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Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
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(Under the jurisdiction of Ministry of Corporate Affairs)

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PUNE  
CHAPTER

ICSI -WIRC Pune Chapter Newsletter

॥ संहिता ॥

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A Capsule of Information for Corporate Professionals

June - 2022, Issue - 5, Pages - 60

*Special Edition on IBC*

# Insolvency & Bankruptcy

## Contents:

1. Chairman Communique
2. Article
  - IBC: Game Changer of Indian Economy
  - The Jigsaw of Pre-Packaged Insolvency for MSMEs
  - Insolvency & Bankruptcy Code, 2016 (IBC, 2016): Manifestation of A Benchmark
  - Insolvency and Bankruptcy Code, 2016
  - How to Start Practice under IBC?
3. Regulatory Updates
  - MCA
  - SEBI
  - FEMA
4. Chapter Update
5. Landmark Judgement Under Insolvency and Bankruptcy Code, 2016



## Chairman's Communique



Respected Seniors, Professional Colleagues and Dearest Students,

It's my pleasure that the 'Team Sanhita Editorial Board' decided to come out with this June 2022 Sanhita Newsletter issue as a Special Issue on 'Insolvency & Bankruptcy Code'. This is a consecutively third special issue that we are releasing this time on the occasion of 'Conclave on IBC' being organised on 15th & 16th July 2022 by the Pune Chapter

of WIRC of ICSI (Pune Chapter) jointly with Pune Chapter of Institute of Cost Accountants of India (CMA Pune Chapter) along with the Insolvency and Bankruptcy Board of India (IBBI), ICSI Institute of Insolvency Professionals (ICSI IIP), ICSI Registered Valuers Organisation (ICSI RVO), ICAI Insolvency Professional Agency (ICMAI IPA) & ICAI Registered Valuers Organisation (ICMAI RVO) as Knowledge Partners. This is the first time in the history of Pune Chapter, when all those professional institutions are coming together for any joint program of Pune Chapter.

As I mentioned in my earlier communiques about specific month wise initiatives that we have been come out, subject of 'Insolvency and Bankruptcy' was not touched by us in this year so far now, hence we have decided to organise complete brainstorming symposium on the topic of Insolvency and Bankruptcy jointly with the above referred professional institutions.

Ordinarily, Insolvency in case of individual / Bankruptcy in case of non-individual is occurred when an individual / organisation is unable to honour its debts or repay to creditors. It gives a chance to them to start fresh when they are in financial problems and also gives equal chance to creditors to recover whatever they owned from debtors.

In India, the government of India has come out with the Insolvency & Bankruptcy Code in the year 2016 with an uniform & comprehensive insolvency legislation with the object of creating a single law for insolvency & bankruptcy which provides a time bound insolvency resolution mechanism. A strong insolvency regime serves two purposes. It saves businesses that are viable and facilitates the exit of those that are not. The Insolvency and Bankruptcy Code, 2016 (IBC), has been designed to create such a regime in India.

Before the IBC, India neither had an efficient rescue mechanism nor a satisfactory exit route for businesses. The IBC offers a market-directed, time-bound mechanism to resolve insolvency, wherever possible, or exit, where required.

The object of Insolvency and Bankruptcy Code (IBC), 2016 is to encourage entrepreneurship and innovation. The prime objective of the IBC is to revive sick business units. During the initial stages of establishment, business ventures might fail due to several unfavourable conditions, but with the help of this code they will be able to move on, instead of being bogged down with decisions taken in the past.

It has been seen that enterprises, which have been revived under the IBC, are helping to create more and more employment, surrounding resources are being used and created wealth for the society, promoters are getting benefitted, government are also getting benefitted with the payment of taxes on the revenues generated by such enterprises which ultimately results in the betterment of Society and Economy as whole.

IBC has some prominent features like overriding effect over any other law in India, Specific time frame at each stage and complete time bound process, Operational Creditors & Financial Creditors have given a priority over the payment of dues to the government which was not earlier and so many others.

Howsoever, the law relating IBC is still evolving by various judicial pronouncements of the Hon'ble NCLT, Hon'ble NCLAT and the Hon'ble Supreme Court, by practical difficulties being faced by the stakeholders be it applicants, RPs, COC, Creditors, government departments, various regulators and notifications of the rules and regulation of IBBI and it will take some more time to settle likewise any other laws.

In this special issue of Sanhita on IBC, exclusive topics relating to IBC law, learning-opportunities-challenges, way forward, CIRP, liquidation, case studies, judicial pronouncements are included apart from regular columns.

In the IBC Conclave being organised by Pune Chapter, efforts have been made to cover all about IBC right from IBC – Learnings, Opportunities, Challenges & Way Forward for Professionals – Regulator Perspective, Initiation of CIRP for corporate and non-corporate entities, Liquidation and voluntary liquidation process, need for valuation in the process, Banker's perspective including importance of valuation for recovery, Scope for transaction audit, Valuation under IBC – Practical Aspects: Difficulties and Learnings including practical nuances of above topics and I am sure that those would be comprehensively and thoroughly deliberated.

On the front of the members activities at Chapter level during the month, the entire month was celebrated as PCS Month instead only celebrating 15th June as PCS Day. 23rd National Conference of Practising Company Secretaries on 18th & 19th June at Lonavla, Pune wherein we as Pune Chapter played key role, for the benefit of the members to bring opportunities to them and with an objective of creating interest and inclination towards research among them, Pune Chapter organized Research Paper Competition - 2022 for its members by inviting them to write an original research paper on various contemporary subjects. Further, in view of CS being considered to be an expert in interpretation of laws, with an objective of creating interest in opinion writing among the members, we also organized an 'opinion writing competition' for the members. We celebrated 5th June as World Environment Day by organising plantation drive, Two Days Master Class for PCS, one day workshop on 'Remuneration of Directors and Key Managerial Personnel and Disclosure of Interest by Directors' and rolling out of zone wise Study Circle Meeting were the featured activities of the June 2022 month.

Big thanks to the CS Pawan Chandak, SCM Co-ordinator and entire SCM lead, Co-lead, coordinators for exerting themselves for rolling out zone wise SCMs, CS Gaurav Nashikkar, Chairman, PCS Committee and his team for going all out for all activities during PCS Month and CS Rohit Gokhale, CS Vikas Agarwal and Team Sanhita for their constant ceaseless efforts for releasing Sanhita Newsletter issue regularly including Three Special Issues till half year of 2022.

Happy reading...!!!

Yours Sincerely,

CS Sanjay Patare

Chairman,

Pune Chapter of WIRC of ICSI

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### Introduction

Every Law framed / implemented by the Government has some or the other impact on the economy of the Country. There were various Laws implemented in India for recovery of debts, securitisation of assets, etc the said laws were amended or changed from time to time considering the changes of the market / economic trends in the country. Thereafter, considering all these laws, Insolvency and Bankruptcy Code (hereinafter referred as IBC) came into picture. It was a big relief to the Banks and Financial Institutions because of IBC they got a security while lending the funds to Corporate considering the fact that if their funds get defaulted IBC is there to get the same recovered. Banks and Financial Institution plays a pivotal role in Indian Economy and if the Banking industry is stable ultimately it can be said that the Economy of the country is stable to some extent. The IBC was introduced in 2016 to resolve claims involving insolvent companies so as to tackle the bad loan problems that were affecting the banking system. IBC can be termed as an important reform in a string of such measures introduced by the Government of India which have acted as a pillar in acceleration of the Indian economy.

IBC has played a major role while improving the process of resolving insolvency cases in India. India has been ranked 111 in 2017 and 47 in 2021 in regard to 'Ease of Resolving Insolvency' as per the



Global Innovation Index, 2021. Accordingly, IBC has augmented the 'ease of doing business in India' and has turned out to be an effective reform in the financial system of the nation.

### OBJECTIVES:

The IBC is a law for insolvency resolution and its foundational objectives are as follows:

An Act 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 maximization 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 Board of India, and for matters connected therewith and incidental thereto.

The first objective of the Code is resolution. The second objective is to maximize the value of assets of the corporate debtor and the third objective is to promote entrepreneurship, availability of credit, and balancing the interests. The order of these objectives is realistic and can be correlated with the need in the economy.

### FREEDOM TO EXIT:

The Insolvency and Bankruptcy Code, 2016 (IBC) is the realistic, logical and implementable legislation for insolvency resolution of all entities in India. The provisions relating to insolvency and liquidation of corporate persons came into force on 1 December 2016, while those of insolvency resolution and bankruptcy of personal guarantors to corporate debtors (CDs) came into effect on 1 December 2019.

The IBC provides for a mechanism for distressed businesses to resolve insolvency in an orderly and

time-bound manner. The Code absolutely changed the legal regime for corporate distress resolution in India and linked it with a time-bound mechanism. It identified the loopholes and hurdles in existing laws in this regard, the market imperfections and plugs the information asymmetries, enabling the “freedom to exit” for commercial entities (through corporate insolvency resolution regimes) and entrepreneurs.

Exit mechanisms for businesses plays a really important role while promoting productive growth which is directly correlated with economic growth. An effective insolvency regime strengthens the market selection process by disposing of non-viable firms and facilitating the restructuring of viable firms. It increases the scope and speed at which scarce resources consumed by failing firms can be reallocated to more productive uses by other firms.

#### CONTRIBUTION TO ECONOMY:

IBC is the incomparable solution for mitigating insolvencies. Mitigating insolvencies was a long process that did not offer an economically viable arrangement. The code aims to protect the



interests of all investors and make the process of doing business easier. It addresses the growing need for a comprehensive law that would be effective in resolving the insolvency of debtors, maximizing the value of assets available for creditors and easing the closure of unviable businesses. IBC aims to protect the interests of everyone may it be banks and financial institutions (FIs), secured and unsecured creditors, and

employees. Apart from the Secured Creditors which were also covered in the earlier laws, IBC focuses on unsecured Creditors as well and provide justice to them. IBC in a way also promotes unsecured financing as the distribution waterfall of recoveries following liquidation gives unsecured financial creditors (FCs) (apart from all secured creditors) precedence over government dues. Even asset reconstruction companies (ARCs) stand to benefit from speedy recovery, and stakeholders would gain clarity on their share of dues. Ultimately, IBC promotes economy of the country by making the process of lending and recovery much easier than what it was before the code came into force.

#### IBC:2016 AND AMENDMENTS:

As the code came into force considering the needs of the market. Initial laws were not able to mitigate the market needs with respect to resolving and recovery of debt cases and restructuring of assets, accordingly, IBC came into picture, therefore, it was also needed to amend the IBC from time to time after understanding the changes adopted by the market in the practice.

There were approximately six major amendments in IBC till date out of which five were through Ordinance considering the emergency to improve the resolution framework. Each amendment was made to sync the resolution process with market realities with the priority being revival of companies. The sixth amendment was prioritising the MSMEs of the Country. The said Ordinance was substituted by adoption of IBC (Amendment) Act, 2021 on August 12, 2021. Prior to the said amendment, various cases related to big size companies were resolved however, as far as the small enterprises are concerned, IBC had the limitations to resolve their cases.

With the amended Act, 2021, IBC had the focused agenda of insolvency resolution process of micro, small and medium enterprises (MSMEs). Covid 19 pandemic created multiple challenges for MSMEs, with several of them unable to continue operations. The amended Act, 2021 is a major advancement towards adopting out of court



settlements as the way forward for achieving faster resolution and minimum distortion of value of assets. This not just impacts the corporate health of the country but translates into the overall growth prospects. Such major amendments in IBC from time to time played a pivotal role for greater improvements in India's economic position globally.

#### STATISTICS:

Since the inception of the Insolvency and Bankruptcy in December 2016, 4708 Corporate Insolvency Resolution Plans (CIRPs) have commenced (as on September 30, 2021), of which 65 per cent have been closed. Of these, 23 per cent were closed on appeal or review or settled, 17 per cent were withdrawn, 46 per cent ended in orders for liquidation and 14 per cent culminated in

approval of resolution plans.

In case of the 421 CIRPs which ended in resolution, financial creditors (FCs) realised 36 per cent of their claims and 167 per cent of the liquidation value



Corporate Insolvency Resolution Process Status								(Number)
Year / Quarter	CIRPs at the beginning of the Period	Admitted	Closure by				CIRPs at the end of the Period	
			Appeal/ Review/ Settled	Withdrawal under Section 12A	Approval of Resolution Plan	Commencement of Liquidation		
2016-17	0	37	1	0	0	0	36	
2017-18	36	706	94	0	20	91	537	
2018-19	537	1157	153	97	79	306	1059	
2019-20	1059	1986	343	216	139	542	1805	
2020-21	1805	537	83	157	122	349	1631	
Apr-Jun, 2021	1631	141	9	33	45	74	1611	
Jul-Sep, 2021	1611	144	18	24	16	57	1640	
Total	NA	4708	701	527	421	1419	1640	

Note: 1. These CIRPs are in respect of 4593 CDs.  
 2. This excludes 1 CD which has moved directly from BIFR to resolution.  
 3. This Includes Dewan Housing Finance Corporation Limited data, the application filed by Reserve Bank was admitted under section 227 read with Financial Service Provider Rules of the Code.

Source: RBI Financial Stability Report, December 2021

Outcome of CIRPs initiated Stakeholder-wise, as on September 30, 2021					
Outcome	Description	CIRPs initiated by			
		Financial Creditor	Operational Creditor	Corporate Debtor	Total
Status of CIRPs	Closure by Appeal/Review/Settled	189	507	5	701
	Closure by Withdrawal u/s 12A	152	368	7	527
	Closure by Approval of Resolution Plan#	241	135	44	420
	Closure by Commencement of Liquidation	628	628	163	1419
	Ongoing	809	759	72	1640
	Total	2019	2397	291	4707
CIRPs yielding Resolution Plans	Realisation by FCs as per cent of Liquidation Value	181.5	115.2	140.8	166.6
	Realisation by FCs as per cent of their Claims	38.5	17.2	25.5	35.9
	Average time taken for Closure of CIRP	499	484	503	495
CIRPs yielding Liquidations	Liquidation Value as per cent of Claims	6.3	8.7	9.7	7.1
	Average time taken for Closure of CIRP	395	364	341	375

Note: # - This excludes Dewan Housing Finance Corporation Limited data, the application filed by Reserve Bank was admitted under section 227 read with FSP rules, of the Code.

Source: RBI Financial Stability Report, December 2021

### IBC: A CATALYST FOR INDIAN ECONOMY:

As a key economic reform, IBC has shifted the balancing ball from the debtor/borrower to the creditor. It has instilled a significantly increased sense of credit discipline to preserve economic value.

The World Bank Group in its report 'Doing Business 2020: Comparing Business Regulation in 190 Economies' included Resolving Insolvency as a major policy reform leading to ease of doing business in India and states as below:

Prime Minister Narendra Modi's "Make in India"

campaign focused on attracting foreign investment, boosting the private sector — manufacturing in particular—and enhancing the country's overall competitiveness. The government turned to the Doing Business indicators to show investors India's commitment to reform and to demonstrate tangible progress. In 2015 the government's goal was to join the 50 top economies on the ease of doing business ranking by 2020. The administration's reform efforts targeted all of the areas measured by Doing Business, with a focus on paying taxes, trading across borders, and resolving insolvency. The country has made a substantial leap upward, raising its ease of doing



business ranking from 130 in Doing Business 2016 to 63 in Doing Business 2020.

In regard to resolving insolvency, the report goes on to state as below:

India made resolving insolvency easier by promoting reorganization proceedings in practice. India also made resolving insolvency more difficult by not allowing dissenting creditors to receive as much under reorganization as they would receive in liquidation.

This is really a proud to read such words in World Bank Report about India.

