

eMagazine



Articles:

An Analysis- Corporate Social Responsibility and its changing Dimensions 05

Columns:

From Chairman's Desk	02
Chapter Activities	03
Living Room	09
Words Worth Millions	09
Students corner	10
Brainy Bits	11
Delhi Diaries	12
Newsroom	14
Regulatory update	15

Introducing

'Del hi Diaries'

- A new column - Solved Cases of Supreme Court and NCLAT

For Private Circulation Only

Vision

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

Motto

सत्यं वद। धर्मं चर। *Speak the truth, abide by the law.*

Mission

"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI



<https://www.facebook.com/ICSI>



https://twitter.com/ICSI_CS



<https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/>

eMagazine from ICSI Mysore Chapter | Edition - 168 April 2018



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

**MYSORE
CHAPTER**



CS Manjunath S.
Chairman
Mysore Chapter

-: Editorial Team:-

CS Vijaya Rao

CS Sherene

CS Pracheta M

CS Phani Datta

CS Ajay Madhaiah

CS Madhur N Agrawal

CS Parvati K.R

**Join
5600+ members'
strong**

"CSMysore" eParivaar

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

Dear Professional Colleagues,

Greetings to you all. I am sure you are all refreshed and busy with the start of another new financial year. During the month of March 2018, a two days seminar on "LEARNING AVENUES IN COMPANIES ACT & GST" with credit hour program was conducted for the members & students. Many students and members from various chapters of SIRC took part in this program. The Management committee is looking forward to conduct many more programs in future.

World International Women's day was celebrated in GSSS College and the students actively took part. A total of six career awareness program to educate students on CS course was conducted and the students in colleges showed great interest to join the course. We plan to organize many more sessions with students in the days to come.

Thank you

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

Click <http://goo.gl/PV90lr> and fill-in simple info.

You may send this link to your friends too!

Please write your comments and feedback to us:

newsletter.icsimysore@gmail.com

Disclaimer

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

Chapter Activities

1. CAREER AWARENESS PROGRAM

Chapter conducted 06 Career Awareness Programs during March 2018. The details are as follows.

S No.	Date	Venue	Speaker(s)	No. of Participants
1	05.03.18	Maharani Women's College Mysore	CS Manjunath S.,	121
2	07.03.18	PES College, Mandya	CS Manjunath S.,	70
3	15.03.18	JSS Arts & Commerce College Mysore	CS Manjunath S.,	150
4	16.03.18	Teresian First Grade College, Mysore	CS Manjunath S.,	150
5	19.03.18	Marimallappa's Women's College Mysore	CS Manjunath S.,	65
6	20.03.18	Maharani's Women's College Mysore	CS Manjunath S.,	80

WOMEN'S DAY CELEBRATION



Chapter in association with MBA Department of GSSS Institute of Engineering and Technology for Women celebrated the International women's day on 08th March, 2018 at College premises. Ms. Sushma from Janaseva Trust & Ms. Aishwarya Sunaad, young entrepreneur was the guest for the program. CS Manjunath S., Chairman, CS Veerash M.J., Secretary & CS Harsha A., Treasurer of the Chapter were presented during the occasion.

Around 90 students and faculty members of MBA department also participated in the event.

TWO DAYS SEMINAR ON LEARNING AVENUES IN COMPANIES ACT & GST



Chapter organised a two day seminar on "Learning Avenues in Companies Act & GST" at Hotel Rio Meridian on 23rd & 24th March, 2018. The program was attended by around 65 delegates from many cities of Southern India. The event was inaugurated on 23rd March, 2018 by industrialist Mr. Arjun Ranga, Chairman, CII-Mysore. He emphasized the need for such a program in this time of ever changing regulatory framework.

He also called upon the Company Secretaries to concentrate on adding value to the organizations they serve, either as an employee or as a consultant. Mr. Satish A.S., President, MCCI was the guest of honor for the program.

Glimpses from 2 day Seminar



Chief Guest Mr. Arjun Ranga



Latest Amendments in Companies Act 2013 –
CS Karthik V



Strike Off Provisions & COD Scheme for Disqualified
Directors – CS Pramod S.M.



