

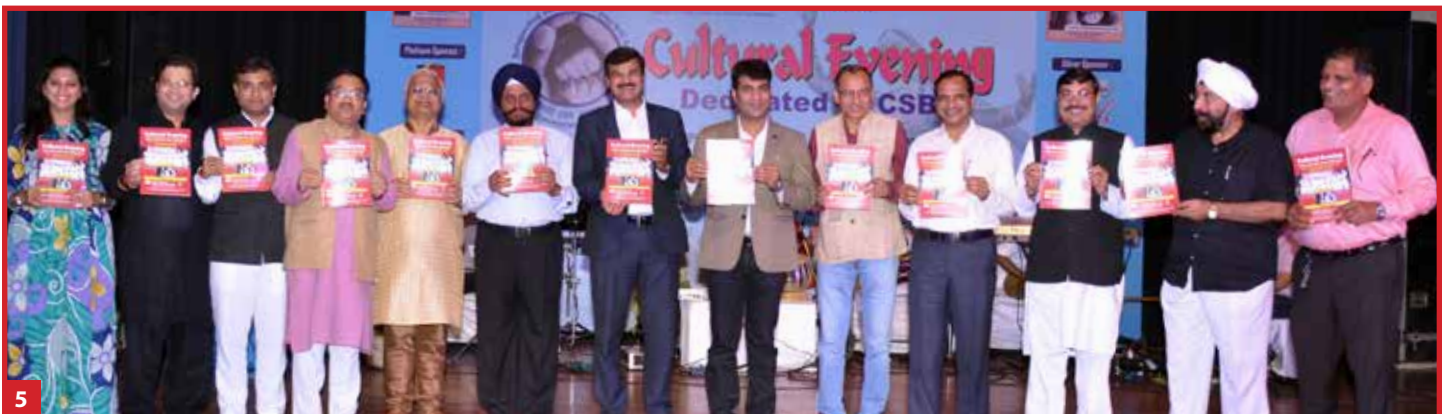
NIRCA-ICSI

IBC & REVISED SS-1&2 SPECIAL ISSUE

NEWSLETTER

National Best Regional Council (2004, 2007, 2008, 2009, 2010, 2011, 2013, 2014 & 2015)

Insight



- 1** Seminar on the theme Contemporary Issues Under Insolvency & Bankruptcy Code (IBC)-31.8.2017: L to R CS Rajeev Bhambri, CS Rajiv Bajaj, Council Member-ICSI, CS Dhananjay Shukla, CS Pavan Kumar Vijay, Past President-ICSI; CS G P Madaan, Past Chairman-NIRCA, CS Vineet K Chaudhary and CS Nitesh Kumar Sinha.
- 2** Seminar on the theme Contemporary Issues Under Insolvency & Bankruptcy Code (IBC)-31.8.2017: L to R CS Manish Gupta, CS Pavan Kumar Vijay, Past President-ICSI; CS U K Chaudhary, Past President-ICSI, CA Ashish Makhija, Advocate, CS Ranjeet Pandey and CS Rajeev Bhambri.
- 3** Two days Workshop on Mock NCLT Proceedings (Including Moot Court & Session on Case Laws)-19-20.8.2017: L to R CS NPS Chawla, Chief Guest & Key Note Speaker Hon'ble Mr. Justice D.R. Deshmukh, Former Chairman, Company Law Board, CS Dhananjay Shukla and CS Manish Gupta
- 4** Study Session on Revised Secretarial Standards on Meetings of The Board of Directors (SS-1) and General Meetings (SS-2) – 8.9.2017: CS Pavan Kumar Vijay, Past President-ICSI & Chairman, SSB-ICSI addressing. Others from L to R CS Manish Gupta, CS Munish Sharma, PCS, and Member Expert Advisory Board & Auditing Standard Board, ICSI, CS Ilam Kamboj, Managing Partner, Kamboj Law Chambers, CS Dhananjay Shukla, CS Ranjeet Pandey, Council Member-ICSI and CS Saurabh Kalia.
- 5** Cultural Evening, Dedicated to CSBF (26.8.2017): L to R CS Monika Kohli, CS Manish Gupta, CS Vineet K Chaudhary, CS Dhananjay Shukla, CS Harish K Vaid, CS H.S. Grover, CS Ranjeet Pandey, CS (Dr.) Shyam Agrawal, President – ICSI, CS Nesar Ahmad, CS S.V. Goyal, CS Deepak Kukreja, CS Paramjeet Singh and CS D.P. Gupta releasing souvenir.

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Co-opted Members	CS Ravinder, IAS	011-23062651
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खुद वो बदलाव बनिए जो आप दुनिया में देखना चाहते हैं

Be the change that you want to see in the world.

Mahatma Gandhi

Dear Professional Colleagues,

Greetings from NIRC-ICSI !!!

Friends, change is inevitable, it is bound to happen. The changing global environment is full of challenges and if one surf the changing scenario using the knowledge acquired, these challenges can easily be converted into opportunities. It should be our endeavour to create more & more visibility for our profession and must not forget that opportunities are for those who take up the challenges. Success of a professional to a great extent depends upon the positive attitude & will power.

The Insolvency and Bankruptcy Code thrown upon us the challenge and opportunity to express the divinity within CS professionals. The Company Secretary being trained professional specializing in Corporate Governance is the most apt professional to discharge the challenging responsibilities by acting as Insolvency Resolution Professional.

Friends, The Insolvency and Bankruptcy Board (IBBI) in association with Gujarat National Law University is organizing research writing competition on 'legal landscape of Insolvency and Bankruptcy in India-journey since 2016'. The NIRC members may take part in the research competition to boost their knowledge and self confidence and also utilize this opportunity to gain recognition.

With the view to equip our members with professional competence and skills to gain a competitive edge in the field of Insolvency and others, your NIRC is making persistent efforts in organising various professional development programs on the topics of corporate interests. Apart from monthly programs,

NIRC is organizing State Conferences in respective Chapters, Regional Conference and other Conferences etc. We want to expand our reach to various states across North India. I request you all to grab each & every opportunity of professional grooming. The success of these programs encourages organisers to organise more & more quality professional development programs. The following programs were organised during the month:

- * On 19th – 20th August, 2017 a two day workshop was held on Mock NCLT Proceedings (Including Moot Court & Session on Case Laws). Hon'ble Mr. Justice D.R. Deshmukh, Former Chairman, Company Law Board, was the Chief Guest & Key Note Speaker. Guest Speakers for the event were CS NPS Chawla, Past Chairman, NIRC, Mr. Ashwini Mata, Senior Advocate, Mr. Krishnendu Datta, Advocate, Mr. P. Nagesh, Advocate, CS S. Koley, PCS, CS Rajeev Goel, Advocate, CS Rakesh Kumar, Advocate, Mr. Vipul Ganda, Advocate, CS Satwinder Singh, Council Member – ICSI, CS Praveen Mahajan, Advocate, Mr. Siddharth Yadav, Advocate. This workshop was attended by large number of Members.
- * Friends, membership of the Company Secretary Benevolent Fund (CSBF) of the Institute is noble cause for the benefit of those members who may be in the dire need of help in case of any eventuality. The importance of the same should not be undermined. Kindly don't take the membership of the Benevolent Fund from your insurance point of view but consider it as a benevolence to others who, God forbid, may require assistance in case of any misfortune. Larger the membership of CSBF, larger the fund would be and the risk cover shall be multiplied with minimum cost. I sincerely appeal to all the members, who are not yet enrolled, to become proud member of the Benevolent Fund. To give happiness to others is a great act of charity.
- * On 26th August, 2017, Cultural Evening (dedicated to CSBF) was organized for Members and their families followed by Dinner . The star attraction of the event was performance by Bollywood Singer Shri Tarun Sagar and Artists of Song & Drama Division, Ministry of Information and Broadcasting. All present on the occasion enjoyed the mesmerizing performance of all the artists.
- * During the Cultural Evening, a cheque of Rs. 3,15,042/- i.e. 5% of NIRC's surplus for the financial year 2016-17 was presented to President-ICSI in favour of Company Secretaries Benevolent Fund (CSBF) apart from other contributions of Rs. 55000/- from members and organizations.
- * On 31st August, 2017, Seminar on the theme "Contemporary Issues Under Insolvency & Bankruptcy Code (IBC)" was conducted at Hotel Holiday Inn, Mayur Vihar. Guest Speakers who spoke at the occasion were, CS Pavan Kumar Vijay, Past President-ICSI; CS U K Chaudhary, Past President-ICSI and CA Ashish Makhija, Advocate. On the same day in the morning , a special discussion was organized on the Revised Secretarial Standards , SS-1 and SS-2 , in which the Guest speakers were CS G P Madaan, Past Chairman-NIRC, CS Rajiv Bajaj, Council Member-ICSI and CS Pavan Kumar Vijay, Chairman, SSB-ICSI and Past President-ICSI.
- * On 3rd September, 2017, North Delhi Study Session on Contentious Issues under Insolvency & Bankruptcy Code(IBC) was conducted. The guest speaker for the study session was CS S.M. Sundaram, Advocate.

- * On 8th September, 2017, Study Session on Revised Secretarial Standards on Meetings of The Board of Directors (SS-1) and General Meetings (SS-2) was conducted at YMCA auditorium. Guest Speaker for the session were CS Pavan Kumar Vijay, Past President-ICSI & Chairman, SSB-ICSI. The session included a panel discussion. The participants of the panel discussion were CS Ilam Kamboj, Managing Partner, Kamboj Law Chambers, CS Ranjeet Pandey, Council Member-ICSI, CS Munish Sharma, PCS, and Member Expert Advisory Board & Auditing Standard Board, ICSI.
- * On 11th September, 2017, a meeting Of CS in Practice on "IBC-Recent Judgments and Key Issues" was held. Guest Speaker for the meeting was CS Madhusudan Sharma. A large number of members participated and benefited from the meet.
- * On 15th September, 2017, a Special Session to deliberate on Draft Guidance note on pre certification of e forms & Do's and Don'ts on e-filing (Do's and Don'ts and Guidance note on Pre Certification attached) was held. Guest Speaker for the meeting was CS S Koley. A large number of members participated and benefited from the meet.

During the month, NIRC also organized the following programs for students:-

- * On 26th August, 2017 Regional Students' Conference on the topic, " CS: A Creative Leader (Excellence through Performance)" was conducted. Chief Guest on the occasion was Mr. Shyam Jaju, National Vice President of BJP; Guest of Honour was Mr. Gopal Agarwal, Council Member-ICSI (Govt. Nominee). CS (Dr.) Shyam Agrawal, President-ICSI also grace the occasion and Guest Speakers for the conference were, Mr. Suneel Keswani, Corporate Trainer & Ms. Ramneet S Mukherjee, Trainer. A large number of students participated in the conference and got benefited from it.
- * On 30th August, 2017 Valedictory Function of 268th Management Skills Orientation Program (MSOP) was conducted. Chief Guest on the occasion was CS Rajesh Jain, Executive Director & Group CEO, A2Z Group. Gurgaon.
- * On 04th September, 2017 Inauguration of 269th Management Skills Orientation Program (MSOP) was conducted. The Chief Guest for the occasion was CS Subhash Setia, Company Secretary of DLF Limited.

During the month of August-September, 2017, NIRC-ICSI also organized various training programs like PDP & 15 days Academic Programs for the students.

I take this opportunity to express my sincere thanks and gratitude to Chief Guests, all distinguished guests, learned faculties, learned speakers and invitees for sparing their valuable time and sharing their rich experience with the participants of the all above mentioned programs.

VISIT TO CHAPTERS

Friends we all are aware that ICSI is following three tier system of governance through its Chapters, Regional Councils and Central Council. This three tier system will become effective only when chapters will be empowered and motivated to become self sustainable and all the facilities to members and students are provided at local level. With an objective of empowering and motivating the Chapters in their activities, I visited few chapters of NIRC viz. , Lucknow , Noida , Karnal-Paniapt, Agra and Gurgaon Chapter /guided Managing Committee. The Chapters were encouraged for providing all the facilities to students as well as

members. The meetings were fruitful with the kind of encouragement and response shown by the chapters.

FORTHCOMING PROGRAMS:

- * On 4th October, 2017, the Institute is commemorating its Golden Jubilee on October 04, 2017 as it is entering in the 50th year of its existence. On the occasion, NIRC is organizing a program at Sirifort Auditorium, New Delhi. The details of the program will be sent to members separately.
- * On 7th October, 2017, a workshop on process for Revival of the Companies under Section 252 of the Companies Act, 2013 & Remedial measures for disqualification of Directors u/s 164(2) of Companies Act, 2013 will be organized at ICSI-NIRC Building, New Delhi.
- * NIRC-ICSI is organizing U P State Conference at Lucknow in the month of October.
- * On 28th October, 2017, NIRC-ICSI is organizing a seminar at New Delhi.

The details of all these programs will be uploaded on our NIRC website for your reference. I appeal to all of you to kindly attend all these programs in large numbers and make them a grand success.

In order to cater to the needs of Senior Professionals who have qualified their examinations but not able to attend 15 days long compulsory Management Skills Orientation Program (MSOP), your NIRC is organizing its 2nd Weekend Management Skills Orientation Program (WEMSOP) from 14th October to 3rd December, 2017 at NIRC premises apart from regular batches of MSOP. I request my professional colleagues to publicize the 2nd Weekend Management Skills Orientation Program (WE-MSOP) being organised by NIRC in your circle which will enable us to get maximum number of eligible students.

NIRC is launching Buniyad (Personality Development programme for Students), Hunar (Skill Development programme for young members) and Debating Society (A platform for honing the Communication and leadership Skills) for Students and Members shortly. The details of all these programs will be uploaded on website for your reference. I am sure that all the above initiatives will be very effective for the respective stakeholders.

I am pleased to inform that Half Yearly Corporate Membership Scheme for the financial year 2017-2018 (October, 2017 to March, 2018) is being released. The scheme will allow members to participate in the programs organised by NIRC and its Chapters. The detailed schemes are published elsewhere in the newsletter/uploaded on website for your reference. I request you to kindly avail this opportunity and take the half yearly membership.

