THE JOURNAL FOR CMAs

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INSOLVENCY & BANKRUPTCY CODE 2016

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)
www.icmai.in

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA (IPA OF ICAI)

(Section 8 Company of the Institute of Cost Accountants of India)

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA (IPA OF ICAI)

About IPA of ICAI:

The Insolvency Professional Agency of Institute of Cost Accountants of India (IPA of ICAI), a section 8 company incorporated under the Companies Act 2013 has been promoted by the Institute of Cost Accountants of India to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder.

ENROL AND REGISTER AS AN INSOLVENCY PROFESSIONAL

ENROLLMENT IS OPEN: For Professionals & Advocates and Graduates having Management Experience
IPA of ICAI enrolls the professionals as '**Insolvency Professionals'** under Regulation 7 read with Regulations 4 & 5 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, if

1. He/she has passed the 'Limited Insolvency Examination', conducted by the Insolvency & Bankruptcy Board of India (IBBI) and
2. Has/she has ten years of experience as -
(a) a cost accountant enrolled as a member of the Institute of Cost Accountants of India,
(b) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
(c) a company secretary enrolled as a member of the Institute of Company Secretaries of India, or
(d) an advocate enrolled with a Bar Council.

OR

3. He/she has fifteen years of experience in management, after receiving a Bachelor's degree from a University established or recognized by law.

Insolvency Professional may function as:

- ❖ Interim Insolvency Professional in Corporate, Individual and Partnership Insolvency Process; Fast Track Corporate Insolvency Process; and Fresh Start Process;
- ❖ Resolution Professionals for Corporate, Individual and Partnership Insolvency Process; Fast Track Corporate Insolvency Process; and Fresh Start Process;
- ❖ Liquidator in Liquidation Process for Corporate Persons;
- ❖ Liquidator in Voluntary Liquidation for Corporate Persons;
- ❖ Bankruptcy Professional for Bankruptcy of Individual and Partnership Firm.

Why to enrol as Insolvency Professional ......

- ❖ It's a niche area of practice with opportunities galore
- ❖ With the first mover's advantage, there is an opportunity to create a brand name
- ❖ Adequate handholding from IBBI and the IPA of ICAI

CMA J. K. Budhiraja
CEO, Insolvency Professional Agency of Institute of Cost Accountants of India

Registered Address:
CMA Bhawan, 4th Floor, 3, Institutional Area
Lodhi Road, New Delhi - 110003

Phone No.: 011 24666141, 24666120
Mail Id: ipa@icmai.in
Website: www.ipaicmai.in

The Institute of Cost Accountants of India

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA (erstwhile The Institute of Cost and Works Accountants of India) was first established in 1944 as a registered company under the Companies Act with the objects of promoting, regulating and developing the profession of Cost Accountancy.

On 28 May 1959, the Institute was established by a special Act of Parliament, namely, the Cost and Works Accountants Act 1959 as a statutory professional body for the regulation of the profession of cost and management accountancy.

It has since been continuously contributing to the growth of the industrial and economic climate of the country.

The Institute of Cost Accountants of India is the only recognised statutory professional organisation and licensing body in India specialising exclusively in Cost and Management Accountancy.

MISSION STATEMENT

The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.

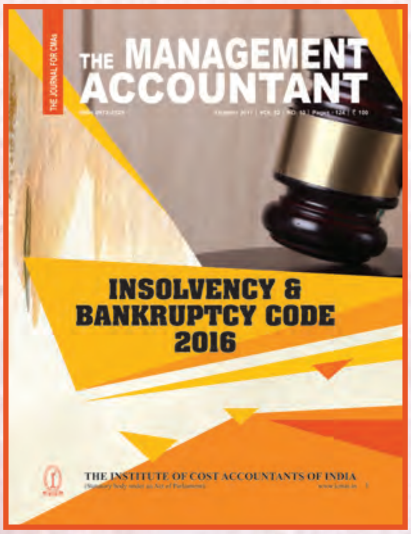
VISION STATEMENT

The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.

IDEALS THE INSTITUTE STANDS FOR

- *to develop the Cost and Management Accountancy profession*
- *to develop the body of members and properly equip them for functions*
- *to ensure sound professional ethics*
- *to keep abreast of new developments*

*Behind every successful business decision, there is always a **CMA***



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The Management Accountant, official organ of The Institute of Cost Accountants of India, established in 1944 (founder member of IFAC, SAFA and CAPA)

EDITOR - CMA Dr. Debaprosanna Nandy
on behalf of The Institute of Cost Accountants of India, 12, Sudder Street, Kolkata - 700 016. e-mail: editor@icmai.in

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on behalf of The Institute of Cost Accountants of India, 12, Sudder Street, Kolkata - 700 016

CHAIRMAN
JOURNAL & PUBLICATIONS COMMITTEE - CMA Biswarup Basu

***EDITORIAL OFFICE -** CMA Bhawan, 4th Floor, 84, Harish Mukherjee Road, Kolkata -700 025*
Tel: +91 33 2454-0086/0087/0184, Fax: +91 33 2454-0063

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EDITORIAL

Greetings!!!

The Insolvency & Bankruptcy Code (IBC) - 2016, passed by the Parliament on 28th May 2016, and implemented from 1st December 2016, was aimed at revamping the then prevailing legal framework of insolvency and bankruptcy resolution in the country, which was very fragmented. Insolvency is a state in which financial difficulties of a company are such it is unable to run its business at its current pace. Bankruptcy is the status of a person who is legally declared as incapable of paying their dues and obligations. The Code aims to smoothen the process and to make it clear and certain. The IBC involves standard steps which is viable and understandable. So, everyone, be it creditors, debtors, companies, or shareholders etc. shall have a standard perform for any matters relating to insolvency.

Why IBC enacted?

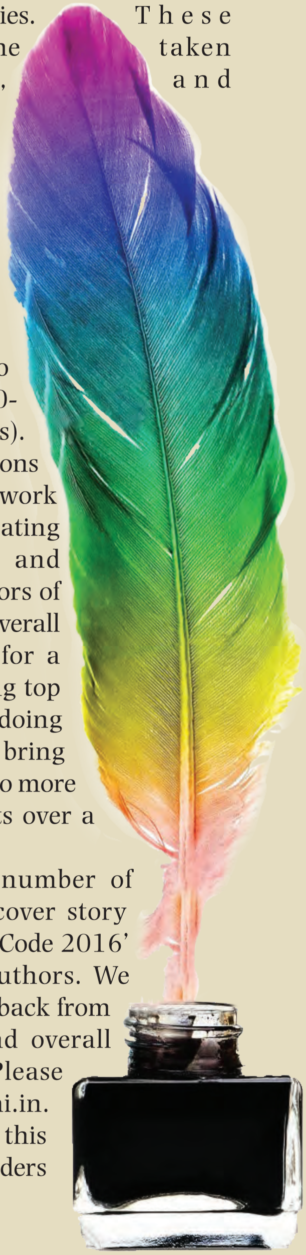
Initially there was Presidency Towns Insolvency Acts, 1909 which was applicable in Kolkata, Chennai and Mumbai and the Provincial Insolvency Act 1920 for the rest of India, for regulating the insolvency laws. The Act applied to individuals and partnerships but exempted corporations from within its ambit.

After the Independence, bankruptcy and insolvency were specified in Entry 9 of the Concurrent List of the Seventh Schedule, under Article 246 of the Constitution. There were numerous Acts to govern Insolvency and bankruptcy issues and matters such as the Sick Industrial Companies (special provision) Act, 1985 (“SICA”), SARFAESI Act, 2002, the Recovery of Debts due to Banks and financial institutions Act, 1993 (“RDDBFI Act”), Companies Act, 1956 as well as Companies act, 2013. But these regulations have not yielded satisfactory results. These regimes are high fragmented, borne out of multiple judicial forums resulting in lack of clarity and certainty of jurisdiction. Further, there are various adjudicatory bodies/ Tribunals to deal with such issues and matters under different Acts stated above.

So, this led to the unclear knowledge about the authority as to whom the parties should approach in the related matters. Hence, this resulted in overlapping of decisions. There was no common regulatory authority to regulate the rights of the secured or unsecured creditors, employees etc. or to determine the priority of their claims. There was also no adequate or credible data regarding the assets, indebtedness etc. of companies which further heighten the problems. Hence large number of legislations and non-statutory guidelines has made the recovery of debt a complex and time consuming process.

The implementation of the new Insolvency and bankruptcy code is expected to give a big push to credit growth, as international experience shows that laws to resolve bad assets have helped boost credit growth, said a report by SBI research. For instance in Germany loans jumped 10 times soon after the implementation of Bankruptcy code. China witnessed a credit growth of 30% in the third year (2009) of implementing its Bankruptcy Code. Similar trends were visible in Poland and Spain. In some of the countries like Kazakhstan and UAE, the credit growth jumped immediately in the next year of implementation of Code.

As per World Bank data, until 2016, insolvency resolution in India took 4.3 years on an average, higher than many major economies. These delays were caused due to time taken to resolve cases in courts, and confusion due to a lack of clarity about the cumbersome process. A time-bound process to resolve insolvency is expected from the current Insolvency and Bankruptcy Code 2016. When a borrower defaults in repayment, creditors gain control over debtor’s assets and must take decisions to resolve insolvency within a 180-day period (extendable by 90 days). The Code also consolidates provisions of the current legislative framework to form a common forum by creating a single law for bankruptcy and insolvency for debtors and creditors of all classes to resolve insolvency. Overall this legislation is a huge step for a country like India towards joining top 50 in the World Bank’s Ease of doing Business and has a potential to bring business practices in India closer to more developed and advanced markets over a long period of time.



This issue presents a good number of articles and interview on the cover story theme ‘Insolvency & Bankruptcy Code 2016’ by distinguished experts and authors. We look forward to constructive feedback from our readers on the articles and overall development of the journal. Please send your mails at editor@icmai.in. We thank all the contributors to this important issue and hope our readers enjoy the articles.

THE JOURNAL FOR CMAs

THE MANAGEMENT ACCOUNTANT

-: PAPERS INVITED :-

Cover stories on the topics given below are invited for 'The Management Accountant' for the four forthcoming months.

Theme

Registered Valuers & Valuation

November 2017

Subtopics

- Provisions in Companies Act 2013
- Ethics & Professional standards
- Code of Practice & benchmarking
- Regulatory model & compliance
- Regulatory Board & government initiatives
- Role of CMAs

Theme

Governance in Real Estate

December 2017

Subtopics

- RERA Act 2016
- Consumer forum & Public Recourse
- Land Development & Regulations
- Developers' Liabilities & Liberties
- Government's role
- Valuation & Pricing
- Regulatory issues & audit
- Role of CMAs

Theme

Paradigm shift in Indian Banking System

January 2018

Subtopics

- Managing Risk, Regulations and Capital
- Digitisation and Cyber security
- Prospective M&A of banks in India
- Strategic Cost Management issues in banks
- Credit issues and Regulators role
- Transitional Cashless economy
- HR issues & performance parameters
- Role of CMAs

Theme

Transforming Energy Sector

February 2018

Subtopics

- Game Changers & Trends in Energy Systems
- Power & Utilities scenario
- Conventional vs. Non-conventional power
- Power Generation & Distribution
- Present industry challenges
- Government Initiatives
- Role of CMAs

The above subtopics are only suggestive and hence the articles may not be limited to them only.

Articles on the above topics are invited from readers and authors along with scanned copies of their recent passport-size photograph and scanned copy of declaration stating that the articles are their own original and have not been considered for publication anywhere else. Please send your articles by e-mail to editor@icmai.in latest by the 1st of the previous month.

Directorate of Research & Journal

The Institute of Cost Accountants of India (Statutory body under an Act of Parliament)
CMA Bhawan, 4th Floor, 84 Harish Mukherjee Road, Kolkata - 700 025, India
Board: +91-33- 2454 0086 / 87 / 0184, Tel-Fax: +91-33- 2454 0063
www.icmai.in

PRESIDENT'S COMMUNIQUÉ

"We can no more gain God's blessing with an unclean body than with an unclean mind. A clean body cannot reside in an unclean city."

– Mahatma Gandhi

CMA SANJAY GUPTA
President
The Institute of Cost Accountants of India

My Dear Professional Colleagues,

Namaskaar!!!

As I am writing this communiqué on the very auspicious occasion for all Indians, when the whole country is being decked up for ongoing and forthcoming festivities. Recently we have celebrated Gandhi Jayanthi and Dussehra / Navratri. **Navratri is replete with symbolism about vanquishing evil and wanton nature, and about having reverence for all aspects of life and even for the things and objects that contribute to our well being.** In fact, this festival epitomizes victory of good over the evil and success of truth over lies. Muharram, a sacred festival is also observed during this period. ***All festivals are important in Indian culture, and celebrations can be a passage way to the most profound aspects of life. Let us all unit in celebrating these festivals.*** I am conveying my love and greetings to the entire CMA fraternity and wish a new and affirmative turn in your life with these festivals. Please accept my greetings in advance for Diwali too. May this Diwali be as bright as ever and the lights that we celebrate at Diwali show us the way and lead us together on the path of peace and social harmony.

CABINET RESHUFFLE: Changes in Union Ministries of Finance and Corporate Affairs

Hon'ble Shri Arun Jaitley continues to be the Union Minister of Finance and Corporate Affairs, Shri Radhakrishnan P. and Shri Shiv Pratap Shukla are the new Union Ministers of State for Finance, and Shri P. P. Chaudhary the new Union Minister of State for Corporate Affairs. On behalf of the Council and the Institute, I take pleasure to welcome them.

I had fruitful discussion on issues and developments in our profession with Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs on 30th September.

I also met few eminent dignitaries during September viz. Shri Suresh Prabhu, Hon'ble Minister of Commerce and Industry at Udyog Bhavan, Shri Shiv Pratap Shukla, Hon'ble Minister of State for Finance.

We also met with Shri Arjun Ram Meghwal, Hon'ble Minister of State, Water Resources, River Development & Ganga Rejuvenation, Parliamentary Affairs on 14th September along with CMA Dr. I Ashok, Council Member to discuss the role of Cost Accountants in his Ministry.

We had the opportunity to meet Shri P.P. Chaudhury, Hon'ble Minister of State, Ministry of Corporate Affairs and Ministry of Law and Justice on 15th September 2017 along with my council colleagues CMA P.V. Bhattad, CMA Amit Anand Apte, CMA Dr. I. Ashok, CMA Sunil Singh, Chairman – NIRC and Institute officials. Hon'ble Minister was kind enough to give us the opportunity to discuss about professional developments and ongoing activities of the Institute in depth.

INTERNATIONAL AFFAIRS DEPARTMENT

❖ SAFA Committee and Board Meetings

I along with my Council colleagues CMA Dr. I Ashok, CMA P.Raju Iyer and CMA Amit Anand Apte attended the 48th SAFA Board meeting and other Committee meetings of SAFA held in Kathmandu on 27th-29th August 2017. SAFA International Conference was also organised on the theme Role of Professional Accountants in Economic Development and Sustainability, which was inaugurated by the Deputy Prime Minister and Minister of Education of Nepal Shri Gopal Man Shreshtha.

❖ Meeting with Senior Vice-President, CPA Canada

I wish to inform the members that I along with CMA (Dr.) I. Ashok, Chairman, International Affairs & Sustainability, CMA P.V. Bhattad, CMA Amit Anand Apte, Council Members, CMA Sunil Singh, Chairman of NIRC and Institute officials met Tashia Batstone, CPA Canada Senior Vice-President, External Relations and Business Development on 15th September 2017 at Delhi Office of the Institute and discussed about possibilities of mutual recognition of the professional qualifications and professional development programmes offered by each Institute. We also discussed about making Collaborative Research Study, Publications, Seminars and Workshops in relevant areas of mutual interest, and also exploring any other possible initiatives for strengthening and empowering the professions globally.

PROFESSIONAL DEVELOPMENT COMMITTEE

❖ Meeting with Deputy Governor of the Reserve Bank of India

I along with CMA Amit Anand Apte, Chairman, Professional Development & CPD committee and CMA Raju Iyer got an opportunity to meet Dr. Viral V. Acharya, Deputy Governor, Reserve Bank of India and other senior officers of RBI on 13th September to apprise them about role of Cost Accountants in Banking Sector and to brief them about the Stock and Book Debt Audit, Concurrent Audit, Forensic Audit etc. wherein the professional services of Cost Accountants can be utilized in befitting manner. The meeting was fruitful and the issues raised by us were taken well cognisance of by RBI side.

❖ Collaborative activities with Competition Commission of India

In continuation to our collaborative activities with Competition Commission of India (CCI) as initiated by the immediate Past President, CMA Manas Kumar Thakur, the Institute organised a 'Workshop on Competition Law and Cartel Enforcement' on 22nd September 2017 at SIRC at Chennai. The esteemed presence of Chief Guest Hon'ble Justice N. V. Balasubramanian and the deliberation by Senior Official of CCI enlightened the participants a lot. I appreciate the efforts of Vice President CMA H. Padmanabhan and Chairman, SIRC CMA Dr. A. Mayil Murugan of the Institute for an overwhelming response.

I feel overwhelmed to note that another 'Workshop on Cartel Enforcement and Leniency' was held on 23rd September 2017 at Lucknow. I acknowledge the enthusiasm of Chairman, NIRC CMA Sunil Singh along with team of Lucknow Chapter and Senior Officials from CCI for making it successful. Deliberations were well received by the members.

We are sure that our members are immensely benefited with these workshops and shall continue our fruitful association with CCI for such activities.

❖ Meeting with Hon'ble Minister of Finance and Corporate Affairs

Recently, I along with CMA Niranjan Mishra, Chairman - Taxation Committee made a presentation on the implementation issues being faced under GST along with possible suggestions to the Hon'ble Union Minister of Finance and Corporate Affairs; Shri Arun Jailtley Ji. We have conducted various seminars, workshops all across the chapters on GST and its Implementation.

❖ 31st Board Meeting of GASAB

I attended 31st board meeting of GASAB on 'Draft guidance note on Fixed Assets Recording & Accounting' and 'Draft Strategic Development Plan 2017-2020' held at the office of CAG of India at New Delhi on 22nd September 2017.

❖ Meeting with Chief Executive of International Valuation Standards Council (IVSC)

I also had an opportunity to meet Mr. Nicholas Talbot, Chief Executive, IVSC at Mumbai to discuss the role of Cost Accountants in Valuation Standard related matters.

TRAINING AND PLACEMENT DIRECTORATE

❖ CFO & HR Discussion Meet

I am delighted to share that I was present at CFO & HR Discussion Meet of the Institute on the theme "Skill Development & Employability – Agenda for Economic Development" on 22nd September, 2017 at Kolkata.

The discussion meet was initiated with a panel discussion by Mr. Ambarish Dasgupta, Former President, Bengal Chamber of Commerce & Industry, Dr. Gaurav Chandra Dutt, IPS at Police Directorate, Dr. Suman K. Mukerjee, renowned Economist and Director General of Bhawanipur Education Society and CMA Manas Kumar Thakur, Immediate Past President & Chairman, Training and Education Facilities and Placement Committee, ICAI. I was given the responsibility to conclude the discussion meet before the august gathering.

The panel discussion session was followed by an open discussion forum where CFO, MD, Directors, GM and HR heads from more than fifty various renowned Public and Private Sector organizations like NALCO, CAG, Webel, MSTC, SBI, DVC, BHEL, SIEMENS, Bank of Baroda, LIC, Ernst & Young, SAIL, Techno India Group, Globsyn Business School, Indo-German Chamber of Commerce, DIC India Ltd., Peerless, Metro Railway, etc. actively participated and shared their views on the theme topic of the evening. CMA Biswarup Basu, CMA Niranjan Mishra, CMA Raju Iyer, Council Members, former Presidents and Officials of the Institute were also present at the discussion meet.

❖ Live Interaction with Newly Qualified CMAs

I had an opportunity to meet newly qualified CMAs at 8 different locations across the country on 9th September through live Interactive Session connected from New Delhi office during the pre-placement orientation program. I congratulated them on qualifying CMA and also wished them a Prosperous Campus placement session.

❖ Campus Placement

I am glad to share with you that so far more than 40 Companies have confirmed their participation in the Campus Placement Drive being organised in October 2017, for absorbing our final qualified students. I am confident that the June 2017 final qualified students would find a bright professional career through this programme. On behalf of all the members of our fraternity, I wish them all success in their campus placement. The campus placement initiative would be a continuous process and your Institute will make all efforts to find suitable professional career for all the CMAs.

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE

❖ IPA matters

The Institute and IPA of the Institute were associated with ASSOCHAM for organizing two National Conferences on Insolvency and Bankruptcy Code- 2016 and Real Estate Regulation on 8th & 15th September, 2017 at Ahmedabad & Hyderabad respectively. Both the conference discussed current issues on Insolvency and Bankruptcy Code 2016 and RERA. CMA Dr. P.V.S. Jagan Mohan Rao, Council Member of the Institute was one the speakers at the National Conference held at Hyderabad on 15th September 2017.

❖ Meeting with Chairperson, Insolvency and Bankruptcy Board of India

I also had an opportunity to meet with Dr. M. S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India to discuss the role of the Insolvency Professional Agency of Institute in Insolvency and Bankruptcy related matters.

❖ Insolvency Professionals - Capacity Constraints & Initiatives

For training and dissemination of information and knowledge to Insolvency professionals, the Insolvency Professional Agency of Institute is organizing one day "Workshop on IBC and practical issues" on 7th October 2017 at New Delhi. The main focus of the workshop is towards the capacity building and professional development of the insolvency professionals. The technical sessions would be more focussed on the role of IRPs/RPs in first 150 days of CIRP, various challenges and aspects of important case laws decided by Supreme Court/High Courts/NCLAT/NCLT and would also deal with various practical difficulties faced by the Insolvency Professionals while conducting the transactions under IBC 2016. The detail of workshop is available on Institute and IPA websites. I urge the professionals to utilize the opportunities and use this platform for knowledge sharing and their capacity building.

I am thankful to the Regional Councils and Chapters of the Institute for their continuous efforts in promoting and creating awareness about Insolvency & Bankruptcy Code 2016 by organizing regular seminars/webinars/programs on IBC.

ACTIVITIES AT REGIONAL COUNCILS & CHAPTERS

❖ ONAM Celebration

I with CMA H. Padmanabhan, Vice President of the Institute had the opportunity to inaugurate the National Festival of Kerala - ONAM 2017 Celebration at Vinayaka Kalyana Mandapam, Kadavanthra, Kochi on 17th September.

❖ Campaign: 'Swachhta Hi Sewa'

I feel happy to share with you that on receipt of letter from Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs, Government of India, requesting us to undertake a campaign 'Swachhta Hi Sewa', from 15th September to Gandhi Jayanti on 2nd October 2017. I have also received a letter on the same subject from Shri P.P. Chaudhary, Union Minister of State, Ministry of Law and Justice and Ministry of Corporate Affairs. Our Delhi Office, all regional offices and chapters of our Institute participated wholeheartedly for making this campaign a great success.

I wish prosperity and happiness to members, students and their families on the occasion of Gandhi Jayanti and Deepawali and pray for the success in all of their endeavours.

With warm regards,

CMA Sanjay Gupta

3rd October, 2017

CMA Sanjay Gupta, President of the Institute wished 'Happy Dusshera' to Hon'ble Finance Minister and Minister of Corporate Affairs, Shri Arun Jaitley and discussed issues and developments regarding the profession of Cost and Management Accountancy

CMA Sanjay Gupta, President and CMA Dr I Ashok, Council Member of the Institute met with Shri Arjun Ram Meghwal, Union Minister of State, Water Resources, River Development & Ganga Rejuvenation, Parliamentary Affairs

CMA Sanjay Gupta, President of the Institute met Shri P P Chaudhary, Union Minister of State, Ministry of Corporate Affairs, Ministry of Law and Justice. Seen in the picture with Hon'ble Minister Shri P P Chaudhary are – on his right CMA Sanjay Gupta, CMA P V Bhattad, CMA Dr. D P Nandy & on his left CMA Amit Anand Apte, CMA Sunil Singh, CMA Dr. I Ashok & CMA S C Gupta

CMA Sanjay Gupta, President of the Institute and Shri Suresh Prabhu, Hon'ble Minister of Commerce and Industry at Udyog Bhavan

CMA Sanjay Gupta, President of the Institute and Shri Shiv Pratap Shukla, Hon'ble Minister of State for Finance

CMA Sanjay Gupta, President of the Institute and CMA P V Bhattad, Former President & CCM congratulating Col Rajyavardhan Singh Rathore, Hon'ble MoS (I/C) for Youth Affairs & Sports and MoS for I&B

CMA Sanjay Gupta, President of the Institute and CMA P V Bhattad, Former President & Central Council Member congratulating Shri P. P. Chaudhary, Hon'ble Minister of State for Law and Justice who has been given the additional charge of Ministry of Corporate Affairs

From left CMA SC Gupta, CMA Sunil Singh, CMA P V Bhattad, Ms. Tashia Batstone, CMA Sanjay Gupta, CMA Dr. I Ashok, CMA Amit Anand Apte, CMA L Gurumurthy & CMA Dr. D P Nandy at a meeting in Delhi

CMA Sanjay Gupta, President, CMA Amit A. Apte, and CMA P. Raju Iyer, Council Members of the Institute met Dr. Viral V. Acharya, Dy. Governor, Reserve Bank of India regarding matters of the profession

CMA Sanjay Gupta, President of the Institute with Dr. M. S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India

ICAI-CMA SNAPSHOTS

CMA Sanjay Gupta, President of the Institute inaugurating the ONAM Celebration at Cochin on September 17, 2017
Seen from left: Ms. Rilu, Student Representative, CMA Rakhesh R. Warrier, Secretary, Cochin Chapter, CMA Pushpy B. Muricken, Chairperson, Cochin Chapter, CMA H. Padmanabhan, Vice President of the Institute, CMA Sankar P. Panicker, Treasurer, SIRC and CMA P. Sivakumar, Vice Chairman, Cochin Chapter

CMA Sanjay Gupta, President of the Institute along with other dignitaries at SAFA International Conference held on August 27-28, 2017 at Kathmandu, Nepal

The Institute organized a Workshop on 'Competition Law and Cartel Enforcement' on 22nd September 2017 in SIRC at Chennai with the esteemed presence of Hon'ble Justice N. V. Balasubramanian, the Chief Guest, CMA H. Padmanabhan, Vice President , CMA Dr. A. Mayil Murugan, Chairman, SIRC, CMA Jyothi Satish, Secretary, SIRC and CCI representative

CFO & HR Discussion Meet on the theme 'Skill Development & Employability – Agenda for Economic Development' was organized by the Institute on 22nd September, 2017 at Kenilworth Hotel, Kolkata.
From Left: Dr. Suman K. Mukerjee, Economist and Director General of Bhawanipur Education Society, Dr. Gaurav Chandra Dutt, IPS at Police Directorate, CMA Sanjay Gupta, President, CMA Manas Kumar Thakur, Immediate Past President, Mr. Ambarish Dasgupta, Former President, Bengal Chamber of Commerce & Industry

Interview with The Expert

Dr. M S Sahoo

Chairperson, Insolvency and Bankruptcy Board of India (IBBI), New Delhi

Q1. What are the foundational objectives of the Insolvency and Bankruptcy Code, 2016?

*A. It is useful to look at the objectives of the Code as stated in its long title. It is for insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for **maximisation of value of assets** of such persons, **to promote entrepreneurship, availability of credit** and **balance the interests of all the stakeholders**. Towards these objectives, the Code (a) endeavours to prevent insolvency; (b) provides a market mechanism for time bound for resolution of insolvency, wherever possible, and (c) promotes ease of exit, wherever required.*

The Code has primarily four foundational objectives:

*(i) It addressesbusiness failures and thereby **promotes entrepreneurship.** Consider a firm that has freedom of entry and freedom to do business. It may, however, fail to deliver as planned, for a variety of reasons. Most often it is due to competition and innovation and for no fault of the entrepreneur.Whilecompetition and innovationcontribute to growth significantly, they increase the incidence of firm failure. The failure could also arise from faulty conceptualisation of business, inefficient execution of business, change of business environment, or even malafide design in rare cases. Irrespective of the reason,it dampens entrepreneurship.Through provisions for reorganisation, wherever feasible,and exit of a firm, wherever required, the Code enables a firm / entrepreneur to get in and get out of business with ease, undeterred by failure (honest failure for business reasons).*

*(ii) It addresses default andthereby **enhances availability of credit** for business. Failure usually manifests as default in repayment obligations, indicating the firm in question in a state of insolvency. Default could arise also from a mismatch between cash inflows and outflows. It is the result of either illiquidity or insolvency and is often a legitimate outcome of business operations. It has, however, serious business consequences. In the face of risk of default, lendersare not willing to lend.As the lenders do not get back their funds, the availability of funds at their disposal reduces limiting their ability to relend even for genuinely viable projects. On the other hand, low and delayed recovery pushes up the cost of lending, and consequently, credit becomes available at a higher cost at which firms are not willing to borrow.Through provisions for resolution and exit,the Code enables lenders to recover funds from either future earnings, post-resolutionor sale of liquidations assets.They can now*

distinguish and price credit risks across risk categories and offer differentiated and customized credit products across the value chain.On the other hand, the inevitable consequence of a resolution process (creditors get a right to decide the future of the firm) deters the management and promoter of the firm from committing a default and thereby minimizes the incidence of default. These increase supply of credit, reduce cost of funds, and develop debt market.

(iii) It addresses inefficiency of resource utilisation and thereby ***maximises the value of assets****. Default reflects relative under-performance (inefficiency) of a firm as compared to the most competitive firm in the industry. In other words, the resources at the disposal of afirm may not always be optimally utilised. The Code facilitates better utilisation of resources of the firm, while preserving the enterprise value. It enables the optimum utilisation of resources, all the time, either by (a) preventing use of resources below the optimum potential, (b) ensuring efficient resource use within the firm through resolution of insolvency; or (c) releasing unutilised or under-utilised resources for efficient uses through closure of the firm. It is believed thatif the resources, that are currently unutilised or underutilized or rusting for whatever reason, can be put to more efficient uses, the growth rate may well go up by a few percentage points, other things remaining unchanged, particularly when it is accompanied by availability of credit and entrepreneurship.*

(iv) It ***balances interests of all stakeholders*** *of the corporate debtor. Equity owners have complete control over a firm as long as they service debt obligations. When they fail to service debt, the Code shifts control to the creditors who get a right to decide what to do with the firm. However, the debtor has as much rights as a creditor under the Code to initiate resolution in case of default. An operational creditor has as much rights as a financial creditor to initiate resolution. The Code provides several measures, such as, payment of at least liquidation value to operational creditors, priority in waterfall for stakeholders in case of liquidation, to balance the interests of stakeholders. While running the firm and approving a resolution plan, the Committee of Creditors (CoC) and the Insolvency Professional (IP) also need to balance the interests of all stakeholders.*

The economywitnessed freedom of entry in the 1990s, led primarily by reform in securities laws, and freedom to compete in the 2000s led primarily by reform in competition laws. The Code now provides the ultimate economic freedom, freedom to exit, led primarily by reform in insolvency and bankruptcy laws. The Code has liberated resources stuck up in inefficient and defunct firms (chakravyuha) for continuous recycling, and has thereby changed the script from ***'Hopeless End' to 'Endless Hope'****.*

Q2. *What is the strategy underlying the Code?*

A. *In the matter of Innoventive vs. ICICI,the Hon'ble SupremeCourtsummed up the Code: "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. All this is to be done within a period of 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins."

If a corporate defaults the threshold amount, a financial creditor, an operational creditor, or the corporate itself may initiate resolution process. It makes an application before the adjudicating authority (AA) along with the evidence of default. If default is established, the AA admits the application and appoints an interim insolvency professional (IRP). The IRP runs the operations of corporate as a going concern up to 30 days during which he collects the claims and based on the same, forms a CoC. The CoC appoints a resolution professional to run the corporate as a going concern and decides what to do with the corporate. The CoC endeavours to resolve insolvency through a resolutionplan.If it approves a resolution plan within 180 days with 75% majority, the resolution professional submits the plan to the AA for approval. If the AA does not receive a resolution plan within the scheduled time, the corporate is liquidated. The strategy thus has broadly three elements:

(i) The Code is proactive. It provides for transfer of control and management of corporate and its assets from the extant promoters and managers to an IP if an application for resolution is admitted. This seeks to bring in behavioural change on the part of stakeholders. In particular, the inevitable consequence of a resolution process (the management as well as the assets of the corporate vest in an IP) deters the management and promoter of the firm from committing a default and thereby minimizes the incidence of default. Going forward, the best use of the ***Code would be not using it at all.***

(ii) Despite the best endeavour, it may not always be possible to prevent insolvencyfor valid, obvious reasons. Where prevention is not possible, the Code envisages ***resolution through a market mechanismas*** *under:*

(a) Resolutionwithin the firm as a going concern, as closure of the firm destroys organisational capital and renders resources idle till reallocation to alternate uses. It expects the creditors to recover their defaults from future earnings of the firm rather than from sale of its assets.

(b) Collective mechanism to resolve the insolvency rather than recovery of dues by a creditor which may make the prospects of resolution difficult. It enables any financial creditor to trigger the resolution process even when the firm has defaulted to another financial creditor and does not envisage termination of the process even if default of the party concerned is satisfied. Once admitted, the nature of insolvency petition changes to representative suit and the lis does not remain only between a creditor and the corporate debtor.

(c) Team effort to resolve the insolvency. There are many players having defined, complementary roles for completion of the process. In a matter, the Hon'ble NCLT observed: "no pleading or defending party, the terminology like petitioner/ respondent or plaintiff/defendant is not present under this Code....". The process is not adversarial.

(d) Timely Resolution. It requires resolution of insolvency at the earliest, preferably at the very first default, to prevent it from ballooning to un-resolvable proportions. A stakeholder is entitled to trigger resolution process as soon as there is a default of the threshold amount. He is, however, not obliged to do so at the first available opportunity if he has reasons for the same.

(e) Resolution in a time bound manner as undue delay is likely to reduce the organizational capital of the firm. When the firm is not in pink of its health,prolonged uncertainty about its ownership and controlmay make the possibility of resolution remote, enterprise value declines, impinging on economic growth.

(f) Resolution in the best possible manner. Anybody and everybody, including the promoters of the firm, may propose resolution plans and the CoC choose the best of them. It envisages limitless possibilities of resolution – with or without the existing promoter, with or without existing products, change of technology or business model, turn-around, buy-out, merger, acquisition, takeover, and what not.

(g) Segregationof commercial aspects of insolvency resolution from judicial aspects. The stakeholders and adjudicating authority decide matters within their domain expeditiously. It empowers and facilitates the stakeholders to complete the resolution process in time.

(h) Balance the interests of stakeholders in the resolution process. A resolution plan should take care of interests of all stakeholders - operational creditor, financial creditor or any other claimant - and also balance their interests.

(i) Compliance with all applicable laws of the land. The

resolution plan needs to be consistent with the laws of the land and should be implementable.

(iii) Where resolution is not possible, the Code enables an inefficient or defunct firm to exit with the least disruption and cost, and release the idle resources in an orderly manner for fresh allocation to efficient uses.

Q3. How is the Code unique as compared to the erstwhile regime?

A. The Code provides a comprehensive, modern and robust insolvency and bankruptcy regime, at par with global standards and even better in some aspects. The unique features of this regime are:

(i) There were several enactments dealing with different aspects of insolvency and bankruptcy of different persons. The Code, however, provides for a comprehensive regime dealing with all aspects of insolvency and bankruptcy of all kinds of persons.

(ii) It seeks to bring in behavioural changes to prevent insolvency.

(iii) It moves away from erosion of net worth to a more objective 'default' in payment for initiation of the insolvency process.

(iv) It moves away from the 'debtor-in-possession' regime to a 'creditors-in-control' regime where creditors decide matters with the assistance of an IP.

(v) In comparison to earlier enactments, the Code seeks to trigger insolvency resolution at the earliest and complete it in a time bound manner and empowers the stakeholders to do so.

(vi) It has separated commercial aspects of insolvency and bankruptcy proceedings from judicial aspects and empowers stakeholders and adjudicating authorities to decide the matters within their domain expeditiously.

(vii) It provides a collective mechanism to resolve insolvency rather than recovery of loan by a creditor. Recovery yields inequitable distribution of available assets to one or a few aggressive creditors to the detriment of the debtor and other creditors, while resolution maximises the value of the assets.

(viii) It requires invitation of resolution plans from market participants and approval of the best of them by CoC.

(ix) It provides several facilitators to complete the transactions, namely, an independent IP to run the debtor as going concern, continuation of essentialservices during resolution period, interim finance for continued operation of the debtor, moratorium on institution of proceedings to provide a calm period, information utilities to provide authentic information, etc.

(x) The proceedings under the Code are not adversarial.

(xi) The Code has several provisions to balance the interests of all stakeholders.

(xii) It has provisions to deal with undervalued transactions and extortionate transactions.

(xiii) In the waterfall for distribution of proceeds from sale of liquidation assets, Government dues come after unsecured creditors.

(xiv) It seeks to liquidate the corporate debtor in an orderly manner.

Q4. Since the implementation of Code, what are the major initiatives of IBBI? What were the challenges?

