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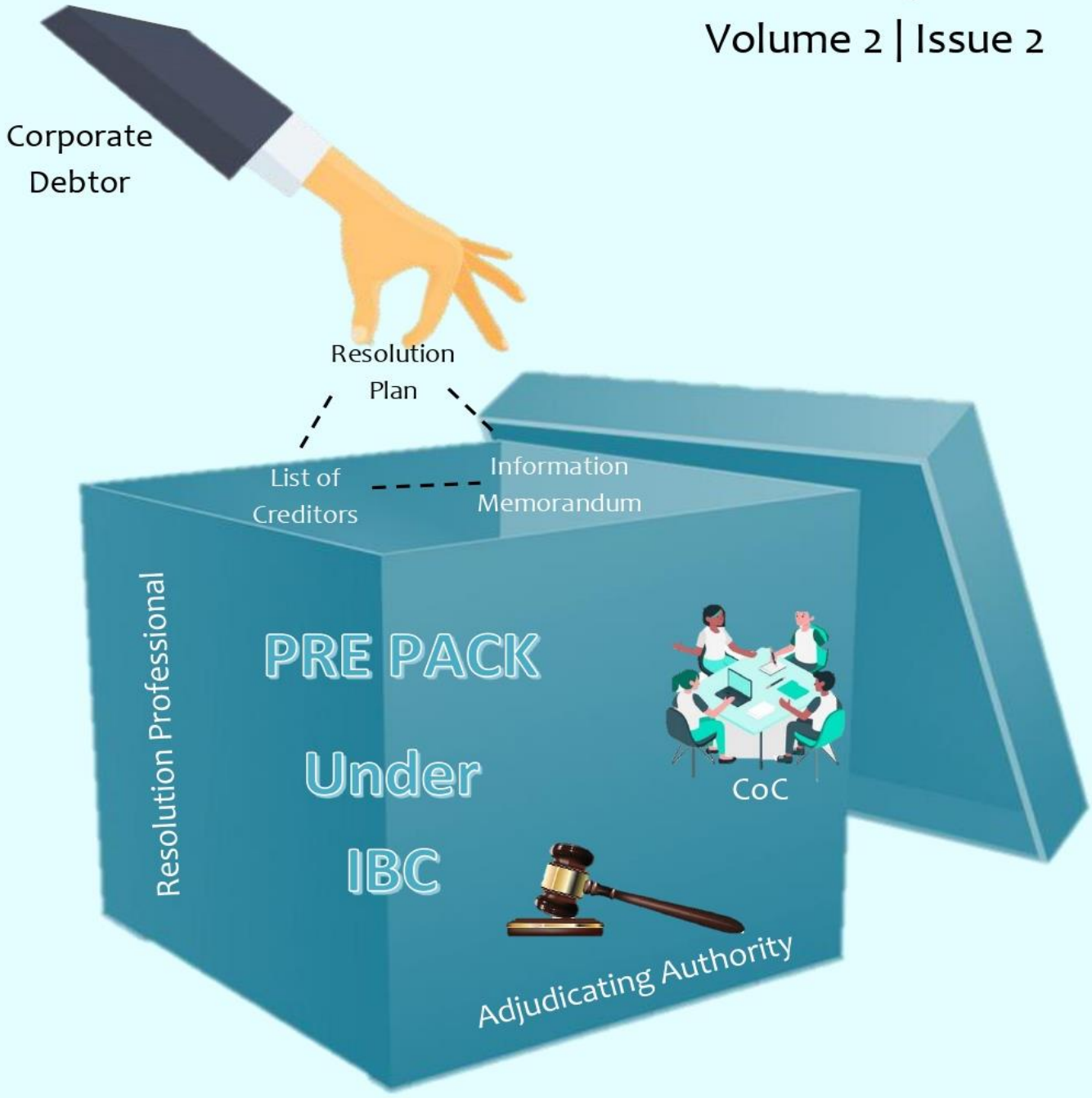

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துணைவலியும் தூக்கிச் செயல்.

Thirukural: 471
Let (one) weigh well the strength of the deed he proposes to do his own strength, the strength of the allies (of both), and then let him act.

From the Editor's Desk

Esteemed Readers of SandBox

The CGRF SandBox Team is honoured to serve you with the latest developments in the fields of banking, insolvency resolution, corporate laws, etc. In this interesting journey, we have great pleasure in placing the February 2021 issue of SandBox in your hands with quite a few interesting articles, news items, etc.

Largest Vaccination drive in the world

The massive challenge of vaccinating the entire country has been well-started. The digital platform "CoWIN", easily one of the biggest inoculation campaign in the world, is said to be capable of handling upto one crore jabs every day. The initial glitches faced being solved, it is hoped that India will emerge stronger containing the Covid-19 pandemic effectively while the economy is posting "V" shaped recovery.

Union Budget 2021

Be that as it may, the sectors deeply hurt by the economy are closely following the Finance Minister on relief measures to take them on board in the recovery path. Hospitality, aviation, entertainment are the worst sufferers. MSME units are said to be limping back to normalcy.

Pre-Pack insolvency resolution process (PPIRP)

In this context, the steps taken by the Central Government to suspend invoking provisions of IBC for one year and hiking the threshold of default to Rs.1 crore have been well-received. However, the need for a structured but faster resolution mechanism was felt where the default threshold is lower than Rs.1 crore and more essentially, where the corporate debtor being viable can be rescued for productive utilization of the scarce resources.

The Insolvency and Bankruptcy Board of India (IBBI) has come out with a concept paper on "Pre-Pack" insolvency resolution process which has been put together by a sub-committee of the Insolvency Law Reforms Committee constituted by the Government.

The public opinion on the scheme was invited and it is reliably learnt that the scheme will be made effective in the near future.

Features of "Pre-Pack"

Unlike the corporate insolvency resolution process (CIRP) which comes with a timeline of 180+90 days, the PPIRP is designed for 90 days, with a time period of 30 days for AA's approval, the reason for shorter timeline being the corporate debtor itself through a consensus process with lenders gets ready with an information memorandum, list of creditors and a viable resolution plan and then approaches the adjudicating authority with an application. While all other regulatory check-points like moratorium, valuation of the assets, preferential transactions audit, etc. will be present in PPIRP, the independent resolution professional will run the process without taking over the reins of the corporate debtor.

In other words, the corporate debtor will be allowed to continue the business operations while at the same time a speedy resolution will be stitched together for approval by the appropriate authority. Through a consensus process, the corporate debtor would be in a position to offer a viable resolution plan which would be approved by the committee of creditors with 66% of voting share of members present and voting. The readers would be able to understand the proposed scheme which has been explained in more detail elsewhere in this issue.

Role of independent professionals in "Pre-Pack"

It would be interesting to note that in the PPIRP regime, the lenders would be faced with challenging situation of a resolution plan with significant hair-cut while a competition from white-knights can reduce the sacrifice of lenders. It is here that "swiss challenge" method suggested by the sub-committee would assume importance and role of independent professionals in advising the corporate debtor or interested investors is expected to be crucial.

One glaring glitch in the CIRP as widely felt by the stakeholders was the inordinate delay in the judicial process which itself is under heavy loads of litigation. The PPIRP is to effectively cut down the delay in this process and to get the resolution plan approved within 30 days of submission to the Adjudicating Authority.

CGRF SandBox Team wishes its readers good times, free from the threats of Covid-19 while at the same time we urge you to take all pre-cautions and not to lower the guard against the pandemic.

Yours truly

S. Rajendran

Legal Entity Identifier (LEI) Code

N. Nageswaran
Insolvency Professional

The January 5th, 2021 notification by RBI mandating mentioning of LEI Number for all payment transactions of value ₹50 crore and above undertaken by entities (non-individuals) for Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT) has revived the discussion on the Legal Entity Identifier (LEI). The RBI Mandate is effective April 1, 2021.

The Legal Entity Identifier (LEI) is a global reference number that uniquely identifies every legal entity or structure that is party to a financial transaction, in any jurisdiction. In India, though it is mandatory for certain legal entities to obtain LEI Code but most of such entities are still unaware about the concept of LEI code. Here are some key points to provide the overview of this concept.

The History of LEI – Global and in India

It is to be noted that following the global financial crisis of 2008 the business community was looking for a trusted services and open, reliable data for unique legal entity identification worldwide. The search ended in the Global Legal Entity Identifier Foundation (GLEIF), a supra-national not-for-profit organization headquartered in Basel, Switzerland. Established by the Financial Stability Board in June 2014, the Global Legal Entity Identifier Foundation (GLEIF) is tasked to support the implementation and use of the Legal Entity Identifier (LEI). The foundation is backed and overseen by the LEI Regulatory Oversight Committee, representing public authorities from around the globe that have come together to jointly drive forward transparency within the global financial markets.

GLEIF makes available the Global LEI Index; i.e. the only global online source that provides open, standardized and high quality legal entity reference data. By doing so, GLEIF enables people and businesses to make smarter, less costly, and more reliable decisions about who to do business with.

For ease of operations with maximum control, GLEIF allowed formation of Local Operating Units (LOU) and accredited them with the task of issuance and management of local entity identified.

India quickly responded by forming Legal Entity Identifier India Limited (LEIL) as a wholly owned subsidiary of The Clearing Corporation of India Limited (CCIL). LEIL has been recognised by RBI as **an "Issuer" of Legal Entity Identifiers under the Payment and Settlement Systems Act 2007 (as amended in 2015). LEIL has been accredited by the Global Legal Entity Identifier Foundation (GLEIF) as a Local Operation Unit (LOU) for issuance and management of LEI's.**

LEIL will assign LEIs to any legal identity including but not limited to all intermediary institutions, banks, mutual funds, partnership companies, trusts, holdings, special purpose vehicles, asset management companies and all other institutions being parties to financial transactions. LEI will be assigned on application from the legal entity and after due validation of data. For the organization, LEI will

- Serve as a proof of identity for a financial entity
- Help to abide by regulatory requirements
- Facilitate transaction reporting to Trade Repositories

The LEI and its structure

Legal Entity Identifier (LEI) is a 20-character unique code which every company is required to obtain who are parties to financial transactions.

The structure of the global LEI is determined in detail by ISO Standard 17442 and takes into account Financial Stability Board (FSB) stipulations.

(Image Source: LEIL website)

An LEI is issued only once for each company and consists of 20 characters:

The first 4 characters are unique to the LOU which has issued the LEI.

The 5th and 6th characters are the same for each company – 0.

The following 12 characters consist of letters and numbers and are unique for each company.

The final 2 characters are known as the checking characters.

Each LEI contains well-structured reference data which is categorized into 2 sections:

Level 1 – "who is who"
Level 2 – "who owns whom."

Level 1 data includes entity registration details, such as legal name, registration number, legal and HQ address etc.

Level 2 contains information about an entity's ownership structure and thus answers the question who owns whom. Simply put, the publicly available LEI data pool transfers unstructured entity registration data into standardized global directory, which greatly enhances transparency in the global marketplace.