Friends, the 45th National Convention of the Company Secretaries on the topic "Company Secretary : Shaping New India 2022 Through Good Governance" is being organized on 22nd, 23rd & 24th November, 2017 at Thiruvananthapuram (Trivandrum), Kerala. I personally invite all of you to attend the National Convention in large number and have the benefit of listening to the galaxy of the speakers from Government, Industry, professionals and academicians.

With the objective of formulating Auditing Standards of the ICSI, the Auditing Standards Board (ASB) of ICSI has brought out Exposure

Drafts of the following Auditing Standards:

CSAS-1 : Auditing Standard on the Audit Engagement

CSAS-2 : Auditing Standard on Audit Process and Documentation

CSAS-3 : Auditing Standard on Forming of Opinion

CSAS-4: Auditing Standard on Secretarial Audit

I take this opportunity to request the members to kindly arrange to send their comments on the exposure draft of the abovementioned proposed Auditing Standards. The same is being placed on the website of the Institute for the public comments. It can be accessed at link: https://www.icsi.edu/WebModules/CSAS_Covering_Letter.pdf.

Friends, the Institute has revised SS-1 and SS-2 and the same have been approved by the Ministry of Corporate Affairs (MCA) vide its letter No. 1/3/2014-CL.I dated 14th June, 2017.

The revised SS-1 and SS-2 shall be applicable to all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 and accordingly all Board Meetings (including meetings of committees of Board) and General Meetings in respect of which Notices are issued on or after 1st October, 2017 need to comply with the revised SS-1 and SS-2. The existing SS-1 and SS-2 will be applicable to the Board Meetings and General Meetings held on or before 30th September, 2017.

I am pleased to inform you that the Malaysian Association of Company Secretaries (MACS), seeking ICSI's cooperation, had expressed its desire to adopt the Secretarial Standards formulated by our ICSI, and approved by the Government of India under sub-section (10) of Section 118 of the Companies Act, 2013, for the purpose of benchmarking MACS own Standards.

Friends, your support & involvement are the prerequisite for the successful implementation of the activities of NIRC. I thank all my council colleagues for participating effectively & carrying out the responsibilities assigned to them in different committees. Together we are trying our best to come up to the expectations of our stakeholders. I request you to kindly send your valuable suggestions & feedback for the betterment of the activities of NIRC. Feel free to contact me at chairman.nirc@icsi.edu

Last but not the least, I take this opportunity to wish you all a very "Happy Dussehra and festive season. May Goddess Durga bless all of us and our families with best of health, knowledge and prosperity.

With best regards,

Yours sincerely,



CS DHANANJAY SHUKLA
Chairman, NIRC-ICSI

Cell: 9873347280

Date: 18th September, 2017
Place: New Delhi

DECODING INSOLVENCY AND BANKRUPTCY CODE 2016 AND ROLE OF THE COMPANY SECRETARY

**CS Santosh Kumar Sharma, Company Secretary & AGM-Legal Compliance,
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CS Rasu Sharma, Company Secretary in Practice; Email: mail.rasu.cs@gmail.com**

INTRODUCTION :

The Insolvency and Bankruptcy code 2016 was framed on the recommendation of the Bankruptcy Law Reform Committee (BLRC) in order to protect the interest of Corporate Creditors and lenders. It came into effect from May 28, 2016.

The idea for introduction of the code came into the mind of BLRC with a view to protect the interest of the Creditors, who have given funds to the Company. In case any default is made by the Company in repayment of such funds then such creditors' interest must be given preference over promoters' interest and the necessary mechanism backed by law should exist for giving them representation in the Board, so that disadvantageous to their interest can be avoided.

In addition to the above, it is pertinent to mention that IBC-2016 also protects the interest of the genuine Corporate Debtors, who has invested in the Business/ projects of the Company, however, due to rapid changes in the technology, their products are lost the market. Hence, they should be given easy exit opportunity for avoiding continuation of loss and they should get value of their assets.

As we all are aware that it is Fundamental Rights of the Citizen of the India to carry on the trade, commerce and profession under Article 19(1)(g) of the Constitution of India. In this similarity, it should be vested right of person to shut down the business, profession or trade and commerce, which are not profitable due to various reasons such as technological changes, test of the consumer etc. This IBC-2016 ensures the right of the person to do the business efficiently and shut down it without any hardship, if situation so demands.

IBC-2016 also deals with provisions relating to the Bankruptcy of the Individual and Micro, Small and Medium Enterprises (MSMEs), which provide for hassle free and fair exit of the Individuals and MSMEs from the business.

The Insolvency and Bankruptcy Board of India (IBBI) make the changes in the regulation as per the need of the hour. Recently for protecting the interest of Home buyers, IBBI has amended IBBI (CIRP) Regulations, who are neither financial creditor nor operational creditor.

IBC-2016 also introduced the concept of Insolvency Professionals, who shall act as single point contact for regulators, corporate debtors, Adjudicating Authorities and Creditors.

As per provisions of the Section 3(19) of the IBC-2016 "insolvency professional" means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.

The professional viz. the Company Secretaries, Cost Accountants, Chartered Accountants and Advocates, who do have experience

of 10 years or more and Graduated in any discipline except fine arts who do have management experience of 15 years or more are eligible for enrolling for Limited Insolvency Examination. After passing the Limited Insolvency Examination such professionals can register with any one of the Insolvency Professional Agency viz. ICSI Insolvency Professional Agency; Insolvency Professional Agency of Institute of Cost Accountants of India and Indian Institute of Insolvency Professionals of ICAI.

The person shall make an application in prescribed form with prescribed fees to IBBI for registering as Insolvency Professional after enrolling with any of the Insolvency Professional Agency as mentioned above.

Upon registration as Insolvency Professional, the following services can be rendered by the Insolvency Professional(s):

- * Interim Resolution Professional
- * Resolution Professional
- * Liquidator
- * Bankruptcy Trustee in case of Individual Bankruptcy

OBJECTIVE OF THE IBC-2016 : The main objectives of the IBC-2016 are :

1. To consolidate and amend the laws relating to reorganization and insolvency resolution of :
 - * corporate persons (Company & Limited Liability Partnership)
 - * partnership firms and individuals

IN A TIME BOUND MANNER for MAXIMISATION OF VALUE OF ASSETS OF ABOVE PERSONS,

2. to promote entrepreneurship,
3. to promote availability of credit and balance the interests of all the
4. stakeholders including alteration in the order of priority of payment of Government dues and
5. to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

SCOPE AND APPLICABILITY OF THE IBC-2016: It is pertinent to mention here that IBC-2016 shall apply all over India, except Part III which shall not apply to Jammu and Kashmir.

Further, IBC-2016 shall be applicable on the following classes of persons (Debtors):

- a. The Company incorporated under the provisions of the Companies Act;

* The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

- b. Limited Liability Partnership (LLP) incorporated under the provisions of LLP Act 2008;
- c. Other body corporate as specified by the Central Government;
- d. Partnership Firm; and
- e. Individual.

REPEAL OF CERTAIN LAWS ON PASSING OF THE IBC-2016: The following sets of the laws dealing with insolvency, restructuring and winding up, are either repealed or amended suitably for enforcing the provisions of the IBC-2016.

- * The Presidency Towns Insolvency Act, 1909 (repealed)
- * The Provincial Insolvency Act, 1920 (repealed)
- * The Sick Industrial Companies (Special Provisions) Act, 1985, (repealed)
- * The Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (Amended)
- * The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Amended suitably)
- * The Companies Act, 2013 (Amended suitably, the provision related with Voluntary winding up, Liquidation of the Company, now will be dealt under IBC-2016).

CORPORATE INSOLVENCY RESOLUTION PROCESS: Corporate Insolvency process can be initiated either by the Financial Creditors under Section 7, or by the Operational Creditors under provisions of Section 9 or by Corporate Debtor under Section 10 of the IBC-2016.

Application by the Financial Creditors seeking CIRP shall be in triplicate in Form No. 1 along with fees of Rs. 25,000/- and other documents proving the debt due to the Financial Creditors, with Adjudicating Authority i.e. bench of National Company Law Tribunal (NCLT) of that jurisdiction where registered office of the Company is situated under the provisions of Section 7 of IBC-2016.

Application by the Operational Creditors seeking CIRP shall be in triplicate in Form No. 5 along with fees of Rs. 2,000/- and other documents proving the debt due to the Operational Creditors, with Adjudicating Authority i.e. bench of NCLT of the relevant jurisdiction, under the provisions of Section 9 of IBC-2016.

The following procedure should be adopted before making application under Section 9 of IBC-2016:

Form no. 3 (Notice of demand) and Form No. 4 (Invoice of demand) by the operational Creditor to be served to the Corporate Debtor at its registered office through personal delivery, registered post, speed post and through electronic means as well sending of a copy of the same to the Information Utility (as of now No Information Utility is registered with IBBI).

If no reply received within 10 days of serving of above notice or no dispute exists in any court of law or Arbitration, then application for insolvency process can be made by OC to NCLT.

The applicant immediately after filing of application under Section 9 must send a copy of whole set of application filed with NCLT at Registered office of the Corporate Debtor.

Application by the Corporate Debtor seeking CIRP shall be in triplicate in Form no. 6 along with fees of Rs. 25,000 along with proof of default to Adjudicating Authority i.e. bench of NCLT of the jurisdiction, where registered office of the Company is situated under the provisions of Section 10 of IBC-2016.

Note: IRP consent shall be attached to the above mentioned application in Form no. 2. However, if application is being filed under Section 9, it is optional for operational creditors to suggest IRP and submit Form no. 2 along with Form no. 5.

TIMELINE FOR ADMISSION / REJECTION OF CIRP APPLICATION BY ADJUDICATING AUTHORITY (NCLT): If the application is complete in all respect and IRP is qualified to be appointed as Resolution professional, then NCLT will accept the application for CIRP within 14 days from the date of application by the FC/OC/CD.

If application is not in complete form then 7 days time is given to the applicant for removing deficiency.

The Resolution Plan must be submitted within 30 days before expiry of period of 180 days or such extended period of not exceeding 90 days.

LIQUIDATION: If Committee of the Creditors did not approve the Resolution Plan within a period of 180 days or extended period of not exceeding next 90 days or there is any violation of resolution plan, then NCLT may approve the Liquidation of the Company.

BANKRUPTCY: It is significant to mention that business run by Individuals, Partnership firms or in form of MSMEs is contributed to 45% of the growth of the Country, hence, provisions for hassle free exit from business are made under IBC-2016. However, these provisions relating to bankruptcy are yet to be enforced.

Application for Adjudication of Individuals/ Firms' bankruptcy shall be made to the Debt Recovery Tribunal in prescribed form along with prescribed fees.

ADJUDICATING AND APPELLATE AUTHORITY UNDER IBC-2016: Following are the Adjudicating and Appellate Authorities under the IBC-2016:

- (i) Adjudicating Authority for Insolvency of Corporate person (Company and LLP) is NCLT and appellate authority is NCLAT.
- (ii) Adjudicating Authority for Insolvency and Bankruptcy of Partnership Firms and Individuals is DRT and Appellate Authority is DRAT.

APPEAL AGAINST THE ORDER OF NCLAT & DRAT: Appeal against order of NCLAT & DRAT shall lie to the Supreme Court of India.

GRAND ROLE OF THE COMPANY SECRETARIES AND OTHER PROFESSIONALS UNDER IBC-2016: The IBC-2016 has opened the new opportunities for professionals such as Company Secretaries and other professionals viz. Chartered Accountants, Cost Accountants and Advocates, who had experience of 10 years or more and Graduate persons having 15 years or more experience in the field of management are eligible for enrolling for Limited Insolvency Examination, which is conducted in English medium with objective type questions in online mode, for this purpose the IBBI has tied up with NISM.

Note: Conducting of National Examination on Insolvency is yet to be notified. It is expected that IBBI will introduce the National Examination within 2 years.

After clearing the Limited Insolvency Examination, above professionals can register with any one of the Insolvency Professional Agencies viz. ICSI Insolvency Professional Agency; Insolvency Professional Agency of Institute of Cost Accountants of India and Indian Institute of Insolvency Professionals of ICAI.

The person shall make an application in prescribed form with prescribed fees to IBBI for registering as Insolvency Professional after enrolling with any of the Insolvency Professional Agency as mentioned above.

Upon registration as Insolvency Professional, the following services can be rendered by the Insolvency Professional(s):

- * Interim Resolution Professional (IRP)
- * Resolution Professional (RP)
- * Liquidator
- * Bankruptcy Trustee in case of Individual Bankruptcy

The task of IRP/RP is very much cumbersome and he act as CEO of the Company, therefore it is need of the hour for IRP/RP to groom themselves in Legal, Finance, Secretarial, liasioning and business aspect.

Even team consisting of experts from various field can pool together in form of Insolvency Professional Entity and can use their expertise for the successfully completion of resolution plan.

On September 20, 2017 total 955 Insolvency Professionals are registered with IBBI, 30 Insolvency professional Entities and 3 Insolvency Professional Agencies are also registered.

The setting up of the Information Utility is under very initial stage and researches are taking place to study the present structure and IT infrastructure of NSDL, CDSL, NSE etc.

CONCLUSION: As per discussions in this article, it is direct corollary that the IBC-2016 provides ample of the opportunities for Company Secretaries in the form of various roles and responsibilities assigned and faith reposed by the legislature. We being the Company Secretary should contribute in active way in the development of the nation.

The task of IRP/RP is very much cumbersome and he/she act in the position as of Chief Executive of the Company in case of insolvency resolution process. Therefore, it is need of the hour for IRP/RP (being Company Secretaries) to groom themselves in Legal, Finance, Secretarial, liasioning and business aspects and always ready for handling the work of beyond their comfort zone.

The role of IPA, IBBI cannot be ignored starting from verifying the credentials and backgrounds of the prospective Insolvency professional and for them through various training/ workshop/ guidance notes etc. Since the law is new in India, however, matured in western countries like UK & US, the references can be taken from Insolvency Resolution plan made in these countries.

