CGRF

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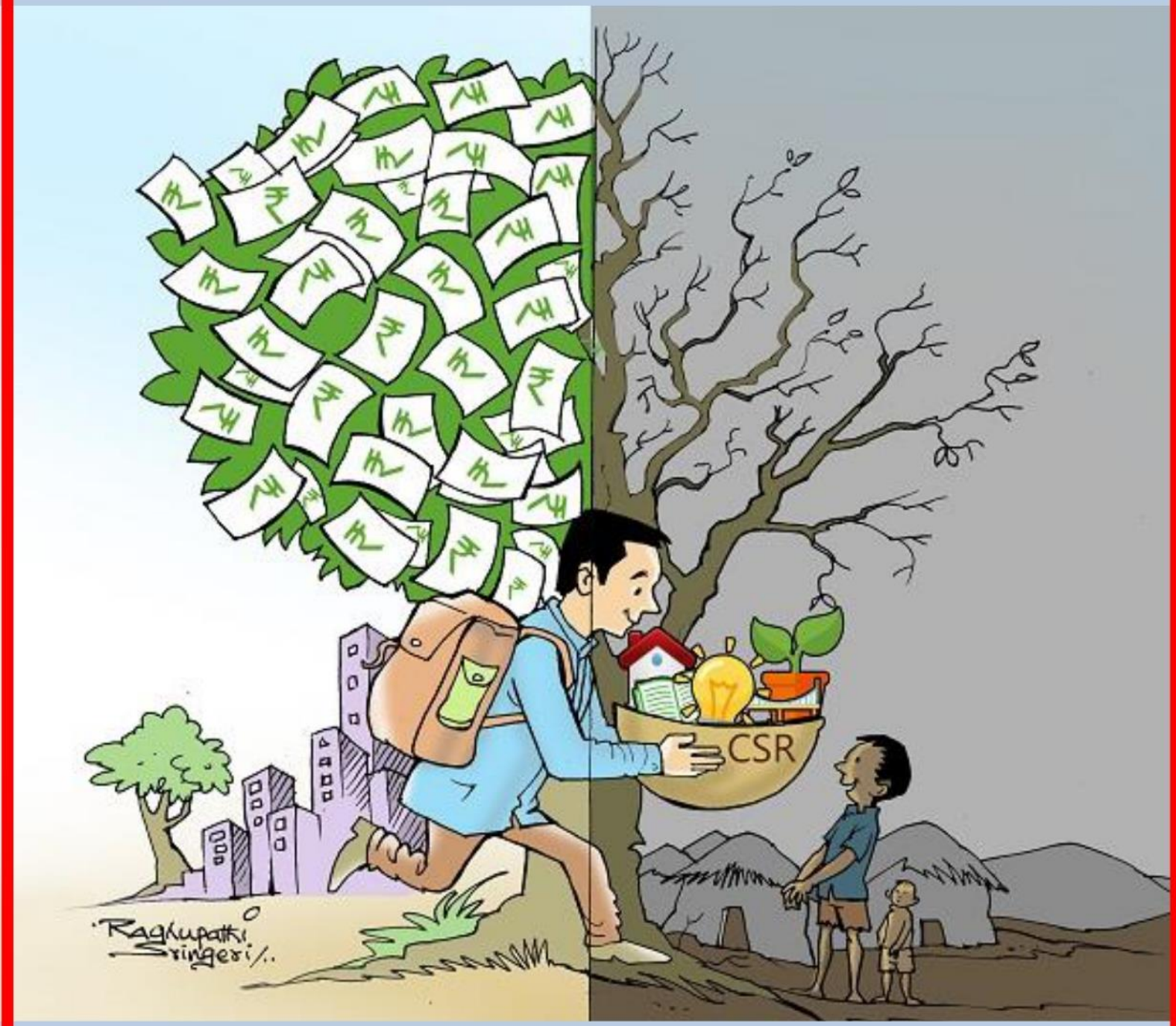

CGRF®

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செவிகைப்பச் சொற்பொறுக்கும் பண்புடை வேந்தன்
கவிகைக்கீழ்த் தங்கும் உலகு.

தமிழ் உரை:
இடித்துக் கூறும் தகுதி மிக்க பெரியோரின் சொற்கள் தனக்கு ஏற்பன அல்ல என்றாலும் வருவது எண்ணிப் பொறுத்துக் கொள்ளும் பண்புள்ள அரசின் குடைக் கீழ், இந்த உலகமே தங்கும்.

Explanation:
The whole world will dwell under the umbrella of the king, who can bear words that embitter the ear.

From the Editor's Desk

Dear Readers of CGRF SandBox

We are happy to reach you with yet another information-packed issue of SandBox.

Socially Responsible Corporates

The concept of Corporate Social Responsibility (CSR) has been widely acclaimed as one of the path-breaking initiatives taken by the Government of India. Introduced in the Companies Act, under Section 135, the impact the CSR has created on the footprint of the country is really laudable.

The society at large has been seeing the benefits of projects undertaken by the corporates in the vicinity of their operations. The Government has specified in "Schedule VII" to the Companies Act, 2013 the broader areas in which the corporates can undertake their CSR activities.

The CSR pipeline includes several NGOs, Registered Trusts, Registered Societies, Non-profit organizations, Section 8 Companies (with charitable objectives), etc. through which the corporates having the obligation to spend the CSR amount may ensure compliance under the provisions.

Spend or deposit

While many larger corporates have been continuing their CSR efforts notwithstanding the statutory requirement, issues have been faced by the mid-sized and smaller corporates in complying with the requirements. The major constraint is "spending" or "depositing" the requisite amount which is 2% of the average of the net profits for the preceding three financial years. The stipulations that if the CSR amount is not spent, it should be deposited in bank account, has created a stress in the cash flows of corporates.

In this issue of CGRF SandBox, we have great pleasure to cover various issues relating to CSR, efficacy of the provisions, quantum of amount spent over the last few years, etc.

Role of the board of directors during CIRP and Liquidation of a company

The powers of the board of directors are suspended when a company is admitted into the CIRP. In case the company gets into liquidation, the powers of the board of directors and key managerial personnel cease to exist. However, it is always argued that only the collective powers of the board get suspended and not the individual director's duties, responsibilities, etc. Some more interesting analysis on this subject is made in this issue.

Obligations under LODR in respect of a listed company undergoing CIRP

SEBI has come out with clear stipulations in Listing Obligations and Disclosure Requirements (LODR) Regulations as to what are the compliances of disclosure a listed company undergoing CIRP should do. It is also interesting to note that in the Insolvency Law Committee (May 2022) Report, it has been clarified that SEBI shall not have any exemption from the moratorium provisions of Sec.14 of IBC.

Amendments in IBBI Regulations

Continuing their focus on streamlining the provisions of Insolvency and Bankruptcy Code, 2016, IBBI has been issuing discussion papers, amendment to various regulations governing the Corporate Insolvency Resolution Process (CIRP), Liquidation process, etc.

Recently, IBBI brought out amendments mandating that the operational creditors filing an application under Sec.9 of IBC should also submit the details of GSTR-1 and GSTR-3B evidencing of transactions, debt and default.

Further, the financial creditors are also now obligated to provide to the IRP / RP information like valuation reports, financial statements, stock audit reports, forensic audit report, any other investigation reports which will help the IRP / RP to prepare the information memorandum. Further, "significant difference" is defined as 25% or more in respect of the two valuation reports in which case, the RP shall go for a third valuation for the specified class of assets.

Also, underlying the importance of claw-back from the avoidance transactions, it is now mandatory that the resolution plan specifies the manner in which the avoidance applications shall be pursued and the proceeds if any realised shall be distributed.

Thanking you for your continued support and wishing you happy reading!!

Yours truly
S. Rajendran

CSR vs ESG

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

1.Corporate Social Responsibility (CSR)

CSR has become a buzzword, around the beginning of the millennium, to encourage companies to look at the broader effects their operations have on the society. Essentially, it stipulated that a Company should be socially responsible, by adhering to the principles of contributing for sustainable development of the health and wealth of the society at large by complying with all relevant laws and norms.

(Image source: Website)

In layman terms, CSR may be defined as a management philosophy for commercial firms, whose turnover are beyond a threshold limit and profit making, have to mandatorily utilise a set portion of their profit, to give back to the society through various philanthropy/charitable efforts or other schemes as mandated by the Government from time to time. Through CSR programs, businesses boost their own brand too.

While the intentions are earnest, the term CSR today mostly resembles a marketing tool, allowing businesses to make symbolic gestures of using their portion of the profits, as mandated, without heeding much to their own activity which may be having an adverse effect and impact on the environment/society. Some of them are even projecting that they are socially and environmentally responsible, without actually doing much on the ground.

While CSR is still very important and used to describe companies culture, some undesirable elements have made it necessary to implement measurable goals and deliverables. Consequently, there is a shift from the **qualitative values of CSR** to **quantitative goals –** which is now known as **Environmental, Social & Governance** (**ESG**) standards, now the new buzzword.

