CGRF

SandBox®

January 2022

Volume 3 | Issue 1

Start-ups

CGRF®

Create & Grow
Research Foundation

INDEX

திருக்குறள்: 703
குறிப்பிற் குறிப்புணர் வாரை உறுப்பினுள்
யாது கொடுத்தும் கொளல்.

தமிழ் உரை:
தன் மனச்சிந்தனையால் பிறர் மனக் குறிப்பை அறியும் அறிஞர் விரும்பி வேண்டுவதைக் கொடுத்தாவது அவரைத் துணையாகக் கொள்க.

Explanation:
Secure the services at any cost of those who can read others' minds just by observing them.

From the Editor's Desk

Dear Readers of CGRF SandBox

It gives me great pleasure to start the New Year 2022 with a communication to all the esteemed readers of SandBox.

The long week-end in January 2nd week coincides with Pongal in Tamil Nadu, Makara Sankaranthi in many other States, Lohri in North India and Bihu in North East. These festivals signify the onset of harvesting season and bring with them the prosperity as well as propensity to spend on good things. **“தை பிறந்தால் வழி பிறக்கும்”** *(Thai piranthaal vazhi pirakkum)* is extensively used in Tamil Nadu connoting that a lot of positive opportunities and solutions emerge in the auspicious Tamil month of “Thai” which starts from 14th January. Well, in the context of business community as well, many new ventures are planned to start in this month. Even, a lot of weddings are normally lined up in this month, as it is considered auspicious.

January 16th National Start-up Day

The governments are increasingly recognising the importance of nurturing start-ups as they hold the key for increased employment, wealth generation and above all, an inclusive growth. It is heartening to see the success of Indian start-ups in the recent months. More than 40 Indian start-ups are said to have turned unicorns (business valuation exceeding USD 1 Billion) during the year 2021. Meesho, Acko, Razorpay, Vedantu, Zeta, Cred, Pepperfry, Groww, Upstox, Apna are just a few examples of successful start-ups leading the pack. And the total number of Indian unicorns is nearing 100. Many more startups like Arya.ag, IndMoney, Chingari are also expected to breach the coveted USD 1 Billion in 2022. In this context, it is a befitting gesture that January 16 is celebrated as **“National Startup Day”** in tune with the good times believed to start from January 14th every year.

Start-ups in several sectors

Unlike a few years ago, the start-ups are now present in several wide-ranging sectors like agriculture, edu-tech, e-commerce, fin-tech, B2B services, entertainment, talent hiring, personal comforts, etc. What they bring to the table is cutting edge technology to add value to the customers or remove their pain points. The recent success stories of start-ups sourcing public funds through IPO have only added to the prospects of generous funding available for right ventures. Yes, there is no dearth of funds for the deserving start-ups. As soon as the start-ups gain access to funds, they scorch the market with huge ad spends, hiring spree and rewards for talent acquisition and retention. Their success go well to encourage more young entrepreneurs to innovate, challenge and disrupt the status quo.

But, please remember, all start-ups don't succeed. Many face failure. Only those ideas which have the potential of touching a larger spectrum of people have the prospects of succeeding. Therefore, it is essential to cast a wider net to encourage more start-ups to emerge.

Be that as it may, are we doing enough to a create a good supporting eco-system for nurturing start-ups? Are the State and Central laws start-up friendly? Innovation being the central theme of start-up ventures, commercial success is not guaranteed unless large scale replication of the benefit is ensured. Well, it is hoped that the governments will bring in lot more liberal regulations to encourage more start-ups to bloom in the coming years, as they are the seeds for the growth of the economy!

Plight of shareholders in IBC process

Shifting to the other end of the corporate life-cycle, the Insolvency and Bankruptcy Code has made its presence felt by inculcating credit discipline in corporates. In the first five years of its journey, significant progress has been achieved by IBC though the huge time taken to achieve a resolution or liquidation has come under severe criticism. The role of shareholders in an IBC process has been relegated to the background and in fact, an express provision in the Code says the approval of shareholders is deemed to be given for the purpose of implementation of a resolution plan. By the terms of a resolution plan, the entire holding of existing shareholders can get extinguished to give way for the new promoters. The plight of shareholders during IBC process is examined in an article in this Issue of SandBox.

Also, a few more articles of relevance to current environment like Tokenisation of Card transactions, Cryptos and interest rates for senior citizen are finding place in this Issue.

Wishing the readers a very successful 2022 and pledging our support for all Start-ups.

Yours truly

S. Rajendran

Payment System – TOKENISATION – A Safety Measure

S. Venkataraman
Chief General Manager (Retd.) SBI
Insolvency Professional

The technological advancements, across spectrum, which is sweeping the world is changing the way we live and also our livelihood. Information Technology enables sophisticated product development, better market infrastructure, implementation of reliable techniques for control of risks and helps the financial services segment including the financial intermediaries to reach geographically distant and diversified markets. Internet has significantly influenced delivery channels of banks and other financial service providers. Through the digital mode, India's vibrant payment ecosystem has gained unbelievable momentum and has grown leaps and bounds over the past few years. Going forward, it is expected to grow exponentially within a short period of time.

Amid Covid, India has been the home to the highest number of real-time online transactions in the year 2020 ahead of many advanced countries such as China and the US. India, in 2020, processed 25.5 billion real-time payments transactions followed by China at a distant 15.7 billion. Other major countries real-time payment transactions were, 6 billion -South Korea, 5.2 billion - Thailand, 2.8 billion - UK and 1.2 billion - USA.

The value of digital payments in India is expected to grow three-fold to touch $1 trillion by the financial year 2026, compared to $300 billion recorded in the financial year 2021. The penetration of internet even in the remotest area, growing smartphones usages, and progression of biometric identities together have fuelled the rapid growth of online payment system. The growth journey in this direction has been profoundly supported by the State and Central governments, regulators, banks, and also the fast growing fin-tech firms which in turn has resulted in greater financial inclusion and faster digitisation of payments systems for the benefit all.

The surge of online platforms (e-commerce, OTT, etc.) coupled with 'hassle-free' payment channels (i.e., digital wallets, UPI, credit cards, etc.) has pushed the Indian user to transition to online payments for their everyday requirements. We all know that the use of Unified Payments Interface (UPI) across the country has enabled our Country's digital transactions to jump over 20 times in the last few years and the financial markets are now operational for 24*7*12 (hours, days and months) with anytime, anywhere facilities.

Regulatory oversight

For long, there has not been much of regulatory oversight over digital transactions by the RBI. As the volume of digital transactions kept increasing, so did the level of fraud, unethical and illegal behaviours. With the profound increase in usage of digital channels for payments, during the COVID pandemic, attempts of digital fraud have been on the rise in our Country compared with the rest of the world. Customers have been relying on digital channels to do business on account of local restrictions and fear of COVID spread. According to a report by global information and insights company TransUnion, the share of suspected fraudulent digital transaction attempts originating from India increased 28.32 percent over the 12 months ended March, 2021 compared with the previous 12 months. In India, across industries, TransUnion found that the highest share of suspected digital fraudulent transactions originated from Mumbai, Delhi and Chennai.