COMPANY SECRETARIES BENEVOLENT FUND

Members Enrolled in NIRC from 19/07/2017 to 22/09/2017

Sl. No.	Region	LM NO	Name	Membership No.	City
1.	NIRC	12897	Ms. Gurpreet Kaur Kohli	ACS 48663	Ghaziabad
2.	NIRC	12900	Mr. Abhay Kumar	ACS 50627	New Delhi
3.	NIRC	12901	Mr. Atul Kumar Singh	ACS 44842	New Delhi
4.	NIRC	12904	Sh. Rajiv Kumar Agarwal	ACS 11591	Noida
5.	NIRC	12908	Sh. Manoj Prasad Singh	FCS 4231	Noida
6.	NIRC	12909	Mr. Bibhu Prasad Das	ACS 52617	Delhi

LANDMARK JUDGMENT OF THE APEX COURT ANALYSING THE PROVISIONS OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

**CS Avnit Singh Aror, Senior Officer (Law), Corporate Law Department, Bharat Heavy Electricals Limited, Delhi;
E-mail: avnitsingharora@gmail.com**

The best guide and reference paper on any statute or provision of law, it is said is the judgment of the Supreme Court of India. The judgment of the Supreme Court, as we are aware lays down the law of the land and is binding under Article 141 of the Constitution of India.

The Hon'ble Supreme Court of India in the recent case titled, M/s Innoventive Industries Ltd. vs ICICI Bank Ltd. (Civil Appeal Nos. 8337 - 8338 of 2017) decided on 31.08.2017 by Justice R.F. Nariman and Justice Sanjay Kishan Kaul, had the occasion to analyse the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). We will analyse the judgment of the Supreme Court to understand the position of law on certain provisions of the IBC, 2016.

Factual matrix – The facts of the matter in a nutshell were that Innoventive Industries had defaulted in repayment of financial assistance extended by different banks. The banks, including ICICI Bank, in the year 2014, after considering a Corporate Debt Restructuring proposal with respect to the dues of Innoventive Industries entered into a Master Restructuring Agreement with Innoventive Industries. The said Agreement stipulated infusion of funds by the banks and certain obligations to be fulfilled by Innoventive Industries over a period of 2 years.

ICICI Bank subsequently preferred an application under the IBC before National Company Law Tribunal (NCLT) stating that Innoventive Industries is a defaulter under the IBC and therefore insolvency resolution process ought to be set in motion.

Innoventive Industries resisted the proceedings on two grounds, first that due to moratorium having been declared with respect to Innoventive Industries under the Maharashtra Relief Undertakings (Special Provisions Act), 1958, the proceedings under IBC would not lie and second that since ICICI Bank had failed to release the amounts under the MRA and therefore there was no question of default by Innoventive Industries. Both the NCLT and the NCLAT held that the insolvency proceedings are maintainable against Innoventive Industries.

Judgment of the Supreme Court – The Supreme Court while acknowledging that this was the first application moved under the IBC, goes on to state that a detailed judgment is being pronounced in this case so that all the Courts and Tribunals can take note of the paradigm shift in the law and the fact that entrenched managements are no longer allowed to continue in the management if they cannot pay their debts. The broad structure of the judgment can be analysed under the following heads:

a. **Background of the IBC** – The Apex Court has noticed the Statement of Objects and Reasons of the Code which state that IBC is meant to consolidate and amend the laws relating to reorganization 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 interest of all stakeholders including alteration in the priority of payment of government dues and to establish the IBC.

It has then been observed that one of the most important objective of the IBC is to bring the insolvency law in India under a single unified umbrella with the objective of speeding up of the insolvency process.

The judgment then goes on to notice important paragraphs contained in the Report titled Bankruptcy Law Reforms Committee of November 2015 to understand the thought process behind the incorporation of the IBC. The salient features as noticed by the Supreme Court are as follows:

- i. Time bound resolution.
- ii. Low loss in recovery.
- iii. Assessment of viability of the enterprise at an early stage.
- iv. Symmetrical exchange of information between creditors and debtors.
- v. Collective process respecting rights of all creditors equally.
- vi. Clarity on priority of debts in case of liquidation.

b. **Scheme of the IBC** – After noting the relevant sections of the IBC, the Supreme Court has gone forward and discussed the Scheme of the Code.

The Supreme Court says that when a default takes place i.e. a debt becomes due and is not paid, the insolvency process under the IBC begins. The said default should involve an amount of Rs. 1 lakh or more to trigger the provisions of the IBC. The process can be triggered by the Corporate Debtor itself or by a financial creditor or by an operational creditor. A financial creditor means a creditor who has a debt due being in the nature of debt which is disbursed against consideration for the time value of money (loans given by financial institutions). An operational creditor means a creditor who has a debt due being a claim in respect of provision of goods or services.

There is a distinction between how a financial creditor triggers the insolvency process and how an operational creditor does so. In case of a financial creditor, the creditor is required to approach the adjudicating authority (NCLT in case of corporate debtors) against the corporate debtor and the adjudicating authority is merely required to see the records or other evidence to satisfy itself that a default has occurred. It is irrelevant whether the debt is disputed or not, as long as the debt is due.

On the other hand, in the case of an operational creditor initiating the insolvency process, on the occurrence of a default is required to first deliver a demand notice of the unpaid debt to the operational debtor as provided in the IBC. The corporate debtor is

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required to bring to the notice of the operational creditor the existence of any dispute or the record of pendency of a suit or arbitration proceedings pending, prior to the receipt of the notice. In case there is a dispute pending, the insolvency process cannot be carried forward and is liable to lapse.

The rest of the procedure being common, the insolvency resolution process is required to be completed within a period of 180 days from the date of admission of the application, extendable by another 90 days subject to extension in case the committee of creditors (financial creditors) by a voting of 75% of voting shares so decides. The said time is provided to ensure that the corporate debtor gets a chance to revive before liquidation. Further, upon admission, a moratorium barring legal proceedings against the corporate debtor starts and a public announcement is made calling for claims from the creditors of the corporate debtor. The Interim Resolution Professional (IRP) is also appointed and the management of the corporate debtor now vests in the IRP. The IRP or later on the Resolution Professional is required to carry out the operations of the corporate debtors in line with the directions of the committee of creditors of the corporate debtor so constituted.

Any person who is interested in reviving the corporate debtor may submit a resolution plan to the resolution professional. The plan must contain provisions for repayment of debts, management of the affairs of the corporate debtor after the plan approval and implementation of the said plan. The said plan is then required to be approved by the committee of creditors by a voting share of more than 75% and by the adjudicating authority. Once approved, the resolution plan becomes binding on all the stakeholders of the corporate debtor.

The scheme of the Code, therefore, is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that the corporate body is able to pay back its debts and get back on its feet. The aforesaid has to be done within a period of 6 months with a maximum extension of another 90 days or else the liquidation process against the corporate debtor would begin.

Conclusion of the Supreme Court on the facts of the case - The Supreme Court while answering the first question as to whether the provisions of the IBC would prevail over the provisions of the Maharashtra Relief Undertakings (Special Provisions Act), 1958, has referred to Article 254 of the Constitution of India which talks about the effect of inconsistency between law made by the Parliament and laws made by the State Legislatures.

The Supreme Court has also referred to various judicial precedents, case laws, various Sections of the Maharashtra Relief Undertakings (Special Provisions Act), 1958 and Section 238 of the IBC, which states that the provisions of the Code shall have effect, notwithstanding anything inconsistent therein contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

After analysing the foregoing, the Supreme Court has concluded that the provisions of the IBC shall prevail over the Maharashtra Relief Undertakings (Special Provisions Act), 1958 and the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.

As regards, the second question regarding non-infusion of funds by ICICI Bank as per the MRA, the Apex Court has concluded that, as provisions of the MRA, the obligation of the corporate debtor was unconditional and did not depend on the infusion of funds by the bank.

The Apex Court therefore upheld the admission by NCLT of the insolvency proceedings against Innoventive Industries after thoroughly considering the contentions raised and the Scheme/provisions of the Insolvency and Bankruptcy Code, 2016

This judgment being the first detailed judgment having been pronounced on the provisions of the IBC by the Supreme Court would be the guiding force for all corporate practitioners and tribunals till the time further jurisprudence is settled on the subject.

INSOLVENCY AND BANKRUPTCY CODE 2016 (IBC): - FREEDOM TO EXIT: PRACTICAL ISSUES IN PREPARATION OF INFORMATION MEMORANDUM AND RESOLUTION PLAN.

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The presence of ballooning NPAs in the balance sheets of India's Banks has been for long a bane of India's financial planners. This figure could be in the range of Rs. 8 lacs to Rs10 lacs crores. RBI has been pushing the case for expeditious resolution of this long standing problem. This besides India's low ranking in the Global Insolvency ratings paved the way for rapid introduction of IBC, which some argue is a reform at par with GST in its significance. A major highlight of IBC is preparation & approval of Insolvency Plan. IBC stands on the edifice of time bound resolution process. Focus of this Code is in revival rather than liquidation of corporates. The Code envisages that the Creditors having 75% voting power approve the resolution plan, which impacts the fate of the company undergoing resolution process.

Section 29 of the IBC governs the preparation of Information Memorandum (IM). The corresponding regulation in The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 2016, is Regulation 36. This provision governs the preparation of IM. Accordingly, the IRP/RP is required to submit IM before the 1st meeting of CoC (Committee of Creditors), which must be convened within seven days of its constitution. The IM should contain the following: -

- a) Assets and liabilities, as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category;
- b) The latest annual financial statements;
- c) Audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
- d) A list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
- e) Particulars of a debts due from or to the corporate debtor with respect to related parties;
- f) Details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- g) The name and addresses of the members or partners holding at least one percent stake in the corporate debtor along with the size of stake;

- h) Details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- I) The number of workers and employees and liabilities of the corporate debtor towards them;

Collation of complete & accurate information pertaining to the corporate debtor's assets & affairs for the purpose of preparing an authentic IM is one of the critical responsibility of RP. Indeed, IM is the basis on which RP would invite and collect revival plans / proposals for solutions to keep the corporate debtor going i.e. the resolution proposals.

The Code permits full force of market play in this regard. Besides the Creditors & the Corporate itself anyone else interested from the overall financial market is permitted to submit resolution plans. Indeed the BRLC report points out that various market participants such as ARCs, FIs, strategic investors can take part & submit resolution plan.

Further, Regulation 36 also mandates for the following matters (at least) to be completed within 14 days of the first COC Meeting :-

- a) The liquidation value;
- b) The liquidation value due to operational creditors;
- c) Other information, which the resolution professional deems relevant to the committee

The appointment of Registered Valuer is governed by Chapter XVII, Section 247 of the Companies Act, 2013. The said section stipulates valuation by a registered valuer. Norms for appointment of such Valuers are currently being finalized by the Regulatory Ministry (MCA). The IM forms the basis for preparation of Resolution Plan. Section 30 of the IBC states that a Resolution Applicant may submit a Resolution plan to the RP based on the IM prepared. The Code envisages that such person who proposes the Resolution plan may be anyone interested viz the Promoters, FC or anyone else interested. As such the Code stimulates limitless possibility in the approval of Resolution Plan and its preparation.

In actual practice however, RP, faces innumerable challenges in the preparation of Resolution plan, in cases where resolution application have been filed under Sections 7 or 9. Only in cases where the application is initiated under Section 10 by the Corporate Debtor (i.e. the Stressed Company itself) we see that the IM is prepared in the letter and spirit in which is intended. The

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formulation of Resolution plan depends upon the timeliness, quality and sufficiency of information contained in the IM. The ability to IRP/RP to prepare a detailed IM is in turn dependent upon availability of and cooperation of the management of the stressed asset. They alone are privy to the financial data pertaining to the operations of the company. Although, IBC does contain empowering provisions, whereby the RP may approach adjudicating authority (NCLT) in cases where the management is non-cooperative. In actual practice the RP would hesitate in precipitating such action. Naturally, filing of a formal complaint would reduce the time available for the preparation of IM and may affect the quality, sufficiency of information provided and restructuring process. The skill of RP is fully put to use in making an effective IM as envisaged under the IBC.

The COC requires the RP to produce an effective IM to facilitate efficient due diligence by the Resolution Applicants. Timely cooperation of such IM is of essence. All stake holders insist on having an effective IM.

The computation of liquidation value is attracting a lot of attention of the Valuation Experts. In actual practice, the valuation of fixed assets of a corporate is done by Chartered Engineer (since they alone have been required skill set for the same), whereas the valuation of current asset is being done by Chartered Accountant as historically their valuation have been accepted by the Bankers.

Another contentious issues have been the computation of liquidation value. Indeed, most professionals have been providing fair market value and replacement value as liquidation value. The Bankers and Resolution Applicants treat this differently. Since the IBC is evolving, Industry expects these guidelines to mature with time. Currently, the Valuer fraternity is awaiting the formal notification of these guidelines.

RBI has reposed tremendous confidence on the IBC for by starting from the top. The list of twelve top value insolvency cases aggregate to a staggering Rupees two lakhs fifty thousand

Crores. Naturally, these large companies have multiple plants spread over vast landscapes. The computation of liquidation value of such assets entails visits and physical verification etc. In practice the valuer prefers to appoint local professionals to do the necessary spade work. Individual computations are then aggregated by the appointed valuer. An essential pre-requisite of such process is understanding the accounting norms and consolidation thereof.

There have been instances where the employers and management lose interest in the process fearing that the company is on the verge of closing down. There have also been cases when the Management has turned hostile to the RP. This in turn leads to inconsistent flow of information which impacts the basis for drafting of the IM which naturally adversely impacts preparation of resolution plan. This is a predictable chain of events. Without timely information and consequent delays the strict timelines of the Code became unattainable.

Without the support of employees and Management of the company the RP is left with no option, but to draw his best estimate on the value of the assets. Naturally, this pushes away any possibility of a good resolution plan, that may otherwise have been possible. This leads the stressed company with a worst case scenario of liquidation a "lose- lose" proposition for all stake holders. Although the IBC provides recourse to the NCLT with a plea that management is not cooperating, this rarely happens in actual practice.

IBC provides for 180+90= 270 days' maximum stipulated time for the approval of Resolution process. The code has no provision for any extension of this time limit. The IBC came into practice in December, 2016. As such currently, approximately nine months have passed. All the stake holders are hoping that with experience this law will evolve to enable the intended benefits for which the IBC was meant. Hence such a step will enable implementation of the Insolvency and Bankruptcy reforms in letter and spirit.