#### **CONCLUDING REMARKS:**

IBC has been a game changer for the Indian Economy. It has provided everything which is needed to simplify the insolvency resolution process, including ease of exit. Six years into



operation, the outcomes under it have been more than encouraging. The primary objective of the Code is rescuing lives of corporate debtors (CDs) in distress. The Code has rescued several Corporate

Debtors through resolution plans, out of which many were in deep distress. It is apparent that IBC is perhaps one of the most critical legislations introduced in the preceding decade impacting the 'ease of doing business in India' in a positive manner and has proved to be an effective catalyst in accelerating the Indian economy. Accordingly, IBC is going to have much more expectations going forward that what it had initially considering the constant growth of Indian economy and therefore, alongwith the expectations it will also have to face various challenges in this regard. Given the fact it has settled the system in these six years, it will definitely overcome the challenges in future and help the Indian Economy now and forever.

**GOVERNANCE BEYOND COMPLIANCE!!!!**

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The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 was promulgated by the President on the Fourth day of April 2021. The Ordinance had been introduced with the intent to provide an efficient alternative insolvency resolution process for corporate persons classified as micro, small and medium enterprises (MSMEs) thus ensuring a quicker, cost-effective and value maximizing outcomes for all the stakeholders, and in a manner, which is least disruptive to the continuity of the business and which preserves jobs. The initiative is based on a trust model and the amendments honor the honest MSME owners by trying to ensure that the resolution happens and the Company remains with them.

This article aims at putting together certain pieces of the Jigsaw of Pre-Packaged Insolvency as set forth in the Ordinance, the Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution process) Rules, 2021 and the IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 as notified by the IBBI on April 9, 2021.

### **History of Pre-Packaged Insolvency:**

Black's Law Dictionary defines a 'pre-pack bankruptcy' as, 'Bankruptcy where the debtor agrees to terms reducing the time it takes to handle the business at hand.'

However, 'pre-pack' has no statutory definition. It is probably because it has evolved over the time, differently in different jurisdictions and every jurisdiction has a unique variant(s) of pre-pack, which allows the stakeholders to modify it further to an extent to suit their needs.

The concept of 'Pre-Packaged Insolvency' has not all of a sudden come into vogue. This concept, by whatever term it may be called, has found its place in the Insolvency Laws in the United Kingdom, the United States of America, Singapore, France and Canada.

### **Need of Pre-Packaged Insolvency in India:**

The outbreak of COVID-19 pandemic and the lockdown imposed thereto forced companies, industries and enterprises all over the World to remain shut for a long period of time thus pushing innumerable business units, specifically the Micro, Small and Medium Enterprises (MSMEs), into financial distress and causing a threat to the very existence of such enterprises.

Considering the need of the hour of revival and insolvency resolution of these Micro, Small and Medium Enterprises that contribute significantly to India's GDP and provide employment to a sizeable population, the Government of India upon several deliberations promulgated the regime of Pre-Packaged Insolvency specifically for such MSMEs vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on April 4, 2021.

Pre-Packaged Insolvency has emerged as an innovative corporate rescue method that incorporates the virtues of both informal (out-of-court) and formal (judicial) insolvency proceedings thus resulting in a faster, cost-effective and value maximizing regime along with ensuring that the management of MSMEs remains with the honest MSME owners. This regime has been introduced as an alternative to Corporate Insolvency Resolution Process (CIRP) and not as a replacement of the same.

### **Important Terms and Definitions:**

1. Base Resolution Plan means a resolution plan provided by the Corporate Debtor under 54A(4)(c).
2. Preliminary Information Memorandum means a memorandum submitted by the Corporate Debtor under 54G(1)(b).
3. Pre-Packaged Insolvency Commencement Date means the date of admission of an





application for initiating the pre-packaged resolution process by the Adjudicating Authority under 54C(4)(a).

4. Pre-Packaged Insolvency Resolution Process Period means the period beginning from the pre-packaged insolvency commencement date and ending on which order under Section 54L (1) [Approval of Base Resolution Plan/Resolution Plan by the Committee of Creditors (CoC)], Section 54N (1) [Termination of Pre-Packaged Insolvency Resolution Process] or Section 54O(2) [Migration from Pre-Packaged Insolvency Resolution Process to Corporate Insolvency Resolution Plan as agreed to by the CoC], as the case may be, is passed by the Adjudicating Authority.

Order of Priority for disposal of application under Section 54C vis-à-vis application under Section 7 or 9 or 10:

Section 11A has been inserted in the Principal Act to set forth the order of priority for disposal of application filed under Section 54C for initiation of PPIRP vis-à-vis an application filed under Section 7 or Section 9 or Section 10 for initiation of CIRP. The provisions set forth as follows:

1. Where an application filed under Section 54C is pending, the NCLT shall pass an order to admit or reject such application before considering application under Section 7 or 9 or 10 for CIRP, in respect of the same

Classification	Micro Enterprise	Small Enterprise	Medium Enterprise
Manufacturing and Service	Investment < Rs. 1 Cr. and Turnover < Rs. 5 Cr.	Investment < Rs. 10 Cr. and Turnover < Rs. 50 Cr.	Investment < Rs. 50 Cr. and Turnover < Rs. 250 Cr.

2. The Corporate Debtor who commits a default of Ten Lakh Rupees or more, referred to in Section 4 of the Insolvency and Bankruptcy Code, 2016.

The Ministry of Corporate Affairs vide notification dated April 9, 2021 issued under the second proviso to Section 4 for Chapter III-A specified Ten Lakh Rupees as the

Corporate Debtor;

2. Where an application under Section 54C is filed within 14 days of any application filed under Section 7 or 9 or 10, the NCLT shall first dispose of the application under Section 54C;
3. Where an application under Section 54C is filed after 14 days of any application filed under Section 7 or 9 or 10, the NCLT shall first dispose of the application under Section 7, 9 or 10.

The provisions of this Section shall not apply where an application under Section 7, 9 or 10 is filed and pending as on the date of the commencement of the aforementioned Amendment Ordinance.

#### Eligibility Criteria for Pre-Packaged Insolvency:

Section 54A enlists the pre-requisites for a Corporate Debtor to be eligible for the Pre-Packaged Insolvency Resolution Process. For the convenience of our readers, the same are enlisted as follows:

1. The Corporate Debtor shall be classified as a micro, small or medium enterprise under sub-section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

The Revised Classification of MSME w.e.f. 1st July 2020 under the Micro, Small and Medium Enterprises Development Act, 2006 is as follows:

minimum amount of default for filing matters relating to the Pre-Packaged Insolvency Resolution Process.

3. The Corporate Debtor has not undergone PPIRP or completed CIRP, as the case may be, during the period of 3 years preceding the initiation date;

4. The CD is not undergoing a CIRP;
5. No order requiring the CD to be liquidated is passed under Section 33 of the Code;
6. The CD is eligible to submit a resolution plan under Section 29A read with Section 240A (Section 240A being an overriding provision shall be considered while determining the applicability of Section 29A to MSMEs being the Corporate Applicants herein;
7. The unrelated Financial Creditors of the Corporate Debtor, representing such number as may be specified in the relevant Regulations to be notified by the IBBI, shall propose the name of the Insolvency Professional to be appointed as the Resolution Professional for conducting the PPIRP;
8. The unrelated Financial Creditors of the CD representing not less than 66% in value of the financial debt due shall approve such proposal of PPIRP;
9. The Members of the Corporate Debtor shall pass a Special Resolution or consent of at least three-fourth of the total number of partners, in case of an LLP, approving the filing of an application for initiating PPIRP.
10. Majority of the directors or partners of the Corporate Debtor shall make a declaration, stating inter alia that-
  - (i) The Corporate Debtor shall file an application for initiating PPIRP within a time period as may be set forth in the declaration provided, the same shall not exceed 90 days from the date of the declaration;
  - (ii) The PPIRP is not being initiated to defraud any person; and
  - (iii) The name of the IP proposed and approved to be appointed as the RP.

Upon the fulfillment of the aforementioned criteria, the Corporate Debtor shall again be required to obtain an approval from its unrelated

Financial Creditors representing not less 66% in value of the financial debt due to such creditors for filing an application for initiating PPIRP.

At the time of obtaining such approval from the unrelated Financial Creditors the Corporate Debtor shall be required to furnish the following documents-

1. Declaration by majority of directors or partners of the Corporate Debtor as aforementioned;
2. A copy of the Special Resolution or resolution of partners passed by the members or partners of the Corporate Debtor;
3. A Base Resolution Plan which confirms with the requirements of Section 54K of the Code, that shall be enlisted in this article.

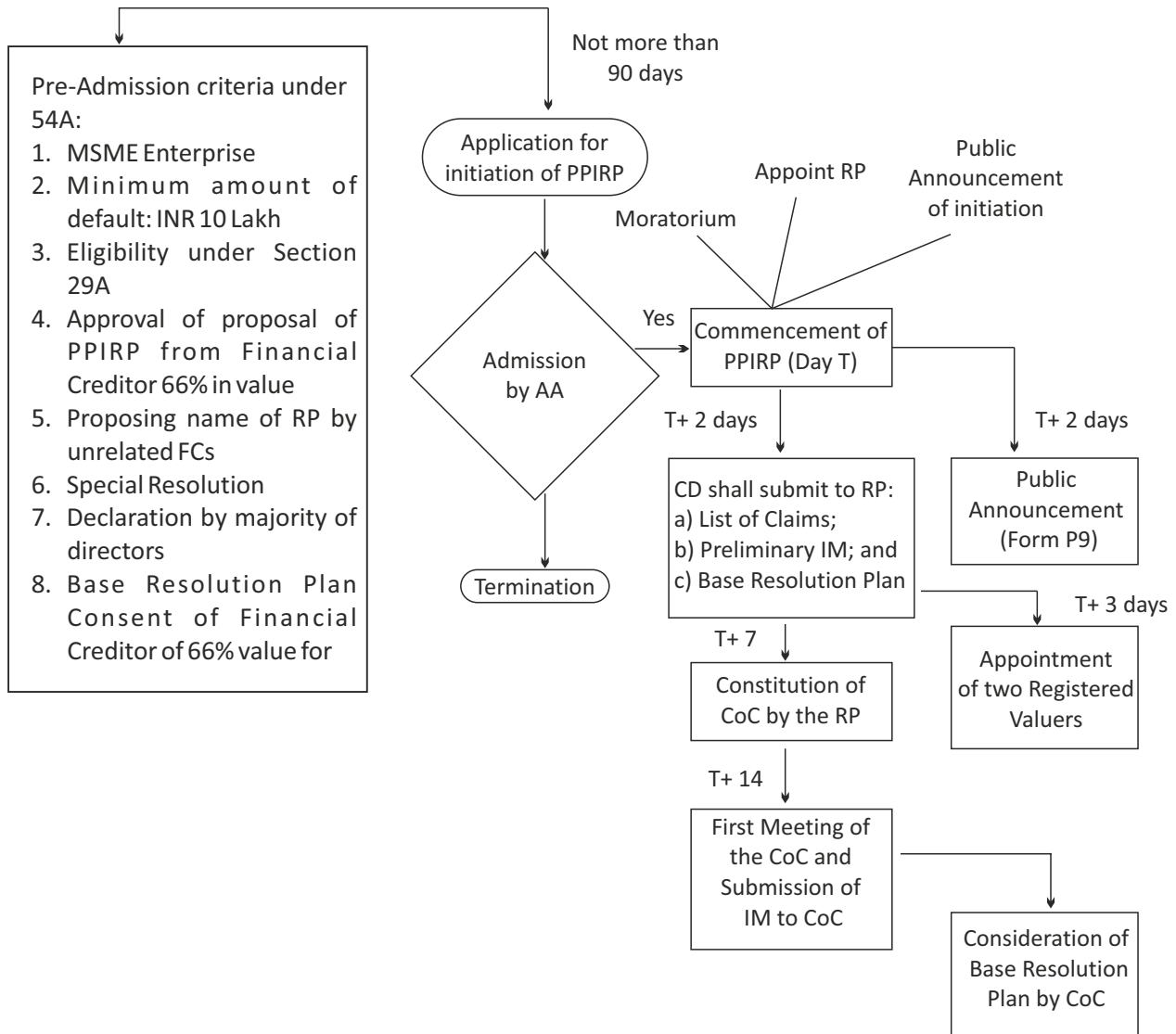
Upon the fulfillment of the aforementioned criteria, the Corporate Debtor shall again be required to obtain an approval from its unrelated Financial Creditors representing not less 66% in value of the financial debt due to such creditors for filing an application for initiating PPIRP.

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2. A copy of the Special Resolution or resolution of partners passed by the members or partners of the Corporate Debtor;
3. A Base Resolution Plan which confirms with the requirements of Section 54K of the Code, that shall be enlisted in this article.



**Procedure of Pre-Packaged Insolvency:**



**Consideration of Resolution Plan by the CoC:**

**Important Terms:**

1. Impairment of Claim: Claims shall be considered to be impaired where the Resolution Plan does not provide for full payment of the confirmed claims as per the updated list of creditors maintained by the Resolution Professional.
2. Basis for Evaluation: It includes the parameters to be applied and the manner of applying such parameters, as approved by the CoC, for evaluating a Resolution

Plan to assign a score to the plan, and disclosed in the invitation for resolution plans.

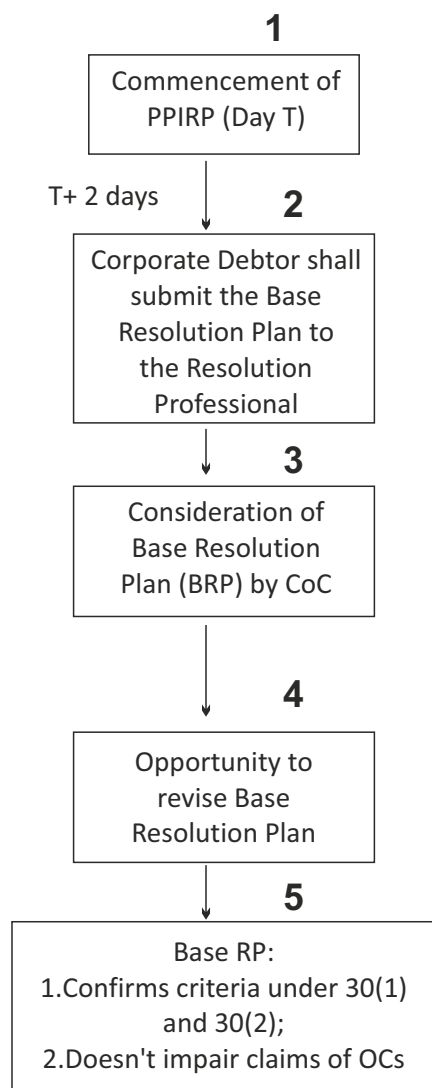
*Illustration: The Committee may identify three parameters namely X, Y and Z for evaluation of Resolution Plans. It may apply these parameters in the form of a formula, namely,  $1.5X + 2Y + 2.5Z$ . If, on evaluation, the score of X, Y and Z are 20, 25 and 30 respectively, the score of the Resolution Plan is  $1.5 (20) + 2 (25) + 2.5 (30) = 155$ .*

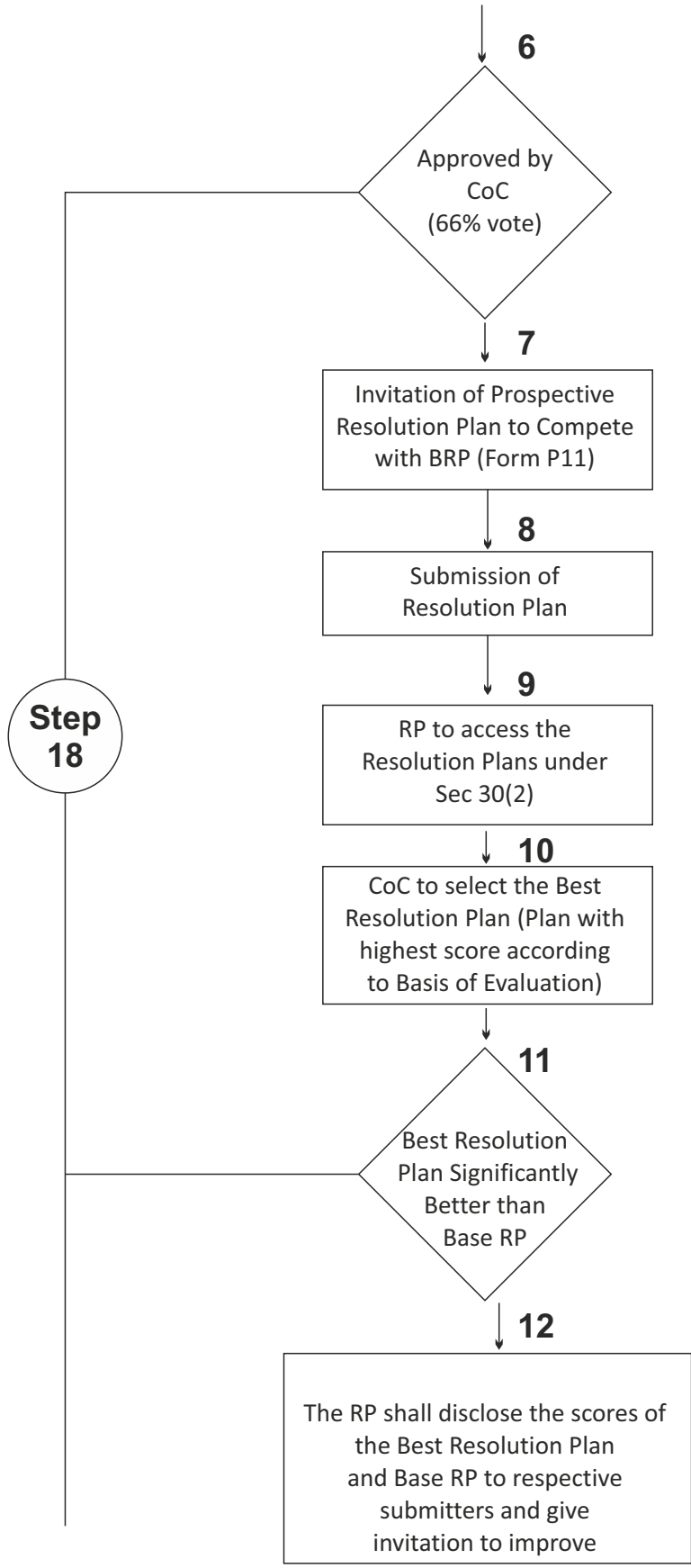
3. Significantly Better: In relation to a Resolution Plan, significantly better means, that the score of the Resolution Plan is higher than that of another resolution plan by a certain number or percentage, as approved by the CoC and disclosed in the invitation of resolution plans.