(Image Source: website)

Implementation in India

a. Requirement of LEI number for participants in derivative markets

In India, RBI undertook the task of booting the originators of all financial transactions with a LEI number by implementing in a phased manner for participants (other than individuals) in the over-the-counter markets for Rupee interest rate derivatives, foreign currency derivatives and credit derivatives in India in terms of RBI circular FMRD.FMID.No.14/11.01.007/2016-17 dated June 1, 2017.

b. Requirement of LEI number mandated for borrowers with more than Rs.50 crores exposure from Scheduled Commercial Banks

In October 4, 2017 it was indicated that LEI system for all borrowers of banks having total fund based and non-fund based exposure of Rs.5 crore and above will be introduced in a phased manner. Accordingly, it was decided that the banks shall advise their existing large corporate borrowers having total exposures of Rs. 50 crore and above to obtain LEI as per the schedule shown below. Borrowers who do not obtain LEI as per the schedule were not to be granted renewal / enhancement of credit facilities. All large borrowers were asked to obtain LEI for their parent entity as well as all subsidiaries and associates.

Total Exposure to SCBs	To be completed by
Rs. 1000 crore and above	Mar 31, 2018
Between Rs.500 crore and Rs.1000 crore	Jun 30, 2018
Between Rs.100 crore and Rs.500 crore	Mar 31, 2019
Between Rs.50 crore and Rs.100 crore	Dec 31, 2019

Schedule for implementation of LEI

(Subsequently the due dates were relaxed and the final dates were changed)

A separate roadmap for borrowers having exposure between Rs. 5 crore and upto Rs.50 crore would be issued in due course.

c. Requirement of LEI for all financial market non-derivative transactions

As a next stage, it was proposed to implement the Legal Entity Identifier (LEI) mechanism for all financial market transactions undertaken by non-individuals in interest rate, currency or credit markets regulated by RBI. Globally, use of LEI has expanded beyond derivative reporting and it is now being used in areas relating to banking, securities market, credit rating, market supervision, etc. The following final time frame has been laid down for implementation of the instructions:

Schedule for Implementation of LEI in the Money market, G-sec market and Forex market

Phase	Net Worth of Entities	Proposed deadline
Phase I	above Rs.1000 crores	April 30, 2019
Phase II	between Rs.200 crores and Rs 1000 crores	August 31, 2019
Phase III	up to Rs.200 crores	September 30, 2020

d. LEI number made compulsory for Insurance cover:

Insurance Regulatory and Development Authority of India (IRDA) issued instructions on 5th June 2020 that the insurers shall necessarily advise their corporate clients with more than Rs. 50 crores exposure to scheduled commercial banks to obtain and report LEI number by 30th June 2020. Also, IRDA advised that for such of the clients who do not report the LEI number latest by 31st July 2020 the insurers should not extend insurance policies covering renewal /enhancement of the credit facilities by their bankers and LEI number was made mandatory for all the applications for insurance policies covering new loan proposals. All transactions

with the borrowers with more than Rs. 50 crore exposure would be captured by the insurers along with the LEI number only.

e. Requirement of LEI mandatory for all remittances above Rs. 50 crores wef 1st April 2021

The January 5th, 2021 notification by RBI mandating mentioning of LEI Number for all payment transactions of value ₹50 crore and above undertaken by entities (non-individuals) for Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT) has revived the discussion on the Legal Entity Identification (LEI) number. The RBI Mandate is effective from April 1, 2021.

Thus, it could be seen that the financial regulators such as RBI and IRDA have been expanding the coverage for LEI.

(Image Source: website)

How to obtain the LEI and the documents required

LEI code may be obtained from Legal Entity Identifier India Ltd. (LEIL) (https://www.ccilindia-lei.co.in), the only service provider identified for this purpose by Reserve Bank of India. The following will be the documents required for making an application seeking LEI number:

a) Certificate of Incorporation/Registration Certificate
b) PAN Card proof
c) Undertaking –cum-Indemnity as per the format specified by LEIL
d) Audited Financial Statements
e) Board Resolution as per the format specified by LEIL or A certified true copy of the general board resolution or general power of attorney will be accepted if the legal entity commits to submit a fresh board resolution in the format as prescribed by LEIL when the next Board Meeting is held subsequently.
f) Power of Attorney as per the format specified by LEIL in case of any further delegation by officials mentioned in Board Resolution.
g) Audited financials of Holding and Ultimate Parent or Auditor's Certificate as per the format specified by LEIL in case of holding company and ultimate parent.

Conclusion

The road map regarding applicability of LEI for borrowers with exposure less than Rs. 50 crores is yet to be put out by Reserve Bank of India. But as of today, it is not confirmed whether all borrowers with exposure more than Rs. 50 crores from scheduled commercial banks have obtained the LEI number. The author is of the view that just like CIN and PAN being made compulsory for putting through various transactions and more particularly while filing necessary compliance reports, LEI number also should be made mandatory. This will be one definite method by which the obtaining of LEI number by the corporate entities can be ensured and speeded up.

CRYPTOCURRENCY TO BE INTRODUCED BY INDIA

The readers may be aware that in our June 2020 issue of SandBox we carried an Article "Did Supreme Court Demonetize RBI in the matter of Virtual Currency?"

In the recent past the Bitcoin price in the world market has gone up substantially reaching the levels of more than US$ 34000. While the advantage of having a digital currency is that it could be used across the countries on unified platform, the disadvantage of losing control on pricing policies, currency regulations weighed in favour of RBI decision not to encourage virtual currencies in India as per the Circular issued in April 2018.

The recent announcement by the Central Government that it will introduce a Bill on "Cryptocurrency and Regulation of Official Digital Currency 2021" in the ongoing budget session of Parliament has come as a surprise. The decision by Supreme Court in March 2020 that the Reserve Bank of India Circular does not pass the test of proportionality came as a blow to RBI's measures prohibiting banks/financial institutions from dealing with entities engaged in virtual currencies. The recent announcement that the government itself will introduce Digital Currency augurs well to face new challenges as Digital Currencies are promoted by countries. It is also looked as the first step eventual introduction of Digital Currency by Reserve Bank of India while China is already stated to have been testing a version of its digital Yuan.

(source: Economic Times 1.2.2021)

Charge on properties acquired subject to a charge

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Tucked away in a corner in Section 79 of the Companies Act, 2013, we find that a reference is made to the applicability of the provisions of section 77 of the Act requiring registration of a charge on a property of a company which has been acquired subject to a charge by a company, whereas a whole section namely section 127 was devoted to such a charge in the Companies Act, 1956. These provisions are reproduced hereunder:

Companies Act, 1956 under section 127:

127. Registration of charges on properties acquired subject to charge *(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required by this Act within thirty days after the date on which the acquisition is completed : Provided that, if the property is situate, and the charge was created, outside India, thirty days after the date on which a copy of the instrument could, in due course of post and if despatched with due diligence, have been received in India shall be substituted for thirty days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar. (2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to 5000 rupees.*

Companies Act, 2013 under section 79

79. **Section 77 to apply in certain matters**—*The provisions of section 77 relating to registration of charges shall, so far as may be, apply to— (a) a company acquiring any property subject to a charge within the meaning of that section; or (b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.*

In the course of business, a company may acquire properties from other entities such as an individual, partnership firm, a limited liability partnership or from some other Company whether on conversion of one form of entity to another or on a merger. These properties may or may not have encumbrances such as a lien, mortgage or a charge. An encumbrance on such properties could arise because of a loan already availed by that entity from a bank or some other lender. A bank or such lenders would have documented to ensure that a charge prevails over these properties until loans are repaid. It is immaterial whether such charge required registration with any appropriate authority or not.

Therefore, acquisition of such properties subject to charge requires registration if such registration was not required with the RoC in its earlier form of entity e.g. a partnership firm being acquired by a private limited company. In such a case, the company which has acquired the property has to give the following details in the Form CHG-1 while seeking registration:

- The date of instrument creating the charge when such charge was created while it was a partnership firm;
- Description of the instrument which created the charge by the partnership firm;
- Date of acquisition and amount of the asset when taken over which was subject to a charge; and
- Particulars of the property charged.

(Image Source: Website)

It is possible that the charge- holder may prefer to obtain fresh documents by the company which has acquired the assets of the partnership firm in the name of the company. The fresh documentation done in such a case will trigger the modification to charge already registered when the assets were acquired subject to a charge. Unknowingly and unintentionally, the charge-holder takes a fresh document in the name of the Company skipping the step of the registering the charge where the assets on which the charges existed at the time of take over.

The charge-holder then seeks registration of charge as if it is a creation. This leaves a gap of discontinuity between the takeover of the assets and the registration of charge which makes it vulnerable for another lender to get his charge registered in the discontinuity period.

"The right course of action should be filing of Form CHG-1 for modification of charge with the RoC within 30 days from the date of taking over attaching copies of all documents executed which created the charge originally when the entity was a partnership firm. If a fresh set of documents are preferred by the charge holder and executed in the name of the company, this again triggers a modification to the first modification as effected as above."

In a case of merger, acquisition of such properties occurs by operation of law. Section 368 of the Companies Act, 2013 (corresponding to Section 575 of the Companies Act, 1956) provides that all property movable and immovable (including actionable claims) belonging to or vested in a company at the date of registration in pursuance of conversion into a different entity shall on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

That means technically the charge on properties acquired through merger need not be registered with the ROC. However, so as to take advantage of section 80 of the Companies Act, 2013 (Notice of Charge) the charges on the properties may be sought to be registered with the ROC by the company since the charge will be a constructive notice available to the public on the MCA site when an inspection is done.

Relaxation on levy of additional fees in filing of e-forms

The Ministry of Corporate Affairs vide the General Circular No. 04/2021 dated 28th January 2021 has further extended the relaxation on levy of additional fees upto 15th February 2021 for the filing of e-forms AOC-4, AOC-4(CFS), AO-4 XBRL and AOC -4 Non- XBRL of the financial year ended 31st March 2020. During the above said period, only normal fees shall be payable for the filing of the e-forms mentioned.

The Code on Wages, 2019

Lakshmi Sankara Raman, CS

Introduction:

A bird's eye view of the earlier labour Acts gave a thought that these Acts were always in favour of the employees because they were facing insecurity of job, increased working hours in an unhappy working environment, etc. Government has now thought it fit to change this scenario and in order to have a balanced approach to encourage more gainful employment also, has, in one stroke introduced The Code on Wages, 2019. The assent of President and publication of the Code in the Gazette was on 8.8.2019 and is likely to be implemented on 1st April 2021.

What are the four Acts and eight Rules subsumed in the Code:

The Code on Wages, 2019 and the draft The Code on Wages (Central) Rules, 2020, subsumed four Acts and eight Rules, as detailed below.

Title of the Acts subsumed in "Code on Wages, 2019"	Title of the Draft Rules subsumed in "The Code on Wages (Central) Rules, 2020"
1.The Payment of Wages Act, 1936 2. The Minimum Wages Act, 1948 3.The Payment of Bonus Act, 1965 4. The Equal Remuneration Act, 1976	1. **P**ayment of Wages (Procedure) Rules, 1937 2. **P**ayment of Wages (Nomination) Rules, 2009 3. **M**inimum Wages (Central) Rules, 1950 4. **M**inimum Wages (Central Advisory Board) Rules, 2011 5. **E**ase of Compliance to Maintain Register under various Labour Laws Rules, 2017 to the extent prescribed. 6. **P**ayment of Bonus Rules, 1975 7. **E**qual Remuneration Rules, 1976 8. **C**entral Advisory Committee on Equal Remuneration Rules, 1991.

Why the Government consolidated the four Acts and eight Rules:

Government, interalia, planned not only to encash on the data it already obtained through Aadhaar/ PAN / other regulatory information, in order to utilize the information about unskilled, semi-skilled, skilled and highly skilled labour force of our country but also wanted information on the remaining vastly available manpower resource of India.