Representation Before NCLT & NCLAT
CS Dushyantha Kumar



GST – Business Issues – CA Vageesh Hegde



Secretarial Standards 1 & 2 – CS Pracheta M



An Analysis- Corporate Social Responsibility and its changing Dimensions

Abstract

Corporate Social Responsibility has become business propaganda now days. Companies are carrying out CSR activities from the traditional perspective of reputation or brand value but not limited to an opportunity to provide sustainability in environment, economic and social value to the stakeholders. It also helps to create a positive attitude towards business. This article examines the inclination of CSR spending in India w.r.t. latest amendments to Companies Act. It stresses the connection between CSR outflow and profits of the companies.

Introduction

CSR has been defined by the European Union (EU), The World Business Council for Sustainable Development (WBCSD) and the United Nation Industrial Development Organization (UNIDO) in their peculiar customs.

In a developing country like India, Corporate Social Responsibility (CSR) plays an important role. In pre-independence and pre-industrialize period, religion and charity were the main standard of CSR and it was believed in establishing temples, hospitals and other infrastructure of public utilities with an aim of serving the society. Post-independence, Indian Companies became conscious and started focusing on areas like public health, education, livelihood and conservation of natural resources etc. so CSR is a win-win situation by contributing towards sustainable development; companies can address their stakeholder's expectation and simultaneously meet their objectives and help them to grow socially, economically and financially. The concept which was once based on charity is now embraced willingly by the companies for improving their brand value too.

CSR under Companies Act, 1956

There was no provision for Corporate Social Responsibility in the Companies Act, 1956, however companies used to make contribution towards charitable and other funds under section 293(1)(e) of the said act. It provided that contribution can be made by a public company or a private company, being a subsidiary of a public company, for an aggregate amount up to Rs.50,000 or Five Percent of its average net profit determined under section 349 and 350 of the said act during the three financial years immediately preceding whichever is greater. Consent of shareholder was required for contribution surplus to the said limit however private companies which were not subsidiary of public company were unrestricted to contribute as per their own desire.

Introduction of Companies Act, 2013 and CSR Made Mandatory

In order to reorganize the charitable activities and contention of accountability & transparency, it has been made mandatory for companies to undertake CSR activities. As per the new Companies Act, 2013, CSR has been defined u/s 135, schedule VII of the Act and Company CSR Policy Rules, 2014 read with General Circular dated 18th June 2014 issued by the Ministry of Corporate Affairs, provides broad outline within which eligible companies were required to formulate their CSR Policies including activities to be undertaken and implement the same in the right earnest. It is applicable to companies which have an annual turnover of Rs.1,000 Cr. or more, or a net worth of Rs.500 Cr. or more, or a net profit of Rs.5 Cr. or more. These companies were required to spend at least 2% of their average profit in the last three years for CSR activities.

The term CSR has been defined under the CSR Rules which includes but is not limited to:

- Projects or programs relating to activities specified in the Schedule; or
- Projects or programs relating to activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated in the Schedule.



This definition of CSR assumes significance as it allows companies to engage in projects or programs relating to activities enlisted under the Schedule. Flexibility is also permitted to the companies by allowing them to choose their preferred CSR engagements that are in conformity with the CSR policy.

The law has listed out a wide variety of activities under CSR, which cover activities such as promotion of education, gender equity and women's empowerment, combating HIV/AIDS, malaria and other diseases, eradication of extreme poverty, contribution to the Prime Minister's National Relief Fund and other central funds, social business projects, reduction in child mortality, improving maternal health, environmental sustainability and employment enhancing vocational skills among others.

The companies can carry out these activities by collaborating either with a NGO, or through their own trusts and foundations or by pooling their resources with another company. The law also entails setting up of a CSR committee which shall be responsible for decisions on CSR expenditure and type of activities to be undertaken. This committee shall consist of three or more directors, with at least one independent director whose presence will warrant a certain amount of democracy and assortment in the decision-making process.

The law is very substantial, because India is at the verge of demographic dividend, and there is an urgent prerequisite for the creation of human and

physical capital to reap its rewards. Investment in education, health, skill development and social infrastructure will enhance capabilities of the youth by improving their nutritional, skill and educational level, which in turn will better their employment prospects.

Companies Amendment Act, 2017

The **Companies Amendment Act, 2017** which was passed by Rajya Sabha on 19th December 2017 has received assent of the president and same has been published in the Official Gazette of India on 3rd January 2018. The changes prescribed by Companies Amendment Act, 2017 shall come in to force from the date notified by Ministry of Corporate Affairs. MCA may prescribe different dates for different provisions in Companies Amendment Act, 2017.