With technological tools, it has now become possible to quantify a company's use of natural resources, conflict minerals /materials, social composition and impact, and good governance. ESG now takes on CSR and builds on it in a manner that takes it out of the realms of pure philanthropy, to a concrete set of numbers which can be used by investors and consumers alike in understanding a company's philanthropic, social and internal governance practices. In the last few years, especially during the Covid-19 pandemic, the focus has shifted from a purely outward-looking analysis to a more dynamic approach focusing on both internal and external factors of a Company.

Generally, people get confused over the differences among the concepts of ESG and CSR, and often use them interchangeably. While both these concepts are related, each one has its own definitive goals and characteristics. ESG provides quantifiable indicators (including sustainable, ethical and corporate governance issues such as managing the company's carbon footprint and making sure there are systems in place) to measure accountability. It applies numerical figures as to how companies treat their staff, manage supply chains, respond to climate change, increase diversity and inclusion, and build community links.

2. Environmental, Social & Governance Standards (ESG)

ESG refers to the business measures used by socially conscious investors to identify and quantify the measures of a company's sustainability and societal impact, using metrics that matter to them.

ESG issues are important to businesses that prioritize sustainability, and to investors looking for socially responsible investment opportunities. ESG issues are now becoming critical for compliance and risk managers as well as for potential investors, who now, not only need to see how a potential target company is doing financially, but are also assessing how a company is run, how it serves the society, how it impacts the environment and how all of these factors cumulatively determine the target company's overall performance.

The fallout of the COVID-19 pandemic has given businesses a chance to reassess almost every aspect of their operations. Consequently, ESG compliance has

intensified in the wake of the pandemic as governments across the globe are now committed to a 'green' recovery. ESG, for a company, is all about making a difference to the world. Creating sustainable outcomes that drive value and fuel growth, whilst strengthening the environment and society. Environmentalists, sociologists, economists, technologists, with lots of experience, are now helping companies to turn theories into action. Smarter businesses are creating or trying to create a transparently brighter future for the world and for generations to come.

3. Major difference between CSR and ESG:

CSR represents a company's efforts to have a positive impact on its employees, consumers, the environment and wider community. It's a form of self-regulation (mandated by law) that most large companies report on annually.

ESG, on the other hand, **measures** these activities to arrive at a more precise assessment of a company's real actions and in particular looks at how it:

- Responds to climate change
- Treat it workers
- Build trust and foster innovation
- Manage its supply chains

Rather than producing impressive sounding rhetoric, ESG demands metrics. It measures to demonstrate kilowatts of energy saved, tonnes of carbon emissions avoided, or gallons of water preserved by companies with specific targets for progression year on year.

a) ESG is Action plan to convert message to meaning

CSR and other precursor programmes are self-regulated practices and policies that capture a company's commitment to positive impact. While these CSR commitments are communicated widely through marketing messages, they lack quantifiable and comparable data to validate their outcomes. Some companies and their CSR programmes are even criticized and viewed with scepticism on their various sustainability initiatives.

ESG is more than good intentions. It's about creating a tangible, practical plan that achieves real results. Success is not about climate change, diversity and disclosures alone. It's about embedding these principles- and more across the business- from investment to sustainable innovation. Bringing together best people and smartest technology enabling to tackle the biggest challenges of today – and capture the best opportunities of tomorrow.

b) ESG is a transformation from inside to outside

CSR programmes, from company to company, are quite different – each having a variety of activities. Due to varied CSR activities, oversight among them has become difficult across the company.

On the other hand, ESG is fundamentally intersectional. "E", "S", and "G" are not separate categories, but rather interconnected.

Let's consider climate issues for example – ESG looks not only at an organization's environmental impact, but also the social justice issues around the disproportionate impact climate change has on low-income populations.

This type of system-based programme requires an integrated approach where the entire leadership team of a company has to take ownership. The focus now is on how well a business is adapting to a changing world, where success is no longer measured by financials alone. When ESG is adopted, the Company has to take bold steps towards a model that will deliver sustainable business advantage and measurable value. It's an approach that makes possible the operational, cultural and financial changes needed to future-proof the business.

c) ESG is a measure of transparency

Another difference worth noting in the evolution to ESG is the motivation behind pursuing corporate sustainability. Traditionally, the argument used to get stakeholders on board to pursue CSR initiatives was to create a profitable environment. Whereas ESG acts as a strategic lever that drives new growth opportunities and enhances performance. In fact, according to a study, more than 80% of a globally representative selection of purpose-driven companies with better ESG profiles outperformed their counterparts in 2020, despite a market slowdown.

(Image source: Website)

ESG infuses metrics right through all areas of operations and creates maximum transparency. With the right combination of data and disclosures, one can be confident of proper reporting and trust on data in the long term.

4. Change is here to stay

We've entered the era of stakeholder capitalism where corporate 'purpose' is about maximizing long-term value to serve the interest of all stakeholders. The introduction of Environmental, Social, and Governance (ESG) is part of that move towards a more meaningful business philosophy. ESG considerations are at the top of the agenda for all key stakeholders.

Now, millennials are leading the charge on sustainable investing, and consumers and employees are increasingly looking for businesses that share their values. There is also a movement towards global ESG reporting standards from both the business and regulatory communities that is expected to intensify.

(Image source: Website)

With demand coming from all angles, we're on the brink of a turning point in the business world. In fact, Bank of America & BofA Securities predicts $20 trillion in assets will flow into sustainable funds and strategies over the next two decades, nearly equalling the market value of the S&P 500 today.

Organizations that fail to embrace this new era of corporate sustainability risk getting left behind. If you are a corporate entity, now is the time to assess how your organization relates to ESG by answering the following questions and re-align with your leadership teams on a path towards:

- How are you measuring the effectiveness of your sustainability programmes?
- Who makes decisions about these programmes?
- How does your "purpose" underpin your sustainability strategy?
- How is your sustainability programme driving growth and performance of your business?

5. ESG may be the Key to investment decisions:

ESG activity is now seen as vital to understanding corporate purpose, strategy and management quality of companies. In particular, ESG is used as a key assessment criterion for investors. Indeed, a quarter of the world's professionally-managed investment funds now only invest in companies that demonstrate solid ESG credentials. Now, rather than having ESG as an 'add on' to business activities, many believe it's essential to really embed ESG at the very heart of a company, especially when it comes to surviving the low-carbon transition. If businesses aren't incorporating seriously, ESG in their long-term planning and also into financial decisions seriously then the businesses are poorly preparing for the future. Investors and well informed customers now ask how best the business is future proof for a low-carbon world which is measurable and monitorable.

Conclusion:

The companies of tomorrow will be judged not only on the products and services they provide but on their broader impacts on society and the environment around them. While corporate social responsibility (CSR) may have started as a way to achieve doing something good to society, employees etc., the consumers are now asking for those efforts to be honest and quantifiable. People today are much more aware of the broader effects businesses and industries have on society and the environment. Millennials, who will make up 70-80% of the workforce by 2027, overwhelmingly prioritize joining companies that will allow them to contribute to social and environmental issues they now care about, because of the various ill effects the society is now facing ,including the very visible Climate change, in which they are part of.

Going forward, ESG will need to be fully embedded into an organisation's decision-making from inception, design, building, and disposal. It is already known that 90% of the world's largest companies by revenue report on their ESG performance. These companies believe that it is important to publish their work in this area (ESG) which reflects how critical ESG has become in conducting their businesses.

One of the positives to have resulted from the outbreak of the COVID -19 pandemic has been the reduced travel and industrial activity which has had an encouraging impact on our environment. The pandemic has also taught us to check in on the people around us, to care for our communities and to put a greater focus on employee wellbeing. As the world recovers from COVID-19, investors will not lose sight of sustainability and the trend of ESG issues will become more central to investing in future.

ESG investing also becomes very important in a fast-growing economy like India as it allows the government,

investors and companies to build a sustainable business economy. The Securities and Exchange Board of India ("**SEBI**") is the securities and capital market regulator in India. SEBI understood the rise and importance of ESG investing in India and thought it necessary to incorporate sustainability reporting by corporates on par with financial reporting. This would ensure the adoption of ESG as a metric to evaluate corporate performance.

SEBI vide their Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated 10th May 2021 ("**SEBI Circular**") has replaced the earlier Business Responsibility Report ("**BRR**") with the new Business Responsibility and Sustainability Report ("**BRSR**"). BRSR is applicable to the top 1000 listed companies by market capitalisation and is mandatory for the financial year 2022-23 i.e., from 1st April 2022.

The disclosures under the BRSR from listed entities pertain to their performance against the nine principles of the "National Guidelines on Responsible Business Conduct". Reporting under each principle is divided into essential indicators and leadership indicators. The essential indicators are required to be reported on a mandatory basis while the reporting of leadership indicators is voluntary.

The purpose of BRSR disclosures is to enable investors to make better and informed decisions regarding their investments and their ESG impact. From a company perspective, it will enable them to evaluate their ESG impact and encourage them to look beyond financial parameters alone. Companies will also be able to demonstrate their sustainability performance and objectives thus creating long term value for their stakeholders. Clear ESG reporting and disclosures will facilitate larger investments into companies with higher ESG metrics.

