

CGRF
SandBox®

July 2022

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“ORDERS RESERVED”



“GIG ECONOMY”



CREATE & GROW
RESEARCH FOUNDATION

Contents

CREATE & GROW RESEARCH FOUNDATION

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திருக்குறள்: 599

பரியது கூர்ங்கோட்டது ஆயினும் யானை
வெருஉம் புலிதாக் குறின்.

தமிழ் உரை:

கூரிய தந்தம் இல்லை என்றாலும் யானையை
மடக்கும் ஆர்வம் கொண்ட புலியே ஊக்கத்திற்கு
அடையாளம்.

Explanation:

The enormous elephant with his tapered tusks still shrinks
in fear when the tiger attacks.



From the Editor's Desk

Dear Readers of CGRF SandBox

I am glad to bring to our esteemed readers the July 2022 issue of "SandBox" with some introspection on current topics.

Start-up Support Services

There is a huge push by the Government to encourage more start-up enterprises. For a country of our size with more than 1.3 Billion population, there should not be any dearth of ideas. Yet, the number of start-ups emerging is comparatively much less than what is seen in a developed nation like USA.

While in this context, the important factor nursing the healthy growth of a young start-up is the presence of a simpler regime for setting up a company or partnership firm which should be capable of being scaled up. A robust eco-system is the need of the hour to guide the young and emerging entrepreneurs who may not have much idea on the commercial and compliance side of their new business venture. It is here that Start-up Support Services play a huge role.

Gig Economy

The start-ups have a strong connection with gig economy. Start-ups have an inherent necessity to be cost-effective and therefore, they feed on the gig economy, shared solutions, etc. An article on "Gig Economy" appearing in this issue highlights in clear terms the nexus between the technological innovations on one side and the need for a cost effective execution of last-mile delivery, on the other.

Interview with a young and promising start-up entrepreneur

Recently, we had the pleasure of chatting with a young, ever-energetic entrepreneur – Mr. V. Vignesh, the Co-Founder of Emptor.AI Inc., California, a start-up company in USA, when he was in Chennai in connection with setting up a subsidiary company in India. It was really amazing to observe the clarity of thoughts and expectations of this aspiring entrepreneur. The excerpts of the interview are published in this issue of CGRF SandBox.

Services under one roof

We are proud that CGRF has been helping to create more start-ups by bringing awareness about the legal requirements of setting up a Limited Liability Partnership or Private Limited Company or a Non-Profit organisation, the cost of complying with the associated regulations.

"Student's Corner"

We are glad to share with the readers that from this issue onwards we are introducing a column exclusively for students where we are publishing articles of interest for them.

Excellence in what we do

Excellence once in a while is likely to be dismissed as an aberration or as a one-off event. Excellence, in order to be respected and recognised, therefore, has to be a way of life. In whatever we do, we aspire to achieve excellence. In our quest for achieving excellence, we always make it a point to bring more value to the esteemed readers. In this context, the CGRF Team invites your critical comments and suggestions to improve our services to you.

Yours truly
S. Rajendran



Interview with Startup Entrepreneur

V. Vignesh, B.S., (Tech), M.S., (Comp. Science)
OpenWrench



We are happy to share with the readers of CGRF SandBox the excerpts of an interesting interview with Mr. V. Vignesh, Co-Founder of OpenWrench a start-up company in California.

Mr. Vignesh is a B.S., (Tech) in Information Systems from BITS Pilani Goa Campus, Masters in Computer Science from Texas A & M University US and IGNITE Programme from Stanford Business School, US. OpenWrench started with a modest beginning. Thanks to enormous efforts, tremendous grit, and great perseverance, OpenWrench has gained considerable traction in its niche segment of B2B services - Facility Management outsourcing for multiple activities. Recently, OpenWrench set up a subsidiary company in India – “OpenWrench India Private Limited” - which provides software development services to the parent company engaging top-of-the-deck engineers.

Here we go with a few questions and look at the aplomb with which Mr. Vignesh fielded the questions.

CGRF SandBox

We are delighted to have you with us Mr. Vignesh. How was your experience in establishing a subsidiary company in India?

V. Vignesh

Well, it was completely different from the impression we in USA had in our mind. It wasn't like you know, at the pressing of a button the company is in place. It took pretty much longer time than we thought it would. We were surprised by the documentations and delays in the process.

CGRF SandBox

What kind of services you would expect particularly as you yourself are already a start-up company in USA and setting up another start-up in India.