A. IBBI is a unique regulator: it regulates a profession as well as transactions. It has regulatory oversight over the IPs, Insolvency Professional Agencies (IPAs) and Information Utilities (IUs). It writes and enforces rules for transactions, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code. So the first initiative of IBBI was to put in place the regulatory framework and the ecosystem expeditiously to commence corporate insolvency transactions. It made regulations to govern transactions relating to corporate insolvency resolution, fast track resolution, corporate liquidation, and voluntary liquidation, and relating to service providers, namely, IPs, IPAs, and IUs. It put in place a mechanism for registration and monitoring of service providers. These enabled commencement of transactions under the Code by 1st December, 2016 within 60 days of the establishment of the IBBI on 1st October, 2016.

Every new establishment has challenges of setting up a new organization, organizing people, and technology, andso *does the IBBI. We thank the Institute of CostAccountants of India for making premises available for immediate use by the IBBI. Ministry of Corporate Affairs extended all possibleassistance to address any and every challenge the IBBI encountered. Help came from all possible corners, including other regulators.For example, SEBI has exempted resolution plans from the requirement of public offer under the Takeover Code, preferential allotment from pricing norms, etc. RBI has allowed information utilities and IPs to access the information from credit information companies. Government issued an ordinance authorizing RBI to issue directions to any bank to initiate insolvency resolution process in respect of a default under the Code. There are early signs of markets for interim finance, resolution plans and liquidation assets developing very fast.*

To commence transactions, we needed IPs. We did not have these professionals as such. We needed innovative, immediate solutions. Fortunately, we had statutorily regulated professionals, namely, chartered accountants, company secretaries, cost accountants, and advocates, who have been carrying on somewhat similar work. We allowed these professionals with 15 years' of practice experience to register as IPs, but their registration was valid for only six months. About a thousand professionals registered in this category. This gave us the time to plan a more systematic solution. We developed a Limited Insolvency Examination and allowed professionals with 10 years of experience and graduates with 15 years' managerial experience to pass the examination and then register as IPs.

Despite the best of efforts and intentions, a regulator may not always have the understanding of the ground realities, as much and as early as the stakeholders and the regulated may have, particularly in a dynamic environment. The most important initiative of the IBBI has, therefore, been seeking proactive engagement with the stakeholders and building institutional capacity, in partnership with them, to implement the insolvency and bankruptcy reform. This ensured that the regulations are informed by thelegitimate needs of those interested in andaffected by regulations.The reform witnessed exceptional cooperation from them and soon it became a reform by the stakeholders, of the stakeholders and for the stakeholders.

Q5. What is the way forward?

A. *Two major things. First, we are looking forward to implementing a regime for individual insolvency in a phased manner. In the first phase, we would implement the insolvency regime in respect of individuals, who are guarantors to corporates undergoing resolution process. That can be done fairly quickly as the adjudicating authority for this is the NCLT. Next would be individuals who are having some kind of business - proprietorship or partnership firms. Second, we will facilitate corporate insolvency transactions. Many resolution and liquidation transactions will mature in the next few months and those may throw up some irritations and deficiencies in the regulatory framework. We would address them expeditiously. We have already invited public comments on the existing regulations. Following the due process, regulations may be modified, if considered necessary.To the extent within our purview, we would promote a conducive environment for the development of markets for interim finance, resolution plans and liquidation of assets. We would focus on building capacity of IPs and keep a close watch on their conduct. We would facilitate operationalisation of information utilities so that authentic information is available to the AA and IPs to complete the transactions expeditiously.*

Q6. Do you think present capacity of Adjudicating Authority sufficient to handle Corporate Insolvency Resolution Process and Liquidation cases?

A. *Yes. The infrastructure needs to develop in sync with workload and it is happening. By now more than 700 applications under the Code have been disposed of by the AA, with outstanding quality and mostly within the prescribed time.*

Q7. Many of stakeholders particularly operational creditors perceive the IBC 2016 as a debt recovery tool. Is it a recovery tool?

A. *No. The objective is reorganisation or resolution of insolvency, as stated in the long title of the Code. In the matter of Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd., the Hon'ble NCLAT settled this by the observation: "It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. I & B Code, 2016 is an Act relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner ...."The Code envisages insolvency resolutionprocess in time bound manner within thefirm as a going concern.It expects the creditors to get their default amounts from future earnings of the firm rather than from sale of its assets. That is why the Code prohibits any action to foreclose, recover or enforce any security interest during the resolution period and thereby prevents a creditor from rushing in to recover his dues.It also prohibits alienation* *of assets of the debtor. It enables any financial creditor to trigger the resolution process even when the firm has defaulted to another financial creditor and does not envisage termination of the process even if claim of the party concerned is satisfied. In the matter of Parker Hannifin India Private Limited Vs. Prowess International Private Limited, the Hon'ble NCLT observed that once admitted, other creditors have a right to file their claims. The nature of insolvency petition changes to representative suit and the lis does not remain only between a creditor and the corporate debtor. Therefore, they alone do not have the right to withdraw the insolvency petition because the disputes between them have been settled.*

Q8. Do you not think that the Banking Sector which is reeling under all time high NPA situation still reluctant to initiate Insolvency Process under IBBI? What may be possible reasons for such reluctance?

A. *I do not think, they are reluctant.It is just that they need a little longer time for preparation, as they need to put in place an organisation wide decision making process to deal with a large number of transactions end to end. They would trigger the process only when they are reasonably confident of arriving at resolution and they think, resolution under the Code is the best of the options available to them under the circumstances. More importantly, being financial creditors, they have the duty and obligation to approve an appropriate and implementable resolution plan. In any case, irrespective of who triggersthe process, ultimate decision remains with them. Further, generally banks are secured creditors and they have security to fall back for recovery. They have other recourses for recovery as well as resolution outside the Code.*

Q9. One of the objectives of Code is to keep the entity "ON GOING CONCERN" so as to maximise the value of assets of corporate debtors. For this purpose the Interim Resolution Professional (IRP)/ Resolution Professional (RP) may have to arrange Interim Finance. Don't you think arranging Interim Finance by stressed businesses is difficult? Is IBBI thinking to develop market for Interim Finance to make available flow of interim finance to corporate debtors under CIRP?

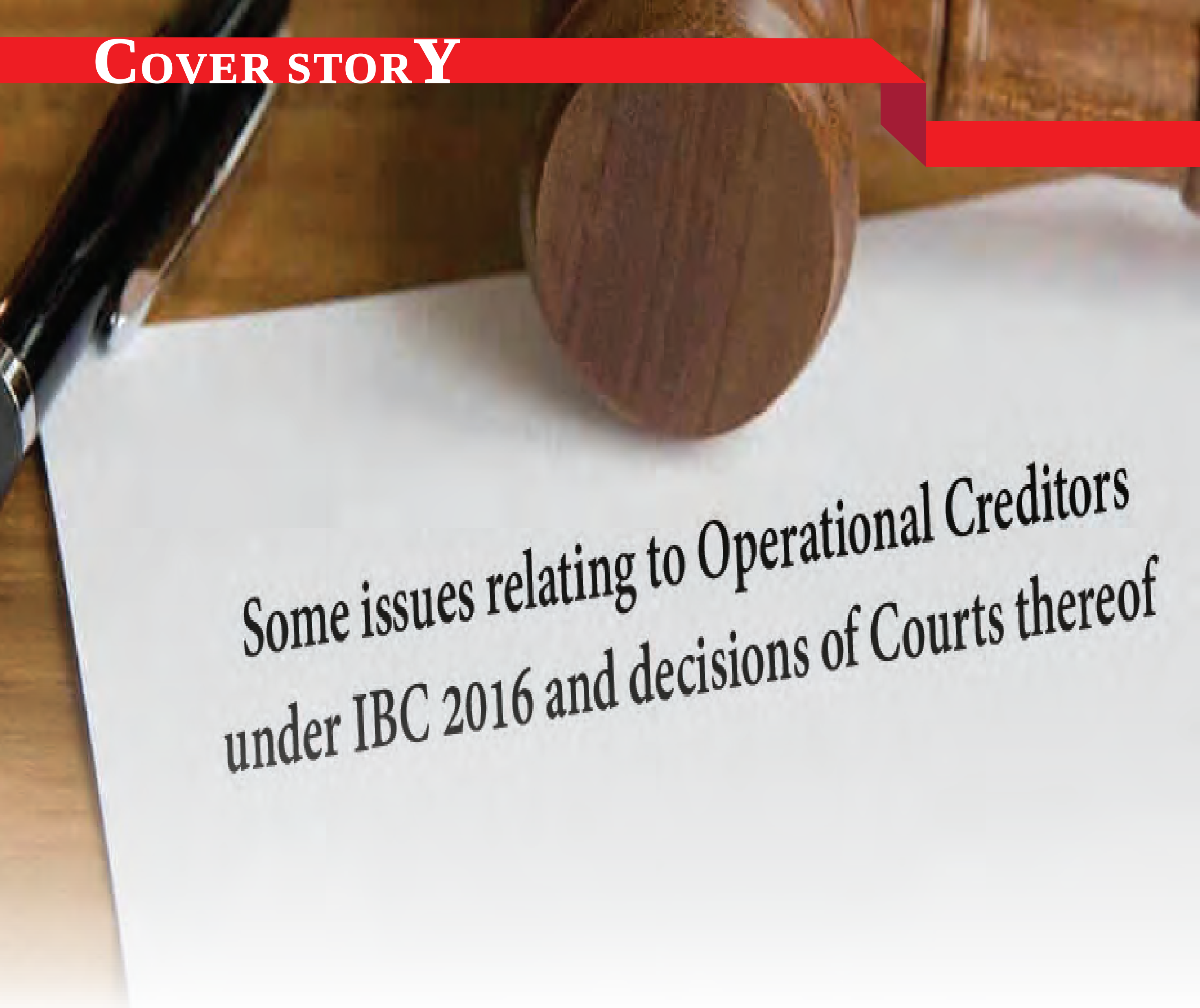
A. *The Code mandates the IPs to make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. For this purpose, they have authority to raise interim finances and "insolvency resolution process costs" includes the amount of any interim finance and the costs incurred in raising such finance. Resolution plan identifies specific sources of funds that is used to pay the insolvency resolution process cost. Despite these protection, it may be difficult to obtain interim finance in some cases, while IPs have succeeded in obtaining interim finance in a few cases. To the extent within its purview, IBBI would promote a conducive environment for the development of markets for interim finance, resolution plans and liquidation of assets.*

Q10. In an Eco-system of IBC 2016, Information Utilities would play a vital role to make available financial information to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings? When IUs under the Code start their functioning?

A. *IBBI has notified regulations for information utilities. It has granted registration to one IU. It should start rendering services soon.*

Q11. How can the Code help MSMEs?

A. *MSMEs are either creditors and or debtors. As creditors, they can trigger insolvency resolution of corporate debtors. As debtor, they can be either companies or non-companies. As corporate debtors, they can benefit from resolution under Fast Track Process, under which the process needs to be completed within a period of 90 days, as against 180 days in other cases. This process is available for insolvency resolution of: (a) a small company, as defined under clause (85) of section 2 of the Companies Act, 2013; (b) a start-up (other than the partnership firm), as defined in the notification dated 23rdMay, 2017 of the Ministry of Commerce and Industry; and (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs.1 crore. Further, IBBI is working on an insolvency resolution framework for non-corporate MSMEs. IBBI has constituted a Working Group for recommending the strategy and approach for implementation of the provisions of the Code to deal with insolvency and bankruptcy in respect of individuals having Business, and drafting related Rules and Regulations.*



The Insolvency and Bankruptcy Code, 2016 (IBC) has been enacted by the legislation in order to consolidate the insolvency and bankruptcy laws.

The said code being a new legislation is still at its nascent stage and various issues are cropping up in the implementation of the said code. The said issues are being resolved by the intervention of the Courts/NCLT/NCLAT in a speedy manner.

Ajay K. Jain
Supreme Court Advocate &
Independent Director
Insolvency Professional Agency of
Institute of Cost Accountants of India

The Code has stipulated strict time lines which have to be adhered to by all the stakeholders. The Courts / Adjudicating Authority etc. being mindful of the time lines are also making all efforts to give an early hearing and early decision on various issues so as to ensure that the time lines set out in the Code are adhered to inspite of various complex issues being raised.

In the said code for the first time the word "Operational Creditor" has been used. The Code defines Operational creditors as being those creditors to whom an operational debt is owed, and an operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority.

As per the scheme of the code i.e. Under Section 8 & 9 an operational creditor, as defined, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), may deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8 (1)). Within a period of 10 days of the receipt of such a demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor existence of a dispute and/ or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute.

From the bare reading of Section 8 & 9 it becomes clear that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist prior to the receipt of the demand notice. In case the operational debt has been paid then in such a case the corporate debtor has to intimate to the operational creditor that the said demand has been paid and give the payment details thereof. It is only incase that the corporate debtor is unable to make payment of the outstanding operational debt within the said period of 10 days or furnish proof to the operational creditor of having paid the said alleged outstanding operational debt earlier. In case there is a dispute then the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8 (2) (a).

In case the operational creditor does not receive the payment from the corporate debtor within 10 days of receipt of notice nor does it receive any notice of dispute, then the operational creditor can trigger the insolvency process.

It, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational

‘In case the operational debt has been paid then in such a case the corporate debtor has to intimate to the operational creditor that the said demand has been paid and give the payment details thereof. It is only incase that the corporate debtor is unable to make payment of the outstanding operational debt within the said period of 10 days or furnish proof to the operational creditor of having paid the said alleged outstanding operational debt earlier’

creditor the existence of a dispute, if any.

Once an application Under Section 9 of the Code has been filed before the Adjudicating Authority then it has to examine and determine:

i. Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)

ii. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And

iii. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority has to follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9 (5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

One of the basic point of contention has been with regard to the definition of the word "Dispute". This controversy has finally been put to rest by the order of the Hon'ble Supreme Court of India passed in the matter of ***"Mobilox Innovations Private Limited Versus Kirusa Software Private Limited" (Civil Appeal No.9405 of 2017).***

Controversy also arose with regard to the right of audience by the corporate Debtor prior to passing of any order against it. This question was heard and decided by the Honble NCLAT in the matter of M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr. In (Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017) wherein it held:

> *66............. Therefore, it will be imperative for the "adjudicating authority" to adopt a cautious approach in admitting Insolvency Application by ensuring adherence to the principal natural justice."*

The code also sets out certain timelines both for the persons who approach the Adjudicating Authority and also cast's an obligation upon the Adjudicating Authority to dispose off the application filed by the applicants for initiation or proceedings under the code in a time bound manner. The timelines set out under the code were put to test in the matter of ***Juggilal Kamlapat Jute Mills Company Limited Civil*** wherein the Hon'ble NCLAT held that the period of 14 days as mentioned under the code during which period the Adjudicating Authority is required to admit the petition and also appoint interim resolution professional (IRP) i.e. within a period of 14 days is not mandatory but directory in terms of Section 16 of the code. In the said order the learned NCLAT further held that the period of 7 days given to the applicant for rectifying defects as pointed out by the Registry is mandatory.

This order of the learned NCLAT was taken up in Appeal to the Hon'ble Supreme Court of India in the matter of ***Surendra Trading Company Versus Juggilal Kamlapat Jute Mills Company Limited & Ors*. (Civil Appeal No.8400/2017).** The Hon'ble Supreme Court in the said order has inter alia held as under:

> "23. Further, we are of the view that the judgments cited by the NCLAT and the principle contained therein applied while deciding that period of fourteen days, within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible.
>
> 24. Thus, we hold that the aforesaid provision of removing the defects within seven days is directory and not mandatory in nature............."

Another interesting question which arose for determination before the Hon'ble Supreme Court was about the interplay of 'Maharashtra Relief Undertaking (Special Provisions) Act (Bombay Act XCVI of 1958), viz a viz the Insolvency & Bankruptcy Code of 2016. The Hon'ble Supreme Court after hearing the parties held as under:

> The code also sets out certain timelines both for the persons who approach the Adjudicating Authority and also casts an obligation upon the Adjudicating Authority to dispose off the application filed by the applicants for initiation or proceedings under the code in a time bound manner.

"54.On reading its provisions, the moment initiation of the corporate insolvency resolution process takes place, a moratorium is announced by the adjudicating authority vide Sections 13 and 14 of the Code, by which institution of suits and pending proceedings etc. cannot be proceeded with. This continues until the approval of a resolution plan under Section 31 of the said Code. In the interim, an interim resolution professional is appointed under Section 16 to manage the affairs of corporate debtors under Section 17.

55. It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in 97 much the same manner as that contained in Sections 13 and 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go 98 ahead with the insolvency resolution process outlined in the Code. Further, the non-obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-à-vis action taken under the later Central enactment. Also, Section 238 of the Code reads as under:

"Sec.238. Provisions of this Code to override other laws.-

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code."

"M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr." (Civil Appeal No. 833-8338 of 2017).

Thus, we will note that the code inspite of being at infancy stage is invoking serious questions which are all being answered in a speedy manner and towards fulfillment of the objectives of the code. MA

ajaykjain26@gmail.com

Roles and Responsibilities of Insolvency Professionals under IBC 2016

The Insolvency and Bankruptcy Code, 2016 after President's assent was notified by Government of India on 28th May 2016. The code consolidated various Legislations which dealt with Insolvency and Bankruptcy in India andprovides for insolvency resolution process for corporates, limited liability partnership, individuals, and partnership firms in time bound manner for maximization of value of assets of these persons, to promote entrepreneurship, availability of credit and balance the interests of all stakeholders.

CMA J K Budhiraja
Chief Executive Officer
Insolvency Professional Agency &
Senior Director (Technical)
The Institute of Cost Accountants of India

The Code enacted at a very crucial time when the banking industry is reeling under huge NPA prompting the Government of India to come out with Banking Regulation (Amendment) Ordinance, 2017 in May 2017. The Ordinance has been replaced by the Banking Regulation (Amendment) Act, 2017 on 25th August 2017. This Actempowers the Reserve Bank of India (RBI) to give directions to banks to act against loan defaulters. It contains provisions for handling cases related to stressed assets. Stressed assets are loans on which the borrower has defaulted or it has been restructured (such as by changing the repayment schedule). The RBI from time to time issues directions

to banks for resolution of stressed assets. The Central Government can authorise the RBI to issue directions to banks for initiating proceedings in case of a default in loan repayment. These proceedings would be under the Insolvency and Bankruptcy Code, 2016.

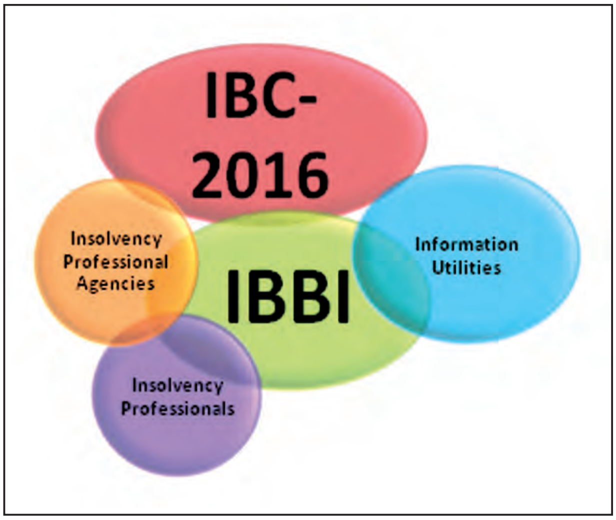
In June 2017, the Reserve Bank of India (RBI) had identified 12 large corporate non-performing assets, accounting for 25 percent (about Rs 1.7 lakh crore) of the total bad loans in the banking system, to be immediately referred to the NCLT under the Insolvency and Bankruptcy Code (IBC). Except for Era Infra Engineering, 11 cases were admitted by the NCLT. 12 large corporate cases include Essar Steel, Bhushan Steel, Alok Industries, ABG Shipyard, LancoInfratech, Era Infra, JaypeeInfratech etc.

The Codepaves the way for the complete overhaul of the Debt Restructuring, Corporate Sickness Resolution, Individuals and Partnership Firms Insolvency and Bankruptcy Resolutionmechanism in India through Adjudicating Authority (NCLT and DRT) and strengthens the legal process.

Eco-System of Insolvency and Bankruptcy in India

The Code allows creditors to assess the viability of a debtor as a business decision, and agree upon a resolution plan for its revival as an on-going concern or a speedy liquidation. The Code creates the following Eco-System of Insolvency and Bankruptcy in India:

Insolvency and Bankruptcy Ecosystem in India



(i) Insolvency and Bankruptcy Board of India:The Insolvency and Bankruptcy Board of India was established on October 1, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. It is a regulator of Insolvency professionals, insolvency professional agencies, information utilities. Its powers and functions are as per Section 196 of the Code. The powers and functions inter-alia include specifying regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities; Inspection and investigation of these agencies; Monitoring the performance of these agencies; Lays down regulations, the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies; Promote transparency and best practices in its governance.

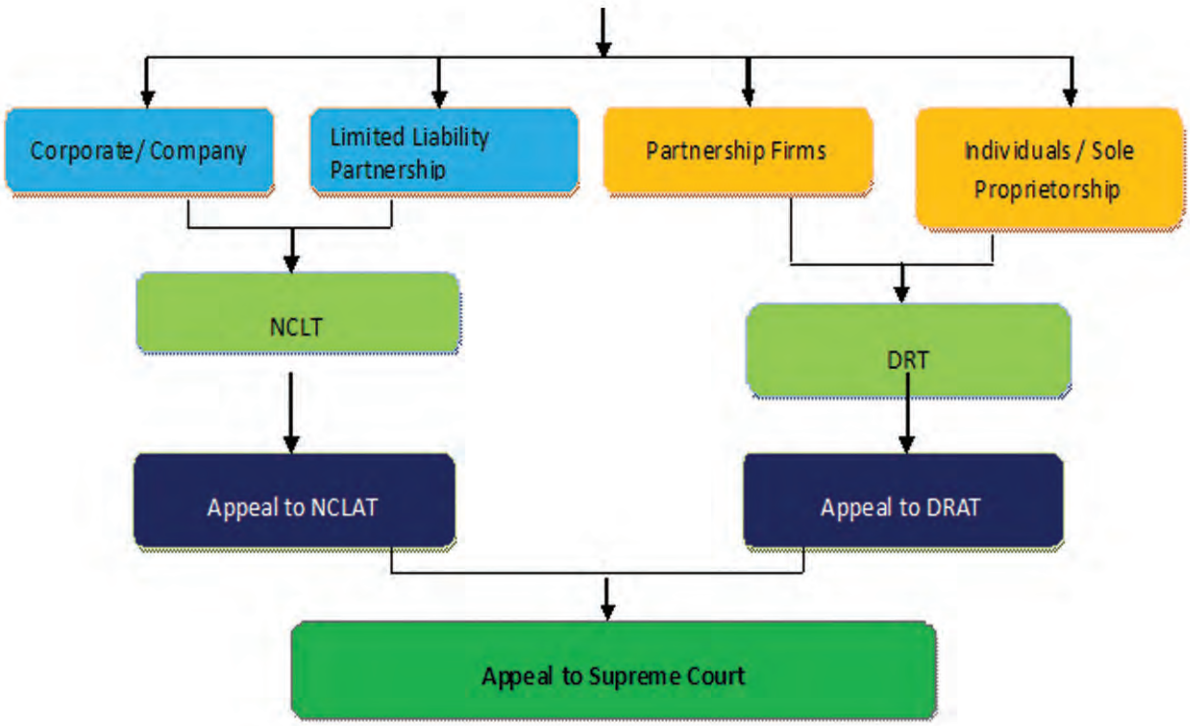
(ii) Insolvency Professional Agency: is a regulator of Insolvency Professionals. It is a quasi-judicial body under the Code. It acceptsenrolment of Insolvency Professionals, examine, and verify their applications for registration with Insolvency and Bankruptcy Board of India. *As per Section 200 of the Code, the Insolvency Professional Agencies shall promote the professional development of and regulation of insolvency professionals; promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified; promote good professional and ethical conduct amongst insolvency professionals; protect the interests of debtors, creditors and such other persons as may be specified; and also promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code.*

(iii) Insolvency Professionals: conduct the insolvency resolution process, take over the management of a company, assist in the collection of relevant information, collate preparation of necessary data information for resolution process, and manage the liquidation process. Section 208 of the Code enumerates the functions and obligations of insolvency professionals and these professionals are required to abide by the Code of Conduct. Code of Conduct have been given in **FIRST SCHEDULE *"Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016"*** notified on 23rd November 2016. *The Code provides for such other powers and duties upon the insolvency professionals to enable them to carry out insolvency process, voluntary liquidation, liquidation and bankruptcy process efficiently.*

(iv) Insolvency Information Utilities: The Code provides for information utilities which collect, collate and disseminate financial information related to debtors. Creditors will report financial information of the debt owed to them by the debtor. Such information will include records of debt, liabilities and defaults. Duties and powers of Information utilities are as per "*Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017*" notified on 31st March 2017.

(v) Adjudicating Authorities: The adjudicating authority under the IBC is "***National Company Law Tribunal (NCLT)***" for Corporate Debtors (Companies & LLPs) and the "***Debt Recovery Tribunal (DRT)***" for individuals and partnership firms.

Adjudicating Authorities



Roles and Responsibilities of Insolvency Professionals

As mentioned in the Eco-System of Insolvency and Bankruptcy, the powers, duties and responsibilities enable the insolvency professionals toplay a vital role in the insolvency and bankruptcy resolution process. The Code provides for Insolvency Resolution and Liquidation/ Bankruptcy for Corporate Persons and Individuals and Partnership Firms separately. **Part-II** of the Code provides for *Insolvency Resolution and Liquidation for Corporate Persons* while **Part-III** of the Code provides for *Insolvency and Bankruptcy for Individuals and Partnership Firms*. The code provides for *two phases*, the first phase of the insolvency and bankruptcy process is the period of insolvency resolution during which insolvency is assessed and a solution is reached within a stipulated time period. In case a solution is not reached within the specified time limitor insolvency process fails, the second phase of the process begins wherein the entity is declared bankrupt. At this point a corporate debtor enters into Liquidation whereas an individual enters into bankruptcy resolution.

The Code provides time bound insolvency resolution process— 180 days after the process is initiated, plus a 90-day extension — for resolving insolvency. The Code also provides for FAST TRACK INSOLVENCY RESOLUTION PROCESS— 90 days after the process is initiated, plus a 45-day extension — for resolving insolvency in fast track mode.

As on 17thSeptember 2017, the Insolvency and Bankruptcy Board of India (IBBI) website shows 904 Insolvency Professionals registered with IBBI and is likely to be more than 1000 insolvency professionals by the end of September 2017. About 1,000 insolvency petitions had been triggered since early 2017, when the first case of *Innoventive Industries Limited v. ICICI Bank Limited*was admitted under IBC 2016. It is estimated that about 80 percent of these were withdrawn following out-of-court settlements.About 60 percent of the cases brought to the NCLT are initiated by operational creditors, as industry estimates show.

Role of Insolvency Professionals: The Code envisages the following Roles of Insolvency Professionals:

(i) As ***Interim Resolution Professionals* (Section 16)** and manage the affairs of the Corporate Debtors as "*going concern*" during the insolvency resolution process in interim period of 30 days;

(ii) As **Representative of a Creditor in CoC under Section 21(6)(c):**Where terms of financial debt extended as a part of consortium and provide for a single trustee or agent), a creditor may appoint an insolvency professional (*other than the resolution professional*) at his own cost **to represent himself in the committee of creditors to the extent of his voting share;**

(iii) As ***Resolution Professional (Section 22)***, the creditors committee may either appoint the same ***"interim resolution professional"*** for preparing the ***"Resolution Plan"*** and managing the affairs of the Corporate Debtor as "*going concern*" during the insolvency resolution process or may appoint other Professional (CMA) in his place;

(iv) As **Representative of a Creditor in CoC under Section 24(5):** Any creditor who is a member of the committee of creditors may appoint an insolvency professional *other than the resolution professional* to represent such creditor in a meeting of the committee of creditors:

(v) As **Liquidator (Section 33)** to be appointed by Adjudicating Authority (NCLT) on the initiation of "Liquidation Process";

(vi) As **Voluntary Liquidator (Section 59)** to be appointed by Corporate Debtors;

(vii) As **Insolvency Resolution Professional (Section 82) by Adjudicating Authority** in case of FRESH START PROCESS for "*Insolvency and Bankruptcy for individuals and Partnership Firms*";

(viii) As **Insolvency Resolution Professional (Section 97) by Adjudicating Authority** for initiating the insolvency resolution process by debtor (***under section 94***) or creditor/ creditors(***under section 95***) in case of "*Insolvency and Bankruptcy for individuals and Partnership";*

(ix) **Appointment as *bankruptcy trustee* (Section 125)**by Adjudicating Authority for initiating the bankruptcy by debtor (***under section 122***) or creditor (***under section 123***) in case of "*Insolvency and Bankruptcy for individuals and Partnership Firms*"

In this article, I am giving briefly the role of Insolvency Professional as Interim Resolution Professional (IRP) and Resolution Professional (RP) in relation to Corporate Insolvency Resolution Process (CIRP) as under.

Role played by IRP/RP in relation to CIRP

An application for initiating the Corporate Insolvency

Resolution Process (CIRP) can be initiated under the "Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 by ***financial creditor***in FORM 1 (*Rule 4 read with Section 7 of the Code*); or ***operational creditor***in FORM 5 (*Rule 6 read with Section 8 & 9 of the Code*) or ***corporate applicant*** in FORM 6 (*Rule 7 read with Section 10 of the Code*). For initiating CIRP, the financial creditor and corporate applicant are required to propose "Interim Resolution Professional" in FORM 2 of the said Rules, whereas in case of operational creditor, proposing of IRP by him is optional. If operational creditor does not propose IRP, the Adjudicating Authority (AA) shall write to IBBI for appointing IRP and that shall intimate AA with period of *ten days* of such request. On admission of an application as above, NCLT appoints anIRP for a period of thirty days. IRP is required to complete many activities within a period of 30 days e.g. issuance of public announcement in newspapers;appointment of Registered Valuers;collection and verification of claims; constitution of Committee of Creditors (COC);, conducting first meetingof COC etc. The Flow Chart below explains these activities:

In addition to above activities by IRP, the following are also to be done within a period of 30 days as IRP:

(A) Management of the affairs of the corporate debtor (Section 17)

There is a paradigm shift from the existing 'Debtor in possession' in Sick Industrial Companies (Special Provisions) Act, 1985 [SICA Act 1985] to a '*Creditor in Control*' regime in the IBC 2016. During the period of CIRP, the powers of Board of Directors shall stand suspended and these powers shall vest in IRP. Officers, managers, financial institutions maintaining the account of corporate debtor shall act as per the instructions of IRP. But it has been seen in many cases, the transfer of powers from the management of corporate debtors is not smooth. As per the provisions of ***Regulation 30*** of the *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Applicant) Regulations 2016*, many IRPs have to take assistance of local district administration.

Recently, NCLT Chennai Bench in September 2017 in the case of ***Central Bank of India and State Bank of India v. Ashok Magnetics Ltd.***,has directed the police to give proper assistance and personal security to an insolvency professional appointed in the above case. The insolvency professional had complained of resistance from the company for not handing over the charge of the assets of the company to initiate the insolvency proceedings.

(B) Management of operations of corporate debtor as "ON GOING CONCERN"

The IRP is to make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. Towards these endeavours he may has to appoint accountants, legal or other professionals as may be necessary; enter into contracts, modify/amend them; raise interim finance; issue instructions to personnel of the corporate debtor as may be necessaryfor keeping the corporate debtor as a going concern; and(e) take all such actions as are necessary to keep the corporate debtor as agoing concern.

(C) Duties of interim resolution professional (Section 18)

The Code casts many duties under section 18 to be performed by IRP. The IRP shall perform the following duties, namely:—

(a) collect all information relating to the assets, finances and operations of thecorporate debtor for determining the financial position of the corporate debtor, includinginformation relating to—

(i) business operations for the previous two years;
(ii) financial and operational payments for the previous two years;
(iii) list of assets and liabilities as on the initiation date; and
(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;
(c) constitute a committee of creditors;
(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;
(e) file information collected with the information utility, if necessary; and
(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights whichmay be located in a foreign country;
(ii) assets that may or may not be in possession of the corporate debtor;
(iii) tangible assets, whether movable or immovable;
(iv) intangible assets including intellectual property;
(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board (IBBI).

First Meeting of CoC and Appointment of Resolution Professional (Section 22)

The first meeting of the committee of creditors (CoC) is to be held within *seven days*of the constitution of the committee of creditors.

The CoC, may, in the first meeting, by a ***majority vote of not less than seventy-five percent*** of the voting share of the financial creditors,either resolve to appoint the interim resolution professional as a resolutionprofessional or to replace the interim resolution professional by another resolutionprofessional.

Where the CoC resolves to continue the interim resolution professional as resolution professional, itshall communicate its decision to the interim resolution professional, the corporatedebtor and the Adjudicating Authority; OR if it resolves to replace the interim resolution professional, it shall file an application beforethe Adjudicating Authority for the appointment of the proposed resolutionprofessional.

On receipt of communication from CoC, the Adjudicating Authority shall forward the name of the resolution professionalproposed to the IBBI for its confirmation and shall makesuch appointment after confirmation by the IBBI.

Where the Board does not confirm the name of the proposed resolution professionalwithin ten days of the receipt of the name of the proposed resolution professional, theAdjudicating Authority shall, by order, direct the interim resolution professional to continueto function as the resolution professional until such time as the Board confirms theappointment of the proposed resolution professional.

Duties of Resolution Professional (Section 25)

It is the duty of the resolution professional to preserve and protect theassets of the corporate debtor, including the continued business operations of the corporatedebtor.

For the above purposes, he shall undertake thefollowing actions, namely:—

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
(c) raise interim finances subject to the approval of the committee of creditors under section 28;
(d) appoint accountants, legal or other professionals in the manner as specified by Board (IBBI);
(e) maintain an updated list of claims;
(f) convene and attend all meetings of the committee of creditors;
(g) prepare the information memorandum in accordance with section 29;
(h) invite prospective lenders, investors, and any other persons to put forward resolution plans;
(i) present all resolution plans at the meetings of the committee of creditors;
(j) file application for avoidance of transactions in accordance with Chapter III, if any; and
(k) such other actions as may be specified by the Board (IBBI).

Duties of Members

Code of Conduct as given under **FIRST SCHEDULE** of the *Insolvency Professionals Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016*are to be complied with by the Insolvency Professionals. Also *Insolvency Professionals Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations 2016* gives the duties of members of the Insolvency Professionals Agencies as follows:

In the performance of his functions, a professional member shall-

(a) act in good faith in discharge of his duties as an insolvency professional;
(b) endeavour to maximize the value of assets of the debtor;
(c) discharge his functions with utmost integrity and objectivity;
(d) be independent and impartial;
(e) discharge his functions with the highest standards of professional competence and professionalethics;
(f) continuously upgrade his professional expertise;
(g) perform duties as quickly and efficiently as reasonable, subject to the timelines under the Code;
(h) comply with applicable laws in the performance of his functions; and
(i) maintain confidentiality of information obtained in the course of his professional activities unless required to disclose such information by law.

Preparation of Information Memorandum

As per Section 29 of the Code, the Information Memorandum shall be prepared by the Resolution

Professional. Whereas as per Regulation 36 of *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016*, the Information Memorandum shall be submitted by either Interim Resolution Professional or Resolution Professional in electronic form to each member of committee of creditors and any potential resolution applicant. As majority of information contained in Information Memorandum should be known to 1st committee of creditors, the information memorandum as per the contents mentioned in clause (a) to (i) of sub-regulation (2) of Regulation 36 may be prepared by Interim Resolution Professional. Briefly Information Memorandum should contain information related to assets and liabilities as on the date of insolvency; latest annual financial statements; audited financial statements for last two years and provisional financial statements for current year made upto a date not earlier than 14 days from the date of application of insolvency; list of creditors; particulars of debts due from related parties; details of guarantees; names and addresses of the members or partners holding at least 1% stake in the entity along with size of debt; details of material litigations/ investigations; number of workers and employees and liabilities of corporate debtor towards them. Other details as per clauses (j) to (l) of sub-regulation (2) of Regulation 36 such as liquidation value and liquidation value due to operational creditors should be provided by Resolution Professional. As the information as contained in Information Memorandum shall be utilized by the Resolution Applicant for providing Resolution Plan of the corporate debtor, so the information prepared by IRP and RP should be utmost relevant to facilitate good Resolution Plan.

Resolution Applicant and Contents of Resolution Plan

Based on the Information Memorandum as discussed above, the Resolution Applicant shall prepare Resolution Plan of the corporate debtor. As per the definition provided under **Section 5(25)**, "***Resolution Applicant***" *means any person who submits a resolution plan to the resolution professional*;**Section 5(26) defines**: "***resolution plan***" *means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II*;Resolution Plan can be submitted by any person such as corporate debtor, creditor, shareholders, third party not related to insolvency process, professionals etc. Whosoever submits the resolution plan to Resolution Professional, it shall provide the measures required for implementing it, including but not limited to the matters provided under Regulation 37 of CIRP Regulations 2016.

Also, the Resolution Plan shall contain the mandatory contents as given under Regulation 38 of CIRP Regulations 2016 read with section 30(2) of the Code, which inter-alia include the following:

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid inpriority to any other creditor;
(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditorwhich shall in any event be made before the expiry of thirty days after the approval of a resolution plan by theAdjudicating Authority; and
(c) liquidation value due to dissenting financial creditors and provide that such payment is made before anyrecoveries are made by the financial creditors who voted in favour of the resolution plan.