*Illustration: The CoC may consider a Resolution Plan to be significantly better than another resolution plan, if the score of the former is higher than the later, say by 10. Where Resolution Plans 'A' and 'B' have score 100 and 110 respectively, 'B' is significantly better than 'A'.*

4. Tick Size: The Tick Size means minimum improvement over another resolution plan in terms of score, as approved by the CoC and disclosed in the invitation of resolution plans.

*Illustration: Let us consider that on the basis of evaluation, resolution plans 'A' and 'B' have scores of 105 and 108, respectively. Resolution Applicant 'A' may wish to improve 'A' over 'B'. The Plan 'A' shall be improved in such a way that the score of 'A' shall exceed that of 'B' at least by tick size. If the tick size is 5, the Resolution Applicant of 'A' must improve 'A' such that the score of 'A' is at least  $108 + 5 = 113$ .*

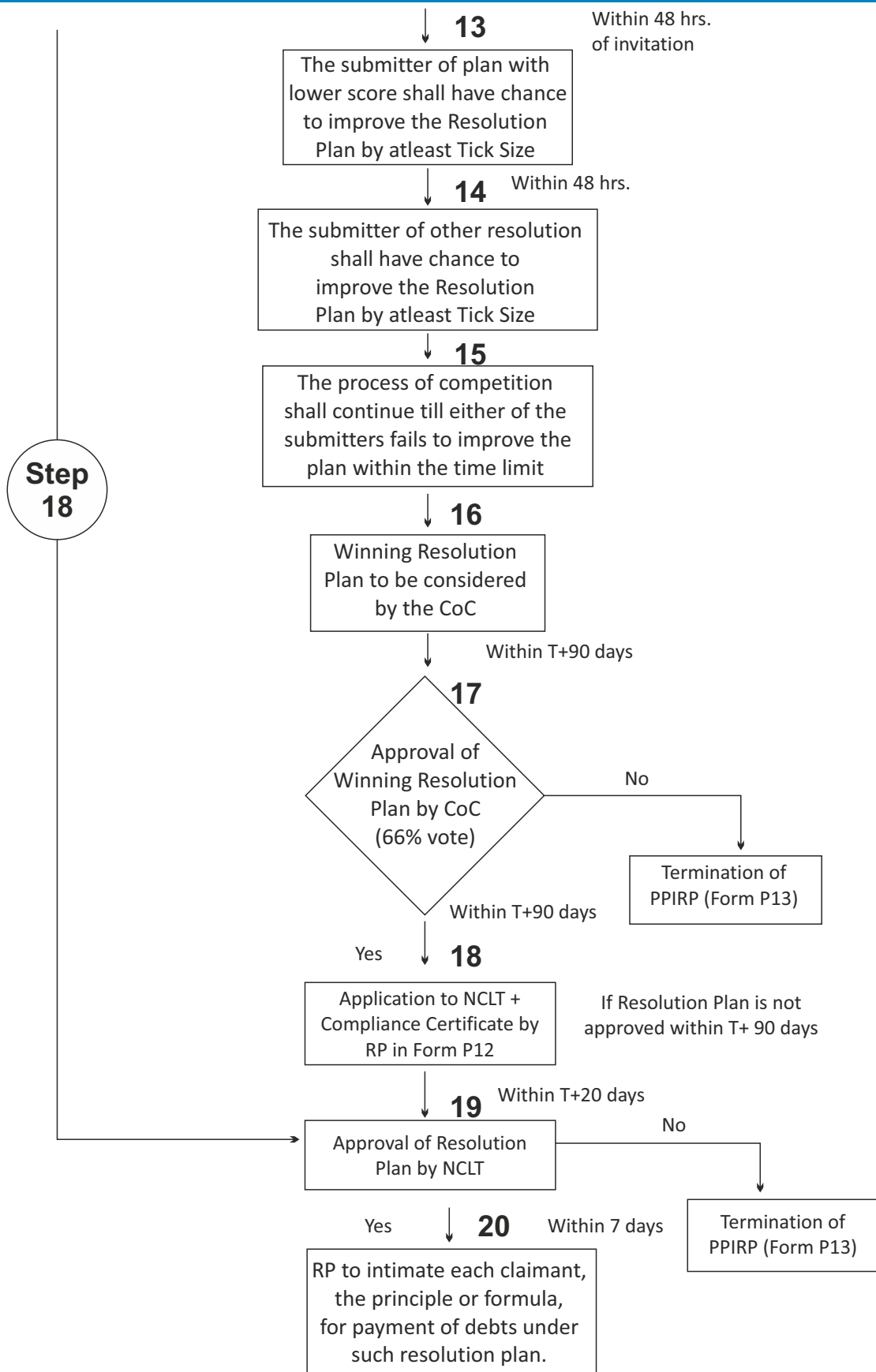




**Note:** While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by the CD provides for **impairment of any claims** owed by the corporate debtor, the CoC may require the promoters of the CD to dilute their shareholding or voting or control rights in the CD.

Where the Resolution Plan does not provide for such dilution, the CoC shall, prior to the approval of such Plan under in Step 6 or Step 17, as the case may be, record reasons for its approval.

**Step 18**





Management of Affairs of the Corporate Debtor during PPIRP:

During the PPIRP period the management of affairs of the Corporate Debtor shall continue to vest in the Board of Directors of the Corporate Debtor, subject to conditions as may be specified.

Under Section 54J of the Code, where the Committee of Creditors (CoC), at any time during the PPIRP period, by a vote of not less than 66% of the voting share, resolves to vest the management of the Corporate Debtor with the Resolution Professional, the Resolution Professional shall make an application in Form P14 to the NCLT for this purpose.

If the NCLT, upon consideration of the Application is of the opinion that during the PPIRP:

1. The affairs of the Corporate Debtor have been conducted in a fraudulent manner; or
2. There has been gross mismanagement of the affairs of the Corporate Debtor

Then the Hon'ble NCLT shall pass an order vesting the management of the Corporate Debtor with the Resolution Professional.

Where the Adjudicating Authority has passed an order under this Section and the Resolution Plan approved by the CoC does not result in change in the management or control of the Corporate Debtor to a person who was not a promoter or in management or control of the CD or if the PPIRP is required to be terminated, the Adjudicating Authority shall pass an order rejecting such plan and terminate the PPIRP by passing a Liquidation Order.

#### **Migration from PPIRP to CIRP:**

The CoC, at any time after the Pre-Packaged Insolvency Commencement Date but before the approval of the Resolution Plan, by vote of 66% of the voting shares, may resolve to initiate a CIRP in respect of the CD, if such CD is eligible for CIRP under Chapter II of the Code.

The Resolution Professional appointed to conduct the PPIRP shall be appointed as the Interim

Resolution Professional in respect of the CIRP. The order passed by the Adjudicating Authority initiating CIRP shall be deemed to be an order for admission passed under Section 7 of the Code.

#### **Determination of Preferential and other Transaction:**

In accordance with Section 54C (3) (c) of the Insolvency and Bankruptcy Code, 2016 the Corporate Applicant shall, along with the application for initiating PPIRP, furnish a declaration in Form P7 regarding the existence of any transactions of the Corporate Debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI.

#### **Forming an Opinion by the Resolution Professional:**

The Resolution Professional shall, on or before the 30th day of the Pre-Packaged Insolvency Commencement date, form an opinion whether the Corporate Debtor has been subjected to transactions covered under Sections 43, 45, 50 or 66.

**Determination:** If the Resolution Professional is of the opinion that the Corporate Debtor has been subjected to transaction covered under Sections 43, 45, 50 or 66, he shall make a determination on or before the 45th day of the Pre-Packaged Insolvency Commencement date.

**Application to NCLT:** Where the resolution professional makes a determination, he shall apply to the NCLT for appropriate relief on or before the 60th day of the pre-packaged insolvency commencement date.

#### **Judicial Pronouncements:**

GCCL Infrastructure & Projects Limited was the first Corporate Debtor to be admitted for pre-packaged insolvency resolution process vide order passed by Hon'ble National Company Law Tribunal, Ahmedabad Bench in CP (IB)/116 (AHM) 2021 pronounced on September 14, 2021.

#### **In the matter of Krrish Realtech Private Limited:**

In the matter of Krrish Realtech Private Limited the

question that arose before the Hon'ble National Company Law Appellate Tribunal was whether the Adjudicating Authority while considering Application of pre-packaged insolvency under Section 54C of the 'I&B Code' can, before admission of the Application, hear Objectors/ Interveners.

The Hon'ble Appellate Tribunal while deciding the matter held that the Scheme under Chapter III A and the Regulations 2021 does not contain any express provision prohibiting the Adjudicating Authority from hearing any of the objectors or interveners prior to the admission of pre-packaged insolvency resolution process application or providing for giving notice or hearing to the

interveners or objectors. The Appellate Tribunal further stated that the cardinal principle of procedure to be followed by the Adjudicating Authority is the adherence of Rules of natural justice which is statutorily provided for under Section 424 of the Companies Act, 2013. The time given for objection to the objectors, is in accordance with principle of natural justice which is to be followed by the Adjudicating Authority. There is no violation of any Regulations or Rules or provisions of the 'I&B Code' in giving opportunity to objectors to file their objection.







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It's been six (6) years since the benchmark law came into existence. Insolvency and Bankruptcy Code is one of the greatest reform by the Government of India. The Insolvency and Bankruptcy Code endeavors to protect the interests of home buyers, investors, banks, customers, employees and stakeholders dealing with the Companies registered in India. Earlier, the legislative framework for insolvency and restructuring was rambling across multiple laws, such as the Companies Act 2013, the Sick Industrial Companies (Special Provisions) Act, 1985, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act (RDDBFI Act), 1993, and others. The Insolvency and Bankruptcy Code offers a single law for all the financial problems. Let's discuss the evolution and procedural aspect of the Code.

### I. Journey of IBC, 2016

- Bankruptcy Law Reform Committee (BLRC) was setup on 22nd August, 2014
- BLRC submitted its interim report to Ministry of Finance on 5th February, 2015
- Ministry of Finance invited comments on the interim report of the BLRC on 10th February, 2015
- On 4th November, 2015 Volume I- Report of BLRC and Volume II- Draft Code, 2015
- Ministry of Finance invited comments on Volume I & II on 4th November, 2015
- Bankruptcy Code introduced in the Parliament on 21st December, 2015
- Bankruptcy Code referred to a Joint Parliamentary Committee on 23rd December, 2015

- Joint Committee invited comments on the Bankruptcy Code on 22nd January, 2016
- Joint Parliamentary Committee submitted its report on the Code on 28th April, 2016
- The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December 2015
- It was passed by Lok Sabha on 5th May 2016
- The Code received the assent of the President of India on 28th May 2016

### II. Acts Amended by the IBC, 2016

Following Acts are amended by the Insolvency and Bankruptcy Code, 2016

- The Companies Act, 2013
- The Indian Partnership Act, 1932
- The Central Excise Act, 1944
- The Income- tax Act, 1961
- The Customs Act, 1962
- The Recovery of Debts due to Banks and Financial Institutions Act, 1993
- The Finance Act, 1994
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- The Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- The Payment and Settlement Systems Act, 2007
- The Limited Liability Partnership Act, 2008

### III. Regulatory Framework:

- Insolvency and Bankruptcy Code, 2016

- Insolvency and Bankruptcy Code (Amendment) Act, 2021

- Rules and Regulations prescribed under Insolvency and Bankruptcy Code, 2016

#### IV. Organized Entities under IBC, 2016

- Insolvency and Bankruptcy Board of India (IBBI)
- Adjudicating Authority (AA) –National Company Law Tribunal (NCLT) , National Company Law Appellate Tribunal (NCLAT), Debt Recovery Tribunal (DRT), Debt Recovery Appellate Tribunal (DRAT), Supreme Court (SC)
- Insolvency Professionals Agencies (IPA)
- Insolvency Professionals (IP)
- Information Utilities (IU)

#### V. Adjudicating Authority

- For Corporate Persons- National Company Law Tribunal
- For Partnerships and Individuals- Debt Recovery Tribunal

#### VI. Applicability

- Any Company incorporated under the Companies Act, 2013 or under any previous company law
- any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act
- any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008
- other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf
- partnership firms and individuals [Section 2]

#### VII. Corporate Insolvency Resolution Process (CIRP)

The insolvency resolution process for corporate persons is detailed under Chapter II of Part II of the Insolvency and Bankruptcy Code, 2016

Who can initiate CIRP?