To strengthen the oversight, the RBI has decided to implement changes to curb payment frauds. Introduction of payment data localisation, prescribing norms for undertaking recurring payments on online platforms, guidelines to regulate payment aggregators and payment gateways are some of such measures. RBI's intent is to regulate digital payments to secure user's interest.

The RBI had planned to introduce the requirements for deletion of card data, by entities in the transaction chain, and transitioning to tokenisation of card details with effect from January 1, 2022. However, at the request of many of the stakeholders, involved in the chain, implementation date is now shifted to July 1, 2022.

Tokenisation – Developments

The RBI permitted card tokenisation from January 2019, by card networks (e.g., Visa, Mastercard, etc.) for any token by a requestor. Tokenisation involves replacing actual card details with a 'token' (i.e., a number which is the combination of elements involved in tokenisation (such as device ID, token requestor ID and merchant). This facility has to be made available for mobile phones, tablets, laptops, computers, etc., of interested card holders.

The RBI's intention is to protect card data; this can be traced to the Guidelines on Regulation of Payment Aggregators ("**PAs**") and Payment Gateways ("**PGs**") issued in March 2020. An increasing number of transaction frauds and data breaches were linked to data stored with merchants and PAs. These guidelines required PAs and merchants to cease storage of card data of end-users. This move even though entails inconvenience to card users, as each user will have to add their card credentials prior to each transaction compared to the existing system of using stored card information. Despite the inconvenience to users, keeping user's safety as paramount objective, the RBI remained firm and reiterated its stand that merchants and PAs cannot store card data, irrespective of compliance with the Payment Card Industry Data Security Standard (PCI-DSS) and all have been advised to implement workable solutions such as tokenisation. As per RBI guidelines

- No entity in the card transaction/payment chain (apart from card network and issuers) can store actual card data. Any card data stored is to be deleted.
- Only the last 4 digits of the card number and card issuer's name may be saved for the limited purpose of transaction tracking / or reconciliation purposes.

Understanding Tokenisation

a) What is Tokenisation

Tokenisation replaces a sensitive data, for example, card number, with a non-sensitive substitute, known as a token. The token is a randomized data string that has no essential or exploitable value or meaning. It is a unique identifier which retains all the pertinent information about the data without compromising its security. A tokenisation system links the original data to a token but does not provide any method to decipher the token to reveal the original data. This is in contrast to encryption systems, which allow data to be decrypted using a secret key. The actual (real) data is kept in a separate location, such as a secured offsite platform. Under this system the real data does not enter any other IT environment. If an attacker even penetrates the environment and accesses the tokens, they will gain nothing as they can't obtain the real data. Thus, it is expected that the tokens cannot be used for any fraudulent activity.

b) How do payment tokens work

In credit card tokenisation, the customer's primary account number (PAN) is replaced with a series of randomly-generated numbers, which is called the "token." These tokens can then been passed through the internet or the various wireless networks needed to process the payment without actual critical details being exposed. Tokenisation of data, safeguards credit card numbers and bank account numbers in a virtual vault, so organizations can transmit data via wireless networks safely. For tokenisation to be effective, organizations must use a payment gateway to safely store sensitive data.

A payment gateway is a merchant service offered by an e-commerce application service provider that permits direct payments or credit card processing. This gateway stores credit card numbers securely and generates the random token.

When a merchant processes the credit card of a customer, the PAN is substituted with a token i.e., *63427850098531* is replaced with, for example, *29864251103237*. The merchant can, then apply the token ID to obtain records of the customer, for example, *29864251103237* is connected to 'X'. This token is then transferred to the payment processor who de-tokenizes the ID and confirms the payment i.e.,29864251103237 becomes 63427850098531. The payment processor is the only party who can read the token which is meaningless to anyone else. Furthermore, the token is useful only for that single merchant.

c) General Benefits of Tokenisation

The goal of an effective tokenisation is to remove any original sensitive payment or personal data from the business systems, replace each of such data with an undecipherable token, and store the original data in a secure environment. Tokenisation can provide several important benefits for securing sensitive customer data:

- **Enhanced customer assurance** — tokenisation offers an additional layer of security for e-commerce websites, increasing consumer trust.

- **Increased security and protection from breaches**—by using tokenisation, businesses do not have to capture sensitive information in their input terminals, keep it in internal databases, or transmit the data through their information systems. This safeguards businesses from security breaches.
- **Tokenisation makes card payments more secure**—the payment card industry needs to comply with extensive standards and regulations. Tokenisation solutions provide a way to protect cardholder data, such as magnetic swipe data, primary account number, and cardholder information.

d) What is Detokenisation?

Detokenisation is the reverse process, exchanging the token for the original data. Detokenisation can be done only by those involved in the tokenisation system. Otherwise, there is no way one can obtain the real details from just the token.

(Image Source: website)

e) **Is tokenisation safe?**

Although no technology can guarantee prevention of any data breach, a properly built and implemented cloud based tokenisation platform, can prevent the exposure of sensitive data, stopping attackers from capturing any type of usable information—financial or personal. "Usable information" is the key here. Tokenisation is not a security system that stops hackers from penetrating the networks and information systems. There are many other security technologies designed for that purpose. Rather, it represents a data-centric approach to security that adheres to "zero trust" principles.

We all know that no defence has proven to be impenetrable. Whether through human error, malware, phishing emails, or brute force, cybercriminals have many ways to prey on vulnerable section. In many cases, it's a matter of when—not if—an attack will succeed. The advantage to cloud tokenisation is there is no information available to steal when the inevitable breach happens. Because of this, it virtually eliminates the risk of data theft.

Conclusion

Tokenisation is a global best practice aimed at preventing visibility of card details to any entity apart from the card holder and card network/issuer. In the interest of security, RBI's measure is a welcome move for all stakeholders especially the gullible card user.

The foremost reason for deferment of introduction of tokenisation (which was originally slated to be introduced from 1-1-2022) was the unpreparedness relating to technological infrastructures by some of the stakeholders involved in the transaction chain (issuers, acquirer banks, etc.) Merchants have to develop options to allow end-users to de-register the tokens, card issuers have to develop facilities that enable end-users to view the list of merchants that they have registered a token with, and in parallel token service providers have to install mechanisms to ensure origination of a transaction request is from a merchant and a token requestor with whom such token is associated. In many instances, this may require redesign of current technology and product offering in the payment industry.

It is also expected that all stakeholders are to devise alternate mechanisms to handle recurring e-mandates, EMIs, etc., and post transaction activity (e.g., dispute resolution, chargebacks, etc.) that involves/ requires storage of card-on-file data by entities other than card issuers and networks. We hope that the issues faced by all the stakeholders would be resolved, in complete coordination with the RBI, in the next six months to roll out tokenisation to protect the interest of the card users.

Legal Maxims

JUS DICERE

To declare the law. This word is used to explain the power which the court has to expound the law; and not to make it.

Bitcoin turns 13: A take on the headline-making cryptocurrency

Shreyansh Jain, MBA(IIM Bangalore)

Introduction

It has been 13 years since 3rd January 2009 - the date when the "*Bitcoin network*" first went live. Much like the death-defying heroes of movies, Bitcoin has come back from the dead, not once or twice, but 436 times. And, like movie heroes, Bitcoin regularly makes headlines too, thanks to its volatile valuation. At the time of writing, one Bitcoin is valued at USD 49,305.00, up from nothing but a few hundred dollars back in its early days. The following exhibit (Exhibit 1) illustrates this meteoric rise.