(2) A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;
(b) the management and control of the business of the corporate debtor during its term; and
(c) adequate means for supervising its implementation.

Some issues as decided by Courts/ NCLAT/NCLT

1. Whether NCLT is bound to issue notice to and hear the corporate debtor to ascertain a default

NCLAT in the case of *Innoventive Industries Limited v. ICICI Bank Limited*held that National Company Law Tribunal (NCLT) is bound to issue only a ***limited notice*** to the corporate debtor before admitting a case under Section 7 of the IBC, 2016. NCLAT has clarified that adherence to principles of natural justice would not mean that in every situation the NCLT is required to afford reasonable opportunity of hearing to the corporate debtor before passing its order.

2. Is it Mandatory to Serve Notice under Section 8(1) of IBC 2016 before filing the application u/s 9 of IBC 2016 by an

operational creditor?

In *Era Infra Engineering Limited V/s Prideco Commercial Services Private Limited*, the operational creditor had in past served demandnotice under Section 271 of Companies Act, 2013 and was relying on the said demand notice initiated the proceeding under IBC 2016.The Adjudicating Authority (NCLT) have on receipt of the application under Section 9 of I&B Code 2016, from operational creditor i.e. Prideco Commercial Services Private Limited had triggered the Corporate Insolvency Process against the Corporate Debtor *Era Infra Engineering Limited* and accordingly appointed an Insolvency Resolution Professional and declared the moratorium under Section 14 of I&B Code 2016. The Hon'ble NCLAT in the appeal set aside the order passed by NCLT and quashed all orders, interim arrangement including declaration of moratorium and appointment of Insolvency Resolution Professional. The NCLAT observed that serving of notice under Section 271 of Companies Act, 2013 cannot be considered as sufficient notice as required to be served under Section 8(1) of I&B Code 2016 in the prescribed format.

3. Is the timeline of 14 days provided under IBC 2016 to admit and initiate the CIRP is extendable?

In *J K Jute Mills Company Limited V/s Surendra Trading Company4*, the Appellate Tribunal (NCLAT) *held that the object behind the time period prescribed under Section 7, Section 9 and Section 10, like Order VIII Rule 1 of CPC is to prevent the delay in hearing the disposal of the cases. The Adjudicating Authority cannot ignore the provisions. But in appropriate cases, for the reasons to be recorded in writing, it can admit or reject the petition after the period prescribed under Section 7 or Section 9 or Section 10*.**Accordingly,the time period of 14 days under Section 7, 9 and 10 which is to be counted from the '*date of receipt of application*' means '*date on which the application is listed for admission / order*.'**

The nature of provisions, contained in Section 7, 9 and 10 in respect of time limit for admission/rejection of an application by adjudicating authority, being procedural in nature, cannot be treated to be a mandate of law and the object behind these provisions is only to prevent delay in hearing and disposal of cases.

NCLAT further held that the period of 7 days granted to an applicant to remove defects is mandatory and on failure to observe this, application is fitted to be rejected. Also, the time limit of 180 days + 90 days (extension) for completion of insolvency resolution process under section 12 is mandatory.

4. What does "dispute" and "existence of dispute" means for the purpose of determination of a petition under section 9 of the Insolvency and Bankruptcy Code, 2016?

In*Kirusa Software Private Ltd. v. Mobilox Innovations Private Ltd*, an appeal was preferred before the Appellate Tribunal by the operational creditor against the rejection of his application by NCLT, Mumbai Bench on the ground that the operational creditor had received notice of dispute disputing the debt allegedly owed to operational creditor.

NCLAT mentioned that Section 3(6) of the Code defines "***Claim***" to mean a right to payment and included within its ambit disputed and undisputed, legal, equitable, secured, including arising out of breach of contract. ***Therefore, "right to payment" is foundation for making a claim under the Code***.

NCLT held that the term "***dispute***" is "inclusive" and not "exhaustive". The same has to be given wide meaning provided it is relatable to existence of the amount of the debt, quality of good or service or breach of a representation or warranty.

NCLAT mentioned admittedly in sub-section (6) of Section 5 of the IBC, the Legislature used the words '*dispute includes a suit or arbitration proceedings*'. If harmoniously read sub-section (2) of Section 8 of the IBC, where words used are '*existence of a dispute, if any, and records of the pendency of the suit or arbitration proceedings*,' the result is disputes, if any, applies to all kinds of disputes, in relation to debt and default. The expression used in sub-section (2) of Section 8 of the IBC '*existence of a dispute, if any*,' is disjunctive from the expression '*record of the pendency of the suit or arbitration proceedings*'. Therefore the term '**dispute**' cannot be restricted merely to a pending suit or arbitrationproceedings, the word '***includes***' ought to be read as "***means and includes***", includingproceedings initiated or pending before consumer court, tribunal, labour court ormediation, conciliation etc.

5.
(a) Whether definition of "dispute" is inclusive?
(b) Is the concurrence of debtor required for assignment?
(c) Where the contract provides for jurisdiction for English laws, whether the application can be filed under the Insol-

vency and Bankruptcy Code?

(d) Can Power of Attorney holder(s) initiate CIRPunder the Code?

In a landmark judgement by NCLT, Mumbai Bench in case of *M/s. DF Deutsche Forfait AG and Anr. M/s. Uttam Galva Steels Ltd.*the above mentioned questions were decided and are given below:

(a) Whether definition of "dispute" is inclusive?

NCLT, Mumbai Bench decided whether the definition of "dispute" undersection 5(6) is exhaustive, as the definition of "dispute" is primarily meant for application wherenotice has been served by an operational creditor under section 8.The Bench confined meaning that the word "***includes***"shall be read and understood as "***means***" with reference to the pendency of a suit or arbitration proceeding – the word "***dispute***" is qualified as such.

(b) Is the concurrence of debtor required for assignment?

The debt was assigned by AIC HandelsGmBH (AIC) by a discounting agreement / forfeiting agreement to DF Deutsche Forfait AG (Deutsche), assigning the entire debt with present and future rights, claims, and demands to it by endorsing thebills of exchange accepted by Uttam Galva. Subsequently, Deutsche further assigned part of its debts to Misr Bank Europe GmBH ("Misr") through another discounting agreement. A notification of the same was sent by Deutsche to Uttam but was not confirmed by Uttam. The Bench remarked that the assignment of debts in India need not be confirmed by the corporate debtor.

(c) Where the contract provides for jurisdiction for English laws, whether the application can be filed under the Insolvency and Bankruptcy Code?

The sales contract between Uttam and AIC was governed by English law. Therefore, the corporate debtor raised an objection that the operational creditors cannot proceed without dealing with English law. The Bench observed that the corporate debtors has been under alarming situation and is consistently into losses. The Bench was of the view that if any further delay is made in accepting the application, it will become nothing but defeat the purpose and object of the Code. It was held that it was for Uttam Galva to show that the English Law was applicable and ithas not been done so. Further, Uttam Galva has not shown that confirmation ofassignment is a requisite under the Indian Law.

(d) Can Power of Attorney holder(s) initiate CIRP under the Code?

The corporate debtor contemplated that there is no explicit provisions in the Power of Attorney pertaining to initiate CIRP against the corporate debtor under the Code. The Bench stated that upon commencement of the new law which has led to the repeal of the previous law, the power of the Power of Attorney does not extinguish upto the extent the Code has repealed the Companies Act, 2013 and therefore the Power of Attorney is a valid.

6. Can the application be withdrawn after its admission for CIRP?

In *Lokhanwala Kataria Constructions Private Limited V/s. Nisus Finance & Investment Manager LLP* there are two cases one decided by NCLAT and later by Supreme Court of India. Both the cases are important for IPs so these are given simultaneously below:

The appeal was preferred by the Corporate Debtor ("Appellant") against order dated June15, 2017 passed by NCLT, Mumbai Bench ("Adjudicating Authority") whereby the applicationfiled by financial creditor ("Respondent") under Section 7 of the Code was admitted.

At the time of the hearing of appeal, the respondent stated that the dispute between the partieshas been settled and part amount has also been paid. But the Appellate Authority noted the provisions of Rule 8 of IBBI (Application toAdjudicating Authority) Rules, 2016 whichempowers the Adjudicating Authority to **permit withdrawal of the application on arequest of the applicant before its admission.**

In view the above Rules,the ***Appellate Authority held that an application made under Section 7 can be withdrawn onlybefore its admission by the Adjudicating Authority but once the application isadmitted***, it cannot be withdrawn and the procedures laid down under Sections 13 to17 of the Code need to be followed.

The appellant filed appeal before the Hon'ble Supreme Court of Indiawhich observed even though prima facie it seems that NCLAT does not have inherent powers (while exercisingpowers under the Code), however, since both the parties were before the Hon'bleSupreme Court, exercising its power to do complete justice under Article142 of the Constitution of India and to put a quietus to the matter and took on record the settlement agreements and disposed of the appeal in terms of the settlement arrived at amongst the parties.

7. Can Home Buyers be treated as "Financial Creditors"?

In *Nikhil Mehta and Sons V/s. AMR Infrastructure Ltd.* An appeal was filed by the Financial Creditors against the order dated 23rd January, 2017 passed by NCLT, Principal Bench New Delhiwhereby theAdjudicating Authority held that the appellants are not Financial Creditors as defined underSection 5(7) of Insolvency and Bankruptcy Code, 2016.One of the unit was purchased by the appellants under the "***Committed Return Plan***". The Respondent paid committed return/ assured return each month for sometime but later stopped. It was noticed by NCLAT that the respondent was deducting TDS on the amount paid as committed returns/assuredreturns under Section 194(A) of Income Tax Act, 1961, as "*interest, other than Interest onSecurities*".

The Appellate Authority held that the appellantsare "investors" and had chosen the "committed return plan". It further held that the amount due tothe appellants came within the meaning of "***debt***" defined under section 3(11) of theCode. The Appellate Authority also noted from the Annual Return and Form 16-A of the respondent that the respondent had treated the appellants as "investors". Thus, the Appellate Authority held that theamount invested by appellants came within the meaning of '***Financial Debt***' as definedunder section 5(8)(f) of the Code, and held that it was clear from the MoU that the amountdisbursed to appellants was "***against consideration of time value of money***". Thus, the appellants were "Financial Creditors" under section 5(7) of theCode.

8. Whether home buyers are operational creditors?

In Col. Vinod Awasthy V/s. AMR Infrastructures Limited, The matter was filed before the NCLT, HyderabadBench under Section 9 of the Code dealing withthe initiation of corporate insolvency process byOperational Creditor.

The application was dismissed by NCLT on thegrounds that the petitioner claiming to be theoperational creditor was not covered under thedefinition of "Operational Creditor" as providedunder Section 5(20) of the Code. ***As per the NCLTorder, an Operational Creditor means any personto whom a corporate debt is owed and whoseliability from the entity comes from a transactionor operation***. Under the said case the OperationalCreditor had neither supplied any goods norrendered any services to acquire the status of anOperational Creditor.

Further the assured returns which were claimed tobe the debt by the petitioner were not coveredunder the definition of "*Operational Debt*" underSection 5(21) of the Code. ***As per NCLT order,operational debt means a debt arising out fromthe provisions of goods or services, employmentor government dues.*** Under the said case, the debthad not arisen from any of the aforementionedactions.

9. Whether the Home Buyers are other Creditors?

In *IDBI Bank Limited V/s. Jaypee Infratech Ltd.*, the NCLT, Allahabad Bench (Adjudicating Authority) admitted the application for initiation of CIRP.

Soon after the judgment was passed by Adjudicating Authority admitting the application,confusion and anxiety arose among the homebuyers with regard to:

- Whether home buyers are "creditors"?
- Whether they are "financial creditor" or "operational creditor"?
- Which form is to be used for submission of claims etc.

In the meanwhile, the IBBI came out with amendment in the "*Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016*" and inserted new Regulation 9A providing for filing of claims by '*other creditors*' who areneither Financial Creditors nor Operational Creditors along with bringing out Form 'F' for filingof such claims by 'other creditors'.

10. Whether Home Buyers are Financial Creditors or Operational Creditors?

In the case of *Rubina Chadha & Anr. Vs. AMR Infrastructure Ltd.*, the Hon'ble NCLAT observed: "*The appellants herein, whether they are 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor', as claim to be creditors are now entitled to file their respective claims before the 'Interim Resolution Professional', as may be appointed and the advertisement as may be published in the newspaper calling of such application(s) with regard to resolution of 'Corporate*

Debtor'- AMR Infrastructure Ltd. In such case, their claim should be considered by the Interim Resolution Professional (IRP) and the Committee of Creditors, in accordance with the provisions of the 'I&B Code'.

From the above cases it is clear that the home buyer is a stakeholder and entitled to submit the claim. The Interim Resolution Professional (IRP) is required to decide whether he is a Financial Creditor, Operational Creditor, or other creditor, based on application of mind as to the nature of contract the parties have and other attending circumstances.

11. Is Limitation Act 1963 applicable under IBC?

In *Neelkanth Township & Construction Pvt. Ltd. v. Urban Infrastructure Trustees Ltd*. an appeal was filed by a corporate debtor (Neelkanth Township & Construction Pvt. Ltd.) against the order of NCLT allowing commencement of insolvency proceedings on the action of the financial creditor (Urban Infrastructure Trustees Ltd).The financial creditor had subscribed to optionally convertible debentures (OCDs) issued by the corporate debtor. OCDs carried nil or 1% p.a. interest rate and matured in years 2011, 2012 and 2013.The order of the NCLT was challenged by the corporate debtor mentioning the debentures matured in years 2011, 2012 and 2013 and initiation of corporate insolvency resolution process filed in year 2017 is time barred.

NCLAT held that that in the absence of any provision in IBC, the Limitation Act, 1963 would not be applicable to initiation of Corporate Insolvency Resolution Process.

12. Whether a copy of the certificate from the financial institutions along with application by the operational creditor is directory or mandatory?

Smart Timing Steel Ltd. v. National Steel & Agro Industries Ltd.

The appellant who claimed to be 'Operational Creditor' filed an application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process, enclosing some of the relevant documents. However, no copy of "the certificate from the Financial Institution maintaining account of the 'Operational Creditor" as prescribed under clause(c) of subsection (3) of Section 9 was enclosed.

On perusal of entire Section (3) along with sub-sections and clauses, inclusive of proviso, itwould be crystal clear that, the entire provision of sub-clause (3) of Section 9 required to bemandatorily followed and it is not empty statutory formality.

The argument thatthe foreign companies having no office in India or no account in India with any "FinancialInstitution" will suffer in recovering the debt from Corporate Debtor cannot be accepted as apartfrom the Code, there are other provisions of recovery like suit which can be preferred by anyperson.

Accordingly NCLAT dismissed the appeal stating the that the provisions of Section 9(3)(c) ismandatory.

What skills an Insolvency Professional should possess?

Under the Code, as per section 17 of the code, management of affairs will be vested in Interim Resolution Professional/ Resolution Professional, he should have knowledge of following Acts:

(i) Insolvency and Bankruptcy Code 2016, Rules and Regulations framed thereunder. He/she should study Banking Legislative Reform Committee (BLRC) report, which is very exhaustive will be good source of knowledge on Insolvency and Bankruptcy;
(ii) Managerial and administrative skills, knowledge of business, professional competency, as all the powers of suspended Board of Directors shall vest in him;
(iii) Companies Act, 2013 and Rules and Regulations framed thereunder;
(iv) Banking, Finance and accounting;
(v) In case of listed companies, he/ she should have knowledge of SEBI Rules and Regulations and study the reporting requirements under SEBI;
(vi) Negotiation Skills;
(vii) Valuation/ Sale of Assets, if required to be sold during Insolvency Process;
(viii) Taxation (Direct and Indirect Taxes);
(ix) Business/ commercial;
(x) Operations of the corporate debtors;
(xii) Time Management to adhere to time lines given in the Code;
(xiii) Corporate Financial Restructuring, Merger and takeover.

What an Insolvency Professional should do on his appointment as IRP/ RP

(1) Before appointment, Letter of consent to act as IRP

to be given;

(ii) Check the details given in the Application, whether these details matching with the books of account of the applicant; In case of operation creditor proof of claim if operation creditor proposes to appoint IRP himself;

(iii) In case of Corporate Debtor, ensure both secured and unsecured financial creditors are considered;

(iv) In case of corporate debtor, check pending legal cases – list required to be filed with NCLT;

(v) On admission of application of Financial Creditor (Section 7) or Operational Creditor (Section 9) or Corporate Debtor (Section 10), the NCLT orders issuance of public notice, declare Moratorium and appoint Interim Resolution Professional (IRP);

(vi) On receipt of NCLT Order, the appointed IRP should immediately go to concerned entity of corporate debtor and handover the letter for his taking over the management of affairs of the corporate debtor. In case of difficulty in handing over the charge by the concerned management, should make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in discharging his duties under the Code or the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations 2016 herein after refer "CIRP Regulations";

(vii) Issue Public Notice within *three days* from his appointment as per Form Aof the Schedule of Regulations to be published in two Newspapers one in local language and other in English language, giving *fourteen days'* time appointment of the interim resolution professional for submission of claims;

(viii) Host copy of Advertisement on the website, if any, of the corporate debtor; and on the website, designated by the Board for this purpose;

(ix) Appoint two registered valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 (Regulation 27) of CIRP Regulations;

(x) Powers of the Board of Directors or the partners of the corporate debtor, as the case may be, shall stand suspended and are to be exercised by the interim resolution professional;

(xi) Entire responsibility of running the corporate debtor as a going concern vests with the IRP;

(xii) Collect details of all bank accounts, confirmation of balances, details of unused cheques etc.

(xiii) Write letters to financial institutions/Banks maintaining the Bank accounts, informing them taking over the management of affairs by IRP/RP under the order of NCLT, changing the authorization to operate Bank Accounts and acting by financial institutions/ Banks only on your instructions;

(xiv) Collect a complete list of fixed and other assets;

(xv) Collect a complete list of operations of the corporate debtors, its units, and branches;

(xvi) Issue instructions to corporate debtor running of the company as a going concern pursuant to the provisions contained in Section 20(2)(d) of the IBC, 2016;

(xvii) Also ask the corporate debtor to provide details and comply with the provisions of Section 18 of the IBC, 2016.

(xviii) Issue instruction to corporate debtors that all payments shall be made with prior approval of IRP/RP;

(xix) Verify and determine the claims of claimants within 7 days from the last date of receipt claims as per the provisions of Regulation 13, 14 and15 of CIRP Regulations;

(xx) After verification and collation of claims, constitute committee of creditors of financial creditors; or where the corporate debtor has no financial debt or where all financial creditors are related parties of thecorporate debtor, the committee as per the provisions of Regulation 16

CIRP Regulations with operational creditors;

(xxi) Verify the books of account of corporate debtor to ascertain Extortionate credit transaction (Regulation 5 of CIRP Regulations); Avoidance of Transactions; Under-Valued and Preferential transactions;

(xxii) Preparation of Information Memorandum as provided under Section 29 read with Regulation 36 of CIRP Regulations;

(xxiii) File a report on or before expiry of 30 days with NCLT certifying constitution of committee of creditors;

(xxiv) Conduct the meetings of committee of creditors as per the provisions of Regulation 18-26 of the CIRP Regulations;

(xxv) Sale of assets outside the ordinary course of business of the corporate debtor shall resorted to only if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case;

(xxvi) Seek the approval of committee of creditors for certain actions as enumerated under Section 28 of the code;

(xxvii) In the first meeting of committee of creditors seek approval of creditors having a majority vote of not less than seventy five percent of voting shares of financial creditors, either to appoint IRP as Resolution Professional or replace him with another Resolution Professional;

(xxviii) The committee of creditors shall inform the IRP for his continuance and in case of his replacement with another Resolution Professional shall file application before the NCLT for appointment of proposed RP.

(xxix) As the appointment of proposed RP is to be confirmed by IBBI within ten days of receipt of name of RP, in case of delay of appointment of proposed RP, the NCLT by an order may direct IRP to function as RP until the IBBI confirms the appointment of RP [Section 22(5) of Code];

(xxx) Liquidated value of the assets of corporate debtors shall be determined based on the provisions contained in Regulation 35 of CIRP Regulations;

(xxxi) RP to invite prospective lenders, investors, and any other persons to put forward resolution plans.

(xxxii) Resolution Plan shall be prepared based on Information Memorandum and it shall be as per the provisions of Section 30 of the Code read with Regulation 37 and 38 of the CIRP Regulations; The Resolution Plan should not contravene any provisions of law for the time being enforced in India;

(xxxiii) All the Resolution Plans submitted by the Resolution Applicants shall be put up to the committee of creditors with the recommendation RP. The committee of creditors may approve any resolution plan with such modifications as it deems fit;

(xxxiv) The resolution applicant may attend the meeting of the committee of creditors inwhich the resolution plan of the applicant is considered. However, he shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor;

(xxxv) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent of voting share of the financial creditors; (Section 30(4) read with Regulation 39 of CIRP Regulations);

(xxxvi) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority[Section 30(6)];

(xxxvii) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as provided in section 30(2); it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(xxxviii) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements under section 31(1) it may, by an order, reject the resolution plan.

(xxxix) After the order of approval under section 31(1):

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

Extension of the corporate insolvency resolution process period

As provided in Regulation 40 of CIRP, the committee of creditors may instruct the resolution professional to make an application to the Adjudicating Authority under section 12 to extend the insolvency resolution process period. Accordingly, the resolution professional shall, on receiving an instruction from the committee under this Regulation, make an application to the Adjudicating Authority for such extension.

If the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Fee for CIRP for Interim Resolution Professional/ Resolution Professional

Unlike Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations notified on 15th December 2016, the CIRP Regulations do not provide for any fee structure.

The Liquidation Process Regulations provide: Liquidator's Fee shall be entitled to such fee and in such manner as has been decided by the committee of creditors before a liquidation order is passed under sections 33(1)(a) or 33(2).

In all cases other than those covered above, the liquidator shall be entitled to a fee as a percentage of the amount realized net of other liquidation costs, and of the amount distributed, as per table of fee given under Regulation 4 of the said Regulations.

In case of CIRP Regulations, the fee for Corporate Insolvency Resolution Process shall be market driven and decided by the market forces. In case of Financial Creditors or Corporate Applicant, the fee shall be based on negotiated amount by the IRP for 30 days. The fee fixed and agreed to by the Applicant will form the part of *"Insolvency Resolution Cost"* to the extent of it has been ratified by the committee of creditors, the balance amount over and above ratified amount is to be paid by the Applicant to IRP.

Further, Fee for Resolution Professional shall be determined by committee of creditors and shall form the part of *"Insolvency Resolution Cost"*.

In case of Operational Creditors, the proposal for appointment of IRP by them is not mandatory while submitting the application with the Adjudicating Authority. In their cases, as per section 16 (3) of

The Code enacted at a very crucial time when the banking industry is reeling under huge NPA prompting the Government of India to come out with Banking Regulation (Amendment) Ordinance, 2017 in May 2017. The Ordinance has been replaced by the Banking Regulation (Amendment) Act, 2017 on 25th August 2017. This Act empowers the Reserve Bank of India (RBI) to give directions to banks to act against loan defaulters.

the Code, if there isno proposal for an interim resolution professional is made, the AdjudicatingAuthority shall make a reference to the Board for the recommendation of an insolvencyprofessional who may act as an interim resolution professional. The Board, within ten days of the receipt of a reference from the Adjudicating Authority under section 16(3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

The term of the interim resolution professional shall not exceed thirty days from date of his appointment.

As per the news published by The Economic Times dated 5th July 2017, the following is mentioned:

IRPs and RPs (Interim Resolution Professionals and Resolution Professionals), collectively called IPs, can earn Rs 2 to Rs 15 lakh, depending on the size of business and debts of cases, professionals said.

For cases between operational creditors and companies, income opportunities are in the range of Rs 50,000 to Rs 1,50,000 a month as the nature of the cases are less complex.

NCLT in the case of ***S3 Electrical & Electronics Pvt. Ltd v. Brian Lau***held that minimum fee suggested by a statutory Institute of Cost Accountants ofIndia cannot be regarded as excessive and allowed fee charges based on the calculation made by Interim Resolution Professional amounting to Rs. 5.25 lakhs was allowed.

NCLT Chandigarh in Jeena and Co. allowed the fee assessed by Interim Resolution Professionalat Rs. 3lakh. Outof the total fee of Rs. 3lakhs, the Operational Creditor paidRs. 1.75 lakhs to the Interim Resolution Professional which was reimbursed to him by the Corporate Debtor. It was directed that the remaining amount of Rs.1.25lakhs should be paid to the Interim Resolution Professionalby the Corporate Debtorwithintwo weeks

Conclusion

Many of Insolvency Professionals have entered into the field of Insolvency and Bankruptcy and working as Interim Resolution Professionals or Resolution Professionals. The Code, Rules and Regulations framed under the Code cast onerous responsibilities on them. They have to be very careful while taking up the assignments and prepare well before they enter into the premises of corporate debtors as IRP or RP. They should build the capacity and develop the skill as given in the article. The Insolvency and Bankruptcy Board of India, Insolvency Professional Agencies registered with IBBI, and Trade Associations are also holding various seminars and conferences to educate and build the capacity of professionals to perform well in their assignments. Also, the Insolvency Professional Agencies are conducting Round Tables discussions, Study Circles' meetings and also conducting the training programs for the Insolvency Professionals. Many such programs have already been held and there shall be many programs on the said topics.

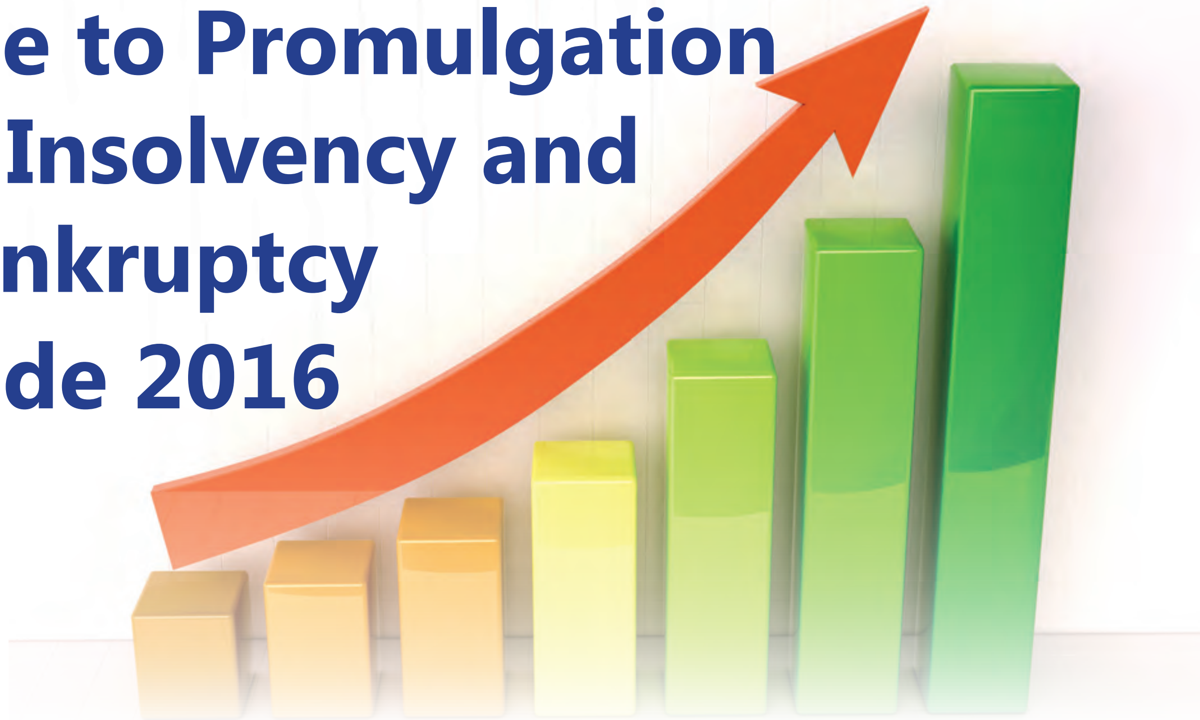
In various Round Table Discussions conducted,this is being shown that the Code still requires a lot of hand-holding by the judiciary to put in place adequate safeguards and guidelines to ensure its smooth, effective, and fair enforcement. The Code is in a nascent stage and its success depends substantially on quality of IPs and how well the IPs performs their functions under the Code.

IPs forms the backbone of the IBC. Their role requires a fine balancing act, given that they are in charge of managing the debtor company and are accountable to the committee of creditors and the adjudicating authority for their actions.

The IPs must perform their role without any misfeasance, and within well-defined entry barriers to the profession. They should provide regular reports regarding their assignments to IPA and IBBI. As per Section 208(2)(d) they are required to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member. As per section 196(g) of the Code, IBBI is to monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder. MA

technical.director@icmai.in

Expected Growth in Productivity in India due to Promulgation of Insolvency and Bankruptcy Code 2016



As envisaged in Bankruptcy Law Reforms Committee (BLRC) report 'India is one of the youngest republics in the world, with a high concentration of the most dynamic entrepreneurs. Yet these game changers and growth drivers are crippled by an environment that takes some of the longest times and highest costs by world standards to resolve any problems that arise while repaying dues on debt. This problem leads to grave consequences: India has some of the lowest credit compared to the size of the economy. This is a troublesome state to be in, particularly for a young emerging economy with the entrepreneurial dynamism of India. It emanates from above that the barriers to developing entrepreneurship in India is

CMA Balaknath Bhattacharyya
Insolvency Professional
Kolkata

1. Longest time as well as highest cost by world standards is involved to resolve any problems that arise while repaying dues on debt payment ,and resultant
2. Lowest credit delivery compared to the size of the economy

The reasons behind the above are as follows

Due to existence of plethora of acts and rules for recovery of debts as well as settling insolvency cases which is often contradictory in nature (At present, there are multiple contradictory elements in the legal arrangements – BLRC Report page 12) the defaulter debtor drags the cases more often than not in various courts taking resort to various acts and rules involving longer and longer time. Too much time is taken in matters of winding up also. Consequently due to illegal removal of assets of the firm by the defaulter debtor and erosion of the value of assets due to normal wear and tear the recovery rate of loan through disposal of assets becomes too low. As a result the NPA upto 2016 (Fig 1) has reached an alarming figure of about 6.97 lakh crores hich is 9.3% of total loans disbursed. As per World Bank report the average time taken in India settling insolvency is 4.3 years while in UK it is just one year and in Japan it is less than one year. Similarly the recovery rate is abysmally low of 20% only whereas it is more than 90% in UK and more than 95% in Japan (Fig 2).

Figure 1

Figure 2

HIGHEST GNPA RATIOS

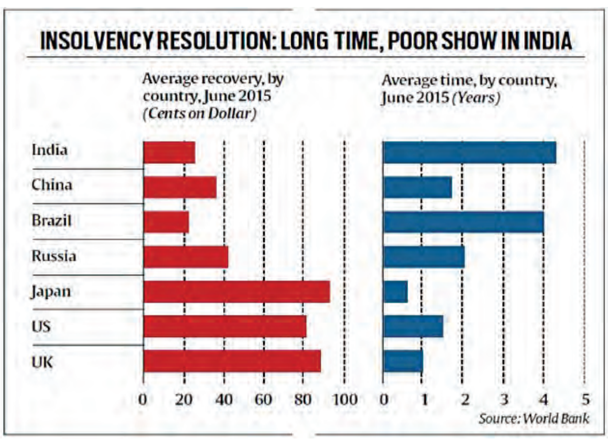
PSU Bank	GNPA ratio
Indian Overseas Bank	22.42
UCO Bank	17.18
United Bank of India	15.98
IDBI Bank Ltd	15.16
Bank of Maharashtra	15.08

GROSS NPAs & ADVANCES (Public + private)

Year	Gross NPAs*	GNPA ratio
Dec '12	178,460	3.5
Dec '13	242,609	4.0
Dec '14	292,193	4.4
Dec '15	437,860	6.0
Dec '16	697,409	9.3

*In Rupees crore
Compiled by Care Ratings

Consequently in India the credit growth is not up



to the mark even it is one of the lowest in the world (Figure 3). The undue emphasis on loan against collateral also hindered the entrepreneurship culture. It deprives of various good proposals having very good prospect of fund since the entrepreneur has no or little asset to provide as collateral. As mentioned in BLRC report 'the lack of lending without collateral, and the lack of lending based on the prospects of the firm, has emphasized debt financing of asset-heavy industries. However, some of the most important industries for India's rapid growth are those which are more labour intensive. These industries have been starved of credit.' (pp-12of BLRC Report).Incidentally this would not be out of point to mention here that inspite of having collateral the recovery rate of banks and Financial institutions are not at all satisfactory which is only a paltry rate of 27% (credit growth figure)

Observation by BLRC

BLRC delved into the problem and came to the conclusion that

1. In India today creditors have been left with very little power over the company or the owner when faced with default.

2. Promoters stay in control of the company even after default. Only the banks which provided loans against collateral are able to repossess fixed assets which were pledged with them-others are left in the lurch.

3. While the existing framework for secured credit has given rights to banks for recovery of their loans, some of the most important lenders in society are not banks who have no such right to recover their dues. They are the holders of corporate bonds. They may be individuals or financial institutions. The lack of power in the hands of the bondholders to recover the investment has been one of the vital reasons for poor development of corporate bond market in India.

4. Infrastructure financing have also become a difficult proposition in India due to poor development of corporate bond market.

5. Under these circumstances the recovery rates obtained in India are among the lowest in the

world. When default takes place, lenders seem to recover only 20% of the value of debt, on an NPV basis.

6. When creditors know that they have weak rights resulting in a low recovery rate, they are averse to lend..

7. Further, undue emphasis is given on secured credit, as creditors' rights are partially present only in this case. Consequently credit analysis is relatively easy; It only requires estimating on the market value of the collateral.

8. Hence it is apparent that credit is provided preferably with the motto of recovery of the loan not with the motto of business development or for that matter for growth of economy. Hence credit analysis as a sophisticated analysis of the business prospects of a firm has been increasingly side tracked.

In View of above to control the twin devils of Indian economy - inordinate delay in resolving insolvency and poor recovery rate of loan and to achieve the following objectives GOI has promulgated the IBC 2016 in 28.05.2016 which has become operational from 01.12.2016.

1. Contributing to Economic growth of the country through being a vital part of Economic Reform Process (ranking in easy in doing business)

2. Minimizing cost to economy through maximization of the value of assets of the distressed firm as well as making all out attempts to revive the firm.

3. Development of culture of entrepreneurship through providing easy exit procedure as well as easy access to cheaper debt fund even without collateral. The debt will be granted only analyzing the business prospect.

4. Development of Corporate Bond Market providing a wide variety of debt instruments to suit different types of borrowers. there will be no dearth of cheap fund for infrastructure financing which is very crucial for economic development.

To achieve the above objectives the Code has taken the following measure which is a paradigm shift in contrast to earlier legislations.

1. Unification of all the acts rules and regulations under one code.

2. Transfer of the control of the firm to creditors from the date of initiation of insolvency resolution process – a vital difference from previous mechanism.

3. Emphasis on revival of the firm. Liquidation only if all attempts for revival fail.

4. Conducting entire resolution process in a time bound manner (180/270 days). Even all activities within the resolution process have been made time bound.

5. Fresh Start Process

The above measures mentioned will improve economy of India and make a positive contribution towards its GDP growth in the following manners.

1. **Unification of all existing Acts and rules-** It will remove confusions and contradictions through which most of the defaulters escaped. Resolution process got delayed inordinately resulting in destruction of value of assets and rendering recovery of creditors dues to lowest extent. In some cases litigation continued and continued for indefinite period. Consequently the assets of the firm including land and building remained unused, employees rendered jobless which together cost to the economy of the country very adversely. Bringing all the rules under one uniform code and under one adjudicating authority is a very effective measure to address the issue.

2. **Time bound resolution programme -** It was stated earlier that average time taken for resolution process in India is 4.2 years which is longest amongst the large economies and it is one of the vital reasons due to which the ranking of India in 'ease of doing business ' is abysmally low. The effect of this inordinate delay are

a) Decrease in lenders' confidence on debtor
b) Squeezing of debt market
c) High interest rate making a project unviable
d) Emphasis on interest against collateral
e) Discouragement of entrepreneurship. Due to very long time taken for insolvency resolution the entrepreneur cannot come out of the unviable firm and employ resources in another project. He may also lose interest in entrepreneurship. Destruction of the value of assets takes place due to natural wear and tear which is detrimental to interests of both entrepreneur and lender.

Time bound resolution programme saves time and cost of resolution as well as fetch maximum value of the assets of the firm which will enable creditor to recover his dues to the maximum extent available and enable the entrepreneur to have maximum residual value of assets so that he can invest it in another venture. This will revive the debt market by increasing confidence of the lenders.

3. **Preserving the Value of Business -** It is affected through handing over the control of the distressed firm to Creditors' Committee who will manage the firm through Insolvency Professional. This mechanism is a paradigm shift and in line with the international norm for insolvency resolution. Immediate shift of control from corporate debtor to creditor will prevent the debtor from stripping of the assets of the distressed firm which is a common practice in Indian industrial scenario. Moreover the moratorium to be declared from the date of commencement of insolvency and extended up to the date of completion of resolution will put a bar to all type of creditors secured or unsecured to claim for their dues to realize due by disposing off the collateral. A lessor cannot also take possession of the leased assets. These provisions have been made aiming at
a) fetching better value for the firm from the potential investors
b) Managing the recovery of dues of creditors in a better way since a revived and running firm has better capability to serve the debt than a liquidated firm.
C) Strengthening confidence of creditors through enabling them getting control over the firm and its assets which in turn help flourish debt market.