CAREER AWARENESS PROGRAMS

NIRC has organised 20 Career Awareness Programs & career fairs during the month of August, 2017 in various schools & colleges located in Delhi and surrounding areas. The students were apprised about the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the Company Secretaryship Course both in employment and in practice. Pamphlets of Career in Company Secretaryship Course were distributed to the students.

NCLAT UPHOLDS NCLT'S DECISION ON INTERPRETATION OF "MORATORIUM" UNDER SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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The Insolvency & Bankruptcy Code, 2016 (IBC) is a comprehensive legislation to deal with insolvency and bankruptcy regime in a comprehensive manner taking into consideration the interests of all the stakeholders. Broadly, the newly introduced IBC moves away from the "debtor-in-control" regime and towards a "creditor-in-control" regime and stresses that within a time-bound fashion, with the help of specially qualified Insolvency Resolution Professionals (IRP), a Corporate Insolvency Resolution Process (CIRP) is devised for the "corporate debtor" (CD), failing which the assets of the CD are liquidated and funds raised thereby are distributed in the manner provided in Section 53 of the IBC.

It is pertinent to note that provisions of the IBC enables initiation of 3 types of Corporate Insolvency Resolution Process (CIRP), namely, under section 7 by "financial creditor" ("FC") singly or jointly; and under section 9 by a "operational creditor" ("OC") and under section 10 by a "corporate debtor" ("CD"). As per the IBC, the National Company Law Tribunal ("NCLT") is the Adjudicating Authority ("AA") which has to admit or reject an application filed by either the FC, OC or CD, as the case may be, and appeals from its decision lie with the National Company Law Appellate Tribunal ("NCLAT").

As soon as an application is admitted under any of the above three categories, apart from issuing directions for appointment of the nominated corporate Insolvency Professional ("IP"), the AA also passes order, inter-alia, declaring "moratorium" under section 14 of the IBC. Section 14 of the IBC provides, inter-alia, that from the date of admission of insolvency petition against a "corporate debtor", moratorium is declared prohibiting, inter-alia, all of the following, namely:—

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor, including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- © Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Further, sub-section (4) of Section 14 of the IBC provides that:

"The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process; provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

The focus of this article is a recent judgement/order passed on 10th July, 2017, passed by AA (i.e. NCLT, Mumbai Bench), in the case of Alpha & Omega Diagnostics (India) Limited –vs- Asset Reconstruction Company of India Limited, (in short "Alpha & Omega" case) on an application moved by the applicant "corporate debtor" under section 10 of the IBC for admission of its case and for initiation of CIRP. The brief facts leading to the filing of the said application u/s 10 of IBC by the corporate debtor M/s Alpha & Omega Diagnostics (India) Limited, is that it obtained certain loans from the Oriental Bank of Commerce (who later assigned its debt to Asset Reconstruction Company of India Limited) and that the said loan facility was granted against the mortgage of Personal Immovable Properties of the Directors of the borrower company and equitable mortgage deeds were created thereon in favour of the lender bank. The particulars of the security held by the lender bank was (a) a flat in Mumbai valued at Rs.7.5 crores; (b) another property at Mumbai valued at Rs.5 crores; and other flats in Nasik, and Chennai valued in total to Rs.1 crore. The directors of the borrower company/corporate debtor also created "negative lien" on their flat at Delhi.

Upon failure of the corporate debtor to pay the outstanding debt due to the lender Bank, the said Bank initiated proceedings before the Debt Recovery Tribunal (DRT) Mumbai under the SARFAESI Act, 2002, and issued notice u/s 13(2) of the SARFAESI Act, 2002. In a series of judgements, the last one is dated 8th May 2017, the DRT passed orders wherein it was recorded that the corporate debtor had agreed to make payment in part and the balance amount of Rs.2 crores was to be paid within six weeks and the case was listed for hearing before DRT on 4th April 2017. The applicant borrower prayed for stay of the proposed action by the lender/respondent to take physical possession of the secured asset, which was a residential flat belonging to the borrower/guarantor. To show its bona-fide, the client/borrower/guarantor who was present at the DRT during hearing on 8th May 2017, agreed to deposit Rs.50 lacs within one week and another Rs.50lacs within one week thereafter and Rs.2 crores within six weeks. In view of the fact that since it was a

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residential flat and since the borrower/guarantor agreed to deposit the aforesaid sums to the lender/respondent, a temporary stay was granted and the DRT order made it clear that if the applicants fail to comply with any of the above conditions, the stay granted shall automatically stand vacated. The case was posted for further hearing on 4th July 2017.

Thereafter, the corporate debtor/borrower filed an application on 19th June 2017, u/s 10 of the IBC before the NCLT, Mumbai Bench, and in the accompanying prescribed form, the corporate debtor acknowledged the outstanding amount at Rs.4,43,70,739/-. At the hearing of its application u/s 10 of IBC, the learned counsel on behalf of the corporate debtor stressed that since the applicant had complied with all the legal formalities, its case was to be "admitted" by NCLT/AA and that provisions of section 14 of IBC on "moratorium" must come into operation, which in other words meant that the proceedings initiated by the lender at DRT will be stayed.

After hearing detailed arguments of both the sides, the NCLT/AA passed order admitting the application u/s 10 of the IBC filed by the corporate debtor. The NCLT/AA, on a careful examination noticed that the assets of the borrower/corporate debtor as reflected in the Balance Sheet did not contain the impugned immovable property subjected to mortgage with the lender Bank. However, NCLT/AA made it clear in its order that nevertheless the decision on "admission" as pronounced by it was subject to a qualification. The NCLT further noted that the IBC has prescribed certain limitations which are inbuilt and must not be overlooked. The "moratorium" u/s 14 IBC is indeed an effective tool, sometimes being used by the CD to thwart or frustrate the recovery proceedings, as happened in the instant case. The NCLT/AA further noted that the learned Chief Metropolitan Magistrate had appointed a Court Commissioner to take over the possession of the flats. The admitted position was that the flats in question were not under the ownership of the corporate debtor. Even in the Balance Sheet of the corporate debtor, these flats were not reflected and that those were the personal properties of the Promoters and given as "security" to the Bank.

The NCLT/AA noted that the word "its" in section 14 (1)(c) of IBC, on a plain reading, indicates that it refers to the properties owned by the corporate debtor and that moratorium shall be declared prohibiting any action to recover or enforce any security interest created by the corporate debtor in respect of "its" property and that the property not owned by the corporate debtor does not fall within the ambit of moratorium. The NCLT therefore in its order dated 10th July 2017, held that the moratorium had no application on the properties beyond the ownership of the corporate debtor.

The corporate debtor preferred an appeal to the NCLAT against the aforesaid decision of the NCLT, and the NCLAT vide its judgement dated 31st July 2017, upheld the impugned decision of the NCLT and concurred with para 8 of the impugned judgement, which is as under:-

"The outcome of this discussion is that the Moratorium shall prohibit the action against the properties reflected in the Balance

Sheet of the corporate debtor. The Moratorium has no application on the properties beyond the ownership of the corporate debtor. For the sake of completeness, it is worth to refer that the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (the SARFAESI Act) may be having different criteria for enforcement of recovery of outstanding debt, which is not the subject matter of this Bench. Before I part with, it is necessary to clarify my humble view that the SARFAESI Act may come within the ambit of Moratorium, if an action is to foreclose or recover or to create any interest in respect of the property belonged to or owned by a corporate debtor, otherwise not."

Conclusion

The aforementioned judgement of the NCLT, duly upheld by the NCLAT on appeal, clearly demonstrates that the corporate debtor filed the application u/s 10 of IBC at the eleventh hour perhaps to somehow circumvent and thwart the process of recovery already initiated by the lender Bank/Financial Creditor under the SARFAESI Act, 2002, by taking possession of the security offered by the promotor/guarantors. Their intent was questionable and was to stifle the proceedings under the SARFAESI Act, 2002. The above decision of the NCLT is a classic example of how a corporate debtor attempts to scuttle the genuine demands of the financial creditor/banks for recovery of their dues from the corporate debtor, even after giving sufficient time and opportunities to repay the debt due and how mischievously and maliciously the corporate debtor uses the provisions of the IBC to thwart such attempts of the financial creditor/banks. Though in another case before the NCLT Hyderabad Bench, on a similar application, the NCLT/AA had imposed a cost of Rs.10 Lakhs on the corporate debtor for filing a frivolous application under Section 10 of the IBC, but in the case under review, the applicant corporate debtor was spared from any such cost. The professionals dealing with insolvency matters of corporate sector are well advised to note that automatic "moratorium" u/s 14 of IBC cannot be claimed as a matter of right to thwart the genuine legal steps taken by the lender/banks to recover its debt due from the corporate debtors.

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To get updated information, Members & Students are requested to visit our following website regularly.

www.icsi.edu/niro

VOLUNTARY WINDING UP PROCESS UNDER INSOLVENCY AND BANKRUPTCY CODE 2016 - SOFT OPPORTUNITY FOR INSOLVENCY PROFESSIONAL

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The Ministry of Corporate Affairs is in news regularly. Striking off of the 2.1 Lakhs Companies by ROC who have not commenced business within one year of their incorporation or who have not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under section 455 has set alarm bell in corporate world.

There is another set of companies. These Companies have asset base but are not doing any business. Many promoters of such companies are not interested to continue with their corporate entities. These companies are not eligible for simplified scheme for the simple reason that assets and liabilities are not nil. The option available for such companies is - Voluntary Winding Up in Insolvency & Bankruptcy Code, 2016 (IBC, 2016). Insolvency and Bankruptcy Board of India (IBBI) came out with IBBI (Voluntary Liquidation Process) Regulations, 2017 on 31st March, 2017 vide Notification No. IBBI/2016-17/GN/REG010 and these regulations came into force with effect from 1st April, 2017.

Voluntary Winding Up (VWU) is not cumbersome but procedural lapses shall not happen. As per the information available on official website of IBBI, 28 voluntary winding up have been commenced. Many more are cases at the initiation stage. Officially VWU commences with onset of Board meeting in which such resolution is passed. The simple change of designation from 'Official Liquidator to Company Liquidator' has set the bell ringing and now Qualified Insolvency Professionals are eligible to become 'Company Liquidator'. This is exciting professional opportunity and relatively soft vis-a-vis Insolvency Process under IBC. The whole process can be sub-divided into three stages:

Laws Governing Voluntary Winding Up:

- * Sec 59 (Chapter V, Voluntary Liquidation of Corporate Persons) of Insolvency and Bankruptcy Code, 2016
- * Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017
- * The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

STAGE NO. 1: PRE-COMMENCEMENT WORK

1. Understanding Eligibility Norms

- a. The professionals need to understand the varying financial status of any company. Wherever the promoters are not willing to continue the company, there may be any of the situations:
 - i. Assets and Liabilities are near to nil – simplified exit scheme
 - ii. Liabilities are more than realizable value of assets – Insolvency process
 - iii. Assets (realizable value) are more than liabilities payable to outside parties – Voluntary Winding UP process.
- b. One need to remember that era of official liquidator is more or less over. Company Liquidator is new term and only Insolvency Professional is eligible to be appointed as Company Liquidator.
- c. Remuneration of Company Liquidator and liquidation costs are to be paid the Company under VWU.
- d. The process is rigorous and time consuming and onus of following the process in letter and spirit has been assigned to Insolvency Professional
- e. Finally winding up is approved by adjudicating authority, presently NCLT.

2. Identifying Willing Promoters and Eligible Corporates

The VWU eligibility criteria is simple and straight forward. Wherever assets are more and liabilities are less in terms of value and promoters are not willing to continue the company, there liquidation through VWU process is possible. In other words, if liabilities are more than realizable value of assets or assets and liabilities are nil, there VWU is not possible.

3. Sensitizing Promoters about Cost Involved

VWU involves number of costs. There cannot be all inclusive cost because each case is unique and the process of VWU may have certain additional costs which may otherwise be unthought-of of. Main costs involved are:

- * Cost of publication;
- * Cost of valuation;
- * Fees payable to other professionals;

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- * Fees payable to concerned Registrar;
- * Costs of conducting meetings;
- * Printing and publishing costs of various reports like Preliminary Report, Annual Status Report; Final Report, etc.
- * Communication costs for sending notices to shareholders, creditors, IBBI, etc.
- * Lawyer's fees for NCLT appearance
- * Costs involved in preparation and completion of prior period compliances and records;
- * Costs involved in making good of prior period defaults, if any.
- * Costs for maintaining various registers and books of accounts during liquidation process
- * Costs involved for keeping liquidation records intact for 8 years with IU;
- * Fees payable to other professionals engaged to complete the assignment

4. Submission of Consent and Proposal for Remuneration

Qualified Insolvency Professional (QIP) is eligible to be appointed Company Liquidator in case of VWU. On being specifically asked, QIP shall submit his consent. While submitting consent and formal proposal, it is advisable to mention the remuneration and activities which are beyond the scope of work.

5. Agenda for Board meeting (Recommending VWU)

Agenda for Board Meeting shall be meticulously prepared and shall ideally contain the following :

- * Agenda for resolution recommending for Voluntary Winding Up;
- * Agenda for convening of General Meeting
- * Agenda for recommending appointment of Qualified Insolvency Professional;
- * Approval of Valuation Report of assets of the Company;
- * Financial Statement stating changes till date since the date of last audited financial statements.

Meeting the requirements of the relevant Act, the Agenda shall be sent well in time to all the members of governing board.

6. Convening of Board Meeting and Other Pre-VWU Preparations

Last set of Pre-VWU steps are:

- * Convening Board meeting for recommendation of VWU; recommendation for appointment of Liquidator and Valuer; finalizing date of Shareholder's meeting;
- * A declaration by majority of Board members regarding sufficiency of assets to pay off all debts and no intent

to defraud any other person;

- * This declaration need to be accompanied by (i) Audited financial statements of previous two years; (ii) record of business operations of previous two years; (iii) statement of material changes since last audited financial statements; (iv) Valuation report of the assets;
- * Individually sworn affidavits stating that the full enquiry in the affairs of the Corporate Person has been made and that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation; and that the corporate person is not being liquidated to defraud any person.

STAGE NO. 2 : IMPORTANT MILESTONES DURING VWU PROCESS

The voluntary winding up provisions in Insolvency & Bankruptcy Code, 2016 completely replaces the provisions of Voluntary winding up under Companies Act, 2013 i.e. ("Chapter XX, Part II.—Voluntary winding up" Sec 304 to 323).