V. Vignesh

Generally, companies from US would like to source software specialists in India to speed up their deliverables in a cost effective manner. The compliance requirements in India for engaging employees and all other statutory requirements like audit of accounts, tax deductions, export

invoicing, transfer pricing, FEMA compliances, etc. are quite huge. No doubt, the services of a reliable support services firm which can provide end-to-end services without any hassles and without any compromise makes great sense for the entrepreneurs from abroad in saving tremendous cost and time.

CGRF SandBox

Any special mention you would like to make as how the eco-system in India can raise its bar to serve the emerging start-ups in India set up by foreign companies?



(From the left: Mr. V. Vignesh, Mr. S. Venkataraman, Mr. S. Rajendran)

V. Vignesh

The start-up entrepreneurs work round the clock. They always work under pressure to set up unique experience for their client, provide value to them. They don't have the luxury of focussing on the legal aspects like contracts, agreements, procedures for getting licence, etc. The cost of the process is quite OK but when there is a time-lag in delivery of things, it hurts the company in terms of cost and customer relationship. So, first time right is extremely important, and they don't mind spending a little more for a full-service firm where we are sure of past experience in handling such issues. If a firm develops that kind of process and confidence, many US based entrepreneurs would be willing to avail such services.

It was absolutely amazing to see the energy levels of this unassuming young entrepreneur alongside the pristine calm with which he takes his business decisions. Imagine, in a few minutes of our interaction, he even wanted to find out if we can take care of his employees in India for a visit to Chennai to have a face-to-face interaction!!!



Did you know

An Alaskan town goes dark for over 60 days?

The residents of Barrow, Alaska, must be the most avid consumers of vitamin D supplements, because their town sees darkness for about 65 days of the year. The 65 days of darkness, known as polar night, is due to their geographical location above the Arctic Circle.

Interest Rate and Inflation Management

N. Nageswaran
Registered Insolvency Professional



Of late, we have been hearing a lot about interest rate and if observed, we will more only when it shoots up northward. We have also been hearing about how Federal Reserve (FED) United States of America (Indian equivalent for our easy understanding is Reserve Bank of India), after a gap of 28 Years jumped the gun called hiking the interest rate and increased the rate of interest by 0.75% in June 2022 and the reason given was that USA was facing highest level of inflation in over 40 years. People in general who have not blocked their ears from hearing terminology of basic economics and particularly connected, even remotely, with banking would have come across the information overload on changes in interest rates and its effect on inflation. In this article, we will touch upon management of inflation, a topic which by itself is an ocean in economics, how the central banks all over the globe use interest rate as one of the tools.

To start with let us know the definition of interest rate, which is otherwise known as Bank Rate as applicable to the central bank of a country and Investopedia defines it as follows:

What is a Bank rate?

“A bank rate is the interest rate at which a nation's central bank lends money to domestic banks, often in the form of very short-term loans.”

What is inflation?

The next component we need to focus on is the word “inflation” which according to the same Investopedia is:

“Inflation is a rise in prices, which can be translated as the decline of purchasing power over time.”

In common-sense parlance, too much money available in the system to buy goods and products the increase in production of which has fallen behind the level of increase in money in circulation. This money in circulation is otherwise called “Liquidity”.

Even though the article is dwelling little deeper into economic terms, it is necessary to understand these basic terms. We will try to take the case of an individual and

extrapolate it to get a clear picture of the term liquidity, inflation and purchasing power.

Mr. A and similarly placed a lakh of people have disposable income in their hands of say Rs.1,00,000/-pm now which is increasing to Rs. 1,50,000/-. All these people, let us presume have been leading a similar lifestyle and with this incremental income they want to buy personal electronic gadgets. The producers of such gadgets have a stock of only say 60000 units of the same and they need at least 3 months to increase their production by another 40000 units to meet out the demand. The producers would, in the meantime, taking advantage of the excessive demand, increase the selling price effectively.

Extrapolating above example, if money in circulation denominated as liquidity is in excess, there will be a net increase in the cost of the items consumed including essentials and the economy is said to have entered into a phase of inflation.



(Image source: website)

Role of Central banks

Almost in every country the central bank is donning the role of managing the inflation level as custodians of the country's monetary position. They possess various tools for this purpose and interest rate is one of the most important tool. In simple terms, we will try to understand this phenomena of interest as a tool to manage inflation.