How the Government categorized the Occupations of Labour:

Government has categorized a total of **681 occupations** under Unskilled, Semi-Skilled, Skilled and Highly skilled categories, as detailed below:

Categorization based on skills of employees as per Rule 4(3)	Number of occupations as per Schedule E of the Code	Definition of the type of skill of the employees
Unskilled occupations	123	An unskilled occupation means an occupation which in its performance requires the application of simply the operating experience and involves no further skills.
Semi-skilled occupations	127	A semi-skilled occupation means an occupation which in its performance requires the application of skill gained by the experience on job which is capable of being applied under the supervision or guidance of a skilled employee and includes supervision over the unskilled occupation.
Skilled occupations	320	A skilled occupation means an occupation which involves skill and competence in its performance through experience on the job or through training as an apprentice in a technical or vocational institute and the performance of which calls for initiating and judgement.
Highly skilled occupations	111	A highly skilled occupation means an occupation which calls in its performance, a specific level of perfection and required competence acquired through intensive technical or professional training or practical occupational experience for a considerable period and also requires of an employee to assume full responsibility for his judgement or decision involved in the execution of such occupation.

What are the interesting points under the new Code on Wages, 2019 useful for compliance / information:

The Code insists mandatorily on proper maintenance of the records in an establishment and hence a lucid presentation of important and interesting points in the Code, is given below:

1. The **Register of Wages, Overtime, Fine, Deduction for damage and loss** in **Form I** is to cover the following details, in addition to Name of the Establishment, Name of the Owner, Name of the Employer, Labour Identification Number, PAN / TAN of the Employer.

1.	2.	3.	4.	5.	6.	7.	8.
S. No. in Employee Register	Name of the employee	Designation / department	Duration of payment of wages (monthly / fortnightly / weekly / daily rated/ piece – rated)	Wage period (From – To)	Total number of days worked during the period	Total overtime (hours worked or production in case of piece workers)	Rate of wages with basic pay, DA and allowances shown separately

9.	10.	11.	12.	13.	14.	15.	16.
Overtime earning	Nature of the acts and omissions for which fine has been imposed mentioning the date	Amount of fine imposed	Damage or loss caused to the employer by neglect / default of the employee	Amount of deduction from wages	Total amount of wages paid	Date of payment	Attendance (Date & Signature)

2. **The employee register** is to be maintained in **Form IV** in the following format by the employer, in addition to Name of the Establishment, Name of the Owner, Name of the Employer, Labour Identification Number, PAN / TAN of the Employer.

1.	2.	3.	4.	5.	6.	7.	8.
Serial Number	Employee code	Employee's Name	Surname	Gender	Father's / spouse name	Date of birth	Nationality

9.	10.	11.	12.	13.	14.	15.	16.
Education level	Date of joining	Designation	Category (Highly skilled/ skilled/ semi-skilled / under-skilled)	Type of employment	Mobile number	UAN (Universal Account Number allotted by EPFO)	PAN No.

17.	18.	19.	20.	21.	22.	23.	24.
ESIC IP No.	Aadhaar No.	Bank Account No.	Name of the bank	Branch (IFSC)	Present address	Permanent address	Service Book No.

25	26.	27.	28.	29.	30.
Date of exit	Reason for exit	Mark of identification	Photo	Specimen signature / thumb impression	Remarks

3. The Wage Slip is to be issued by an employer to employees. The format for Wage slip has been prescribed in **Form V**. The wage slip should contain mandatory details of Name of the Establishment, Address, Period to which the wage slip pertain and the Date of Issue. It should **also contain** the following columns.

WAGE SLIP FORMAT as in FORM V

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
Name of the employee	Father's / Spouse name	Designation	UAN (Universal Account Number allotted by EPFO)	Bank Account No.	Wage period	Rate of Wages payable with particulars of Basic Pay, Dearness Allowance and Other allowances	Total attendance / unit of work done	Over. Time Wage	Gross wages pay-able	Total deduct-ions towards PF, ESI and Others	Net wages paid

But issue of wage slip is not mandatory if an employer employs not more than five persons for agriculture or domestic purposes.

4. The Code has different definition for an **Employee** and a **Worker.**

Employee, interalia, is engaged by an **establishment** to do any skilled/ semi-skilled / unskilled / manual / operational/ supervisory/ managerial / administrative/ technical / clerical work for hire or rewards, and includes a person so declared by the appropriate government.

Worker, interalia, is engaged in any **industry** to do any manual/ unskilled/ skilled/ technical/ operational/ clerical / supervisory work for hire or reward and includes working journalists and sales promotion employees and for the purposes of industrial disputes, includes a dismissed / discharged / retrenched /otherwise terminated because of a dispute. Code **did not** recognise a person as a **Worker** if he held a managerial / administrative / supervisory post, drawing wage **exceeding Rs. 15000/-** per month or such amount, as may be notified by Central Government from time to time. **Apprentices** are neither treated as an employee nor a worker.

5. Central Government has demarcated the geographical area into three areas and the State Governments have to fix the minimum rate of wages accordingly. However, the floor wage will be fixed only by Central Government.

Type of area	Criteria
Metropolitan area	Compact area having a population of 40 lakhs or more comprised in one or more districts
Non-metropolitan area	Compact area having a population of more than 10 lakhs, but less than 40 lakhs comprised in one or more districts
Rural area	The area which is not the metropolitan area or Non-metropolitan area

6. The **definition for wages** has been made uniform unlike the earlier The Payment of Wages Act, The Minimum Wages Act and The Payment of Bonus Act, etc. Interestingly, The Code now proposes the following:

S. No.	Interesting points on wages in the Code
1.	Wages means **all** remuneration including salary, allowances, or remuneration in kind.
2.	Allowances restricted to 50% of remuneration, with exclusion of (a) bonus, to the extent it did not form part of remuneration, (b) conveyance allowance, (c) special expenses, (d) award / settlement amount, (e) overtime, (f) commission, (g) gratuity, (h) HRA, etc., (i) employer's contribution to PF and interest thereon & Pension, (j) retrenchment compensation / other retirement benefits or any ex-gratia payment on termination of employee, etc.
3.	Wages is **deemed to be** net of allowances (as mentioned in S.No. 2). The net of allowances should be in the form of (a) Basic Pay, (b) Dearness Allowance and (c) Retaining Allowance, if any and **is deemed to constitutes wages**. The Code is specific to instruct for non- inclusion of allowances like HRA, conveyance/ project/ special / washing allowance, commission, etc.
4.	If allowances as in S.No. 2 **exceeds 50% or such %** as notified by Central Government (CG), the allowances **in excess of 50% or such %** as notified by CG, should be deemed as remuneration and **added to wages.** This does not include (i) gratuity (ii) retrenchment compensation / other retirement benefits and (iii) ex-gratia payment on termination of employment.
5.	If allowances are **paid in kind,** the value of allowances in kind **which does not exceed 15% of the total wages shall form part of the** wages.
6.	Employers may not have to provide for **Discretionary payments** such as gifts and incentives in the Appointment Order or Contract of Employment, as this will be treated as allowances only in the Code.

7. The Central Government shall fix floor wages and the minimum wages fixed on a day basis by Appropriate Government shall be not less than the floor wages fixed by Central Government.

8. Appropriate Governments shall review and revise the minimum wages, in intervals **not exceeding five years**.

9. Full wages are to be paid, even if an employee worked **for ½ day**, **unless** he was unwilling to work, etc.

10. The **overtime rate is twice the normal rate of wages**.

11. Employees employed in an establishment through contractors **also** shall get **timely payment of wages**, as in the case of regular employees engaged on, viz., daily basis (**end of the shift),** weekly basis (**on the last working day of the week, before the weekly holiday)**, fortnightly basis **(before the end of the second day after the end of fortnight),** monthly **(before the expiry of 7th day of the succeeding month)** and when removed / dismissed / retrenched / resigned / became unemployed due to closure of the establishment **(within two working days of happening of such event).**

12. Minimum wages of each class of work is to be paid if an employee does more than **two or more classes of work.**

13. The **normal hours of work** fixed at eight shall constitute a normal working day. Exceptions for increase in working hours upto twelve hours, which included one or more hours of rest have been provided in the Code.

14. **Dearness allowance revision** is to be done twice per annum on **1st April and 1st October**.

15. A **minimum bonus** @ 8.33% per annum or Rs. 100/-, whichever is higher is to be paid to an employee who has put in atleast 30 days of service during the accounting year by every employer, whether or not he has any allocable surplus during the previous accounting year.

16. **If any dues remain unpaid to an employee**, time limits have been prescribed for the amount to remain with the establishment, after which it shall be deposited with Deputy Chief Labour Commissioner (Central) of the concerned jurisdiction.

17. **The limitation period** for filing of claims by an employee is three years and after three years also, he can file claims, on sufficient cause, being shown in this regard.

18. The **Central Advisory Board** with composition of employers, employees and independent persons including 1/3rd women are to advise Central Government on fixation / revision of minimum wages, increasing employment opportunities for

women, etc. and the **State Advisory Boards** are to constitute as per necessity, committees with 1/3rd women representation, to look into the issues for implementation of the recommendations of Central Advisory Board.

19. Acts and omissions on the part of employees, **constituting fine** should be displayed in **notice board and fine** shall not be collected without giving an opportunity and it **shall not exceed** an amount equal to **3% of wages payable during the wage period.** A Register is to be maintained by the employer for the purpose.

20. Fines shall not be imposed on any employee who is under the age of fifteen years. As per **Child and Adolescent Labour (Prohibition and Regulation) Act**, 1986, amended in 2016, no child below the age of 14 can be employed in any employment including as a domestic help. Hence an employee between 14 – 15 years of age cannot be imposed fine under the Code.

21. The Code provides for the following penalties for **offences.**

S. No.	Nature of offence	Initial penalty	Enhanced penalty if found guilty of similar offence
1.	Employee **being paid less than the amount due to him**	Upto Rs. **50,000/-**	If repeated within 5 years from the date of commission of first or subsequent offence, upto Rs. **1.00 lakh or imprisonment which may extend upto 3 months.**
2.	Non-compliance of **other provisions** of this Code	Upto Rs. 20,000/-	If repeated within 5 years from the date of commission of first or subsequent offence, upto Rs. **40,000/- or imprisonment which may extend upto 1 month.**
3.	**Non-maintenance or improper maintenance of records** in an establishment	**Fine may extend upto Rs. 10,000/-**	
4.	If violation of the same nature in respect of (**S.No. 2 and 3** only) is **repeated within 5 years** from the date of first violation, even after Inspector – cum – Facilitator had provided directions.	Prosecution shall be initiated in accordance with the provisions of this Code.	

22. Compounding of offences is to the maximum of 50% of the fine, if the accused person agrees for the same.

23. The upper ceiling of deductions (only as authorized in the Code) cannot exceed fifty percent of the wages in any wage period.

24. If there are undisbursed dues either due to non-availability of nomination or for any other reason, the amount shall be deposited with the Deputy Chief Labour Commissioner (Central) having jurisdiction before the expiry of the 15th day after the last day of the period of six months from the date the amount become payable to him. The amount deposited in this regard will be disbursed to the nominee or the claimant, after due process. If the amount still remained without disbursement for a period of seven years, the amount will be dealt with, as directed by Central Government.