4. **Emphasis on revival of the firm -** It is vital shift from earlier schemes where recovery of dues f of the creditors was main objective. The foremost duty of the insolvency professional is to strive for revival of the firm. Right from protecting the assets, running the firm in a professional manner as a going concern and preparation of an effective information memorandum etc are all aimed at having good resolution plan from the competent investors for revival of the firm. IP has also the responsibility to convince the creditors committee to accept a good resolution plan which not only benefit them by providing better debt service but also help economy of the country grow. Revival of the firm cost lesser to economy by contributing to its growth as well as rescuing the job of people. Liquidation is resorted to as a last option when every attempt for survival fails.

5. **Reduction in NPA –** NPA is a normal outcome of weak insolvency regime. A stronger insolvency regime as experienced in other countries is sure to reduce NPA rate thereby enabling Banks to extend more and more cheaper loans to firms which in turn will contribute to growth of the country. As per a report (The Economic Times 24th august 2017) bad loan resolution through the Insolvency and Bankruptcy Code (IBC) can help accelerate bank credit growth which is abysmally low for the past many quarters and in the year to March 2017, bank credit growth reached a multi-decadal low of 5.08 per cent. For instance in China when such a code was implemented in 2006, bank credit grew by around 30 per cent in the third year (2009) of its implementation. And in Germany loans jumped 10 times soon after the implementation of Bankruptcy code. Similar trends were visible in Poland and Spain.

6. **Corporate bond market development -** As observed by BLRC the natural financing strategy in all countries is for large companies (e.g. the top 500 firms) to obtain all their debt financing from the bond market. This channel has been choked off in India, partly owing to the fact that corporate bond holders obtain particularly bad recovery rates under the present arrangements. Bankruptcy reform would yield higher recovery rates for corporate bond holders, and remove one barrier that impedes the corporate bond market.

Since recovery rate will improve the interest rate will also be lower thereby increasing the viability of the firms.

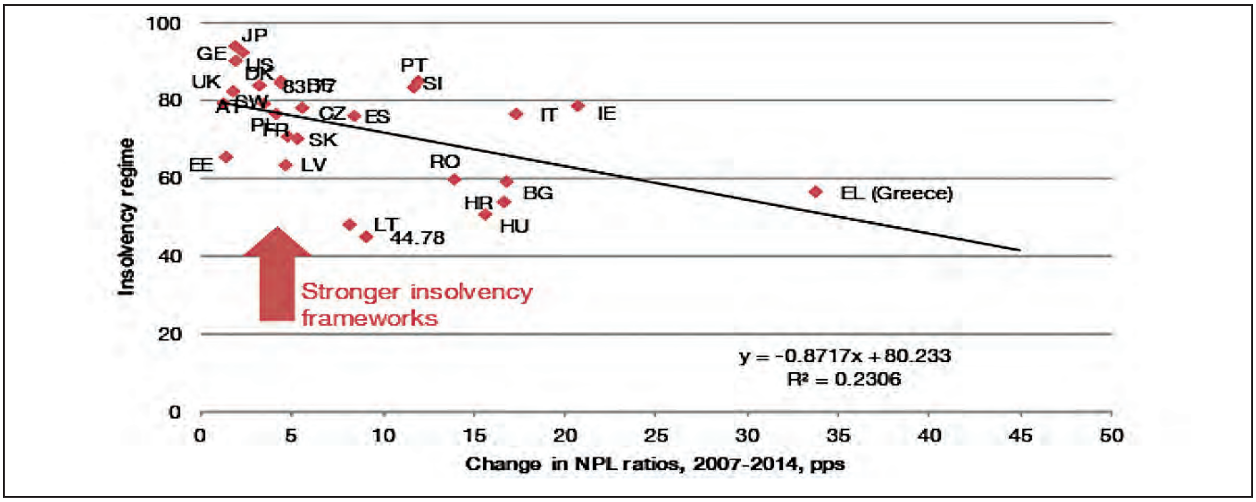
7. **Fresh Start Process -** The "fresh start" process can also foster productivity growth via better incentives for entrepreneurship and experimentation by: i) increasing firm entry ii) providing failed entrepreneurs with a second chance to apply their experience and lessons learnt to ensure their new businesses grow iii) attracting better quality entrepreneurs – i.e. individuals with higher expertise and knowledge.

International experience on effects of strong insolvency regimes

The IMF (2015) found that countries with better insolvency frameworks deleveraged faster during the post-crisis period. Also, countries with sound insolvency frameworks were able to adjust their non-performing loan ratios more rapidly than countries with weaker regimes (see Figure 3 and EC 2015).

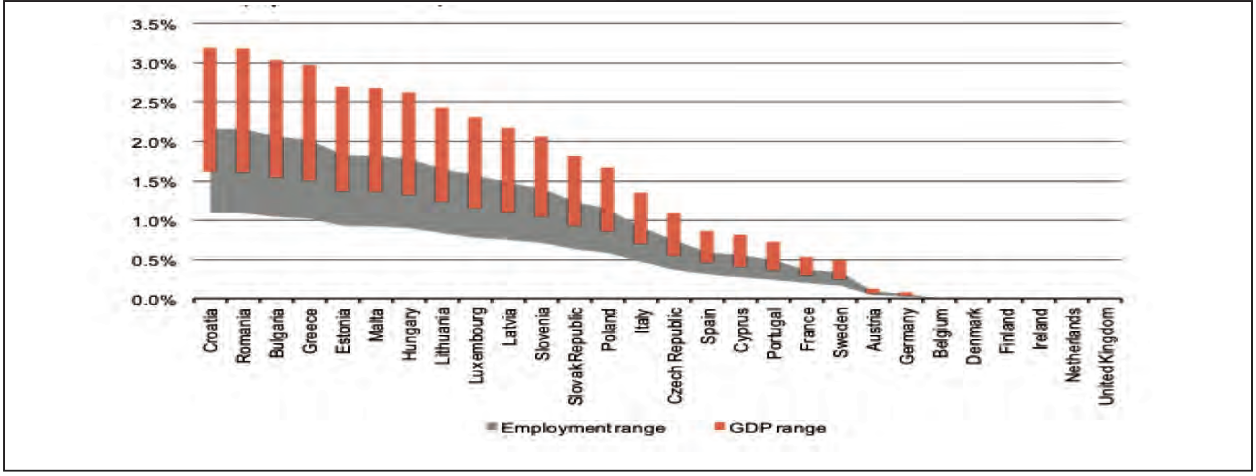
Quality of insolvency regimes in 2015 (distance to frontier) and change in NPLs (Non Performing Loans) in Europe, Japan, and the US **(Figure -3.**)

Figure 3



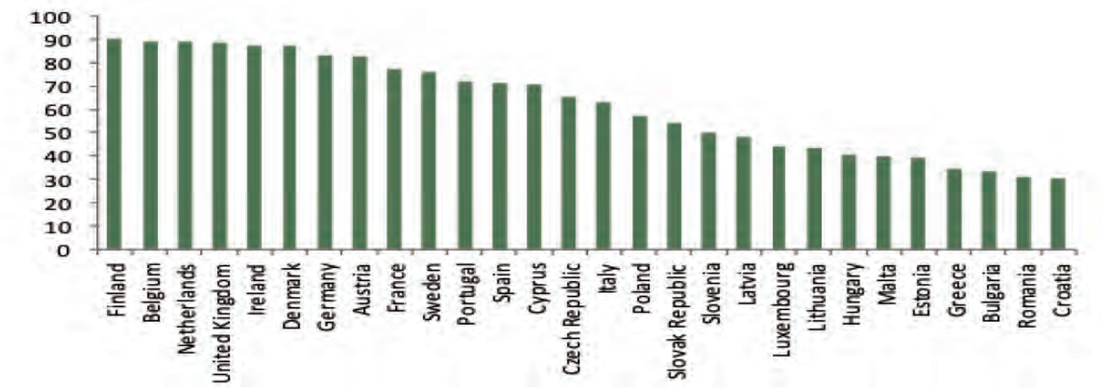
IMF also studied the impact of Insolvency regime on employment and GDP. It has found that while 0.33 parentage point to a little above 2 percentage points increased amongst the EU countries due to insolvency regime increase in employment potential is upto 3.25 percentage (Fig 4).

Figure 4



It has also been observed by IMF that debt recovery rate has been increased substantially considering the strength of insolvency which is more than 80% for about 10 countries. This enabled the banks of the concerned EU countries to release more and more fund to industries resulting in entrepreneurship and consequent growth of economy. (Figure 5)

Figure 5



> NPA is a normal outcome of weak insolvency regime. A stronger insolvency regime as experienced in other countries is sure to reduce NPA rate thereby enabling Banks to extend more and more cheaper loans to firms which in turn will contribute to growth of the country.

Conclusion

Introduction of IBC 2016 is a milestone in the economic reform process with various objectives – decreasing staggering NPAs, increasing rate of recovery of outstanding dues , strengthening banks, establishing vibrant corporate bond market, encouraging entrepreneurship, lowering of lending rate , settling resolution of insolvency in a time bound matter , providing easy exit route from unviable units and releasing capital tied to the unviable units to be invested in viable project, giving honest entrepreneur a second chance, encouraging employment etc all of which has the ability for positive contribution to growth of GDP of the country as experienced in other countries as shown above. It has been estimated that IBC 2016 will along with other reform measures like GST , RERA 2016 will increase GDP of India about 2 percentage points . It will also contribute towards realizing India's dream of 80 -notch jump (The Economic Times ,dated July 3 2017) in the World Bank's ease of doing business ranking which is presently 130th out of 185 countries.. MA

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bhattacharyyabn@yahoo.com

Winding up of Companies under Companies Act, 2013 & Insolvency & Bankruptcy Code, 2016

Till the advent of Insolvency & Bankruptcy Code, 2016, (IBC, 2016), winding up of companies was completely under the purview of the erstwhile Companies Act, 1956 and later Companies Act, 2013. However, with the enactment of IBC, 2016, a company can be wound up either under the Companies Act, 2013 or under IBC, 2016 depending on the facts and circumstances of each case. Sections 230-231 and 270-365 of the Companies Act, 2013 and Sections 33 to 54 and Section 59 of IBC, 2016 deal with the issue of winding up of the companies.

Earlier, it is the Companies Act which alone dealt with the issues from incorporation to dissolution of the companies. The Companies Act, 1956 provided for three modes of winding up of companies, namely :

1. Winding up by the Court or Compulsory winding up
2. Voluntary winding up..
3. Winding up subject to the supervision of the Court.

The issue of "inability to pay debts" was covered under the mode of winding up by the court and generally the creditors would always press this button for recovery of their debts in a summary procedure and as a fast track solution. In this mode, if after receipt of the 21 days statutory notice, if the company failed and neglected to pay its debts, the company was deemed to be insolvent and the winding up proceedings would commence. Of course, existence of a dispute with regard to the said payments of debts was one of the main grounds for the Company court to refuse the order of winding up.

K.S. Hareesh Kumar
Chief Manager (Law)
Union Bank of India
Kolkata

The Bombay High Court has laid down the following principles in Softsule(P) Ltd. Re, (1977) 47 Com.Cases 438 (Bom):

"Firstly, it is well settled that a winding up petition is not legitimate means of seeking to enforce payment of a debt which is bona fide disputed by the company. If the debt is not disputed on some substantial ground, the Court/Tribunal may decide it on the petition and make the order.

Secondly, if the debt is bona fide disputed, there cannot be "neglect to pay" within the meaning of Section 433(1)(a) of the Companies Act, 1956. If there is no neglect, the deeming provision does not come into play and the winding up on the ground that the company is unable to pay its debts is not substantiated.

Thirdly, a debt about the liability to pay which at the time of the service of the insolvency notice, there is a bona fide dispute, is not 'due' within the meaning of Section 434(1)(a) and non-payment of the amount of such a bona fide disputed debt cannot be termed as "neglect to pay" the same so as to incur the liability under Section 433(e) read with Section 434(1)(a) of the Companies Act, 1956.

Fourthly, one of the considerations in order to determine whether the company is able to pay its debts or not is whether the company is able to meet its liabilities as and when they accrue due. Whether it is commercially solvent means that the company should be in a position to meet its liabilities as and when they arise."

The Madras High Court in Tube Investments of India Ltd. v. Rim and Accessories (P) Ltd. (1990) 3 CLJ 322, has evolved the following principles relating to bona fide disputes:

(i) If there is a dispute as regards the payment of the sum towards principal however small that sum may be, a petition for winding up is not maintainable and the necessary forum for determination of such a dispute existing between parties is a Civil Court;

(ii) The existence of a dispute with regard to payment of interest cannot at all be construed as existence of a bona fide dispute relegating the parties to a Civil Court and in such an eventuality, the Company Court itself is competent to decide such a dispute in the winding up proceedings; and

(iii) If there is no bona fide dispute 'with regard to the sum payable towards the principal, it is open to the creditor to resort to both the remedies of filing a civil suit as well as filing a petition for winding up of the company.

The Rules as regards the disposal of winding up petition based on disputed claims are stated by the Supreme Court in Madhusudan Gordhandas & Co. v. Madhu Woollen Industries Pvt. Ltd. [1972]2SCR201 . The Court has held that if the debt is bona fide disputed and the defence is a substantial one, the Court will not wind up the company. The principles on which the Court acts are:

(i) that the defence of the company is in good faith and one of substance;

(ii) the defence is likely to succeed in point of law; and

(iii) the company adduces, prima facie proof of the facts on which the defence depends.

Further, in the case of IBA Health (I) Pvt. Ltd. vs. Info-Drive Systems Sdn. Bhd. (23.09.2010 - SC) : MANU/SC/0772/2010, the Supreme Court held as under :

"21.The Appellant company raised a contention that it is commercially solvent and, in such a situation, the question may arise that the factum of commercial solvency, as such, would be sufficient to reject the petition for winding up, unless substantial grounds for its rejection are made out. A determination of examination of the company's insolvency may be a useful aid in deciding whether the refusal to pay is a result of the bona fide dispute as to liability or whether it reflects an inability to pay, in such a situation, solvency is relevant not as a separate ground.

If there is no dispute as to the company's liability, the solvency of the company might not constitute a stand alone ground for setting aside a notice under Section 434(1)(a), meaning thereby, if a debt is undisputedly owing, then it has to be paid. If the company refuses to pay on no genuine and substantial grounds, it should not be able to avoid the statutory demand. The law should be allowed to proceed and if demand is not met and an application for liquidation is filed under Section 439 in reliance of the presumption under Section 434(1)(a) that the company is unable to pay its debts, the law should take its own course and the company of course will have an opportunity on the liquidation application to rebut that presumption.

22. An examination of the company's solvency may be a useful aid in determining whether the refusal to pay debt is a result of a bona fide dispute as to the liability or whether it reflects an inability to pay. Of course, if there is no dispute as to the company's liability, it is difficult to hold that the company should be able to pay the debt merely by proving that it is able to pay the debts. If the debt is an undisputedly owing, then it should be paid. If the company refuses to pay, without good reason, it should not be able to avoid the statutory demand by proving, at the statutory demand stage, that it is solvent. In other words, commercial solvency can be seen as relevant as to whether there was a dispute as to the debt, not as a ground in itself, that means it cannot be characterized as a stand alone ground.

The Court further held that "Where the company has a bona fide dispute, the petitioner cannot be regarded as a creditor of the company for the purposes of winding up. "Bona fide dispute" implies the existence of a substantial ground for the dispute raised. Where the Company Court is satisfied that a debt upon which a petition is founded is a hotly contested debt and also doubtful, the Company Court should not entertain such a petition. The Company Court is expected to go into the causes of refusal by the company to pay before coming to that conclusion. The Company Court is expected to ascertain that the company's refusal is supported by a reasonable cause or a bona fide dispute in which the dispute can only be adjudicated by a trial in a civil court. In the instant case, the Company Court was very casual in its approach and did not make any endeavour to ascertain as to whether the company sought to be wound up for non-payment of debt has a defence which is substantial in nature and if not adjudicated in a proper forum, would cause serious prejudice to the company".

The court cautioned against Malicious Proceedings for Winding up and held as under :

"25. We may notice, so far as this case is concerned, there has been an attempt by the respondent company to force the payment of a debt which the respondent company knows to be in substantial dispute. A party to the dispute should not be allowed to use the threat of winding up petition as a means of enforcing the company to pay a bona fide disputed debt.

A Company Court cannot be reduced as a debt collecting agency or as a means of bringing improper pressure on the company to pay a bona fide disputed debt. Of late, we have seen several instances, where the jurisdiction of the Company Court is being abused by filing winding up petitions to pressurize the companies to pay the debts which are substantially disputed and the Courts are very casual in issuing notices and ordering publication in the newspapers which may attract adverse publicity. Remember, an action may lie in appropriate Court in respect of the injury to reputation caused by maliciously and unreasonably commencing liquidation proceedings against a company and later dismissed when a proper defence is made out on substantial grounds. A creditor's winding up petition implies insolvency and is likely to damage the company's creditworthiness or its financial standing with its creditors or customers and even among the public.

26. A creditor's winding up petition, in certain situations, implies insolvency or financial position with other creditors, banking institutions, customers and so on. Publication in the Newspaper of the filing of winding up petition may damage the creditworthiness or financial standing of the company and which may also have other economic and social ramifications. Competitors will be all the more happy and the sale of its products may go down in the market and it may also trigger a series of cross-defaults, and may further push the company into a state of acute insolvency much more than what it was when the petition was filed. The Company Court, at times, has not only to look into the interest of the creditors, but also the interests of public at large.

27. We have referred to the above aspects at some

length to impress upon the Company Courts to be more vigilant so that its medium would not be misused. A Company Court, therefore, should act with circumspection, care and caution and examine as to whether an attempt is made to pressurize the company to pay a debt which is substantially disputed. A Company Court, therefore, should be guarded from such vexatious abuse of the process and cannot function as a Debt Collecting Agency and should not permit a party to unreasonably set the law in motion, especially when the aggrieved party has a remedy elsewhere."

Therefore, it could be seen that the provision of winding up was being used for arm twisting of the Companies for recovering their debts by the creditors. However, under the IBC, in respect of application filed under Section 7, dispute is not relevant, but "default" is.

The revised Companies Act, 2013 had the same provisions as of the Companies Act, 1956 with regard to the winding up of companies till the enactment of Insolvency & Bankruptcy Code, 2016. But, the aspect of insolvency resolution, as is envisaged under IBC, 2016, was not covered by the Companies Act, though the same was comprehensively covered under Sick Industrial Companies (Special Provisions) Act, 1985 and to some extent under the Chapter of Compromise and Arrangement.

The main objective under IBC, 2016 is resolution of the Company's insolvency rather than recovery of creditors' dues though the same is well part and parcel of the resolution plan. Section 271 of the Companies Act, 2013 has been amended by Section 245 of the of the IBC,2016 and new grounds for winding up of the company have been introduced while completely taking away the provisions of winding up for inability to pay debts by shifting it to the IBC, 2016, but giving it a new impetus. Presently, Section 271 of the Companies Act, 2013 provides for the following circumstances under which a company could be wound up :

1) If the Company has, by special resolution, resolved that the company be wound up by the Tribunal.

2) If the Company has acted against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality.

3) If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the Company have been conducted in a fraudulent manner or the Company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith ad that it is proper that the company be wound up.

4) If the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

5) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Under the Companies Act, 2013, in a case of a situation arising under Section 271(b), Central and State Governments have also been empowered to file the Petition for winding up of the Company. The elaborate discussion contained in Sections 304-323 under Part II, i.e., "Voluntary winding up" has been omitted, apparently, since the Section 271 and Section 10 of the IBC themselves enabled the Companies to apply for winding up and/or resolution.

IBC proposes a paradigm shift and seeks to encourage resolution as a means of first resort for recovery and winding up of the company as a last resort unlike the previous regime when companies were to be wounded up for their inability to pay debts. Further, the resolution has to be in a time bound manner and as such it can be said that the IBC to be a fast track mechanism to either resolve or to liquidation.

Classification Of Creditors of the Corporate Debtors :

The Companies Act, 2013 (or earlier versions of the Companies Acts) did not make any distinction between the creditors save and except as Secured and Unsecured Creditors. Whereas, IBC, 2016 has made a further distinction and provided for two more kinds of creditors, namely Financial and Operational Creditors. A Financial Creditor has been defined under Section 5(7) of the Code to mean any person to whom a financial debt is owed whereas Section 5(20) of the Code defined Operational Creditor as a person to whom operational debt is owed. The word "Financial Debt" has been defined under Section 5(8) of the Code indicating that where money is disbursed/borrowed for interest and whereas Operational Debt is defined under Section 5(21) where it is a claim in respect of supply of goods or services.

Service of Notice :

Under the Companies Act, 2013, a creditor (Whether Financial or Operational) was required to issue a three weeks notice before filing the winding up petition. But, under Section 7 of the IBC,2016, no notice is required to be issued to the Corporate Debtor whereas in case of an operational creditor, as per Section 8 of the Code, a demand notice is required to be served upon the corporate debtor.

In the Companies Act, 2013, the issue of "dispute" was relevant for the company court/NCLT to pass the order of winding up as discussed above whereas under IBC,2016, the same is not relevant for passing the orders in respect of the application filed by a Financial Creditor under Section 7 of the Code for initiation of corporate insolvency resolution process. But, in case of an Operational Creditor, as per Section 8(2)(a) of the Code, the Corporate Debtor is required to bring to the notice of the Operational Creditor of existence of a dispute, if any, within a period of 10 days of the receipt of the demand notice.

Decision of the Tribunal

If after admission of the Petition filed either by Financial or Operational Creditor, as per Section 33 of the IBC, 2016, if the Adjudicating Authority does not receive a resolution plan as approved by the Committee of Creditors or if the Adjudicating Authority rejects the resolution plan as per Section 31, the Adjudicating Authority shall pass an order requiring the corporate debtor to be liquidated. A company can be liquidated even during the course of Insolvency Resolution Process if the Committee of Creditors decides to liquidate the Company. Further, a Company may be ordered to be liquidated by the Adjudicating Authority if the Resolution Plan approved by him is violated by the Corporate Debtor.

Jurisdiction of the Courts for winding up of the Companies

Under the Companies Act, 1956, it was the High Courts which had been vested with the jurisdiction to deal with winding up matters. The repealed Sick Industrial Companies (Special Provisions) Act, 1985 had provided that the Board for Industrial Construction and Rehabilitation (BIFR) could recommend winding up of a Company though it was not binding on the Company Court.

Presently, jurisdiction to pass orders for winding up under Section 271 of the Companies Act, 2013 and winding up under the provisions of IBC, 2016 has been vested in the 11 National Company Law Tribunals situated across the country which are constituted under Section 408 of the Companies Act, 2013.

Further, despite every aspect of Company's insolvency and its resolution has been dealt with under IBC, 2016, it is observed that the Chapter XV of the Companies Act, 2013 (Sections 230-231) which deals with, inter alia, the Compromises and Arrangements has been retained even after IBC, 2016 has come into force. The IBC, 2016 comprehensively deals with all the issues of company's insolvency and resolution thereof including by way of Compromise and arrangement. The resolution and procedure therefor envisaged by way of Compromise and Arrangement between a company and its creditors is also similar to the one envisaged in the IBC, 2016.

Section 231 of the Companies Act provides that if the Compromise or Arrangement sanctioned under Section 230 of the Act cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the Scheme, the Tribunal may make an order for winding up the Company which is also similar to Section 33 of the IBC, 2016. Hence, these provisions appear to be superfluous and there is a case for deletion of Sections 230 and 231 of the Companies Act, 2013 in view of the comprehensive IBC, 2016 thereon being already in force.

Therefore, it can be said that the Companies Act, 2013 and IBC, 2016 are complementary to each other and provide a comprehensive scheme for winding up of companies. MA

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kshk.hareesh@gmail.com

Insolvency and Bankruptcy Code (IBC) 2016: in the area of Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy Code (IBC) 2016, an Act to consolidate and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals. It act in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including establish an Insolvency and Bankruptcy Board of India. IBC, 2016 was notified by the Government of India on 28th May 2016. Before the enactment of this ACT, there was no single law dealing with insolvency and bankruptcy in India. The Code offers a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms). There is a clear and explicit process to be followed by all stakeholders. IBC 2016 also altered the order of priority various payment dues and put the payments of workmen's dues in foremost priority over Government dues. The payments of Government dues are kept after payment of financial debts owed to unsecured creditors. IBC 2016 provides the complementary ecosystem for the insolvency law, and aims to ensure smoother settlement of insolvency cases, enable faster turnaround of businesses and provide for creating a database of creditors. The IBC provides an institutional set-up comprising of five pillars, i.e., Insolvency Professionals Agency, Insolvency Professionals, Information Utilities, Insolvency and

CMA Dr. Susanta Kanrar
Assistant Professor
Shibpur Dinabandhu Institution
(College) Howrah

Bankruptcy Board of India and Adjudicating Authority for properly implementing the Act.

At present, there are multiple overlapping of laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India, like Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the Companies Act, 2013 dealing with insolvency and bankruptcy of companies, limited liability partnerships, partnerships firms, individuals and other legal entities in India. The current legal and institutional framework does not aid lenders in effective and timely recovery or restructuring of defaulted assets and causes undue strain on the Indian credit system. In this situation to facilitate easy and time bound closure of business in India and to overcome various challenges, a strong bankruptcy law was required. At this backdrop the Insolvency and Bankruptcy Code, 2016 was finally published in the Official Gazette on 28th May 2016, thus putting an end to months of anxious wait, mainly by the secured creditors and unsecured creditors, who look forward to a single law, that would replace a host of other laws governing individual and corporate bankruptcy and insolvency. The journeys of the code are shown below:

JOURNEY OF THE INSOLVENCY AND BANKRUPTCY CODE 2016

August 22, 2014	Bankruptcy Law Reform committee (BLRC) was first set up under the Chairmanship of MR. T.K Vishwanathan
February 5, 2015	BLRC Submitted its Interim Report to Ministry of Finance
February 10, 2015	Ministry of Finance Invited Comments on the Interim Report of BLRC
November 4, 2015	Volume -I Report of BLRC, Volume-II Draft Code-2015.
November 4, 2015	Ministry of Finance Invited Comments on Volume-I & Volume-II Submitted by BLRC.
December 21, 2015	Bankruptcy Code Introduced in the Parliament.
December 23, 2015	Bankruptcy Code to a Joint Parliamentary Committee Under the Chairmanship of MR.B.Yadav
January 22, 2016	Joint Committee Invited Comments on the Bankruptcy Code
April 28, 2016	Joint Parliamentary Committee Submitted its Report on the Code.
May 5, 2016	Bankruptcy Code Passed by Lok Sabha
May 11, 2016	Bankruptcy Code Passed by Rajya Sabha
May 28, 2016	Received President's assent

Objectives of Insolvency and Bankruptcy Code 2016

The objectives of code are as follows:

- To consolidate the existing laws relating to insolvency of companies, limited liability entities, unlimited liability partnerships and individuals, which are scattered in a number of legislations, into a single legislation.
- To facilitate time bound insolvency resolution process and liquidation.
- To improve the handling of conflicts between creditors and debtors, avoid destruction of value, distinguish malfeasance vis-à-vis business failure and clearly allocate losses in macroeconomic downturns.
- To provide greater clarity in law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business

failure or inability to pay debt.

- To address the challenges being faced for swift and effective bankruptcy resolution.
- To improve ease in doing business and set up a better and faster debt recovery mechanism in India.
- To promote the growth of an economy through efficient reallocation of resources, which otherwise remain locked in unviable / closed entities.
- To offering uniform and comprehensive legislation.
- To protect the interest of the creditors by reorganizing the viable businesses to the extent possible and quickly liquidation of unviable businesses.

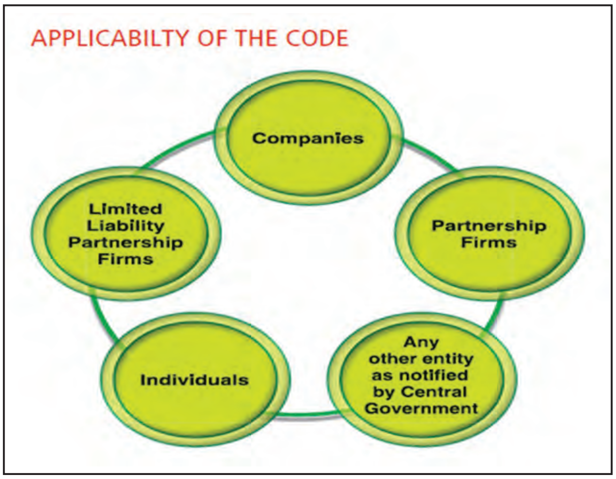
Applicability of the Code

The provisions of this Code shall apply to —

(a) Any company incorporated under the Companies Act, 2013 or under any previous company law;

(b) Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;

(c) Any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;



(d) Such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and

(e) Partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

Corporate Insolvency Resolution Process:

Part II of the Code deals with matters relating to the insolvency and liquidation of Companies and Limited Liability Partnership Firms where the minimum amount of the default is Rupees one lakh and this amount can be increased up to Rupees one crore by the Central Government.

Where any corporate debtor commits a default, a financial creditor (Financial creditor are creditors to whom corporate debtors owes financial debt) , an operational creditor (Operational creditors are the creditors to whom corporate debtor owes operational debts such as claims for goods and services, employees etc) or the corporate debtor (Corporate debtors means its shareholders, partners, management personnel, employees etc) may initiate corporate insolvency resolution process in respect of such corporate debtor by application to National Company Law Tribunal (NCLT) under section 7,8 and 10 respectively.

On receipt of an application, the Adjudicating Authority shall within fourteen days by order admit the application, if it is complete or Reject the application, if it is incomplete. But before rejecting an application, the Adjudicating Authority gives a notice to the applicant to rectify the defect from the application within seven days of receipt of such notice from the Adjudicating Authority

CORPORATE INSOLVENCY RESOLUTION PROCESS

The Financial Creditor/Operational Creditor or Corporate Debtor can be initiate the CIRP by application to National Company Law Tribunal (NCLT) under section 7 (Financial Creditor), 8 (Operational Creditor) and 10 (Corporate Applicant) respectively.

National Company Law Tribunal within 14 days of receipt of application by order acknowledge or reject application .But before rejecting they give notice to rectify the defect within 7 days of receipt of notice

Intimation of admission or rejection is to be given by National Company Law Tribunal within seven days of acknowledge or rejection to the applicant

National Company Law Tribunal declare Moratorium, appoint Interim Resolution Professional (IRP) for a period not exceeding thirty days from the date of appointment and cause public announcement

Public announcement shall include the information, such as - name and address of the corporate debtor under the Corporate Insolvency Resolution Process (CIRP), name of the authority with which corporate debtor is registered etc

Insolvency Commencement date starts from the date of admission of application and is to be completed within 180 days of commencement which can be extended by more ninety days (one time) by National Company Law Tribunal

Interim Resolution Professional (IRP) Constitute the Committee of Creditors comprising by all financial creditors

Management of affairs of corporate debtor, powers of Board of Directors or the partners of debtor shall stand suspended and it is exercised by the Interim Resolution Professional (IRP)

Committee of Creditors within 7 days of its constitution either to resolve to appoint Interim Resolution Professional as Resolution Professional (RP) or replace IRP with another RP

All decisions of committee of creditors shall be taken only by vote and there must be at least 75% of voting share of financial creditor

Preparation of information memorandum by the Resolution Professional for the formulation of Resolution Plan by the Resolution Applicant

Resolution Applicant going to prepares the Resolution plans based on information of memorandum

Submission of Resolution Plan by Resolution Applicant is to be examined by the Resolution Professional and it must be approved by the 75% of voting share of financial creditor

Resolution Professional is to submit the approved Resolution Plan to National Company Law Tribunal which shall approve or Reject for the Liquidation

The approved plan shall be binding the all corporate debtors and its employees, members, creditors, guarantors and other stakeholders who involved in the resolution plan/process.

Moratorium is to be ends on the date of approval

Appeal may be made to the National Company Law Appellate Tribunal (NCLAT) on Rejection

Strict Timelines for Completion of Insolvency Resolution Process:

The Corporate Insolvency resolution process shall be completed within one hundred and eighty days from the date the application is admitted by the National Company Law Tribunal. If the process cannot be completed within one hundred and eighty days then one time extension of ninety days subject to resolution passed at a meeting of the committee of creditors by a vote of seventy-five percent of the voting shares.

Conclusion

From the above, it can be seen that the Insolvency and Bankruptcy Code (IBC) -2016 aims to regulate, streamline and fast-track the process of winding up and liquidation in India. The Code promises to bring about far-reaching reforms with a thrust on creditor driven insolvency resolution. The fate of the Code rests in the change in the mindset of the creditors and the work that insolvency professionals render as creditors cannot always have the cake in full. The scope of the Code is also far reaching. Even persons with annual income of less than a lakh of rupees are covered in the Code. This will include even small and marginal farmers who are indebted and are losing their lives for not being able to repay the debt and interest thereon. The Code also has provisions to address cross border insolvency through bilateral agreements and reciprocal arrangements with other countries. It should be noted that the Code marks a substantial change in legislative policy relating to corporate insolvency, wherein, creditors in general and financial creditors in particular are substantially empowered to obtain debts due to them. It is surely that the benefits of the Insolvency and Bankruptcy code will help in improving the stressed assets easily and speedily thereby enabling the higher flow of capital in the economy. Moreover, it will help the companies to wind up failed businesses and bring India on a par with developed nations in terms of resolving bankruptcy issues. However, the success of the IBC is dependent on its effective implementation including creation of the required Institutional Infrastructure, appointment of competent and suitable persons to implement the Code. But it is expectable that code will be able to achieve its desired objectives. MA

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sk13_kol@rediffmail.com

Anti Profiteering under GST

The structure of indirect taxes in India , till 30th June 2017 was based on the three lists in Seventh Schedule to Constitution of India i.e Union List, State List and Concurrent List wherein powers of the Central Government, State Governments and Local Bodies were unambiguously defined. These lists were mostly based on Government of India Act, 1935 and therefore were based on the situation prevailing in 1935. The structure became outdated due to changes in situations, technology etc.

To remove the defects of the prevailing tax structure and as a process of Tax Reforms GST has been introduced from 1st July 2017.

CMA Dr. Sanjay R. Bhargave
Practicing Cost Accountant and
Former Council Member
Pune

1. Major defects in earlier structure of indirect taxes.

1.1 Following can be summarized as major defects in structure of indirect taxes, as existing upto 30.06.2017.

- Central Sales Tax (CST) was payable @ 2% for every movement of goods from one State to other. Even in case of stock transfers or branch transfers, there is incidence of tax as input service credit (set off) of input taxes was not fully available.
- Cascading effect of taxes could not be avoided due to CST and Entry Tax. State Vat was payable on Central Excise element also.
- Movement of goods in European Union (EU) is free across all countries without any incidence of tax. However, in India, movement of goods from one State to other was not tax free due to entry tax.

- India did not have a national market due to invisible barriers of Central Sales Tax, Entry Tax and State Vat and visible barriers of check posts.
- Millions of man-hours and truck hours were lost at check posts. Besides, huge corruption is involved.
- Central Government could not impose tax on goods beyond manufacturing level. State Government could not impose Service Tax.
- Over the years, distinction between goods and services had become hazy, due to which there is overlapping of State Vat and Central Service Tax on transactions like works contract, food related services (restaurants, outdoor catering, mandap services), Software, IPR Related services, lottery, SIM cards, operating lease / renting of goods etc.
- Same transaction was taxed both by Central and State Government which created confusion, litigation and double taxation in many cases.
- Each State had its own State Vat Laws with different provisions, different Vat rates different forms and difference procedures. Thus, taxable person having business in more than one States found it extremely difficult to keep pace with tax laws of each State.

1.2 To overcome the defects in the indirect tax system and following the worldwide trend of Goods and Service Tax (GST), the Government of India also, as a part of Tax Reform process , moved to GST on 1st July 2017. It is a very bold and progressive step taken by the Government. As per Statement of Objects and Reasons appended to One Hundred and First Constitution Amendment Bill, the object of GST is

(a) to have common market, and

(b) avoid cascading effect of taxes.

1.3 The GST law contains a unique provision on anti profiteering measure to curb the practice of enjoying unjust enrichment in terms of profit arising out of implementation of GST in India. The Government wants that GST should not lead to general inflation, as feared by the common man and for this it was necessary to set up a mechanism to ensure that benefits arising out of GST implementation are passed on to the customer.

Section 171 of the Central Goods and Services Tax Act, 2017 provides for Anti Profiteering measure. As per Sub Section 1 of Sec 171 of CGST ACT, 2017 , "Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

1.5 Thus it makes mandatory for every supplier (taxpayer) to pass on the benefits arising out of following to the recipient of the goods or services or goods and services.

- Reduction of rate of tax on any supply of goods or services.
- Benefit of input tax credit.

1.6 The increase or decrease in cost on account of other than tax rate and input tax credit is not to be considered for the purpose of anti profiteering.

2. Taxes Subsumed in GST and Cesses Abolished

2.1 Following Central and State Taxes levied in old system are subsumed in GST

Central Taxes

✗ Central Excise Duty,

✗ Additional Excise Duties on Goods of special importance, Textile

✗ Countervailing Duty and Special Additional Duty levied under Customs Act.