In the earlier paragraphs we saw how inflation gets triggered in any country. Now let us presume that the Bank Rate is 6% - the interest rate at which the central bank is ready to lend funds to the banking sector in the country to carry out their operations. This does not mean that every bank on a daily basis will be availing such funds from the central bank. But the Bank rate becomes the benchmark for every bank against which they should monitor its cost of capital. The commercial banks would keep the rate of interest for their operations – interest payable to depositors and chargeable from the borrowers as the net difference is the starting point of their revenue.

Let us presume that Bank A has kept the interest rate as 4% payable to its depositors from whom they source their

funds and as 7% to its borrowers to whom they have lent the money as use of the funds sourced.

If the Bank rate is increased to say 7% by the central bank it may be safely assumed that Bank A would change their interest rates also as 5% to its depositors and 8% to its borrowers. Ok. How this will change the liquidity?

Let us go back to our earlier example of sudden availability of disposable funds with the public at large which ended up country entering into inflation. The increase in interest rate for depositors would make some of the people who have excess disposable income with them to convert them into deposit, postponing their idea of spending it on purchases. It may even make some others who, as of now, do not possess disposable income to look out for avenue to find sacrificing some of their consumption. Net to net, monies will start flowing into the bank reducing overall the liquidity available amongst the general public.

It may be interesting to know the flip side of the effect of increase in rate of interest from present 7% to 8% by Bank A to its borrowers. As this increase in rate would directly affect the cost of production for the borrowers, they would like to reduce their borrowings from the bank and decide not only to postpone their expansion but may also to shrink if they think that the demand for their product might come down. In any case, through various angles such as amount spent on raw materials and other factors of production, the money that gets into circulation through the operations of the production activities of the borrowers would come down. Further through a butterfly effect the economic activities which are remotely connected undergo a change resulting in sucking out the excess money in circulation.

Limitations in using Bank Rate to fight inflation

The article has been written for a basic understanding of, as stated earlier, the Bank rate and its effect on liquidity in a simple way. But in real life the model is not as simple as it appears to be. For example, it should not be understood that every central bank knows exactly what is the point of equilibrium at which they should start muddling with the interest rate. Also inflation by itself is a manifestation of so many other factors such as excessive demand, supply side problems etc. It is a practice in economics that whenever attention is being put on one matter, it is safely assumed that all other matter remain unchanged. This theory has been used extensively to write this article also as the idea is to understand the relativity between interest rate and inflation management.



Formation of a Foreign Subsidiary Company in India

Sonam Singhvi
SR *Srinivasan & Co.* LLP



The definition of Foreign Company under Section 2 (42) of the Companies Act, 2013 says “a company or body corporate incorporated outside India which –

- a) has a place of business in India whether by itself or through an agent physically or through electronic mode, and
- b) conducts any business activity in India in any other manner.”

A Foreign Subsidiary Company is an organization, which is wholly-owned or partly owned by the parent company (i.e holding company) situated in another country. For example, a company incorporated in the USA (Parent company) can execute their business operations through a subsidiary company in India.

The Corporate Identification Number (CIN) is a 21 digit code in an alpha numeric format, provided to every company registered by Registrar of Companies (RoC). For instance, the CIN of a foreign subsidiary company namely Amazon Retail India Private Limited is **U52609DL2017FTC318364**, wherein,

- **1st letter** denotes the status of being unlisted i.e ‘U’.
- The **next five numbers** represents the industry code to which the company belongs i.e **52609**.
- The **7th & 8th characters** represent the state code in which the company is incorporated i.e **DL - Delhi**.
- The **next four numbers** is the year of incorporation of the company i.e **2017**.
- The **next three letter** denotes the classification or the type of the company i.e. **FTC - Subsidiary of a foreign company**.
- The **last six numbers** represent the registration number of the company i.e. **318364**.

A foreign company can incorporate a wholly owned subsidiary in India by making investment in any sector in which Foreign Direct Investment (FDI) is allowed subject to the provisions of RBI or FEMA or Companies Act, 2013.

Further, according to Foreign Exchange Management Act (FEMA) guidelines and RBI’s Master direction on foreign

investment, Foreign Direct Investment (FDI) is not allowed in case of Proprietorship, Partnership Firm and One Person Company, though investment in Limited Liability Partnership (LLP) is allowed.

Further more, incorporating such sort of companies in India has its own advantages:-

- It can help in generating a lot of job opportunities which results in enhancing economic growth and national income of the country.
- Such type of companies can also avail several tax benefits like incentives, deductions and exemptions prescribed by the government of India depending upon the sector they operate.
- No prior approval of RBI is required for incorporation, if the subsidiary company is related to the activities permitted by RBI.