Exhibit 1: Price of 1 Bitcoin in USD *(Source: CoinGecko)*

Such meteoric rise seldom goes unnoticed, and Bitcoin invariably finds itself in the headlines for a host of reasons, ranging from a simple tweet from famous entrepreneurs, all the way to institutional investments in the cryptocurrency. Retail investors, especially in India, find themselves fascinated by such a meteoric rise in valuation, sometimes not knowing the risks that it carries. But what is so unique about Bitcoin, that is driving all of this frenzy? This article attempts to throw light on Bitcoin's viability - both as an asset and as a currency.

What is Bitcoin?

First, one needs to understand what Bitcoin is not. These days, a lot of articles on Bitcoin have the image shown in Exhibit 2.

Exhibit 2: Contrary to news article portrayals, Bitcoin is NOT a physical coin

(Image Source: website)

Bitcoin is not a physical coin as you see in exhibit 2. It is a **digital** form of currency, stored as -binary code - bits (0s and 1s) inside computers. One cannot physically touch a bitcoin and bitcoin does not exist outside of the digital world. Bitcoin is one of many such digital currencies.

To fully understand Bitcoin, one must refer to the original white paper published by its pioneer and founder - Satoshi Nakamoto. The same can be accessed using the link https://bitcoin.org/bitcoin.pdf. This article will touch upon the highlights as under:

To put it in a nutshell, one can think of Bitcoin much like a digital currency that can be **transferred from one person to another via computers, not physically**. But what makes it special and different from a normal bank transfer of a currency like USD or INR? Some of these unique attributes are:

1. With Bitcoin, there is ***no need for a central authority to validate a transfer***. Bitcoin transactions are stored on a digital ledger whose copies are distributed on various computers that may belong to different people throughout the world. So, if someone tries to falsify the number of Bitcoins they hold when they do a transaction, the copies of previous transactions on various machines will catch that attempt and prevent it from happening.
2. Bitcoins are ***neither created nor circulated by central banks*** like the Fed / RBI. Instead, Bitcoins are **"mined" by individual computers**. Here, mining is a process involving maintaining

the copies of the digital ledger. Miners are rewarded Bitcoins for mining.

3. There are a ***fixed number of Bitcoins*** (21 million). Unlike national currencies which are freely printed by the Central Banks (like Fed/ RBI), Bitcoins cannot be freely created. This caps the Bitcoin supply.

How does Bitcoin fare as a currency?

Fundamental economic theory suggests that currency should meet the following three (3) criteria to function as "money". Without meeting all of these, the currency fails, and people move to alternative currencies. The following is an attempt at evaluating Bitcoin on each of these three criteria:

1. **Can it act as a medium of exchange?** The currency must be usable to buy goods and services. Traditionally, one can use the national currency (for example INR in India) to buy goods and services like, say, ordering some food or buying a car.
   a. How does Bitcoin fare? To be viable as a currency, Bitcoin must be accepted for such transactions. However, with recent developments, the world seems divided on Bitcoin as a medium of exchange. Some countries accept bitcoins as payment while others do not. It is reported that India, for instance, plans to ban Bitcoin as a payment method.

2. **Can it act as a unit of account?** The criteria here states that money should be equally divisible without loss of value, money should be verifiable, money should be countable and money should be fungible.
   a. How does Bitcoin fare? Bitcoins are divisible without much loss in value as per the white paper by Satoshi Nakamoto. Bitcoins are fungible - i.e.,1 Bitcoin can be exchanged for another. Bitcoins are verifiable owing to the verification algorithm on which they run. However, there are many concerns on this verification algorithm & mining algorithm being power consuming and detrimental to the environment.

3. **Can it act as a store of value?** This criteria states that there must be capability to store, save and retrieve money in a reliable manner. Also, its value must remain stable over time.
   a. How does Bitcoin fare on this criteria? Although Bitcoin can be reliably saved, stored and retrieved, its value raises questions. For one, its value has not been too stable as per Exhibit 1. Plus, there are concerns around mining concentration - whereby, a few powerful computers built in areas with subsidised electricity are doing the majority of mining and hence controlling Bitcoin value.

Can the Bitcoin price stabilise in the future? Can the mining centralisation problem be solved? Will governments allow Bitcoin as a mode of payment? Can environment-friendly ways of mining be invented? Only time will tell. As a user, one needs to be aware of these risks that the currency poses, before dealing in Bitcoin.

How does Bitcoin fare as an asset?

Economic theory looks at assets as **anything with economic value that has the ability to produce future cash flows or benefits**. For example, when one invests in a company's equity, one expects to be paid dividends from the company's profits in the future ("Cash flow to the investor"). With Bitcoin, many experts argue that it can be used as an effective hedge against inflation. However, Bitcoin price volatility and lack of regulatory authority raises questions on it's long term stability as a reliable asset class.

What lies ahead in digital payments

With Bharat Bill Pay (NPCI), the Government of India and RBI have taken steps in the right direction - recognizing that digital payments are the key to the future of payments. The government has also made it quicker and cheaper to make these payments with the use of technology. Traditionally, credit card/ debit card payments involve multiple intermediaries and charges. A secure digital payment system can avoid these charges. Moreover, with a central authority to settle disputes and prevent money laundering, India's digital payments solution can potentially trump crypto currencies' lack of central regulatory authority.

It will therefore be very interesting to understand the government's and RBI's stand on crypto-currencies and its plans for a **native digital currency** in the crypto bill which is likely to be introduced in the Parliament in the next session. Above all, investors must understand the fundamentals and risks of investments they make, and Bitcoin is no exception to that.

Offer Higher Interest Rates on Deposits to Senior Citizens

Hargovind Sachdev
General Manager (Retd.) SBI

“Interest is a case of reward over financial matter; if you don't mind it, it doesn't matter!"

India's annual budget is under preparation for approval by the parliament. Various interest groups pursue the Finance Ministry to redress their demands for facilities, exemptions, concessions, and funding for projects that impact their well being. Senior citizens are also in the queue. They seek a hike in interest rates on deposits, their solitary source of survival during the prohibitively costly pandemic era.

With deposit rates heading south and the cost of living zooming north, senior citizens want the Government to ensure that they get at least 100-200 basis points higher interest rates on their deposits over and above banks' prevailing card rate to make ends meet.

Senior citizens have long been sacrificing their share of the yield of interest on hard-earned savings of life for the nation's development. They accept low-interest rates to enable banks to pass on the benefits to Corporates, Exporters, and MSME segments, by keeping the cost of borrowings artificially low. As per the RBI report, the weighted average domestic term deposit rates on outstanding rupee term deposits of scheduled commercial banks has come down by 3.72 % from 8.76 % in November 2013 to 5.04 % in November 2021. Due to modest interest paid on deposits, the loans to borrowers have moderated comfortably. But senior citizens have suffered silently.