- a financial creditor
- an operational creditor or
- the corporate debtor itself

#### VIII. PROCEDURAL ASPECT UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

##### By Financial Creditor

- File an application for corporate insolvency resolution process before the Adjudicating Authority (AA) [Section 7(2)]

Application should be accompanied by:

- record of the default recorded with the information utility or such other record or evidence of default as may be specified
- the name of the resolution professional proposed to act as an interim resolution Professional
- any other information as may be specified by the Board

##### [Section 7(3)]

- Within 14 days of the receipt of the application AA will ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor
- If AA is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit the application
- If default has not occurred or the application is incomplete or any disciplinary proceeding



is pending against the proposed resolution professional, it may, by order, reject such application

- Before rejecting the application AA shall give a notice to the applicant to rectify the defect in his application within 7 days of receipt of such notice. [Proviso to Section 7(5)]
- The corporate insolvency resolution process shall commence from the date of admission of the application by AA. [Section 7(6)]
- Communicating an order to financial creditor and corporate debtor within 7 days of admission and to financial creditor within 7 days of rejection of the application. [Section 7(7)]

#### By Operational Creditor

- On occurrence of default, operational creditor may deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor. [Section 8(1)]
- Within 10 days of receipt of demand notice corporate debtor shall bring to the notice of the operation creditor an existence of default or proof of repayment of unpaid operational debt. [Section 8(2)]
- If corporate debtor fails to show an existence of default or proof of repayment, then operational creditor may file an application before AA for initiating a corporate insolvency resolution process. [Section 9(1)]
- **Application should be accompanied by:**
  - (a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
  - (b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
  - (c) a copy of the certificate from the financial institutions maintaining accounts of the

operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

- (d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available
  - (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed
- An operational creditor may propose a resolution professional to act as an interim resolution professional. [Section 9(4)]
  - Within 14 days of receipt of an application, if satisfied AA will admit the application by an order. [Section 9(5)]
  - If AA is not satisfied by the application, it will reject the application and communicate to the operational creditor and the corporate debtor. [Section 9(5)]
  - Before rejecting the application AA shall give a notice to the applicant to rectify the defect in his application within 7 days of receipt of such notice. [Proviso to Section 9(5)]
  - The corporate insolvency resolution process shall commence from the date of admission of the application by AA. [Section 9(6)]

#### By Corporate Applicant

- On occurrence of default, a corporate applicant may file an application with AA for initiating corporate insolvency resolution process. [Section 10(1)]

Application should be accompanied by:

- (a) its books of account and such other documents relating to such period as may be specified;
- (b) the resolution professional proposed to be appointed as an interim resolution professional. [Section 10(3)]

- Within 14 days of receipt of an application, if satisfied AA will admit the application by an order. [Section 10(4)(a)]
  - If AA is not satisfied by the application, it will reject the application. [Section 10(4)(b)]
  - Before rejecting the application AA shall give a notice to the applicant to rectify the defect in his application within 7 days of receipt of such notice. [Proviso to Section 10(4)]
  - The corporate insolvency resolution process shall commence from the date of admission of the application by AA. [Section 10(5)]
  - After admission of the application AA shall by an order:
    - (a) Declare a moratorium
    - (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims
    - (c) appoint an Interim Resolution Professional (IRP) within 14 days from the insolvency commencement date
  - From the date of appointment of IRP-
    - (a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional
    - (b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional
    - (c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor
    - (d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor
  - (e) After collation of all claims received against the corporate debtor and determination of the financial position of the corporate Debtor IRP shall constitute a committee of creditors. [Section 21 (1)]
  - (f) First meeting of the committee of creditors shall be held within 7 days of its constitution. [Section 22(1)]
  - (g) The committee of creditors, may, in the first meeting, by a majority vote appoint the IRP as a resolution professional or to replace the IRP by another resolution professional
  - (h) If existing IRP appointed as resolution professional communicate to IRP, corporate debtor and AA
- In case of replacement of IRP, committee shall file an application to AA for appointment of proposed resolution professional
- After receiving application, AA shall forward the name of resolution professional to the Board.
  - Confirmation by Board within 10 days of receipt of name of resolution professional
  - Where the Board does not confirm the name of the proposed resolution professional within 10 days, the AA shall, by order, direct the IRP to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.
- IX. Conduct of Corporate Insolvency Process by Resolution Professional (RP)**
- Preparation of information memorandum and shall provide to the resolution applicant access to all relevant information in physical and electronic form



- Resolution Applicant to submit the resolution plan to RP
- RP to review the resolution plan
- Selection of resolution plan by RP which confirms the conditions as specified in Section 30(2)
- RP shall present the selected resolution plan to the Committee of creditors
- The committee of creditors may approve a resolution plan by a vote of not less than 75 % of voting share of the financial creditors
- The RP shall submit the resolution plan as approved by the committee of creditors to the AA.
- If AA is satisfied by the resolution plan it shall by an order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.
- If AA is not satisfied by the resolution plan it shall by an order reject the resolution plan.

**Time limit for completion of insolvency resolution process**

- the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process
- The RP can file an application to AA to extend the period
- If satisfied, AA can grant further period of 90 days
- Extension of period shall not be granted more than once

**[Section 12]**

**X. Liquidation Process**

- If AA does not receive the resolution plan before the expiry of insolvency resolution process period or if it rejects the resolution plan it shall:

- (a) pass an order requiring the corporate debtor to be liquidated
- (b) Issue a public announcement stating that the corporate debtor is in liquidation [Section 33]
- Where the AA passes an order for liquidation of the corporate debtor, the RP shall act as the liquidator for the purposes of liquidation unless replaced by the AA
- The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.
- The liquidator shall:
  - (a) Receive or collect the claims of creditors within a period of 30 days from the date of the commencement of the liquidation process
  - (b) Verify the claims
  - (c) After verification admit or reject the claims
  - (d) Determine the value of claims admitted
  - (e) A creditor may appeal to AA against the decision of liquidator rejecting the claims within 14 days of receipt of such decision

- Avoidance of preferential transactions, undervalued transactions, transactions defrauding creditors and extortionate credit transactions
- Preferential transactions
- Undervalued transactions
- Transactions defrauding creditors
- Extortionate credit transactions
- Distribution of assets
- Dissolution of corporate debtor.

**FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS**

- An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors

- (a) a corporate debtor with assets and income below a level as may be notified by the Central Government
- (b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government
- (c) such other category of corporate persons as may be notified by the Central Government. [Section 55(2)]

- An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be, alongwith-

- (a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
- (b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process. [Section 57]

**Time limit for completion of Fast track corporate insolvency resolution process**

- Time period for completion of process is 90 days from the insolvency commencement date. [Section 56 (1)]

- Resolution professional can file an application to AA to extend the time period beyond 90 days. [Section 56 (2)]
- If AA is satisfied, it can grant further time period of 45 days to complete the process. [Section 56 (3)]
- Extension can be granted only once.

**First case under Insolvency and Bankruptcy code, 2016**

The first insolvency resolution order under this code was passed by National Company Law Tribunal (NCLT) in the case of Synergies-Dooray Automotive Ltd on 14 August 2017. The plea for insolvency was submitted by company on 23 January 2017. The resolution plan was submitted to NCLT within a period of 180 days as required by the code, and the approval for the same was received on 2nd August 2017 from the tribunal. The final order was uploaded on 14 August 2017 on the NCLT website.

**Reference:**

[www.ibbi.gov.in](http://www.ibbi.gov.in)

[https://en.wikipedia.org/wiki/Insolvency\\_and\\_Bankruptcy\\_Code,\\_2016](https://en.wikipedia.org/wiki/Insolvency_and_Bankruptcy_Code,_2016)





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### Introduction

**Insolvency:** A state in which company's liabilities are far more than its assets so that it is unable to run its business and repay the debt.

**Bankruptcy:** when a person is legally declared by a court as incapable of paying their debts/dues and their obligations.

The major economic reform bill next only to GST moved by the Government i.e. "Insolvency and Bankruptcy Code, 2016."

The bill was passed in Lok Sabha on May 5th, 2016 and in Rajya Sabha on May 11th, 2016.

### Why code was needed?

- 1) To make faster recovery of debt
- 2) For the need of a unified code
- 3) To ensure revival before liquidation
- 4) To reduce the burden of NPA's on Banks
- 5) To provide an easy exit for corporates

### History:

Before the Code, the following Act has different provisions for Insolvency and Bankruptcy, and also proven time consuming to recovery of debt for the Bank,

- 1) Companies Act, 1956.
- 2) Sick Industrial Companies Act (SICA), 1985
- 3) Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- 4) Securitization and reconstruction of financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002.
- 5) Companies Act, 2013.

### Important Four Pillars of IBC, 2016:

- I) Insolvency Professional (IP): The Insolvency Professional Mediator between the Bank and Corporate Business or Individual who make provision to liquidate or Sale the assets or recover the firm or the business.
- II) Information Utilities: Facts related to terms, Agreement between the lenders are stored in data basis, So As to whenever requires, information should be easily available.
- III) National Company Law Tribunal/ Debt Recovery Tribunal: It is the executive authority that ruins the preceding that any Firm/Corporate Sector / Business/ Company Default, Then Bank can go to NCLT. For an individual for the same, Bank can go to Debt recovery Tribunal.
- IV) Insolvency and Bankruptcy Board of India: This Works as to regulate the case and cross checking it for abide by the law. The Final Decision is given by this Board.

### Who can Initiate Insolvency Resolution Period (IRP)?

- 1) Financial Creditor: the loan given by bank over the period of time like term loan, working capital loan, bank guarantee.
- 2) Operational Creditor: The debts can be exchangeable by goods or services provisions. It May Include Central or State Government Dues.
- 3) Corporate Debtor: Whenever an Company/Firm's Owner or an Individual wants to exit then he can seeks for insolvency.

For Corporate Debtors, the default should be at least Rs. 1 Lakh (which limit may be increased upto 1 crore by the government).

Corporate Debtor: Two Stage Process

Stage 1) Insolvency Resolution Process (IRP):

It is required when

- 1) Commencement of IRP - Bank initiates this process in NCLT against the debt within 14 days.
- 2) Moratorium: No case/preceding/juree will not be takes place.
- 3) Appointment of resolution professional: The member must be a Chartered Accountant with 10 years work experience/ private practice who has right to consider all possible prospective to run the business. An Chartered Accountant take the charge of entire company instead of an CEO or MD
- 4) Creditors Committee and Revival Plan: Creditor may be more than 1. Many lenders or tie together and form an creditors committee. All these members make Revival Plan and requires 75% of the committee votes for approval within 180 days which can be extended for 90 days. For small company, time period is 90 days with the extension of 45 days which requires 75% committee votes.

Stage 2) Liquidation:

Liquidation takes place in following cases,

- 1) If 75% majority of the creditors committee resolves to liquidate the corporate debtor at any time during the IRP;
- 2) If the creditors committee does not approve a resolution plan within 180 days (or within the extended period of 90 days).;

- 3) If the NCLT rejects the resolution plan submitted to it on technical grounds;
- 4) The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the corporate debtor.

Before the implementation of the IBC, 2016, the liquidation process is as follows;

- 1) Liquidation Costs
- 2) Government dues of 12 months
- 3) Workman dues
- 4) Employees dues
- 5) Unsecured creditors
- 6) Shareholders

From the IBC, 2016, the sequence of liquidation is as follows;

- 1) Liquidation Costs
- 2) Workman dues of 24 months
- 3) Employees dues of 12 months
- 4) Unsecured Financial Creditors
- 5) Secured Creditors
- 6) Shareholders

Objectives of IBC, 2016

- 1) It provides a single forum overseeing all insolvency and liquidation proceedings.
- 2) To enable the resolution process to start at earliest sign of financial default.
- 3) Fast debt recovery within time frame of 270 days maximum and for small companies 135 days.







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*"If you want something you've never had, you must be willing to do something you've never done."*

*- Thomas Jefferson*

There is myth in the minds of many Company Secretaries, that one can practice under Insolvency and Bankruptcy Code 2016 (IBC), only if he / she have passed the Limited Insolvency Professional Examination and is practicing as Insolvency Professional. The same is not true. Company secretaries are very much capable of and eligible for providing services under IBC. They can provide value adding services to their clients, without becoming an Insolvency Professional.

Following may be some of the reasons, that practicing company secretaries, although willing to, but have not yet started practicing under IBC:

1. Manging existing work and then entering new area is challenging.
2. Due to misunderstanding that only Insolvency Professionals can practice under IBC law.
3. After several years of practice under Companies Act, they feel difficult to study new law and procedures.
4. They think that IBC and NCLT are not something they are made for and they are comfortable in traditional Company Law practice.

This article guides professionals who have inclination towards IBC and wish to start practice under IBC, but for some reasons they have not yet succeeded. This article provides realistic and practical tips for entering into the new area of IBC and providing services to the clients. Although the article talks about practicing under IBC, it will be equally helpful for Company Secretaries in employment. By understanding and using

provisions of IBC, CS in employment can help their management in recovering outstanding dues. Recovery of debt is not the main object of IBC. However, debt recovery can certainly be said as ancillary object of IBC.

### Advantages of practicing under IBC?

- Unlike routine Company Law Company practice, IBC involves monitory transactions and thus gain importance from management.
- No risk of pre certification of E-forms or online submissions.
- Less or no competition, as this is new area and there are very few established practitioners.
- Assignments under IBC are more lucrative / remunerative.

### How to start practice under IBC?

#### a. Primary requirements before starting IBC Practice:

- Basic knowledge of IBC 2016 and IBC Regulations
- Knowledge of documentation and procedures before NCLT
- Willingness to learn and keep watch on latest judgements of NCLT, NCLAT and Supreme Court, under IBC.

#### b. Which are the assignments with which one can start practice under IBC?

A professional may be approached by clients for several services under IBC like:-

- recovery of outstanding debts i.e. initiating Corporate Insolvency Resolution Process (CIRP) under IBC or
- for voluntary winding up of Company or
- for submission of claims by creditor with IRP in case CIRP has commenced.
- for preparation of resolution plan.
- Providing routine secretarial services including conducting meetings for companies which are under CIRP or voluntary liquidation.
- Consultancy and advisory services especially in recovery or winding up matters.

However, following are most common or initial assignments which a Practicing Company Secretary can handle. In fact it can also be said that to start with, practicing company secretary should aim following get assignments under IBC:-

- A. Initiating Corporate Insolvency Resolution Process (CIRP) by Operational Creditor under Section 8 and 9 of IBC, against Corporate Debtor.
- B. Representing a Corporate Debtor and defending the case of CIRP filed against client who is corporate debtor. (under Section 9 of IBC)
- C. Voluntary Winding up under Section 59 of Insolvency and Bankruptcy Code 2016.

**A. Initiating Corporate Insolvency Resolution Process (CIRP) by Operational Creditor under Section 8 and 9 of IBC, against Corporate Debtor.**

For IBC assignments, PCS can approach his / her existing client companies which have outstanding dues i.e. receivables from corporate debtors.

Initiating CIRP under Section 9 is mainly divided into three parts viz.,

- I. Sending Demand Notice under Section 8,
- II. Filing of petition with NCLT and
- III. Appearing before NCLT and either settlement of matter through NCLT or getting the petition admitted.

Above three parts can be taken as basis of charging professional fees for the assignment.

Before taking up the assignment of CIRP, following factors must be taken into consideration:

- Constitution of Debtor (Whether it is Corporate Debtor and not individual or firm)
- Amount of outstanding debt involved. (To ensure that it exceeds Rs. 1 Crore)
- Period when debt was due (To ensure whether period of limitation has not expired)
- Financial condition of Corporate Debtor (ensure whether Corporate Debtor is financially sound or has good amount of assets or receivables or bank balance)

Before proceeding to prepare and send Demand Notice, following initial information & documents shall be obtained from the client.



### Initial Information & Documents Required for initiating CIRP under IBC

Sr. No.	Details Required	Particulars Required
1	Details of Debtor	<ul style="list-style-type: none"> <li>i. Name</li> <li>ii. Address</li> <li>iii. Constitution (Whether Company or LLP or Partnership Firm or Proprietary Concern)</li> </ul>
2	Details of Creditor	<ul style="list-style-type: none"> <li>i. Name</li> <li>ii. Address</li> <li>iii. Constitution (Whether Company or LLP or Partnership Firm or Proprietary Concern)</li> <li>iv. Name, Address and Designation of Person acting on behalf of Creditor.</li> </ul>
3	Details of Transaction	<ul style="list-style-type: none"> <li>i. Nature of Transaction</li> <li>ii. Date of Transaction</li> <li>iii. Copy of Agreement(s) / Term sheet / MOU, etc between parties, if any.</li> <li>iv. Details of Dispute / Quality Issue / Rejection, if any.</li> <li>v. Payment Terms and Credit Cycle</li> </ul>
4	Details of Amount	<ul style="list-style-type: none"> <li>i. Total Transaction Amount</li> <li>ii. Payment received, if any</li> <li>iii. Exact amount of Debt and Outstanding Amount as on date</li> <li>iv. Interest on outstanding amount, if provision in agreement</li> <li>v. Reasons for non payment / default on payment by Debtor</li> <li>vi. Details and Evidence of Default of payment</li> <li>vii. Date on which default occurred</li> </ul>
5	Transaction Documents	<ul style="list-style-type: none"> <li>i. Copy of Purchase Order / Job Order</li> <li>ii. Copy of Proforma Invoice</li> <li>iii. Copy of Tax Invoice</li> <li>iv. TDS and GST Details</li> </ul>
6	Miscellaneous Information & Documents	<ul style="list-style-type: none"> <li>i. Details of Pending litigation before any other authority or details if matter was filed with NCLT previously.</li> <li>ii. Existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice.</li> <li>iii. Details of Cheques issued and check bouncing records if any.</li> <li>iv. Bank Statement of Company (evidencing non receipt of payment and cheque bouncing details)</li> <li>v. NEFT details of RTGS receipts of payments received if any.</li> <li>vi. Correspondence between parties in respect of transactions which shall include – Reminder emails, Admission of default,</li> <li>vii. Ledger amount of Debtor in the books of creditor.</li> <li>viii. Such other documents which are relevant and have evidential value in the matter like Credit Notes, Securities, Guarantees, Post Dated Cheques, Whats App / Email communication between parties.</li> <li>ix. Copies of COI, MOA &amp; AOA and last audited financial statements of Creditor as well as Debtor in case of Company.</li> <li>x. Whether Creditor is MSME Registered? If yes, copy of registration certificate.</li> </ul>

Upon receipt of above details, a demand notice along with necessary enclosures, as stated in Section 8, shall be sent to the Corporate Debtor.

