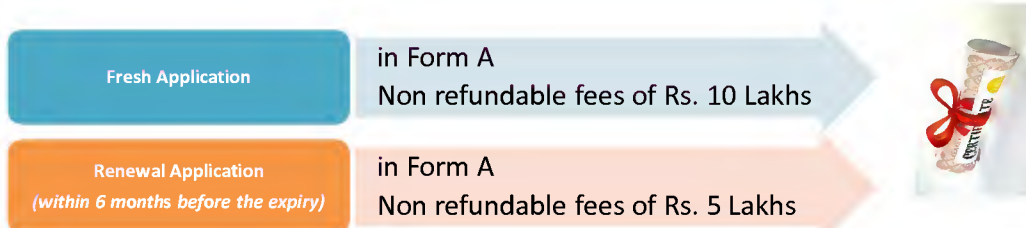


Only a company registered under Section 8 of the Companies Act, 2013 can apply to be registered as Insolvency Professional Agency. Further the Insolvency Professional Agency Regulations, 2016 prescribes eligibility criteria's for a Section 8 company for such registration.

An Insolvency Professional Agency shall have a **Governing Board** (Board of Directors) whose composition shall be as follows: IPA's shall have Bye-Laws which shall provide for all the matters prescribed under the model Bye-Laws Regulations, 2016. The **Bye-Laws may be amended by the Governing Board** by way of a resolution passed by votes in favour being not less than 3 times the number of votes, if any, cast against the resolution by the directors.

Further such resolution shall be filed within **7 days** with the Board and the amendments shall be effect only on the 7th day of the approval.

Registration as Insolvency Professional Agency or renewal thereof:



Certificate of Registration for IPA: Within **60 days** of receipt of application the Board shall grant the Certificate of Registration/ Renewal in **Form B**, if it is satisfied after such inspection or inquiry and having **regard to the principles** provided under Section 200 of the code, that the applicant is satisfying the eligibility criteria's as mentioned in the regulations. *Certificate of Registration shall be valid for 5 years from the date of issue.*

INSOLVENCY PROFESSIONALS

According to Section 3(19) of the Code an Insolvency Professional means a person enrolled under Section 206 with an IPA as its member and registered with the Board as an Insolvency Professional under section 207.

Insolvency Examinations: The Board shall either on its own or through a designated agency conduct a 'National Insolvency Examination' or a 'Limited Insolvency Examination' to test the knowledge, its application and practical skills of Individuals in the area of Insolvency, Bankruptcy and allied subjects.

Eligibility for Registration as Insolvency Professional

Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides for eligibility criteria's for an individual to get himself registered as an Insolvency Professional.

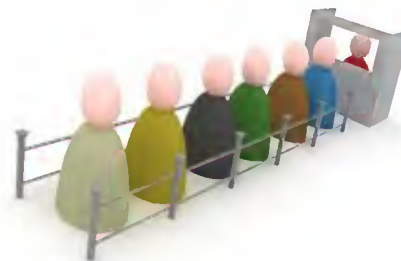
Qualifications and Experience requirement for Registration as Insolvency Professional

Criteria	1	2	3
Qualification	Passing of National Insolvency Examination	Passing of Limited Insolvency Examination	Passing of Limited Insolvency Examination
Experience	-	15 years in management, after Bachelor's degree from a university established or recognised by Law	10 years of experience as a: <ul style="list-style-type: none">• CA enrolled as member of ICAI;• CS enrolled as member of ICSI;• Cost Accountant enrolled as member of Institute of Cost Accountants of India; or• An advocate enrolled with Bar Council;

Qualifications and Experience requirement for Registration as Insolvency Professional