Hence, the easiest and fastest way to establish a business in India by a Non-Resident Indian or Foreign Nationals/entities is through incorporation of a subsidiary company, whether public or private.



MCA Circular

MCA vide its general circular dated 26th July 2022 has provided clarification on **spending of CSR funds for “Har Ghar Tiranga” campaign**. Spending of CSR funds for the activities related to the said campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities **are eligible CSR activities** under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture. The companies may undertake the aforesaid activities subject to fulfilment of the Companies (CSR Policy) Rules, 2014 and related circulars/clarifications issued by the Ministry thereof.

This is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag.

Committee of Creditors: Roles and Responsibilities

CGRF Bureau

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) envisages the Committee of Creditors (CoC) as constituted under the Code to be a crucial decision-making body during Corporate Insolvency Resolution Process (CIRP). The effectiveness and success of the Code predominantly depends upon the prompt and workable solution to the financial stress of corporate debtor to be decided by the CoC.

The Code mandates that the interim resolution professional shall, after collation of claims received against the corporate debtor and determination of the financial position, constitute a CoC. Further the Code specifies that the CoC shall comprise of all the financial creditors only, except in case where a corporate debtor does not have any financial creditors or where all the financial creditors are related parties of the corporate debtor.

Though CoC is not included in the four pillars of the IBC infrastructure, they play a vital role in the Corporate Insolvency Resolution Process (CIRP) and is a vital log in the wheel of the process under the Code. The Code also ensures that judiciary plays a very limited role in the CIRP and only acts as a safeguard to ensure that the process does not contravene any provisions of the Code. Judicial pronouncements have enlightened the role and responsibilities of the CoC and established the primacy of ‘commercial wisdom of CoC’ in deciding the fate of the corporate debtor undergoing CIRP.

Thus, the objectivity of the CoC in its decision making and its ability to address the interest of the corporate debtor as well as all other stakeholders concerned is quintessential, given the key responsibilities under the Code. However, the manner and the fairness of decision taken by the CoC in the CIRP has been an incessantly debated question since implementation of the Code.

This article discusses the roles and responsibilities of CoC.

Roles and Responsibilities of CoC:

The role of the CoC is very imperative for timely and successful completion of CIRP. The CoC holds the key to the fate of the corporate debtor and its stakeholders. Several actions under the Code require the approval of the CoC and CoC has to take important decisions on several matters including approval of the resolution plan, which may have a great impact on the corporate debtor and associated stakeholders.

Though the Code directs the Resolution Professional to conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the CIRP period, nevertheless such Resolution Professional is restrained to take certain actions / decisions without the prior approval (at least 66% of the votes) of the CoC.

Major responsibilities of the CoC are listed below:

- Appointment of Resolution Professional: As time is the essence of the CIRP and with that intent the Code prescribes an outer limit of 180 days, for completion of a CIRP, the CoC is duty-bound to appoint a Resolution Professional (RP) to conduct the CIRP and manage the operations of the corporate debtor at its first meeting held within seven days of the constitution of the CoC. The Code envisages different role and duties for interim resolution professional (IRP) and the resolution professional. Though the Code mandates continuation of the term of IRP till the date of appointment of RP and further insists the IRP to perform the functions of the RP, the question is that whether the IRP who is disregarded for appointment as RP by the CoC will be inclined to perform the functions of the RP to the best of his abilities. Hence, any delay in the appointment of the RP by the CoC shall delay the CIRP and have an impact on the objective of the Code.
- Approval of CoC for certain actions: As stated above, though the Code directs the resolution professional to conduct the entire CIRP, yet such resolution professional cannot take certain actions without prior approval of the CoC.

The following are the actions which cannot be taken by the resolution professional without the prior approval of the CoC –

- a) raising any interim finance;
- b) create any security interest over the assets of the corporate debtor;
- c) change the capital structure of the corporate debtor;
- d) record any change in the ownership interest of the corporate debtor;
- e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
- f) undertake any related transaction;
- g) amend any constitutional documents of the corporate debtor;
- h) delegate his authority to any other person;

- i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- j) make any change in the management of the corporate debtor or its subsidiary;
- k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
- m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

In addition to the above, RP is also bound to take approval of the CoC on all matters involving financial outlay.



(Image source: website)

- Approve cost directly relating to CIRP: The CoC shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute the CIRP cost.