This cross-subsidization is morally acceptable if the funds provide genuine utilization for productivity enhancement and employment generation. With the financial assets of banks collapsing by the hour clock, mainly due to the greed and diversion of funds by some aspirational people in business dreaming overnight enrichment, the gambit needs a fresh look. The legal system has been tirelessly plugging loopholes to bring sanity to the system. The Reserve Bank of India has to redeem itself as a regulator of interests of each stakeholder in the financial ambiance.

With over ten lacs crores of funds of banks locked up in the vice grip of NPAs, the demand for ending the honeymoon of cheaper funds to businesses with inadequate integrity stands justified. The time to offer differential interest rates to the Senior Citizens has arrived and needs to be addressed by the authors of the Union Budget.

The theory of evolution of "Interest" also justifies the elders' claims. According to historian Paul Johnson, "food money" was frequently lent in various civilizations since 5000 BC. Since the acquired seeds and animals could reproduce themselves, the argument accepted to justify interest.

(Image source: website)

The charging of compound interest dates roughly 2400 BC. The annual interest rate was around 21%. High interest was necessary for the development of agriculture and essential for urbanization. In the medieval economy, people availed of loans due to necessities like bad harvests or fire in a workplace. Under such extreme conditions, it was morally reproachable to charge interest.

In the Renaissance period, distances shrunk due to greater mobility of people facilitating enhanced commercial activity and the emergence of the opportunities appearance of appropriate conditions for entrepreneurs to start new, lucrative businesses. Since borrowed money was no longer strictly for consumption but for production, people no longer viewed charging interest in low esteem.

The Banque de France attempted to control interest rates by manipulating the money supply in 1847.

In Banking, the rate of interest is the cost of capital. In a free-market economy, interest rates are subject to the law of supply and demand of the money supply. Interest is payment from a debtor or bank to a lender or depositor of an amount above the amount borrowed at a special rate.

It is different from a fee which the borrower may pay the lender. It is also separate from a dividend paid by a company to its shareholder owners from profits or reserve, but not at a particular rate decided beforehand, instead of as a share in the reward gained by risk-taking entrepreneurs when the revenue earned exceeds the total costs.

Interest differs from profit. Interest is a monetary gain to a lender, whereas profit goes to the owner of an asset, investment, or enterprise. The interest rate, expressed in percentage, equals the interest paid or received over a given period divided by the loan amount lent or borrowed.

For offering higher deposit rates, the Government could incentivize Banks by either giving them tax concession or lowering the deposit insurance premium they pay on senior citizens term deposits, say experts. Banks should pay higher differential interest on deposits to senior citizens and stop cross subsidizing the borrowers.

Rightly said, "In the end, it's not the total deposits in your Bank account that count. It's the monthly interest you get in your account."

General Circular No. 22/2021

Ministry of Corporate Affairs (MCA) vide its circular dated 29th December 2021, has extended the due date for filing the Annual Financial Statements/returns of the company with respect to **e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL upto 15th February, 2022** and **e-forms MGT-7/MGT-7A upto 28th February, 2022 in respect of the Financial Year ended 31.03.2021**. During the said period, only normal fees is payable for filing the above-mentioned e-forms.

Doctrine of Part Performance

Section 53A of the Transfer of Property Act, 1882

"53-A. Part performance. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

E.g., X contracts with Y to sell his plot for a certain amount of money and also accepts an advance from Y towards the sale of the plot. The possession of the said plot is also handed over to Y by X. As agreed, Y is ready to pay the remaining sale amount but X refuses to accept the same and also asks Y to hand over the plot back to him. In such a case, Y can bring a case against X for specific performance.

Assignment of office by a Director

S. Srinivasan, Senior Partner
SR *Srinivasan & Co* LLP

The office of a director in a company is sacred and pious and has to be respected as such by the directors of the company and by others dealing with the company. This office has a special place under the Companies Act. Knowing the importance of this office, the framers of the Companies Act,1956 devoted a separate section, namely, 312, prohibiting a director from assigning his office. In other words, directors cannot absolve themselves of their duties as such either by assigning their duties to any one of them or to any other person. Is it only the duties that he cannot assign? The Office of a director is a bundle comprising of rights, duties, powers, responsibilities, liabilities and obligations. Section 312 of the Companies Act, 1956 and section 166(6) of the Companies Act, 2013, mandates that a director cannot assign his office and does not elaborate. Therefore, it appears that he can also not assign his rights, powers, responsibilities, authority, liabilities and obligations apart from his duties. But there is subtle difference between his rights and his other functions. Rights are lawful principles that are granted by the Companies Act or the Articles of Association of the Company to a director. In contrast, the duties, powers, responsibilities, liabilities, and obligations are attributes that mandatorily vests on the directors. In rights, there is an element of choice for the director. Whereas in duties, powers, responsibilities, liabilities, and obligations he has no choice. The main difference between rights and duties is that right is founded on an individual's privilege, while duty is based on a person's extraordinary position in the company as a director. Of course, the two form either side of the same coin. Without the other, one does not exist. The two words "right and the corresponding duty" are inseparable. Therefore, we shall attempt to separate the two words to clarify the distinction between them for the purpose of our discussion now. The other functions are superfluous for the time being. Directors must fulfil their duties in company law enforcement, taxation, court service, etc. They are extremely important. Similarly, freedom of expression such as a dissent, petition, attending meetings, receiving remuneration, inspection of records including minutes etc., are the rights of directors. Some rights overlap with duties. For example, attending Board meetings is a duty and a right of a director. Wherever it overlaps, the former will prevail. Therefore, the question then arises as to what is the meaning of "*Assignment*" and "*Assignment **of Office***"?

Meaning of "Assignment" and "Assignment of Office"

Section 166(6) of the Companies Act, 2013, uses the word "*assignment*". It states as under:

> ***"A director of a company shall not assign his office and any assignment so made shall be void."***

Therefore, it is crucial to understand the meaning of the word "*Assignment*" first and then the term *"Assignment **of Office".*** The Companies Act, 2013, does not define the word "A*ssignment" or "Assignment **of Office".*** Neither did the Companies Act ,1956. The word "*Assignment*" in normal sense covers a wide range of subject. Therefore, it is essential to understand in what context the word is used. It goes to reason to say that in the light of our discussions the word "*Assignment*" has to be read in conjunction with the term "… ***of office***" and one cannot read "*assign*" or "*assignment*" in isolation.

(Image source: website)

The expression "*Assignment **of Office"*** is only relevant for ascertaining whether Sec. 166 of the Companies Act,2013 prohibits such an assignment. It then would boil down to find out "*what is office?".* The word "*office*" is not defined in the Companies Act,2013 nor was it defined under the Companies Act ,1956. The word "*office*" is derived from the Latin word " *Officium* "(plural officia) which had various meanings in Ancient Rome, including \`service\`, \`(sense of) duty\`, \`courtesy\`, \`ceremony\` and the like. It also translates the Greek "*kathekon*" and was used in later Latin to render more modern offices. Ramanathan's Law Lexicon defines "*office*" as a position which requires the person holding it **to perform certain duties and discharge certain obligations.** An office may not depend on any law or contract or any mandate from the State or any authority {*Maharaj Shri Govidlalji Ranchodlalji v C.I.T (1958) 34 ITR 92 (Bom)}*. In *Dewan Joynal Abedin v Abdul Wazed 1988 Supp SCC 580* it was held that "an '*office*' means a public or private employment with **certain duties to be performed**". In *Shrilekha Vidyarathi v State of U.P AIR 1991SC537* it was pointed out that by `*office*' is meant the right and duty to exercise an employment or a position of authority and trust to which certain **duties** are attached;

Therefore, we find that invariably the word "*office* " is clubbed with the expression "**duty to be discharged"** by a person holding that office. It does not speak of a "*right"* attached to it. Hence, when we use the expression "*Assignment of Office*", we have to necessarily hive off the word "*right*" from it. This appears to be the indirect intention of section 166 (6) of the Act. As stated earlier, rights are privileges conferred on the director which right he may or may not enforce. When he chooses to enforce his right, it appears that such an exercise is not prohibited by section166(6).