1) Member's Approval

The member's resolution for VWU and appointment of Insolvency Professional as Liquidator is required to be passed with special majority within four weeks of the signing of declaration by majority of governing body members. The appointment resolution shall also mention terms and conditions of the appointment of the liquidator, including the remuneration* payable to him (Section 59 (3)(c) of the IBC, 2016 & Regulation 3 (1)(c) of the IBBI (Voluntary Liquidation Process) Regulations, 2017).

2) Creditors Approval :

Creditors representing two thirds in value of the debt also need to approve same resolution within 7 days of member's approval.

3) Public Announcement :

Within five days of his appointment, the liquidator shall make a public announcement. Prescribed format for public announcement is Form A of Schedule I. (Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017). The announcement shall be published in one English and one regional language newspaper and is also required to be displayed on website of the company, if any and on the website of IBBI.

4) Intimation to Registrar and IBBI

Concerned Registrar and Insolvency and Bankruptcy Board of India (IBBI) need to be informed within seven

days of passing of the resolution by members (Section 59 (4) of the IBC, 2016 & Regulation 2(3) of the IBBI (Voluntary Liquidation Process) Regulations, 2017).

5) Intimation to Other Authorities

The Liquidator needs to inform all other authorities (Sectoral or otherwise), Banks, Statutory Auditor's (including Secretarial, Tax and Cost Auditors, if any) and other professionals engaged with the Corporate Person to get the assistance and true picture of the financial affairs of the Corporate Person.

6) Management & Control:

Then the liquidator needs to take control on all the assets, property, effects, books, contracts, documents and actionable claims. The liquidator has to identify the suits, prosecution & other legal proceedings of Corporate Person in order to institute or defend as the situation demands. After taking control liquidator has to commence the investigation into the Books of Accounts of the Company and maintain the Books of accounts as on date if they are incomplete. Liquidator at the same time has to identify the prospective stakeholders. Liquidator while handling the winding up process can engage professionals (unrelated to liquidator as well as to the Company). (Regulation (11) of IBBI (Voluntary Liquidation Process) Regulations, 2017).

7) Opening of Separate Bank Account:

A separate Bank Account needs to be opened by the Liquidator for maintaining sale proceeds. [Regulation 34 (1) of the IBBI (Voluntary Liquidation Process) Regulations, 2017].

8) Claims Submission and Substantiation

Within 30 days from Liquidation commencement date.

The liquidator can access any information from the any information systems for this purpose. (Sec 35 of the IBC, 2016). The Liquidator has also to provide any financial information related to corporate Person to creditors who have requested information within a period of Seven days from such request. (Sec 37 (2) (3) of the IBC, 2016). Cost of substantiation of claims is required to be borne by the Claimant. The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate person within seven days of such admission or rejection of claims. After getting informed about rejection a creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision. Utmost precaution shall be taken during substantiation of claims as the creditors are allowed to approach AA against the decision of Liquidator.

9) Preliminary Report – Preparation and Submission

The liquidator shall prepare and submit a Preliminary Report to the company within forty five days from the liquidation commencement date (Regulation (9) of IBBI (Voluntary Liquidation Process) Regulations, 2017). The preliminary report includes:

- * the capital structure of the corporate person;
- * the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person whether or not the books of the corporate person are reliable;
- * Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof;
- * the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

10) Quarterly Progress Report

The liquidator shall prepare and submit progress reports of Liquidation within fifteen days after the end of every quarter during which he acts as liquidator. A Progress Report shall enclose an account maintained by the liquidator showing his receipts and payments during the quarter; and the cumulative amount of his receipts and payments since the liquidation commencement date. (Regulation 15 of IBBI (Liquidation Process) Regulations, 2016). Liquidator is also required to prepare an 'Asset Sale Report' and attach the same to Quarterly Progress Reports containing all details in respect of that sale.

11) List of Stakeholders and Its Updation

Liquidator need to prepare and finalize list of stakeholders within 45 days from the date of claim submission. The list may be updated / modified from time to time.

12) Assets Realization

Liquidator may dispose assets at opportune time in the manner and mode approved by the Company. This work need to be done in time bound manner and all the assets need to be disposed off.

13) Distribution of Proceeds

All monies received from asset realization need to be deposited into 'in voluntary liquidation Bank account'. Money is required to be distributed within 6 months from date of last realization. Asset may also be given to specific claimant at an agreed price. The distribution shall be done on the basis of Payment Waterfall Mechanism. Priority of

order of payments has been defined in Sec 53 of the Code and shall be complied with. In the order the insolvency resolution process costs and the liquidation costs are to be deducted prior to distribution of proceeds to all stakeholders.

14) Annual Status Report and Audited Accounts

Ideally, VWU process shall be completed within one year from the Liquidation Commencement Date. Annual Status Report and Audited Accounts of Liquidation shall be prepared when VWU process stretched beyond one year. This report needs to be placed in the meeting of members (contributories). [Regulation 37(2)(b) and (3)]

15) Meeting of Contributories

This meeting is required to be held within 15 days from the date of completion of 12 months period from Liquidation Commencement Date. [Regulation 37(2)(a)]

16) Final Report

The Liquidator after completing wound up of affairs of the Corporate person by liquidation of assets and distribution of the proceeds to the stakeholders and disposing off the all the liabilities shall prepare a final report along with the Audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date. A statement also has to be made in the report that:

- * the assets of the corporate person has been disposed of;
- * the debt of the corporate person has been discharged to the satisfaction of the creditors;
- * no litigation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation

A sale statement in respect of all assets containing the realized value, cost of realization, the manner and mode of sale, an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets under section 59(3)(b)(ii) or Regulation 3(1)(b)(ii), as the case may be; the person to whom the sale is made; and any other relevant details of the sale.

17) Submission of Final Report

The 'Final Report' prepared by the liquidator is required to be submitted to the Registrar & IBBI.

18) Application to Adjudicating Authority

The liquidator shall make an application to the Adjudicating Authority (NCLT) for the dissolution of such corporate person and also submit the Final Report to the Adjudicating Authority (NCLT) under section 59(7) of the

Code.

The Adjudicating Authority (NCLT) shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

19) Filing of Dissolution Order

A copy of an order under sub-section (8) shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.

With this step, the Voluntary Winding Up Process concludes formally.

STAGE NO. 3: POST VWU WORK

1. Records Preservation:

Onus has been placed on VWU to keep the VWU records referred to in Regulation 8 and 10 intact for the period of eight years after completion of dissolution. The records can be kept either by QIP himself or with Information Utilities (IU). It is recommended that QIP shall keep the records with IU. Records need to be preserved in physical as well as in electronic form.

2. Post VWU Process Litigations :

Probability of litigation by any of the creditors or even the promoters or any other stakeholders in future (after completion of dissolution process) cannot be denied. At that QIP may be asked to appear. QIP shall keep this in mind accepting any assignment. At that time, he has to defend himself at his own cost.

3. Rest after Completion of Each Assignment

It is advisable that Insolvency Professional shall not take more than two assignments simultaneously and shall take sufficient rest after completion of each assignment in order to maintain good health.

CONCLUDING REMARKS :

There is a saying that "The risk also comes with opportunity". The opportunity to handle the Voluntary Winding Up by the Qualified Insolvency Professional on Standalone basis as the QIP have all the powers of control and management of corporate person and of liquidation of all assets without any intervention of the Adjudicating Authority is huge. The adjudicating authority will only show up at the time of submission of application for dissolution – and this is required to be submitted at the end of process of VWU. The QIP needs to take every step cautiously, confidently, complying with all requirements of the law and also in time bound manner.

FUNCTIONING OF THE NCLT UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 – A CRITICAL APPRAISAL

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The alignment of legal machinery regulating debt defaults with the global standards was effectuated only very recently with the introduction of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"). The Code is a uniform, consolidated, comprehensive insolvency legislation applicable to companies, partnerships and individuals, which inter-alia allows creditors to evaluate the feasibility of a debtor and subsequently strategize a plan for revival or speedy liquidation.

As stated above, the Code specifies the mechanism to resolve debt disputes by providing the procedure applicable to creditors to initiate corporate insolvency resolution process under Chapter II therein. Although the objective of the Code is to provide reorganization and resolution of insolvency in a time bound manner, which it seeks to achieve by way of compliance with the procedure laid down therein, there exist discrepancies in the actual compliance to the provisions of the Code. The preamble to the Code specifies the establishment of the Insolvency and Bankruptcy Board of India (hereinafter referred to as the "Board") as a regulator, which is empowered to carry out pertinent functions provided for under Section 196 of the Code. Further, the Code in relation to insolvency resolution and liquidation for corporate persons provides for the National Company Law Tribunal (hereinafter referred to as the "NCLT") as the adjudicating authority with the appellate body being the National Company Law Appellate Tribunal (hereinafter referred to as the "NCLAT") under Section 60 and Section 61 of the Code, respectively. The NCLT has jurisdiction to adjudicate on applications and/or claims made against corporate debtors by either the financial creditors or operational creditors, to entertain questions pertaining to insolvency resolution or liquidation proceedings and so on.¹

NCLT – An Indispensable Adjudicator :

As the famous saying goes, "With great power comes great responsibility", the NCLT being conferred with adjudicating powers which play an indispensable role in determining the fate of creditors and debtors in varying circumstances and varying capacities, it's arduous responsibilities cannot be discounted. The determination of admission or rejection of an application for Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") of insolvency by NCLT at the initial stage itself has the ability to grant creditors an opportunity to reclaim their money from debtors or prevent debtors from being wrongly proceeded against, respectively. The adjudication by NCLT admitting or rejecting an application will bear repercussions, for instance on an application for insolvency being admitted, a moratorium is declared, the Insolvency Resolution Professional (hereinafter referred to as the "IRP") is appointed and the management of the affairs of the corporate debtor is transferred to such IRP from the Board of Directors of such debtor. Therefore, the pertinent position held by NCLT is undisputed and unparalleled but

unfortunately the adjudication is flawed on multiple fronts thereby jeopardizing the interests of the debtors or creditors, as the case may be.

NCLT – Defaults and Decisions :

The conceptually defective decisions taken by the NCLT are evident through the available judicial orders passed by the NCLT, either admitting or rejecting the application for insolvency, which have been reversed by the NCLAT on appeal by aggrieved parties. The grounds on which such orders have been reversed by the NCLAT are for lack of compliance with the provisions of the Code, overlooked or differently interpreted by the NCLT, thereby prejudicing the interests of the parties.

(I) Admitted CIRP application rejected by NCLAT:

There have been a number of instances wherein the NCLT has vide an order admitted an application for CIRP and subsequently issued directions but on an appeal being preferred before NCLAT by the corporate debtor against the admission of CIRP application, the said order has been reversed by NCLAT.

On an analysis of the appeals made before NCLAT against NCLT orders admitting applications for CIRP, it transpires that such orders bear taints of inconsistency with the Code and relevant rules and regulations thereby making the said order illegal or ultravires the applicable law. The most common grounds for such appeals where the NCLT has failed to comply with the provisions of the Code are:

- * allowing applications where there has been an absence of mandatory service of notice to the corporate debtor u/s 8 of the Code as well as relevant rules thereby violation of the principles of natural justice;
- * allowing applications that are incomplete as per the statutory requirements;
- * admitting applications during the existence of dispute and pending disciplinary proceedings between the parties in question;
- * incorrect interpretation of the definition of financial and operational creditors filing CIRP applications thereby empowering ineligible creditors to institute CIRP.

(a) Violation of Natural Justice:

Service of notice provided for under the Code by the operational creditor itself is a requirement specifically provided for under the Code as a first step towards insolvency resolution. Admitting CIRP applications in the absence of service of such notice is a flaw of the NCLT and when appealed before NCLAT, the NCLT order of admission of the application stands rejected as in the case

¹ Section 60(5) of the Insolvency and Bankruptcy Code, 2016

* The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

of Jammu Paper Pvt. Ltd. v. Shiv Pooja Traders.² There also appears default committed on behalf of NCLT while adjudicating on who the giver of the notice is. In the case of S3 Electrical & Electronics Private Limited v. Brian Lau³, the application of CIRP was admitted ignoring the fact that the same was served by the lawyer of the creditor and not the creditor itself (as mandated by the Code), and later reversed by NCLAT.

(b) **Incomplete Applications:**

In a number of NCLT orders admitting CIRP applications, aggrieved parties approached the appellate body with a prayer to dismiss the respective NCLT order in light of the application allowed by such order being incomplete from the perspective of statutory requirements. In cases like that of Ganesh Sponge Pvt. Ltd. v. Aryan Mining & Trading Corporation Pvt. Ltd.⁴ the NCLAT reversed the order of the NCLT admitting the CIRP application due to the latter being incomplete for non-compliance with Section 8 of the Code mandating delivery of notice by the creditor in question only, and not the lawyer of such creditor.

(c) **Pendency of Disputes:**

In a number of cases before the NCLAT where the ground of appeal had been the existence of dispute or ongoing judicial proceedings, NCLT failed to adjudicate on the existence of the pending disputes and proceeded to admit the CIRP applications despite the latter being ultra vires the law. In a majority of the appellate cases, NCLAT relied on the interpretation of disputes and pending proceedings provided in the case of Kirusa Software Pvt. Ltd. v. Mobilox Innovations Pvt. Ltd.⁵ and concluded the existence of dispute and consequently overturned the NCLT order of admission of CIRP application.⁶

(d) **Misinterpretation of the definition of creditors:**

Whether it is with regard to financial creditors or operational creditors, the definition of both have been wrongly interpreted on a number of occasions by the NCLT thereby allowing CIRP applications to be initiated by individuals or companies in the capacity of such creditors as claimed by them but not actually falling within such eligibility. The locus of the NCLT for admitting applications tainted by such impropriety has been appealed against before NCLAT and the order of such admission has been reversed.⁷

The above mentioned grounds of appeal stipulate the loopholes in the adjudication of NCLT which have negative implications on a corporate debtor leading to admission of CIRP application followed by appointment of IRP, declaration of

moratorium, freezing of account of corporate debtor, management of affairs of the corporate debtor by the IRP instead of its board of directors as provided for under the Code.