Some of the key disclosures sought in the BRSR are:

a. An overview of the entity's material ESG risks and opportunities, approach to mitigate or adapt to the risks along with financial implications of the same
b. Sustainability related goals & targets and performance against the same
c. Environmental disclosures cover aspects such as resource usage (energy and water), air pollutant emissions, greenhouse (GHG) emissions, transitioning to a circular economy, waste generated and waste management practices, biodiversity etc.
d. Social disclosures covering the workforce, value chain, communities and consumers, as given below:
    i. Employees/workers: Gender and social diversity including measures for differently-abled employees and workers, turnover rates, median wages, welfare benefits to permanent and contractual employees/workers, occupational health and safety, training etc.
    ii. Communities: Disclosures on Social Impact Assessments (SIA), Rehabilitation and Resettlement, Corporate Social Responsibility etc.
    iii. Consumers: Disclosures on product labelling, product recall, consumer complaints in respect of data privacy, cyber security etc.[2]

To conclude, ESG investing is very important for an emerging economy like India as it provides an opportunity for all stakeholders to build an economy that is financially inclusive and measured by parameters beyond financial metrics. SEBI is indeed a visionary to facilitate the achievement of the United Nations Sustainable Development Goals and the Paris Agreement on Climate Change by way of mandatorily requiring ESG reporting by Indian companies. One hopes that the applicability of the BRSR reporting is extended to all listed companies and large unlisted companies in a phased manner to facilitate creating a environmentally friendly society.

Did you Know?

The first mobile device to be called an **"iPhone" was made by Cisco**, not Apple. It allowed the user to use the voice functions of Skype without a computer. Apple announced its own product just 22 days later, and Cisco sued for trademark infringement. The lawsuit was ultimately settled out of court and both companies were allowed to keep using the name. However, you've probably never heard of the Cisco iPhone.

MCA Circular June 2022

MCA vide its circular dated 9th June 2022, notified Companies (Removal of Names of Companies from the Register of Companies), stated that if the e-Form STK 2 is defective, it must be rectified within 15 days and submitted to RoC failing which the Registrar shall treat the form as invalid. After first resubmission also if there is any defect in the form then within 15 days the corrected form should be submitted to the RoC. Any re-submission of the application in Form STK-2 made prior to this amendment shall not be counted for the purpose of maximum number of resubmissions of such form. Hence, it is understood that only two resubmissions are allowed for e-Form STK 2.

MCA vide its circular dated 10th June 2022, notified Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2022 stated that any individual whose name is removed from the databank under sub-rule (4) may apply for restoration of name on payment of fees of one thousand rupees. The institute will show their name in a separate restored category for a period of one year and allow them to appear for proficiency self-assessment test. In case of failure to pass the proficiency self-assessment test, their name will be removed from the databank.

MCA extended the due date to file the web form LLP Form 11 (Annual Return) for the Financial Year 2021-22 till 15th July 2022 vide its circular dated 29th June 2022.

Did you Know?

According to the Guinness Book of World Records, **"strengths"** is the longest word in the English language with one vowel. The word contains nine letters, eight of them being consonants.

Corporate Social Responsibility – An Eagle's Eye View

B Christy Bella
SR *Srinivasan & Co.* LLP

Earlier CSR activities were carried out especially through the charities. Over a period of time, welfare programs and activities in the nature of social responsibility came into being. The concept of CSR has evolved during the last few decades, by exhibiting socially, environmentally and ethically responsible behaviour in governance of its operations, business can generate value and long term sustainability for itself while making positive contribution towards the betterment of the society. CSR aims to fulfil expectations of the society, and it is now used as a strategy and a business opportunity to earn stakeholders' goodwill.

The Ministry of Corporate Affairs introduced the scheme of Corporate Social Responsibility w.e.f 1st April 2014. This move was done to enhance the environment and society where the company's operations are carried out. The main objective of implementing this scheme is to change the Corporate Social Responsibility to Socially Responsible Corporates. The proviso to sub-section (5) of Section 135, states that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities. However, the preference to local area is only directory, not mandatory in nature and companies should balance local area preference with national priorities.

Applicability:

Every Company which has

- ✓ net worth of rupees five hundred crores or more, or
- ✓ turnover of rupees one thousand crores or more or
- ✓ a net profit of rupees five crores or more,

in the immediately preceding financial year should spend at least two per cent of the average net profits made during the three immediately preceding financial year(s).

This criterion is specific to each Company. A holding or subsidiary of a company is not required to comply with the CSR provisions unless the holding or subsidiary itself fulfils the eligibility criteria prescribed under section 135(1) stated above.

If the company has not completed three financial years since its incorporation, but it satisfies any of the criteria mentioned in section 135(1), the CSR provisions including spending of at least two per cent of the average net profits made during immediately preceding not more than three financial year(s) are applicable.

Disclosure requirements

The Company which is spending CSR should disclose the following as per the Companies (CSR Policy) Rules, 2014:

Board's Report (Rule 8)

- Composition of CSR Committee
- Actual CSR amount spent
- Unspent CSR amount
- Reason for not spending the same

Website (Rule 9)

- CSR Committee composition
- CSR Policy
- Projects approved by Board

As per Rule 8(2), in case of a CSR-eligible foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II of the said rules, as applicable.

Creation of account and transfer to Fund - unspent CSR amount

For ongoing Projects:

The Company should transfer such unspent amount within a period of **thirty days** from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of **three financial years** from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of **thirty days** from the date of completion of the third financial year.[Section135(6)]

For projects other than ongoing:

Transfer such unspent amount to a **Fund** specified in Schedule VII, within a period of **six months** of the expiry of the financial year.[Section 135(5)]
The difference between both is when the unspent CSR amount relates to ongoing projects, it is given 3 years for spending the unspent amount, after expiry of 3 years only it is transferred to the Fund, but in the case of projects other than ongoing if there is any unspent amount it should be directly transferred to the Fund.

It is also to be noted that in case the company fails to spend the requisite amount within the financial year, it shall fulfil its obligation by transferring the unspent amount to any fund included in Schedule VII of the Act. The same will be considered as compliance with section 135(5) of the Act.

(Image source: Website)

Activities not included in CSR [Rule 2(d)]

(i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;
(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;
(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
(v) activities supported by the companies on sponsorship basis for deriving marketing benefits

for its products or services;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;

Eligible entities to receive CSR funds – Implementing Agencies [Rule 4]

The Board shall ensure that the CSR activities are undertaken by the company itself or through –

a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or
b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
c) any entity established under an Act of Parliament or a State legislature; or
d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

As per **Point (a) -** If the entity is established by the company, either singly or along with any other company then track record of three years is not required; on the other hand in **Point (d) -** If the entity is not established by the company, either singly or along with any other company then three years track record is mandatory.

Impact Assessment:

- ✓ The purpose of impact assessment is to assess the social impact of a particular CSR project. The intent is to encourage companies to take considered decisions before deploying CSR amounts and assess the impact of their CSR spending.
- ✓ Rule 8(3) of the Companies (CSR Policy) Rules, 2014 mandates following class of companies to conduct impact assessment:

  (i) companies with minimum average CSR spending obligation of Rs. 10 crore or more in the immediately preceding 3 financial years; and

  (ii) companies that have CSR projects with outlays of minimum Rs. 1 crore and which have been completed not less than 1 year before undertaking impact assessment.

- ✓ Impact assessment shall be carried **out project-wise only** in cases where both the above conditions are fulfilled. In other cases, it can be taken up by the company on a **voluntary basis.**
- ✓ Rule 8(3) of the Companies (CSR Policy) Rules, 2014 requires that the impact assessment be conducted by an independent agency. The Board has the prerogative to decide on the eligibility criteria for selection of the independent agency for impact assessment. The impact assessment report should be placed before Board and annexed to their report.
- ✓ The web-link to access the complete impact assessment reports and providing executive summary of the impact assessment reports in the annual report on CSR, shall be considered as sufficient compliance of the said rule.
- ✓ In case two or more companies choose to collaborate for the implementation of a CSR project, then the impact assessment carried out by one company for the common project may be shared with the other companies for the purpose of disclosure to the Board and in the annual report on CSR. The sharing of the cost of impact assessment may be decided by the collaborating companies subject to the limit as prescribed in rule 8(3)(c) of the Companies (CSR Policy) Rules, 2014 for each company.
- ✓ Expenditure up to a maximum of 5% of the total CSR expenditure for that financial year or 50 lakh rupees (whichever is lower) can be incurred separately for impact assessment.

Set off and carry forward of excess CSR amount spent:

The excess CSR amount spent in a financial year, can be set off against the required 2% CSR expenditure up to the immediately succeeding **three financial years** subject to compliance with the conditions stipulated under rule 7(3) of the Companies (CSR Policy) Rules, 2014.

The conditions under rule 7(3):

i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.

ii) the Board of the company shall pass a resolution to that effect.

This position is applicable from 22nd January 2021 and has a prospective effect. Thus, no carry forward shall be allowed for the excess amount spent, if any, in financial years prior to FY 2020-21.

(Image source: Website)

Terms in CSR:

"Administrative Overheads" are the expenses incurred by the company for 'general management and administration' of CSR functions. However, the expenses which are directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme, shall not be included in the administrative overheads.

Administrative overheads generally comprise of items such as employee costs, utilities, office supplies, legal expenses, etc. However, expenses which are attributed to the project implementation shall be included in project cost only.