While Regulations have specified on who has to bear the expenses to be incurred on or by the interim resolution professional, it is silent on who has to bear the expenses to be incurred on or by the resolution professional. Though it gives the power to the CoC to approve the same, nothing in the Code / Regulations suggest that a creditor or CoC member is obliged to contribute to CIRP cost or provide interim finance to fund the CIRP cost. Although IRP (*subject to conditions as provided in Section 20(2)(c) of the Code*) has the authority to raise interim finance without approval of the CoC, resolution professional cannot do so without the approval of the CoC. Further, raising interim finance is a challenge for IRP / RP for a corporate debtor undergoing CIRP. There have been instances where the Tribunals have directed the CoC to contribute towards CIRP cost in proportion to their voting share. In number of cases, CoC is reluctant to approve CIRP cost / Interim Finance. This puts the IRP / RP in a

precarious situation, as he is responsible for carrying out the statutory duties under the Code/Regulations besides managing the corporate debtor as a going concern. Until the CIRP Regulations have enabling provisions similar to Regulation 2A of Liquidation Process Regulations, IRP / RP will be put to hardships to carry out the statutory duties, where the operations of the corporate debtor are in stand-still due to various reasons or having negative cashflows.

- Evaluate the resolution plans: The primary objective of the Code is providing for revival of the corporate debtor and to make it a going concern. Hence, every attempt has to be first made to revive the corporate debtor and make it a going concern, liquidation being the last resort. The Code prescribes the manner in which the Resolution Plan needs to be evaluated. Any erroneous decision of the CoC during the CIRP period will impact the chances of the corporate debtor from its revival and consequently affect all stakeholders concerned. Therefore, CoC must apply the highest standard, duty of care and see that interest of all stakeholders have been taken care and follow the due process, while evaluating the resolution plan and also act in a transparent manner in discharge of its responsibilities.
- Record its deliberations on feasibility and viability of each resolution plan: The resolution plan can necessitate a change in management, technology, or product portfolio or combination of all. Further, continuation of operations of the corporate debtor with value maximisation requires strategies much beyond restructuring of liabilities. This requires tremendous commercial dexterity and acumen on the part of members of the CoC. Thus, the regulations specify that the deliberations of CoC on feasibility and viability of each resolution plan should be recorded.
- Vote on resolution plan: The Code has empowered the CoC to choose the best possible resolution plan and provide for any measure as part of such resolution plan through their voting on the resolution plan. Any decision thus taken by the CoC shall prevail, unless the same is in contravention of any law.

Power of the Committee of Creditors:

The CoC has powers commensurate with its responsibilities.

As stated above, though CoC is not included in the four pillars of the IBC infrastructure, the CoC is an important decision-making body in the Corporate Insolvency Resolution Process. 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. Hon'ble Supreme Court has time and again reiterated that the Commercial Wisdom of the Committee of Creditors cannot be questioned by the courts, except on limited grounds.

The power of the CoC includes -

- Power to replace the Resolution Professional: The CoC at any time during the CIRP, has the power to replace the resolution professional.
- Power to approve withdrawal of CIRP: The CoC with the approval of 90% of its voting share approve withdrawal of admission of CIRP.
- Power to approve or reject the resolution plan: The power of the CoC is to consider and then approve / reject a resolution plan with respect to a corporate debtor. Though this power to approve is subject to the final approval of the resolution plan by the Adjudicating Authority, Hon'ble Supreme Court has upheld the supremacy of the commercial wisdom of the CoC.
- Power to liquidate the corporate debtor any time during the CIRP: The CoC at any time during the CIRP but before confirmation of resolution plan, can decide to liquidate the corporate debtor.

Thus, it is evident that the CoC during the CIRP is vested with enormous powers to determine on the future course of the corporate debtor along with huge responsibilities, duty of trust and care. Although this creditor-in-control approach is in line with the Code, in some cases, concerns have been raised regarding the capacity and conduct of CoC.

Presently, the conduct and decision making of the CoC is not subject to any regulations, instructions, guidelines etc. Many stakeholders have expressed the need of a code of conduct for the CoC against the backdrop of its current roles and responsibilities.

The thirty second report of the Parliamentary Standing Committee on finance has also recommended the same stating that, "*there is an urgent need to have a professional code of conduct for the CoC, which will define and circumscribe their decisions, as these have larger implications for the efficacy of the Code*". In line with the same, the IBBI in its discussion paper dated 27th August 2021 has proposed a draft code of conduct for Committee of Creditors for public comments and the same is yet to come into effect.