In the United States corporation law is determined in large part by the individual States. Cal. Corp. Code section 1602 (West 1977) provides: *Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation of which such person is a director and also of its subsidiary corporations, domestic or foreign. Such inspection by a director* ***may be made in person or by agent or attorney*** *and the right of inspection includes the right to copy and make extracts.* What essentially it means is that the right to inspection of minutes of the Board may be assigned.

Who can inspect the Minutes Book of Directors?

As per 7.7.1 of SS-1, the Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.

A Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship but only after he is appointed as a director and not before.

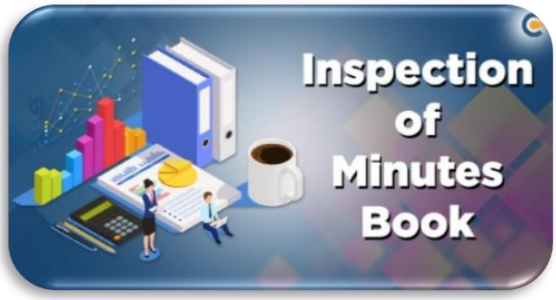
A Director is entitled to inspect the Minutes of the Meetings held during the period of his Directorship, even after he ceases to be a Director.

The Company Secretary in Practice **appointed by the company,** the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.

Officers of the Registrar of Companies can inspect the Minutes Book during the course of inspection [Section 206-207 of the Act]. Officers of the Government/ Regulatory bodies, if so authorised by the Act or any other law, can also inspect the Minutes Book.

Other than the above no one else is entitled to inspected the minutes of the Board including the members of a company.

When such is the case, there appears to be no provision in the Companies Ac,2013 or its Rules and SS-2 to permit inspection of minutes book by a power of attorney holder of a director.



(Image source: website)

A case in point as made out by the author is to allow by a power of attorney holder to inspect the minutes of the Board as under:

Inspection of Board Minutes is a "pure right". It is no duty of a director to compulsorily inspect the minutes book except to the extent that he should ensure that the minutes portray the proceedings of each meeting. Therefore, it is only logical to say that what is "*pure right*" which is "*unconditional*" can be assigned by a director to someone else on his behalf. In particular when we talk of the right to inspect minutes book of meeting of directors it sometimes becomes necessary that the exercise be assigned to someone who is conversant with corporate governance and who will carry out that activity on behalf of the director. That is so because under the Indian Company Law a director need not be educated. In some cases he does not know how to affix his signature but only knows how to affix his thumb impression. In such a scenario, where there is a dispute amongst the directors and the director concerned who wants to inspect the minutes book, he has necessarily to look up to some professional who would know corporate law to inspect the minutes book of directors on his behalf. Natural justice demands that the authorised representative or a power of attorney holder should be allowed to inspect the minutes book on his behalf. The author wishes that the MCA will look at this issue objectively and make necessary changes in law.

(The *views expressed herein are solely that of the author. SandBox neither endorses the views nor opposes. It is for the reader to assimilate the contents and take an independent view.*)

Plight of shareholders during IBC process

S. Rajendran,
Insolvency Professional

Background

In a corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC), the financial creditors have the final word. The board of directors of the company loses its powers from the commencement of CIRP. Decisions are taken by the Committee of Creditors (usually, the financial creditors) either for resolution or for liquidation of the company. However, there are a few exceptions to this general rule.

What happens to the shareholders of a company when it undergoes insolvency resolution process or liquidation? Do they not form an important cog in the wheel? Don't they have any role in the insolvency resolution process? Are they a completely forsaken tribe or mute spectators?

Well, this article explores the plight of the shareholders of a corporate entity undergoing insolvency resolution process or liquidation process under the provisions of IBC.

Role of shareholders under CIRP

Literally, the shareholders of a company have no role in an IBC process. When a financial creditor or an operational creditor initiates CIRP under Sec.7 or 9 of IBC respectively, the IRP is appointed. The IRP calls for claims to be submitted and forms a Committee of Creditors (CoC) which is generally formed with unrelated financial creditors. The CoC then takes the driver seat and runs the process either to get a resolution or for liquidation of the company. In this entire process, the shareholders have absolutely no say.

Shareholders of smaller private companies

Having said that, in a large number of small and medium companies, the promoters are the major shareholders as well as directors of the company. Therefore, it may be construed that the shareholders per se will be aware of the developments in the insolvency resolution process but they don't have any role or participation. The directors of the company are entitled to participate in the meetings of CoC and receive all notices, agenda notes and documents which are provided to the CoC, but they have no voting rights. But the shareholders have not even participation rights, leave alone voting rights. They have the right to call for general meetings of the company, but it is of no use as the company will be managed by the RP and CoC and all major decisions will be taken by the CoC.

Shareholders of larger public companies / listed companies

In the case of a widely held public company or a listed company, the information flow on the CIRP goes through the website of the company, just for the information of the shareholders like any other stakeholders like claimants. SEBI, through its Listing Obligations and Disclosure Requirements (LODR) Regulations, has mandated the disclosure of the decisions of the CoC and the details of approved resolution plans for dissemination to the shareholders.

What IBC says on shareholders' role

In an amendment brought in June 2018, an Explanation was inserted in Sec.30(2) to clarify the role of shareholders. This was done as a clarificatory note as the Code in Sec.30(2)(e) made it mandatory that the resolution professional shall examine and confirm that ***"the resolution plan does not contravene any of the provisions of the law for the time being in force"***. This may mean that a change in management or sale or disposal of the assets shall require the approval of the shareholders. But going to the shareholders for such approvals would be futile as they may not approve such decisions which would be in conflict of their own interest. To rectify this anomaly, the Code inserted an explanation to Sec.30(2).

The Explanation runs like this:

> ***"Explanation: For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law."***

Right or wrong, the promoters already having shareholdings in the company are pretty much aware of the status of the financial affairs of the company. Having been a direct or indirect cause to the failure of the corporate entity, the promoters are looked down upon in the entire IBC process. But, should the shareholders who are totally unrelated to the promoters be also looked down upon? What sin they have done for being meted out such a treatment?

Well, the possible explanation to this provision in IBC is that the CoC has been mandated with the responsibility of steering the resolution process in its own commercial wisdom, of course, within the contours of the defined process. The CoC may approve a resolution plan considering its feasibility and viability. It is also mandated that "a resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors, of the corporate debtor". Reg.38(1A). Under this situation, involving the shareholders of the company in the process would not only make it complicated but also prove to be counter productive.