The bill provides for more than 40 amendments to Company Act 2013 and helps in simplifying procedures, make compliance easy and take stringent action against defaulting companies and will strengthen corporate governance standards. These amendments inculcate the below:

- Eligibility criteria for the purpose of constituting the Corporate Social Responsibility Committee and incurring expenditure towards CSR is proposed to be calculated based on immediately preceding Financial Year. Currently this eligibility is decided based on preceding three financial years.
- Further it is proposed that where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee two or more directors.
- It also proposed to empower the Central Government to prescribe sums which shall not be included for calculating 'net profit' of a company under section 135.

Disclosure of CSR Activities Made Compulsory

Prior to 2012-13, many firms were voluntarily making donations and spending on community development and alleviation of environmental pollution. It is only since 2012-13 that firms have started allocating funds for CSR activities, to be more precise, post SEBI's rule that has made it mandatory for all top 100 listed companies vide circular dated August 2012 to include business

responsibility report as a part of their annual report. Therefore FY 2012-13 marks a turning point, where we can see a clear difference in the CSR initiatives adopted by the companies.

The passing of the Act also led to a sheer increase in the number of firms revealing their CSR expenditure. In 2010-11, 336 companies had disclosed their donations and expenditure on community and environment related activities. This number rose to 504 in 2011-12, and to 1,470 in 2012-13. There was an increase in environmental reporting by firms as well. In 2010-11, only 35 companies had complied with environmental reporting, while 52 had filed reports in 2011-12. But in 2012-13, there was an increase of 211.5%, with 162 firms disclosing their environmental performance information.

In 2012-13, 760 firms had crossed the threshold of RS.5 Cr net profit, but their total CSR contribution was lesser than the 2% criterion as laid down by the Act. The total CSR spending by firms was RS.33,668 million, but the required spending should have been RS.45,154 million.

There has been a lot of debate about the superfluous burden on the corporate sector due to the CSR expenditure specified in the Companies Act, 2013. Corporate groups have criticized the mandatory clause in the Act, as it will decrease the profitability of firms. We have analyzed the connection between Profit after Tax (PAT), donation and community development expenditure undertaken by the companies over the last three years and find it to be positive and increasing. We also find that there is a positive connection between CSR and profit, and the probability of higher spending on CSR increases as the firm becomes bigger. However, CSR activities closely linked to the company's business goals and falling in the purview of strategic CSR. It is expedient for a large company to spend on CSR, as it strategically differentiates its product, which ultimately pays off in the long run. Strategic differentiation may also spur innovation, which might improve delivery of services.

We found that 34% of the top 300 companies in India work through own foundations or trusts. They serve the society through various measures like community development, rural development, etc. About 19% of the companies organize free

medical check-up camps in rural areas, blood donation camps and educational camps for farmers in the rural areas and school children. Around 30% of the firms collaborate with non-profit organizations (NGOs) to carry out their CSR activities. For example, some companies like TVS motors, Godrej and other companies fund the NGO Smile Train, which conducts cleft lip and palate surgeries.

Tata Motors collaborated with a number of industrial training institutes to conduct skill development programmes. Some of the companies collaborated with Government Schools and support the mid-day meal programmes. Mostly Banks donate medical equipment and school books to local hospitals and schools. Hence, it can be seen that most of the firms rely on foundations to carry out CSR activities. In this way they are able to monitor the CSR activities better, save on transaction costs and create goodwill for their company.

Penal Action observed for CSR Violation

Section 134(3)(o) provides that Board of Directors have to disclose the details about the policy developed & implemented by the Company on Corporate Social Responsibility initiatives taken during the year. Section 134(8) states that if a Company contravenes the provision laid down under this section, it shall be punishable with fine not less than Rs. 50,000 but may extend to Rs.25,00,000. Similarly every officer in default shall be punishable with an imprisonment for a term which may extend to three years or with a fine not less than Rs. 50,000 and may extend up to Rs.5,00,000 or both. In 2014-15 fiscal, Ministry of Corporate Affairs had permitted penal action against 187 companies for violating CSR norms.

Companies bombarded Approx. 9,553.72 Cr. towards CSR activities in 2014-15 while the number of such companies and total money spent rose in the next fiscal. In 2015-16, as many as 7,983 companies incurred CSR expenditure of Approx.13,625.24 Cr. as per official data. However it has also been observed that Indian Companies has emerged on the top for reporting Corporate Social Responsibility as per the Annual Financial Report of companies, but the excellence of disclosures has to improve, according to a Big4 Firm survey.