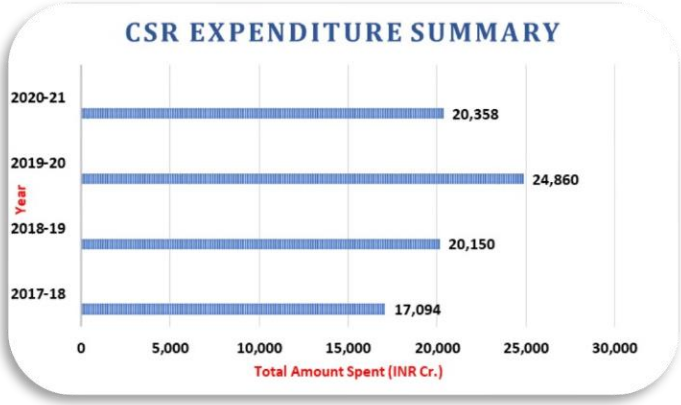
- ✓ Salary and training for the employees working in the CSR division of a company, stationery cost, travelling expenses, etc. may be categorised as administrative overheads.
- ✓ Salary of school teachers or other staff, etc. for education-related CSR projects shall be covered under education project cost.

The maximum permissible limit for administrative overheads is **five per cent** of the total CSR expenditure of the company for the financial year. The expenses incurred by the Implementing agency cannot be claimed as administrative overhead by the Company.

"**Ongoing Project**" means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.

"Commenced" - An ongoing project will have 'commenced' when the company has either issued the work order pertaining to the project or awarded the contract for execution of the project.

"Surplus" refers to income generated from the spend on CSR activities, e.g., interest income earned by the implementing agency on funds provided under CSR, revenue received from the CSR projects, disposal/sale of materials used in CSR projects, and other similar income sources. The surplus arising out of CSR activities shall be utilised only for CSR purposes.



Registration requirements:

In accordance with the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, a company can undertake CSR activities either by itself or through entities defined under Rule 4 (1).

e-Form CSR 1: These entities are required to mandatorily register themselves with the central government for undertaking any CSR activity by filing the e-form CSR-1 with the Registrar of Companies.

This e-Form is to be certified by a practicing professional. The form is processed by STP mode(straight through process), further a digitally signed approval letter along with CSR Registration number will be sent via mail as an acknowledgement.

e-Form CSR 2: The ***web-form*** CSR 2 shall be filed as an independent form for FY 2020-21 by all the companies that are required to carry out CSR activities as per the relevant rules or are voluntarily carrying out CSR activities. From financial year 2021-22, the *e-Form* CSR 2 should be submitted as an Addendum to e-Form AOC 4/ AOC-4 XBRL/ AOC-4 CFS/ AOC-4 NBFC of that financial year.
The form also generates project ID for ongoing projects and the form is processed by STP mode. The due date for filing this form for the FY 2020-21 is extended till 30th June, 2022.

Important facts:

- The amount spent by a company towards CSR cannot be claimed as business expenditure. Hence, no tax benefit available for the same.
- CSR contribution cannot be in kind and monetized as it should be spent.
- The CSR expenditure of the Company should not be incurred on activities or schemes beyond Schedule VII.
- Rule 2(1)(d)(ii) of the Companies (CSR Policy) Rules, 2014 clearly states that any activity undertaken by the company outside India shall not be an eligible CSR activity. The only exception is training of Indian sports personnel representing any State or Union Territory at national or international level.
- The expenses relating to transfer of capital asset such as stamp duty and registration fees, will qualify as admissible CSR expenditure in the year of such transfer.
- As per the definition of an ongoing project, the maximum permissible time period shall be three financial years excluding the financial year in which it is commenced i.e., (1+3) financial years.
- The budget outlay dedicated for one project can be used against another project, the Board and the CSR committee should appropriately record the alteration.
- Companies are not permitted to spend the unspent CSR amount, other than the amount pertaining to ongoing projects, on any CSR activity during the intervening period of six months after the end of the financial year. Such unspent CSR amount is required to be transferred to any fund included in Schedule VII of the Act.
- Mere disbursal of funds for implementation of a project does not amount to spending unless the implementing agency utilises the whole amount.
- Further, as per rule 4(5) of the Companies (CSR Policy) Rules, 2014, the Board of a company shall satisfy itself that the funds so disbursed 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.
- A company needs to open a separate 'Unspent CSR Account' for each financial year but not for each ongoing project.
- Profit Before Tax (PBT) is used for computation of net profit under section 135 of the Act.
- MCA Circular vide its circular No: 10/2020 dated 23.03.2020 clarified that spending of CSR funds for COVID-19 is eligible CSR activity.
- MCA also formed CSR Cell to resolve the issues on CSR (CSR Cell)(Ministry Of Corporate Affairs - FAQ on CSR Cell (mca.gov.in))

CSR Excellence Award – The Institute of Company Secretaries of India

With a view to provide further impetus to the Government's efforts towards implementation of provisions relating to CSR and to recognize the good practices undertaken by corporates under the CSR umbrella, ICSI unfolds the "ICSI CSR Excellence Awards".

Objectives of the Award:

The ICSI CSR Excellence Awards aim to recognise and promote the execution of CSR in its true letter and spirit. The objectives of the awards include the promotion of the spirit of Corporate Social Responsibility (CSR) amongst the Indian corporate by various ways.

Award Categories:

Large	-Actual CSR Spending ₹25 Crores and above
Medium	-Actual CSR Spending < ₹25 Crores and > ₹10 crores
Emerging	-Actual CSR Spending < ₹10 crores and > ₹1 crore

Eligibility Criteria:

All companies having CSR spend of 2% of average net profits as mandated under section 135.
The previous awardees list is provided in the website of ICSI. [Previous_Awardees_06092021.jpg (3556×2000) (icsi.edu)]

MCA Circulars, FAQ and Updates on CSR with time line:

- Companies (Corporate Social Responsibility Policy) Rules, 2014 – 27th February 2014
- MCA General Circular No: 21/2014 – 18th June, 2014
- MCA General Circular No: 10/2020 – 23rd March, 2020
- MCA General Circular No: 01/2021 – 13th January, 2021
- Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 – 22nd January, 2021

- MCA General Circular No: 13/2021 – 30th July, 2021
- MCA General Circular No: 14/2021 – 25th August, 2021
- Companies (Accounts) Amendment Rules, 2022 – 11th February, 2022

An extract of SCHDULE VII of Companies Act, 2013

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:

i) Eradicating hunger, poverty and malnutrition, "promoting health care including preventive health care" and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.

v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

vi) measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;

vii) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports

viii) contribution to the Prime Minister's national relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

ix)

a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

x) rural development projects

xi) slum area development.

Explanation. - For the purposes of this item, the term `slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

xii) disaster management, including relief, rehabilitation and reconstruction activities.

Legal Maxim

Ubi jus ibi remedium

Meaning- It means, 'where there is a wrong, there is a remedy'. According to the maxim, if a wrong is committed, the law will offer a remedy.

LODR Compliances for listed companies undergoing Corporate Insolvency Resolution Process (CIRP)

Sonam Singhvi
SR *Srinivasan & Co.* LLP

Listing Regulations contain a list of events that are required to be disclosed when a listed company is under CIRP. This article will help us to understand the instances triggering the compliances becoming mandatory under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations').

Insolvency and Bankruptcy Code, 2016 provides for the initiation and conducting of corporate insolvency resolution process (CIRP). If the Corporate debtor is a listed company, then the provisions of Listing Regulations become applicable.

Listing Regulations were amended in the year 2018 and later again in 2021 which mandated disclosures at various stages by listed companies undergoing CIRP wherein, the powers of the Board of Directors are suspended and the management is taken over by the Interim Resolution Professional/ Resolution Professional (IRP/RP). Accordingly, IRP/RP has to ensure that the company under CIRP complies with all the applicable laws including that of Listing Regulations.

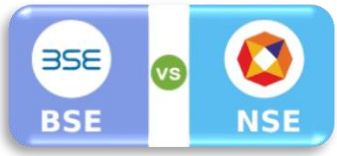
Regulation 30, Schedule III – Part A - Para A- Sl. No.16

The following are the list of material events upon occurrence of which the disclosure is required to be made to the Stock Exchange by a listed company undergoing

a) Filing of application by the corporate applicant for initiation of CIRP, also specifying the amount of default;
b) Filing of application by financial creditors for initiation of CIRP against the corporate debtor, also specifying the amount of default;
c) Admission of application by the Tribunal, along with amount of default or rejection or withdrawal, as applicable ;
d) Public announcement made pursuant to order passed by the Tribunal under section 13 of Insolvency Code;
e) List of creditors as required to be displayed by the corporate debtor under regulation 13(2)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
f) Appointment/ Replacement of the Resolution Professional;
g) Prior or post-facto intimation of the meetings of Committee of Creditors;
h) Brief particulars of invitation of resolution plans under section 25(2)(h) of Insolvency Code in the Form specified under regulation 36A(5) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
i) Number of resolution plans received by Resolution Professional;
j) Filing of resolution plan with the Tribunal;
k) Approval of resolution plan by the Tribunal or rejection, if applicable;
l) Specific features and details of the resolution plan as approved by the Adjudicating Authority under the Insolvency Code, not involving commercial secrets, including details such as:
    - Pre and Post net-worth of the company;
    - Details of assets of the company post CIRP;
    - Details of securities continuing to be imposed on the companies' assets;
    - Other material liabilities imposed on the company;
    - Detailed pre and post shareholding pattern assuming 100% conversion of convertible securities;
    - Details of funds infused in the company, creditors paid-off;
    - Additional liability on the incoming investors due to the transaction, source of such funding etc.;
    - Impact on the investor – revised P/E, RONW ratios etc.;
    - Names of the new promoters, key managerial persons, if any and their past experience in the business or employment. In case where promoters are companies, history of such company and names of natural persons in control;
    - Brief description of business strategy.
m) Any other material information not involving commercial secrets.
n) Proposed steps to be taken by the incoming investor/acquirer for achieving the Minimum Public Shareholding (MPS);
o) Quarterly disclosure of the status of achieving the MPS;

p) The details as to the delisting plans, if any approved in the resolution plan.