Whether employers and employees would welcome the Code:

Employees would welcome increase in their kitty since their PF and Gratuity calculation is linked to their minimum wages, as per the Code but employers have to shell out more money on their employees and so may have to plan their budget accordingly for PF contribution and provide for increased liability through actuarial valuation for gratuity.

As of January 2021, the major ten Central Trade Unions have jointly asked the Government to put on hold all the four Labour Codes including the Code on Wages and restart discussions with the Unions on the regulations in the true spirit of bipartite and tripartite consultations, rather than rushing to implement them. Inter-alia, two of the issues raised by Trade Unions were that (i) the contractors and staffing firms should not be allowed to hire workers for core activities, without the need for multiple location – specific registrations with a single license and (ii) even if one contract worker was engaged by an establishment, employer has to pay wages, EPF, ESI and other benefits to him.

Conclusion:

Though Government has consolidated the four Acts and subsumed it under one Code with most of the provisions being carried forward from earlier four Acts, the employees now can heave a sigh of relief that they are covered under this Code, either as Highly Skilled, Skilled, Semi-skilled or Un-skilled and can demand atleast the minimum wages as fixed by the Appropriate Governments.

Recent amendments in CSR

Prof R. BalaKrishnan FCS, Pune

CSR – revised rules notified by Ministry of Corporate Affairs

When the Companies Act 2013 came into force, the Act provided in respect of Corporate Social Responsibility (CSR) that the companies were not mandated to spend on CSR – however the board report would disclose the reasons for not spending. The above provision is in line with UK Combined code "Comply or explain". On 27th January 2021, the Ministry of Corporate Affairs amended the CSR Rules 2014 and announced new CSR rules which is known as, Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 through notification and brought out major changes in the rules. The Amendment Act, 2020 notified the penal provisions for non-compliance of CSR rules changing the earlier nature of CSR provisions from "Comply or explain" to "Comply or suffer".

New definitions / substituted definitions

The amended rules introduced many new definitions such as administrative overheads, international organization, ongoing project, public authority etc. Also, many definitions have been substituted. As per the amended rule, CSR Policy now means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

Prominent changes brought out by the amended rules

The amended rules have not only brought out changes in the relevant section and rules but also made substantial changes in the entire implementation of CSR activities undertaken by the company. Many new concepts have been introduced in the amended rules such as (i) registration of implementation agencies for which filing of e-form CSR-1 has been specified; (ii) Certification by Chief Financial Officer or person responsible for financial management – yet another new concept and (iii) mandatory impact assessment.

Effective from the financial year commencing from 1st April 2021, the companies are required to do one of following:

(i) spend the required amount for corporate social responsibility activities as prescribed under schedule VII or
(ii) transfer unspent amount to such funds as mentioned in Schedule VII or like (such as- Clean Ganga Fund / Prime Minister National Relief Fund (PMNRF) / within 6 months of the end of financial year. or
(iii) park the unspent amount of ongoing projects in a separate Unspent CSR account within 30 days of the end of financial year.

Acquisition of Assets

The amended CSR rules provide that the CSR funds may be spent by a company for creation or acquisition of assets which could be held by a company established under section 8 of the Act 2013 or a registered public trust or a registered society having charitable objects and CSR Registration Number.

If a company has created any asset prior to the commencement of Companies (CSR Policy) Amendment Rules, 2021, it is required to comply with the above requirements within a period of 180 days from such commencement of the current rule. The Rules also provide for further extension of not more than 90 day with the approval of the Board based on reasonable justification.

Board responsibility

The amended CSR rules put more responsibility on the Board members of a company. The board members are expected to get satisfied themselves that the funds so disbursed for CSR activities have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

The Board's responsibility in case of ongoing project is to monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

Role of CSR Committee

As per the amended rule of CSR, the CSR Committee is required to draw a detailed annual action plan in pursuance of the company's CSR policy, which is required to include the following, namely: -

a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;

c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
d) monitoring and reporting mechanism for the projects or programmes; and
e) details of need and impact assessment, if any, for the projects undertaken by the company.

The Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

Annual Report

The amended rules have introduced annual report on CSR activities which would form part of the Board Report effective from the financial year commencing on or after 1st April 2020.

Contents of the annual report: -
The companies are required to disclose in the annual report the details relating to (a) brief outline of CSR policy; (b) composition of CSR committee; (c) web link; (d) impact assessment of CSR project; (e)amount available for set off ; (f) average net profit as per sec 135(5) and 2% of such profit; (g) surplus arising out of CSR projects and the amount of set off for the year; (h) total CSR obligation for the year; (i) CSR amount spent / unspent details; (j) CSR amount spent on ongoing projects, CSR amount spent other than on ongoing projects; (k) amount spent on admin overheads; (l) amount spent on impact assessment (if applicable); (m) total amount spent in financial year, excess amount of set off if any and the details of unspent CSR amount, details of amount spent in the financial year on ongoing projects of the preceding financial years and (n) details relating to creation or acquisition of capital assets etc.

In case of non-spending on CSR activities: -

The report also seeks to ask the reasons if the company fails to spend the amount on CSR activities.

Let us look into the gist of the notification brought out by Ministry of Corporate Affairs:

Compliances called for

S no	Details	Rule / section	Required action
Registration			
1	Registration	Section 135 read with Rule 4 (1) and 4(2)	The entities intending to undertake any CSR activity, is required to register with the Registrar of Companies by filing the Form CSR-1 with effect from 1st April 2021. (this shall not affect the CSR projects or programmes approved prior to it)
	Certification by professional	Rule 4(2)(b)	The Form CSR-1 is required to be verified digitally by a practising professionals such as Company Secretary or Chartered Accountant or Cost Accountant.
	CSR registration number	Rule 4(2)(c)	Upon submission of the Form CSR-1 on the portal, a unique CSR Registration Number will get generated by the system.
CSR Committee			
2	CSR Committee	Section 135 read with rule	Companies covered under the provisions of CSR are required to constitute a CSR Committee.
	Exemption from constituting CSR Committee	Section 135(9) (new section)	Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable. The functions of such Committee provided under this section shall, in such cases, be performed by the Board itself.
Annual action plan			
3	Annual action plan	Rule 5(2)	Annual action plan of CSR activities to be formulated and recommended to the Board by the CSR Committee which shall include the following: 1. the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act; 2. the manner of execution of such projects or programmes; 3. the modalities of utilization of funds and implementation schedules for the projects or programmes; 4. monitoring and reporting mechanism for the projects or programmes;

			5. details of need and impact assessment, if any, for the projects undertaken by the company: Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect
CSR contribution and CSR activities implementation			
4	CSR contribution	Section 135(1)	Company having - net worth of Rs.500 crore or more, or - turnover of Rs.1,000 crore or more or - net profit of Rs.5 crore or more are required to shell out at least 2% of their immediately preceding three-years average net profit towards CSR activities in a financial year.
	CSR activities implementation	Rule 4(i)	Board is required to ensure that the CSR activities are undertaken by the company by itself or
		Rule 4(1)(a)	Through a company established under section 8 of the Act, or a registered public trust or a registered society, registered u/s 12A and 80G of the Income Tax Act, 1961.
		Rule 4 (1) (b)	Through a company established under section 8 of the Act, or a registered trust or a registered society, established by Central government or State government.
	Creation or acquisition of capital assets	Rule 7 (4)	CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by a section 8 company / registered public trust / registered society having charitable objects and CSR Registration Number. or Beneficiaries of the said CSR projects. or A public authority.
CSR spending / unspent details			
5	CSR spending	Rule 7	The companies are now required to do either of the following: (i) spend the required amount for CSR activities as prescribed under schedule VII or (ii) park the unspent amount of ongoing projects in a separate account within 30 of the end of financial year
	Unspent amount	Rule 10	(iii) transfer unspent amount to such funds as mentioned in Schedule VII viz. Clean Ganga Fund or Prime Minister National Relief Fund (PMNRF) or like within 6 months of the end of financial year.
Admin overheads / surplus / set off etc.			
6	Administrative overheads	Rule 7(1)	The administrative overhead should not exceed 5% of total CSR expenditure of the company for any particular financial year.
7	Surplus arising out of CSR activities	Rule 7	- Any surplus arising out of the CSR activities shall not form part of the business profit and the same is required to be ploughed back into the same project or - The same is required to be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or (iv) Transfer such surplus amount to a fund specified in Schedule VII within a period of six months of the expiry of the financial year.
8	Set off excess expenditure of CSR	Rule 7(3)	Whenever a company spends an amount in excess of requirement provided under sub-section (5) of section 135 of the Companies Act 2013, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that – 1. the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, (v) the Board of the company shall pass a resolution to that effect.
Impact assessment			
9	Impact assessment	Rule 8(3)	Company having average CSR obligation of Rs.10 crore or more in the three immediately preceding financial year is required to undertake impact assessment, through an independent agency, of their CSR projects having outlays of Rs.one crore or more, and which have been completed not less than one year before undertaking the impact study.

	CFO certificate	Rule 4(5)	Mandatory certificate from the Chief Financial Officer is made for the impact assessment. The Board of a company is required to get itself shall satisfied that the funds of CSR have been utilized for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management is required to the effect.
Disclosure requirement			
10	Disclosure requirement at the web site	Rule 9	The companies are required to display CSR activities on their website, to disclose - the composition of the CSR Committee, - CSR Policy and - Projects approved by the Board for public access.
Annual report			
11	Annual report (a new format)	Rule 8(1)	The annual report on CSR activities has been introduced which would form part of the Board Report effective from the financial year commencing on or after 1st April 2020.
	Signature	To be signed by	CEO / MD/ Director and Chairman of CSR Committee Person specified under clause (d) of section 380 of the Act where applicable

Penal provisions for contravention

Non-compliance with CSR provisions has been decriminalized by shifting such offences to penalty regime. The violation of CSR rules would now attract penalties if a company were in default in complying with the provisions of sub-section (5) or sub-section (6),

(Image Source: Website)

- the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the unspent Corporate Social Responsibility Account or Rs.1 Crore, whichever is less, and
- every officer of the company who is in default shall be liable to a penalty of 1/10th of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs.2 Lakhs, whichever is less.

Conclusion

The intention of the regulator is clear from the amended rules on CSR is broadly based on stricter compliance coupled with social welfare at large to the society in which the companies are serving. As per the amended rules, the companies are expected to ensure absolute compliance or else they will have to suffer the consequences – i.e. "comply or suffer" is now made effective against the earlier rules of "comply or explain." Further, there is also greater responsibility thrust upon the statutory auditors as he is required to comment on the CSR provisions specifically with respect to the amount unspent and whether the same is transferred to unspent account in the CARO (2020) report which is forming part of the auditor's report.

To conclude, companies cannot take the CSR provisions lightly as used to be the case earlier by providing certain explanations for not spending the amount in the board's report instead they need to strictly adhere to absolute compliance.

In pari delicto

In pari delicto indicates that parties involved in an action are equally culpable for a wrong. When the parties to a legal controversy are in pari delicto, neither can obtain affirmative relief from the court, since both are at equal fault or of equal guilt.

Prepack Insolvency Resolution Process – Salient Features.

CGRF Bureau

The Ministry of Corporate Affairs in January 2021 published the Report of the sub-committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process and has invited public comments on the same for implementation. Given the urgency to roll out the pre-pack, the sub-committee also recommended to quickly amend the Code, preferably by an Ordinance.