SEBI had asked the top 500 Listed Companies to adopt integrated reporting on a voluntary basis, although only five companies published such information. But 99% of the companies reported on their sustainability performance. In India, 95 companies acknowledged human rights as an issue to their business, ranking the country well above the global average. The business risks of climate change, however, were acknowledged by only 34 in India in their non-financial disclosures, according to the survey.

The quality of disclosures has to improve. Companies in India are not going beyond their organization to study violation while globally companies even examine their supply chains. Even in the word of our Finance Minister Arun Jaitley that large corporates can support the Government's social sector initiatives through their Corporate Social Responsibility (CSR). "If we look at India's large corporates with profitability of Rs.500 Crore and above, we have a potential of about Rs.14,000 Cr of CSR activities," he added, and this could significantly support the government's social sector initiatives. The finance minister also encouraged companies to take up challenging areas for spending their CSR funds.

Though Companies Act, 2013, which made spending 2% of their profits on CSR mandatory, came into force only in April 2014, the last couple of years have seen a significant increase in CSR expenditure by companies. This can be attributed to the desire of companies to project them as socially responsible. The CSR expenditure by companies is affected by the industry to which they belong. Companies in polluting industries spend more on activities related to the environment, while firms in the iron and steel and power sector spend more on local community development, as their projects cause large-scale displacement. They also do it in the hope that it might prevent future boycott and protest movements.

Until now, donations by companies were driven by their interests; it was arbitrary, and in some cases very small in comparison to the size of the firms. The CSR activities of the companies depended upon the nature of their industry and restricted to the area where the firm was located. This was largely driven by factors such as cost minimization and "visibility" among the consumers. But this may change with the new law. Firms may be driven to diversify their areas of operation and part of population which had been left behind in the development process may gain tremendously from this.

Conclusion

Government of India deserves applause for the introduction of CSR in the Companies Act but at the same time it is marred with certain weaknesses. It is worth mentioning that companies pay taxes on 1/3rd of their profits every year and wealth tax of 1% on their taxable net wealth. However by making 2% of average profit made during the immediate preceding three financial years which has now amended preceding immediate financial year on CSR activity an obligation. This may sometimes make companies not comfortable in complying, especially when companies which are not profitable, but fall under the category due to triggering Net-worth or Turnover criteria.

In order to achieve the objectives of the latest amendments in Companies Act 2013 in CSR law, clarification on certain issues is the need of the hour, it cannot be denied that Companies Act 2013 has given new dimensions to CSR by making it mandatory for the companies falling under designated category to comply with CSR Policy but at the same time it has created burden on certain organizations which still cannot undertake it due to financial constrictions.

In light of the recent amendments of legislation in Dec 2017, it would be interesting to see how companies would change their CSR strategies when criterion for spending has been amended. After community development, education (including skill development) ,Health is also a major area which is likely to attract investment by companies



BE (IT'S) DIFFERENT

Sipping a cup of coffee watching a hot debate on a popular news channel, my thoughts too took a small break just as the TV channel did for its sponsors advertisements. Reminiscing the golden days of school, the home work time, Annual exams and the little treat of watching the favourite program in TV after completing the portion, I remembered that there were times that TV programs were watched to get a glimpse of advertisement's and some popular Tag lines. As I was flipping through the pages of memory a very catchy tag line flashed "It's Different". No brownie points for guessing that it was Maggi.

I am sure as young students most of us have told at least once, the iconic reply "No, my teacher taught it this way". It just made me ponder that how from a

very young age our minds are tuned to a system and fail to do things differently. And there is no denial in the fact that we have all carried this to our work places where we sometimes refuse to refute consciously being aware of what is right.

It is high time to train our brains to be more responsible and say "I have a different opinion". Garnering courage to speak up your mind is a challenge by itself and to overcome the cliché of being opinionated and stand ground and still be able to say "I have a different idea" requires humongous personal strength.

Let us teach ourselves to be different in thoughts, deeds, spoken words and all the more to compromise with ourselves and say "it's Ok to be different"

Creativity involves breaking out of established patterns in order to look at things in a different way.

Edward de Bono

Words Worth Million

Start where you are. Use what you have. Do what you can.