Guidance note by NSE and BSE



(Image source: Website)

Further, in order to ensure the timely disclosure of the material information to the Stock Exchanges, on 09th July, 2021, the National Stock Exchange of India Limited ('NSE') and Bombay Stock Exchange ('BSE') issued a guidance note to companies undergoing CIRP. It states that the following disclosures shall also be submitted to the Stock Exchange in addition to the above already provided:

- Prior intimation of at least two working days about the date of hearing where NCLT would be considering the Resolution Plan.
- Disclosure of the approval of resolution plan to be made to the Exchange on oral pronouncement or otherwise of the Order on immediate basis and not later than 30 minutes.
- The Resolution Professional shall inform through the Exchange platform any impact on the existing holders / investors of listed securities on areas such as status of listing, the value of holding of existing holders, write off/ cancellation/ extinguishment of existing equity shares/ preference shares/ debentures, etc. without any payment to such holders, where applicable.
- Companies/Resolution Professionals are advised to be guided by the provisions of the LODR Regulations and are advised to maintain the confidentiality of the resolution plan until details are not submitted on the Exchange Platform.

Exemptions

The provisions pertaining to the Composition and Constitution of Board, Audit and other committees shall not be applicable to the listed companies undergoing CIRP provided that the roles and responsibilities of the Board/ Committees are fulfilled by the IRP/RP. It may be pertinant to note that the SEBI disclosure requirements relate only to CIRP and do not make any reference to liquidation process. It is high time SEBI comes out with disclosure requirements for liquidation process also.

Powers of the Board during CIRP and Liquidation

Kiran Kumar Bhaskar
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The Insolvency and Bankruptcy Board of India vide its Circular dated 3rd January,2018 emphasized that the corporate debtor should comply with the applicable laws during the CIRP process. Subsequently with effect from 06th June 2018 the IRP shall be responsible for complying with the requirements on behalf of the corporate debtor as prescribed under Section 17(2)(e) of the Code. The circular reiterated that while acting as an IRP, RP, liquidator for a corporate person under the Code, an Insolvency Professional shall exercise due care and take all necessary steps to ensure the compliance of the applicable laws of the corporate debtor. Further the insolvency professional shall be responsible for the non-compliance of the provisions of applicable laws if it is on account of his conduct. This puts the resolution professional into the shoes of the board of directors of the corporate debtor. The aforesaid circular spreads a belief that the RP completely replaces the board of directors which seems to be a perplexed view.

(Image source: Website)

The corporate setup is structured in such a way that the board of directors is vested with the general powers to manage the entity subject to the limitations posed by the charter documents and the laws governing the entity. As long as the company stays intact the governance is vested with the board of directors. However, if things go inside out wherein the company starts to default in payment or fails to meet continuing obligations, the control goes for a change as per the scheme of the Insolvency and

Bankruptcy Code, 2016. The Code intends to follow the design of creditor in control.

The Bankruptcy Law Reforms Committee observes:

"The limited liability company is a contract between equity and debt. As long as debt obligations are met, equity owners have complete control, and creditors have no say in how the business is run. When default takes place, control is supposed to be transferred to the creditors; equity owners have no say." The Code provides for suspension of the board and the affairs are to be managed by the Resolution Professional who is appointed by the committee of creditors.

Now the question is to what extent will the RP replace the board. There is a consensus building on the point that once an Insolvency Professional takes over the corporate debtor through the resolution process, the RP is responsible for fulfilling the actions that the directors are supposed to do in respect of the company. The above does not seem to be the true intent of the code. The resolution professional leads the resolution process to ensure no malpractice takes place so that the entity's wealth is not depleted.

Provisions in the Code:

Section 17 of the Code, inter-alia, states,
"17. (1) From the date of appointment of the interim resolution professional,—

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

Sub-section (2) goes on to state that the interim resolution professional, vested with the management of the corporate debtor, shall act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents and shall have the authority to access the electronic records, books of accounts, records and other relevant records of the corporate debtor.

Section 19 of the Code runs as under:

"(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor."

Note that the word "personnel" includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor (as defined under section 5 (23)).

Section 24 (3) perpetuates confusion when it says the resolution professional shall give notice of each meeting of the committee of creditors to the members of the "suspended board of directors or partners of the corporate debtor".

Section 25 (1) of the Code enunciates that it shall be the duty of the resolution professional "to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor". Sub-section (2) then lists down the actions to be undertaken for fulfilment of the duty stipulated under sub-section (1).

As per the Hon'ble Supreme court judgement on the case I*nnoventive Industries Ltd v. ICICI Bank and Another*, the Hon'ble SC stated that *"once an insolvency professional is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the company."* The pronouncement seems to conclude that directors of the company become erstwhile directors and are no longer allowed in the management of the corporate debtor once an IP is appointed.

Now, Section17(1) of the Code states that the powers of the Board be suspended and such powers are to be exercised by the IRP/RP. Therefore, the words "suspended board of directors" as used in Section 24 is misguided. As per Section 17 the word "suspended" signifies only the powers of the board and not the board itself. Cessation of powers must be differentiated from cessation of directorship. In S*teel Konnect (India) Pvt. Ltd. v. M/s. Hero Fincorp Ltd*., it was held that "Once the application is admitted, the 'Corporate Debtor' has a right to prefer an appeal under Section 61, apart from any other aggrieved person like Director(s) of the company or members, who do not cease to be Director(s) or member(s), as they are not suspended but their function as 'Board of Director(s)' is suspended."

From the above it can be inferred that if the corporate debtor is to be carried on as a going concern all the directors or officers of the corporate debtor are required to function and to assist the IRP/RP who manages the affairs of the company during the moratorium period. If the officer or employee refuses to function on the

direction of the Resolution Professional or misuse the power, it is always open to the Resolution Professional to take away such power after notice to the person concerned.

As per Section 25(1) of the Code it is the duty of the RP to preserve and protect the continued business operations of the corporate debtor for which the RP shall undertake the list of actions as mentioned in sub-section (2) of Section 25. On a plain reading of the section the majority of the matters mentioned in the list pertains to conduct of the resolution process and are either supervisory or representative in nature. The RP is to come into the picture only when there are difficulties faced during the continued operations of the business of the corporate debtor.

So far, we have discussed on the provisions relating to CIRP, now let's look into the provisions of Liquidation.

It might be relevant to note that as per sub-section (7) of section 33 of the Code "the order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator".

Two important points may be noted here are:

1) When an entity goes into liquidation, the order of liquidation is deemed to be a notice of discharge to the officers, employees and workmen. As such, the persons vacate their respective offices. The law explicitly provides for vacation of their offices. Such a provision cannot be said to be the same as that contained under section 17 which talks about suspension of powers of the Board. "Suspension" should be differentiated from "discharge".
2) Where the business of the corporate debtor is continued during the liquidation process by the liquidator, the order shall not be taken to be a notice of discharge of the officers and employees of the corporate debtor. This exception leads to the conclusion that in case the entity is allowed to continue its operations, the officers shall continue serving their respective functions, which is the case during CIRP.

Also, as per Section 34(2), once the liquidator is appointed under this section all powers of the board of directors, key managerial personnel and the partners of the corporate debtor shall cease to have effect and shall be vested in the liquidator.

Therefore, the IBBI Circular that directs an insolvency professional to ensure corporate person undergoing any process under the Code complies with the applicable laws shall be read accordingly. It should be the responsibility of the directors and officers of the company to continue to comply with the applicable laws and report periodically to the Insolvency Professional. A Resolution Professional takes over the management of the corporate debtor on "as is" basis – just that the management comes under the powers of the Resolution Professional, conferred on him under the law. The officers continue functioning as they used to. However, the overall governance of the corporate debtor will go in the hands of the Resolution Professional so as to ensure that the corporate debtor goes through the resolution process without any hindrances. The functional machinery of the corporate debtor remains intact under the control and supervision of the Resolution Professional.

To sum up, suspension of the board of directors under CIRP means suspension of the powers of the board of directors and not the board as a whole. And ceasing of all powers of the board during liquidation process does not imply cessation of directorship.

An English professor wrote the words:

"A Woman without her man is nothing"
on the chalkboard and asked the students to punctuate it correctly.

All of the boys in the class wrote:
"A woman, without her man, is nothing."

All of the girls in the class wrote:
"A woman: without her, man is nothing."