Corporate Debtor may either come forward for settlement or make the payment by agreeing consent terms or may reply to the demand notice taking a stand that there is a pre-existing dispute.

After studying the facts of the case and detailed study of documents, terms, conditions and correspondence between Debtor and Creditor, client may be advised to proceed and file application for CIRP before NCLT, depending upon the merits of the case.

Application for initiating CIRP is required to be filed with NCLT Bench, online and also two physical copies of Application are to be submitted to the Bench. Application for initiating CIRP will mainly consist of:-

- a. Covering Letter
- b. Index
- c. Synopsis
- d. List of Dates and Events
- e. Application in Form No. 5 under Section 9 read with Insolvency and Bankruptcy Application to Adjudicating Authority) Rules 2016 before NCLT.
- a. Affidavit verifying Application for CIRP
- f. Affidavit under Section 9(3)(b) of IBC - an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt
- b. Affidavit confirming that there is no payment of an unpaid operational debt by the corporate debtor (This Affidavit is asked at NCLT Bench)
- c. Copy of Demand Notice served to Corporate Debtor
- d. Affidavit of service of notice / service of copy of application to Corporate Debtor.
- e. Such other annexures like – MCA Master

Data of Corporate Debtor, Ledger Accounts, MOA & AOA, Financial Statements, TDS and GST Certificates, Emails, messages, etc depending upon the facts of the case.

The matter will then be listed before NCLT Bench where both the parties will be heard and depending upon the case, the matter is either mutually settled or decided on merits i.e. either admitted or dismissed.

### **B. Representing a Corporate Debtor and Defending the case of CIRP filed against client who is corporate debtor. (Under Section 9 of IBC)**

There a possibility that your client has received a demand notice under Section 9 and later a petition is filed before NCLT for initiating CIRP as stated above. Company Secretaries can play very important role in defending CIRP case. If such assignment is received, then first and foremost action that needs to be taken is reply to the demand notice within prescribed time limit of 10 days. Not replying to demand notice is considered as a serious misdeed on the part of Corporate Debtor.

Depending upon the facts and circumstance of the case, company secretary may choose any of the following options, while defending CIRP case:

- i. If there are no merits on the part of Corporate Debtor, trying to negotiate the case, convincing our client and making the outstanding payment. Advising and working towards mutual and amicable settlement between parties. Here a PCS can give value addition to his client by negotiating the terms which are favourable to his client like seeking time from Creditor to make payment, request for payment in tranches or requesting for reducing or waiver of interest / penal charges, etc.
- ii. If there are merits on the part of Corporate Debtor, then he may be advised to appear before NCLT and fight the case for getting the CIRP application dismissed.

Deciding whether there are merits in a particular case or not, requires thorough understanding facts of the case and also the provisions of IBC along with



Rules and Regulations and latest judgements of NCLT, NCLAT or Supreme Court, passed under IBC. A fresher IBC practitioner or young member may handle few initial assignments with the help of senior or expert in the area.

Points of defending case under IBC generally depend upon facts of each case. However, some of the common points of defence of Corporate Debtor in CIRP process (Section 9 matter) can be:

- Breach of Terms of Agreement by the Creditor.
- Pre-existing dispute pending before Arbitrator or Civil Suit.
- Mismatch in amount claimed.
- Expiry of Period of Limitation.
- Threshold of monetary limit for initiating CIRP whether below 1 Crore of amount of default.
- Delayed or improper service or supply of inferior quality of damaged goods.

### C. Voluntary Winding up under Section 59 of Insolvency and Bankruptcy Code 2016.

As per Indian Laws, a Company may be closed in three ways:-

- i. Striking off of defunct Company.
- ii. Voluntary Winding up under Section 59 of IBC
- iii. Winding up under Companies Act 2013.

Promoters of the Company may close or winding up the Company for several reasons. If a Company does not fit into the definition of 'Defunct Company' or does not fulfil the criteria prescribe for striking off the Company under Section 248 read with Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 and is a solvent Company, they may be advised voluntary winding up under Section 59 of IBC.

If a solvent Company wishes to close down i.e. wind up its operations, Voluntary Winding up under Section 59 of IBC is the most logical and even preferred option. For taking up this assignment, Practising Company Secretary will have to involve and engage Insolvency Professional who will act as Liquidator.

Voluntary Winding up of Company under Section 59 of IBC read with Insolvency And Bankruptcy Board Of India (Voluntary Liquidation) Regulations, 2017 (as amended from time to time), shall involve following procedural steps:-

1	Convening a meeting of Board of Directors
	a. Pass resolution approving Voluntary Liquidation.
	b. Appointing Insolvency Professional as Liquidator of the company
	c. Approve Declaration of Solvency
	d. Approve the notice of EOGM Considering Voluntary Liquidation (send within 4 Weeks of filing Declaration of Solvency)
2	Following Documents are to be prepare for initiation of Voluntary Liquidation Process:
a.	Declaration of Solvency by the Directors
b.	Affidavit for verification of Declaration of Solvency

	c. Approve Declaration of Solvency
	d. Approve the notice of EOGM Considering Voluntary Liquidation(send within 4 Weeks of filing Declaration of Solvency)
2	Following Documents are to be prepare for initiation of Voluntary Liquidation Process:
a.	Declaration of Solvency by the Directors
b.	Affidavit for verification of Declaration of Solvency
c.	Annexure of Declaration of Solvency:-
	a. Audited Financial Statement and records of business operation for the last 2 FY
	b. Valuation Report of the company prepared by the Registered Valuer
d.	Resolution for approving Voluntary Liquidation
e.	Resolution for Appointment of Liquidator subject to approval of Shareholders
f.	Resolution for approval of Declaration of Solvency
g.	Resolution for Appointment of Authorised Representative of Shareholders
3	Convening an Extra ordinary General Meeting and obtaining approval of members for voluntary liquidation and appointment of liquidator.
4	Intimation to IBBI
5	Approval from Creditorsrepresenting 2/3rd in value of the debt of the company within 7 days from the date of shareholder's approval.
6	Filing of necessary forms with IBBI and ROC
7	Voluntary liquidation proceeding shall be deemed to have commenced from obtaining the approval form shareholders and creditors.
8	The liquidator shall make public announcement within five days from his / her appointment calling upon the stakeholders to submit their claims
9	Opening of Bank Account in the Name of Corporate person
10	The person who are stakeholders of the corporate person have to submit proof his claim for debt or dues pending with the Corporate person
11	The Liquidator shall prepare the list of stakeholders
12	Liquidator shall surrender various registrations like PF, ESI, GST Registration number after discontinuance of Business i.e. date of commencement of Voluntary liquidation process.



Above are brief pointers highlighting voluntary winding up process. However, the exact and actual procedure for winding up will vary according to facts and circumstances of the case.

### **Conclusion**

IBC has opened new doors of opportunities for professionals and those who are planning to enter this new area, especially the young practicing professionals, must grab the opportunity. Currently, only, the provisions relating to resolution

of corporate persons, are notified. Eventually the resolution process and bankruptcy of Individuals and partnership firms will also be notified which will again provide more opportunities. At that time, first movers will definitely get advantage over others, who start IBC practice late. At the end, if you want something you've never had, you must be willing to do something you've never done.



**MCA Regulatory updates**  
**(From 21<sup>st</sup> May 2022 to 20<sup>th</sup> June 2022)**

CS Shantanu Jagtap  
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Sr. No	Notification / Circular	Particulars
1	General Circular No. 04/2022 dated 27 <sup>th</sup> May 2022	<p><b>Relaxation in paying additional fees in case of delay in filing Form. 11 LLP up to 30th June, 2022</b></p> <p>The MCA has been decided to allow LLPs to file e-Form 11 (Annual Return of LLP) for the FY 2021-2022 without paying additional fees up to 30th June, 2022.</p>
2	General Circular No.05/2022 dated 30 <sup>th</sup> May 2022	<p><b>Micro Finance/Micro Credit as an object in the Object Clause of MoA of Section 8 Companies</b></p> <p>The ROC (CRC) is not allowing Section 8 Companies to get incorporated with the objects of micro-finance activities. They are required to take immediate action, including changing the objects to prevent such companies from carrying out the micro finance activities. The Office of DGCoA shall ensure strict compliance by all the ROCs with the instructions issued by the MCA. Further, the Officers/Officials are directed to ensure due examination, while processing e-forms relating to Incorporation of Companies and Change in Objects.</p>
3	Notification dated 30 <sup>th</sup> May 2022	<p><b>Companies (Compromises, Arrangements Amendment Rules, 2022</b></p> <p>Rule 25A which deals with Merger or Amalgamation of a Foreign Company with a Company and vice versa, the following sub-rule shall be inserted:</p> <p>(4) Notwithstanding anything contained in sub-rule (3), in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under section 230 of the Act.</p> <p>Form No. CAA. 16 shall be inserted in Annexure A dealing with Declaration in terms of Rule 25A.</p>
4	General Circular No.06/2022 dated 31 <sup>st</sup> May 2022	<p><b>Relaxation in paying additional fees in case of delay in filing all the event-based e-forms by LLPs which are due on and after 25th February, 2022 to 31st May, 2022 up to 30th June, 2022</b></p> <p>This MCA has been decided to allow LLPs to file various event-based LLP e-forms, due dates of which are falling between 25th February, 2022 and 31st May, 2022, without paying additional fees up to 30th June, 2022.</p>
5	Notification dated 31 <sup>st</sup> May 2022	<p><b>Companies (Accounts) Third Amendment Rules, 2022</b></p> <p>The amendment extends the date for furnishing CSR Report in Form CSR-2 from 31st May, 2022 to 30th June, 2022.</p> <p>Following proviso in Rule 12(1B) shall be inserted: “Provided further that for the FY 2021-2022, Form CSR-2 shall be filed separately on or before 31st March, 2023 after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be”.</p>





Sr. No	Notification / Circular	Particulars
6	Notification dated 01 <sup>st</sup> June 2022	<p><b>Companies (Appointment and Qualification of Directors) Amendment Rules, 2022</b></p> <p>If any person who is a national of a country that shares a land border with India (i.e. China, Bangladesh, Pakistan, Bhutan, Nepal, Myanmar, and Afghanistan), seeking an appointment in any Indian Company or is applying for Allotment of DIN, shall on or before his/her appointment or application for Allotment of DIN shall obtain and attach necessary security clearance from the Ministry of Home Affairs, Government of India along with his/her consent in writing to act as such in Form DIR-2.</p>
7	Notification dated 09 <sup>th</sup> June 2022	<p><b>Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022</b></p> <p>Upon examination of form STK-2, if it is found necessary by the concerned ROC to call for further information or if the application or any document is incomplete or defective, he shall inform the applicant to remove such defects. The applicant has to resubmit the form within 15 days from the date of such information;</p> <p>After the re-submission of the form, if the ROC finds that the form/document is defective or incomplete in any respect, he shall give further time of 15 days to remove such defects. In both the resubmissions, any failure to resubmit the form within 15 days shall make the application invalid;</p> <p>Any re-submission of the application in form STK-2 made prior to the commencement of these rules shall not be counted for the purposes of reckoning the maximum number of re-submissions.</p>
8	Notification dated 10 <sup>th</sup> June 2022	<p><b>Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022</b></p> <p>The MCA has notified Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022 which shall come into force on the date of its publication in the Official Gazette i.e. 10th June, 2022.</p> <p>Any individual whose name has been removed from the databank, may apply for restoration of his name on payment of fees of one thousand rupees and the institute shall allow such restoration subject to the following conditions, namely: -</p> <p>his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test and in such case, the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid; and</p> <p>In case he fails to pass the online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank.</p>
9	Notification dated 17 <sup>th</sup> June 2022	<p><b>National Financial Reporting Authority Amendment Rules, 2022</b></p> <p>The MCA on 17th June, 2022 has issued the National Financial Reporting Authority Amendment Rules, 2022 to further amend the National Financial Reporting Authority Rules, 2018.</p> <p>Rule 13 which specify "Punishment in case of non-compliance" has been substituted namely: - "Whoever contravenes any of the provisions of these rules, shall be punishable with fine not exceeding five thousand rupees, and where the contravention is a continuing one, with a further fine not exceeding five hundred rupees for every day after the first during which the contravention continues."</p>

**SEBI UPDATES**  
(From 21<sup>st</sup> May 2022 to 20<sup>th</sup> June 2022)

CS Sameer Siddheshwar  
Email : cs.sameersiddheshwar@gmail.com

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
1	May 30, 2022	<p><b>Standard Operating Procedures (SOP) for dispute resolution under the Stock Exchange arbitration mechanism for disputes between a Listed Company and/or Registrars to an Issue and Share Transfer Agents (RTAs) and its Shareholder(s)/Investor(s):</b></p> <p>SEBI vide circular dated April 08, 2022 advised Exchanges to put in place a Standard Operating Procedure (SOP) for operationalizing the resolution of all disputes pertaining to or emanating from investor services such as transfer/transmission of shares, de-mat/re-mat, issue of duplicate shares, transposition of holders, etc. and investor entitlements like corporate benefits, dividend, bonus shares, rights entitlements, credit of securities in public issue, interest/coupon payments on securities, etc.</p> <p>In partial modification to the above circular SEBI has prescribed the SOPs.</p> <p><a href="https://www.sebi.gov.in/legal/circulars/may-2022/standard-operating-procedures-sop-for-dispute-resolution-under-the-stock-exchange-arbitration-mechanism-for-disputes-between-a-listed-company-and-or-registrars-to-an-issue-and-share-transfer-agents-59345.html">https://www.sebi.gov.in/legal/circulars/may-2022/standard-operating-procedures-sop-for-dispute-resolution-under-the-stock-exchange-arbitration-mechanism-for-disputes-between-a-listed-company-and-or-registrars-to-an-issue-and-share-transfer-agents-59345.html</a></p>
2	June 02, 2022	<p><b>Procedure for seeking prior approval for change in control of Portfolio Managers</b></p> <p>Regulation 11(aa) of SEBI (Portfolio Managers) Regulations, 2020 provides that a Portfolio Manager shall obtain prior approval of SEBI in case of change in control in such manner as may be specified by SEBI. Vide Circular No. SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/564 dated May 12, 2021, the procedure for obtaining prior approval in case of change in control of Portfolio Managers was specified.</p> <p>Details of Procedure is provided in the circular:</p> <p><a href="https://www.sebi.gov.in/legal/circulars/jun-2022/procedure-for-seeking-prior-approval-for-change-in-control-of-portfolio-managers-59504.html">https://www.sebi.gov.in/legal/circulars/jun-2022/procedure-for-seeking-prior-approval-for-change-in-control-of-portfolio-managers-59504.html</a></p>
3	June 02, 2022	<p><b>Investor Redressal Grievance Mechanism</b></p> <p>Clause 4 of the Circular No. SEBI/HO/MIRSD/DOC/CIR/P/2020/226 dated November 6, 2020 shall be substituted with the following, namely, - "4. Arbitration(a) For any dispute between the member and the client relating to or arising out of the transactions in Stock Exchange, which is of civil nature, the complainant/ member shall first refer the complaint to the IGRC and/ or to arbitration mechanism provided by the Stock Exchange before resorting to other remedies available under any other law. For the removal of doubts,</p>



SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
		<p>it is clarified that the sole arbitrator or the panel of arbitrators, as the case may be, appointed under the Stock Exchange arbitration mechanism may consider any claim relating to any dispute between a stock broker and client arising out of the transactions in stock exchange, as per law, and shall always be deemed to have the competence to rule on its jurisdiction.</p> <p>A complainant/member, who is not satisfied with the recommendation of the IGRC shall avail the arbitration mechanism of the Stock Exchange for settlement of complaints within three months from the date of IGRC recommendation”</p> <p>(b) The time period of three months mentioned in the previous sub-clause for filing arbitration shall be applicable only for the cases where the IGRC recommendation is being challenged. For any arbitration application received without going through IGRC mechanism, the above time period of three months shall not apply, and for such cases the limitation period for filing arbitration shall be governed by the law of limitation, i.e., The Limitation Act, 1963.”</p>
4	Jun 03, 2022	<p><b>Extension of facility for conducting annual meeting and other meetings of unitholders of REITs and InvITs through Video Conferencing (VC) or through Other Audio-Visual means (OAVM)</b></p> <p>SEBI vide circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated June 22, 2020 read with circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/201 dated October 08, 2020 permitted REITs/InvITs to conduct annual meetings and other meetings of unitholders through VC or OAVM up to December 31, 2020.</p> <p>Vide circular no. SEBI/HO/DDHS/DDHS/CIR/P/2021/21 dated February 26, 2021 the facility to conduct annual meetings of unitholders through VC/OAVM was extended till December 31, 2021 and other meetings of unitholders through VC/OAVM till June 30, 2021. Further, vide circular no. SEBI/HO/DDHS/DDHS_Div2/P/CIR/2021/697 dated December 22, 2021 the VC/OAVM facility for conducting annual and other meetings was extended till June 30, 2022.</p> <p>Representations have been received from stakeholders of REITs/InvITs to further extend the aforesaid facility to conduct annual meetings and other meetings of unitholders through VC/OAVM. It is also observed that MCA, vide circular dated May 05, 2022 has extended the facility of holding AGMs and EGMs through VC/OAVM till December 31, 2022.</p> <p>Accordingly, it has been decided to extend the facility to conduct annual meetings of unitholders in terms of Regulation 22(3) of SEBI (REIT) Regulations, 2014 and Regulation 22(3)(a) of SEBI (InvIT) Regulations, 2014 and meetings other than annual meeting, through VC or OAVM till December 31, 2022.</p>

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
5	Jun 15, 2022	<p><b>Nomination for Mutual Fund Unit Holders</b></p> <p>Investors subscribing to mutual fund units on or after August 1, 2022, shall have the choice of:</p> <ol style="list-style-type: none"> <li>a. Providing nomination in the format specified in fourth schedule of SEBI (Mutual Funds) Regulations, 1996 (or)</li> <li>b. Opting out of nomination through a signed Declaration form as provided in Annexure - A to this circular.</li> </ol> <p>AMC shall provide an option to the unit holder(s) to submit either the nomination form or the declaration form for opting out of nomination in physical or online as per the choice of the unit holder(s). In case of physical option, the forms shall carry the wet signature of all the unit holder(s) and in case of online option, the forms shall be using e-Sign facility recognized under Information Technology Act, 2000, instead of wet signature(s) of all the unit holder(s).</p> <p>All AMCs shall ensure that adequate systems are in place for providing the e-Sign facility and take all necessary steps to maintain confidentiality and safety of client records.</p> <p>All the AMCs are advised to set deadline as March 31, 2023 for nomination / opting out of nomination for all the existing individual unit holder(s) holding mutual fund units either solely or jointly as mentioned at para 1 above, failing which the folios shall be frozen for debits.</p>

## FEMA UPDATES

(From 21<sup>st</sup> May 2022 to 20<sup>th</sup> June 2022)

CS Sameer Siddheshwar

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SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
1	May 24, 2022	<p><b>Housing Finance – Loans for repairs/additions/alterations - Enhancement of limits</b></p> <p>The ceiling on loans to individuals for carrying out repairs/additions/alterations to their dwelling units was revised upwards to ₹2 lakh in rural and semi-urban areas and ₹5 lakh in urban areas.</p> <p>The ceiling on such loans is now revised to ₹10 lakh in metropolitan centres (those centres with population of 10 lakh and above) and ₹6 lakh in other centres.</p>
2.	May 26, 2022	<p><b>Bharat Bill Payment System – Amendment to guidelines</b></p> <p>Bharat Bill Payment System (BBPS) issued by the Reserve Bank of India (RBI) vide circular DPSS.CO.PD.No.940/02.27.020/2014-2015 dated November 28, 2014. As announced in the Statement on Development and Regulatory Policies dated April 08, 2022, the minimum net-worth requirement for non-bank Bharat Bill Payment Operating Units (BBPOUs) stands reduced to ₹25 crore. The BBPS guidelines have been suitably amended.</p>
3.	Jun 08, 2022	<p><b>Liquidity Adjustment Facility - Change in rates</b></p> <p>Monetary Policy Statement, 2022-23, it has been decided by the Monetary Policy Committee (MPC) to increase the policy Repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 4.40 per cent to 4.90 per cent with immediate effect.</p> <p>2. Consequently, the standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted to 4.65 per cent and 5.15 per cent respectively, with immediate effect.</p>
4.	Jun 08, 2022	<p><b>Standing Liquidity Facility for Primary Dealers</b></p> <p>In the Monetary Policy Statement 2022-23, dated June 8, 2022, the policy repo rate under the Liquidity Adjustment Facility (LAF) has been increased by 50 basis points from 4.40 per cent to 4.90 per cent with immediate effect.</p> <p>Accordingly, the Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralised liquidity support) from the Reserve Bank would be available at the revised repo rate of 4.90 per cent with effect from June 8, 2022.</p>



SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT						
5	Jun 08, 2022	<p><b>Change in Bank Rate</b></p> <p>As announced in the Monetary Policy Statement 2022-23 dated June 08, 2022, the Bank Rate is revised upwards by 50 basis points from 4.65 per cent to 5.15 per cent with immediate effect.</p> <p>3. All penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised:</p> <p style="text-align: center;"><b>Penal Interest Rates which are linked to the Bank Rate</b></p> <table border="1"> <thead> <tr> <th>ITEM</th> <th>EXISTING RATE</th> <th>REVISED RATE</th> </tr> </thead> <tbody> <tr> <td>Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).</td> <td>Bank Rate plus 3.0 percentage points (7.65 per cent) or Bank Rate plus 5.0 percentage points (9.65 per cent).</td> <td>Bank Rate plus 3.0 percentage points (8.15 per cent) or Bank Rate plus 5.0 percentage points (10.15 per cent).</td> </tr> </tbody> </table>	ITEM	EXISTING RATE	REVISED RATE	Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (7.65 per cent) or Bank Rate plus 5.0 percentage points (9.65 per cent).	Bank Rate plus 3.0 percentage points (8.15 per cent) or Bank Rate plus 5.0 percentage points (10.15 per cent).
ITEM	EXISTING RATE	REVISED RATE						
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (7.65 per cent) or Bank Rate plus 5.0 percentage points (9.65 per cent).	Bank Rate plus 3.0 percentage points (8.15 per cent) or Bank Rate plus 5.0 percentage points (10.15 per cent).						
6	June 8, 2022	<p><b>Section 23 of the Banking Regulation Act, 1949 – Doorstep Banking</b></p> <p>In terms of Section 23 of the Banking Regulation Act, 1949 (AACS) Primary (Urban) Co-operative Banks (UCBs) are required to seek prior approval of the Reserve Bank for opening any new place of business including offering services at the doorstep of the customer.</p> <p>Keeping in view the above, it has been decided to allow financially sound and well managed (FSWM) UCBs to provide Doorstep Banking Services to their customers on a voluntary basis. However, Non-FSWM UCBs would have to seek prior approval of concerned Regional Office of Department of Supervision of the Reserve Bank to provide Doorstep Banking Services.</p> <p>Eligible UCBs may formulate a scheme for providing Doorstep Banking Services to their customers, with the approval of their Boards.</p> <p>UCBs are further advised to take into account the various risks that may arise on account of offering Doorstep Banking Services to customers either directly through own employees or through agents and take all necessary steps to manage the same.</p> <p>The operation of the scheme may also be reviewed by the Boards of UCBs on a half-yearly basis during the first year of its operation. The scheme may be reviewed thereafter on an annual basis.</p>						

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT									
7	June 8, 2022	<p><b>Enhancement in Individual Housing Loan limits and credit to Commercial Real Estate - Residential Housing (CRE-RH)</b></p> <p>It has been decided to revise the limits on residential housing loans sanctioned by rural co-operative banks to an individual borrower as under:</p> <table border="1" data-bbox="578 472 1313 743"> <thead> <tr> <th>Category of the bank</th> <th>Existing Limit (per individual borrower)</th> <th>Revised Limit (per individual borrower)</th> </tr> </thead> <tbody> <tr> <td>StCBs/DCCBs having assessed net worth less than 100 crore</td> <td>₹ 20 lakh</td> <td>₹ 50 lakh</td> </tr> <tr> <td>StCBs/DCCBs having assessed net worth equal to or more than ₹100 crore</td> <td>₹ 30 lakh</td> <td>₹ 75 lakh</td> </tr> </tbody> </table> <p>Further, it has been decided to allow StCBs and DCCBs to extend finance to Commercial Real Estate-Residential Housing (CRE-RH) within the existing aggregate housing finance limit of 5% of their total assets. For this purpose, CRE-RH shall consist of loans to builders/developers for residential housing projects (except for captive consumption). Such projects should ordinarily not include non-residential commercial real estate. However, integrated housing projects comprising some commercial space (e.g. shopping complex, school, etc.) can also be classified under CRE-RH, provided that the commercial area in the residential housing project does not exceed 10% of the total Floor Space Index (FSI) of the project. Standard asset provision of 0.75% and risk weight of 75% shall be maintained for CRE-RH advances.</p>	Category of the bank	Existing Limit (per individual borrower)	Revised Limit (per individual borrower)	StCBs/DCCBs having assessed net worth less than 100 crore	₹ 20 lakh	₹ 50 lakh	StCBs/DCCBs having assessed net worth equal to or more than ₹100 crore	₹ 30 lakh	₹ 75 lakh
Category of the bank	Existing Limit (per individual borrower)	Revised Limit (per individual borrower)									
StCBs/DCCBs having assessed net worth less than 100 crore	₹ 20 lakh	₹ 50 lakh									
StCBs/DCCBs having assessed net worth equal to or more than ₹100 crore	₹ 30 lakh	₹ 75 lakh									
8	June 8, 2022	<p><b>Individual Housing loans – Enhancement in limits</b></p> <p>As announced in the Statement on Developmental and Regulatory Policies, it has been decided to revise the limits on individual housing loans sanctioned by urban co-operative banks to an individual borrower as under:</p> <table border="1" data-bbox="542 1245 1352 1472"> <thead> <tr> <th>Category of the bank</th> <th>Existing Limit (per individual borrower)</th> <th>Revised Limit (per individual borrower)</th> </tr> </thead> <tbody> <tr> <td>Tier-I UCBS</td> <td>₹ 30 lakh</td> <td>₹ 60 lakh</td> </tr> <tr> <td>Tier-II UCBS</td> <td>₹ 70 lakh</td> <td>₹ 140 lakh</td> </tr> </tbody> </table>	Category of the bank	Existing Limit (per individual borrower)	Revised Limit (per individual borrower)	Tier-I UCBS	₹ 30 lakh	₹ 60 lakh	Tier-II UCBS	₹ 70 lakh	₹ 140 lakh
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Tier-I UCBS	₹ 30 lakh	₹ 60 lakh									
Tier-II UCBS	₹ 70 lakh	₹ 140 lakh									
9	Jun 09, 2022	<p>Discontinuation of Return under Foreign Exchange Management Act, 1999</p> <p>1. Authorised Persons were advised about proposed discontinuation of the return “Details of guarantee availed and invoked from non-resident entities”. It was also advised that the date of discontinuation would be notified in due course.</p> <p>2. In this regard, reference may be drawn to A.P. (DIR series) circular No 20, dated August 29, 2012, Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 and the Master Direction - Reporting under Foreign Exchange Management Act, 1999 dated January 01, 2016, as amended from time to time(Refer Part X – 'Statement for reporting of non-resident guarantees issued and invoked in respect of fund and non-fund based facilities between two persons resident in India').</p> <p>It has now been decided to discontinue the above return, with effect from the quarter ending June 2022.</p>									



SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT									
10	June 16, 2022	<p data-bbox="581 338 1057 365"><b>Sovereign Gold Bond (SGB) Scheme 2022-23</b></p> <p data-bbox="581 386 1417 512">Government of India, has announced Series I and II of Sovereign Gold Bond Scheme 2022-23. Under the Scheme, there will be a distinct series (Series I and II) for every tranche. The terms and conditions of the issuance of the Bonds shall be as per the above notification.</p> <p data-bbox="581 533 1417 659">The Subscription of the Gold Bonds under this Scheme shall be open (Monday to Friday) on the dates specified above, provided that the Central Government may, with prior notice, close the Scheme at any time before the period specified above.</p> <table border="1" data-bbox="626 695 1354 852"> <thead> <tr> <th data-bbox="626 695 870 747">Tranche</th> <th data-bbox="870 695 1125 747">Subscription Period</th> <th data-bbox="1125 695 1354 747">Date of Issuance</th> </tr> </thead> <tbody> <tr> <td data-bbox="626 747 870 800">2022-23 Series I</td> <td data-bbox="870 747 1125 800">June 20-24, 2022</td> <td data-bbox="1125 747 1354 800">June 28, 2022</td> </tr> <tr> <td data-bbox="626 800 870 852">2022-23 Series II</td> <td data-bbox="870 800 1125 852">August 22-26, 2022</td> <td data-bbox="1125 800 1354 852">August 30, 2022</td> </tr> </tbody> </table>	Tranche	Subscription Period	Date of Issuance	2022-23 Series I	June 20-24, 2022	June 28, 2022	2022-23 Series II	August 22-26, 2022	August 30, 2022
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2022-23 Series I	June 20-24, 2022	June 28, 2022									
2022-23 Series II	August 22-26, 2022	August 30, 2022									



CS IP Sandeep Kulkarni  
Email : ipsandeepkulkarni@gmail.com

**Order Passed by:** Supreme Court of India  
**Case No.** Civil Appeal Nos. 9402-9405 of 2018  
**Order –** Order passed by J. R Fnariman & J. Indu Malhotra, New Delhi on October4, 2018  
**Parties:** ArcelorMittal India Private Limited **....Appellant**  
**Versus**  
Satish Kumar Gupta & Ors. **...Respondent**