-- Arthur Ashe



Commentary on Casual Vacancy Director – Series- 5

Provision: Section 161(4)

In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Commentary

- 1 **Meaning:** Casual vacancy is a vacancy when the office of the director is vacated before his term of office expires in normal course, which may occur on account of resignation, disqualification, death, insolvency, incapacity, removal or for any other reasons.
- 2 **Applicability:** Applicable to all companies, public or private companies.
- 3 **Eligibility:** Section applies to a casual vacancy in the office of director appointed by the company in general meeting only. In other words, casual vacancy cannot be filled up for an additional director as their appointing authority is board.
- 4 **Mandatory:** It is not mandatory to fill casual vacancy as word is 'may'.
- 5 **Provision in the AOA:** Power to fill casual vacancy is not derived from the articles unlike additional director but is subject to articles of association of the company.
- 6 **Authority:** Only Board of Directors can fill up casual vacancy. Managing director or committees of Directors or WTD do not have power to fill the vacancy.
- 7 **Resolution:** Appointment of casual vacancy director shall be passed at the meeting of the Board and not by resolution by Circulation.
- 8 **Tenure of Directorship:** Casual vacancy director shall be eligible to hold office only up to the date up to which the director in whose place he/she is appointed would have held office if it had not been vacated.
- 9 **Department Clarification dated 01/07/1963:** Dept has no objection to the company to fill the casual vacancy as many times as may be necessary.
- 10 **Companies Amendment Act 2017**
 - a. **Applicability:** Act is providing right to the private companies as well.
 - b. **General Meeting Approval:** Casual vacancy shall be subsequently approved by members in the immediate next general meeting, may be AGM or EGM.
- 11 **Forms:** Within 30days of his appointment, the company needs to file Form DIR 12 along with consent letter in Form DIR 2.
- 12 Casual Vacancy director has to disclose his interest in Form MBP 1 within 30days of his appointment in line with Sec.184 and the company need to update the relevant Statutory Registers.



Gella Praveen Kumar
B.Sc., MBA, FCA, Grad CMA
Faculty at ICAI for GST training
Practising Chartered Accountant
Gella & Co. Bangalore
gellapraveen@gmail.com



ABC Ltd., a manufacturing entity while closing the Books of Accounts for the year ended 31.03.2018 sought for confirmation of balance. In the course of reconciliation, below general discrepancies were noted:

- Goods were supplied & received before 31.03.2018 but Bills are pending for approval by purchase department
- Goods were received and rejected by the Quality department. Vendor has not received the rejected goods
- Goods were received during April 2018 for which the Invoice was issued during March 2018

- Debit/Credit note adjustments were not duly approved by the Purchase department

Considering the above adjustments should the input tax benefit under GST to be adjusted on or before 31.03.2018 or can the same be accommodated during 2018-19 considering the matching principle of Bills with returns to be filed.

Please send your opinion to,

newsletter.icsimysore@gmail.com



Opinion To Last Month's Brainy Bits

Facts to Consider

- ABC Education Institution (hereinafter referred as Institution) has registered itself u/s12AA of Income Tax Act
- The Institution has been providing extracurricular activities to its students who are pursuing education in the regular stream upto Higher Secondary education
- The Institution is collecting the bus fee from the students in the course of its regular curricular activities as a reimbursement of cost incurred by the service provider

Relevant Provisions

Abstract of relevant provision from Notification 12/2017 dtd: 28.06.2017 as amended till date:
Entry No.80: 9996 Services by way of training or coaching in recreational activities relating to

- (a) Arts or culture or
- (b) Sports by charitable entities registered u/s12AA of the Income Tax Act

Entry No.66: 9992 Services provided by

- (a) By an educational institution to its students, faculty and staff

(b) To an education institution by way of

- i. Transportation of students, faculty and staff
- ii. Catering, including midday meal schemes...