✗ Excise Duty levied under the Medicinal and Toilet preparations (Excise Duties) Act, 1955.

✗ Service Tax,

✗ Central Surcharges and Cesses on Excise/Service tax

States Taxes

✗ State VAT/Sales Tax, Purchase Tax

✗ Entertainment tax (unless it is levied by the local bodies), Central Sales tax (levied by Centre and collected by States)

✗ Octroi and Entry Tax, Luxury Tax, Taxes on lottery, betting and gambling.

✗ State Surcharges and Cesses

2.2 Cesses Abolished Since 2015.

S. No.	Name of the Cess	Date of Abolition
1	Education Cess on taxable services	01.06.2015
2	Secondary & Higher Education Cess	01.06.2015
3	Education Cess on excisable goods	Exempted with effect from01.03.2015. Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
4	Secondary & Higher Education Cess on excisable goods	Exempted with effect from01.03.2015. Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
5	The Mica Mines Labour Welfare Fund Act, 2016.	21.05.2016
6	The Salt Cess Act, 1953	21.05.2016
7	The Merchant Shipping Act, 1958	21.05.201
8	The Textile Committee Act, 1963	21.05.2016
9	The Limestone and Dolomite Mines Labour Welfare Funds Act, 1972 [2 Cesses]	21.05.2016
10	The Tobacco Cess Act, 1975	21.05.2016
11	The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976 [3 Cesses]	21.05.2016
12	The Cine-workers Welfare Cess Act, 1981	21.05.2016
13	Cess on cement [by notification]	Exempted in 2016., Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
14	Cess on strawboard [by notification]	Exempted in 2016.Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
15	Research & Development Cess	01.04.2017
16	The Rubber Act, 1947 – Cess on Rubber	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act

S. No.	Name of the Cess	Date of Abolition
17	The Industries (Development and Regulation) Act, 1951, Cess on Automobile	Abolished with effect from 01.07.2017 by the Taxation Laws
18	The Tea Act, 1953 – Cess on Tea	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
19	The Coal Mines (Conservation and Development) Act, 1974 – Cess on Coal	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act
20	The Bidi Workers' Welfare Cess Act, 1976 – Cess on Bidis	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
21	The Water (Prevention and Control of Pollution) Cess Act, 1977 – Cess levied on water Consumed by certain industries and by Local authorities.	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act
22	The Sugar Cess Act, 1982, Cess on Sugar The Sugar Development Fund Act, 1982–	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act
23	The Jute Manufacturers Cess Act, 1983 – Cess on jute goods manufactured or produced wholly or in part of jute	Abolished w.e.f. 01.07.2017 by the Taxation Laws (Amendment) Act.
24	The Finance Act, 2010 – Clean Energy Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act
25	The Finance Act, 2015 – Swachh Bharat Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
26	The Finance Act, 2016 – Infrastructure Cess and Krishi Kalyan Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act

3. Input and Input Service

Allowability of input tax credit for payment of output tax is one of the key features of GST. Input Tax Credit (ITC) provisions help in avoiding cascading effect of taxes. The input tax credit provisions under the central excise , service tax , state VAT laws and GST are different. Input Tax credit provisions under GST are more liberal as compared to Cenvat Credit Rules. On comparison of the ITC provisions under Cenvat Credit Rules and GST, it can be seen that the scope of inputs, input service and capital goods is wider in GST. More ITC is allowed to taxpayers under GST.

Provisions of Sec 171 of CGST Act, 2017 provides to pass on the benefit of input tax credit to recipient of goods or services or both. Therefore it is important to understand the concept of inputs, input service and capital goods under Cenvat Credit Rules (CCR) and GST.

4. Pre GST and Post GST

Following are major areas , where the taxpayer will get benefit of input tax credit, which was not available under the subsumed tax laws.

4.1 Central Sales Tax :- Central Sales Tax was leviable on interstate transactions with respect to sale of goods. The taxpayer was not entitled to avail setoff of

CST paid by him on his purchases. CST is subsumed in GST and now on interstate transactions Integrated GST (IGST) is leviable. The taxpayer is entitled to avail input tax credit of IGST paid by him on his inward supply of goods , services or goods and services. Effectively there will be direct reduction in landed cost of inward supplies.

4.2 Stock Transfers to Depots :- Since Customers were not ready to absorb cost of CST, many companies have opened depots in different states. At the time of stock transfers to depot outside the state, VAT/CST was not payable against form "F". However, set off of input tax was disallowed to taxpayer proportionate to value of interstate stock transfers. Now every interstate transaction including stock transfers will attract IGST. The input tax credit of IGST is available to tax payer. Therefore the disallowance of set off will not be a cost anymore.

4.3 Entry Tax, Octroi, Local Body Tax (LBT) :- Some states were charging entry tax on goods. Similarly some local bodies such as municipal corporations were charging Octroi or Local Body Tax on the goods entering into the respective areas. Now Entry Tax, Octroi and LBT is subsumed in State Goods and Services Tax (SGST). Input tax credit of Entry Tax, Octroi and LBT was not available therefore it was cost to the taxpayer. Under GST, taxpayer is entitled to avail input tax credit of SGST and therefore Entry Tax , Octroi and LBT is not a cost anymore.

4.4 Savings arising from non payment of Luxury Tax, Entertainment Tax :- Luxury Tax and Entertainment Tax are abolished from the appointed day and are subsumed in SGST. Since input tax credit of Luxury Tax and Entertainment Tax was not available, it was a cost.

4.5 Non reversal of proportionate Cenvat credit under Rule 6(3) of Cenvat Credit Rules,2004. :-Cenvat credit was not available on inputs and input services used in manufacture of exempted goods and trading activity if he is engaged in manufacture of excisable and exempt goods or trading. Now, input tax credit of CGST is available on trading activities also. Also the list of exemptions from tax is reduced to a great extent. Therefore the cost on account of reversal of Cenvat credit on provision of exempted services, manufacture of exempted goods and trading activities will be saved.

4.6 Carrying out process which does not amount to manufacture :- Certain processes like kitting, making cable jointing kits, cutting, slitting, testing etc do not amount to manufacture under sec 2(f) of the Central Excise Act, 1944. Therefore persons engaged in doing such processes were not entitled for Cenvat credit. Now every commercial activity will attract GST and therefore the persons engaged in doing these processes will be entitled to take input tax credit of GST on inward supplies of goods as well as services. This will reduce landed cost of input services and inputs.

4.7 Input tax credit is available to wholesalers, retailer hotel, restaurants, outdoor caterers etc:- Prior to GST , traders , wholesalers and retailers, hotels, restaurants, outdoor caterers etc were not entitled for Cenvat credit of service tax paid on input services. Now since they are required to pay GST, they will be entitled for input tax credit on inward supplies.

4.8 Availability of credit on opening stock :- Companies engaged in manufacture of exempted goods, warehouses and depots of goods from where goods were sold to consumers or in retail market, wholesalers, retailers may have opening stock on the appointed day. Since GST will have to be paid on supply of goods from such places, they are entitled to take input tax credit of Central Taxes on opening stock of inputs, input contained in semi finished goods and finished goods as per the transitional provisions. This will reduce their landed cost of goods in stock.

4.9 Local Body Tax on job work :- Job workers were exempt from LBT subject to prior permission of Municipal Corporation. In prior permission is not obtained, then LBT was payable on 10% of the value of the goods received for job work from outside the corporation limit. Since LBT is subsumed in GST, job workers are not required to pay LBT on job work charges.

4.9 Purchase Tax/ URD.:- In some states, buyers were required to pay tax on the goods purchased from unregistered dealers. Input tax credit of the same was not allowed. Under GST , Input Tax credit of the tax paid under reverse charge is also allowed subject to restrictions provided under Sec 17 of the CGST Act, 2017.

4.10 Cenvat Credit on Furniture, Storage racks, Assets used in Office etc capitalized in books of account :- The definition of capital goods as per rule 2(a) of Cenvat Credit Rules was entirely different from the capital goods as understood in accounting principles for income tax or even for Companies Act. Generally spare parts, tools, tubes, fittings etc are not capitalized in books of account. But for cenvat purpose they were capital goods.

Further, as per the definition of Capital Goods in Cenvat Credit Rules , capital goods should be used in the factory of the manufacturer of the final products or outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory. Thus equipments, appliances or machines used in the office of the manufacturer were not entitled for availing cenvat credit, though they are capitalized in the books of account.

The term capital goods is defined in section 2(19) of CGST Act. Capital Goods means goods , the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

Sec 17 of the CGST Act excludes the following goods from the scope of Capital Goods :

a) motor vehicles and other conveyances except when they are used

(i) for making the following taxable supplies, namely

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods.

Thus the scope of capital goods for the purpose of ITC is wider in GST. ITC can be claimed on the equipments, appliances etc irrespective of their use in the office of the manufacturer. This is an additional benefit to the manufacturers. Even Traders, Wholesalers, Retailers, Service Providers can also claim ITC on capital goods.

4.11 Admissibility of ITC on inputs (ED as well VAT) used by service providers :- Service providers were not entitled for credit (Set off) of VAT on input material used for providing output services. Under GST, suppliers of service as well as traders, dealers, wholesalers, retailers are entitled for input tax credit of GST. This will reduce their input cost.

Further, credit of Special Additional Duty (SAD) was not admissible to service providers. Since SAD is subsumed in GST, input tax credit can be availed by service providers. This will reduce their input cost.

4.12 Developers, Builders, Construction contractors :- Under Cenvat credit scheme, builders, developers, Construction contractors were not entitled for Cenvat credit of duty paid on inputs. Under GST , input tax credit on their inputs such as cement, steel, is allowed to them. They are also entitled for input tax credit on the opening stock of inputs and input contents in work in progress and unbilled finished work. This will result in bringing down cost of material used in the work substantially.

4.13 Price Reduction on input supplies by vendors :- GST law provides that the benefits arising out of GST are to be passed on to customers. Therefore prices of inward supply will also be reduced. Of course this can be done through negotiations with suppliers. This will reduce cost of inward supplies.

4.14 Refund of accumulated credit on account of inverted duty structure :- In many cases , the duty payable on the finished goods was less than the credit available to the manufacturer. For example, the duty payable on pharmaceutical products was 6% whereas the inputs like bulk drugs, packing material etc attract duty @ 12.5%. Thus credit availed on inputs use to remain accumulated with the manufacturer of the pharmaceutical products. The credit could not be used as credit on inputs, capital goods and input services was more than duty paid on finished goods. The GST Act specifically provide for refund of such unutilized input tax credit. This will reduce the cost of production of such products.

4..15 Duty paid on captively consumed goods :- Notification No. 67/1995-CE provide exemption from payment of duty on intermediate goods or capital goods further used in manufacture of excisable goods. In case of final product exempted from duty, the exemption was not available. Since there is no concept of captive consumption and the GST is leviable on supply, no GST is payable on the goods used further by the same taxpayer.

4.16 Abolition of Cesses :- As many as 13 cesses have ceased to exist with the rollout of GST , from 1st July 2017. Which include Krishi Kalyan Cess and Swacha Bharat Cess. During the period 2015 to June 2017 as many as 13 cesses levied by the Central Government alongwith Central Excise and Service Tax have been abolished. These include Education cess , Secondary ad Higher Education Cess. Thus total 26 cesses have been abolished in the last two year. This also has an impact on cost of production. List of Cesses abolished has been given below.

4.17 Transitional provisions :- The impact of transitional provisions on input tax credit needs to be analyzed in terms of provisions of Sec 140 to 143 of CGST and SGST Acts. Though this will be limited to the extent of stock, it will provide more insight on assessing the impact of other factors.

Negative impact

4.18 Adverse impact due to increase in tax rate on services, where input tax credit is not available.:- Services were liable to Service tax @ 14%, Krishi Kalyan Cess, @ 0.5% and Swacha Bharat Cess @0.5% . Now services attract GST @ 18% in general.

Sec 17 of CGST Act provides list on inputs and input services , where input tax credit is not available. On most of the services listed in Sec 17 of the CGST Act, Cenvat credit was also not allowed. Since these services are leviable to GST @ 18% as against Service Tax @ 15% including cesses, these services will become costlier.

4.19 Impact on working capital due to delay in getting input tax credit.

Working capital will be affected due to following.

Document	Purpose
ER1.	Reversal under Rule 6 of CCR. Clearance of Exempt Goods.. Stock Transfers. Duty paid on captively consumed goods
ER4	Reversal under Rule 6 of CCR. Clearance of Exempt Goods.. Stock Transfers. Duty paid on captively consumed goods.
ER4	Discounts, Freight, Valuation.
ST3	Service Tax under RCM. In-admissible service tax on rent a cab, Works contract, Repairs & Maintenance, Employee related services etc.
Cost Audit Report	Indirect Taxes reconciliation. Impact of disallowance of Cenvat credit u/r 6 of CCR, inadmissible inputs and input services.
Summary of VAT Returns.	Disallowance of set off on account of Interstate stock transfers
VAT Audit Report	Purchase Tax, Disallowance of set off, CST payment etc.
Trial Balance	Payment of LBT, Octroi , Entry Tax , Purchase Tax. Other Taxes and Cesses Repairs and Maintenance Cost.
Tax Audit Report	Details of capital goods on which Cenvat Credit is not availed. Furniture Fixtures etc.

Input tax credit is admissible only after matching details of transactions with suppliers' Returns.

- GST is payable on advances received from the customers.
- GST is payable on interstate stock transfers.
- GST is payable on goods and services received from unregistered suppliers.

Interest cost on working capital may increase due to this.

4.20 Pruning of exemption list.:- Many exemptions available under Central Excise, Service Tax, VAT are removed in GST. The incidence of tax on said goods will increase the price of the goods.

4.21 Compliance cost.:- The compliance by way filing returns, audit, reconciliation of input tax credit etc. is more in GST. However, this cannot be quantified in monitory terms.

4.22 How to determine impact :- The impact of the above factors for each organizations will vary. If the organization is having multiple units then unitwise impact will vary. The impact needs to be worked out considering the provisions of input tax credit under the erstwhile tax laws and provisions under GST.

A comparison of provision applicable to the respective organization or unit can be prepared. The quantum can be worked out on the basis of past two- three years actual and also considering the budgeted product mix, sales mix , purchase mix and interstate stock transfers etc. The impact in terms of percentage of turnover will be more appropriate for reducing the price of the goods or services.

5. Documents to be verified for assessing impact.

Following information / documents may be obtained for Impact Analysis.

Other details which may be useful for assessing financial impact.

- Comparison of inputs under Cenvat Credit Rules and GST
- Comparison of input services under Cenvat Credit Rules and GST
- Comparison of capital goods under Cenvat Credit Rules and GST
- Details of capital goods received from customers, Financial Institutions etc.
- Standard Operating Procedures (SOP) followed by the organization.
- Pending cases under Excise, VAT, Customs and Service Tax and other indirect Taxes.
- Details of Warehouses, C & F Agents and stock transfers – intra state and interstate.
- Details of imports.
- Inventory at Warehouses, C & F Agents outside state.
- Open contracts, Purchase Orders.
- Price Lists – pre GST and post GST
- Discount Structure and various discount schemes – pre GST and post GST.
- Tax rates – pre GST and post GST.

6. Anti-Profiteering Rules.

Provision relating to anti-proffering measure has been introduced vide section 171 of CGST Act. The idea is that the taxable person should pass on benefit of reduction in rate of tax on any supply of goods or the benefit of input tax credit to the customer as reduction in prices.

6.1 Gist of rules.:- In exercise of the powers conferred by section 164 read with section 171 of the CGST Act, 2017, the Central Government has issued Anti Profiteering Rules.

As per Sec 171(2) of CGST Act, The Central Government may, on recommendation of GST Council by notification, constitute an Authority, or empower any existing Authority constituted under any law, to examine whether input tax credits availed by any registered person or the reduction in the tax rate actually have resulted in a commensurate reduction in the price of the said goods or services or both supplied by him.

The Authority referred to in section 171(1) shall exercise such functions and have such powers as may be prescribed – section 171(3) of CGST Act.

An Authority will be constituted with Chairman and four technical members. Standing Committee and Screening Committees will be constituted. State Level Screening Committees will also be constituted

The Authority will determine methodology and procedures to determine whether reduction in rate of supply and benefit of ITC has been passed on to the recipient –

6.2 Duties of the Authority

1. To determine whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

2. To identify the registered person who has not passed on the benefit of reduction in rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

3. To order

(a) Reduction in prices.

(b) Return to recipient , an amount equivalent to the amount not passed on by way of commensurate reduction in prices alongwith interest at the rate of eighteen percent from the date of collection of higher amount till the date of return of such amount or recovery of the amount not returned in case the eligible person does not claim return of the amount or is no identifiable , and depositing the same in the fund referred in sec 57 of the CGST Act.

(c) Imposition of penalty as prescribed under the Act ; and

(d) Cancellation of registration under the Act.

6.3 Scrutiny of the applications and investigation :- Applications will be scrutinized by Standing Committee within two months. Applications of local nature will be scrutinized by State Level Screening Committee and then forward to Standing Committee for further action

The Standing Committee will scrutinize the cases. If prima facie evidence of profiteering is found, the matter shall be referred to Director General of Safeguards.

The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

Before initiation of investigation, the Director General of Safeguards will issue notice to interested parties who may have information. He will collect evidence within three months. He will submit his report within three months to standing committee.

Director General of Safeguards can take assistance of other authorities. He has powers to summon persons to give evidence and produce documents.

As per Rule 130 of CGST and SGST Rules, 2017, provisions of section 11 of RTI Act relating to disclosure of confidential information supplied by third party will apply to information received by Director General of Safeguards -

On receipt of report of Director General of Safeguards, the Authority will give opportunity of hearing to interested parties.

6.4 Order of the Authority.

After investigation and hearings, the Authority may order

a. reduction in price

b. return amount to recipient

c. impose penalty ((which is maximum Rs 25,000)

d. cancellation of registration under GST Act -

Rule 133(3) of CGST and SGST Rules, 2017

Rule 135 of CGST and SGST Rules, 2017 provides that if the taxable person does not comply, recovery proceedings can be initiated as per provisions of CGST, SGST and UTGST Act .

6.4 Penalty. :- Interestingly, there is no provision for imposing separate penalty or recovering excess profit. Even if profiteering is discovered, maximum penalty that can be imposed is residual penalty of Rs.25000/- under Sec 125 of CGST and SGST Act.

However, Rule 21(c) of CGST and SGST Rules,2017 provides for cancellation of registration for violation of provisions relating to anti profiteering.

6.5 Sunset Clause :- As per Rule 137 of CGST and SGST Rules, 2017 , Anti profiteering clause has sunset clause of two years.

7. Role of Cost Accountants

If the power to deregister or cancellation of registration is invoked frequently and lightly by the authority under Anti Profiteering provisions, it will create fear and distrust amongst the trade.

Therefore, before taking any such action, the Authority can order special audit by Cost Accountants under Sec 66(1) of the CGST Act which will be very useful in taking any such decision.

The organizations can also undertake voluntary audit by the Cost Accountants with respect to benefits received due to implementation of GST.

The anti-profiteering rules provide for constitution of screening committees in each state and also the standing committee. These committees may refer matters to cost accountants or cost accountants can approach them for assistance in verification of data for assessing the impact.

Cost Accountants should be prepared with the detailed knowledge of GST law and its applications to the different transactions and procedures followed by the respective organizations.

Training and awareness programs on anti-profiteering provisions also can be conducted by Cost Accountants. MA

sanjaybhargave@bhargaves.com

Congratulations !!!

CMA S.N Gupta, Director-Risk Advisory Services (RAS) at "Risk Averse" New Delhi receiving 'Life Time Achievement Award in Academics' at the platform of International Vaish Federation from Ms. Sumitra Mahajan, Hon'ble Speaker of Lok Sabha and Dr Harsh Vardhan, Hon'ble Union Cabinet Minister

Impact of Mergers and Acquisitions on Stock Prices:

A Case Study

Dr. Debasish Maitra
Assistant Professor
IIM Indore

Dr. Varun Dawar
Assistant Professor
IMT Ghaziabad

CMA Dr. Ashish Varma
Assistant Professor
IMT Ghaziabad

Arit Chaudhury
Assistant Professor
IMT Ghaziabad

The boards of Vodafone India (India's number 2 telecom operator) and Idea (India's number 3 telecom operator) announcedtheir merger on March 20, 2017to create India's largest telecommunications companywith almost 400 million customers, 35%customer market share and 41% revenue market share. Under the proposed merger, Vodafone will own 45.1% of the combined company after transferring a 4.9% stake to the Aditya Birla Group for INR39billion (US$579 million) in cash, concurrent with completion of the merger. The Aditya Birla Group will then own 26.0%of the combined company and Idea's other shareholders will own the remaining 28.9%.Furthermore, Aditya Birla Group would have the right to acquire up to a 9.5% additional stake from Vodafone so that both partners can have equal stakes in terms of shareholding.

The merger ratio of 1:1 is based on the Idea's undisturbed price of INR 72.5 (30 trading day VWAP as at 27 January 2017) and implies an enterprise value of INR828 billion (US$12.4 billion) for Vodafone India and INR722 billion (US$10.8 billion) for Idea's mobile business (excluding its 11.15% stake in Indus).

Strategic Rationale for Merger

The merger would give strategic cost and capex synergies amounting to almost INR 670 billion after integration costs and spectrum liberalisation payments, with estimated run-rate savings of INR140 billion(US$2.1 billion) on an annual basis by the fourth full year post completion. The combined company would have the requisite scale and efficiency to price mobile services attractively and ensure pan-India expansion of wireless broadband services on 4G/4G+/5G technologies to build capacity. The combined entity would also be able to compete effectively with other leading telecom operators in the country with a substantial spectrum holding of 1850 MHz and large broadband spectrum portfolio of 1429 MHz.

Given the Vodafone's dominant leadership in metro circles and Idea's strong presence in semi-urban and rural telecom markets, the combined entity willensurenationwide leadership and unparalleled service infrastructure with 19,000 company branded stores and 28,000 contact service agents. The major expected sources of cost and capex synergies include:

- rationalising network infrastructure, generating operational efficiencies, lower maintenance expenses and savings inenergy costs;
- higher spectrum availability and larger single radio access network (RAN) deployment coupled with re-deployment of overlapping equipment from rationalised sites, resulting in lower capex;
- service centres, back office and distribution efficiencies;
- streamlining regional and nationwide IT systems and evolving to a single IT system for the new entity;
- optimising general and administration costs.

PRO-FORMA FINANCIALS (LTM DECEMBER 2016)

All figures in INR billion	Idea	Vodafone	Aggregate
Revenue	369	447	816
EBITDA	114	130	244
Net Debt	527[1]	552[2]	1079
Net debt /EBITDA	4.6x	4.2x	4.4x
Capex	75	79	154
Total Spectrum invest-ment	617	788	1405

1) Based on Idea's net debt (based on pro forma adjustments as per transaction definitions) as at 31 December 2016.

2) Vodafone's net debt= Idea's adjusted net debt of INR527 billion (US$7.9 billion) as at 31 December 2016 (+ INR25 billion (US$369 million)

Event Study Review

An event studygenerally refers to an empirical analysis to measure the impactof a specific event or news(such as a merger or earnings announcement) on security prices. According to Kothari (2001), an accounting event or news conveys new information if there is a change in level of stock prices or trading volume around an event date. In the empirical literature, past event studies include work of Ball & Brown (1968), Beaver (1968), Brown and Warner (1980), Wilson (1986, 1987), Bernard and Stober (1989) and Amir and Lev (1996) among others. Under the event study, estimation of returns is done in response to announcements and can be considered abnormal relative to a particular benchmark. When the price of asecurity fall more than the normal return ofthe market, the outcome is said to be negativeand the news is called a negative newsand vice versa.

Impact of Announcement of the merger news on share prices

The merger announcement between Vodafone and Idea resulted in a sharp fall of 9.8% from INR 97.2 to INR 87.6 between 20 March2017 and 27March 2017.

Date	Closing Price (Idea)	% change over previous day
17-Mar-17	107.8	
20-Mar-17	97.2	-9.83%
21-Mar-17	92.85	-4.48%
22-Mar-17	91.3	-1.67%
23-Mar-17	91.5	0.22%
24-Mar-17	90.65	-0.93%
27-Mar-17	87.6	-3.36%

Event Study Analysis

	IDEA		NSE (MARKET)	
Date	Closing Price	% change over previous day	Closing Price	% change over previous day
1-Mar-17	112.7		8,945.80	
2-Mar-17	109.55	-2.80%	8,899.75	-0.51%
3-Mar-17	110.85	1.19%	8,897.55	-0.02%
6-Mar-17	109.5	-1.22%	8,963.45	0.74%
7-Mar-17	108.35	-1.05%	8,946.90	-0.18%
8-Mar-17	106.15	-2.03%	8,924.30	-0.25%
9-Mar-17	103.85	-2.17%	8,927.00	0.03%
10-Mar-17	104.05	0.19%	8,934.55	0.08%
14-Mar-17	102.8	-1.20%	9,087.00	1.71%
15-Mar-17	113.25	10.17%	9,084.80	-0.02%
16-Mar-17	112.5	-0.66%	9,153.70	0.76%
17-Mar-17	107.8	-4.18%	9,160.05	0.07%
20-Mar-17	97.2	-9.83%	9,126.85	-0.36%
21-Mar-17	92.85	-4.48%	9,121.50	-0.06%
22-Mar-17	91.3	-1.67%	9,030.45	-1.00%
23-Mar-17	91.5	0.22%	9,086.30	0.62%
24-Mar-17	90.65	-0.93%	9,108.00	0.24%
27-Mar-17	87.6	-3.36%	9,045.20	-0.69%
28-Mar-17	88.45	0.97%	9,100.80	0.61%
29-Mar-17	88.85	0.45%	9,143.80	0.47%
30-Mar-17	87.3	-1.74%	9,173.75	0.33%
31-Mar-17	86.1	-1.37%	9,173.75	0.00%
3-Apr-17	85	-1.28%	9,237.85	0.70%
5-Apr-17	88.15	3.71%	9,265.15	0.30%
6-Apr-17	86.55	-1.82%	9,261.95	-0.03%
7-Apr-17	87.5	1.10%	9,198.30	-0.69%
10-Apr-17	88.15	0.74%	9,181.45	-0.18%
11-Apr-17	88.7	0.62%	9,237.00	0.61%
12-Apr-17	86.7	-2.25%	9,203.45	-0.36%
13-Apr-17	85.9	-0.92%	9,150.80	-0.57%

Regression Statistics

R Square	0.0200
Standard Error	0.0320
Intercept	-0.0090
Slope	0.7710

Abnormal Returns

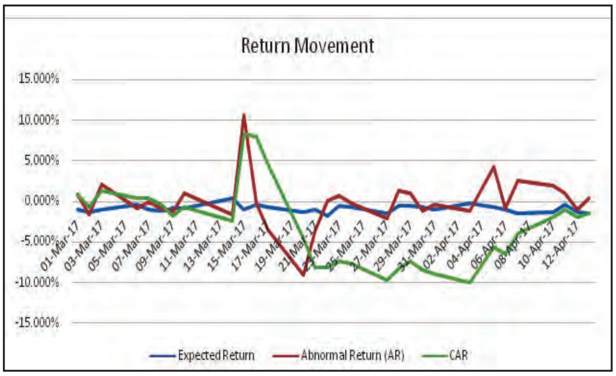
Date	Expected Return	Abnormal Return (AR)	Accumulated Abnormal Return (AAR)	*t-stat* (AR)	*t-stat* (AAR)
1-Mar-17	-0.900%	0.90%	0.90%	1.58	0.99
2-Mar-17	-1.286%	-1.55%	-0.65%	-2.73**	-0.72
3-Mar-17	-0.920%	2.10%	1.45%	3.70**	1.60
6-Mar-17	-0.325%	-0.90%	0.55%	-1.58	0.61
7-Mar-17	-1.029%	-0.03%	0.52%	-0.05	0.58
8-Mar-17	-1.160%	-0.89%	-0.37%	-1.57	-0.41
9-Mar-17	-0.828%	-1.36%	-1.73%	-2.40**	-1.91
10-Mar-17	-0.854%	1.05%	-0.68%	1.84	-0.75
14-Mar-17	0.411%	-1.62%	-2.30%	-2.85**	-2.54**
15-Mar-17	-1.017%	10.70%	8.39%	18.84**	9.26**
16-Mar-17	-0.409%	-0.26%	8.14%	-0.45	8.98**
17-Mar-17	-0.736%	-3.53%	4.61%	-6.22**	5.08**
20-Mar-17	-1.239%	-9.11%	-4.50%	-16.04**	-4.97**
21-Mar-17	-0.987%	-3.59%	-8.10%	-6.32**	-8.93**
22-Mar-17	-1.735%	0.05%	-8.04%	0.09	-8.88**
23-Mar-17	-0.466%	0.69%	-7.36%	1.21	-8.12**
24-Mar-17	-0.666%	-0.27%	-7.63%	-0.47	-8.41**
27-Mar-17	-1.384%	-2.04%	-9.66%	-3.59**	-10.66**
28-Mar-17	-0.447%	1.41%	-8.25%	2.49**	-9.11**
29-Mar-17	-0.581%	1.03%	-7.22%	1.82	-7.97**
30-Mar-17	-0.598%	-1.16%	-8.38%	-2.05**	-9.25**
31-Mar-17	-0.970%	-0.41%	-8.80%	-0.73	-9.71**
3-Apr-17	-0.150%	-1.14%	-9.93%	-2.00	-10.96**
5-Apr-17	-0.735%	4.37%	-5.56%	7.70**	-6.13**
6-Apr-17	-1.021%	-0.81%	-6.37%	-1.43	-7.03**
7-Apr-17	-1.471%	2.56%	-3.81%	4.51**	-4.20**

10-Apr-17	-1.240%	1.98%	-1.83%	3.49**	-2.01
11-Apr-17	-0.348%	0.97%	-0.86%	1.71	-0.94
12-Apr-17	-1.276%	-1.00%	-1.86%	-1.77	-2.05
13-Apr-17	-1.375%	0.45%	-1.41%	0.79	-1.56

**indicates significance at 5% level

Under the market model, it is observed that ARs are statistically significant and negative for four days and are significant and positive for two days during the pre-announcement period.ARs are also found significantly negative for three days and positive for four days during the post-announcement period. Six ARs are found insignificant at the 5per cent level of significance on the first, fourth, five, six, eighth and ninth day during the pre-announcement period. When AAR iscalculated under the same model, it is found that it is significantly negative for threedays (second, seventh and ninth day) and positive forfour days during the pre-announcement period but during the post-announcement period significantly negativeAAR is noticed.It is palpable to note that on the day of merger announcement (March 20), the abnormal was -9.11% followed by -3.59% on the first after the merger announcement. Thereafter, there are positive returns on the second day and third day to counter negativefall observed for the two days after the announcement. Evidently, it canbe inferred that there are significant abnormal returns (positive or negative or both) upon merger announcement. It can also be drawn, intuitively, from this paper thatthe Indian capital market does not capture the information very rapidly just after the announcement of merger, which is portrayed by the magnitude of average abnormal return MA

Abnormal Return Chart



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avarma@imt.edu

A Note on Non-Conventional Sources of Financing

Case 1– Off-balance Sheet Financing: A Case of Inter TechPvt Ltd

Inter TechPvt Ltd (ITPL) are a dealer in modems, clip phones, and other hardware's required for connecting computers and mobile to the Internet. The company was formed as a subsidiary of a limited company manufacturing optical fibre cable,FRP Rods, Broadband CPEs, Optical Transmission Equipment, Microwave Equipment, LT/HT Power Cables and ACSR/AAAC Conductors and supplying them to telecom companies. ITPL was specially formed to import and assemble modems and clip phones to meet the requirement of telecom companies. Since parent company was already having a good presence in the telecom sector, ITPL in a short time succeeded to get a tender for supply of Rupees 100 crores worth of modems to a large telecom company.

Devesh Baid
Associate Professor
International Management Institute
Gothapatna, Bhubaneshwar

This was first tender for ITPL after its incorporation. It furnished a performance guarantee of Rs 5 Crores in the stipulated time. Thereafter, supplies had to be completed in two years' time from the date of performance guarantee. A supplier was identified in China. Prototype of modem as per specification was made and submitted to the company, which quickly approved it. An assembly plant was also set up at Thane Mumbai as containers were to land at Jawaharlal Nehru (Nhava Shiva) Port located at Thane, Mumbai. Modems were to be assembled at the plant and after inspection had to be sent to the Telecom Company. Entire schedule of import, assembly and delivery was prepared to meet the time line in line with the order. In case of any delay or default, there were heavy penal charges which could affect the profitability of this contract.

While everything was going as planned, the parent company faced some adverse financial crises and was reported to Board for Industrial and Financial Reconstruction. Earlier also, the company had gone for corporate debt restructuring. With this development; the facilities of bank limit and other financial assistance, which wereassumed to be availed from the parent company, vanished. ITPL at that time had no office of its own, no assets,and a share capital of only few lakhs, and had no bank credit line. There were borrowings from the related company to serve performance guarantee and to incur initial expenses. To compound the problem, all deliveries were negotiated with the supplier from China against payment. Payment terms from the Telecom Company were 60 days from the dateof QC certificate issued after 3 to 5 days of delivery at various brancheslocated across India of the telecom company. Actual payment was expected to take ninety days.

It takes three weeks after payment for a container to reach JNP port at India. Custom clearance and transport to plant takes another one week. Assembly and inspection takes another two weeks, delivery across India and QC certificate takes another two weeks, and payment takes another 12 weeks. So, one operating cycle was estimated as 6 months. One year was over and supplies of 20 crores had only happened. 80 crores supplies had to be done in next 12 months. Earlier what was appearing as a small contract had now become an important one, which had to be managed in time and cost otherwise the contract will result in loss. This will also jeopardise follow-on contracts and seeking contracts with other companies which were under way. Banks and NBFCs were approached for financing on the merit of the contract (contract based financing). The Telecom Company was triple AAA rated by CAREand looking at company financials there was no possibility of default. Company had also not defaulted any time in past. Suppliers from China were one of the leading global manufacturers of modem parts. 20 crores worth of billing had already taken place and there was no problem reported by QC department of Telecom Company. However banks were not convinced with these arguments. For them, ITPL was a new company with no past performance and had no significantcollateral to offer. Adding to the problem was the fact that the directorsof ITPL were same as that of its parent, which was now a BIFR company. Also, the telecom sector was put in a negative list by the banking sector due to an alleged scam related to licensing and spectrum allocation, which covered the headlines of media for days.While the time was passing by,deadlines for delivery were approaching fast and something had to be done immediately.

Private financers were approached for the funds to help ITPL complete the contract. Most private financers wanted to do it on a profit sharing basis. Some agreed to finance but the interest rates were around 18% per annum. This was very high and was adversely affecting the profitability of the ITPL. However to continue delivery and ease pressure some money was borrowed for six months and material was imported through telegraphic transfer. Still a lot has to be accomplished.

ITPL also approached a financial and management consultant to help them arrange the funds. After going through the entire case facts, it was suggested that imports be made through by availing the buyer's credit, which was a cheap source of finance allowed by RBI scheme. Now the challenge for consultant was arranging collateral required for availing buyer's credit. Fund based financing cost was almost double when comparedwith the imports charges under buyer's credit. Buyers credit was available at LIBOR rate which at that time was around 1 percent, arranging fee around 2 to 3 percent, and hedging charges was around 5 to 6 percent, costing around 8 percent to 9 percent per annum .It was thought to create a natural hedge while arranging for collateral so that hedging cost is not incurred and can act asand incentive for the firm providing collateral.

Consultant started approaching firms who have bank limits and are exporters of goods / services from India. The modalities were to sign an MOU between the financing company and ITPL, where the former one will arrange financing for the latter for a fee. The financing company will provide a stand-by letter of comfort (SBLC) or bank guarantee (BG)in the name of ITPL, which will help ITPL to import goods from China. An escrow account would be opened between the three parties, i.e., thefinancing company, ITPL and the Telecom Company to ensure that payment is not diverted by ITPL for any other purpose. Also crossed blank cheques and personal guarantee of directors of ITPL were to be given. Cash margin, if required, was to be brought by ITPL. For ITPL, it was a completely non fund based deal. Even a nominee of the financing company may be appointed as director in ITPL if the company so desires.

The biggest issue was about what to offer as fee. Non fund based financing inthe form of off-balance sheet financing is not a usual practice in Indian context. There are no benchmarks for financing charges (guarantee fees) available. A formula had to be devised which is simple as well as convincing and also motivates parties to get into transaction.The ROI of these transactions is infinite. The firm continues to earn its rent (actual or deemed)as well as appreciation in value and without any marginal cost, it can earn additional fee by giving asset as collateral provided it is willing to assume credit risk. This amount could be actually bigger than the amount of rent as it is based on % value of the collateral asset. The absolute amount has to be big enough, which really attracts the firm guaranteeing the deal by offering the collateral to get into this deal and still the total cost of financing has to be less than the fund based financing. Banks have a minimum rate of lending which takes into account cost of funds and other expenses. This rate is called as marginal cost of fund based lending rate (MCLR). Banks add a mark up to this rate based on credit rating of the company to account for risk. Themaximum mark-up is 4 to 5 percent above the MCLR rate. Or in other words the spread in the interest rate which account for risk factor in case of bank financing is not more than 5%. This logic was made as a basis for determining fee for SBLC or BG offered. The fee was decided to range from 4 % to 5% p.a. This will keep total cost of financing around 14 percent per annum.