**Brief Facts of the Case:**

- The facts of the present case revolve around the ineligibility of resolution applicants to submit resolution plans after the introduction of Section 29A into the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”), with effect from 23.11.2017. On 2.8.2017, the Adjudicating Authority, being the NCLT, Ahmedabad Bench, passed an order under Section 7 of the Code at the behest of financial creditors, being the State Bank of India and the Standard Chartered Bank, admitting a petition filed under the Code for financial debts owed to them by the corporate debtor Essar Steel India Limited (hereinafter referred to as “ESIL”), in the sum of roughly Rs.45,000,00,00,000 (Rupees Forty-Five Thousand Crores). Shri Satish Kumar Gupta was appointed as the Interim Resolution Professional and confirmed as such on 4.9.2017.
- The Resolution Professional published an advertisement dated 6.10.2017, seeking expression of interest from potential resolution applicants who wished to submit resolution plans for the revival of ESIL. Pursuant to this advertisement, one 'ArcelorMittal India Private Limited' (hereinafter referred to as “AMIPL”) submitted an expression of interest on 11.10.2017. An entity called Numetal Limited also submitted an expression of interest on 20.10.2017.
- The Resolution Professional published a 'request for proposal', in which it was stated that the last date for submission of resolution plans would be 29.1.2018. On a request made by the Committee of Creditors, the NCLT extended the duration of the corporate insolvency resolution process by 90 days beyond the initial period of 180 days, i.e., up to 29.4.2018. The Resolution Professional therefore issued the first addendum to the request for proposal, extending the date for submission of resolution plans to 12.2.2018. Both AMIPL and Numetal submitted their resolution plans on this date. On 23.3.2018, however, the Resolution Professional found both AMIPL and Numetal to be ineligible under Section 29A.
- On 26.3.2018, AMIPL filed I.A. No. 110 of 2018 before the Adjudicating Authority, challenging “the order” of the Resolution Professional dated 23.03.2018. Numetal did likewise vide I.A. No. 111 of 2018. On 2.4.2018, pursuant to the Resolution Professional's invitation, fresh resolution plans were submitted (as both the resolution plans before this were found to be ineligible) by AMIPL, Numetal, and one other entity, namely 'Vedanta Resources Ltd.'
- National Company Laws Tribunal remanded the matter to Committee of Creditors and Resolution Professional for reconsideration as both the Resolutions plans were valid as per the facts and circumstances of the case.
- Appeals were filed by both Numetal and AMIPL, on 26.4.2018 and 27.4.2018 respectively, before the Appellate Authority, being the NCLAT. Before these appeals could be decided, in compliance with the order passed by the Adjudicating Authority, the Committee of Creditors, after hearing both AMIPL and Numetal, disqualified AMIPL by an order dated 8.5.2018. By another order of the same date, the Committee of Creditors disqualified Numetal.
- In the appeals that were filed before it, the Appellate Authority, insofar as Numetal's Resolution plan was concerned, vide an order dated 7.9.2018 it was observed that as on 12th February, 2018, when the 1st Resolution Plan was submitted by 'Numetal Ltd.', it had four shareholders.
  - 'Crinium Bay' : 40%
  - 'Indo' : 25.1%
  - 'TPE' : 9.9%

(iv) 'AEL' : 25%

As held earlier, that AEL is held as a related party and comes within the meaning of 'person in concert' in terms of Regulation 2(1)(q) to ESIL and thus is ineligible to submit Resolution Plan in terms of Section 29A.

Numetal Ltd.' filed fresh 'Resolution Plan' on 29th March, 2018. On the said date the 'Numetal Ltd.' consisted of the three shareholders:-

(a) 'Crinium Bay' ('VTB') : 40%

(b) 'Indo' : 34.1%

(c) 'TPE' : 25.9%

As on 29th March, 2018, as the Aurora Enterprises Limited (hereinafter referred to as 'AEL'), which is held completely by Rewant Ruia was not the shareholder of 'Numetal Ltd.' and all the three shareholders aforesaid being eligible, we hold that 'Numetal Ltd.' in respect of the 'Resolution Plan' dated 29th March, 2018, is eligible and the provision of Section 29A, as on 29th March, 2018 is not attracted to the 'Numetal Ltd.'. For the reasons aforesaid, we are of the view that the 'Resolution Plan' submitted by 'Numetal Ltd.' on 29th March, 2018 is required to be considered by the 'Committee of Creditors' to find out its viability, feasibility and financial matrix."

8. Section 29A came into force on 23rd November, 2017. Those who submitted 'Resolution Plan' prior to the said date and if covered by clause (c) of Section 29A are entitled to derive benefit of second proviso to sub-section (4) of Section 30. Under 'I&B Code' there is no provision to submit 'Expression of Interest' prior to 'Resolution Plan'. the invitation seeking 'Expression of Interest' to submit a 'Resolution Plan' is the first stage of 'Resolution Plan'. In view of the aforesaid finding, we hold that the Adjudicating Authority rightly held that the Appellant- 'AM India Ltd.' should have been given the opportunity by the 'Committee of Creditors' in terms of second proviso to sub-section (4) of Section 30. This is how both AMIPL and Numetal are before us in appeals from the Appellate Authority's order dated 7.9.2018. Shri Harish N. Salve, learned Senior Advocate appearing on behalf of AMIPL, argued that Section 29A, amendment made to Section 29A in June, 2018, expressly stating that the relevant time was the time of submission of a resolution plan, is clarificatory in nature. Once this

becomes clear, everything on facts falls into place.

9. According to Shri Salve, Uttam Galva, though it entered into a Co-Promotion Agreement with Arcel or Mittal Netherlands BV (hereinafter referred to as AMNLBV) on 4.9.2009, was really promoted by the Miglani Group of businessmen who are Indian citizens residing in Mumbai. The Co- Promotion Agreement conferred on AMNLBV the right to appoint 50% of the non-independent directors on the board, as well as certain affirmative voting rights. This required that the Articles of Association be amended, which was never in fact done. In 2015 itself, AMNLBV had written off the investment in Uttam Galva from its books, seeking an exit from Uttam Galva at this time. AMNLBV never appointed any director or exercised any voting rights in Uttam Galva. What is important to note is that it had transferred its entire shareholding in Uttam Galva on 7.2.2018 to one 'Sainath Trading Company Private Limited', which was a Miglani Group Company, for Re.1 per share (having purchased the shares at Rs.120 per share). The depository participant account of AMNLBV ceased to show the said shares with effect from 7.2.2018. The Co-Promotion Agreement dated 4.9.2009, pursuant to which the status of "promoter" had been conferred on AMNLBV, stood automatically terminated thereof on 7.2.2018.
10. Learned Senior Advocate when it came to Numetal's Resolution Plan, as expressed earlier that 'Crinium Bay Holdings Limited' (hereinafter referred to as 'Crinium Bay') holds 40% shares of Numetal. Crinium Bay is a 100% indirectly held subsidiary of one 'VTB Bank', which was a Russian company, the majority of whose shares were held by Russian Government. Shri Salve has argued that Numetal is hit by Section 29A(i) of the Code, as VTB Bank, the parent of Crinium Bay, stands prohibited from accessing the securities markets in the European Union pursuant to an order dated 31.7.2004, and in the United States by two orders. This being the case, Numetal is directly hit by sub-section (f) read with sub-section (i) of Section 29A.
11. On the other hand, Shri Mukul Rohatgi, learned Senior Advocate, appearing on behalf of Numetal, stated that Numetal was a company which was therefore a separate person in law from its shareholders. He contended that on the date of submission of the resolution plan (i.e., 12.2.2018), AEL held only 25%, which would be below the figure



of 26% mentioned in the request for proposal dated 24.12.2017, wherein “control” has been defined as a person holding more than 26% of the voting share capital in the company. According to him, in any case by 2.4.2018, when it submitted a fresh resolution plan, AEL had walked out completely. He emphatically argued that though Shri Rewant Ruia is the son of Shri Ravi Ruia, who is a promoter of the corporate debtor, and though he may be deemed to be a “person acting in concert” within the definition contained in Regulation 2(1) (q) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 but yet, he cannot be considered to be a “connected person” under Section 29A(j) of the Code. He strongly attacked Shri Salve's argument that VTB Bank, the holding company of Crinium Bay, was barred from accessing the securities market by either the European Union or the United States. He took us to the original orders and extracted the key facts.

12. Shri Rohatgi then attacked AMIPL by stating that even a literal reading of Section 29A(c) would make it clear that in the case of Uttam Galva, AMNLBV, which is admittedly an L.N. Mittal Group Company, was directly covered by sub-clause (c) as it had been shown as a 'promoter' in the Annual Reports of Uttam Galva, & would therefore fit the definition of 'promoter' contained in Section 2(69) of the Companies Act, 2013. Incidentally, according to Shri Rohatgi, in any case, getting out of Uttam Galva by paying a price of Re.1 per share when the market value on that date was Rs.19.50 per share is again a fraudulent transaction, which cannot possibly pass muster under Section 29A. Shri Rohatgi further argued that Shri Pramod Mittal, brother of Shri L.N. Mittal, is a connected person, which would trigger Section 29A(j). Shri Pramod Mittal is a promoter and director of one 'GontermannPiepers (India) Limited', which has also been declared an NPA, rendering Shri L.N. Mittal ineligible under Section 29A(j). Equally, Shri L.N. Mittal, Shri Pramod Mittal and other members of the Mittal family are promoters of one 'Ispat Profiles India Limited'. This company was ordered to be wound up by the BIFR, appeals from which have been dismissed by the AAIFR. Consequently, Shri L.N. Mittal, as a related party of Shri Pramod Mittal, would render AMIPL ineligible under sub-clause (c) read with sub-clause (j) of Section 29A of the Code.
13. Shri Gopal Subramaniam, learned Senior Advocate appearing on behalf of the Committee of Creditors, has placed before us the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, introducing Section 29A, and commented on the difference between the opening lines of the said Ordinance as compared with those of the Amendment Act of 2017. On the facts of each case, according to Shri Subramaniam, both resolution plans were correctly rejected by the Resolution Professional and the Committee of Creditors, as they were both hit by the provisions of Section 29A.
14. At this point, it is necessary to first set out Section 29A. The Section was introduced to fulfil the concerns which have been raised those persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. The opening lines of Section 29A of the Amendment Act refer to a de facto as opposed to a de jure position of the persons mentioned therein. This is a typical instance of a “see through provision”, so that one is able to arrive at persons who are actually in “control”, whether jointly, or in concert, with other persons.
15. When we come to sub-clause (c) of Section 29A, the first thing that was argued, at which the parties were at loggerheads, was the time at which sub-clause (c) can be said to operate. According to Shri Rohatgi, in the original sub-clause (c), pre-amendment, the time must necessarily be the date of commencement of the corporate insolvency resolution process, as is mentioned by the Section itself. The opening words of Section 29A state: “a person shall not be eligible to submit a resolution plan...”. It is clear therefore that the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant. The contrary view expressed by Shri Rohatgi is obviously incorrect, as the date of commencement of the corporate insolvency resolution process is only relevant for the purpose of calculating whether one year has lapsed from the date of classification of a person as a nonperforming asset.
16. The interpretation of Section 29A(c) now becomes clear. Any person who wishes to submit a resolution plan, if he or it does so acting jointly, or in concert with other persons, which person or other persons happen to either manage or control or be promoters of a corporate debtor, who is classified as

a non-performing asset and whose debts have not been paid off for a period of at least one year before commencement of the corporate insolvency resolution process, becomes ineligible to submit a resolution plan.

17. This provision therefore ensures that if a person wishes to submit a resolution plan, and if such person or any person acting jointly or any person in concert with such person, happens to either manage, control, or be promoter of a corporate debtor declared as a non-performing asset one year before the corporate insolvency resolution process begins, is ineligible to submit a resolution plan. The first proviso to sub-clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan. Since Section 29A(c) is a see-through provision, great care must be taken to ensure that persons who are in charge of the corporate debtor for whom such resolution plan is made, do not come back in some other form to regain control of the company

without first paying off its debts.

18. The analysis of the facts leads to references of various earlier case laws like Surendra Trading Co. v. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. (2017) 16 SCC 143 or Innoventive Industries Ltd. v. ICICI Bank & Anr. (2018) 1 SCC 407 or Madras Petrochem Ltd. and Anr. v. Board for Industrial and Financial Reconstruction and Ors., (2016) 4 SCC 1 which broadly explained various questions which arose in the case. A model time line provided under provided under the Regulation 40A of the CIRP Regulations was also stated as follows:

40A. Model time-line for corporate insolvency resolution process.

The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:

Section/Regulation	Description of Activity	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	....	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1) (c)/Regulations 6(2)(c) and 12 (1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90th day of commencement	T+90
Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
Regulation 13(2)	Verification of claims received under regulation 12(2)		T+97



Section 21(6A)(b)/Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC		T+23
Section 22(1)/ Regulation 19(1)	1st meeting of the CoC	Within 7 days of the constitution of the CoC, but with seven days' notice	T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA	....
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed	If RP is not appointed by 40th day of commencement	T+40
Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 40th day of commencement	T+47
Section 12A/ Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI (Expression of Interest)	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of	Within 3 days of	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
Regulation 35A	RP to file applications to AA for appropriate relief	Within 135 days to commencement	T+135

Regulation 36(1)	Submission of IM to CoC	Within 2 weeks of appointment of RP, but not later than 54 <sup>th</sup> day of commencement	T+54
Regulation 36A	Publish Form G	Within 75 days of commencement	T+75
	Invitation of Eol		
	Submission of Eol	At least 15 days from issue of Eol (Assume 15 days)	T+90
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of Eol	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Final List of RAs by RP	Within 10 days of the receipt of objections	T+115
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T=180

AA: Adjudicating Authority; AR: Authorised Representative; CIRP: Corporate Insolvency Resolution Process; CoC: Committee of Creditors; Eol: Expression of Interest; IM: Information Memorandum; IRP: Interim Resolution Professional; RA: Resolution Applicant; RP: Resolution Professional; RFRP: Request for Resolution Plan.

Committee of Creditors on the ground that the resolution plan violates the provisions of any law, including the ground that a resolution plan is ineligible under Section 29A, is not final. The Adjudicating Authority, acting quasi-judicially, can determine whether the resolution plan is violative of the provisions of any law, including Section 29A of the Code, after hearing arguments from the resolution applicant as well as the Committee of Creditors, after which an appeal can be preferred from the decision of

19. The Regulation 39 of the CIRP Regulations shows that the disapproval of the



- the Adjudicating Authority to the Appellate Authority under Section 61.
20. If, on the other hand, a resolution plan has been approved by the Committee of Creditors, and has passed muster before the Adjudicating Authority, this determination can be challenged before the Appellate Authority under Section 61, and may further be challenged before the Supreme Court under Section 62, if there is a question of law arising out of such order, within the time specified in Section 62. Section 64 also makes it clear that the time lines that are to be adhered to by the NCLT and NCLAT are of great importance, and that reasons must be recorded by either the NCLT or NCLAT if the matter is not disposed of within the time limit specified.
  21. We therefore hold that, whether the first or second resolution plan is taken into account, both would clearly be hit by Section 29A(c), as the looming presence of Shri Rewant Ruia has been found all along, from the date of incorporation of Numetal, till the date of submission of the second resolution plan.
  22. It is absolutely clear that Shri L.N. Mittal, who is the ultimate shareholder of the resolution applicant, viz. AMIPL, is directly the ultimate shareholder of AMNLBV as well, which is an L.N. Mittal Group Company. When the corporate veil of the various companies aforementioned is pierced, both AMIPL and AMNLBV are found to be managed and controlled by Shri L.N. Mittal, and are therefore persons deemed to be acting in concert as per Regulation 2(1)(q)(2)(i) of the 2011 Takeover Regulations. That AMNLBV is a promoter of Uttam Galva is clear from the aforementioned facts, being expressly stated as such in Uttam Galva's annual returns. The reasonably proximate facts prior to the submission of both resolution plans by AMIPL would show that there is no doubt whatsoever that AMNLBV's shares in Uttam Galva were sold only in order to get

out of the ineligibility mentioned by Section 29A(c), and consequently the proviso thereto. It is clear therefore that the Uttam Galva transaction clearly renders AMIPL ineligible under Section 29A(c) of the Code.