Conclusion

The activity of providing training in the area of Martial Arts, singing, drawing etc., are more of recreation in nature in addition to the regular academics. Further, the Institution is providing such activities to its students who are pursuing their regular schooling activity which is very well covered under the entry 9996 at Entry No.80 read as above. Further, the activity of recovering the bus fees in addition to tuition fees is exempted vide entry No.66

Accordingly, all the activity provided by the Institution are exempted and no GST is applicable

Disclaimer: The above views expressed are as per the understanding of the present GST provision by the author. Any corrections or suggestions may be sent to praveen@gella.in



Vikram Hegde, Advocate
No. 10, Lawyers' Chambers
Supreme Court of India
New Delhi – 110001
vikramhegde87@gmail.com



Delhi Diaries 1

Solved cases of Supreme Court and NCLAT

Moratorium on Recovery Claims against Personal Guarantor of a Company under Liquidation

Background

The Insolvency and Bankruptcy Code, which has created waves over the last year, for its purported efficacy as mode of money recovery and has been touted as one of the solution to the problem of overwhelming NPAs still has some rough edges which are being smoothed out by a process of judicial interpretation. It is also being amended from time to time, to meet the challenges of the day.

Personal Guarantor in the context of the Code



The personal guarantor is defined by Section 5(22) of the IBC as an “individual who is the surety in a contract of guarantee to a corporate debtor”. Section 5(8) of the IBC provides that the liability to discharge obligation under such a guarantee would amount to a “financial debt” in itself.

Let’s take a brief detour, to identify who is likely to put himself in the position of a personal guarantor. A company limited by shares is a mechanism of restricting the liability of the shareholder to the extent of his investment of his company. Why would any person shed this basic immunity that company law provides, and subject himself and his entire property to the threat of recovery action for the sake of financing his company? Seen in this light, it becomes fairly evident that an individual who is willing to be a personal guarantor to a

company is no ordinary investor in the company. Even identifying him as a promoter might not tell the complete tale. It is very often a person with overwhelming control of the company. He is also usually a person with sufficient means, else the lender would not be satisfied by his guarantee (notwithstanding recent prominent instances where this turned out to be false).

Moratorium

One of the key features of the Insolvency and Bankruptcy Code is that upon the commencement of insolvency of a company, the Adjudicating Authority (i.e., the National Company Law Tribunal) can prohibit the institution of fresh suits or continuation of pending suits or the execution of any judgment, decree or order in any court or tribunal against the company under insolvency. It also prevents the corporate debtor, i.e., the company under insolvency, from transferring, encumbering or alienating any assets and also protects the corporate debtor from foreclosure or recovery of enforcement of security interest, including under SARFAESI.

Status of the Personal Guarantor

The Insolvency and Bankruptcy Code, is divided into three parts. The first part dealing with preliminaries which apply to both corporate insolvencies and individual bankruptcies. The second part deals exclusively with Corporate Insolvencies. Part III, which is not yet notified, deals with insolvency of individuals and partnership firms. One situation which would perhaps involve the operation of Part II and Part III, once the entire IBC comes into effect, is that of the personal guarantor. Insolvency proceedings cannot be

initiated against the personal guarantor under Part II.

So what would be the effect of the moratorium provisions on the personal guarantor? This question came to be considered by the National Company Law Appellate Tribunal in *State Bank of India v. M.V. Ramakrishnan* (CA 213/2017, judgment dated 28.02.2018).

In this case, a director of a company, had given a personal guarantee and had mortgaged his assets as collateral security to the State Bank of India against loan facilities availed by the financial creditor. The State Bank of India issued a notice under Section 13(2) of the SARFAESI Act, to the personal guarantor and subsequently took symbolic possession of the secured assets.

The company then filed an application under Section 10 of the IBC seeking insolvency of itself. The said application was admitted and an order of moratorium was passed and an IRP was appointed. However, despite the moratorium, the State Bank of India continued to take action under the SARFAESI on the premise that the moratorium was applicable only to the corporate debtor. They also argued that they could not take any other action against the personal guarantor as Part II was applicable only to the corporate guarantor.

The Appellate Tribunal, upon hearing the parties and considering the various provisions of the Act, resolved the issue by taking the issue to its logical conclusion. Section 31, which provides for approval

of resolution plan, also contemplates that the resolution plan shall be binding not only on the corporate debtor but also *inter alia* on guarantors. Without explicitly stating so, the Appellate Tribunal seemingly relied upon this provision to hold that the assets of the Personal Guarantor are also to be within the moratorium so as to facilitate the effective resolution of the insolvency. Hence the Appellate Tribunal held that the 'moratorium' would be applicable to the property of the corporate debtor and the personal guarantor.

Conclusion

The Appellant in the above case is yet to approach the Supreme Court and we may not have seen the last of this. However, for the time being it is safe to say that the personal guarantor would have the same immunity from recovery actions as the corporate debtor in the event of any insolvency proceedings against the corporate debtor being admitted.