Another argument could be that the shareholders appoint the directors to run the business. When the business fails and gets into IBC, it's the failure of the board of directors and therefore, failure of the shareholders as well to take due care to protect their interest. So, naturally they have to pay a price for it. When the powers of the board of directors are clipped, the shareholders naturally have to take a back seat. Also please remember, a shareholder cannot submit any claim during the CIRP as they are not creditors to the corporate debtor.

Role of shareholders under Liquidation

In contrast to what is said about role of shareholders in a CIRP, there is a limited role for shareholders in the liquidation process. Reg.31A of IBBI (Liquidation Process) Regulations provide that a Stakeholders' Consultative Committee (SCC) be formed by the liquidator within 60 days of liquidation commencement. In the SCC, there is a one-person representation for shareholders or partners of the corporate debtor while financial creditors, operational creditors, workmen and employees, governments also have representation. The role of SCC is to mainly advise the liquidator on matters relating to sale of liquidation assets, appointment of professionals, etc. The Regulation further adds that such advice will be with 66% voting of the representatives present and voting (please note, not on the basis of debts owed) but the liquidator is not bound by such advice. However, wherever his decisions are different from those of the SCC, he needs to record the reasons for his decisions and the same must find a place in the next quarterly progress report submitted to Adjudicating Authority.

Please remember, a shareholder may make a claim before the liquidator for his shareholdings. Reg.20 states that the existence of his claim should be proved on the basis of documentary or electronic evidence of the shareholding.

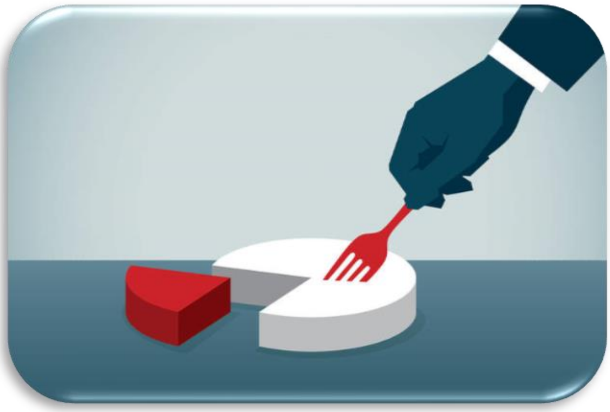
One may not miss the provisions of Sec.53 of IBC ("the waterfall" provision), wherein the spoils are shared by various stakeholders in a pecking order of priority. The shareholders are in an unenviable slot at the bottom of the table as the creditors have a priority right on the liquidation proceeds. Even crown debts, i.e. government dues, have taken fifth position after the mandatory costs of liquidation, secured creditors dues, workmen and employees dues and unsecured financial debts. **The hyenas can eat only when the lions have finished their meal.**

As could be seen from the above discussions, the shareholders of a company under liquidation as per IBC provisions, has a slightly better role than in the case of a CIRP, notwithstanding the fact that their plight remains.

Exceptions – Where shareholders do have a role

An exception to the general rule that shareholders have no say in an IBC process, there are two exceptions:

a. Initiation of CIRP by the corporate debtor itself under Sec.10 of IBC; and
b. Initiation of PPIRP (Prepackaged Insolvency Resolution Process) wherein an MSME corporate is allowed to function in the normal way, subject to minimal intervention by the creditors.



(Image source: website)

Special Resolution of Shareholders required for initiating CIRP under Sec.10

A corporate applicants of corporate debtor may file an application for admission into CIRP under Sec.10 for a default of Rs.1 crore and above, subject to the provision that, inter alia, the shareholders of the corporate debtor pass a special resolution or at least three-fourths of the partners give their consent for the filing of application with NCLT initiating insolvency resolution process.

Role of shareholders in a PPIRP

It is very clearly provided in Sec.54A (2) of IBC that apart from the decision of the board of directors, the shareholders by a special resolution or partners, by a three-fourth majority of a corporate MSME should approve the filing of an application to initiate prepackaged insolvency resolution process under

Sec.54C. Therefore, the shareholders of a corporate entity are very much in the picture when a PPIRP is initiated. Of course, thereafter, when the application is admitted and the PPIRP process commences, there is no role for the shareholders. Also, the provisions of Sec.30(2) and the Exception provided therein as discussed earlier very much apply to PPIRP as well.

Debt converted into equity under a restructuring scheme

(Image source: website)

In a few IBC cases, it is seen that the financial creditors have converted part of their debt into equity under a Master Restructuring Agreement as per the provisions of Corporate Debt Restructuring (CDR) or any other scheme approved by RBI. While making a claim against the corporate debtor, the banks claim their total debt due including the equity portion, which according to them, was also a debt. Their logic is that as the CDR failed, the debt converted into equity also fails and therefore, the equity gets reverted into debt.

Adjudicating Authorities have given clear judgements that such debt converted into equity cannot take the form of debt for the purpose of claims as the equity shareholders are not creditors. Their contention is that there should be an implementable provision for reconversion of equity into debt in a manner known to law in the event of failure of CDR. Reconversion of equity into debt results in capital reduction. Another case, the adjudicating authority while discussing a claim of the financial creditor for the equity portion made an observation that the converted equity becomes a debt. One can call it as an obiter dicta, such observation does not have the binding force of a court verdict. Be that as it may, there is no finality on this issue yet as appeals have not reached the apex court so far.

The banks find themselves on the wrong side in such cases of debt converted into equity when the company goes into insolvency process under IBC. It is true that the intent of picking up an equity stake in lieu of debt is to revive the company and also get some upside when the company returns to profitable business and adds value to the shareholders.

Recently, the government decided and gave options to convert huge amount of debts owed by major telecom companies into equity to give them a breathing time to revive. In case those companies go belly up and get into IBC, even the government cannot make a claim as a creditor. Nevertheless, is it to be seen under what terms the debt conversion into equity is to take place.

Conclusion – Equity is not equity

In the corporate quicksand, the stakes of equity shareholders have never been equitable. In good times, equity calls the shots. In bad times, debt destroys equity. The days of majority shareholders enjoying a come-what-may strangle-hold on the company have gone. In a blink, their stake vapours into thin air and they become a hapless stakeholder, just watching the mutiny. Therefore, remember the pecking order before picking up equity anywhere. Your investments in equity may be reduced to a null in no time. Though sounds pessimistic, it is true!!

Court Orders

CGRF Legal Team

In the matter of Bank of Baroda & Anr.
Vs.
MBL Infrastructures Ltd. & Ors. Civil Appeal No.8411 of 2019

Supreme Court Order Dated: 18-1-2022

An interesting judgement of the Apex Court- upholding the resolution plan of the promoter- otherwise ineligible under Section 29A

Background

The CIRP of the corporate debtor (MBL Infrastructures Ltd.) commenced in March 2017 on an application filed by RBL Bank under Sec.7 of IBC. The promoter of the corporate debtor was one of the resolution applicants. It may be noted that during that time, Sec.29A was not introduced in IBC, which came into being with effect from 23rd Nov. 2017. Sec.29A(h) provide that a resolution applicant will be declared ineligible, only if he has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against whom CIRP has commenced. [It may be noted again here that there was a subsequent amendment to Sec.29A(h) in June 2018 which has replaced the words "enforceable guarantee" with "a guarantee" and also added the following phrase "such guarantee has been invoked by the creditor and remains unpaid in full or part".]