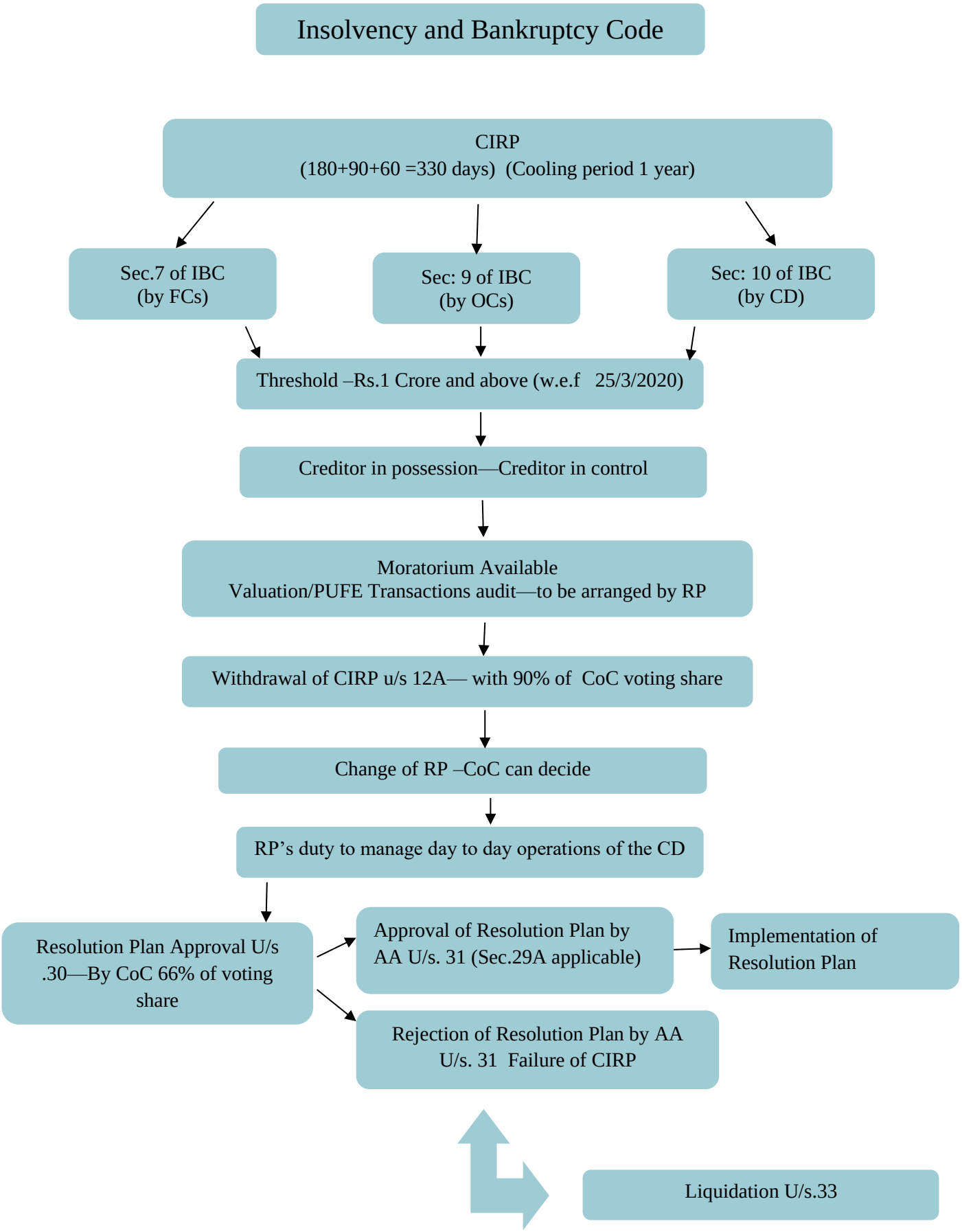
Pre-pack is a voluntary consensual process between debtors and creditors to resolve stress. The objective of the Pre-pack proposal is to aid the existing insolvency framework and cut the cost and time of the resolution process.

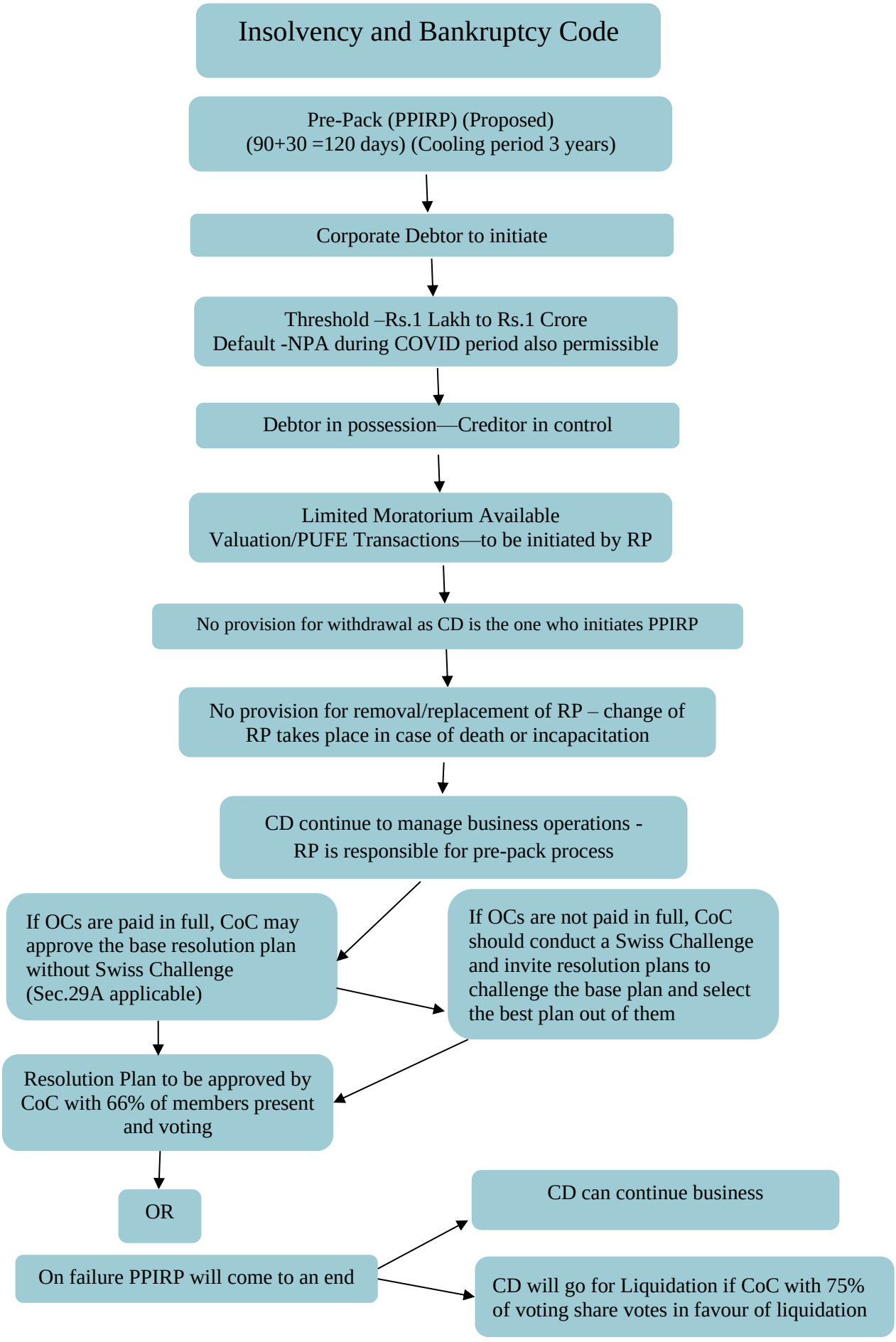
The sub-committee of Insolvency Law Committee, set up on 24th June 2020 to recommend a detailed scheme for its implementing pre-pack and prearranged insolvency resolution process, has inter-alia suggested:

- The Code may make a skeletal provision enabling pre-pack, while the informal part could be left to market practice or guided by self-regulation, guidelines, best practices, etc.
- Pre-pack should be available for all corporate debtors and for any stress – pre-default and post-default.
- Implementation could be phased. It may commence in respect of defaults from Rs.1 lakh to Rs.1 crore and Covid-19 defaults for which CIRP is not available today.
- The Corporate Debtor (CD) shall initiate pre-pack with consent of simple majority of unrelated financial creditors and shareholders.
- The CD shall remain under the control and possession of the current promoters and management during pre-pack process, except matters enumerated under section 28 of the Code, which requires the approval of the CoC.
- The Moratorium under section 14 of the Code shall be available to the CD. However, it shall not cover the essential and critical services.
- There shall be no dilution of provisions of section 29A in respect of resolution applicants for submission of resolution plans.
- Pre-pack should offer two optional approaches, namely (i) without swiss-challenge but no impairment of OCs, and (ii) with swiss-challenge with rights of OCs and dissenting FCs subject to minimum provided under the Code.
- Regulatory benefits available to CIRP shall be available to pre-pack.
- Pre-pack shall not end up with liquidation, except when the CoC decides to liquidate the CD with 75% voting share.
- The resolution plan approved by AA shall be binding on everyone.

A diagrammatic representation of the CIRP and Pre-pack process given for better understanding.

(Image Source: Website)


Insolvency and Bankruptcy Code
CIRP
(180+90+60 =330 days) (Cooling period 1 year)
Sec.7 of IBC
(by FCs)
Sec: 9 of IBC
(by OCs)
Sec: 10 of IBC
(by CD)
Threshold –Rs.1 Crore and above (w.e.f 25/3/2020)
Creditor in possession—Creditor in control
Moratorium Available
Valuation/PUFE Transactions audit—to be arranged by RP
Withdrawal of CIRP u/s 12A— with 90% of CoC voting share
Change of RP –CoC can decide
RP's duty to manage day to day operations of the CD
Resolution Plan Approval U/s .30—By CoC 66% of voting share
Approval of Resolution Plan by AA U/s. 31 (Sec.29A applicable)
Implementation of Resolution Plan
Rejection of Resolution Plan by AA U/s. 31 Failure of CIRP
Liquidation U/s.33


Insolvency and Bankruptcy Code
Pre-Pack (PPIRP) (Proposed)
(90+30 =120 days) (Cooling period 3 years)
Corporate Debtor to initiate
Threshold –Rs.1 Lakh to Rs.1 Crore
Default -NPA during COVID period also permissible
Debtor in possession—Creditor in control
Limited Moratorium Available
Valuation/PUFE Transactions—to be initiated by RP
No provision for withdrawal as CD is the one who initiates PPIRP
No provision for removal/replacement of RP – change of RP takes place in case of death or incapacitation
CD continue to manage business operations - RP is responsible for pre-pack process
If OCs are paid in full, CoC may approve the base resolution plan without Swiss Challenge (Sec.29A applicable)
If OCs are not paid in full, CoC should conduct a Swiss Challenge and invite resolution plans to challenge the base plan and select the best plan out of them
Resolution Plan to be approved by CoC with 66% of members present and voting
OR
On failure PPIRP will come to an end
CD can continue business
CD will go for Liquidation if CoC with 75% of voting share votes in favour of liquidation

Resolution Plan: How should it take care of Operational Creditors and Dissenting Financial Creditors?