Standard of Conduct for the CoC - Report of the Insolvency Law Committee May 2022

CGRF Bureau

The following are the excerpts from the Insolvency Law Committee Report: Standard of Conduct for the CoC.

"The CoC is entrusted with critical commercial decision-making powers in the CIRP under the Code. It not only takes key decisions regarding the conduct of the business of the corporate debtor during the CIRP but is also tasked with the responsibility of assessing the viability of the corporate debtor and determining the manner in which its distress is to be resolved. Thus, the success of a CIRP hinges on the manner of functioning of the CoC. It was brought to the Committee that there have been a few instances of improper conduct by members of CoCs that have raised concerns amongst stakeholders.

In some instances, the representatives sent by members of the CoC are neither adequately apprised of their role, nor adequately empowered to take decisions. This "*causes delay and allows depletion of value* "which goes against two crucial objectives of the Code, i.e., timely resolution and maximization of value available for stakeholders. This is despite a circular issued by the IBBI vide its No. IBBI/CIRP/016/2018 which provides that members of the CoC should send personnel "*who are competent and are authorised to take decisions on the spot and without deferring decisions for want of any internal approval from the financial creditors*." In other instances, the tribunals have noted missteps of CoCs, such as undertaking adjudication beyond their powers, violating legal procedural requirements6, etc.

It is also pertinent to note that presently, the conduct and decision making of the CoC is not subject to any regulations, instructions, guidelines etc. of the IBBI. Unlike insolvency professionals, IUs and IPAs, the IBBI does not exercise regulatory oversight over financial creditors who form the CoC. Given this, stakeholders have suggested that CoCs should be guided by a code of conduct which lays down the expectations that financial creditors are required to meet when acting in the CoC.

The Committee had previously deliberated on this issue in its 2020 Report and suggested that "*institutional financial creditors should take necessary steps to ensure that their representatives are capable of discharging their duties in a timely and efficient manner*." To enable this, the 2020 Report had recommended that–

i) Financial institutions should build strong verticals for stressed asset management that go through period performance review. These verticals should be staffed with personnel that have adequate training and expertise.

ii) The personnel that represent financial creditors in meetings of the CoC should be sufficiently empowered to take decisions on the spot, and effectively discharge their duties.

iii) Industry bodies, like IBA, should develop guidance to help members of the CoC in discharging their duties consistent with the letter and spirit of the Code.

The Committee took note of the above and discussed that the recommendations made in its last report have not resulted in a change in the conduct of financial creditors in the CoC. It felt that since the CoC drives the CIRP and is given wide powers to utilise its commercial wisdom, such powers should be balanced with adequate accountability. Since the decisions of the CoC impact the life of the corporate debtor, and consequently its stakeholders, it needs to be fair and transparent in its decisions. **Therefore, the Committee agreed that it would be suitable for the IBBI to issue guidelines providing the standard of conduct of the CoC while acting under the provisions governing the corporate insolvency resolution process, pre-packaged insolvency resolution process and fast track insolvency resolution process. This may be in the form of guidance that provides a normative framework for conducting these processes. In order to empower the IBBI to issue such guidelines, the Committee recommended that appropriate amendments may be made to Section 196 of the Code. Further, the Committee discussed that the MCA may consult with relevant financial sector regulators such as SEBI and RBI, to frame an appropriate enforcement mechanism for the standard of conduct. Several members of the Committee agreed that the IBBI may be most suitable to carry out such enforcement.** A discussion paper addressing the standard of conduct has already been issued by the IBBI pursuant to the discussion of the Committee.

The Committee also discussed the scope of the standard of conduct. It noted that the standard of conduct should lay down the rules of procedural fairness and efficiency that the CoC is required to abide by. However, the Committee cautioned that the standard of conduct should not be utilised to expand or limit the substantive powers of the CoC and should not provide guidance that diminishes its commercial wisdom. Additionally, such a standard of conduct should elucidate the role of the CoC vis-à-vis insolvency professionals, in line with the discussion in the 2020 Report of this Committee."

Court Orders

CGRF Legal Team

Vallal RCK
Vs.
M/s Siva Industries and Holdings Ltd. and others
CIVIL APPEAL NOS. 1811-1812 OF 2022
03.06.2022 | Supreme Court

An application was filed by IDBI Bank under Section 7 of IBC, 2016 for the initiation of CIRP in respect of the Corporate Debtor in NCLT Chennai. The RP had presented a Resolution Plan before CoC, submitted by one M/s Royal Partners Investment Fund Ltd. (IARCL). But it received only 60.90% votes of the CoC and could not meet the requirement of 66% votes; so, the plan was not approved. Also, the 330 days period in relation to the CIRP of the Corporate Debtor had expired and hence the Resolution Professional had filed the application seeking liquidation as per Section 33(1) of IBC, 2016.The appellant, who is the promoter of the Corporate Debtor, submitted a settlement plan to the CoC. The settlement plan got 94.23% votes by the CoC favouring the plan. The NCLT held that the said settlement plan was not a settlement simpliciter under Section 12A but a Business restructuring plan, dismissed the application filed under Section 12A of IBC, 2016 for withdrawal of CIRP and approval of the settlement plan. Accordingly, application for liquidation of the Corporate Debtor was allowed as well.

(Image source: Website)

Aggrieved by the said orders of NCLT, the appellant preferred two appeals before the Hon'ble NCLAT Chennai. The two appeals were-

1. Appeal against dismissal of application under Section 12A of IBC, which was rejected on the ground that the well settled legal principle is that the committee of creditors ought not to approve the Resolution Plan where the Resolution applicant is ineligible under Section 29A of the code. '**The promoter of the CD being ineligible to project a resolution plan by virtue of 29A of the code had embarked upon the aspect of furnishing a settlement proposal 'which is akin to resolution plan'.**
2. Appeal against the order of Liquidation under Section 33(1) of IBC, which was rejected on the ground that upon failure of CIRP the Code allows Liquidation. It is pointed out that Section 33 of the code enjoins liquidation of the CD if the Adjudicating Authority comes to the conclusion that the Resolution plan does not satisfy the ingredients of Section 30(2) of the code. '**If the time period for CIRP was extended but the Resolution plan was not accepted by the Adjudicating Authority, then liquidation of the company can be ordered under Section 33 of the Code'.**

Aggrieved by the order of NCLAT Chennai, the appellant filed applications before the Hon'ble Supreme Court.

A short question that fell for consideration in the appeal is as to whether the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors or not.

The Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It is thus clear that the decision of the CoC was taken after the members of the CoC, had due deliberation to consider the pros and cons of the Settlement Plan and took a decision exercising their commercial wisdom. Therefore, the court is of the view that neither the learned NCLT nor the learned NCLAT were justified in not giving due weightage to the commercial wisdom of CoC.

It was submitted that one of the main objects of the IBC is permitting the Corporate Debtor to continue as an ongoing concern and at the same time, paying the dues of the creditors to the maximum and the impugned judgment passed by the learned NCLAT and the learned NCLT are totally contrary to the spirit behind the IBC.

It was also submitted that the CoC, having accepted the Settlement Plan with the voting majority of 94.23%, the

learned NCLT and the learned NCLAT have grossly erred in rejecting the Settlement Plan and withdrawal of CIRP. In the case of **Swiss Ribbons Private Limited and Another v. Union of India and Others ((2019) 4 SCC 17))**, one of the challenges made was with regard to validity of Section 12A of the IBC. It was argued that the figure of 90% voting share was arbitrary. It was the contention that though the withdrawal was just and proper, the CoC could exercise the power arbitrarily to reject such a settlement. While rejecting the said contention, this Court observed thus:

"The main thrust against the provision of Section 12-A is the fact that ninety per cent of the Committee of Creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, IBC Laws must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the Committee of Creditors do not have the last word on the subject. If the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12-A also passes constitutional muster."

When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and violates the provisions of the statute or the Rules.

The Hon'ble Supreme Court allowed the appeals and the orders of NCLT and NCLAT were quashed and set aside. The order passed by NCLT for withdrawal of CIRP application was allowed.

Amit Gupta
Vs.
Anil Kohli RP and another
Company Appeal (AT) (Ins) No. 445 of 2021
10.06.20222 | NCLAT, New Delhi Bench

The Appeal has been filed against the order passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai Court –II on 30.04.2021 in IA No. 661 of 2020 & IA No. 1327 of 2020 in CP (IB) No. 1138/MB/2017 on the applications of the Appellant. The Adjudicating Authority vide the impugned order was pleased to dismiss the Company Application being IA No. 1327 of 2020 filed by the Appellant and partly allowed the Company Application being IA No. 661 of 2020 filed by the Appellant.

a) The grievance of the Appellant is that the Adjudicating Authority has dismissed the Company Application being IA No. 1327 of 2020 in CP (IB) 1138/MB/2017 on the ground that the Adjudicating Authority is not vested with the jurisdiction to entertain the prayer that the Appellant should be permitted to make payments of the balance amount within two months after the lifting/removing all attachments, charges, encumbrances and liens from the assets & properties of the Corporate Debtor & in respect of IA No. 661 of 2020 and for imposing Commercial interest @ 12% p.a. from the date it become due & payable.

b) The Appellant was also aggrieved with the Adjudicating Authority as it has allowed partly the Company Application being IA No. 661 of 2020 particularly the direction giving the Appellant to pay interest @ 12% p.a. from the date it became due and payable as per the Resolution Plan.