(Image source: website)

The promoter-resolution applicant has made a prayer in NCLT stating that he should not be declared as ineligible under Sec.29A because the guarantees furnished by him were not invoked. His prayer was allowed by the Adjudicating Authority. The above order was challenged by other financial creditors, in the CoC, in the NCLAT which gave an interim order stating that the CoC may proceed with the CIR process but restrained the adjudicating authority either to approve or reject the plan, until its prior approval.

In the meantime, the resolution plan submitted by the promoter-resolution applicant got the approval of the Committee of Creditors. On an appeal made by the financial creditors, NCLAT vacated its earlier interim order holding up the approval or rejection of resolution plan (by the adjudicating authority). The resolution plan, which had 78.50% voting in favour, was approved by the adjudicating authority in April 2018.

Bank of Baroda then appealed against the resolution plan approval order. NCLAT heard the parties, directed the resolution applicant to revise their resolution plan and finally approved the revised resolution plan and dismissed the appeal. In so far as the eligibility under Sec.29A was concerned, the appellate authority stated that as the issue has attained finality before the adjudicating authority, it will not sit on the appeal over the decision, in the absence of any apparent discrimination. However, this decision of NCLAT was challenged by Bank of Baroda before the apex court.

The Supreme Court, after extensively deliberating on the issues raised by the appellants, held that the resolution plan submitted by the promoter-resolution applicant ought not to have been entertained as the guarantees have been invoked by some of the financial creditors even prior to application u/s 7.

Conclusion

Though the resolution plan submitted being ineligible and not maintainable, the apex court decided based on the fact that much water had flown under the bridge, i.e., (i) the resolution plan has already been implemented (ii) the corporate debtor is a going concern, (iii) executing several projects of national importance and (iv) having more than 23,000 shareholders and thousands of employees, affirmed its approval too.

The Apex court has noted that the ultimate objective of the Code is to put the corporate debtor back on the rails and that no prejudice would be caused to the dissenting creditors and considering the peculiar facts of the case, it has ordered as follows: ***"we do not wish to disturb the resolution plan leading to the on-going operation of the corporate debtor"*** and accordingly dismissed the appeal.

In the matter of M/s JBM *Shelters Private Limited*
LICHFL Trustee Company Private Ltd (Financial creditor)
Vs
M/s JBM Shelters Private Ltd, (Corporate Debtor)
NCLT Chennai dated 07-09-2021

CMA. T. Ranganathan,
Insolvency Professional

Issues adjudicated

1 Whether the claim of the Application qualifies to be a 'financial debt' and as a consequence whether the applicant can be treated as a 'financial creditor' in respect of the Corporate Debtor.

2 Whether the Application as filed by the Financial Creditor is barred by Limitation

Facts in Issue

The financial creditor LICHFL Trustee Company Private Ltd., filed application u/s 7 of the IBC against M/s JBM Shelters Private Ltd., the Corporate Guarantor of M/s JBM Homes Private Ltd., (Principal Borrower) The date of default is stated in the application as 27-09-2018 and a sum of Rs.68,64,47,800/- claimed as financial debt duly enclosing the relevant documents.

The FC submitted that that the CD stood as Corporate Guarantor for JBM Homes Private Ltd., (Principal Borrower) towards the amount invested in the form of debentures by the FC. Principal Borrower is engaged in the business of developing and constructing real estate Projects at Chennai. Principal Borrower borrowed funds for the infrastructure development of the land measuring about 8.26 acre in different areas of Chennai and approached FC to invest in equity shares, optionally convertible Preference shares and Fully convertible debenture (OFCDs) of CD and executed agreement dated: 23.03.2015. Accordingly, the FC invested Rs.24290/- in equity shares, Rs.73,280/- in optionally convertible preference shares and Rs.9,99,01,800/- in Debentures initially and further funded by way of debentures Rs.15,00,00,000/- The Corporate Guarantee was executed on 09-04-2015 by which CD stood as guarantor for the Principal Borrower. Further to the above first supplementary agreement was executed on 24-03-2018 to extend the tenure of its investment by FC in the Company by six months which was agreed upon by FC. Later a second supplemental agreement was executed on 24-07-2018 for infusion of additional funds.

(Image source: website)

Contentions of Corporate Debtor

The CD in its counter inter-alia raised that

i) The FC is a shareholder of CD holding 19.95% of the shares of the CD by virtue of agreement dated: 23.03.2015 and hence cannot file an application u/s 7 and cited the decision of Hon'ble NCLAT in the matter of ***Vipul Ltd., Vs Solitaire Buildmart Private Ltd., in company Appeal (AT)(Ins) No.550 of 2020. & Judgment of this Tribunal in the matter of Ashok Sachdev Vs Call Express***

ii) as per the original agreement dated: 23-03-2015 the cause of action arose on 25-05-2015 as the approvals should have been obtained within 60days of the first closing which constitutes material breach as per clause 21 of the said agreement which would be an event of default and hence the same lapses on 25-05-2018, hence the present application dated: 31-07-2020 is barred by Limitation. In this context, CD relied on various judgements of Hon'ble Supreme Court of India.

Rejoinder by Financial Creditor

The Financial Creditor submitted to NCLT that

i) the Application has been filed solely in the capacity of the debenture holder of the Corporate debtor and the applicant is merely a financier for the projects which was made through several routes of investments such as preference shares, debentures and equity shares. The Judgements relied on by the CD do not have any bearing on the present case.

ii) The starting point of limitation for claiming the amount is 27-09-2018 in view of extension of the tenure of investment till 26-09-2018 against the original tenure of 36 months. Hence, the application is not barred by limitation.

(Image source: website)

Findings of Hon'ble NCLT

ISSUE No.1

The Hon'ble NCLT after discussing the contentions raised by the parties, observed that in the matter of Vipul Ltd., the financial creditor is required to pay certain amount towards its share in the projects. However, as to the facts of the case on hand the FC is a debenture holder and has a right to redeem the debenture.

Further, the Hon'ble NCLT after discussing the definition of the term 'financial debt' under sub-section 8 of Section 5 of IBC,2016 held that any amount raised pursuant to the debentures would partake the character of 'financial debt'. The Hon'ble NCLT further observed that Just because the FC is also equity shareholder in respect of the CD would not debar the FC from initiating the CIRP against CD citing the decision of Hon'ble NCLAT in the matter of *India Power Corporation Ltd., Vs. Meenakshi Energy Limited and Others in Company Appeal (AT) (Ins) No. 1220 of 2020*. The Hon'ble NCLT also cited the Judgement of Hon'ble SC in the matter of Pioneer Urban Land and Infrastructure Ltd., Vs Union of India (2019) 8 SCC 416 wherein it was held that even individuals who were 'debenture holders' and fixed deposit holders could also be financial creditors who could initiate the CIRP.