CGRF Bureau

The provisions of IBC do not say how a resolution plan should look like. Nor does it give any rigid contours for the resolution plan. However, certain minimum requirements have been specified in the Code in respect of a resolution plan and obligations have been cast upon the Resolution Professional to examine if the plan addresses those requirements. In other words, the structure of a resolution plan has been left open.

The IBBI (IRPCP) Regulations provide for certain mandatory contents that a resolution plan should include. While certain obligations are cast upon the resolution applicant (RA) by way of mandatory contents of the resolution plan, the resolution professional (RP) is required to examine the resolution plans for certain compliances.

It is interesting that these provisions are evolving over the last four years. One such aspect of what a resolution plan should provide is with regard to payment of operational debts and debts due to dissenting financial creditors. An attempt is made to analyse the provisions relating to allocation of resolution plan amount to operational creditors and dissenting financial creditors in practical situations.

What is expected of the Resolution Applicant

Reg.38 of IBBI (IRPCP) Regulations lays down the mandatory contents that the resolution plan should include:

- The operational creditors shall be paid in priority over financial creditors
- Dissenting financial creditors shall be paid in priority over assenting financial creditors
- A statement as to how it has dealt with the interests of all stakeholders

There are a few other mandatory contents but for the purpose of our discussion, we limit ourselves to the above requirements.

Responsibility of the Resolution Professional

The Code casts upon the RP certain responsibilities when he considers the resolution plans and puts them up to the Committee of Creditors for its approval. Such responsibilities relate to minimum amounts to be allocated to operational creditors and dissenting financial creditors, apart from various other requirements. The relevant provisions of Sec.30(2)(b) of IBC which was amended with effect from 16th August 2019 are given below:

"The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

a) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

*b) Provides for the **payment of debts of operational creditors** in such manner as may be specified by the Board which shall not be less than –*

i) The amount to be paid to such creditors in the event of liquidation of the corporate debtor under Sec.53; or

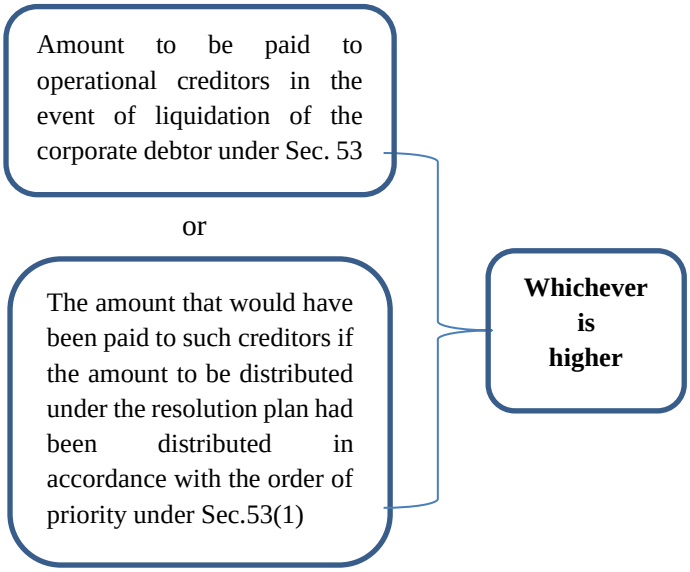
ii) The amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Sec.53(1), whichever is higher; and

*provides for the **payment of debts of financial creditors, who do not vote in favour of the resolution plan**, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with Sec.53(1) in the event of a liquidation of the corporate debtor.*

Explanation 1: For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors." (emphasis supplied)

Amount payable to operational creditors:

Stated simply, the operational creditors should be paid **at least** the higher of the following two amounts:



Amount payable to dissenting financial creditors:

Regarding financial creditors who do not vote in favour of the resolution plan, the provision states that the amount payable to them shall not be less than the amount to be paid to such creditors in accordance with Sec.53(1) in the event of liquidation of the corporate debtor.

Now, to understand the practical issues that could come up while considering a resolution plan, let us have a look at the following scenarios: (Rs in crores)

Liquidation Value			150	150
Resolution Plan Amount			125	175
		Liquidation Value Payable		
			Allocation	
	Claims / Dues			
CIRP Costs	5	5	5	5
Assenting Financial creditors (secured)	100	100	100	100
Operational creditors- workmen and employee dues	5	5	5	5
Dissenting financial creditors (unsecured)	20	20	15 **Note-1**	20
Related party financial creditors (unsecured)	20	20 **Note-2**	NIL	NIL **Note-2**
Operational creditors- statutory dues -2 years preceding CIRP	10	NIL	NIL	10
Operational creditors – trade payables (other than workmen, employee dues – unrelated parties	60	NIL	NIL	15 (+ 20?)
Related party operational creditors	30	NIL	NIL	NIL **Note-3**
Total Amount	**250**	**150**	**125**	**175**

Note 1: The amount payable to dissenting financial creditors (they being unsecured) as per liquidation value is Rs.20 crores. But the resolution plan amount being lower than liquidation value, only Rs.15 crores has been allocated by the resolution applicant. Whether this allocation is in violation of Sec.30(2)(b) is a question. However, if the CoC approves this resolution plan applying its commercial wisdom, whether Adjudicating Authority has jurisdiction to reject the resolution plan?

Note 2: There is no mandatory provision under IBC to pay related party financial creditors. Hence, no allocation has been proposed in the plan. However, in the event of liquidation, a related party financial creditor will have a right as per Sec.53(1) to get payments if available under the waterfall mechanism. It may be noted that in scenario 2, the amount payable to related party financial creditors will be Rs.20crore and amount payable to operational creditors will be Rs.15crores. However, RA is not under compulsion to pay related party financial creditors and hence there could be flexibility in allocation of plan amount.

Note 3: There is no distinction provided in IBC for an operational creditor as to whether they are related parties or otherwise. However, applying the principles followed for a financial creditor wherein the related party financial creditors cannot have the right to attend and vote in the meetings of Committee of Creditors, a reasoning could be ascribed that a related party operational creditor cannot also rank on par with an unrelated operational creditor. When the resolution plan amount is more than the liquidation value, the operational creditors are required to be paid the higher of the value what they would get as stated above. If the resolution plan does not provide the minimum amount as specified above, then, question arises whether the resolution plan is compliant with the provisions of IBC.

The Resolution Applicant's conundrum

The Resolution applicant is having no access to the liquidation value nor does he have an idea who would vote against the resolution plan. Therefore, he would not be able to arrive at the quantum of amount payable to such dissenting financial creditors. Whether the financial creditor dissenting to the resolution plan is a secured creditor or otherwise will also have a bearing on the amount payable as per the waterfall provision of Sec.53(1). Therefore, the only assumption he can make while submitting the resolution plan is that the plan value offered by him could possibly be presumed as the

liquidation value and accordingly the plan is compliant with the provisions of Sec.30(2)(b). The situation becomes critical when secured or unsecured financial creditors vote against the resolution plan with an aim to get a better pay-out in cases where the resolution plan amount is less than liquidation value. This situation could arise as the financial creditors will have access to the liquidation value and the resolution plan amount.

The Resolution Professional's conundrum

The Resolution Professional, who will have access to liquidation value, may not be able to say which CoC member will vote against the resolution plan. He will come to know of dissenting creditors only when the plan is put to voting. Here again, there will be a tricky situation particularly when the resolution plan value is less than the liquidation value and the dissenting creditors are unsecured. Because the amount payable to operational creditors (who rank in priority after the unsecured financial creditors) has to satisfy two limbs as discussed above. How the Resolution Professional can certify the resolution plan in such a situation is a question.

Further, after the plan is approved by the CoC with some dissenting creditors, the allocation of plan value should be revised to meet the provisions of Sec.30(2)(b). While in some of the insolvency resolution cases, the RA is required to undertake that they shall meet the provisions of the Code in respect of dissenting financial creditors, in practice, the resolution plan needs to undergo revised allocation which may have to be again taken note by the CoC before submission to the Adjudicating Authority. Though there is no need to go for voting again of the resolution plan, the CoC should at least ensure revised allocation by RA in order to be compliant with the Code.

Difference between resolution process and liquidation process

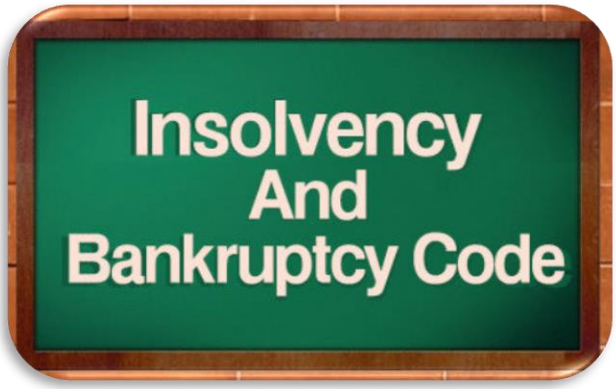
On a holistic reading of Sec.30 of IBC, it is felt that the resolution applicant has freedom to distribute the resolution plan value in accordance with the security interest of the creditors. As decided by NCLT, New Delhi in Rave Scans Private Ltd., Sec.30(2) nowhere provides that each financial creditor must get proportionately equivalent share with other financial creditors. The only condition for approving the resolution plan by the CoC is by the requisite voting share.

Compelling the resolution applicant to comply with Sec.30(2)(b) when he does not have access to liquidation value is a clear case of information asymmetry and for that reason, the resolution plan cannot be said to be not compliant with the provisions of IBC.

Role of CoC and Adjudicating Authority while approving a resolution plan

While approving a resolution plan, the CoC applies its commercial wisdom and considers the feasibility and viability of the plan, the manner of distribution, priority and value of security interest of secured creditors. The Adjudicating Authority's role in approving a resolution plan is to see if the plan meets the requirements of Sec.30(2) and the plan has provisions for its effective implementation.

In DBS Bank Ltd. Singapore Vs Shailendra Ajmera & Another (CA-AT(Ins) No.788 of 2019), the Hon'ble NCLAT decided that no financial creditor can dissent, in spite of plan being feasible and viable, taking advantage of amended Sec.30(2)(b)(ii) just to get more amount than the other secured creditors.



(Image Source: Website)

It may also be noted, to the relief of the RP, that in Arcelor Mittal case the Supreme Court decided that Section 30(2)(e) does not empower the RP to decide whether the resolution plan does or does not contravene the provisions of law. It is the CoC which will approve or disapprove a resolution plan, given the statutory parameters of Sec.30.

It is interesting to note that Supreme Court again decided in Maharashtra Seamless Ltd. case that once the resolution plan has been approved by the CoC, the Adjudicating Authority ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan itself.

Conclusion

It is felt that the provisions of Sec.30(2)(b) were aimed at ensuring that the dissenting financial creditors should get at least the liquidation value while the assenting creditors may get relatively higher amount. This provision was to protect the interest of unsecured financial creditors who are on CoC but offered very small amount or "NIL" amount in the plan as they do not have any security interest. There cannot be a situation where the unsecured financial creditors flexing their muscle just because the liquidation value is higher and therefore, they should get higher amount than what is provided in the resolution plan, in cases where the resolution plan amount is lower than the liquidation value. In a CoC where the unsecured creditors constitute a major voting share, this kind of a situation could further complicate things as they could demand a better deal to approve a resolution plan.