#### **Conclusion:**

Since it is clear that both sets of resolution plans that were submitted to the Resolution Professional, even on 2.4.2018, are hit by Section 29A(c), and since the proviso to Section 29A(c) will not apply as the corporate debtors related to AMIPL and Numetal have not paid off their respective NPAs, ordinarily, these appeals would have been disposed of by merely declaring both resolution applicants to be ineligible under Section 29A(c). Shri Subramaniam, on behalf of the Committee of Creditors, requested us to give one more opportunity to the parties before us to pay off their corporate debtors' respective debts in accordance with Section 29A, as the best resolution plan can then be selected by the requisite majority of the Committee of Creditors, so that all dues could be cleared as soon as possible. Acceding to this request, in order to do complete justice under Article 142 of the Constitution of India, and also for the reason that the law on Section 29A has been laid down for the first time by this judgment, we give one more opportunity to both resolution applicants to payoff the NPAs of their related corporate debtors within a period of two weeks from the date of receipt of this judgment, in accordance with the proviso to Section 29A(c). If such payments are made within the aforesaid period, both resolution applicants can resubmit their resolution plans dated 2.4.2018 to the Committee of Creditors, who are then given a period of 8 weeks from this date, to accept, by the requisite majority, the best amongst the plans submitted, including the resolution plan submitted by Vedanta. We make it clear that in the event that no plan is found worthy of acceptance by the requisite majority of the Committee of Creditors, the corporate debtor, i.e. ESIL, shall go into liquidation. The appeals are disposed of, accordingly.



# News from Chapter

## Report-Pune Chapter of WIRC of ICSI From 01<sup>st</sup> June 2022 to 30<sup>th</sup> June 2022

By CS Vishal Patil, Secretary, Pune Chapter of WIRC of ICSI  
(Email ID: secretary.pune@icsi.edu)

### STUDENTS' TRAINING ACTIVITIES

Sr. No.	Activities conducted	Remarks
1	Celebration of World Environment Day (05 <sup>th</sup> June 2022)	As a part of PCS Day celebrations, Pune Chapter of WIRC of ICSI observed "World Environment Day" by planting saplings on Sunday, 05th June 2022 at Pune Chapter premises
2	Placement Drive by Pune Chapter of WIRC of ICSI for Placement Cum Training Drive for CS Members & Students (16 <sup>th</sup> June 2022)	Pune Chapter of WIRC of ICSI organized "Placement Cum Training Drive for CS Members & Students" on Thursday, 16th June 2022 at Pune Chapter premises on the occasion of PCS Month Celebration. Registered Companies/Firms/Associates/Practicing Company Secretaries (PCS) and Corporates requiring Company Secretary Members/Trainees were invited to participate in the said Placement Drive.
3	68th Batch of One Day Orientation programme for Executive Students (18 <sup>th</sup> June 2022)	Pune Chapter of WIRC of ICSI organized 68th Batch of One Day Orientation programme for Executive Students in physical mode on 18th June 2022 at Pune Chapter premises which was attended by 12 students. CS Arun Barve was the eminent faculty for the session.
4	08 <sup>th</sup> Batch of 15 days Executive Development Programme for Executive Students (21 <sup>st</sup> June 2022 to 07 <sup>th</sup> July 2022)	Pune Chapter of WIRC of ICSI organized 08th Batch of 15 days Executive Development Programme at Pune Chapter from 21st June 2022 to 07th July 2022 which is being attended by 49 students.
5	69 <sup>th</sup> Batch of One Day Orientation programme for Executive Students (24 <sup>th</sup> June 2022)	Pune Chapter of WIRC of ICSI organized 69th Batch of One Day Orientation programme for Executive Students in physical mode on 24th June 2022 at Pune Chapter premises which was attended by 19 students. CS Kalyani Shirode was the eminent faculty for the session.
6	Annual General Meeting 2022 (25 <sup>th</sup> June 2022)	Annual General Meeting of Pune Chapter of WIRC of ICSI was held on 25th June 2022 at Pune Chapter Office. Around 15 members attended the meeting.
7	70th Batch of One Day Orientation programme for Executive Students (30 <sup>th</sup> June 2022)	Pune Chapter of WIRC of ICSI organized 70th Batch of One Day Orientation programme for Executive Students in physical mode on 30th June 2022 at Pune Chapter premises which was attended by 19 students. CS Sohal Thakur was the eminent faculty for the session.



**Program / Meetings & Events**  
**From 01<sup>st</sup> June 2022 to 30<sup>th</sup> June 2022**

Sr. No.	Activities conducted	Remarks
1	Study Circle Meeting on "Cryptocurrency's Blockchain & Risks Associated as Practicing Professionals" (11 <sup>th</sup> June 2022)	<p>Pune Chapter of WIRC of ICSI organized a Study Circle Meeting on "Cryptocurrency's Blockchain &amp; Risks Associated as Practicing Professionals" at Yashwantrao Chavan Law College, Pune on 11<sup>th</sup> June 2022.</p> <p>CA Pratik S. Kothari, Practicing Company Accountant was the eminent faculty for this Study Circle Meeting.</p> <p>This study circle meeting was attended by 87 delegates. 01 CPE (Structured) was awarded to the members who had attended this study circle meeting.</p>
2	PCS Day Celebration (15 <sup>th</sup> June 2022)	<p>Pune Chapter of WIRC of ICSI Celebrated PCS Day 2022 at Pune Chapter premises which was attended by many Practicing members and Committee members</p>
3	Study Circle Meeting on "Oppression & Mismanagement" (17 <sup>th</sup> June 2022)	<p>Pune Chapter of WIRC of ICSI organized a Study Circle Meeting on "Oppression &amp; Mismanagement" at Pimpri Chinchwad Science Park, Chinchwad on 18<sup>th</sup> June 2022.</p> <p>CS Omkar Deosthale, Practicing Company Secretary was the eminent faculty for this Study Circle Meeting.</p> <p>This study circle meeting was attended by 62 delegates. 01 CPE (Structured) was awarded to the members who had attended this study circle meeting.</p>
4	Study Circle Meeting on "Trade Mark- Practice & Procedure" (18 <sup>th</sup> June 2022)	<p>Pune Chapter of WIRC of ICSI organized a Study Circle Meeting on "Trade Mark- Practice &amp; Procedure" at Pune Chapter premises on 18<sup>th</sup> June 2022.</p> <p>CS Gaurav Kulkarni, Practicing Company Secretary was the eminent faculty for this Study Circle Meeting.</p> <p>This study circle meeting was attended by 58 delegates. 01 CPE (Structured) was awarded to the members who had attended this study circle meeting.</p>
5	Two Days Master Class for PCS (24 <sup>th</sup> & 25 <sup>th</sup> June 2022)	<p>Pune Chapter of WIRC of ICSI organized Two Days Program: "Master Class for PCS" at DES, New English School, Pune on 24<sup>th</sup> &amp; 25<sup>th</sup> June 2022.</p> <p>CS Amruta Jana- DTSM &amp; Associates, Dr. K. C. Vora- CEO, COEP's Bhau Institute Pune, CS Pawan G. Chandak- KPRC &amp; Associates, CS Hrishikesh Wagh- KANJ &amp; Co., CS Bala Nadar- Practicing Company Secretary, Mr. Mangesh R. Jadhav- ICLS, Registrar of Companies Pune, Advocate Ajinkya Kurdukar- Mumbai, CS Vinayak Khanvalkar- KANJ &amp; Co. were the eminent faculty for this program.</p> <p>This program was attended by 158 delegates. 08 CPE (Structured) were awarded to the members who had attended this program.</p>

Sr. No.	Activities conducted	Remarks
6	Study Circle Meeting on “Panel Discussion on Opportunities & Challenges in the Profession of CS” (28 <sup>th</sup> June 2022)	<p>Pune Chapter of WIRC of ICSI organized a Study Circle Meeting on “Panel Discussion on Opportunities &amp; Challenges in the Profession of CS” at Poona Club, Camp, Pune on 28th June 2022.</p> <p>CS Harshal Joshi, CS Hrishikesh Wagh &amp; CS Pawan G. Chandak all Practicing Company Secretaries, Pune were the eminent faculties for this Study Circle Meeting.</p> <p>This study circle meeting was attended by 78 delegates.01 CPE (Structured) was awarded to the members who had attended this study circle meeting.</p>
7	Workshop on “Remuneration of Directors and Key Managerial Personnel and Disclosures of Interest by Directors” (30 <sup>th</sup> June 2022)	<p>Pune Chapter of WIRC of ICSI organized a Workshop on “Remuneration of Directors and Key Personnel and Disclosures of Interest of Directors” at DES New English School, Pune on 30th June 2022.</p> <p>CS (Dr.) K. R. Chandratre, Past President, The ICSI &amp; Practicing Company Secretary, Pune was the eminent faculties for this Workshop.</p> <p>This study circle meeting was attended by 201 delegates.04 CPE (Structured) was awarded to the members who had attended this Workshop</p>
8	Study Circle Meeting on “Listing Process- Critical Steps for Listing on Stock Exchanges” (30 <sup>th</sup> June 2022)	<p>Pune Chapter of WIRC of ICSI organized a Study Circle Meeting on “Listing Process- Critical Steps for Listing on Stock Exchanges” at Prabhu Dynan Mandir, Pune on 30th June 2022.</p> <p>CS Sunil N. Lalai, Company Secretary and Executive Vice President – Legalat Endurance Technologies Ltd. was the eminent faculties for this Study Circle Meeting.</p> <p>This study circle meeting was attended by 49 delegates.01 CPE (Structured) was awarded to the members who had attended this study circle meeting.</p>



## June month as PCS Month Celebrations

SR. No.	Activities
1	<p><b>CSBF Life Membership &amp; Fund raising Appeal</b></p> <p>To create awareness among the members to promote the subscription of the Company Secretaries Benevolent Fund (the CSBF) and to strengthen the CSBF, Pune Chapter of WIRC of ICSI urged all members to become a part of this philanthropic initiative of fund raising for CSBF and becoming a life member of CSBF.</p>
2	<p><b>Tree Plantation Drive by CS to Celebrate - World Environment Day</b></p> <p>Appeal was made to members &amp; students to celebrate World Environment Day and as a responsible world Citizen, and to protect our nature and keep it liveable by planting a minimum of 5 saplings along with the office staff / family members.</p>
3	<p><b>Unique Initiatives / IT System Set Up in office</b></p> <p>In order to promote unique / e- initiatives in the offices of PCS and to motivate them, PCS members were requested to share the details of specific unique initiatives / e-set up in operation of office through various IT-Tools / IT Systems etc., based on the Software / System driven technology and the useful benefits of the same.</p>
4	<p><b>Opinion Writing Competition – 2022</b></p> <p>Opinion Writing Competition- 2022 was conducted to bring opportunities to Members and with the objective of promoting and enhancing the skill of interpretation and opining on the complex case studies as a part of Professional Development.</p>
5	<p><b>Research Paper Competition – 2022</b></p> <p>Research Paper Competition – 2022 was conducted to bring opportunities to Members and with the objective of creating inclination towards research among the members.</p>
6	<p><b>PCS Day Celebration – 15th June 2022</b></p> <p>Pune Chapter Celebrated PCS Day on 15th June 2022 at 06:00 pm at the Pune Chapter premises at Kothrud, Pune to celebrate the milestone in the development of the Profession, when the Company Secretaries in Practice, were accorded recognition for certifying the Annual Returns under the erstwhile Companies Act, 1956.</p>

## 23<sup>rd</sup> National Conference of Practising Company Secretaries

18<sup>th</sup> - 19<sup>th</sup> June, 2022 | Della Resorts, Lonavala, Maharashtra

Dear Professional Colleague, The most awaited annual event of the Institute of Company Secretaries of India i.e., The 23 National Conference of Practising Company Secretaries was successfully held at the Della Resorts, Lonavala, Maharashtra on June 18-19, 2022. The theme for the conference was centered at "CS: A Preferred Professional" to have focused deliberations on the transforming role of Company Secretaries in the Indian scenario. The Conference witnessed the presence of over 300 delegates present physically and over 1100 delegates attended the Conference virtually from different parts of the country, making the event a grand success.

The Inaugural Session of the Conference was illuminated with the presence of Hon'ble Ranjeetsingh Naik Nimbalkar, Member of Parliament. His words of wisdom and unique

outlook towards our roles and the future ahead made it all the more memorable. Following releases were made at the hands of our Guest:

- Souvenir of 23<sup>rd</sup> National Conference of Practising Company Secretaries
- A Co-branded publication with Bharat Law House titled Companies Act, 2013 with Rules;
- A Co-branded publication with Taxmann titled Companies Act, 2013 with Rules;
- FAQs on Valuation;
- Corporate Governance: From Compliance to Excellence (Handbook on best Practices) were released at the hands of the guest and other dignitaries.





Inaugural session was followed by two technical sessions: i) Evolving Role of Company Secretaries in New India: Opportunities and Challenges and (ii) Strategic options for Practice in the New Decade. Past Presidents and other learned speakers shared their views on readiness for future and capturing opportunities, options available to practicing professionals such as Arbitration, Forensic audit, valuation, appearance before Tribunals etc.

On day two sessions were held on (iii) New Recognitions under SEBI Laws - Expectations and Challenges; (iv) Building Trust & Enabling Sustainability and (v) Regulatory Perspective: Opportunities & Expectations, having the presence of Senior SEBI official, NSE, BSE, IBBI and practicing professionals were guided on various practical issues and challenges. The deliberations at the Conference as a whole broadened the learnings and highlighted the importance of capturing newer opportunities for the members to emerge as a

Preferred Professional in the Indian Corporate Sector.

The Conference provided for capacity building of Professionals along with brand building of the Profession by bringing forth diverse dignitaries encouraging professional excellence on one platform. The galaxy of speakers, their varied backgrounds and the richness of their experience all added to the magnanimity of the event voluminously.

We express our sincere thanks and gratitude to all the dignitaries, distinguished invitees, the Council Members of the ICSI and the Professionals for extending their support in making this Conference a grand success. We are confident that all the professionals will not only cherish the learnings received, but also retain them for the times to follow.



## *Glimpse of 23<sup>rd</sup> National Conference of PCS*





**PROGRAM: Celebration of World Environment Day**  
**PROGRAM DATE: 05<sup>th</sup> June 2022**



**PROGRAM: PCS Day Celebration**  
**PROGRAM DATE: 15<sup>th</sup> June 2022**





**PROGRAM: Trainee Drive**  
**PROGRAM DATE: 16<sup>th</sup> June 2022**



**PROGRAM: 08<sup>th</sup> Batch of 15 days Executive Development Programme**  
**PROGRAM DATE: 21<sup>st</sup> June to 07<sup>th</sup> July 2022**





**PROGRAM: Annual General Meeting  
PROGRAM DATE: 25<sup>th</sup> June 2022**



**PROGRAM: A Study Circle Meeting on  
“Cryptocurrency's Blockchain & Risks Associated as Practicing Professional”  
PROGRAM DATE: 11<sup>th</sup> June 2022  
FACULTIES: CA Pratik S. Kothari**







**PROGRAM: A Study Circle Meeting on “Oppression & Mismanagement”**  
**PROGRAM DATE: 17<sup>th</sup> June 2022**  
**FACULTIES: CS Omkar Deosthale**



**PROGRAM: A Study Circle Meeting on “Trade Mark- Practice & Procedure”**  
**PROGRAM DATE: 18th June 2022**  
**FACULTIES: CS Gaurav Kulkarni**





**PROGRAM: Two Days Master Class for PCS**

**PROGRAM DATE: 24th & 25th June 2022**

**FACULTIES: CS Amruta Jana, Dr. K. C. Vora, CS Pawan G. Chandak, CS Hrishikesh Wagh, CS Bala Nadar, Mr. Mangesh R. Jadhav, Adv. Ajinkya Kurdukar, CS Vinayak Khanwalkar**





**PROGRAM: A Study Circle Meeting on “Panel Discussion on Opportunities & Challenges in the Profession of CS”**  
**PROGRAM DATE: 28th June 2022**  
**FACULTIES: CS Harshal Joshi, CS Hrishikesh Wagh & CS Pawan G. Chandak**





# Memory Refreshing

**PROGRAM: Workshop on “Remuneration of Directors and Key Managerial Personnel and Disclosures of Interest by Directors”**

**PROGRAM DATE: 30<sup>th</sup> June 2022**

**FACULTIES: CS (Dr.) K. R. Chandratre**



**PROGRAM: A Study Circle Meeting on “Listing Process- Critical Steps for Listing on Stock Exchanges”**

**PROGRAM DATE: 30th June 2022 FACULTIES: CS Sunil N. Lalai**



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**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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PUNE  
CHAPTER

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