First company that was approached was a conglomerate with large exports, also having a presence in the telecom sector. The idea of providing off-balance sheet financing in form of SBLC or BG in favour of ITPL was new and needed persuasion to make it acceptable. Although off-balance sheet financing happens between parent/subsidiary and sister concerns but it is not a usual mode of financing for generating other income if the company has some financial capacity to take risk. The risk involved in terms of uncertainty of cash flows or chance of default has to be evaluated carefully. Merits of the case were shown. There was a certainty of cash flows in this case as sales were definite under the contract. Contract tenure itself was smalli.e., only one year. Product had become a commodity. Suppliers and buyers were well known companies with negligible default risk. These arguments convinced the company officials to consider the proposal. Trust in the consultant and promoters/directors of beneficiary company were an important factor in convincing the company about the merits of the deal. Also, the conglomerate had actually hedged dollar at 58 while the current dollar rate was 64.Since they could create a natural hedge by fixing the dollar rate today of six months hence without paying any charges, it also made the proposal attractive. However, since this has to be stated in the footnote as a contingent liability on 31st March when balance sheet is drawn made the proposal unacceptable. Company did not want to report this in annual report as it may attract undue questions from investors, analysts, etc. and so the deal did not workout.The problem of reporting contingent liability on the balance sheet deterred a mid-size pharma company with large exports to get into the deal. The exports were down and company had a good amount of bank facility/limit idle. The proposed fee of 2 Crore was seen as a good amount for a guarantee of 40 crores for a year.

Apart from corporates, treasurers of political parties and religious trusts were approached. They have high cash reserves in form of bank deposits. The problem in case of political parties and religious trusts was that too many people involved in decision making, lack of understanding of these deals, and also lack of trust in general. Others approached were HNI and corporate NBFCs in individual capacity. They had a good understanding of these deals. Some of them wanted to import the goods and bill ITPL in which case the taxes were an issue and the charge of 5% was not working out. ITPL was only looking for financing arrangements. Others who considered the proposal had no redundant bank facility at that moment and making arrangements with banks for one time for them was perceived to be a costly affair. Time was passing by. Almost two months were over trying to secure BG or SBLC in form of off balance sheet financing, but deal could not be worked out. Something had to be done urgently.

Finally people in real estate sector were approached. Real estate boom was over and sector was not doing well. Many projects had got delayed and interestburden was mounting.Most of them were private companies so issue of reporting in balance sheet was not a major problem. They were looking for avenues of income from investments which were idle as of now. They also had requisite banking arrangements. One company in real estate sector agreed to provide SBLC of 25 crores for one year for a fee of Rs 1 Cr payable upfront. All other fees and expenses were to be borne by ITPL. For ITPL this worked as a good deal keeping their total cost of financing around 12 percent.

Changes in the economy have changed the way people do businesses. While fund based banking transactions have gone up, it is realized that non fund based services can also meet specific requirements and it is expected that such services/products will also see an increase acceptance and supply. Businesses will be more dealing through instruments like BG, SLBC, LOC, LC, BC etc. To avail these services new structures are emerging. One such structure proposed is creating a limited liability partnership* (LLP) M/s Guarantee LLP for facilitating non fund based transactions. This LLP will have partners who will bring their commercial / residential properties as collateral assets for securing bank limit. These limits will be used to facilitate transactions for other partners, who need facilities such as BG, SLBC, LOC, LC, BC etc. for their trade. For example, assume Ms. Sikha has a commercial / residential asset,which she is ready to use as collateral. She can become a partner in LLP and the LLP will secure a bank limit against this asset. Now this limit can be used to avail a SBLC/BG for ITPL, who is also a partner in this firm and wants to import goods. Firm will charge a fee to ITPL for this service and pay this fee (after deducting a small amount) to Ms. Sikha for providing her asset as collateral for ITPL. M/s Guarantees LLP can be managed by a professional and the partners will be charged an annual fee for being a member in the LLP. This firm will only facilitate non fund based transactions through underwriting guarantees for its partners. Cost of non-fund based transactions is less than cost of fund based transactions in case of imports etc., as they are fee based and money is arranged on basis of LIBOR rate. Such off balance sheet financing arrangements are need of the hour,when businesses are looking to reduce their cost to be more competitive.

Although the example cited here relates to import transactions and a supply under a contract from PSU, it provides an opportunity forfee in the range of 4 to 5 percent as finance is available at LIBOR plus rates, which is much below the financing rate in India including forex hedging. However the concept can be extended to other business transactions also. New businesses do not get working capital financing arrangements from banks for initial three to five years. In such cases normally firms resort to private fund based financing at a substantially high rate. This kind of arrangements can help new businessessignificantly. Although in these cases underwriting fee may not be as high as 5 percent but may hover around 2to 3 percent. But if the profile of the business is not risky, additional 2 to 3 percent is good enough return.

The reason for suggesting an LLP form of organization is that it is more regulated as compared to a partnership. LLP has to register and file annual returns with ministry of corporate affairs. It can have unlimited partners while in partnership number is restricted to 20. In case of LLP, liability of a person is limited to the amount of his/her capital contributed to the LLP and the partner of a LLP are not personally liable for the liability of the LLP. As both parties giving and seeking guarantee will be partners in the LLP, they will be hold jointly responsible in case of failure where LLP will also provide a recourse to party seeking guarantee on behalf of party giving guarantee. This kind of structures will help in standardizing the contracts and fees in a manner most appropriate for the businesses to function.

Off balance sheet financing through proper evaluation and management of risk provides an opportunity to improve bottom line of both firms. As stated, ROI is infinite in such cases. Additional fee is earned without any additional investment. This improves the overall profitability of the entity earning fee. Quantum of fee will depend on the risk involved and overall cost of financing has to be at least 2percent less than fund based financing, which itself has a wide spread. This concept is an extension of concept of channel financing in working capital management where the finance for entire channel is arranged by highest rated firm which can borrow at the least cost. Trust of channel partners is an important element to start with. Here what is being proposed to bring a strong player in the channel that can help to reduce cost of working capital by few hundred basis points and at same time channel financer also get benefited by utilising his underutilised line of credit.We go a step further by proposing non fund based financer asentities in the market to help reduce the cost of financing. I am not aware of any such entities currently existing in the credit market, which provide guarantees professionally for a fee.

Note * - Author acknowledges contribution of Shri. Deepak H Parmar, Chartered Accountant, Ahmedabad in suggesting an LLP format.

Case 2 - Private Finance Acting as Helping Hand in Financial Distress

Mr Lalwani was in the business of making plastic sheds and was doing extremely well. He met an accident and was bed ridden for four years due to which the business suffered heavily. There was nobody else in the family to take care of business. They had taken a term loan against hypothecation of factory land from a regional cooperative bank. Due to adverse circumstances, business had run in to losses. Loan could not be paid back and became a non performing asset (NPA) for the bank. Bank had initiated action to seize the land and put in on sale to recover principal, interest and penal charges of approximately Rs 12.00 crores. When Mr Lalwani negotiated with bank for one time settlement pleading his misfortune, bank agreed to waive of penal charges and gave him three months' time to pay approximatelyRs 10.5 crore failing which the property will be seized and put up for auction. The market value of the property was around Rs 15 crores but Mr Lalwani feared that if it goes for a distress sale through auction, then it may not fetch a fair price. In that case, he will lose heavily. Takeover by other banks and NBFCs was completely ruled out at this point. He started searching for options.

In another instance, a business man's loan repayment cheque had bounced back andhe was looking for some source of funds to meet his loan repayment schedule and also for funds to complete his housing project scheme under construction. To ease his liquidity crunch, he did not get any support from banks and NBFC as he was already a defaulter with low credit rating. The only option for him to continue his business was to avail private finance.

A similar situation is faced by a person with an irregular income stream from his job or business who is planning to buy a house. He will not be able to avail a loan from regular financing channels of Banks and NBFCs. If he goes to the money lenders (under state money lending act), he cannot get loan for 20 years based on equal monthly instalments (EMI) and the interest rates he has to pay will also be high. An option which allows him to hire purchase the facility (house) at a competitive rate is most suitable option for him. This provides him with a house and on payment of all instalments, the house will be owned by him.

In no case I am talking of people that are being brought in system through various schemes of financial inclusion. These schemes will help them avail small loans from institutions rather than availing loans at a high interest rate from money lenders. Although states have created money lenders act but still the rates at which they finance these small and uneducated borrowers is extremely high.

These people in financial distress and looking for some source of funds came across firms (on search engines like google, sulekha.com, justdial.com etc. or through their agents network) which state that they finance NPA assets and all types of loans requirements whether project finance, mortgage loan, personal loans, education loan, or home loan. Loans are sanctioned even for more than seven digit figures, have an option of moratorium period and repayment period over 20 years based on EMI. They arrange investments in form of private equity also. Some of them are registered as private limited firms with websites stating an all India franchise network, toll free numbers, e mail id, online application forms and also claiming to have global branches and claiming global investors. Details about these companies were available on databases

> This note talks about two cases of non-conventional sources of financing – One related to off-balance sheet financing and the other related to raising funds from private financial intermediaries. The objective of the note is to highlight role of such sources in financing some very specific situations. These sources are complementary to existing conventional sources of banking and primary markets and can be used in tandem with other sources. In my opinion, the role of such sources will increase in times to come.

like zabuacorp.com and tofler.in. Interesting part is that they claim to arrange loans at a very competitive interest rate. These companies are not NBFCs. They act as financial intermediaries arranging funds from private sources.

Although there are negative reports available on the Internet about some of these companies, but the way they are organised in terms of structure and functioning makes it clear that they are here to do business. Once you speak to them they brief you about the process involved. They charge their clients a nominal fee for registration and ask for all the documents, which are used for a typical loan processing from a bank or NBFC. Within a fortnight, an approval letter after verification of papers is issued. The only difference is that once a loan is sanctioned by them, they ask for a commission (from .05% to 2.0%) for arranging loan or meeting with investors, a part of which has to be paid in advance as negotiated. Here some amount of caution is to be exercised before going further and verify the credentials of firm. That is utmost necessary in such cases. Internet states many stories where people have been cheated in such cases. These private firms ask for commission for arranging loan. They also seem to charge financer a percentage of loan disbursed and also later some amount for interest collected from parties. From these revenues, firms meet their expenses of office, staff etc. and make profit. Once the part commission is paid, money is disbursed in a few weeks' time. They accept payments through cheque /NEFT / RTGS and loans are also disbursed in similar manner.

The point which I am trying to make here is about a parallel financing system, which is working to help that section of society which for various reasons is not able to avail services of regular financing system of Banks and NBFCs. This private finance is available at very competitive rates. The point is why will these private financers finance them and what is the role of these intermediaries. The financing theory of trade credit provides an explanation for this. Firms get trade credit even when they are not eligible for institutional finance (Banks and NBFCs). The reason is information asymmetry. Supplier of goods has more information about buyer and can keep close watch on him than financing institutions. Also supplier can confiscate the goods easily and sell again while financing institutions will have to follow a lengthy process. They also manage to recover debt through pressure (social or otherwise) which to a large extent is not possible for the institutional financers. Same arguments apply in the cases of private finance discussed here. Apart from the advantage of reduced information asymmetry and informal enforcement, these private intermediaries facilitate their clients in increasing their trade and business by referring them to their other clients if need arises.

Generally, the textbooks are largely filled with sources of institutional finance and do not dwell much upon private finance. Even where they discuss private finance, they talk of private debt or equity under normal business circumstances available to large companies from HNI or small firms and people from small money lenders. Books are silent on financing options available in adverse situations of financial distress. Markets, however, create alternatives whenever there is a felt need provided it can be done in a financially viable manner. Essentially these loans come as unsecured loans on your balance sheet. As security,parties involved keep signed stamp paper as security and use them to claim assets sold in case of default. So trust among the parties is a major prerequisite for these deals.

This kind of private finance is not a substitute for banking and will never be. This is a channel for sectors where traditionally the banks had limited exposure like housing, telefilms, and movies and where banks will not entertain clients if they are not confident of the clients' creditworthiness. Increasingly, the informal financing is becoming more organised and sophisticated in its functioning. With growing use of computers and Internet, this sector can play a larger role by reaching out to far more people and activities.

Conclusion

This note tries to relate theory with the practice. It seeks to explain the rationale behind two non-conventional sources of finance existing in practice. Both the sources discussed in the note help to alleviate the consequences of loans/businesses in distress therefore help system becoming more efficient. Private players in these cases are ready to bear risk for additional reward. These sources should be strengthened so that they work as pillars to support and complement the existing formal system of financing. MA

f07devesh@iima.ac.in
jaindevesh@rediffmail.com

Management Accounting Practices:

A Study on Manufacturing Sector With Reference to India

At the outset, it may be stated that the practical importance in terms of use and application of management accounting practices have been increased remarkably in many folds during the on-going century though the use of costing techniques in ascertainment of product cost is found to be in vogue since time immemorial, more specifically the evidence with regard to use of costing techniques in managing economic activities is found in 323 BC. The reason of ever increasing use of management accounting techniques are not far to seek. In simplicity, severe competition both at domestic as well as global fronts due to adoption of globalization, decreasing profitability or profit margin, persistent increase in input prices and economic crises made the enterprise owners to take the shelter of cost and management accounting practices in order to overcome the non performance syndrome of the business undertakings by and large. India is one of the leading countries in the Earth who has been engaged in developing and nurturing the cost and management accountancy profession keeping in view the immense necessity for judicious management of industrial organization during last 73 or more years and today India has emerged as the second largest proponent

CMA Dr D. Mukhopadhyay
Professor
Shri Mata Vaishno Devi University
Katra

and advocate of the cost and management accounting profession in the world and she stands after CIMA, UK. There is considerably wider practice of cost and management accounting tools and techniques in the developed countries like USA, UK, Japan, Australia, South Africa, Canada and many more. Among the developing countries, India is the leading country that understands the importance and indispensability of management accounting techniques in the domain of economic resource management and application of the principles of three "Es" i.e. E1 for Efficiency, E2 Effectiveness and E3 for Economy and this three ES are the practical and philosophical determinants of the use of cost and management accounting practices in the process of management of day to day operations of a business organization whether engaged in service sector or manufacturing sector but our focus is manufacturing sector in this study. However Lin and Yu(2002) is of the view that practice and application of management accounting techniques in less developed countries is quite unsatisfactory and there is lack of adequate literature on the usage of same. Based on economic development, Indian management accounting profession has been in considerable progress since pre-independence era i.e. 1944 and onwards where the Institute of Cost and Works Accountants of India (ICWAI) was established as Company Limited by Guarantee under the then Companies Act, 1913. In India, management accounting practices are found to be in wider practice both in Public Sector as well as Private Sector organizations. Medium and large industrial undertakings set up cost and management accounting unit in the Finance and Accounting Department. Moreover, Cost and Management Accounting as a subject has been included in the faculty of Commerce and Business Management in every University which witness the growing importance of the profession of Cost and Management Accountancy in India and across the globe as well. The very purpose of the present study is to assess and explore management accounting practices remaining in place the Indian manufacturing sector.

Literature Review

Growing importance of cost and management accounting practices in order to achieve organizational objectives and goals, studies in the chosen field have remarkably incremental and upward trend in recent years in the emerging economies(Wu et al. 2007, O'Connor et al., 2004, Joshi, 2001;Szychta, 2002) following the studies in developing countries (Wijewardena and Zoysa, 1999, Shields, 1998). A study was conducted by Van Triest and Elshahat (2007) which found that cost accounting information in Egypt was found at basic level and mostly it is use in framing pricing strategies. They also concluded that advanced costing techniques like Activity Based Costing was hardly found in practice in Egypt. A comparative study was undertaken by Joshi(2001) where he opined that Indian manufacturing sector relies heavily on the traditional cost and management accounting techniques like variable costing, budget and budgetary control, standard costing, Return on Investment (ROI) as a tool for performance evaluation and performance management. However, life cycle costing, value chain analysis, back flush costing, activity based costing, activity based management, activity based budgeting, benchmarking, balanced scorecards are also found to be in place though not at very fast speed and large scale. Moreover, size of the firms is also a determinant for as to which management accounting techniques should be used and larger firms use widely those advanced techniques in comparison to small and medium sized enterprises(Joshi, 2001; Chenhall and Longfield Smith, 1998). From this it may be opined that use and implementation of management accounting practices in India is gaining popularity against use of the same by the developed countries. In India, besides, the Institute of Cost of Accountants of India (ICAI-CMA)'s professional publications, , almost every day, a number of books and journal articles publication on the given subject are found to be in increasing trend (Mukhopadhyay, 2017). Besides other countries in the world, Turkey is one of the leading countries which practice cost and management accounting theories and principles in day to day operational management of industrial organizations Altug (1982, 1985), Bursal(1968, 1990), Karakaya(2007), Caldog(2008), Gursoy(1999), Guredin et al.(2007) etc. works of the authors do have a wide coverage on the issues concerning cost classification, allocation of costs , job costing, process costing ABC, standard costing, budgeting and budgetary control, cost-volume -profit analysis and other advanced topics of the science of management accounting. However, majority of the publications on management accounting subject and literature in Turkey is published in Turkish Language.

Objective of the Study

The objective of the study is to assess and explore management accounting practices reamaning in existence and vogue in Indian manufacturing sector. The study is expected to contribute the cultivated knowledge to existing literature of cost and management accounting or simply management accounting. The study mainly covers product costing methods used by the firms, overhead allocation bases , usage domain of management accounting information and explore the reasons for persistent increase in use , application and utilization of management accounting theories and practices in day to day operations and management of industrial organizations or enterprises in India.

Methodology

The data for the present study was collected with the help of structured questionnaire from randomly selected 100 manufacturing firms in India from various industries. The questionnaire contained multiple choice, open ended and questions based on Likert scale. The data collection period is April 20017 to August, 2017. The questionnaire included two sections and Section A contains general information on the enterprises and respondents and Section B contains information relating to management accounting practices. Descriptive statistics in combination with inferential statistical tools are used in data analysis and interpretation.

Let us present the data in the following tabular format:

I: Industry Presentation:

Industry Mix	Frequency	Percentage (%)
Steel	15	15
Cement	10	10
Textile	25	25
Chemicals & Fertilizers	15	15
Paper Products	15	15
Food	10	10
Miscellaneous	10	10
Total	100	100

II: Size of the Firms

Sales (Annual Turnover Rs.in Cr.	Frequency	Percentage (%)
Upto 200	40	40
200-500	25	25
500-1000	20	20
Above 1000	15	15
Total	100	100

III: Ownership Structure:

Structure Mix	Frequency	Percentage(%)
National Mix	80	80
Multinational Mix	20	20
Total	100	100

IV: Respondent Status

Respondents Mix	Frequency	Percentage(%)
Promoters	10	10
Vice President	15	15
General Manager	20	20
Cost & Management Accountant(CMA)	20	20
Chartered Accountant (CA)	20	20
Company Secretary(CS)	15	15
Total	100	100

V: Number of Employees

Employees Number Mix	Frequency	Percentage(%)
100-200	30	30
201-400	20	20
401-600	25	25
601-800	10	10
801 & above	5	5
Total	100	100

VI: Life Span of the Firms

Age of the Firms	Frequency	Percentage(%)
Less than 20 years	10	10
21 years to 40 years	30	30
41 years to 60 years	30	30
61 years to 80 years	20	20
81 years and above	10	10
Total	100	100

Discussion

Section A: In the above tables, industry presentation, size of the firms in terms of annual sales turnover, ownership structure, respondents status, number of employees and life span of the firms are presented

. It is evident from the table I that highest percentage of the sampled firms belongs to textile industry i.e. 25%, and miscellaneous group comprises of information technology, computer parts, mobile manufacturing and allied industries. Again it can be seen in the table II that 40% firms have up to Rs. 200 crores turnover and 15% of the firms have above Rs. 1,000 crores annual turnover. Table III shows that ownership structure of firms consists of 80% as national or domestic companies whereas 20% firms are multinationals, Table IV contains respondent mix and it included promoters, vice presidents, general managers, CMAs, CAs and CSs. The sample included 10% promoters, vice presidents 15%,General Managers 20%, CMAs 20%, CAs 20% and CSs 15%. Table V exhibits that 30% of the firms have 100-200 employees in the payroll, 20% of the firms have 201 to 400 employees, 25% of the firms have 401 to 600 employees, 10% firms have 601 to 800 employees and 5% of the firms have 801 and above number of employees in the payroll of the companies. Finally table VI shows the life span of the firms in terms of number of years of operations and 10% of the firms' life span of operation is less than 20 years, 30% of the firms life span of operation is 21 to 40 years of existence, 30% of the firms belong to age group of 41 to 60 years, 20% of the firms belong to the age group of 61 to 80% and 10% of the firms belong to the age group of 81 and more years.

Section B: Section B of the questionnaire was meant for data collection with respect to use of Product Costing Methods by the sampled firms and the same is represented as below:

VII: Table Showing Product Costing Methods in use

Industry	Process Costing	ABC	Job Costing	Other non specified	Total
Steel	8	2	5	Nil	15
Cement	6	1	3	Nil	10
Textile	15	5	10	Nil	30
Chemicals & Fertilizers	10	1	2	2	15
Paper & Pulp	8	2	3	2	15
Food Products	4	1	3	2	10
Miscellaneous	3	1	1	Nil	5
Total	54	13	27	6	100

It is evident from the above table that most of the firms in our sample use process costing followed by job costing and activity based costing and least number of companies follow non specified costing methods. They follow as and when their product so demands and as per the requirements since they do not produce any particular product consistently.

Overhead Allocation bases for the purpose of Product Costing:

Let us show the bases of overhead allocation in Product costing in the following tabular presentation:

VIII: Table showing Overhead Allocation Bases used by Indian Firms:

Overhead Allocation Bases	Frequency	Percentage(%)
Direct Labour Hours	10	10
Machine Hour	6	6
Direct Labour Cost	20	20
Direct Material Cost	10	10
Prime Cost(Direct Materials+ Direct Labour+ Direct Chargeable Expenses)	40	40

Overhead Allocation Bases	Frequency	Percentage(%)
Number of Units Produced	10	10
Other Base	4	4
Total	100	100

It is evident from the above tabular presentation that majority of the firms use Prime Cost as the basis of overhead allocation for the purpose of product costing followed by Direct labour Cost, Direct Labour Hours, Direct Material Cost, Number of Units Produced and other base finally. It may be opined from the observation of the above data that Prime Cost as a base of overhead allocation is very popular among the firms followed by Direct Labour Cost and so on. Prime Cost as base of overhead allocation under traditional product costing method is more logical than other bases available. Of course, Activity Based Costing is perhaps the best base for overhead allocation and it is an effective technique for overhead management. Here other base includes Activity Based Costing but it is time consuming and efficient and knowledgeable staff are necessary to implement the ABC and that is why there is fear among the firms on the usage of ABC as a process of overhead management. However, according to Horngren et al.(2000, p. 101), direct labour hours is the most widely used overhead allocation base among the countries United States, Australia, Ireland, Japan and United Kingdom.

Use and Application of Management Accounting Information:

The respondents were asked to score the use of costing information on Likert Scale of 1 implying never use and application to 5 implying always in use and application. To evaluate and assess the result Students' 't' test was administered and result showed that costing information is widely and to the maximum extent used in product pricing decisions with an average of 9.36 with S. D. of 2.32 followed by Customer Profitability with an average 8.14 with S. D. 2.07, performance measurement and management with average of 8.08 with S. D. 3.4, activity analysis and make or buy decisions areas also substantially need costing information as they are attributed with average of 8.16 with S. D. 2.24 and 8.00 with S. D. 1.98 respectively . Deciding appropriate product mix and change in product mix are done on the basis of thumb rule and no logical costing information is used in deciding product mix and adding or dropping a product and they are attributed with aveage of 7.10 with S.D. of 2.32 and 6.92 with S. D. of 2.74 respectively whereas the contribution approach or Profit Volume Ratio could easily act as the guide for the management in deciding the best product mix as well as in adding or dropping any product to or from the existing product profiles of the firms. Student's ''t" test was administered at 0.001 level of significance and it was found to be significant at 0 .001 level for pricing decisions, customer profitability, performance measurement and management, activity analysis and make or buy decisions and product mix decisions and adding or dropping product were found to be insignificant.

Reasons for persistently increasing interest in the application of Cost and Management Accounting principles and practices:

The respondents were asked to score their opinions on the issues concerning increase in interest in application and use of management accounting principles and practices in management of industrial organizations and a 5 point Likert Scale was used where 1 stands for strongly disagree and 5 stands for strongly agree. The respondents were requested to evaluate each of the reasons for increase in interest in Cost and management accounting practices given in a list of reasons for the same. Here also, student's ''t" was administered at 10% level of significance test . The first and foremost reason for use of cost and management accounting techniques is because of decreasing trend in profitability and it substantiates the wider degree of importance of cost and management accounting discipline. It is one of the most important tools to evaluate the reasons for increase or decrease of profitability of the organization. The parameter named ''Decreasing Profitability" is attributed with 9.18 average with 1.12 S. D. and ''t" value is 28.32. Increasing trends in input cost and cost management is the reason for growing interest in cost and management accounting. The parameter is attributed with 9.14 average with 1.33 S.D. and ''t" value is 23.26. Globalization of Indian industry is another factor that made the industrial organizations use more and more cost and management accounting techniques and tools in order to ensure there sustainability , competitiveness and survival under the environment of intense competitive market scenario. This factor is attributed with 8.90 as average with 1.90 S.D and ''t" value is 12.90 and finally economic slowdown and recession make the firms use cost and management accounting techniques in order to management resource better under such undesirable economic conditions. This factor is attributed with 8.50 average with 2.36 S. D. and ''t" value is 11.00. and all the four cases are found to be statistically significant at 0.001 level.

Overall Importance of Practice of Management Accounting Theories and Principles:

There were 15 parameters which were identified to assess the overall importance of management accounting practices and better management of economic resources of the industrial organizations and these 15 parameters are (1) Breakeven Analysis, (2)Standard Costing & Variance Analysis and Reporting, (3) Budget and Budgetary Control, (4) Responsibility Accounting, (5)Transfer pricing, (6) Balanced Scorecard, (7)Target Costing, (8)Value Chain,(9) Life Cycle Costing,(10) Back flush Costing, (11)Learning Curve,(12) Simulation,(13) Activity Based Management, (14)Quality Cost Management & Reporting & (15) Strategic Planning.

The respondents were requested to evaluate the perceived importance of cost and management accounting applications and practices that are widely used by the industrial organizations on a 5 point Likert Scale where 1 stands for least important and 5 stands for most important. Student's ''t" test was administered to in order to obtain statistically valid results. Let us present the result in the following table and glimpse of the same can be had at a glance:

Variables	Mean	Standard Deviation (S. D.)	"t" Value at .001 level of significance
BEP Analysis	6.45	1.28	14.56
Standard Costing & Variance Analysis and Reporting	5.20	2.20	11.76
Budget & Budgetary Control	6.79	1.17	15.68
Responsibility Accounting	6.15	1.11	13.20
Transfer Pricing	4.68	2.89	3.25
Balanced Scorecard	4.25	2.92	3.12
Target Costing	6.28	1.25	13.66
Value Chain	5.56	1.95	12.33
Life Cycle Costing	6.48	1.23	15.33
Back Flush costing	3.67	3.09	2.65
Learning Curve	2.61	1.37	1.25
Simulation	4.56	1.83	2.53
Activity Based Management	5.66	2.56	12.11
Quality Cost Management and Reporting	7.90	1.89	16.67
Strategic Planning	5.65	1.45	12.77

It is evident from above table that the firms popularly adopt and practice in the traditional management accounting tools and techniques. For instance, budgeting, breakeven analysis, standard costing and variance analysis, quality cost management , responsibility accounting , target costing , activity based management, strategic planning, value chain are of immense importance followed by learning curves, back flush costing, balanced scorecard, transfer pricing, simulation etc. From the above table it can be seen that new tools and techniques are also becoming popular after the traditional tools and techniques like Breakeven analysis, budgeting, standard costing responsibility accounting and so on.

Conclusion

The study reveled that the most widely method of costing used by the sampled firms is process costing followed by job costing. Similarly, the most popular overhead allocation base is Prime Cost followed by direct labour cost. Costing information is immensely used in formulating pricing strategy, planning and control is exercised through budget and budgetary control of the economic activities of the organizations. The industries take maximum help of management accounting practices when they come across declining trend in profitability, increasing trends in the factor costs, intense competition and economic slowdown Furthermore, it is also evident from the study that the traditional cost and management accounting tools are still very popular because they are users' friendly. The sample represents the medium and large industrial organizations and small organizations are beyond the purview of the present study, therefore future researchers may opt for studying the degree of importance of management accounting practices in order to bring about profitability, efficiency and economy in the micro and small industrial units across/enterprises in the country. The future researchers are advised to study the same subject with much larger sample and test the results and variations if any may be reported in appropriate manner. MA

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mukhopadhyay.dinabandhu@gmail.com

Is there a Talent Crunch in Public Sector Banks?

Indian Banks are passing through turbulent times. Banking is no longer just "accepting deposits from the public for the purpose of lending or investment". Banking operations have become more of Risk Management and Asset Liability Management. Decades ago banks perceived only credit risk. Now, even opening a savings or current account can pose risky, if Know Your Customer (KYC) norms are not followed and due diligence is not done.

On the one hand, banks have to keep lending,- granting small loans towards poverty alleviation and big-ticket advances to Corporate Houses. on the other hand, they are saddled with Non Performing Assets (NPAs), threatening their very survival/identity.

There are pressures against both decreasing the deposit rates and increasing the lending rates. Liberalization, privatization and Globalization initiatives have gained momentum; Consolidation issues are hanging like a Damocles Sword.

L Srinivasan
Senior Manager
Indian Overseas Bank
Chennai

Even the "too big to fail" banks find it difficult to remain "big enough" to sustain. Let us discuss briefly, the challenges confronting banks in India today.

Chellenges confronting Banks in India:

Banks have come a long way - from manual banking to ALPM, then to Total Branch Automation (TBA) and then to Core Banking Solution (CBS). From the CBS environment, banks are moving to Virtual Banking. Alternate delivery channels such as debit and credit cards, ATMs, Internet banking and Mobile banking have replaced the traditional branch banking. Banks have to take these changes in their stride and market these digital products to the customers. This is a challenge. Employees need to be trained on the use and scope of these delivery channels and they need to be motivated. Once the staff members, who are the internal customers of a bank, gain the knowledge of these new-era products, they will smoothly adapt themselves to the changes and market the products to the customers

Although NPAs have been perennially a problem for PSBs, they have now breached the threshold limits these days. Apart from macro-economic issues, wilful default and indifference of the borrowers contribute to the NPAs. The very existence and sustainability of PSBs depends upon quicker recovery and effective control on fresh slippages. This is a challenge. What is the way forward?

NPA management requires the collective efforts of all stakeholders- the Banks, their effective use of recovery methods and tools, the support of Government and borrowers themselves. Moreover, In future, banks need to make enhanced due diligence and sharper appraisal when they sanction loans. Monitoring the advances and taking corrective measures when the accounts slip are also crucial.

Another big challenge in these transitional times, is the need for fine balancing between earning more profits without compromising on social obligations towards priority sectors.

" The old order changes, yielding place to the New" For the past few years, there have been a large number of retirements and simultaneous large scale recruitment of young staff, resulting in new challenges to the banks such as generation-gap, knowledge-gap and attitudinal issues.

Thus, to say that Indian Banks are passing through turbulent times is not an overstatement.

At this juncture, therefore, high levels of talent, commitment and passion are required of the employees to ensure that Banks pass through these difficult times successfully.

Succession issues and Business Continuity Plans (BCP). Issues:

During the early 1980s, banks witnessed a large number of recruitments, through the Banking Service Recruitment Board (BSRB). The recruitment stabilized over the years. During the late 90s, a large number of employees opted to retire, using the Golden Handshake offered by many Banks. This involved huge outflow of money from Banks' kitty and banks were advised not to recruit employees till the costs of Golden Handshake were amortized.

There were virtually no recruitments in Indian banking system for nearly 15 years. From the year 2008 onwards recruitment of Officers and clerical staff members commenced again, this time, through Institute of Banking Personnel Selection (IBPS). This coincided with a large number of retirements due to superannuation, of employees who had been recruited during the 1980s.

Selection of highly qualified members of the younger generation in banking sector:

The growing number of professional colleges and the pro-active role played by Public Sector banks which granted Educational loans, resulted in professionally qualified youth emerging out of such colleges.

Further, issues such as unemployment and under-employment of educated youngsters, insufficient avenues of Government jobs and the rigorous working conditions coupled with low pay offered by Software companies compelled the younger generation to seek an opening in the Banking sector.

More than 350000 Officers and clerical employees have been absorbed in the Banking sector in the last 5-6 years. Most of the officers hail from the northern parts of the country such as Uttaranchal, Bjhar, Jhakhand, Orissa and West Bengal.

Before we discuss the issue of Talent crunch in banks, we need to understand the talents that are required for the effective functioning of the present Indian Banking system.

a) Talents which will enable the successful delivery of digital banking products to the customers.

b) Talents relating to effective communication skills and human qualities such as commitment, honesty, sympathy, empathy and a passion for helping all strata of society, especially the needy.

..Talent in banking service includes essentially good customer service. Talking to customers politely, having empathy towards their problems and offering speedy disposal of their requirements are vital. In this regard, let me share an experience:

Most of the old generation employees presently serving the Banking sector, especially in Public sector Banks, do not understand e-products especially mobile banking and their immense possibilities. On the other hand, the young generation of workers takes to e-products as easily as fish take to water! As we know, banking secror in India has crossed many stages over the years- from manual banking to ALPM; from ALPM to Total Branch Automation (Local Area Network); from TBA to Core Banking Solutions (CBS) through Wide Area Network. Now, the banking system is moving towards Virtual Banking environment, through Digital transactions.

This new era involves the use of Debit and credit cards, ATM Usage, internet banking and mobile banking and e-commerce transactions.

The younger generation of customers desire to have banking relationship only with tech-savvy banks, banks which would offer them all Digital products. The younger generation of employees, most of whom are graduates in Engineering technology and science are more suited to meet this challenge and satisfy the needs of the neo-gen customers.

The grooming of the younger generation work-force:

Commitment to the organization, building a long relationship with the respective banks where they are working, developing sympathy for the various types of customers such as the villagers, illiterates, women, aged customers are some of the qualities that the senior employees have to teach the youngsters.

Helping the women through Self Help Group concept, giving agricultural loans and empowering the rural people are also skills that need to be developed by the younger generation, in the grooming process.

If Talent has to be identified, nurtured and sustained in Banks, the following aspects of HR need to be taken.

Proper Man Power planning and recruitment, training and skill development of staff, career planning, performance Management, Reward Management, Leadership Development, proper Employee Engagement and Motivation strategies, Professionalization of Human Resources in Banks, drawing an appropriate wages, service conditions and welfare structure for employees, Corporate Governance and creating a Risk Culture in Banks,

Concluding remarks:

There is no talent crunch in banking sector. Talent crunch in Indian Banking system is only a myth. There is sufficient talent. With India becoming Digital and with more and more cashless transactions taking place, only tech-savvy and computer-savvy workforce is needed in Banking. The earlier generation of dedicated and committed employees had done their part very nicely. They knew the pulse of the customers and gave them excellent customer service. However, their days are over.

However, the time has come for handing over the baton to the younger generation. There are many positive aspects in the new generation employees- high academic and technical qualification, tech-savviness and quicker grasping capacity, qualities vital for present-day banking. The challenge is to mould these young employees and share the values that have nourished banks all these years - such as good customer service, sensitization towards vulnerable sectors and loyalty and commitment.

The younger generation will carry the baton and take the Indian Banking sector to greater glory. What is, however, required, is that they should be motivated by the outgoing work-force and taught a few lessons in customer-sensitization and customer-delight through personal banking

> ‘The younger generation of customers desire to have banking relationship only with tech-savvy banks, banks which would offer them all Digital products. The younger generation of employees, most of whom are graduates in Engineering technology and science are more suited to meet this challenge and satisfy the needs of the neo-gen customers.’

We can hope that this will happen and the talented youth will take good care of the Indian Banking system. MA

lsrinivasan@iobnet.co.in

India at 70:

A Youthful Country full of Vigour and Opportunity

On 15 August 2017 India will celebrate 70 years as an independent country and there is much to celebrate for the world's largest democracy. Since independence, India has lifted millions of people out of poverty, become self-sufficient in food production, and made great strides in science and technology including space research. And, of course, whenever one visits India one is struck by its diversity, its rich history, culture and secular traditions.

But in the last few years India has caught the world's attention as one of the world's fastest growing major economies as per the International Monetary Fund (IMF). This was not the case for more than four decades in independent India, indeed, until 1991 India was an economic laggard with all aspects of the economy controlled by the state with accompanying red tape and bureaucracy. For all practical purposes, India was a closed economy with hardly any foreign direct investment. Private enterprise was stifled and weak with little room for entrepreneurship and innovation.

Gautam Banerjee
Senior Managing Director and Chairman of Blackstone Singaporer

The first steps to liberalise the economy were forced on the government led by MrNarasimha Rao in 1991 when India was in a serious economic crisis and reduced to such a point that it could barely finance three weeks' worth of imports. The economic liberalisation which started in 1991 has continued under successive governments but there has been a perceptible improvement in India's economic fundamentals since Prime Minister Modi took office in May 2014.