Therefore, a decision by the NCLT to initiate insolvency proceedings would stall the business of the corporate debtor and transfer the management of its affairs from the board of directors. Subsequently, if the NCLT order is challenged and the NCLAT reverses such order for reasons inter alia as mentioned above, all statutory implications which were made applicable to such corporate debtor get reversed and the normalcy is restored. This gives rise to a chaotic situation wherein the management of the debtor has to be returned to its board of directors, the declared moratorium, freezing of accounts, actions taken by the IRP have to be reversed and so on. This results in economic and strategic hardship to be borne by the creditors as well as the debtor.

(ii) **NCLAT admits CIRP application rejected by NCLT :**

There have been instances of a rejected CIRP application being admitted in the appellate stage due to discrepancies not examined by NCLT, initially. In the case of M/s. Annapurna Infrastructure Pvt. Ltd. & Anr. v. M/s. SORIL Infra Resources Ltd.,⁸ the NCLT rejected the CIRP application on the ground of pendency of a dispute but the said order was rejected by the NCLAT which admitted the application on the basis of the fact that an arbitral award marks the end of an arbitration proceeding and not its pendency, which was otherwise held by the NCLT. Again, in Nikhil Mehta & Sons (HUF) & Ors. v. AMR Infrastructure Ltd.,⁹ the pendency of winding up petition before the Punjab and Haryana High Court was the reason for reversing the NCLT order and consequently admitting the CIRP application. Though, the repercussions of such reversal is that the IRP shall have to be appointed, moratorium shall have to be declared and board of directors will be suspended but the same shall not cause chaos and confusion as existent in the opposite scenario.

Conclusion:

In light of the above, it is evident that on numerous occasions the NCLT has defaulted in playing its role as an adjudicating authority determining CIRP applications. Subsequently, the implications on the corporate debtors and creditors have been harsh and unwarranted due to absence of proper diligence on behalf of NCLT in complying with the provisions of the Code and the applicable rules and regulations. If the NCLT does not slack off in carrying out its responsibilities judiciously, the burden on the NCLAT will reduce considerably and so will the unnecessary complexities that arise from oscillating between admitting CIRP applications and then rejecting them or the vice-versa.

² Company Appeal (AT) (Insolvency) No. 144 and 149 of 2017; See also Mindtree Exports Pvt. Ltd. v. M/s. Ashmita Multitrade Pvt. Ltd. & Anr. Company Appeal (AT) (Insolvency) No. 98 of 2017; Agroh Infrastructure Developers Pvt. Ltd. v. Narmada Construction (Indore) Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 57 of 2017; Kaliber Associates Pvt. Ltd. v. Mrs. Tripat Kaur Company Appeal (AT) (Insolvency) No. 52 of 2017; M/s. Aruna Hotels Limited v. Mr. N. Krishnan Company Appeal (AT) (Insolvency) No. 59 of 2017; P.K. Ores Private Limited v. Tractor India Private Limited Company Appeal (AT) (Insolvency) No. 56 of 2017; Era Infra Engineering Ltd. v. Prideco Commercial Projects Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 31 of 2017

³ Company Appeal (AT) (Insolvency) No. 104 of 2017; Ganesh Sponge Pvt. Ltd. v. Aryan Mining & Trading Corporation Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 124 and 125 of 2017; Uttam Galva Steel Limited v. DF Deutsche Forfait AG & Anr. Company Appeal (AT) (Insolvency) No. 39 of 2017

⁴ Company Appeal (AT) (Insolvency) No. 124 and 125 of 2017; See also M/s. Aruna Hotels Limited v. Mr. N. Krishnan Company Appeal (AT) (Insolvency) No. 59 of 2017

⁵ Company Appeal (AT) (Insolvency) No. 06 of 2017

⁶ M/s. Bhash Software Labs Pvt. Ltd. v. M/s. Mobme Wireless Solutions Ltd. Company Appeal (AT) (Insolvency) No. 79 of 2017; Uttam Galva Steel Limited v. DF Deutsche Forfait AG & Anr. Company Appeal (AT) (Insolvency) No. 39 and 34 of 2017; P.K. Ores Private Limited v. Tractor India Private Limited Company Appeal (AT) (Insolvency) No. 56 of 2017; M/s Meyer Apparel Ltd. & Anr. v. M/s Surbhi Body Products Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 33

⁷ S3 Electrical & Electronics Private Limited v. Brian Lau Company Appeal (AT) (Insolvency) No. 104 of 2017; Mindtree Exports Pvt. Ltd. v. M/s. Ashmita Multitrade Pvt. Ltd. & Anr. Company Appeal (AT) (Insolvency) No. 98 of 2017

⁸ Company Appeal (AT) (Insolvency) No. 32 of 2017

⁹ Company Appeal (AT) (Insolvency) No. 07 of 2017

UNDERSTANDING REVISED SECRETARIAL STANDARD ON BOARD MEETINGS SS -1

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ICSI had issued Secretarial Standard on Board meetings (SS-1) in 2015 which was applicable from June 1, 2015. Now, to align the same with the Company's amendment act and Exemption Notification(s) issued by MCA dated 5 June 2015 and to remove the interpretation issues as well as considering the Issues/ Suggestions received from different stakeholders the ICSI has revised the Secretarial Standard SS -1 after obtaining the approval of the Central Government, as required, under section 118(10) of the Companies Act, 2013 has.

The revised SS-shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 and will supersede the text of earlier SS-1.

Changes in the revised SS-1 are summarised below:

SCOPE:

The Scope of the Secretarial Standard SS-1 has been amended as previously only one person companies were exempted but since exemption has been granted by MCA to Section 8 Companies from the compliance of section 118 of Companies Act 2013 therefore to align with the principal act section 8 Companies have also been exempted from the compliances of secretarial standard SS-1.

Notice

- * The company may choose to send Notice of Meeting by a Faster Mode in case a meeting is being held at a Shorter Notice.
- * Time period for maintaining the proof of sending notices has now been provided in SS-1. It states that the Board shall have the authority to decide the period which in any case shall not be less than 3 years from the date of Meeting.
- * The Notice of Meetings shall compulsorily provide all the necessary information's & procedures regarding the participation of Directors in a Meeting through Electronic Mode.
- * The Director shall now have the option to declare intention of his participation in a Board / Committee of Board Meeting by electronic mode for a complete calendar Year.
- * Sending notices by COURIER has been restricted.

Agenda & Notes to Agenda

- * Agenda & Notes on Agenda cannot be sent to directors by COURIER. This is basically to align with Section 173(3) of Companies Act 2013 which provides for sending the notice by hand delivery, post or electronic means. Therefore the word "or by courier" is deleted.
- * Any item not included in the Agenda may be taken up with the permission of the Chairman and consent of a majority of the Director's present in the Meeting. Consent of

Independent directors is not required and therefore it would facilitate the company to transact urgent business.

Quorum

- * A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. But, a private company director can participate in respect of such item provided he has disclosed his interest before participation.
- * The chairman has an additional responsibility to ensure that the Quorum was present throughout the meeting and at the end of discussion on each agenda item the chairman shall announce the summary of the decision taken thereon.

Attendance Register

- * The participation of director through electronic mode was previously duly recorded in minutes of meeting but now in revised standard such recording is also required to be mentioned in attendance. Moreover, it is also clarified that the mode of presence to is to be recorded in attendance only in case of participation through electronic mode.
- * A right to inspect the attendance register of the meetings has also been given to a person who has cease to be a director of the company. But such right can be exercised only in case of those meetings which were held during the period of his directorship.
- * Authentication is no more required on attendance register by company secretary which was previously required in previous Secretarial Standard. This requirement has been done away with.

Leave of Absence

- * Now directors can communicate their leave of absence to company secretary, chairman or any other person authorised by the board to send the notice of the meeting. Basically this relaxation is provided to facilitate cases where there is no company secretary and any other person is authorised by the board for sending notice of the meeting.

Participation through Electronic Mode

- * Keeping in view the exemption provided in MCA notification dated June 5th, 2015 in respect to private companies and also to align with the provisions of law, it has been provided that the chairman of private company may continue to chair and participate in the Meeting after disclosure of his interest. Further, in case of items of related party transaction, chairman shall not be present in the meeting whether physically or through electronic mode, during discussion and voting on such item.

* The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

Resolution by Circulation

- * The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft resolution is circulated to all the directors, whether the approval of the Board for a particular business shall be obtained by means of a resolution by circulation. Previously only managing director/ whole time director/ chairman of the company were given authority.
- * Proof of sending the draft resolution to be passed by circulation also needs to be maintained for 3 years. Previously no period was defined.

Minutes of the Meeting

- * Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification of the decision taken in respect of such item by a majority of Directors of the company.
- * Where any earlier Resolution(s) or decision is superseded or modified, Minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard.
- * Company needs to maintain proof of sending certified copy of signed minutes to the directors for 3 years. Director can waive the right of receiving certified copy of signed minutes by communicating the same in writing or in Board Meeting which can be recorded in minutes of that meeting.

- * Any alteration in minutes after they are entered in the minutes book shall be made with the approval of Board and the fact of such alteration shall also be recorded in the minutes of subsequent meeting.

Disclosure

- * The requirement of disclosing the number and dates of Meetings of the Board and Committees held during the financial year and indicating the number of Meetings attended by each Director in the Annual Report of the company has been removed.
- * The Report of the Board of Directors shall include a statement on compliance of applicable Secretarial Standards. This is a major new provision inserted in revised secretarial standard. This is basically to align with the provisions of section 134 (5) (f) of the companies act 2013 and also to make the directors of the companies responsible for the compliances of secretarial standards.

Conclusion

The revised secretarial standards aligned with amendments in company law. Many provisions have also been re drafted to provide better clarity. The standard would as a guidance to comply with law and also enhance levels of governance in the company which ultimately would increase the confidence of various stakeholders.

TO GIVE OPPORTUNITY AND PLATFORM TO OUR MEMBERS

In order to give opportunity and platform to our young members and also to enhance their communication and presentation skills, the Executive Committee of NIRC-ICSI has decided that the various activities, like seminar, conferences, workshops, class room series, study sessions, PCS Meetings etc., as may be organized by NIRC-ICSI for members and students, will be made available to the young members as a platform and opportunity to hone their communication and presentation skills. The Members will be provided with an opportunity to coordinate the complete sessions independently or jointly with other member.

Your NIRC is always on a forefront and always strive to build the capacity and confidence of our young brigade of Company Secretaries by empowering them to face the challenges of the Corporate world. This endeavour of NIRC will surely help them to excel in their skills in managing and conducting the AGM/ EGM for their respective companies or for their client companies. Members are requested to forward to grab this opportunity for their own benefit and to serve the profession. Interested members may send their details at niro@icsi.edu.

An analytical and practical view of the revised Secretarial Standard 2 (SS-2)

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In view of the numerous changes brought about in the Companies Act, 2013, in the last few years through a spate of notifications, clarifications and amendments, there was an imperative need to align the current Secretarial Standard -2 ('SS-2') relating to Annual General Meetings with the changes in the provisions and the consequent / emerging new structure of the Act emanating out of such notifications, amendments etc. The Institute of Company Secretaries of India after the approval of the central government has accordingly revised the aforesaid Secretarial Standards issued in the year 2015. The revised standard will be effective from October 1, 2017.

An analytical and practical view on the revised SS – 2 is presented below:

- * By an express assertion in the introductory paragraphs, Section 118 under the aegis of which the secretarial standards have been made mandatory has been made exempt in entirety for OPCs and not for profit companies under Section 8 of the Companies Act. There is nothing new about this change as such Companies were already exempted from the applicability of Secretarial Standards vide MCA's notification dated June 5, 2015.
- * Definition of Secretarial Auditor now also includes a firm of Company Secretary(ies) in Practice. Though the intent in the earlier version of the Secretarial Standard was not to exclude a firm of PCS, however, the existing definition was not clear. This change is only clarificatory and has been inserted to provide clarity.
- * The previous version of the Secretarial Standard also mandated that the company should retain proof of dispatch of Notice for AGM but no period for preservation of such documents was laid down. The new version makes it incumbent on the Board to decide on the period for preservation which shall not be less than three years. This will avoidably increase compliance burden for the companies. Preservation of records is part of the house keeping requirements of the company secretary and thus the valuable time and attention of the Board for deliberating on such routine procedures could have been avoided.
- * Notice of AGM was earlier also required to be hosted on website of the company after dispatch of the same to the members by virtue of Rule 20 of MGT Rules. Now the additional stipulation is that the notice should be simultaneously kept hosted on the website till the conclusion of the meeting. This is a cosmetic change and does not put any additional compliance burden on the company secretary.
- * It has now been stipulated that the notice of AGM should also specify the serial number of the Meeting. As a general practice Companies mention the serial number of the meeting in the notice, however, this is now required to be specifically mentioned in order to comply with SS-2.
- * Revised Secretarial Standard has provided exemption from providing the route map and prominent landmark in case of (a) a company in which only its directors and their relatives are members;(b) a wholly owned subsidiary. The existing requirement was not relevant for a company whose shares are held by directors only or a WOS of another company as the purpose of such stipulation was to make it convenient for the members to attend the meetings.
- * In case of government companies, the AGM should be held at its registered office or any other place with the approval of the Central Government, as may be required in this behalf. This was earlier also stipulated by the Ministry vide its Notification dated June 5, 2015. However, it is pertinent to note that the Ministry had come with another Notification on June 13, 2017 to amend the aforesaid June 5, 2015 Notification wherein it has been provided that Govt. companies may hold their AGM, at, (1) registered office, (2) such other place within the city, town or village in which the Registered Office is situated or (3) a place approved by the Central Government.
- * Notice of AGM in respect of a private limited company shall specify the entitlement of a member to appoint proxy unless otherwise provided in the articles.
- * No resolutions are now required to be incorporated in the notice of AGM for items of Ordinary Business. The existing SS provided that where the auditors or directors to be appointed are other than the retiring auditors or directors, then the same shall be provided in the notice by way of a resolution even if the item falls under ordinary business. The revised secretarial standard has removed this requirement.
- * Explanatory statement to be annexed with the notice of AGM in respect of private limited companies may not incorporate and include the nature of the concern or interest (financial or otherwise of the directors, KMPs and their relatives) along with other details as mentioned in the para if the Articles of such companies provide otherwise. This is in line with the exception to Section 102 of the Act provided by the MCA through June 05, 2015 Notification.
- * Private limited companies may not comply with the requirement of giving notice and accompanying documents at least twenty-one clear days in advance of the meeting if Articles provide otherwise. This is in line with the exception to Section 101 of the Act provided by the Ministry through June 05, 2015 Notification.
- * Consent for holding the AGM at a shorter notice is now required to be received by the company prior to the time fixed for the meeting; Companies have been now exempted from observing the provisions relating to appointment of proxy if all the members entitled to vote give their consent to holding the meeting at shorter Notice; and also Private companies may now provide in its Articles, the manner of obtaining consent for a meeting convened at a shorter notice including the number of members from whom such consent will be required. The change in the existing requirement of receiving the consent one day prior to the meeting to a time prior to the time fixed for the meeting is a welcome change considering the practical difficulties faced by the companies.
- * The Chairman of a meeting of private limited company is now permitted to be appointed in terms of the provisions in the Articles of the company. This is in line with the exception from Section 104 of the Act. provided by the MCA through June 05, 2015 Notification.