Procedure for Registration as Insolvency Professional

- ✦ An individual enrolled with an IPA as a Professional Member may make an application to the Board in **Form A**;
- ✦ A non-refundable **fees of Rs. 10,000/-** shall be paid along with Form A;
- ✦ **Within 7 days** the Board shall acknowledge the application;
- ✦ **Within 60 days** from the date of application the board may if satisfied grant the Certificate of Registration;
- ✦ **Within 45 days** from the date of application, if the Board is of the opinion that the registration ought not to be granted, it shall communicate the reasons and give the applicant an opportunity to explain why his application should be accepted;
- ✦ **Within 15 days** of hearing from the Board the applicant shall provide his explanations;
- ✦ **Within 30 days** of receipt of explanation from the application the board may accept / reject the application as it may deem fit;



Registration as Insolvency Professional for Limited Period:

insolvency
CA CS CMA Advocate



- An individual who is in practice for 15 years as:
- a CA enrolled as a member of ICAI;
 - a CS enrolled as a member of ICSI;
 - a Cost Accountant enrolled as a member of Institute of Cost Accountants of India;
- or
- an advocate enrolled with a Bar Council;

can register himself as an Insolvency Professional for a limited period of 6 months by submitting an application in Form A to the Insolvency Professional Agency with which he is enrolled on or before December 31, 2016 along with a non-refundable fee of Rs. 5,000/-.

Living Room...



Some Major Highlights of Union Budget 2017:

1. Total Budget of Rs. 21.47 Lakh crores for 2017-18
2. Increase in Direct Tax Collection by 34% after demonetization
3. Holding period for LTCG reduced to 2 years
4. Carried forward of MAT for 15 years instead of 10 years
5. 5% tax exemption for companies having turnover below Rs 50 crores
6. 6% presumptive tax for turnover up to Rs.2 crores
7. No cash transaction above Rs. 3 Lakh will be permitted
8. Maximum donation receivable from unknown sources by political party will be Rs. 2000
9. Change in period of limitation for scrutiny assessment.
10. 5% tax for income below Rs. 5 Lakh
11. No tax for income up to Rs. 3 Lakh
12. 10% surcharge for assessee income between Rs. 50 Lakhs to Rs. 1 crore
13. One page income tax return proposed
14. No change in service tax and excise duty as GST draft will be launching soon

News Room



- ✓ Retail inflation cools to 5-year low of 3.2% in January
- ✓ WPI inflation spikes to 5.25pc in Jan, fuel prices rise
- ✓ Tax refund jump 42%, says I-T Dept
- ✓ Trade unions oppose changes to Factories Act
- ✓ India defends IP rights despite threats from US pharma lobby groups

Corporate Insolvency set-up to be fully functional by 31st March

The corporate insolvency and bankruptcy system would be fully functional by 31st March 2017, says MS Sahoo, chairman of the bankruptcy regulator, Insolvency and Bankruptcy Board of India

Though the system has started working from 1st December 2016, there are still some parts finalizing regulations of information utilities and voluntary liquidations which are yet to be completed and the board expect to put these things in place by 31st March.

L&T and European Company MBDA tie up for missiles

L&T Group executive Chairman A. M. Naik said his company also hopes to ink the Army's Rs. 4,600 crore contract for 100 tracked, self-propelled guns within a month or so. As for the JV, Naik said L & T and MBDA, which is the world's largest exporter of missiles, have been already working together for over 5 years now. We feel that the time has come to strengthen the partnership for the government's 'Make in India' initiative.

Reinterpret provisions of Cos Act: Mistry camp

Tata Sons on Monday argued that the Supreme Court's decisions on Companies Act would render two firms held by Cyrus Mistry's family ineligible to even seek relief against alleged oppression of their rights as minority shareholders, while the Mistry camp said the issue calls for "fresh interpretation of provisions under the 2013 Act".

C A Sundaram, counsel for the two Mistry firms, said that the Companies Act as a "new regime for the first time distinguishes between class of members and seeks to protect those classes".

He said, as a result, an eligibility requirement of minimum 10% shareholding in the company before a member can drag it to court for acts of alleged mismanagement or oppression has to be interpreted in a "harmonious manner" as rights of a "class of shareholders".