The present Government's ground up social reform and financial inclusion initiatives, tackling directly corruption and the "black" economy, fiscal reform such as the introduction of GST as well as actively promoting the adoption of technology, entrepreneurship and innovation have been well received by both local and foreign investors. So it's not surprising that today India has a glowing economic report card across all key indicators such as GDP growth, inflation rate, trade balance, international reserves, and stock market valuation. According to the IMF the Indian economy will grow at 7.2% in financial year 2016/17 and further accelerate to 7.7% in financial year 2017/2018. India's consumer confidence index stood at 136 in the fourth quarter of 2016, topping the global list of countries on the same parameter, as a result of strong consumer sentiment, according to market research agency, Nielsen. If investors needed more assurance that the Indian economy is likely to outperform peers over a sustained period, they can take comfort from the recent affirmation by Moody's of the Government of India' Baa3rating with a positive outlook because of bottom up social and economic reforms being undertaken by the Government.

Even though India turns 70 on 15 August 2017, it has a large and youthful population. This demographic dividend will mean that the labour force participation rate in India will keep increasing and the new entrants to the workforce can be trained and equipped with the right skill sets. Also as the urban workforce increases at the expense of subsistence agricultural jobs and per capita incomes rise India is expected to be the third largest consumer economy globally. According to a Boston Consulting Group report, shifts in consumer behaviour and expenditure patterns in India will result in consumption tripling to US 4 trillion by 2025.

So with such a great macro story, a strong stable Government encouraging foreign direct investment, India is being viewed as a major investment destination by potential investors. Some key sectors include infrastructure, manufacturing, consumer and healthcare, commercial real estate including business Parks, media, technology including e-commerce, banking and insurance. Investors include global and regional companies, private equity and sovereign wealth firms. A recent PricewaterhouseCoopers report based on a survey of 40 private equity firm partners has projected that the country has the potential to get private equity funding of US$ 40 billion by 2025. My own firm, Blackstone, the leading American alternative asset management firm, established an office in Mumbai in August 2005 and has since committed US$ 6.9 billion to companies in India.Blackstone is the single largest investor in the Private Equity/Real Estate space in India and has helped finance over US $12 billion of hard asset creation in India. Overall Blackstone has invested in 47 companies and has generated employment for close to 200,000 people in India through its portfolio companies.

India's main stock markets have also been among the best performing globally as both foreign and domestic investors see the opportunities and potential of the Indian economy and corporate India. With the Indian government's crackdown on the black economy we are already seeing a shift in the composition of savings in the country with a larger proportion of savings being in financial assets instead of gold and unaccounted for "black" money. This augurs well for India's financial markets as much of these financial assets will be invested in equities, bonds and mutual funds.

However, investing and doing business in India is not without its challenges. It is still a difficult place to do business because of a preponderance of regulations, bureaucracy and administrative bottle necks which mean that in the latest World Bank's Doing Business rankings India is ranked 130. The good news for investors is that Prime Minister Modi's government is determined to do whatever is necessary for India to steadily climb up the World Bank'sdoing business rankings.

One other major impediment to much needed new investment is that the state banking sector in India, which accounts for almost 70 percent of all lending, has been heavily weighed down by non-performing assets. A new insolvency act and upgrading the quality of Asset Reconstruction companies (ARC) by allowing 100 per cent foreign equity participation will hopefully reduce the level of non-performing assets on bank balance sheets.

As India turns 70, it is well on course to be a major global economy but to achieve its full potential its needs investment and expertise from foreign investors. India's doors are open for business and the rest of world is actively engaged with India in a journey which should be mutually rewarding. MA

Jocelyn.Gee@blackstone.com

Strategy for Growth Vis-À-Vis Management of Capital Structure: Contrasting Cases of Real Estate Sector and Software Industry in India

Prof. Kalpataru Bandopadhyay
Department of Commerce
with Farm Management
Vidyasagar University

Dr. Abhijit Sinha
Department of Commerce with
Farm Management
Vidyasagar University

The aim to grow and prosper is the sign of life. Every company targets to grow its shareholders' wealth. However, in a competitive environment the growth has to be 'achieved'; it does not come automatically. Thus, management has to chalk out strategies to achieve growth. In management, the term 'strategy' goes hand in hand with the term 'environment' as it is about creating a fit between the two. The need of the hour is to monitor developments around the business and bring about strategic revisions as felt necessary. In this paper, the focus is on study of financing pattern for managing the expansion mode of two sample industries, software and real estate.

1. Financing growth mechanisms and its consequences

Any expansion programme requires financing. The managers have the responsibility to tap the right sources and in such a proportion that it does not put the firm at risk. We already know from basic financial management theory that there are three distinct ways to fund the process:

(a) through internal accruals (also called 'ploughing back of profits'), i.e. utilizing the reserve created over time, and

(b) through debt financing, i.e. raising debt from financial institutions in the form of loans, debentures, Global Depository Receipts, American Depository Receipts among others.

(c) by issue of equity shares in the primary/secondary market, as the case may be.

The basic difference is that (a) involves implicit cost, whereas (b)/(c) involves explicit cost of debt or equity, as may be the case. The usage of debt financing is 'financial leveraging', which increases the burden of making timely financial payments at times of both flourishing and failing businesses. Apart from the source of fund, managers also think of the 'investment in asset' decisions (human and /or non-human) that are aimed to generate returns which exceeds the cost of financing. This aspect relates 'operating leverage'. These two leverages together create the impact of 'combined leverage'. A point of caution is that finance managers should not leverage both these at the same time because it raises the overall risk substantially to such an extent that it can have serious repercussions in case, the winds of change become unfavorable.

2. Real estate and software industry in India: A brief introduction

The following paragraphs give details about status of the two sample industries.

2.1 Real estate sector in India

The real estate industry of this country has been a phenomenal contributor to the country's GDP (around 5-6%). The industry comprises of four segments, viz. residential, commercial, organized retail and hospitality. Prior to liberalization of the Indian economy, this sector had a small number of regional players having low expertise, poor infrastructural support and less number of financiers due to which the sector relied mainly on high networth individuals and informal sources. However, since the economic liberalization in 1990s, the sector has taken a different route for growth due to numerous opportunities and change in the financing pattern. The real estate sector till 2007 grew at a phenomenal rate during which the prices escalated dramatically. Some of the main reasons contributing to the growth included housing shortage (mainly in the urban areas), migration to the urban areas, rising economic growth rate, government's focus on affordable housing, increase in demand for commercial space from the service sector space and business houses in SEZs and IT Parks, among others.

The growth of the housing industry can be broken into four phases:

Phase I: In early 2000, when there was a slow rise

Phase II: 2006-2008 during which there was a spurt in growth

Phase III: 2009-10 when there was a decline in demand, and

Phase IV: Post-2011 when the business started consolidating at a slow pace.

2.2. Financials of Real Estate Sector

The financials of the real estate sector shows a high growth curve during the period 2003-2008 in terms of growth in net sales and profit before interest and taxes. In this paper, the leading real estate companies were chosen on the basis of sales criterion for 2015-16. However, due to non-availability of data for all the previous ten years, some names were deleted and the sample was reduced to nine.

Table 1: Top Real Estate Companies: Sales & PBIT

Company	Avg. growth in sales p.a. (%)	Change in PBIT(%)	Change in ROE(%)
Hindustan Construction	36	201	-52
NBCC	33	3300	642
NCC	51	563	-46
IVRCL	54	627	-57
Punj Lloyd	43	262	-56
Simplex Infrastructure	40	502	-45
DLF*	90	261	-86
JP Associates*	32	234	-40
Shapoorji Palonji*	57	1000	-28

** period of data is 2005-06 to 2009-10*
Source: Capitaline, 2016
** period covered is 2003-04 to 2007-08 (growth phase)*

From the above table, it is understood that the average growth in sales per annum was as high as close to 40% for the period 2003-04 to 2007-08. After 2008, though the pain of financial crisis was felt, the extent of damage to the real estate was not that severe. Though, the impact on the Indian economy as a whole was not that critical, the real estate sector could not remain untouched. In fact, the companies could only defer the slowdown to 2010. The higher sales during the growth period increased the profit before interest and taxes (PBIT) at a rate that exceeded the rise in sales, thereby indicating a boom phase. At this juncture, it is reasonable to assume that higher sales would lead to higher profits which in turn will yield higher return on equity that increased shareholders' wealth. However, surprisingly, from the table below it is observed that the return on equity (ROE) has declined during the period thereby impacting the shareholders' wealth negatively.

On further scrutiny, it is observed that during the same time, companies in this sector aggressively financed their capital structure by pouring in debt capital. Consequently, the interest burden was high enough to eat up a large chunk of profit. In few cases, where the debt-equity ratio was within reasonable limits, the management ploughed back the profits and moved ahead with the 'debt' proposal. In some instances, the company also increased the equity capital to demonstrate an in-control debt-equity ratio which apparently may not seem to be too alarming.

Table 2: Position of Top Real Estate Companies

Name of the Company	Debt-equity ratio on 31.3.2004	Avg. growth in debt	Change in ROE (%)
Hindustan Construction	2.62	48%	-52
NBCC	5.52	-30%	642
NCC	0.94	56%	-46
IVRCL	1.3	65	-57
Punj Lloyd	2.69	47	-56
Simplex Infrastructure	2.5	35	-45
DLF*	3.54	114	-86
JP Associates*	1.88	41	-40
Shapoorji Palonji*	1.76	54	-28

* debt equity ratio for 2005-06, the period of data is 2005-06 to 2009-10;

Source: Capitaline 2016

Among the leading companies, only NBCC (India) Limited which is a Central Public Sector Undertaking and a Navratna organisation strategically not only reduced its debt by 30% but also achieved a positive ROE change of 642% during the period of growth. The other industry competitors, showed a lop-sided picture in their financial statement with high growth in their debt component of the capital structure which had a devastating effect on their return to equity shareholders.

Thus, we see that the nature of this business is such that its growth is dependent on the macro-level developments and policy changes. It is very true that the industry is so sensitive to external moves that there will be sudden ups and downs in the business trend. The above analysis points to a wrong anticipation on the finance managers that led them to despair when the happy days were gone. Hence, we can comment that there is a need to put forward steps with caution and keep reasonable expectations even at times of high growth rate of an industry. Too much of leveraging can do mayhem to the industry and to competitors depending on their strategic moves.

3. Software sector in India

When we refer to the software industry, we refer to the computer services and the ITES plus BPO services which play a vital role in the economic growth of a nation like ours. Almost 75% of the sectoral business comes from its offsite clients. If we look back into the history of this sector, we find that immediately following the liberalization of the economy, the software business was minimal with around only US$ 131 million of exports in 1992. However, by 1997, it galloped ten times. The turning point was the Y2K problem that gripped the world which led to a surge in the order book of software companies. Consequently, exports also moved northwards from 14% in 2003-04 to 15% in 2013-14. The difference was that during the recent years, the production location has changed with a tilt towards off-site business than on-site. Of the total exports, the majority share is from the US and Canada which together contribute around 65% of the export revenues. Recent DIPP reports mention that in 2013-14, there was a jump of 14% in software service exports that generated US$71.4 billion (around Rs. 4.32 lakh crores) in export business. The growth is also evident from the six-fold growth (in revenue terms) during the last decade and the sectoral share in India's GDP which is more than 9% in 2016-17 (http://meity.gov.in/content/software-and-services-sector). In terms of exports of software services, there has been a leap in terms of growth during the recent years.

3.1. Financing in Software Sector

Since, the analysis traces financing pattern of the software companies during their years of growth, we have not considered the same period for all the companies. Instead, the applicable period is studied to get an insight into their growth mechanism.

Table 3: Position of Top Software Companies

Name of the Company	Period	Avg. Growth in Sales	Avg. D/e	Avg. ROE
Cognizant Tech.	2004-10	50%	0.00	39%
Infosys	2001-06	50%	0.00	45%
L&T Infotech	2004-08	46%	0.69	43%
Mindtree	2004-09	54%	0.30	29%
Oracle India	2007-12	25%	0.00	66%
Syntel	2003-06	34%	0.00	30%
TCS	2006-14	25%	0.01	48%
Tech Mahindra	2005-09	48%	0.03	54%
Wipro	2004-09	33%	0.10	31%

Source: Capitaline, 2016

The software industry experienced a growth phase spreading over a long period. The companies under this industry umbrella could grab the opportunity consistently. So, each company exhibited high growth in different phase during the past fifteen years. The annual growth rate of IT companies (see table 3) ranges from 33% p.a. to 54%, which is quite high. However, debt-equity ratio is in stark contrast to that of real estate sector companies. The Capitaline database reveals that many leading software companies are debt-free, thereby making them an all-equity firm. The debt-equity ratio of almost all the prominent companies in the sector is negligible. For Infosys, Cognizant Technologies, Syntel and Oracle India, the debt is nil whereas, for companies like Wipro, TCS and Tech Mahindra, the debt-equity ratio is even less than 10%. Apparently, it may seem that these debt-free / low-debt companies are too conservative and must be generating less return. However, the ROE of these companies is commendably good with the average ranging between 30% and 66%. The return for TCS, Tech Mahindra and Oracle India is close to 48% per annum or even higher.

With regard to the analysis, one may comment that the software industry is subject to less risky environment. To this, we will say that the software industry is an export-oriented business with majority of the clients staying abroad and invoice receipts being mainly in foreign currency, especially US dollars, pounds and euro. Because of fluctuation/volatility in exchange rates, the software exporters have their financial statements exposed to translation and economic exposure. Moreover, the volatility is not a rare event as evident from a few major crises that have occurred within the past three decades that include the Mexican Peso crisis (1994), Asian crisis (1997), sub-prime mortgage (2008) and the very recent Euro zone crisis (2012). Due to these recurring factors, one can apprehend that the managers of these companies play safe and resort to very low levels of debt financing. Due to this, they have been able to easily absorb the shock extended through uncertain international and domestic events and have never felt the jerk that the real estate companies experienced.

4. Risk Management in Real Estate Sector versus Software Industry

Bandopadhyay (2013) pointed out that risk management of growth companies is more important than companies experiencing slow/ normal escalation. It is obvious because of the difficulty to forecast the timing of the 'happy' phase running out of steam. Sooner or later, a growth phase would subside without any prominent notice. Hence, if a fast-growing company expands aggressively to position itself to grab opportunities, it is certainly assuming a high level of risk. Moreover, the cost of debt being lower, there is a tendency of resorting to the borrowed capital. But, this may distort the risk profile due to commitment to repay interest every year. An increase in financial risk over and above the enhanced operating risk may lead to an undesirable risk profile. Thus, the study shows that due to VUCA (volatile, uncertain, complex and ambiguous) environment, it is better to play safe rather than getting excited and resorting to excessive use of borrowed funds.

5. Conclusion

This empirical study is based on secondary data. The paper deals with management of capital structure decisions during the phase of growth. For this purpose, two industries have been considered: real estate sector and software industry. During the growth phase, the companies under both the industries were studied. It is observed that finance managers' decision relating to financing is starkly different. To grab the growth opportunities by expanding capacity, real estate companies aggressively assumed debt in their capital structure. On the contrary, the software companies relented on ploughing back of profit as they were not eager to expand capital base aggressively by issuance of debt (especially) or equity. It is further observed that during the growth phase, net worth per share

A firm can try to achieve targeted growth by managing internal factors that help to grab opportunities using traditional and also 'out-of-the-box' thinking. This empirical research studies two industries which experienced a spurt in growth in the recent past. The objective of this paper is to analyse the financing strategy adopted during this growth phase. The study is based on secondary data of leading companies under each of the two sectors for a period of ten years covering the growth period. It is observed that the management of capital structure is contrastingly different in the two industries. The software companies show their reluctance to assume debt in their capital structure which is considered to be prudent in the context of the nature of the industry. However, the companies engaged in the real estate sector show much aggression by adding huge amount of debt capital which ultimately put them into severe problems and erosion of shareholders' wealth.

has declined in case of real estate companies in sharp contrast to that of software companies. Thus the paper upholds the Pecking Order Theory of capital structure where the perfect usage of retained earnings and issuance of equity share has been advocated over incorporation of debt in capital structure. Further, the companies under growth phase assume higher risk in comparison to those under normal growth. Thus, the assumption of financial risk for growth companies in the form of adoption of aggressive debt-equity ratio might create huge financial pressure when the growth phase will sever away and business comes back to normal or even a decline. The paper suggests reducing or at least maintaining debt-equity even during growth phase. And, if there is a need to raise capital, a reasonable amount of debt is acceptable. MA

> Prior to liberalization of the Indian economy, this sector had a small number of regional players having low expertise, poor infrastructural support and less number of financiers due to which the sector relied mainly on high networth individuals and informal sources. However, since the economic liberalization in 1990s, the sector has taken a different route for growth due to numerous opportunities and change in the financing pattern.

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abhijitsinha_091279@rediffmail.com

Restaurant: The cursed child of Indirect Taxation?

It so happens that some childhood buddies meet after a long time. They are over the moon. Excited and elated as they are, they plan for a day long grand get together. They make fun, play, crack jokes, sing and dance, pull legs and what not. Then comes the evening. They decide that the grand get together must culminate in a sumptuous dinner at a restaurant. They must wine and dine. They go to one of the best restaurants of the city. They eat and drink to their heart's content.

Then comes the climax. They ask the waiter to bring the bill. The waiter does so. The top lines consisting of the items are alright. The prices charged are high but of no issue to them because they had themselves ordered the items from the menu card very well knowing the prices. But the hell broke loose when they came to the taxation part. Oh my God! Both Vat and Service tax have been levied. The Vat is so high! Then there is service tax. What kind of rate is it? On which value has it been charged? Good God, on the top of it, there are again service charges.

They became damn angry yet do not create a ruckus because they are in blue collared jobs. Their status and ego prevents them from raising their voice at a public place. The ambience of the restaurant also puts them in the back foot. They suppress their anger but their merriment takes a beating.

CMA Sankar Majumdar
Sankar Majumdar & Associates
Cost Accountants
Assam

But frankly speaking - what's the issue here? Is it double taxation? If it is so, who is at fault – the restaurant ownersfor charging the taxes as directed by laws? Or the childhood buddies for not understanding the operative laws? Or for not raising a voice at the appropriate forum? Or for that matter is it the Government who is at fault for levying something which might not be constitutional or does not go by the canons of taxation?

The issue is not simple but let us try to delve deep into this.

The non-taxable journey

There was a time when the hoteliers as well as the boarders had a pretty satisfied life. There was no burden of any taxation on enjoying a meal by the guests while staying at the hotel. A particular judgement of the Apex court wasthe reason for the hoteliers as well as boarders to be happy. The Hon'ble Supreme Court in the case of State of Punjab vs. Associated Hotels of India Limited [[1972] 29 STC 474] held that atransaction between a hotelier and the resident-visitors was essentially one of service by the hotelier in the performance of which, and as part of the amenities incidental to the service, the hotelier served meals at stated hours. The revenue was not therefore, entitled to split up the transaction into two parts, one of service and the other of sale of food-stuffs with a view to bringing the later under the Sales Tax Act.

While passing the judgement the Court also observed that the nature of the transaction and the intention of the parties when an hotelier receives a guest in the hotel is essentially one and indivisible namely that of receiving a customer in the hotel to stay. Even if the transaction is to be disintegrated, there is no question of supply of meals during such stay constituting a separate contract for sale, since no intention on the part of the parties to sell and purchase of food-stuffs supplied during meal times can be realistically spelt out. The boarder definitely consumes a number of food-stuffs during his stay at hotel and it is possible to conclude that there might be a transfer of property in the food stuffs. Even if that be so, it does not render the event of such supply and consumption as a sale, since there is no intention to sell and purchase. The transaction essentially is one of service by the hotelier in the performance of which meals are served as part and incidental to that service. When a boarder uses a fan in the room allotted to him, there is surely no sale of electricity nor a hire of the fan.

The judgement of the Apex Court as narrated above was delivered in respect of serving of meals and foodstuff during a stay in a hotel. In an analogous decision in the case of Northern India Caterers (India) Limited vs. Lt. Governor of Delhi [[1978] 42 STC 386], the Apex Court was of the view that supply of food to the visitors in a restaurant was also not taxable under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi. Drawing the reference of the judgement in Associated Hotels of India Ltd. case, the Supreme Court observed that there is no salewhen food and drink are supplied to guests residing in the hotel. Thesupply of meals was essentially in thenature of a service provided to them and could not be identified as atransaction of sale and the Revenue was not entitled to split up the transaction into two parts, one of service and the other of sale of food-stuffs. If that be true inrespect of hotels, a similar approach seems to be called for on principle in the case of restaurants also.

At that time, there was nothing called Service Tax even in the distant horizon and therefore, the question was limited to levy of Sales Tax only and the Apex court rulings were very clear that serving meals in a hotel as well as a restaurant was not exigible to sales tax.

First nail in the coffin?

Nevertheless, such happy days continued for about another decade till the Government became pro-active. Accordingly clause 29A to Article 366 was inserted by 46th Constitution Amendment Act, 1982 w.e.f. 2nd February 1983 incorporating a deeming provision of sale of goods. Was that the first nail in the coffin?

Before the insertion of Clause 29A to Article 366 by which the concept of deemed sales was introduced, it was perceived that transactions where transfer of property in goods actually took place were still held to be not exigible tosales tax because of absence of such deeming provision. In a number of judgements, lot of transactions where transfer of property in goods took place were held by the Apex Court not to be liable to sales tax mainly citing the reference of the judgement in the case of Gannon Dunkerley & Co.In fact, in the judgement of the Apex Court mentioned above, in a reference, the Court accepted the fact that the difficulty which the courts have often to face in construing a contract of work and labour, on the one hand, and a contract for sale, on the other, arises because the distinction between the two is very often a fine one. This is particularly so when a contract is a composite one involving both a contract of labour and a contract of sale. Nevertheless the distinction between the two rests on a clear principle. A contract of sale is one whose main object is the transfer of property in, and the delivery of the possession of, a chattel as a chattel to the buyer. Where the principal object of work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one of work and labour.

Probably the idea gained some ground that such transactions which looks a lot like a sale particularly those where there is a perceived transfer of property

‘ The foodies as well as the casual visitors alike were all anxiously waiting what sort of an axe befalls on them in the garb of **GST** rates. They were hopeful too in the sense that after a prolonged two pronged attack from **VAT** as well as **Service Tax** they could at least breathe easy, but nevertheless was apprehensive too as **GST** was an alien territory... ’

in goods in the execution of a works contract could not be brought under the ambit of sales tax and consequently there were allegedcases of avoidance of tax. The Statement of Objects and Reasons appended to the Constitution (Forty Sixth Amendment) Bill, 1981 also clearly mentions the same. The states did not have any power to levy taxes on such types of transactions as the Apex Court was very clear that a Provincial Legislature could not, in the purported exercise of its power, tax transactions which were not sales, by enacting that they should be deemed to be sales. Accordingly, the issue was referred to the Law Commission of India and the Commission after going through the same had recommended in their 61st report, certain amendments to the Constitution.

The Government was quick to act. Clause 3 and Clause 29A were inserted into Article 286 and Article 366respectively by the 46th Constitution Amendment Act, 1982 w.e.f. 2nd February 1983.

The following clause 29A, which is relevant in the context of the present discussion, was inserted into Article 366.

(29A) "tax on the sale or purchase of goods" includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.

The statement of objects and reasons appended to the constitution amendment bill specifically referred to the aforementioned judgements where it was held that sale of food and beverages at a restaurant is a transaction in service not exigible to sales tax under Entry 54 of List II. To overcome this, new clause 29A was inserted in Article 366 and with the insertion of Clause 3 in Article 286, the power to levy tax on sale or purchase of goods was conceded in favour of the States by the Centre with a specific condition that the tax on sale or purchase of the goods which is covered by sub clauses (b), (c) and (d), i.e. transfer of property in goods in the execution of works contract, hire-purchase or instalment sale and leasing activities as we normally call them, would be subject to such restrictions and conditions in respect of levy, rates and other incidents of the tax as the Centre may decide through enactment of laws. So far as rest sub-clauses are concerned the States were absolutely free to impose tax on such purchase or sale. This particular amendment of the Constitution thus empowered the States to levy tax on what we colloquially mention as Deemed Sales.Accordingly, all the State Governments have included the contents of Clause 29A in the definition of sales.

Thus, as is quite evident, with the introduction of sub-clause (f) of Clause 29A of Article 366, restaurants, which were in a safe territory earlier also came within the purview of deemed sales and the States now had absolute powers to levy tax on foodstuffs deemed to be sold in restaurants. Judgments by the Apex Court also provided solidity to the same. In K. Damodarasamy Naidu and Brothers vs. State of Tamil Nadu, the Constitutional Bench of the Supreme Court held that Article 366(29A)(f) empowers the State Government to impose tax on supply of food and beverages whether it is by way of a service or a part of the service. Such a supply is deemed to be a sale and the provision of service is only incidental to such a sale.

Imposition of Service Tax

If winter comes, can spring be far

behind? Of course, not.

With the introduction of clause 29A, the States have started to enjoy a major slice of the pie. How long can the Centre resist themselves from such a lucrative prospect? Wisdom arose in them, albeit after 18 years.

It might be an imaginary case that one fine morning, while sipping from his cup of tea and enjoying his delicious and sumptuous breakfast at his residence, one of the lawmakers suddenly struck a golden idea. He probably thought that had he taken this breakfast at a restaurant they would have definitely charged Vat on that. And since the food is cooked and served with tinges of hospitality in a restaurant, there is a definite element of service in it. Will it be a bad idea if Service Tax can be imposed on the same?He toyed with the idea again and again. He might have discussed the issue with his colleagues and seniors. Probably they were also convinced. Why not? Why should the revenue miss any chances of taxing its citizens?They are anyway, empowered by the Constitution to levy service tax in exercise of the residuary power under Entry No. 97 of List I of Seventh Schedule. Nobody knows what transpired behind the scene on this imaginary theorybut nevertheless arrived with a bang a levy called Service Tax on restaurants. The historic date was 1st May 2011, the notification no. 29/2011 – ST and the section 65(105)(zzzzv) of the Finance Act.

It might so happen that somebody from the lawmakers had loosely read the canons of taxation advocated by the great economist Adam Smith. They might have thought to apply the Canon of Equity to certain extent. So they decided to burden the rich with the levy of this tax. Now who is rich here? Probably they thought a person or a group of persons who can afford to have a meal and/or alcoholic beverages in an air conditioned restaurant are rich. Accordingly they brought the following under the ambit of restaurant service:

"Taxable service, means any service provided or to be provided to any person by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises."

The Tax Research Unit (TRU) of the Department of Revenue, Government of India explained the background and the purport of the above changes by a communication dated 28th February 2011, some of the relevant portions which read as under:

> Restaurants provide a number of services normally in combination with the meal and/or beverage for a consolidated charge. These services relate to the use of restaurant space and furniture, air-conditioning, well-trained waiters, linen, cutlery and crockery, music live or otherwise, or a dance floor. The customer also has the benefit of personalized service by indicating his preference for certain ingredients e.g. salt, chilies, onion, garlic or oil. The extent and quality of services available in restaurant is directly reflected in the margin charged over the direct costs. It is thus not uncommon to notice even packaged products being sold at prices far in excess of the MRP.
>
> The new levy is directed at services provided by high-end restaurants that are air-conditioned and have license to serve liquor. Such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations. It should not be confused with mere sale of food at any eating house, where such services are materially absent or so minimal that it will be difficult to establish that any service in any meaningful way is being provided.

Nevertheless they appreciated the fact that the price charged by the restaurant included both the prices for foodstuff and/or beverages including alcoholic beverages as well as provision of services. But how to arrive at respective values? In absence of any objective criteria, they applied the abatement principle in finding the taxable value to be chargeable under Service Tax and accordingly there were a notification as well as a clarification by the Board. As per notification no. 34/2011 and clarification no. M.F. (D.R.) letter F. No. 334/3/2011-TRU both dated 25th April 2011, the abatement was fixed at 70% of the gross value i.e. the total price charged by the restaurant provided no cenvat credit is availed either on inputs or input services. This effectively meant that service tax would be levied on 30% of the value of total price charged by the restaurant.But this 30% could not satiate the Central Government. After just one year, the abatement was reduced to 60% making 40% of the total price chargeable to service tax vide Notification No. 24/2012 dated 6th June 2012 effective from 1st July, 2012 with the restricted facility of availment of credit on Capital Goods and some specified inputs and input services.

However, the Government did not stop there. There was limited number of restaurants which had license to serve liquor. So they thought why not broaden the ambit. Let us bring all the air conditioned restaurants under the domain of service tax irrespective of the fact whether such restaurants have license to serve liquor or not. Naturally came the amendment to Notification No. 25/2012 dated 20.06.2012 and the entry no. 19 of the notification, which deals with exemptions, was amended by Notification No. 3/2013 dated 1st March 2013 asfollows :

"(iii) for entry 19, the following entry shall be substituted, namely:-

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air conditioning or central air-heating in any part of the establishment, at any time during the year;"

Accordingly only those restaurants got the exemption cover which does not have air conditioning or central air heating facility and consequently all the air conditioned restaurant came within the ambit of service tax.

There might have been some apprehension in the minds of the lawmakers that the constitutional validity of these provisions might be challenged. So the Finance Act, 2012 was used as a tool to make vital changes in the levy of Service Taxthrough insertion of Sections 65B. Section 65B deals with definitions and Sections 65B(22), 65B(44) and 66E(i) are most relevant for the subject discussion.

Sec 65B(44) was used to interpret the term "service". It says that "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include- (a) an activity which constitutes merely,- (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or (ii) such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution. The definition had both an inclusion clause and an exclusion clause. While it included "declared service" it excluded "deemed sales".Sec 65B(22) defines 'Declared Service' which means any activity carried out by a person for another person for consideration and declared as such under Sec 66E. Sec 66E says that the following shall constitute declared services, namely:- ...... (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity."

Since by virtue of Sec 65B(44), the term service excluded "deemed sales", the obvious interpretation that came to mind was that there would be no service tax on food and beverages served in a restaurant as the same was covered under clause 366(29A)(f). But the inclusion clause precedes the exclusion clause and the inclusion clause clearly says that the term "service" includes "declared service" and as mentioned above "declared service" includes service portion of supply of goods or drinks in a restaurant.

It appears that it was a conscious effort on the part of the Government to create a separate identity for the service portion in a composite supply of food and beverages in an air conditioned restaurant and bifurcate the value between the two by application of abatement principle and levy service tax on the value of the service portion on an activity which is otherwise covered under 366(29A)(f) of the Constitution.

But while there was an effort on the part of Central Government to bifurcate the value of a composite activity, irrespective of the fact whether the levy was intra vires or ultra vires of Constitution, there was no change so far as the chargeability or the sale price under the State Vat laws were concerned in respect of restaurants. The States continued to levy Vat on the entire Sale price. The situation constrained one to ask the inevitable question whether this was not a clear case of double taxation since Vat was being charged also on that portion of the price which attracted Service Tax? Yes, it was. The Apex Court decision in the case of Imagic Creative Pvt. Ltd. vs. Commissioner of Commercial Taxes was very clear that payment of Vat and Service Tax are mutually exclusive.But there was nothing doing as Vat was a state subject and the states never bothered to look into this matter. In fact, why should they? Why should the states voluntarily want to lose their revenue?

That was the next nail in the coffin.

Judicial pronouncements on this simultaneous and concurrent levy

As there was clear ambiguity in respect of levy of service tax on supply of foodstuff in a restaurant and there was a concurrent levy of Vat, quite obviously the matter was dragged to Courts. In various cases, the issuesput before the Courts were –

1. Constitutional validity of levy of Service Tax on restaurants,
2. Levy of both Service Tax and Vat on the same transaction and probable encroachment on each other's law making territory by the States and the Centre.

In the case of Kerala Bar Hotels Association and Others vs. Union of India and others [[2015] 77 VST 529], the Division Bench of Hon'ble Kerala High Court had upheld the view of a single member bench that sub clause (zzzzv) of clause (105) of Section 65 of Finance Act, 1994 as amended by Finance Act, 2011 is illegal and unenforceable. On a writ appeal filed before the Division Bench by the Revenue against the judgment of the single member bench, the Court observed that before exclusive legislative competence is claimed for Parliament in terms of the residuary entry, entry 97 of List I of the Seventh Schedule to the Constitution, the legislative incompetence of the State Legislature must be clearly established. As provided for in entry 97 itself, a matter can be brought under that entry only if it is not enumerated in List II or List III and in the case of tax, if it is not mentioned in either of those Lists. Disagreeing to the view taken by the Bombay High Court on such matter, the Kerala High Court said that it is beyond dispute that by virtue of the provision in article 366(29A) of the Constitution, even the service part involved in the supply of food and other articles of human consumption, is deemed as a sale to enable the States to impose tax on the same. The point, therefore, is as to whether, having characterised constitutionally the subject-matter of supply of food in a restaurant, including the service part of it, as a sale, can the Parliament characterise the same transaction as a service for imposition and levy of service tax. The Court was of the view that since the whole of the consideration received by a restaurant owner for supply of food and other articles of the human consumption, including the service part of the transaction, is exigible to tax by the State by virtue of the constitutional definition under Entry 54 of List II, it is not open to the Union to characterise the same transaction as a service for imposition and levy of service tax.

However, the view of the Bombay High Court was not in consonance with that of the Kerala High Court. In the case of Indian Hotels and Restaurant Association and other vs. Union of India and others, Bombay High Court was of the opinion that a service tax or tax on a service, which is made taxable by the Finance Act is thus, a completely distinct tax. It should not be and cannot be confused leave alone equated with a tax on sale or purchase of goods. By the nature of the tax, which has been imposed, so also, bearing in mind the wording of the entries in the Seventh Schedule to the Constitution of India, it would be evident that a service tax is not a tax on supply of goods.However, what is contemplated by Article 366(29A)(f) is the supply, by way of or as part of any service or in any other manner whatsoever of goods. Thus, the goods which may be food or any other article for human consumption or any drink (whether or not intoxicating), being supplied in the course of their sale, does not mean that the tax imposed on them is a service tax. The tax is on the sale or purchase of goods. That includes the supply of goods. The service during such course is not taxed. The food or article for consumption of human beings or any drink is sold and therefore, the State Legislature can levy the sales tax thereon. The Parliament levies the service tax when a service is rendered by a restaurant to any person.

Under these circumstances, the Court was of the view that the Parliament cannot be said to have transgressed into leave alone encroached upon the power of the State Legislature to impose a tax on sale or purchase of goods vide Entry 54 of List II. The taxing power of the Parliament and traceable to Article 248 of the Constitution of India r/w Entry 97 of List Iof the Seventh Schedule enables it to impose a service tax.

In another case in Karnataka High Court, the judgement delivered was also on the same line as that of the Bombay High Court. In the case of Ballal Auto Agency and others vs. Union of India and another, Karnataka High Court observed that different aspects of the same transaction can involve more than one taxable event. There is nothing to prevent taxation of different aspects of the same transaction as separate taxable events. A tax on the sale or purchase of goods and tax on service are two distinct aspects. Tax on sale or purchase of goods is envisaged under entry 54 of List II of the Seventh Schedule to the Constitution and the taxable event therein is transfer of property in goods or any of the nature of transactions stipulated in article 366(29A)(a) to (f) of the Constitution. Sales tax can be levied by the State Government and the State Legislature is competent to enact law with regard to levy of sales tax. When the State Government imposes tax on sale of goods, it does not do so on the service aspect of the sale. Thus, service tax is not levied on the transaction when a sale of goods occurs. Service tax can however be levied on the transaction by Parliament, which is competent to enact a law imposing service tax. Hence, by virtue of the insertion of clauses (zzzzv) to subsection (105) of section 65 of the Finance Act, 1994, Parliament intends to levy service tax on those transactions relatable to service aspect and not on the aspect of sale of goods. Parliament is competent to do so.

There was a case before the Chhattisgarh High Court also. The petitioners were Hotel East Park and another and the Respondents were Union of India and others. The issues before the Court were :

(i) Whether any service tax can be charged on a sale of an item or vice versa;

(ii) Whether in view of Article 366 (29A)(f) service is subsumed in sale of food and drinks;

(iii) Whether section 66E(i) of the 1994Act is violative of Article 366(29A)(f) of the Constitution.

On the first issue, the Court was of the opinion that a tax on the sale and purchase of food and drinks within a State is in exclusive domain of the State. The Parliament cannot impose atax upon the same.Similarly, there is no entry in List II or List IIIunder which service tax can be imposed. There is no legislativecompetence with the States to impose a tax on any service and similarly the Parliament cannot impose tax on sale and purchase within aState (except on newspapers). The Court was of the opinion that the entire idea of inserting of Article 366(29A) (f) was to bifurcate saleof the food or drinks from the service part as interpreted by the SupremeCourt, that is to say that by amending the Constitution, the supply of foodor drinks to a person in a hotel or in a restaurant has been bifurcated intotwo parts, namely, service part and sale of goods. This is also clear from thewordings of Article 366(29A)(f) of the Constitution. The objects and reasons as well as historical background of Article 366(29A) (f) of the Constitution show that the intention behind substitutingthis sub-article was to separate the value of sale of food and drinks fromthe service part. It was neither the intention that the service part shouldbe subsumed in the definition of sale nor interpretation of Article 366(29A) leads to this conclusion.The Court referred to the definition of the word 'Service' under Section 65B(44) (ii) of the Finance Act, 1994 and interpreted that Section 65B(44)(ii) of the Finance Act, 1994 shows that supply of goods that is deemed to be sale under Article 366(29A) is not included in service.