* The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

voting: (i) the letter of appointment of representative(s) of the President of India or the Governor of a State; or (ii) the authorisation in respect of representative(s) of the Corporations; should be received by the scrutiniser/ company on or before close of e-voting. In the case of postal ballot such letter of appointment/ authorisation shall be submitted to the scrutiniser along with physical ballot form. If the representative attends the Meeting in person to vote thereat, the letter of appointment / authorisation, as the case may be, shall be submitted before the commencement of Meeting. Unlike proxies, there was no clarity in regard to the manner of submission of appointment/ authorisation letter of authorised representatives. In absence of a clear provision, the companies, scrutinisers appointed for the meetings faced practical difficulties and accordingly diverse practices were being followed.

- * An instrument appointing a Proxy shall be in the Form prescribed under the Act. The option of using the Form specified in the Articles of the company has been deleted
- * A proxy need not now be informed of the revocation by the member. However, without such intimation, how will the proxy come to know about the revocation remains unclear as the same may create confusion at the physical meeting.
- * The requirement of proposing and seconding of a resolution which has been put to vote through remote e-voting or on which a poll has been demanded has been done away with. The removal of the requirement of proposing and seconding is a welcome change. This is in line with the exception provided under Section 107 of the Act. by the Ministry through June 05, 2015 Notification.
- * In a meeting of a private company a poll shall be conducted in accordance with the Articles. This is in line with the exception provided under Section 109 of the Act. by the Ministry through June 05, 2015 Notification.
- * In case of a private limited company, a member who is a related party is entitled to vote on such Resolution. Further, a member who is a related party is entitled to vote on a Resolution pertaining to approval of any contract or arrangement to be entered into by: a. One Govt. company with any other Govt. company; or b. An unlisted Govt. company with the prior approval of competent authority. This is in line with the exception provided for the private companies under Section 188 of the Act by the Ministry through June 05, 2015 Notification.
- * The provision of authorising the Chairman or in his absence, any other Director by the Board to receive the scrutiniser's register, report on e-voting and other related papers with requisite details, has been deleted.
- * Newspaper advertisement of notice of the meeting is now simultaneously also required to be placed on the website of the company, till the conclusion of meeting.
- * In respect of e – voting the scrutiniser is now required to submit his report to the Chairman or authorized person within 3 days from the date of Meeting. This is in line with the provisions under Rule 20 of the MGT Rules. Directors are excluded to handle scrutiniser's report, they can handle it only at a discretion of Chairman, if he authorizes them to do so. This provision has been incorporated to improve the integrity of information / decision making
- * The result of the postal ballot voting is now required to be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere. There was no such requirement or timeline earlier.
- * The scrutiniser(s) shall submit his report within seven days

from the last date of the poll to the Chairman who shall countersign the same and declare the result of the poll within two days of the submission of report by the scrutinizer. In case of private limited companies, the declaration of the result of poll shall also be in accordance with this para, unless otherwise provided in the Articles. Considering the fact that the provisions of Section 109 (Demand for Poll) are not applicable to a company covered under Section 108 (Mandatory voting through electronic means), the change in provisions will impact only those companies which are not covered under Section 108. In regard to private companies, the change is in line with the exception provided under Section 109 of the Act by the Ministry through June 05, 2015 Notification.

- * The qualifications, observations or comments or other remarks if any, appearing in the Secretarial Audit Report issued by the Company Secretary in Practice, which have any material adverse effect on the functioning of the company, have been stipulated to be read at the AGM. However, in the absence of any guidance with regard to the manner and basis of determination of such material impact, compliance of this provision in true spirit would be a challenge.
- * If a meeting is adjourned for a period not exceeding three days and where an announcement of adjournment has been made at the meeting itself, giving in the details of day, date, time, venue and business to be transacted at the adjourned meeting, the company may still opt to give notice of such adjourned Meeting either individually or by publishing an advertisement.
- * If a meeting other than an AGM or a requisitioned meeting stands adjourned for want of quorum, then the adjourned meeting shall be held on the same day, in the next week at the same time and place or on such other day, in spite of that day being a National Holiday.
- * An adjourned AGM, adjourned for want of quorum or otherwise, shall not be held on a National Holiday, only if any item relating to filling up of vacancy of a director retiring by rotation is included in the agenda of such adjourned Meeting.
- * In case of companies having a website, Notice of the postal ballot shall simultaneously be placed on the website.
- * Minutes of Meetings, if maintained in loose-leaf form, are now required to be bound periodically at least once in every three years.
- * A company may maintain its Minutes in physical or in electronic form. No need now of time stamp on electronically maintained minutes
- * Minutes Books now is required to be kept at the Registered Office of the company only
- * The time of conclusion of the AGM is not required to be mentioned in the minutes.
- * In case of a Nidhi Companies, notice may be served individually only on Members who hold shares of more than 1000 rupees in face value or more than 1% of the total paid-up share capital of the company, whichever is less. For other Members, Notice may be served by a public notice in a newspaper circulated in the district where the Registered Office of the company is situated and by displaying the same on the Notice Board of the company. No such option was available to the Nidhi Companies as per the erstwhile SS. However, the same has been aligned with the MCA's exemption provided to Nidhi Companies vide its notification dated June 5, 2015. No Member shall exercise Voting Rights on poll in excess of five percent of total Voting Rights of equity shareholders. Nidhis are not required to provide e-voting facility to their members.

LIST OF MEMBERS – IT COMMITTEE OF NIRC-2017

Name	Mobile	E-mail
CS Avtaar Singh - Chairman	9899769697	avtaar.sgh@gmail.com
CS Balaji Srivastava - Convenor	9873169769	bbalaji567@gmail.com
CS Prakash Kumar Verma – Co-Convenor	9990379137	prkverma@gmail.com
CS Parveen Kumar	9213976512	parveengoyalcs@gmail.com
CS Gursat Singh	9811105891	gursatsingh@gmail.com
CS Nimesh Kumar	7503667621	nimesh.cs@gmail.com
CS Princy Agrawal	9716083549	princyagrawal02@gmail.com
CS Awanish Kumar	9873334481	awanish@nakslaw.com
CS Manoj Verma	9958865446	mkv965@yahoo.com
CS Rohit Chopra	9911551107	cs.rohit Chopra@gmail.com
CS Nityanand Singh	9811119576	officenns@gmail.com
CS Ravi Bhushan	9990339200	cs.ravibhushan@gmail.com
CS Deepanshu Gambhir	9999390144	deepanshu.gambhir@yahoo.com
CS Chandradip Bharati	9910243486	cbharti2@gmail.com
CS Nityanand Singh	9350558186	nitya@nakslaw.com.
CS Vivek Tiwari	9311412372	vivek_tiwari76@rediffmail.com

**Press Information Bureau
Government of India
Ministry of Corporate Affairs
14-September-2017 13:36 IST**

Malaysian Association of Company Secretaries (MACS) to adopt the Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) as the benchmark.

The Ministry of Corporate Affairs has approved a request of the Malaysian Association of Company Secretaries (MACS) for adoption of the Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) as the benchmark in the development of Secretarial Standards of MACS.

The Secretarial Standards on Meetings of the Board of Directors and Secretarial Standard on General Meetings were approved by the Ministry of Corporate Affairs, Government of India under sub-section 10 of Section 118 of the Companies Act, 2013 and are in place with effect from 1st July, 2015.

It is a matter of prestige that Indian Standards are to be adopted/benchmarked by a foreign sister institution in the course of formulation of their own similar standards.



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
www.icsi.edu



Northern India Regional Council of ICSI

Cordially invites you at the Inaugural Function of
Golden Jubilee Year Celebrations
of The Institute of Company Secretaries of India
on 4th October, 2017

Venue : Sirifort Auditorium I, August Kranti Marg, Khel Gaon, New Delhi

Timing : 2 pm onwards

PROGRAMME

- 1) Address by Chief Guest and Felicitation of Past Chairmen of NIRC-ICSI
- 2) Convocation of the Members admitted before 2012
- 3) Live streaming of Hon'ble Prime Minister Shri Narendra Modi from New Delhi

The programme will be followed by the High Tea

FOR REGISTRATION CLICK BELOW

For Inauguration - <http://14.140.246.91/GJRegistration/CHAPTERMEMBERLOGIN.ASPX>

For Convocation - <http://www.icsi.in/GJRegistration/ChapterMemberLogin.aspx>

With Best Regards

CS Dhananjay Shukla
Chairman

VISION

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

सत्यं वद। धर्मं चर।

ICSI Motto

इष्टकं कृतं तृप्तः शोभते ननु कृतं इत्तः

MISSION

"To develop high calibre
professionals facilitating
good corporate governance"

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COMPLIANCE CHECKLIST

FROM 20TH SEPTEMBER TO 20TH OCTOBER, 2017

GST Compliances

S. No.	Activities	Sections/Rules/ Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
1.	Summary Return on self-declaration basis for the month of August, 2017 in GSTR-3B after paying appropriate taxes	Goods and Services Tax Rules, 2017	GST	20th September	GST Authority
2.	Details of outward supplies of Goods and Services in Form GSTR-1 for the month of July, 2017	Goods and Services Tax Rules, 2017	GST	10th October	GST Authority
3.	Details of inward supplies of Goods and Services in Form GSTR-2 for the month of July, 2017	Goods and Services Tax Rules, 2017	GST	11th October to 31st October	GST Authority
4.	Form GSTR-1 for the month of July for large taxpayer with turn over more than Rs. 100 Crore	Goods and Services Tax Rules, 2017	GST	03rd October	GST Authority
5.	Summary Return on self-declaration basis for the month of September, 2017 in GSTR-3B after paying appropriate taxes	Goods and Services Tax Rules, 2017	GST	20th October	GST Authority

Income-tax Related Compliances

S. No.	Activities	Sections/Rules/ Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
6.	Contractor's Bill / Advertising / Professional service Bill - TDS collected for the previous month Section 194J (September, 2017)	Section 194C Section 194J	Income-tax Act, 1961	07th October	Income Tax Authorities
7.	Monthly payment of TCS (September, 2017)	Section 206	Income-tax Act, 1961	07th October	Income Tax Authorities
8.	TDS from Salaries for the previous month (September, 2017)	Section 192	Income-tax Act, 1961	07th October	Income Tax Authorities
9.	Deposit TDS from salaries for the previous month in Challan No.281 (September, 2017)	Section 192	Income-tax Act, 1961	07th October	Income Tax

Company Law Related Compliances

S. No.	Activities	Sections/Rules/ Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
10.	Last Date of Annual General meeting for the financial year ended on 31st March, 2017	Section 96	Companies Act, 2013	30th September	N.A.

RBI Related Compliances

11.	Reporting of actual transactions of ECB in form ECB-2 within 7 working days (September, 2017)	ECB Rules	FEMA, 1999	08th October	RBI through Authorized Dealer
12.	Quarterly submission by Deposit taking Non-Banking Financial Companies for the details of Assets and Liabilities (Form NBS- 1)	Master Direction DNBS.PPD.02/66.15.001/2016-17 dated 29 September 2016	RBI- Master Direction	15th October	RBI
13.	Quarterly submission by Deposit taking Non-Banking Financial Companies and Residuary Non-Banking Company for Capital Funds, Risk Assets, Asset Classification etc. (Form NBS- 2)	Master Direction DNBS.PPD.02/66.15.001/2016-17 dated 29 September 2016	RBI- Master Direction Master Circular	15th October	RBI