COURT'S OBSERVATIONS:

i. It is amply clear that the CIRP shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including the extension of CIRP Period and time taken in legal proceedings.
ii. Liability for prior offenses etc. particularly removing / lifting attachments / liens / charges/ encumbrances existing prior to CIRP needs to be dealt with in accordance with the provisions of Section 32A of the Code.
iii. It is also not in dispute that the object of the

IBC would be defeated if the responsibility for prior offences is put on the Resolution Appellant. The Resolution Appellant is supposed to get a clean slate and all dues of the Corporate Debtor prior to commencement of CIRP stand extinguished.

iv. It is very much clear that the Resolution Applicant has got the Corporate Debtor in less than 10% of the value of the admitted claim practically 90% is the waiver. However, this issue cannot be reckoned now but it can have a leverage impact on levy of interest @ 12% p.a. for delay in releasing the balance payment. The interest is to be paid for the period from 27.01.2020 to 15.11.2021. As it looks from the Written Submissions of the SBI submitted to the Registry of this tribunal vide diary no. 33701 dated 21.02.2022, this period also comprises the period resulting from global pandemic covid-19.

v. Since the Successful Resolution Applicant/Appellant has paid the full amount so now there is no question of going back and hence, perhaps this is the area where the question involved is now as far as whether the interest rate be reduced to be made at par of RBI base rate for lending to banks with additional 2% margin subject to a limit of 12% p.a. or otherwise. Hence, we hereby approve a rate of interest of RBI base rate for lending to Banks + 2% margin as per the rate of interest applicable between 27.01.2020 to 15.11.2021 subject to a limit of 12% p.a.

vi. It has been made amply clear in the "CoC of Essar steel India Ltd. v. Satish Kumar Gupta & Ors." that the SRA cannot suddenly be faced with undecided claims, after the Resolution Plan submitted by him has been accepted. It is the responsibility of the Resolution Professional to compile the claims submitted to him or observed from record and put the same in the information memorandum, so that the Prospective Resolution Applicant have a full idea of its own liability. The SRA is to start on a fresh slate.

vii. All this reflects to suggest one thing very clearly that the Resolution Professional and the representative of the CoC who the Chairman/Members of the Monitoring Committee are should assist the Resolution Applicant in sorting out the issues pending at various forums be it Excise Authority, Enforcement Directorate etc. As reflected by the Appellant and at the same time the Resolution Applicant will have to bear certain interest burden which should be the rate of interest of RBI Base rate for lending to banks + 2% margin as per the rate of interest applicable between 27.01.2020 to 15.11.2021 subject to a limit of 12% p.a.

CONCLUSION:

The appellate authority upholds the view that the Resolution Professional and the CoC who are the Chairman/Members of the Monitoring Committee should assist the Resolution Applicant in sorting out the issues pending Liability for prior offenses etc. particularly removing/lifting attachments/liens/charges encumbrances existing prior to CIRP needs to be dealt with in accordance with the provisions of Section 32A of the Code.

Manoj Toshniwal
Vs.
IFCI Ltd.
07-Jun-22 | NCLT, Kolkata Bench

"The presence of the term 'and' in the section 96(1)(a)&(b) should be read as a conjunctive one, which joins clause 1(a) of the section with clause 1(b) and infers that interim moratorium commences against all the debts (including his personal debt) and the creditors of the debtor are barred from initiating any legal proceedings in respect of any debt"

An Application under Section 95 of the Code in CP(IB) 210/KB/2021 was filed by State Bank of India ('SBI') against Mr. Manoj Toshniwal ('personal guarantor' of EMC Ltd – Corporate debtor). Further, IFCI Limited ('IFCI') being one of the financial creditors of the corporate debtor also filed an Application in CP(IB) 319/KB/2021, under Section 95 of the code against the personal guarantor.

On 14th January 2022, Hon'ble NCLT Kolkata vide its orders in the application filed by SBI, appointed Mr. Kannan Tiruvengadam as the RP and directed him to file a report under Section 99 of the Code. However, the said order was modified on 21st February 2022 by the Bench and the name of RP was changed as Mr. Tarun Kumar Ray.

Subsequently, the application filed by IFCI came up for hearing on 17th February 2022 wherein a different RP was appointed and directed to submit report.

The present Application is filed by the personal guarantor seeking directions to set aside the order of NCLT dated 17th February 2022 on the ground that during interim moratorium period the creditors of the debtor shall not initiate any legal action or proceedings in respect of the debt and hence the CP(IB) 319/KB/2021 filed by IFCI should be stayed in view of Section 96(1)(b).

After hearing all the parties, the Adjudicating Authority observed that on a conjoint and careful reading of Section 96 of the Code it appears that an *interim moratorium shall commence on the date of the application* in relation to *all the debts* and shall cease to have effect on the date of admission of such application *and* during the interim moratorium period, all legal actions or proceedings pending in respect of any debt shall remain stayed and *creditors shall not initiate any legal action or proceedings in respect of any debt.*

It was opined that the term 'and' in the Section should be read as a conjunctive one, which joins clause 1(a) with clause 1(b) and infers that interim moratorium commences against all the debts (including his personal debt) and the creditors of the debtor are barred from initiating any legal proceedings in respect of any debt. Hence, the Bench was of the view that the interim moratorium restrains any ongoing or fresh legal action or proceeding in respect of any debt pertaining to the personal guarantor.

Further, it was noted that the application by IFCI was filed on 29th September 2021, whereas, the application filed by SBI was on 9th July 2021, which indicates that the interim moratorium against the personal guarantor commenced from 9th July 2021 itself.

Accordingly, the Application filed by IFCI was stayed and the resolution professional appointed in the application filed by IFCI was held to be discharged of his duties.

Legal Maxim

Nemo dat quod non habet

Meaning- 'no one gives what he doesn't have'. It means no one can transfer the title which he doesn't possess. The rule is associated with transfer of possession of a property in law.

Ambit Finvest Private Limited
Vs.
Rakesh Niranjan Ranjan & Ors.
17-Jun-22 l NCLT, Mumbai Bench

"*A dissenting financial creditor cannot file an application under Section 66 of IBC*"

An Application was filed by Ambit Finest Pvt. Ltd. (Dissenting Financial Creditor) under Sections 60(5), 66,67,47 and 73 of IBC against the resolution applicant / erstwhile director to avoid transactions to the extent of Rs. 2.28 crores and to reject the resolution plan proposed by the Respondent.

It was noted that the resolution plan submitted by the resolution applicant was duly approved by the CoC.
After looking into the averments, the Bench was of the view that the corporate debtor is a registered MSME and hence the provisions of section 29A (c) and (h) of the Code does not apply. Accordingly, the resolution plan submitted by the respondents were held to be within the provisions of the Code.

(Image source: Website)

Further it was noted that clause of personal guarantee in the resolution plan will not extinguish the right of creditors to proceed against personal guarantors. The Bench was of the view that Creditors are always at liberty to proceed against personal guarantor separately.

Since only the resolution professional or liquidator has the right to file an application for avoidance transaction, it was held that the Applicant herein being the dissenting financial creditor does not have a right to file the present application. Hence, the Application was dismissed on the ground of maintainability, since the transactions which were mentioned in the application under section 47 and section 66 did not qualify the criteria of undervalued or fraudulent transactions.

Shri. V S Varun, Liquidator, M/s. Aradhya Wire and Ropes Pvt. Ltd.
Vs.
M/s. South Indian Bank
06-Jun-22 | NCLT, Bengaluru Bench

Company Petition filed for initiation of CIRP against a Corporate Debtor can be withdrawn during the process of Liquidation

The Liquidator of Aradhya Wire and Ropes Pvt. Ltd. ('corporate debtor') filed an application before Hon'ble NCLT under Section 12A of IBC seeking withdrawal of the Application filed under Section 10 initiating CIRP against the corporate debtor. It was submitted that South Indian Bank was the only member of CoC and that it resolved to liquidate the corporate debtor on 15.10.2020, which was subsequently approved by the NCLT on 16.11.2020. Even under liquidation, South Indian Bank was the only creditor who had submitted its claim. It was submitted that the only realizable asset available with the corporate debtor was plant and machinery which was valued around Rs. 25 Lakhs. The financial assets were not in a position to be recovered. In the meantime, a resolution applicant of the group company expressed intention to take over the entire assets at liquidation value. However, due to Covid-19 pandemic the prospective buyer was unable to pay balance payment of Rs. 8 Lakhs towards GST.

(Image source: Website)

In the meantime, the erstwhile promoter of the corporate debtor approached the liquidator and expressed his intention to revive the company. The promoter informed that debt due to the only creditor viz., South Indian Bank was settled and that the Bank had issued no due certificate. Subsequently, in the stakeholder consultation committee meeting held on 15.10.2021, the representative of South Indian Bank intimated the liquidator that the loan account of the corporate debtor is settled and that they consent for withdrawal of liquidation process.

In view of the above, the liquidator approached Hon'ble NCLT, Bengaluru. Thus, the issue for consideration is whether a Petition filed for initiation of CIRP against the corporate debtor, can be withdrawn during the process of liquidation.