Thus having pronounced that levy of Service Tax on restaurants vide Section 66E(i) of the Finance Act, 1994 is intra vires the Constitution, the Court also brought a new dimension to this whole debate. The Court observed that they had some reservations about the rule in quantifying fixed sum towards service i.e. the abatement procedure as well as with the tax authorities under the VATAct.The Court further narrated that generally, the hotel and restaurant owners charge service tax on 40% or60% of the bill amount and charge VAT on the bill amount. The 40% or60% over which service tax has been charged, cannot be subject to VAT. The amount over which service tax has been charged should not be subject to VAT.

Another important judgement in this respect was delivered by the Delhi High Court in the case of Federation of Hotels & Restaurants Association and others vs. Union of India and others. The petition before them challenged the Constitutional validity of Section 65(105)(zzzzv) of the Finance Act, 1994 whereby the provision to any person by a restaurant, by having the facility of air conditioning in any part of its establishment serving food and beverage, including alcoholic beverage or both, in its premises has been made amenable to Service Tax. The additional prayer in the petition was also to declare bad in law Section 66(E)(i) of the Finance Act and also to term as invalid Rule 2C of the Service Tax (Determination of Value) Rules, 2006 related to determination of value of service portion involved in supply of food or any other article of human consumption.The court was of the view that Section 65(105)(zzzzv) of the Finance Act, 1994, whereby the provision to any person by a restaurant, by having the facility of air-conditioning in any part of its establishment serving food or beverage, including alcoholic beverages or both, in its premises has been made amenable to service tax, is valid. Moreover, Section 66E(i) of the Act which seeks to constitute a service portion in an activity of supply of food or other articles as "declared service" is also valid. Lastly, Rule 2C of the Service Tax (Determination of Value) Rules, 2006, which provides for determination of the value of the service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering at a specified percentage of the total amount charged for such supply, in terms of a table is valid too.

After a study of the above, it is clear that apart from Kerala High Court, other four High Courts are of the opinion that the levy of Service Tax by the Parliament on the service portion ofsupply of food and beverages in a restaurant is constitutionally valid and the calculation of the service portion by application of an abatement percentage is also good in law. However, the question of double taxation on the service portion of this composite supply was suomotu addressed by the Chhattisgarh High Court which also suggested that the petitioners object to this double taxation before the Vat authorities.

It was thus so obvious that due to contradictory views of the High Courts the uncertainty persisted in respect of levy of taxes on restaurants. As there was no judgement from the Apex Court on the subject, the hospitality industry as well as the poor customers was bound to pass through a phase of ambiguity. Was that not another nail in the coffin?

GST Regime

However, since last 1-2 years, as the GST was almost a certainty, people started to heave a sigh of relief. Why? Because they were given to understand that GST would subsume both the Service Tax and Vat and the overlapping or the concurrent application of both the levies would stop. The hospitality industry would be subject to only one tax – GST and there should not be any ambiguity on this subject any more.But is the scenario under GST really so?

On principle, GST is really a good and simple tax but on a micro level, a thorough reading of the laws constrains one to have a reservation about such an adjective assigned to it. In respect of restaurants and food joints etc., it would be very difficult to pronounce whether the ambiguity has ended. Keeping alcoholic liquor for human consumption outside the ambit of GST has made the things a little complicated. On the top of it, the definition of the term 'aggregate turnover' has not helped the things either. Let us elaborate.

As per Sec 2(6) of CGST Act, 2017 (same definition in SGST and UTGST Acts also) "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes Central tax, State tax, Union territory tax, Integrated tax and cess. The definition of 'aggregate turnover' includes 'exempt supplies'. The law has provided definition of 'exempt supplies' also. As per Sec 2(47) of CGST Act, 2017 "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply. Thus, by extension, 'aggregate turnover' includes 'non-taxable supply'. The Act has defined 'non-taxable supply' too. It says "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act. This means the term "aggregate turnover" includes all taxable supplies, zero rated supplies, exempt supplies as well as all other supplies which even do not come under the ambit of GST laws.One may argue that just in respect of a definition, GST laws have included all kinds of supplies but ultimately there is no levy of tax on such supplies which is beyond the ambit of GST laws. Agreed, but when a definition encompasses even supplies beyond its ambit, is it simplicity personified? And we would also see what kind of repercussion this definition has so far as restaurant business is concerned.

As stated, the definition of 'aggregate turnover' includes supplies not leviable under GST laws and Clause 12A of Article 366 inserted through 101st Constitution Amendment Act clearly says that goods and services tax means any tax on supply of goods, or services or both except taxes on the supply of alcoholic liquor for human consumption. Thus, it is amply clear that although GST laws cannot levy tax on supply of alcoholic liquor for human consumption, it has nevertheless brought it under the definition of 'aggregate turnover'.

Now let us first analyse Sec 22 pertaining to registration. Sub-section (1) says "every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakhrupees" : Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees."

Now let us focus our discussion on a restaurant running its business from Assam which is a special category state. Say there is a restaurant in Guwahati, which serves both foodstuff and alcoholic liquor. Under earlier Vat regime, the restaurant had to pay Vat both on cooked food, non-alcoholic beverages as well as alcoholic liquor. Under GST regime, although no GST would be levied on alcoholic liquor, which will still continue to be taxed under State Vat (courtesy amended Entry No. 54 of List II of Seventh Schedule of the Constitution of India), GST will be levied on food and other beverages. Let us assume, the value of supplies of food and non-alcoholic beverages of this restaurant is about Rs. 8 lakh and the sale of alcoholic liquor is about Rs. 15 lakh in a financial year. Had the definition of aggregate turnover been otherwise, the restaurant would not have become liable for registration under GST laws. However, in this instant case, not only would it be liable for registration under GST because its aggregate turnover is more than Rs. 10 lakh, but simultaneously it would not be eligible to opt for composition levy (Sec 10(2)(b)) as it is also supplying goods which are not leviable to tax under GST. The consequences? It will have to install a software which can bill simultaneously under both Vat (alcoholic liquor) and GST laws (food etc.), issue two sets of bills to a customer – one Tax Invoice and one Bill of Supply, appoint one person to operate the software and generate bills, maintain proper records and file 37 returns under GST laws and 13 returns under Vat laws in a year. Very simple, isn't it?

Now let us consider another case where a bar and restaurant mainly serves alcoholic liquor and while serving it supplies eatables to be consumed along with it. In this case, the value of supplies of eatables will be quite insignificant as compared to the value of supplies of liquor. Since the supplies of eatables in this case is incidental to the supply of liquor which is not taxable under GST, taking a clue from Apex Court judgement in the case of Associated Hotels case, can one interpret that the supply of eatables in the process of supply of alcoholic liquor is outside the ambit of GST and hence only Vat is leviable? Or the GST law would strictly say that even for this insignificant value of eatables incidentally supplied in the performance of serving liquor also requires taking a registration under GST and filing 50 returns in a year? Thus, the obvious question is – has the ambiguity ceased to exist?

The next issue was the most awaited but the dreaded one – the rates. The foodies as well as the casual visitors alike were all anxiously waiting what sort of an axe befalls on them in the garb of GST rates. They were hopeful too in the sense that after a prolonged two pronged attacks from Vat as well as service tax they could at least breathe easy but nevertheless was apprehensive too as GST was an alien territory.However, bitter experiences did not end. The Government was 'kind' enough to categorise 'accommodation, food and beverage services', i.e. the hospitality sector, in not more than nine categories and put them in tax brackets of 12,18 and 28 percentages. The rates applicable for restaurants are as follows:

Heading	Description of services	Rate
9963 (Accommodation, food and beverage services	Supply by a restaurant not having air-conditioning or air-heating facility nor having license to serve alcoholic liquor for human consumption	12%
	Supply by a restaurant having air-conditioning or air-heating facility or having license to serve alcoholic liquor for human consumption	18%

It appears irrational as to why a similar food item needs to be charged to 12% when served in a non-air conditioned restaurant but would attract 18%when served in a restaurant which has air conditioning facility or license to serve alcoholic beverages. Does the same dish prepared by the same cook in an air conditioned restaurant taste better than a non-air conditioned one or have a different type of value addition? In fact, under GST regime, a particular food item served in a restaurant having annual turnover of less than Rs. 20(10) lakh, would not attract any GST, would attract a composition rate of 5%, if opted, in a restaurant not serving liquor and having annual turnover of less than Rs. 75 (50) lakh, a rate of 12% in a restaurant not having air-conditioning or air-heating facility and not having any license to serve alcoholic liquor and 18% in other cases.When one goes to buy household provisions, the rate of GST on the same is absolutely uniform whether it is from a roadside non-AC shop or an Air-conditioned mall, isn't it? Then why burden restaurants with multiple rates?

While adopting multiple GST rates, the justifications offered by the Government are that India, unlike other countries, needs to take care of its population which comes under various economic strata. That makes us to believe that countries like Australia and Canada which have mainly one rate of GST does not have people of varied purchasing powers in their country. Even for argument's sake, the Government justification is accepted, where multiple rates are fixed for various types of goods and services depending on their use by section of the population having different economic capability, can that be a reason for charging different rates at least for the same goods or services? Why the rate of GST needs to be higher in an air conditioned restaurant is beyond simple understanding. The same dish would obviously cost more in an air conditioned or a high end restaurant in the sense that the additional overhead expenses of a high end restaurant would naturally mark up the cost and make the food costlier consequently ensuring a higher amount of GST in absolute term. Till now, we had studied that progressive taxation fulfils better the canon of equity but it seems we need to restudy the principle again and adjust our understanding of the same and reconcile to the fact that the same canon can be applied to indirect taxation also which is generally regressive by nature.

In pursuance of the same logicin respect of taking care of the financial capabilities of various classes of people while fixing GST rates, would it be a bad idea if it is suggested that the Government fixes all four rates of GST for telecommunication services where a citizen from the lowest economic strata should pay 5% GST on his mobile bill, a rate of 12% for middle class having either an air conditioned car or an AC at his residence, 18% for the affluent class for having both an air conditioned car and an AC at residence and 28% for those ultra-rich who have air conditioners installed everywhere. Or alternatively, rates of GST could be different for various users using different types of phones with different price tags. After all, the quality of service of the service providers would be same for all and call drops would happen to all of them. Why burden the poor with similar rate of tax applicable for the ultra-rich when the service or the lack of it is absolutely same? Is it not ambiguity?

Wait, the painful story of ambiguity still has not ended. The last nail on the coffin is Sec. 17(5)(b)(ii) of CGST Act. It virtually restricts all Input Tax Credits in respect of any expenditure incurred by the consumers (recipients of service)in restaurants for food and beverages which simply means that even if a company spends on food and beverages for its business partners or others in course or furtherance of its business, it would still not be able to avail the ITC against the GST it pays to the restaurant.And we still boast, there is a seamless flow of credit in GST.

Conclusion

Going by the above, it is still premature to say with conviction and certainty whether GST laws in its present form would be able to shed all its ambiguities and prove to be a vehicle for growth for the hospitality industry. The jury is still out. MA

sma.guwahati@gmail.com

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

MANAGEMENT ACCOUNTANCY

EXAMINATION TIME TABLE & PROGRAMME – DECEMBER 2017

Sunday 10th December, 2017 02.00 P.M to 05.00 P.M	Monday 11th December, 2017 02.00 P.M to 05.00 P.M	Tuesday 12th December, 2017 02.00 P.M to 05.00 P.M	Wednesday 13th December, 2017 02.00 P.M to 05.00 P.M	Thursday 14th December, 2017 02.00 P.M to 05.00 P.M
Management Accountancy	Advanced Management Techniques	Industrial Relations & Personnel Management	Marketing Organisation & Methods	Economic Planning & Development

EXAMINATION FEES

Per Group	Rs 2500/-

1. (a) Application Form for Management Accountancy Examination is available from Directorate of Advanced Studies, The Institute of Cost Accountants of India, Hyderabad Centre of Excellence, Plot No. 35, Financial District, Nanakramguda Village, Serilingampally Mandal, Gachibowli, Ranga Reddy District, Hyderabad on payment of Rs 50/- per form.

   (b) Students can also download the Examination Form from ICAI Website at www.icmai.in.

2. Last date for receipt of Examination Application Form without late fees is 30th September, 2017 and with late fees of Rs 300/- is 10th October,2017.

3. Examination fees to be paid through Demand Draft of requisite amount drawn in favour of "The Institute of Cost Accountants of India" and payable at Kolkata.

4. Students may submit their Examination Application Form along with the requisite amount at the Directorate of Advanced Studies, The Institute of Cost Accountants of India, Hyderabad Centre of Excellence, Plot No. 35, Financial District, Nanakramguda Village, Serilingampally Mandal, Gachibowli, Ranga Reddy District, Hyderabad. Any query in this regard may be addressed to Directorate of Advanced Studies, Plot No. 35, Financial District, Nanakramguda Village, Serilingampally Mandal, Gachibowli, Ranga Reddy District, Hyderabad.

5. Examination Centres: Adipur-Kachchh(Gujarat), Agartala, Ahmedabad, Akurdi, Allahabad, Asansol, Aurangabad, Bangalore, Baroda, Berhampur(Ganjam), Bhilai, Bhilwara, Bhopal, Bewar City(Rajasthan), Bhubaneswar, Bilaspur, Bokaro,Calicut, Chandigarh, Chennai, Coimbatore, Cuttack, Dehradun, Delhi, Dhanbad, Durgapur, Ernakulam,Erode, Faridabad, Ghaziabad, Guwahati, Hardwar,Hazaribagh, Howrah, Hyderabad, Indore, Jaipur, Jabbalpur, Jalandhar, Jammu,Jamshedpur, Jodhpur, Kalyan, Kannur, Kanpur, Kolhapur, Kolkata, Kota, Kottayam, Lucknow, Ludhiana, Madurai, Mangalore, Mumbai, Mysore, Nagpur, Naihati, Nasik, Nellore, Neyveli, Noida, Panaji (Goa), Patiala, Patna, Pondicherry,PortBlair, Pune, Rajahmundry, Ranchi, Rourkela, Salem, Sambalpur, Shillong, Siliguri, Solapur, Srinagar, Surat, Thrissur, Tiruchirapalli,Tirunelveli, Trivandrum, Udaipur, Vapi, Vashi, Vellore, Vijayawada, Vindhyanagar, Waltair and Overseas Centres at Bahrain, Dubai and Muscat.

6. A candidate who is fulfilling all the conditions only will be allowed to appear for the examination.

Directorate of Advanced Studies

Eastern India Regional Council

The Institute of Cost Accountants of India-Bhubaneswar Chapter

The Chapter organized its 'Young CMA Award Function & Mega Blood Donation Camp' on 2nd September 2017 at its premises. Dr. S.C. Jamir, His Excellency Hon'ble Governor of Odisha inaugurated the mega blood donation camp and graced the Young CMA Award Function as 'Chief Guest'. He also released Newsletter (Volume-9) of the chapter on the said occasion & handed over Young CMA Awards and Rank Holders Awards with certificate of excellence to

the students. CMA Sanjay Gupta, President & CMA Niranjan Mishra, council member of the Institute graced the function as special guest. Apart from the awards, the chapter also felicitated its successful

students at all India Level (All Intermediate and Final Pass out Students) in Dec 2016 & June, 2017 term examination. As the Taxation Committee of the

Institute invited suggestions for Direct & Indirect Tax Matters of significance for identifying issues for considerations and inclusion in the pre budget

Memorandum (2018-19) which is going to be submitted to the Ministry of Finance, Govt. of India, the chapter had organized a round table discussion on the said matter on September 20, 2017 at its conference hall.

Northern India Regional Council

The Institute of Cost Accountants of India-Jaipur Chapter

The Chapter celebrated the 71st Independence Day Function on August 15, 2017 at its premises. CMA P.R. Jat, chairman and CMA Alok

Kumar Gupta, secretary of the chapter hoisted the National Flag along with senior members, faculties and staff. CMA PR Jat apprised the

members about latest developments and various activities at the chapter. The Chapter organised 12 Days pre-placement orientation program for students of Rajasthan who passed CMA Final Course in June 2017 Exam and will appear for

campus placement in the month of October 2017. The program was inaugurated on 08th September, 2017 by Prof. S.P. Garg, Dean, Swami Keshwanand Institute of Technology (SKIT). During 12 Days' training program, experienced faculties and dignitaries from various organizations were invited who shared their

practical experiences and gave useful tips for facing the interviews. The valedictory session was held on 19th September, 2017 in which CMA R.K. Tripathi, Retired Dyt. GM (Production and Operations), Mayur Leather Products Ltd. was invited as the chief guest of the programme. CMA P.R. Jat, chairman of the chapter and CMA Alok Kumar Gupta, secretary of the chapter took feedback of the program and gave useful tips to budding CMAs for success in their campus placement.

Southern India Regional Council

The Institute of Cost Accountants of India-Bangalore Chapter

The Chapter on August 4, 2017 organized a Practioner's Forum Meet on 'Preparation of Annexure to Cost Audit Report' at its premises

and CMA B R Prabhakar, Past Chairman of SIRC was present during the Meet. On August 2017, the Chapter organized various PD Meets on Discussion on Insolvency & Bankruptcy Code-2016-Limited Insolvency Examination, Goods & Services Tax

- Preparation of GSTR-3B & Practical Issues, The Draft Companies (Cost Records and Audit) Amendment Rules, 2017, Practical Discussion on Transitional Provisions and RCM at its premises. On August 12, 2017 the chapter inaugurated the 102nd batch of oral coaching classes leading to Dec

2017 Examination. From 21st August 2017 to 23rd August 2017, a Training Programme on 'Corporate Governance' for Financial & Non-Financial Officers

of State PSEs was organized at its premises and CMA G N Venkataraman, Past president of the Institute, CMA Girish K, chairman of the chapter, CMA N R Kaushik, secretary of the chapter, CMA B R Nagaraj,

CMA B R Prabhakar were present at the programme. On August 15, 2017 the chapter celebrated the Independence day and CMA G N Venkataraman,

Past President of the Institute hoisted the National Flag.

The Institute of Cost Accountants of India-Cochin Chapter

On August 2017, CMA Sureshkumar K P, Practicing Cost Accountant, CMA Padmakumar V K, Practicing Cost Accountant organized seminars on the theme 'Clear the doubts In GST'. From August 24, 2017 till August 26, 2017, the chapter organized career counselling and career awareness programme at Silver Jubilee Hall.

The Institute of Cost Accountants of India-Hyderabad Chapter

On August 4, 2017 a programme on 'GST Implementation – Practical Issues & Queries' was held at CMA Bhavan, Himayatnagar, Hyderabad

and CMA Ashok B. Nawal, council member was the speaker of the programme. CMA Ashok B. Nawal addressed the members on GST Implementation-Practical Issues, Queries, post implementation of GST and the issues that cropped up during implementation.

On August 10, 2017 a programme on 'Works Contract in GST' was held at CMA Bhavan, Himayatnagar, Hyderabad and CA V.S. Sudhir was the speaker of the programme. Mr Sudhir gave an overview of joint development agreements, land and construction services, their taxability in the hands of the landlord and the builder / developer. On August 15, 2017, Independence Day was celebrated at CMA Bhawan and CMA Dr A.S. Durga Prasad, Past President of the Institute and Mrs. Nirmala K Mondal were the speakers of the programme. Dr. CMA A.S. Durga Prasad addressed the students by suggesting them to plan their work and then work their plan. On August 16, 2017 a career counselling was held at

TSWRM Jr. College, Ibrahimpatnam. On August 22, 2017, a programme on 'Cost Accounting Standards' was held in the Business Management Auditorium, Osmania University, Hyderabad and CMA D. Zitendra Rao, Member, SIRC, CMA S.V. Koteswara Rao , Practicing Cost Accountant, CMA N.S.V. Krishna Rao , Practising Cost Accountant were the speakers of

the programme. The speakers brought out a practical perspective to the standards and how they should be applied. On August 23, 2017 a group discussion on 'Comments, Suggestions on Draft Companies (Cost Records & Audit) Amendment Rules' was held at CMA Bhavan, Himayatnagar, Hyderabad and CA Radhika Verma was the speaker of the programme. On the same day a student programme on "Look at CMA" at CMA Bhavan, Sanathnagar, Hyderabad was held by the chapter initiated by CMA D. Zitendra Rao, Member SIRC. On August 29, 2017 a programme on 'How to fill GST Trans – I' was held at CMA Bhavan, Himayatnagar, Hyderabad and CA Radhika Verma was the speaker of the programme.

The Institute of Cost Accountants of India-Coimbatore Chapter

On July 3, 2017 the Chapter celebrated GST Day as per HQ circular and on 7th July, 2017 Vice Chairman CMA Subbaraman gave a guest lecture on 'Importance of GST in India' at Sankara College of Science & Commerce, Coimbatore. The Chapter introduced the full day oral coaching for the benefit of the students and the first batch of Intermediate Group 1 class was inaugurated at the chapter on 3rd July, 2017. The Chapter conducted various career counselling programmes at different colleges of Coimbatore in July 2017 and the chapter conducted professional development programmes in July and August 2017. The Chapter entered into MoU with Karunya School of Management, Karunya University, Coimbatore for operation of Satellite Centre for Foundation Course, signed by Chairperson CMA Meena Ramji on 8th August, 2017 in the presence of vice chairman, secretary and treasurer of the chapter. The annual CMA students festival 'COSMA FEST –

2017' was celebrated on 19th August, 2017. SIRC Chairman CMA Dr.A. Mayil Murugan inaugurated the function. Students from various local colleges and satellite centres participated in the program. Chief Guest for valedictory session, Smt. Vanitha Mohan, President, The Indian Chamber of Commerce & Industry, Coimbatore, Vice Chairman – PRICOL Ltd., Coimbatore and Managing Trustee of SIRUTHULI gave away the prizes to the winners and also addressed the students.

Western India Regional Council

The Region organized 'Eklavya - Students Day Programme' to motivate the budding CMAs on 9th September 2017 at Sydenham College Auditorium, Mumbai. CMA Kailash Gandhi, Chairman WIRC, Shriram Mahankaliwar, Chairman, Students,

Members & Chapter Co-ordination Committee WIRC, CMA Laxman D. Pawar, Vice Chairman WIRC, CMA Pradip. H. Desai, Immediate Past Chairman WIRC, Debasish Mitra, RCM, CMA Ashok B Nawal, CCM, CMA P.V. Bhattad, CCM were present on the occasion. The Region organized felicitation function for the

students who completed foundation, intermediate and final examination in June 2017 examination at Sydenham College Auditorium, Mumbai. CMA Kewal Handa, Chairman & Part-Time Non-Official Director, Union Bank of India was the Chief Guest and he guided and motivated the students. CMA Kailash Gandhi, Chairman WIRC, Shriram Mahankaliwar, Chairman, Students, Members & Chapter Co-ordination Committee WIRC, CMA Laxman D Pawar, Vice Chairman WIRC, CMA Pradip. H. Desai, Immediate Past Chairman WIRC, CMA Debasish Mitra, RCM, CMA Ashok B Nawal, CCM, CMA P.V. Bhattad, CCM were present on the occasion. The Faculty Meet of WIRC Oral Coaching was held at WIRC office Fort Mumbai on 9th September 2017 to discuss various issues pertaining to oral coaching. Faculty members suggested various methods to improve the coaching standards and also assured full support in Institute's activities. CMA P.V. Bhattad and CMA Ashok Nawal, CCMs replied all the queries raised by the faculty.

The Institute of Cost Accountants of India-Pimpri Chinchwad Akurdi Chapter

The Chapter celebrated Independence Day on 15th August 2017 by hoisting flag and CMA L D Pawar, RCM & Vice-Chairman, WIRC hoisted the flag. He encouraged all the students through his motivational speech. On August 17, 2017 the

chapter organized a seminar on 'GST – Filing of Returns and Reverse Charge Mechanism' and CMA L D Pawar in his speech focused on Filing of Returns. He said that all the returns are to be filed online mode only. CMA Mahendra Bhombe in continuation with

the session focused on Reverse Charge under GST. He said as per section 2(98) of CGST Act' 2017, "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both.

The Institute of Cost Accountants of India-Navi Mumbai Chapter

The 71st Independence Day celebration was celebrated by the students, members and Managing Committee members of the chapter on15th August 2017 jointly at Karmaveer Bhaurao Patil College Vashi, Navi Mumbai. The National flag was hoisted by Dr. V. S. Shivankar, Principal, K. B Patil College in the chapter campus.

Role of CMAs in Insolvency & Bankruptcy Code, 2016

✤ *Set up of Insolvency Professional Agency of Institute of Cost Accountants of India:*

The Insolvency and Bankruptcy Code (IBC), 2016 passed by the Parliament on 28th May 2016 is a welcome approach towards improvising the existing framework dealing with insolvency of corporate, individuals, partnerships and other entities. The previous fragmented structure of the Indian legal system dealing with insolvency and restructuring lead to unwanted delays, confusion and conflicts. Further, many of the laws, such as Sick Industrial Companies (Special Provisions act (SICA), 1985, had proved to be wholly ineffective in achieving a speedy restructuring that took into account the interests of both debtors and creditors. Thus, providing for an umbrella law, that of the IBC-2016 was the need of the hour for the stressed economy and the stressed banking system of the country. The advent of IBC, 2016 also widened the scope for professionals like CMAs. The Institute of Cost Accountants of India (ICAI) formed The Insolvency Professional Agency, a section 8 Company namely Insolvency Professional Agency (IPA) of Institute of Cost Accountants of India to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with the provisions of the Insolvency & Bankruptcy Code 2016, Rules, Regulations and Guidelines issued.

✤ *Scope of CMAs as Insolvency Professionals:*

IPA provides the platform to members of Institute and other professionals and graduates who meet the qualification and experience criteria, and also passed the "Limited Insolvency Examination" to get enrolled as Insolvency Professionals and thus utilize their expertise in the process of revival and resolution of the sick companies. Here are the areas where they can act as insolvency professional :-

- *As Interim Resolution Professionals (Section 16) and manage the affairs of the Corporate Debtors as "Going Concern" during the insolvency resolution process in interim period of 30 days;*

- *Can represent in the Committee of Creditors [Section 21(6) (c)] to the extent of voting share in situations where terms of financial debt extended as a part of consortium and provide for a single trustee or agent. The Committee of Creditors can appoint the same Interim Resolution Professional as Resolution Professional or a professional CMA also as per Section 22.*

- *As liquidator (Section 33) to be appointed by Adjudicating Authority (NCLT) under "Liquidation Process";*

-As Voluntary Liquidator (Section 59) to be appointed by Corporate Debtors;

- *-As Insolvency Resolution Professional by Adjudicating Authority for initiating the insolvency resolution process by debtor in case of "Insolvency and Bankruptcy for individuals and Partnership Firms;*

- *As bankruptcy Trustee (Section 125) by Adjudicating Authority in case of "Insolvency and Bankruptcy for individuals and Partnership Firms, and*

- *-As valuer of properties and assets of liquidation estate under the Code and Regulations being framed under IBC, 2016*

Stressed Asset Management:

The IBC Code is a revolutionary step as it proposes to transform the credit market in India, which hitherto was malfunctioning due to various problems and malpractices. The benefits of Insolvency & Bankruptcy Code will help in improving stressed assets easily and speedily, thereby, enabling the higher flow of capital in economy. Moreover, it will help the companies to wind up failed businesses and bring India on par with developed nations in terms of resolving bankruptcy issues. As India's banks try and resolve the bad loans that have long burdened the industry and pose a significant macroeconomic risk, insolvency professionals stand to get a big career boost. The CMA professionals are proficient enough to be appointed as Insolvency Professionals, to deal with matters of insolvency, liquidation and bankruptcy and assist to reduce sufferings of banks overburdened by Stressed Assets or Non Performing Assets (NPA).

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

INTERMEDIATE AND FINAL EXAMINATION TIME TABLE & PROGRAMME –DECEMBER 2017

	PROGRAMME FOR SYLLABUS 2012		PROGRAMME FOR SYLLABUS 2016	
Day &Date	**Intermediate Time: 2.00 P.M. to 5.00 P.M.**	**Final Time: 2.00 P.M. to 5.00 P.M.**	**Intermediate Time: 2.00 P.M. to 5.00 P.M.**	**Final Time: 2.00 P.M. to 5.00 P.M.**
Sunday, 10th December, 2017	Financial Accounting	Corporate Laws andCompliance	Financial Accounting	Corporate Laws & Compliance
Monday, 11th December, 2017	Laws, Ethics andGovernance	Advanced FinancialManagement	Laws & Ethics	Strategic Financial Management
Tuesday, 12th December, 2017	Direct Taxation	Business Strategy & Strategic Cost Management	Direct Taxation	Strategic Cost Management – Decision Making
Wednesday, 13th December, 2017	Cost Accounting &Financial Management	Tax Management& Practice	Cost Accounting	Direct Tax Laws and International Taxation
Thursday, 14th December, 2017	Operation Management and Information Systems	StrategicPerformance Management	Operations Management & Strategic Management	Corporate Financial Reporting
Friday, 15th December, 2017	Cost & Management Accountancy	Corporate FinancialReporting	Cost & Management Accounting and Financial Management	Indirect Tax Laws & Practice
Saturday, 16th December, 2017	Indirect Taxation	Cost &Management Audit	Indirect Taxation	Cost & Management Audit
Sunday, 17th December, 2017	Company Accounts andAudit	Financial Analysis &Business Valuation	Company Accounts & Audit	Strategic Performance Management and Business Valuation

EXAMINATION FEES

Group (s)		**FinalExamination**	**IntermediateExamination**
One Group	(Inland Centres) (Overseas Centres)	₹1400/- US $ 100	₹1200/- US $ 90
Two Groups	(Inland Centres) (Overseas Centres)	₹2800/- US $ 100	₹2400/- US $ 90

1. **Application Forms for Intermediate and Final Examination has to be filled up through online only and fees will be accepted through online mode only (including Payfee Module of IDBI Bank). No Offline form and DD payment will be accepted for domestic candidate.**
2. **STUDENTS OPTING FOR OVERSEAS CENTRES HAVE TO APPLY OFFLINE AND SEND DD ALONGWITH THE FORM.**
3. **(a) Students can login to the website www.icmai.in and apply online through payment gateway by using Credit/Debit card or Net banking.**
   (b) Students can also pay their requisite fee through pay-fee module of IDBI Bank.
4. **Last date for receipt of Examination Application Forms is 10th October, 2017.**
5. **The provisions of direct tax laws and indirect tax laws, as amended by the Finance Act, 2016, including notifications and circulars issued up to 31st May, 2017, are applicable for December, 2017 term of examination for the Subjects Direct Taxation, Indirect Taxation(Intermediate) and Tax Management & Practice(Final) under Syllabus 2012 and Direct Taxation, Indirect Taxation (Intermediate) , Direct Tax laws and International Taxation and Indirect Tax laws & Practice (Final) under Syllabus 2016. The relevant assessment year is 2017-18. GST of 20 marks included in Paper 18- Indirect Tax laws & Practice (Final), under syllabus 2016 only.**
6. **The Companies (Cost Records & Audit) Rules 2014 as amended till 14 July 2016 are applicable for Paper 10 - Cost & Management Accountancy (Intermediate) and Paper 19 - Cost and Management Audit (Final) under syllabus 2012 and Paper 12- Company Accounts & Audit(Intermediate), Paper 19 – Cost & Management Audit(Final) under Syllabus 2016 for December 2017 term of examination.**
7. **The provisions of the Companies Act 2013 are applicable for Paper 6 - Law, Ethics and Governance (Intermediate) and Paper 13 - Corporate Laws and Compliance (Final) under syllabus 2012 and Paper 6- Laws and Ethics (Inter) and Paper 13- Corporate Laws and Compliance (Final) under Syllabus 2016 to the extent notified by the Government up to 31st May 2017 for December 2017 term of examination.**
8. **Pension Fund Regulatory and Development Authority Act,2013 is being included in Paper 6- Laws and Ethics(Intermediate) and Insolvency and Bankruptcy Code 2016 is being included in Paper 13- Corporate Laws and Compliance (Final) under Syllabus 2016 for December 2017 term of examination.**
   For details view link -http://icmai.in/upload/Students/Circulars/Clarification-Dec2017.pdf
9. **Examination Centres: Adipur-Kachchh(Gujarat), Agartala, Agra, Ahmedabad, Akurdi, Allahabad, Asansol, Aurangabad, Bangalore, Baroda, Berhampur(Ganjam), Bhilai, Bhilwara, Bhopal, Bewar City(Rajasthan), Bhubaneswar, Bilaspur, Bokaro, Calicut, Chandigarh, Chennai, Coimbatore, Cuttack, Dehradun, Delhi, Dhanbad, Durgapur, Ernakulam,Erode, Faridabad, Ghaziabad,Guntur, Guwahati, Haridwar,Hazaribagh, Howrah, Hyderabad, Indore, Jaipur, Jabalpur, Jalandhar, Jammu, Jamshedpur, Jodhpur, Kalyan, Kannur, Kanpur, Kolhapur, Kolkata, Kota, Kottayam, Lucknow, Ludhiana, Madurai, Mangalore, Mumbai, Mysore, Nagpur, Naihati, Nasik, Nellore, Neyveli, Noida, Palakkad, Panaji (Goa), Patiala, Patna, Pondicherry, Port Blair, Pune, Raipur,Rajahmundry, Ranchi, Rourkela, Salem, Sambalpur, Shillong, Siliguri, Solapur, Srinagar, Surat, Thrissur, Tiruchirapalli,Tirunelveli, Trivandrum, Udaipur, Vapi, Vashi, Vellore, Vijayawada, Vindhyanagar, Waltair and Overseas Centres at Bahrain, Dubai and Muscat.**
10. **A candidate who is fulfilling all conditions specified for appearing in examination will only be allowed to appear for examination.**
11. **Probable date of publication of result: Inter & Final – 21stFebruary, 2018.**

*** For any examination related query, please contact exam.helpdesk@icmai.in**

Kaushik Banerjee
(Secretary)

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

EXAMINATION TIME TABLE & PROGRAMME – DECEMBER – 2017

FOUNDATION COURSE EXAMINATION

Day & Date	Foundation Course Examination Syllabus-2012 Time 2.00 p.m. to 5.00 p.m.	Foundation Course Examination Syllabus-2016 Time 2.00 p.m. to 5.00 p.m.
Sunday, 10th December, 2017	Fundamentals of Economics & Management	Fundamentals of Economics & Management
Monday, 11th December, 2017	Fundamentals of Accounting	Fundamentals of Accounting
Tuesday, 12th December, 2017	Fundamentals of Laws & Ethics	Fundamentals of Laws & Ethics
Wednesday, 13th December, 2017	Fundamentals of Business Mathematics & Statistics	Fundamentals of Business Mathematics & Statistics

Examination Fees

Foundation Course Examination	**Inland Centres**	**₹ 1200/-**
	Overseas Centres	**US $ 60**

1. **The Foundation Examinationwill be conducted in Offline, descriptive (Pen & Paper)modeonly.Each paper will be of 100 marks and for 3 hours duration.**

2. Application Forms for Foundation Examination has to be filled up through online only and fees will be accepted through online mode only (including Payfee Module of IDBI Bank). No Offline form and DD payment will be accepted for domestic candidate.

3. STUDENTS OPTING FOR OVERSEAS CENTRES HAVE TO APPLY OFFLINE AND SEND DD ALONGWITH THE FORM.

4. (a) Students can login to the website www.icmai.in and apply online through payment gateway by using Credit/Debit cardor Net banking

   (b) Students can also pay their requisite fee through pay-fee module of IDBI Bank

5. **Last date for receipt of Examination Application Forms is 10th October, 2017.**

6. Examination Centres: Adipur-Kachchh(Gujarat), Agartala, Agra, Ahmedabad, Akurdi, Allahabad, Asansol, Aurangabad, Bangalore, Baroda, Berhampur(Ganjam), Bhilai, Bhilwara, Bhopal, Bewar City(Rajasthan), Bhubaneswar, Bilaspur, Bokaro, Calicut, Chandigarh, Chennai, Coimbatore, Cuttack, Dehradun, Delhi, Dhanbad , Durgapur, Ernakulam, Erode, Faridabad, Ghaziabad,Guntur, Guwahati, Haridwar, Hazaribagh, Howrah, Hyderabad, Indore, Jaipur, Jabalpur, Jalandhar, Jammu, Jamshedpur, Jodhpur, Kalyan, Kannur, Kanpur, Kolhapur, Kolkata, Kota, Kottayam, Lucknow, Ludhiana, Madurai, Mangalore, Mumbai, Mysore, Nagpur, Naihati, Nasik, Nellore, Neyveli, Noida, Palakkad, Panaji (Goa), Patiala, Patna, Pondicherry, Port Blair, Pune, Raipur,Rajahmundry, Ranchi, Rourkela, Salem, Sambalpur, Shillong, Siliguri, Solapur, Srinagar, Surat, Thrissur, Tiruchirapalli,Tirunelveli, Trivandrum, Udaipur, Vapi, Vashi, Vellore, Vijayawada, Vindhyanagar, Waltair and Overseas Centres at Bahrain, Dubai and Muscat.

7. **A candidate who is completing all conditionsfor appearing the examination as per Regulation will only be allowed to appear for examination.**
8. **Probable date of publication of result: 21stFebruary,2018.**

*** For any examination related query, please contact exam.helpdesk@icmai.in**

Kaushik Banerjee
(Secretary)

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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Behind every successful business decision, there is always a CMA

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