S. No.	Activities	Sections/Rules/Clauses, etc.	Acts/Regulations etc.	Compliance Due	To whom to be submitted
14.	Quarterly submission by Deposit taking Non-Banking Financial Companies for Statutory Liquid Assets (Form NBS- 3)	Master Direction DNBS. PPD.02/66.15.001/ 2016-17 dated 29 September 2016	RBI- Master Direction	15th October	RBI
15.	Quarterly submission by Non-Banking Financial Companies (NBFCs) not accepting/holding public deposits and having asset sizes of Rs. 500 crore and above for Capital Funds, Risk Assets, Asset Classification (Form NBS- 7)	Master Direction DNBS. PPD.02/66.15.001/ 2016-17 dated 29 September 2016	RBI- Master Direction	15th October	RBI
16.	Quarterly submission by Non-Banking Financial Companies (NBFCs) not accepting/holding public deposits and having asset sizes of Rs. 500 crore and above for the details of Assets and Liabilities (Form NBFCs- ND-SI 500cr)	Master Direction 2016-17 DNBS.PPD.02/66.15.001/ dated 29 September 2016	RBI- Master Direction	15th October	RBI
17.	Quarterly submission by Securitisation Companies / Reconstruction Companies for Details of Assets acquired / securitized / reconstructed (Form SC/RC)	Master Direction DNBS. PPD.02/66.15.001/ 2016-17 dated 29 September 2016	RBI- Master Direction	15th October, 2017	RBI
18.	Quarterly submission by Non-Banking Financial Companies (NBFCs) not accepting /holding public deposits and having asset sizes of Rs. 500 crore and above for Short Term Dynamic Liquidity (Form ALM-1)	Master Direction DNBS. PPD.02/66.15.001/ 2016-17 dated 29 September 2016	Master Direction	15th October, 2017	RBI
19.	Half Yearly submission by Non-Banking Financial Companies (NBFCs) not accepting/holding public deposits and having asset sizes of Rs.500 crore and above for Structural Liquidity/ Interest Rate Sensitivity (Form ALM-2 & 3)	Master Direction DNBS. PPD.02/66.15.001/ 2016-17 dated 29 September 2016	Master Direction	30th October, 2017	RBI
20.	Quarterly submission by Non-Banking Financial Companies (NBFCs) not accepting/holding public deposits and having asset sizes of Rs. 500 crore and above and Deposit taking Non-Banking Financial Companies for Branch Details (Form Branch Info return)	Master Direction DNBS. PPD.02/66.15.001/ 2016-17 dated 29 September 2016	RBI- Master Direction	15th October	RBI
21.	Quarterly submission by Residuary Non-Banking Company for Statutory Liquid Assets (Form NBS3A)	Master Direction DNBS. PPD.02/66.15.001/ 2016-17 dated 29 September 2016	RBI- Master Direction	15th October	RBI
22.	Reporting of Special Mention Account status (SMA-2 return)	NBS.PPD.02/66.15.001/ 2016-17 dated September 29, 2016	RBI- Master Direction	Every Friday	RBI
23.	The NBFCs having Foreign Direct Investment are required to submit a Certificate from their Statutory Auditor on a half-yearly basis certifying compliance with the stipulated minimum capitalization norms and that its activities are restricted to the activities prescribed under FEMA.	Master Direction DNBS. PPD.02/66.15.001/ 2016-17 dated 29 September 2016	RBI- Master Direction	30th October, 2017	RBI
24.	The applicable NBFC shall furnish to the RBI a quarterly statement on change of directors, and a certificate from the Managing Director of the applicable NBFC that fit and proper criteria in selection of the directors has been followed.	Master Direction DNBR. PD. 008/03.10.119/ 2016-17 dated 29 September, 2016	RBI Master Direction	15th October, 2017	RBI

S. No.	Activities	Sections/Rules/Clauses, etc.	Acts/Regulations etc.	Compliance Due	To whom to be submitted
Economic, Industrial & Labour Law Related Compliances					
25.	Payment of ESI contribution for the previous month	Regulation 31	Employees' State Insurance Act, 1948 and Employees State Insurance (Gen.) Regulations, 1950	21st September	ESIC Authorities
26.	Monthly return of Provident Fund for the previous month (September) Provident funds	Paragraph 38 of Employees' Provident Act, 1952	Employees Provident Funds and Misc. Scheme, 1952	25th September	Provident Fund Authorities
27.	Monthly return of Provident Fund for the previous month with respect to International Workers.	Paragraph 36	The Employees' Provident Funds Scheme, 1952	25th September	Provident Fund Authorities
28.	i) File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF)) ii) File monthly Return for members of Insurance Fund leaving service during the month of September (Form no. 3(IF)) iii) File monthly return of members joining service during the month of September (Form no.F4(PS))	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	15th October	Provident Fund Commissioner
29.	File monthly return for employees leaving / joining during the month of September (Form No.5)	Paragraph 20(2) read with Paragraph 36(1) & (2)	The Employees Pension Scheme, 1995 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	15th October	Provident Fund Commissioner
30.	Monthly payment of Provident Fund (PF) (Non Corporate)	(a) Paragraph 38 of Employees Provident Funds Scheme, 1952 (b) Section 418 of the Companies Act, 1956	(a) Employees' Provident Funds and Misc. Provisions Act, 1952 (b) Exempted Scheme	15th October	Provident Fund Authorities Trustees of Provident Fund Depositories
31.	Submit monthly statement on substitution of names of depositories in the previous quarter.	Regulation 54	SEBI (Depositories & Participants) Regulations, 1996	07th October	Depositories
32.	Quarterly Corporate Governance Compliance Certificate/Report	Clause 27(2)	SEBI(Listing Obligations and Disclosure Requirements) 2015	15th October	Securities & Exchange Board of India

Note : While every care has been taken in the preparation of this Compliance Check List for the Month of September, 2017, to ensure its accuracy at the time of publication, NIRC – ICSI assumes no responsibility for any errors which despite all precautions, may be found therein. Members are requested to check the latest position with the original sources before acting upon on the information published in this newsletter. Neither this Newsletter nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/ substitute professional advice that may be required before acting on any matter.

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Supported by : CS Punit Arora ! punit.arora@religare.com

NEWS FROM NIRC

NIRC organised the following programs:

Date	Program	Chief Guest/speakers	Present
19-20.8.2017	Two days Workshop on Mock NCLT Proceedings (Including Moot Court & Session on Case Laws)	Chief Guest & Key Note Speaker: Hon'ble Mr. Justice D.R. Deshmukh, Former Chairman, Company Law Board Guest Speakers: CS NPS Chawla, Past Chairman,NIRC, Mr. Ashwini Mata, Senior Advocate, Mr. Krishnendu Datta, Advocate, Mr. P. Nagesh, Advocate, CS S. Koley, PCS, CS Rajeev Goel, Advocate, CS Rakesh Kumar, Advocate, Mr. Vipul Ganda, Advocate, CS Satwinder Singh, Council Member – ICSI, CS Praveen Mahajan, Advocate, Mr. Siddharth Yadav, Advocate	CS Dhananjay Shukla, CS Manish Gupta, CS Alka Arora and participants
26.08.2017 to 4.09.2017	Executive Development Program for students	Members of the Institute and other professionals	CS Dhananjay Shukla, CS Pradeep Debnath and participants
26.08.2017	Regional Students' Conference on CS: A Creative Leader (Excellence through Performance)	Chief Guest: Mr. Shyam Jaju, National Vice President of BJP; Guests of Honour: CS (Dr.) Shyam Agrawal, President-ICSI and Mr. Gopal Agarwal, Council Member-ICSI (Govt. Nominee) Guest Speakers: Mr. Suneel Keswani, Corporate Trainer & Ms. Ramneet S Mukherjee, Trainer	CS Dhananjay Shukla, CS Pradeep Debnath, CS Satwinder Singh, CS Alka Arora and students
26.08.2017	Cultural Evening (dedicated to CSBF) for Members and their families followed by Dinner	Presentation by Bollywood Singer Tarun Sagar and Artists of Song & Drama Division, Ministry of Information and Broadcasting and Members of ICSI	CS Dhananjay Shukla, CS (Dr.) Shyam Agrawal, CS Ranjeet Pandey, CS Vineet K Chaudhary, CS Pradeep Debnath CS Manish Gupta, CS Monika Kohli, CS Alka Arora, past Presidents-ICSI, Chairmen of NIRC and members and their families
30.8.2017	Valedictory Function of 268th Management Skills Orientation Program (MSOP)	Chief Guest: CS Rajesh Jain, Director & Group CEO, A2Z Group	CS Dhananjay Shukla, CS Nitesh Sinha, CS Alka Arora and participants
31.8.2017	Seminar on the theme "Contemporary Issues Under Insolvency & Bankruptcy Code (IBC)"	<i>Guest Speakers:</i> CS Pavan Kumar Vijay, Past President-ICSI; CS G P Madaan, Past Chairman-NIRC, CS Rajiv Bajaj, Council Member-ICSI, CS U K Chaudhary, Past President-ICSI and CA Ashish Makhija, Advocate	CS Dhananjay Shukla, CS Ranjeet Pandey, CS Vineet K Chaudhary, CS Nitesh Kumar Sinha, CS Manish Gupta, CS Alka Arora and members
3.9.2017	North Delhi Study Session on Contentious Issues under Insolvency & Bankruptcy Code(IBC)	<i>Guest Speaker :</i> CS S.M. Sundaram, Advocate	CS Saurabh Kalia and members
4.9.2017	Inauguration of 269th Management Skills Orientation Program (MSOP)	<i>Chief Guest :</i> CS Subhash Setia	CS Dhananjay Shukla, CS Nitesh Sinha, CS Alka Arora and participants
8.9.2017	Study Session on Revised Secretarial Standards on Meetings of The Board of Directors (SS-1) and General Meetings (SS-2)	<i>Guest Speaker:</i> CS Pavan Kumar Vijay, Past President-ICSI & Chairman, SSB-ICSI; Panel Discussion by CS Ilam Kamboj, Managing Partner, Kamboj Law Chambers, CS Ranjeet Pandey, Council Member-ICSI, CS Munish Sharma, PCS, and Member Expert Advisory Board & Auditing Standard Board, ICSI	CS Dhananjay Shukla, CS Saurabh Kalia, CS Manish Gupta and participants
11.9.2017	PCS Meeting on "IBC - Recent Judgments and Key Issues"	<i>Guest Speaker :</i> CS Madhusudan Sharma, Advocate	Members of the Institute
15.9.2017	Special Session to deliberate on Draft Guidance note on pre certification of e forms & Do's and Don'ts on e-filing	Guest Speaker: CS S Koley, Company Secretary in Practice	CS Dhananjay Shukla, CS G P Madaan, CS Deepak Kukreja, Officials from ICSI-HQ and Members

Safeguarding and caring for your well being



COMPANY SECRETARIES BENEVOLENT FUND

Be a proud member of CSBF-Saathi Haath Badhana

Dear Professional Colleagues,

As you may be aware that in recent past, some of our members have died leaving behind the spouse and minor children. In some cases providing adequate financial assistance to the bereaved family becomes an impediment. Although the Managing Committee of the CSBF wanted to help the bereaved family members, but it was constrained to do so in view of financial position of the Fund.

The fund can provide the much needed financial assistance in such cases if the corpus of the Fund increases substantially which is possible if more number of members are enrolled to the fund. The members in all earnestness are therefore sincerely requested to become the members of the CSBF by paying one time Life membership fee of ₹ 10,000/-.

The payments made to the Fund are exempted under Section 80G of the Income Tax Act, 1961.

Following benefits are presently provided by the CSBF:

Financial Assistance in the event of Death of a member of CSBF:

Upto the age of 60 years

- Group Life Insurance Policy for a sum of ₹ 7,50,000

Above the age of 60 years

- Upto ₹ 3,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time.

Other benefits subject to the Guidelines approved by the Managing Committee from time to time:

Reimbursement of Medical Expenses

- Upto ₹ 60,000/-

Financial Assistance for Children's Education (one time)

- Upto ₹ 40,000/- per child (Maximum for two children) in case of the member leaving behind minor children

I appeal to the members who have yet not become members of CSBF are requested to fill up Form-A (available on website of the Institute i.e. www.icsi.edu) and send the same along with a cheque for ₹ 10,000/- favouring 'Company Secretaries Benevolent Fund' payable at New Delhi to the Regional Director, NIRC of ICSI, 4, Prasad Nagar Institutional Area, New Delhi. Members may also apply online at www.icsi.edu

Looking forward to receive positive response for this noble cause.

Yours sincerely,

CS DHANANJAY SHUKLA

Chairman



- 1** Regional Students' Conference on CS: A Creative Leader (Excellence through Performance)-26.8.2017 – (Left) – CS Alka Arora welcoming Ms. Ramneet S Mukherjee, Trainer by presenting flower bouquet and (Right) CS Dhananjay Shukla welcoming Mr. Suneel Keswani, Corporate Trainer by presenting flower bouquet.
- 2** Inauguration of 269th Management Skills Orientation Program (MSOP) – 4.9.2017: Group photograph of participants alongwith CS Subhash Setia, Company Secretary, DLF Ltd., CS Dhananjay Shukla, CS Nitesh Kumar Sinha, CS Alka Arora, Dr. Bhole Shankar Sikhwal and CS Sharad Kumar Jhunjhunwala.
- 3** Valedictory Function of 268th Management Skills Orientation Program (MSOP) – 30.8.2017: L to R CS Nitesh Kumar Sinha, Chief Guest: CS Rajesh Jain, Director & Group CEO,A2Z Group, CS Dhananjay Shukla and Dr. Bhole Shankar Sikhwal.
- 4** Valedictory Function of 41st MSOP organised by Noida Chapter: CS Rajiv Bajaj, CS Dhananjay Shukla, CS Nisid Kumar Singh, CS Gaurav Sharma, CS Alok Kuchhal, CS Kushal Kumar and best participants seen.
- 5** PCS Meeting on "IBC - Recent Judgments and Key Issues (11.9.2017): CS Arvind Kohli welcoming CS Madhusudan Sharma by presenting flower bouquet.
- 6** Special Session to deliberate on Draft Guidance note on pre certification of e forms & Do's and Don'ts on e-filing (15.9.2017): CS Dhananjay Shukla, CS G P Madaan and CS Deepak Kukreja presenting memento to CS S Koley.



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- 1 Cultural Evening, Dedicated to CSBF (26.8.2017): CS Dhananjay Shukla and Council Members/Regional Council Members & others presenting cheque in favour for CSBF to CS (Dr.) Shyam Agrawal, President - ICSI
- 2 Regional Students' Conference on CS: A Creative Leader (Excellence through Performance)-26.8.2017 – L to R CS Pradeep Debnath, Mr. Gopal Agarwal, Council Member-ICSI (Govt. Nominee); Chief Guest Mr. Shyam Jaju, National Vice President of BJP; Guests of Honour: CS (Dr.) Shyam Agrawal, President-ICSI, CS Dhananjay Shukla, and CS Satwinder Singh.
- 3 Two days Workshop on Mock NCLT Proceedings (Including Moot Court & Session on Case Laws)-19-20.8.2017: L to R CS NPS Chawla, Mr. Vipul Ganda, Advocate, CS S Koley, CS Satwinder Singh, CS Rajeev Goel, CS Rakesh Kumar, CS Praveen Mahajan, CS Dhananjay Shukla and Mr. Siddharth Yadav, Advocate
- 4 Cultural Evening, Dedicated to CSBF (26.8.2017): Group photograph of members and their families, Bollywood Singer Tarun Sagar and others.

Disclaimer :

While every effort has been made and care has been taken in preparation of this Newsletter and to ensure its accuracy at the time of publication, NIRC of ICSI assumes no responsibility for any errors which, despite all precautions, may creep in. It is suggested that the readers cross check all the facts and the relevant law position before acting on any matter.