Thus the Hon'ble NCLT held that the Application qualifies to be a 'financial debt' and the applicant can be treated as 'financial creditor' in respect of the Corporate Debtor.

ISSUE NO.2

The Hon'ble NCLT after discussing the contentions of the Corporate Debtor observed that the parties have entered into 1st and 2nd supplemental agreement dated: 24-03-2018 and 24-07-2018 respectively. It was also observed by Hon'ble NCLT relying on the Judgement of the Hon'ble SC in the matter of ***Laxmi Pat Surana Vs Union Bank of India & Anr. In Civil Appeal No. 2734 of 2020*** **wherein it was held that the liability of the Corporate Guarantor is co extensive with that of the Principal Borrower and that the acknowledgment given by the Principal Borrower also binds the corporate guarantor.**

The Hon'ble NCLT after considering the above aspects held that the 'debt' is not barred by limitation and the submissions of the CD that the cause of action for the Financial Creditor arose on 25-05-2015 and the same lapses on 25-05-2018 is factually incorrect, since by virtue of the second supplemental agreement, the Financial creditor has invested Rs.4,40,00,000/- OFCDs. Hence, in all respects the debt claimed by the Financial Creditor is well within the period of limitation.

Further, it was observed by Hon'ble NCLT that the excerpts from the Annual Accounts and Statutory Auditor Report duly approved in AGM show the debt due to debenture holders as on 31-03-2019. The Principal Borrower has given an offer for One Time Settlement to the FC on 18-02-2021. The above two documents show the principal borrower has committed 'default' in repayment of debentures to the tune of Rs.18.40 Crores to the FC.

Thus, the NCLT admitted the Application filed by the Financial Creditor u/s 7 of the IBC,2016.

Find the words!!!

CLUES	WORDS
1. Number of minimum shareholders required for a private company.	
2. The date of admission of an application by a FC/CD/OC for initiating corporate insolvency resolution process by the AA.	
3. Evaluating the resolution plan with such parameters	
4. Document inviting subscription to shares	
5. Record notes of the proceeding of a meeting	

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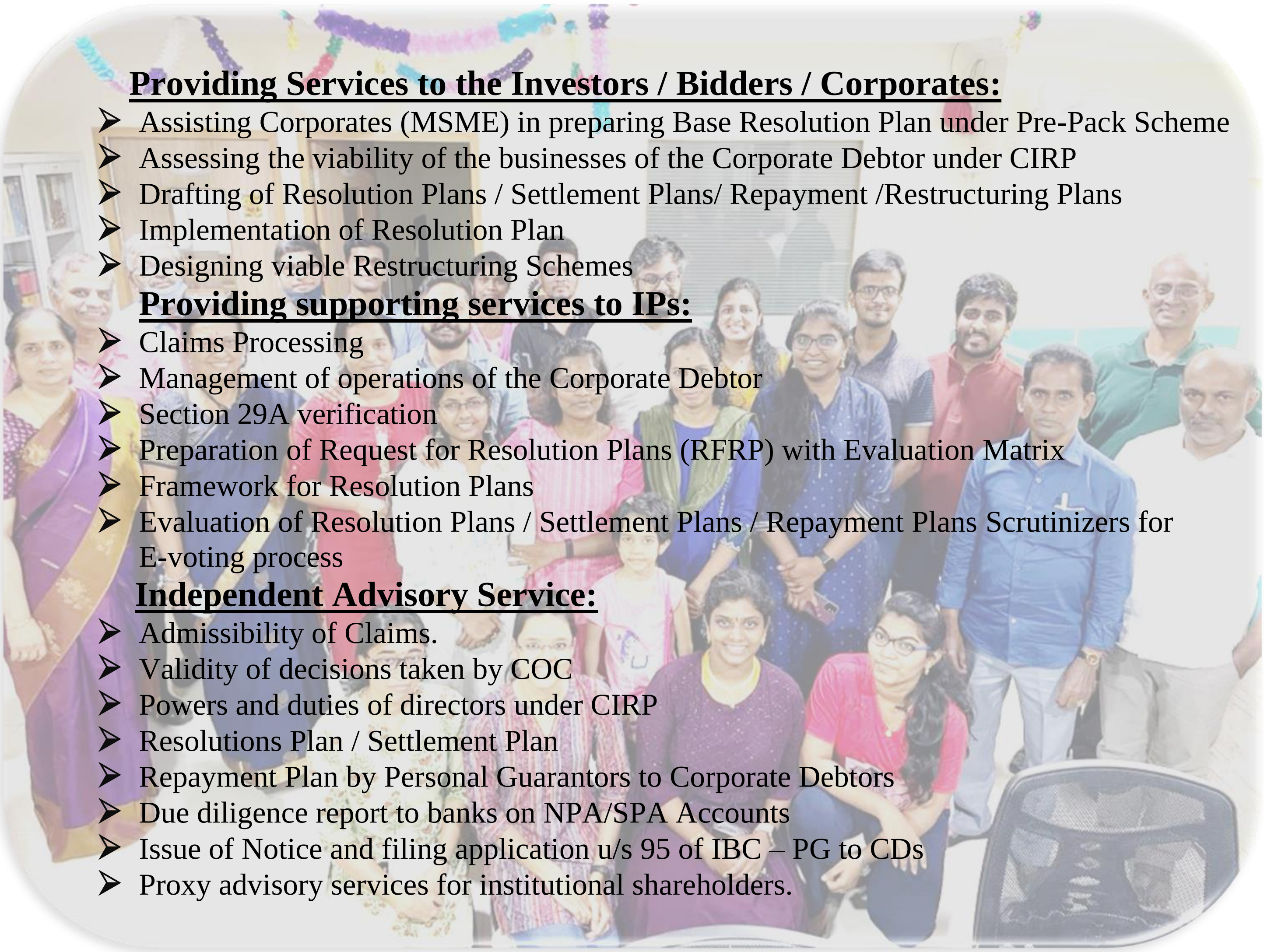
Answers

1. Two 2. Commencement Date 3. Evaluation Matrix 4. Prospectus 5. Minutes

OUR SERVICES



Providing Services to the Investors / Bidders / Corporates:

- Assisting Corporates (MSME) in preparing Base Resolution Plan under Pre-Pack Scheme
- Assessing the viability of the businesses of the Corporate Debtor under CIRP
- Drafting of Resolution Plans / Settlement Plans/ Repayment /Restructuring Plans
- Implementation of Resolution Plan
- Designing viable Restructuring Schemes

Providing supporting services to IPs:

- Claims Processing
- Management of operations of the Corporate Debtor
- Section 29A verification
- Preparation of Request for Resolution Plans (RFRP) with Evaluation Matrix
- Framework for Resolution Plans
- Evaluation of Resolution Plans / Settlement Plans / Repayment Plans Scrutinizers for E-voting process

Independent Advisory Service:

- Admissibility of Claims.
- Validity of decisions taken by COC
- Powers and duties of directors under CIRP
- Resolutions Plan / Settlement Plan
- Repayment Plan by Personal Guarantors to Corporate Debtors
- Due diligence report to banks on NPA/SPA Accounts
- Issue of Notice and filing application u/s 95 of IBC – PG to CDs
- Proxy advisory services for institutional shareholders.

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