Another aspect of importance is that the liquidation value is only a reference point for the CoC when a resolution plan is considered by them for approval. Even in the liquidation process, the liquidator can revise the reserve price if the auction fails. Hence, the provisions of Sec.30(2)(b) should not be rigidly seen while approving a resolution plan for compliance and a holistic view taken by the CoC should be respected. It fact, since the RA is interested in running the corporate debtor they may also be requirement of additional investment towards working capital, modifications etc., and therefore even if the resolution plan value is lower than the liquidation value, the plan may still be approved by the CoC in their commercial wisdom.

Uberrima Fidei

An uberrimae fidei contract is a legal agreement, common to the insurance industry, requiring the highest standard of good faith during disclosure of all material facts that could influence the decision of the other party. Uberrimae fidei or "uberrima fides" literally means "utmost good faith" in Latin

Do You Know?

BARBELL Strategy

The Barbell strategy refers to the strategy where the worst outcome is hedged initially and thereafter, the feedbacks are used and the responses are calibrated to come out with better results.

Most of us, when Government of India, announced the first lock down on 25th March 2020 upto 14th April 2020, were a little sceptical as to why such a stringent measure was being taken to fight Covid 19 pandemic. Subsequently the lockdown was extended upto 31st May 2020. During that time slowly the seriousness of the pandemic dawned on the public. It is to be noted that when the third and fourth lockdowns were announced, simultaneously we could see more administrative instructions being issued and economic packages were put in place. On June 4th the Unlock 1.0 guidelines were announced as India recorded more than 2,50,000 COVID-19 cases and 7,200 deaths.

While presenting the Economic survey report for 20-21, Ms.Nirmala Seetharaman summed up the Government of India's strategy by equating it to the Barbell strategy, which normally is used in financial investment, hedging for the worst outcome initially, and updating its response step-by-step via feedback. Like a financial investor who mobilises his financial position to scale up his investments during the high and low of the market, the government used the lockdown period to scale up the necessary medical and para-medical infrastructure for active surveillance, expanded testing, contact tracing, isolation and management of cases, and educating citizens about social distancing and masks, etc.

Court Orders

CGRF Legal Team

(Image Source: Website)

Manish Kumar
vs
Union of India and Anr.
Decided on 19.01.2020
(Supreme Court)

Amendments brought in Section 7, 11 & 32A of the Code by Insolvency and Bankruptcy Code (Amendment) Act 2020 are constitutionally valid.

There were number of Petitions filed before the Hon'ble Supreme Court under Article 32 of the Constitution of India, challenging the constitutional validity of amendments brought vide Section 7, 11 & 32A of the Code, wherein majority of the Petitioners were Home Buyers (Allottee) of Real Estate Projects and a few Petitioners were money lenders of the Real Estate Projects. The Hon'ble Supreme Court dealt these matters together and has upheld the constitutional validity of these amendments brought by Insolvency and Bankruptcy Code (Amendment) Act 2020.

With regard to Amendments in Sec. 7 of the Code:

A new threshold has been declared for Allottees to move an application under Section 7 for triggering the Corporate Insolvency Resolution Process under the Code. The new threshold requires that there should be at least 100 allottees to support the application or 10 per cent of the total allottees whichever is less, wherein earlier even a single Allottee was entitled to initiate CIRP.

The Hon'ble Supreme Court has observed that If the Legislature felt that having regard to the consequences of an application under the Code, when such a large group of persons, pull at each other, an additional threshold be erected for exercising the right under Section 7, certainly, it cannot suffer a constitutional veto at the hands of Court exercising judicial review of legislation.

Further the Hon'ble Bench was of the view that it is not a case where the right of the allottee is completely taken away. The Legislature has only conditioned an absolute right which existed in favour of an allottee by requirements which *"would ensure some certain element of consensus among the allottees"*.

Thus, the Hon'ble Supreme Court has upheld the amendments in Sec 7 of the Code which relate to the new threshold for the rights of home buyers as FCs with the stamp that it cannot be dubbed as either discriminatory or arbitrary and that it is a number which goes to policy and lies exclusively within the wisdom of the Legislature, to be constitutionally valid.

With regard to insertion of EXPLANATION-II in **Section 11 of the Code:**

The contention was that, before the insertion of Explanation II, under Section 11, not only was an application for initiating CIRP by a CD against itself was prohibited in the circumstances referred to in Section 11, but it also contemplated that the CIRP could not be filed by the CD in circumstances covered by Section 11 against another CD.

The Hon'ble Supreme Court observed that, "The intention of the Legislature was always to target the CD only insofar as it purported to prohibit application by the CD against itself, to prevent abuse of the provisions of the Code. It could never had been the intention of the Legislature to create an obstacle in the path of the CD, in any of the circumstances contained in Section 11, from maximizing its assets by trying to recover the liabilities due to it from others.". Also observed that the EXPLANATION-II in Section 11 of the Code warranted a "clarificatory amendment".

The petitioners also contended that the amendment came into force only on 28.12.2019 and, so in respect to applications filed under Sections 7, 9 or 10 of the Code the said Explanation-II will not apply. In this regard, the Hon'ble Supreme Court observed that the insertion of Explanation-II being a clarificatory amendment, is retrospective in nature, thus it will certainly apply to all pending applications.

With regard to insertion of Section 32A of the Code:

Section 32A was challenged, stating that immunity granted to the CDs and its assets acquired from the proceeds of crimes and any criminal liability arising from the offences of the erstwhile management for the offences committed prior to initiation of CIRP and approval of the resolution plan by the adjudicating authority further jeopardizes the interest of the creditors. The Hon'ble Supreme Court observed that the immunity will be available to the new management only if all the conditionalities are fulfilled, important amongst them being the change in the control of the CD

happening through a properly approved resolution plan and no connectivity whatsoever is established with the old management of the CD. The apex court felt that this was needed to attract resolution applicants, who would otherwise shy away from offering reasonable and fair value as part of the resolution plan. The Hon'ble Supreme Court also observed that the extinguishment of criminal liability as far as the CD is concerned and transferring it to the head of the wrongdoers was a much-needed step to the new management of the CD to make a clean break with the past and start with a clean slate. Thus, upholding that Section 32A was necessary and also constitutionally valid.

Considering all the above, the Hon'ble Supreme Court found no basis in the arguments that the changes to the Code violated Articles 19,21 or 300A as portrayed by the applicants and held that Amendments brought in Section 7, 11 & 32A of the Code by Insolvency and Bankruptcy Code (Amendment) Act 2020 are constitutionally valid.

Rajkumar Brothers and Production Pvt. Ltd.
Vs
Harish Amilineni Shareholder and erstwhile Director of Amilionn Technologies Private Limited & Anr.
(Supreme Court) (22.01.2021)

The Corporate Debtor having succeeded, cannot be saddled with the costs of the CIRP initiated at the behest of the Operational Creditor or with the fees of the IRP.

An Appeal was filed by the Operational Creditor challenging the order of the Hon'ble NCLAT directing him to bear the CIRP cost and fees of the IRP.

The Applicant (Appellant) in the instant case is the Operational Creditor (OC) of Amilionn Technologies Private Limited who filed a petition under Section 9 of the IBC before the NCLT, Hyderabad. The Hon'ble NCLT admitted the petition observing that the claim of the OC was undisputed. However, when the matter came up before the Hon'ble NCLAT vide the Appeal filled by the Corporate Debtor, the Hon'ble NCLAT set aside the order of the Hon'ble NCLT, holding that there were pre-existing disputes and ordered as below:

"*the IRP/RP will place particulars regarding CIRP costs and fees before the Adjudicating Authority and the Adjudicating Authority after examining the correctness of the same will direct the Operational Creditor to pay the same in time to be specified by the Adjudicating Authority".*

When the matter was before the Hon'ble Supreme Court, it was of the view that, the CD having succeed, cannot be saddled with the cost of CIRP initiated at the behest of the Appellant or with the fee of IRP, and therefore, upheld the order of Hon'ble NCLAT.

(Image Source: Website)

Skillstech Services Private Limited
Vs.
Registrar, National Company Law Tribunal, New Delhi & Anr.
(High Court of Delhi) (13.01.2021)

The question as to whether the NCLT has the jurisdiction to entertain a particular case or not cannot be determined by the Registrar in the administrative capacity as the same has to be judicially determined.

A Writ Petition was filed before the Hon'ble Delhi High Court against the Registrar of NCLT, New Delhi, for denying the listing of the Petitioner's matter before the appropriate Bench of NCLT, on the ground that the threshold of the pecuniary jurisdiction of the NCLT has now been amended by a notification dated 24th Nov. 2020, from Rs.1 Lakh, to Rs.1 Crore.

The Hon'ble Court was of the opinion that the question as to or not whether the NCLT has jurisdiction to entertain a particular case cannot be determined by the Registrar in the administrative capacity and therefore the Registrar would have to place the matter before the appropriate bench of the NCLT, for the said question to be judicially determined. And that the appropriate bench of the NCLT would have to then take a considered view as to whether notice is liable to be issued in the matter or not.

Thus, the Hon'ble Court observed that the question as to whether or not the notification dated 24th March 2020 applies to a particular petition that has been filed prior to the said notification is also a question to be determined by the Bench of the NCLT and not by the Registrar of the Tribunal and disposed the case directing the Ld. Registrar to place the Sec. 9 Application filed by the Petitioner in NCLT, before the appropriate Bench.

Pratap Technocrats (P) Ltd
Vs.
Monitoring Committee of Reliance Infratel Limited
(NCLAT, New Delhi) (04.01.2021)

Equitable treatment can be claimed only by similarly situated creditors, Operational Creditors are entitled to receive a minimum payment being not less than liquidation value, which does not apply to Financial Creditors.

An Appeal was preferred by the 'Operational Creditors' of Reliance Infratel Limited, Corporate Debtor (hereinafter referred to as 'CD'), against the order passed by the Hon'ble NCLT, Mumbai Bench wherein Resolution Plan in respect of the CD submitted by Reliance Projects and Property Management services Limited, Resolution Applicant (hereinafter referred to as 'RA') was approved.

The order was assailed on the ground that the Appellants were kept unaware of the CIRP of the CD and the progress of Resolution Process regarding disbursal of fund towards their claims.

Hon'ble NCLAT observed that the Operational Creditors other than related parties and Statutory Creditors were allocated 19.62% of the upfront payment of Rs. 3,270 Crores while the Financial Creditors were paid only 10.32% of the upfront payment.
It was held that the Appellants are not justified in claiming that they have been excluded from the Resolution Process proceedings as their claims have been admitted partly.

(Image Source: Website)

Referring to the legal proposition laid down in "Swiss Ribbons Private Limited v. Union of India", the Appellants were held not entitled to the same treatment, as they are different from Financial Creditors and Secured Creditors. It was further pointed out that priority in upfront payment to Operational Creditors cannot be termed unfair or inequitable to the Appellants.

Accordingly, the Appeal was dismissed due to lack of merit.

Kalinga Allied Industries India Private Limited
Vs.
Hindustan Coils Ltd. & Anr.
(NCLAT, New Delhi) (11.01.2021)

The AA has limited power of judicial scrutiny under Section 31 of the I&B Code and the statutory provision does not permit the AA to interfere with the commercial wisdom of the COC. After the Resolution Plan has been opened and fundamentals and financials of the plan and offer made therein were disclosed to all the participants, including RP. No further fresh bid or offer could be accepted or considered.

An Appeal was filed by the Appellant whose resolution plan was approved by the COC and filed before the Hon'ble NCLT u/s 30(6) of IBC.