It is important to keep in mind the reality of insolvency proceedings to understand how this judgment might affect the process of insolvency resolution. The Appellate Tribunal seems to proceed on an assumption that every insolvency action will end in a successful resolution. This may not be necessary. We are yet to come across proven instances of collusive initiation of insolvency action under the new code, but the hazard is great. This judgment may have given shysters another reason for cynical use of insolvency proceedings.



News Room



Express News

- As part of the drive to double income of farmers by 2022, the government has raised the authorised capital of Nabard by six times to Rs 30,000 crore to help it increase its lending to the rural economy.
- P-note investments dip to nearly 9-yr low at Rs 1.06 lakh cr
- Eight of top 10 companies add Rs 83,672 cr in m-cap
- Price hikes post import duty increase to slow sales: Luxury car companies
- SBI Mutual Fund re-classifies schemes; gives exit option to unit holders

FPIs infuse Rs 3,935 cr in debt markets in a fortnight

Foreign investors have pumped in Rs 3,935 crore into the Indian debt markets in the first fortnight of the month, driven by a stable currency and attractive bond yields.

This comes following a net outflow of Rs 12,750 crore in the last two months (February-March) largely due to a surge in interest rates in home markets as well as rupee depreciation outlook due to crude price and fiscal deficit.

E-way bill rules: CBIC lays out procedure for interception, detention of goods

Tax authorities have asked field officers to follow standard procedure for interception of conveyances for inspection of goods and their confiscation under the e-way bill rules.

The Central Board of Indirect Taxes and Customs (CBIC) has laid out a detailed procedure with respect to time bound uploading of reports/ forms by revenue authorities, time bound closure of cases where goods have been detained, instructions to release goods where there are no prima-facie irregularities.

DoT awaits FDI clearance for Idea to approve merger with Vodafone

DoT is waiting for DIPP to give clearance for raising the foreign direct investment (FDI) limit in Idea Cellular to 100 per cent before approving the merger of Vodafone India with the Aditya Birla group firm, as per official sources.

"Only FDI clearance for Idea is pending before merger of Vodafone (India) with it. FDI limit needs to be raised in FDI for clearing both the deals of Idea -- sale of tower to ATC and Vodafone merger," a government official told.



Updates on Amended Rules

MCA has introduced National Financial Reporting Authority (Manner of Appointment and other terms and conditions of service of chairperson and members) rules, 2018. This rules contains detail information on

- Composition of Authority.
- Manner of appointment.
- Resignation.
- Removal from office.
- Procedure for inquiry.
- Terms of office.
- Vacancy.
- Pension, gratuity and provident fund etc Of chairperson and members of NFRA.

National Financial Reporting Authority Manner of Appointment and other terms and conditions of service of chairperson and members) rules, 2018, dated 21st March, 2018.

MCA has amended Companies (Incorporation) Rules, 2014 which is to be known as Companies (Incorporation) second amendment Rules, 2018. Following rule shall substitute rule 9 of the principle rules.

"An application for reservation of name shall be made through web service available at www.mca.gov.in by using RUN service. "

Earlier there was an option to apply for one name at a time, but now user can apply for two names out of which one name will be reserved by CRC . Re-submission facility has also been introduced by MCA under RUN service.

Companies (Incorporation) second amendment Rules, 2018, dated 23rd March 2018.

MCA has amended Companies (Share Capital and Debentures) Rules, 2014 which is to be known as Companies (Share Capital and Debentures) Amendment Rules, 2018.

Following rule shall substitute rule 5(3) of the principle rules.

"(3) Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary.

Provided that in case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate."

Companies (Share Capital and Debentures) Amendment Rules, 2018

Notifications

MCA has appointed 21st day of March, 2018 as the date on which the provisions of section 132(3) and (11) of the companies Act, 2013 shall come into force.

SO (E), dated 21st March, 2018.

MCA has made certain alterations to the schedule I of the Companies Act, 2013.

In TABLE F, Paragraph 11

Following shall substitute sub-paragraph (2) of item (ii)

"Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed a company secretary."

2018. G S R (E), dated 10th April

Orders

MCA has passed an order which shall be known as Companies (Removal of Difficulties) order, 2018.

In the Companies Act, 2013, following proviso shall be inserted in section 169(1).

"Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard".

SO (E), dated 21st February, 2018.