Upon perusal of Section 12A read with Regulation 30A of CIRP Regulations and relying upon the decision of Hon'ble NCLAT in Shwe*tha Vishwanath Shirke & Ors. Vs. The Committee of Creditors & Anr. - CA(AT)(Ins) 601 of 2019*, the Bench in the present case was of the view that the instant application filed by liquidator under Section 12A is maintainable.

Further, the Bench relied on the Judgment passed by Hon'ble NCLAT in V. Navaneetha Krishnan Vs. Central Bank of India, Coimbatore & Anr. *CA(AT)(Ins) 288 of 2019,* in which it was held that even during the liquidation period, if any person, not barred under Section 29A of the code satisfy the demands of the CoC, such person may move before the Adjudicating Authority for withdrawal of the proceedings. It was noted that Hon'ble Supreme Court in *Vallal RCK vs. M/ s. Siva Industries and Holdings Limited and Others – Civil Appeal Nos. 1811-1812 of 2022,* held that if the CoC resolve with more than 90% voting share to accept the settlement proposal and to allow the withdrawal of Petition, neither NCLT nor NCLAT shall interfere with the same unless the decision of the CoC is wholly capricious, arbitrary, irrational and de hors the provisions of the Statue or the Rules.

Finally, taking into consideration of the above judicial precedents and provisions of law, the application filed by the liquidator in the present case was allowed and the corporate debtor was released from all rigours of CIRP. The liquidator was directed to handover the corporate debtor to the suspended board of directors forthwith and he was released from all his duties as the liquidator.

Legal Maxim

Suo moto

Meaning- 'on its own accord'. When a court or a government entity takes an action on its own account and not as a result of a party asking or making a motion to move the court or the entity to act.

Insolvency and Bankruptcy Board of India
CIRCULAR

No. IBBI/IU/51/2022 15th June,2022

1. It has been decided that henceforth, the Board will forward the application for initiating insolvency received by it in terms of rule 4 *(Sec.7-Intiation of corporate insolvency process by Financial Creditor)*, 6 *(Sec. 9-Application of initiation of corporate insolvency resolution process by Operational Creditor)* or 7 *(Sec. 10- Initiation of corporate insolvency resolution process by Corporate applicant)* of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, to the Information Utility (IU) and on receipt of the said application, the IU shall:
    a) inform other creditors of the Corporate Debtor by sharing the application;
    b) issue notice to the applicant, requiring it to file *'information of default'* in the specified format under Insolvency and Bankruptcy Board of India (Information Utility) Regulations, 2017(IU Regulations); and
    c) process the 'information of default' for the purpose of issuing Record of Default (ROD) as per the IU Regulations.
2. This circular is issued in exercise of powers under section 196 of the Insolvency and Bankruptcy Code, 2016.
3. This Circular shall come into force with immediate effect.

Insolvency and Bankruptcy Board of India

No. IBBI/PR/2022/28 15th June, 2022

Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2016

1. The amendment provides the operational creditors to furnish extracts of Form GSTR-1, Form GSTR-3B and e-way bills, wherever applicable along with the application filed under section 9 of the Insolvency and bankruptcy Code, 2016. These additional set of documents, can be used as evidence of transaction with the corporate debtor, debt and default easing the process of admission. These documents will also to be submitted as part of the claims submitted to the resolution professional to help collation of claims. Further, creditors filing applications under section 7 or 9 of the Code are required to furnish details of their PAN and Email ID to ensure smooth correspondence.
2. In order to improve information availability, the amendment places a duty on corporate debtor, its promoters or any other person associated with the management of the corporate debtor to provide the information in such format and time as sought by the resolution professional.
3. The amendment places a duty on the creditors to share information regarding the assets and liabilities of the corporate debtor, the financial statements and other relevant financial information from their records and available reports to help the resolution professional in preparation of the information memorandum and relevant extracts from the transaction or forensic audit reports to aid the resolution professional in preparation of the avoidance application.
4. The Amendment also addresses the issue of treatment of avoidance applications filed with the Adjudicating Authority after closure of the corporate insolvency resolution process (CIRP). It provides that the resolution plan shall provide for manner in which such applications will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.
5. The amendment includes a definition of significant difference in valuations during CIRP and enables the committee of creditors to make a request to the resolution professional regarding the appointment of a third valuer.
6. The amended regulations are effective from 14.06.2022. These are available at www.ibbi.gov.in.

No Exemptions from the Scope of the Moratorium U/s 14(1), IBC, 2016 – Insolvency Law Committee Report May 2022

Under Section 14(1) of IBC 2016, the Adjudicating Authority shall by order declare moratorium for prohibiting the following:

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property;
d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Section 14 (3)(a) of the Code provides for an exception that the provisions of sub-section(1) shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

In this backdrop, it is relevant to note the recommendations of the report issued by the Insolvency Law Committee in May 2022.

The Insolvency Law Committee considered whether certain transactions in respect of securities and related proceedings under securities law should be exempted under this provision by the Central Government.

The Committee highlighted the application of Sec 14(1) in two kinds of situations:

1. ***Proceedings or actions*** against the corporate debtor for recovery of debt, security interest or property;
2. ***Transactions*** related to transfer of assets or any legal right or beneficial interests by the corporate debtor.

Further, on a combined reading of Sections 14(1) and 14(3)(a), the Committee opined that the power to grant exemption under Section 14(3)(a) applies only to transactions, agreements or arrangements and Central Government does not appear to have the power to exempt legal proceedings or actions.

Insolvency Law Committee in its report issued in May,2022 recommended that the exemption under Section 14(3)(a) should be exercised only in exceptional circumstances, which may not hinder the smooth conduct of the CIRP and hence, should not be relaxed until found necessary from the implementation experience of the Code.

The above views of the Insolvency law Committee assume significance as SEBI is reportedly concerned about the listed companies under CIRP not complying with the listing regulations while the trading of shares continued putting the interests of the public shareholding at high risk.

Permitting all shops and establishments to keep open for 24x7 on all days of the year extended for a period of three years under the Tamil Nādu Shops and Establishments Act, 1947.

In exercise of the powers conferred by section 6 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) the Governor of Tamil Nadu, in public interests, hereby **exempts all shops and establishments employing 10 or more persons**, from the provisions of sub-section (1) of section 7 and sub-section (1) of section 13 of the said Act and permits to **keep open for 24x7 on all days of the year, for a period of three years with effect from 05.06.2022**, unless it is revoked, subject to the following conditions, namely:

1. Every employee shall be given one day holiday in a week on rotation basis, and the details of every employee shall be provided in **'Form S'** added to the Tamil Nadu Shops and Establishments Rules, 1948 and shall be exhibited by the employer in a conspicuous place in the establishments.
2. Every employer shall exhibit details of the employees who are on holiday/leave, on daily basis, in a conspicuous place in the establishments.
3. The wages including overtime wages of the employees shall be credited to their savings bank account.
4. An employer shall not require or allow any person employed to work therein for more than eight hours in any day and forty-eight hours in any week and the period of work including over time shall not exceed ten and a half hours in any day and fifty seven hours in a week.
5. If employees are found working on any holiday or after normal duty hours without proper intent of overtime, penal action will be initiated against the employer/manager as laid down in the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the Tamil Nadu Shops and Establishments Rules, 1948.
6. Women employees shall not be required to work beyond 8.00 p.m. on any day in normal circumstances: Provided that the employer after obtaining written consent of the women employees shall allow them to work between 8.00 pm and 6.00 am, subject to providing adequate protection of their dignity, honour and safety.
7. Transport arrangements shall be provided to the women employee who works in shifts. A notice to this effect shall be exhibited at the main entrance of the establishment indicating the availability of transport.
8. The employees shall be provided with restroom, washroom, safety lockers and other basic amenities.
9. Every employer employing women employees shall constitute Internal Complaints Committee against sexual harassment of women under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Central Act 14 of 2013) and the said Committee shall be operative.
10. The above said terms and conditions shall be treated and implemented in addition to those provisions specified in the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the Tamil Nadu Shops and Establishments Rules, 1948.
11. In the case of violation of any statutory provision or any of the above terms and conditions noticed by the Inspector or otherwise, necessary penal action will be initiated against the employer/manager as laid down in the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the Tamil Nadu Shops and Establishments Rules, 1948.

Notification by Government
Labour Welfare and Skill Development Department
G.O.Ms.No.61 dt. 02.06.2022

Find the words!!!

CLUES	WORDS
1. All the fees and grants are received by IBBI are credited to the ------.	
2. What is the minimum net worth required for a company to be eligible for registration as an information utility?	
3. Who makes a public announcement inviting claims in a CIRP process?	
4. Income tax department works under?	
5. The minimum number of members necessary for holding a meeting is called as ------	
6. What is the period for which books of accounts must be retained by a company under the Companies Act 2013?	
7. Who is the South African born CEO of SpaceX and the electric cars manufacturing company Tesla?	
8. Which same mountain range would you find in India, China and Nepal (amongst other countries)?	

Dear Readers,

Names of the readers who give correct answers for all the above questions will be published with answers in our next month edition.

Send your answers to our mail ID, which is given below:-

createandgrowresearch@gmail.com

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 Services:

- 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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