When the said Application u/s 30(6) was before the Hon'ble NCLT various objections were filed by Hindustan Coils Ltd. seeking direction for consideration of its Resolution Plan claiming to be more than 12% of the plan approved by CoC. The Hon'ble NCLT directed that the proposed plan of the Hindustan Coils Ltd. to be placed before the COC for consideration in its view that the object of the I&B code encourages maximization of the value of assets of the corporate debtor, which is also advantageous to all the stakeholders.

However, the Hon'ble NCLAT held that once the plan is approved by the COC, the statutory mandate of the Adjudicating Authority under Section 31(1) of the I&B Code is only to ascertain whether the Resolution Plan meets the requirements of Sub Section (2) of Section 30 thereof. The Adjudicating Authority has a very limited power of judicial scrutiny and the statutory provision does not permit the Adjudicating Authority to interfere with the commercial wisdom of the COC. Even for maximization of value of the assets of the Corporate Debtor, the Adjudicating Authority is not entitled to overturn the business decisions of the COC.

The Hon'ble NCLAT is directed the Hon'ble NCLT to proceed with the Application filed by the RP u/s 30(6) of the Code, for approval of Resolution Plan.

Harkirat Singh Bedi
vs.
The Oriental Bank of Commerce & Anr.
(NCLAT, New Delhi) (12.01.2021)

The grounds under Section 30(2) or 61(3) of the IBC are regarding testing the validity of the approved resolution plan by COC and not for approving the resolution plan which has been disapproved by the CoC in exercise of its business decision

The erstwhile promoters of the Corporate Debtor, IDEB Projects Private Limited, MSME, was not allowed to submit a resolution plan by the CoC as he was classified as a wilful defaulter in the year 2007 by two banks, namely State Bank of Travancore and Oriental Bank of Commerce, which is one of the criteria specified in Section 29A of the Code while determining the eligibility of the PRA to submit its resolution plan. The applicant had filed a writ petition against the decision of the CoC in the Hon'ble High Court of Karnataka, wherein permission was granted to submit the Resolution Plan on the ground that Section 29A(b) of the Code appears to be prospective in nature. Pursuant to the order of the High Court, a resolution plan was submitted by the erstwhile promoters which was considered by CoC and rejected on the grounds that the resolution applicant was hit by Section 29A of the Code. Since, there was no other viable resolution plan available, the CoC had passed a resolution for liquidation of the company and the same was approved by the Adjudicating Authority on 8th November 2019.Having been aggrieved by the impugned order an appeal was preferred under Section 61 by the erstwhile promoters challenging the grounds of rejection of the resolution plan in spite of the direction of the Hon'ble High Court of Karnataka.

Hon'ble NCLAT had upheld the order of the Adjudicating Authority stating that according to S. 29A(b) of the code, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949. In the instant case, the appellant had been declared as a willful defaulter in terms of RBI and the correctness of the declaration is still pending before the HC. Therefore, RP can only rely on the present status of the applicant and not probe further. Accordingly, the Hon'ble NCLAT declared that the appellant has no locus standi to challenge the order of the AA and dismissed the Appeal.

The appellate tribunal had also clarified that the provisions of the Code has not empowered the tribunal to test the validity of the commercial wisdom of the CoC on approving or disapproving a resolution plan submitted, thus, dismissing the instant appeal.

Saboo Tor Private Limited
Vs.
Mr. Sanjay Gupta, Liquidator & Anr.
(NCLAT, New Delhi) (18.01.2021)

Where the Liquidator is justified in forfeiting the Earnest Money Deposit, the Successful bidder cannot turn around and ask for refund, after failing to comply with the terms and conditions of the Auction agreement with regard to payment of balance sale consideration.

An Appeal was filed against the order of the Hon'ble NCLT -Principal Bench, New Delhi, which dismissed the Application filed by the Applicant, seeking refund of the Earnest Money Deposit (EMD), remitted by the Applicant to participate in the Auction.

When the matter was before the Hon'ble Tribunal, it observed that the Applicant was declared as the Successful Bidder by the Liquidator and was required to remit the balance consideration towards the sale of the Auctioned Property belonging to the Corporate Debtor. On failing to make the balance payment, despite providing sufficient time and several reminders to the Applicant/ Successful Bidder, the Liquidator had forfeited the EMD.. The Hon'ble Tribunal dismissed the application as misconceived stating that, "When law is very clear and the applicant has entered into the bidding process based on the terms and conditions in the bidding documents, today the applicant cannot turn around and ask for refund after failing to comply with the terms and conditions of the agreement,"

The Hon'ble NCLAT, on taking note of documentary evidence, also observed that sufficient opportunity was provided to the Appellant by the Liquidator to remit the balance consideration. Thus, upheld the Order of the Hon'ble NCLT and dismissed the Appeal.

Ravindra Chaturvedi (Liquidator of Excel Glasses Ltd.)
Vs.
Kopran Ltd
(NCLAT, Chennai) (25.01.2021)

The remarks of the Adjudicating Authority scarring the Liquidator as a tainted person cannot be supported.

An Application was filed by Kopran Ltd (Unsecured Financial Creditor of Excel Glass Limited) for impleading itself as a party in all the Applications filed by the workmen/employees, in order to avoid multiple intervention applications. The Application came to be dismissed at the hands of Adjudicating Authority, (NCLT Kochi Bench) in terms of impugned order dated 10.12.2020 on the ground that the same was not maintainable.

While disposing of the matter, the adjudicating authority made the following observations and remarks against the liquidator:

> *"24. Further, from a reading of the reply of the Liquidator, it is seen that there is a collusion by the Liquidator with the applicant M/s Kopran Limited in filing the present MA in order to defeat the rightful claims of the ex-workers of their legitimate dues. This will be clear from the*

counter filed by him in the present MA. The Liquidator can make the legitimate payment of the applicant Kopran Limited but that should not be at the costs of the workmen of Excel Glasses Limited."

Against the above remarks of NCLT, an Appeal was filed by the Liquidator. The Hon'ble NCLAT observed that even raising an adverse inference may be justified but branding somebody as a collaborator in an act of commission to defeat the legitimate rights on that score would not be justified. It was further stated that deviation from the procedural requirements would not tantamount to an act of misconduct of such magnitude which would scar a person for life.

It was held by the Hon'ble NCLAT that the conclusion in regard to there being collusion between the liquidator and the applicant is not justified and that the remarks of the Adjudicating Authority scarring the Liquidator as a tainted person cannot be supported.

Accordingly, it was directed that the above quoted lines from the impugned order shall stand expunged and shall be deleted from the record.

(Image Source: Website)

POSCO India Pune Processing Centre Pvt Ltd
vs.
Dhaval Jitendrakumar Mistry RP for Poggenamp Nagarsheth Powertronics Pvt Ltd
(NCLT Ahmedabad) (06.01.2021)

The Corporate Debtor cannot be treated as MSME and cannot take the benefit of MSME when on the date of filing an application under section 9 of the Code Corporate Debtor does not fall under the criteria of MSME.

M/s Poggenamp Nagatsheth Powertronics Private Limited, Corporate Debtor, was admitted into CIRP on 22.01.2020. During the course of CIRP, the Resolution Professional on the request of the management had registered the CD as a MSME vide the notification of Government on new criteria classification for MSME dated 01.06.2020. EOI was issued pursuant to which a list of PRAs were shortlisted, which included the erstwhile promoters and the applicant in the instant case. The applicant had raised objections stating that RP had not disclosed the status of the CD being MSME in Information Memorandum and the erstwhile promoters were eligible to submit their plan.

AA held that the RP while discharging his duty has failed to adhere to the provisions of the Code i.e., Section 25, which does not give any power to RP to change the nature and character of the CD during the CIRP period.

It was also clarified by the Adjudicating Authority that if on the date of filing of application under the Code the CD was not a MSME, the position of the CD cannot be changed with retrospective date and thereby disposed the matter.

Breaking News- Union Budget 2021

The Ministry of Corporate Affairs vide its Notification No.G.S.R.92(E) dated 1st February 2021 has amended the definition of Small Company:

Small Company means a company, other than a public company, —

(i) paid-up share capital of which shall not exceed two crore rupees, or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year shall not exceed twenty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Provided that nothing in this clause shall apply to—

A. a holding company or a subsidiary company;
B. a company registered under section 8; or
C. a company or body corporate governed by any special Act;

The above-mentioned definition is effective from 1st April 2021.

(Section 2(85) of Companies Act, 2013)

The **Chennai Bench of National Company Law Appellate Tribunal (NCLAT) has commencement functioning on 25th January 2021through Virtual Mode.** Therefore, the filing of Fresh Appeals against the orders of the Benches of the National Company Law Tribunal having jurisdiction in respect of States of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, and Telangana and Union Territories of Lakshadweep and Puducherry shall be made before the Chennai Bench of NCLAT w.e.f. 25th January 2021.

Do you Know!
Union Budget 2021 – Boost for One Person Companies (OPC)

The Ministry of Corporate Affairs vide its Notification dated 1st February 2021 has amended the Companies (Incorporation) Rules, 2014 as follows:

- NRIs are allowed to start and can be Nominee of an OPC.
- No restriction in Share Capital and Turnover of the OPC.
- No restriction in voluntary conversion of OPC into a public company or a private company.
- Presence of 120 days in India in a year is enough to start an OPC as a resident in India.

(Section 2(62) of Companies Act,2013)

KIND ATTENTION!!

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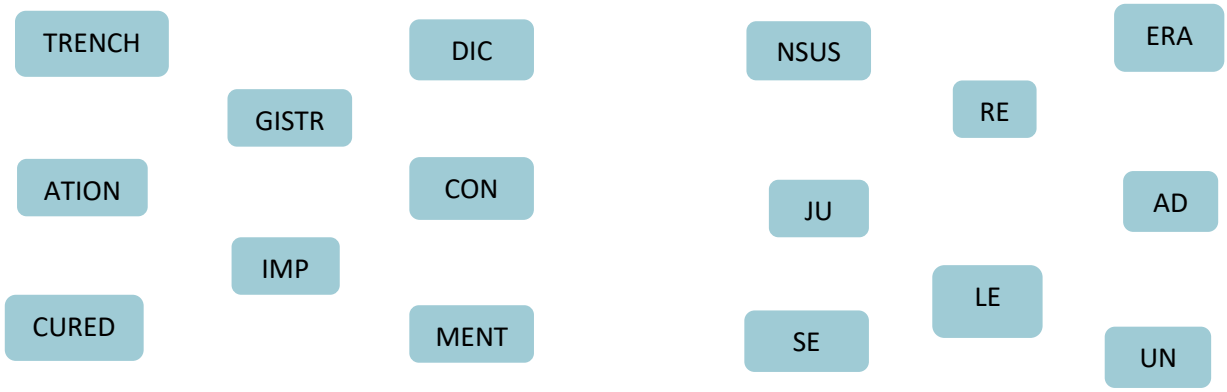
Your materials for publishing may please be sent to create.and.grow.research@gmail.com in 'MS Word'.

Find the words!!

CLUES	WORDS
1. Act of enrolling	
2. Not protected	
3. A formal judgement on dispute	
4. The process of putting a decision or plan into effect	
5. Complete removal of something	
6. Agreeing by a group	
7. Reduction of manpower	

Note: The below group of letters can be used repeatedly for different clues



Answers:
1. Registration 2. Unsecured 3. Adjudication 4. Implementation 5. Eradication 6. Consensus
7. Retrenchment

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