Though it is stated in the Regulations that the members of the CoC shall discharge functions and exercise powers under the Code and Regulations in respect of the CIRP in compliance with the guidelines issued by IBBI. Still, the

conduct and decision making of the CoC is not subject to any regulations, instructions, guidelines etc.

It is pathetic to mention here that in many cases, RP is being penalised by the regulators for the actions and the conduct of the CoC.



Did you know

Bubble wrap was originally invented as wallpaper.

If you can't wait to pop every air-filled pocket the minute you pull a piece of bubble wrap out of a package, can you imagine how irresistible it would be if it were covering your walls? Engineer Al Fielding and Swiss inventor Marc Chavannes probably didn't consider that when, in 1957, they invented bubble wrap while trying to create a textured wallpaper by sealing two shower curtains together to trap air bubbles.

KIND ATTENTION!!

Articles are Invited!

We would be delighted to have you in our panel of writers to contribute articles / snippets / write-ups to add value to CGRF SandBox. This will go a long way in enhancing the quality of CGRF SandBox which is expected to have wide readership amongst top bankers, corporates and professionals.

Your materials for publishing may please be sent to

createandgrowresearch@gmail.com
in 'MS Word'.

Court Orders

CGRF Legal Team

Supreme Court of India
Vidarbha Industries Power Ltd.

Vs
Axis Bank Ltd.
12th July 2022



(Image source: website)

The Appellant is a Power Generating Company within the meaning of Section 2(28) of the Electricity Act, 2003 and has set up a 600 MW Coal-fired Thermal Power Plant comprising of two units each of 300 MW capacity, within the Butibori Industrial Area in the Nagpur District in Maharashtra.

The Respondent, Axis Bank Limited, as Financial Creditor of the Appellant, filed an application under Section 7(2) of the IBC before the NCLT, Mumbai for initiation of CIRP against the Appellant, Vidarbha Industries Power Ltd., Corporate Debtor.

According to the Appellant, implementation of the orders of the APTEL (Appellate Tribunal for Electricity) would enable the Appellant to clear all its outstanding liabilities.

Brief background of Appellant's position with regard to pending Appeal before APTEL:

- i. In January 2016, the Appellant filed an application being Case No.91 of 2015 before the MERC for the purpose of truing up the Aggregate Revenue Requirement and for determination of tariff in terms of MERC (Multi Year Tariff) Regulation 2011, in view of, inter alia, the increase in fuel costs, consequential to the rise in the cost of procuring coal for the purpose of running the power plant.
- ii. By an order dated 20th June 2016, the MERC disposed of Case No.91 of 2015 disallowing a substantial portion of the actual fuel costs as claimed by the Appellant for the Financial Years 2014-2015 and 2015-2016 and also capped the

tariff for the Financial Years 2016-2017 to 2019-2020.

- iii. Being aggrieved, the Appellant filed an appeal being Appeal No.192 of 2016 before the Appellate Tribunal for Electricity (APTEL), challenging disallowance of the actual fuel cost for the Financial Years 2014-2015 and 2015-2016.
- iv. By an order dated 3rd November 2016, the APTEL allowed the appeal and directed MERC to allow the Appellant the actual cost of coal purchased for Unit-1, capped to the fuel cost for Unit 2 in terms of the FSA that had been executed, till such time as a FSA was executed in respect of Unit 1. The Appellant claims that a sum of Rs.1,730 Crores is due to the Appellant in terms of the said order of APTEL.
- v. On or about 8th December 2016, the Appellant filed an application before the MERC for implementation of the directions contained in the order dated 3rd November 2016 of APTEL. MERC however filed Civil Appeal No.372 of 2017 in this Court, challenging the order of APTEL. The Appeal is pending.

The Adjudicating Authority (NCLT) considered the dispute of the Corporate Debtor with the Electricity Regulator, or the recipient of electricity would be extraneous to the matters involved in the petition.

The Hon'ble NCLAT had also observed that *the financial woes of the Appellant and the liquidity problems faced by it, whether forced upon it or of its own making, have no bearing on commencement of insolvency resolution and cannot be permitted to be a stumbling block in triggering of CIRP at the instance of Financial Creditor.*

Both, the Adjudicating Authority (NCLT) and the Appellate Tribunal (NCLAT) proceeded on the premises that an application must necessarily be entertained under Section 7(5)(a) of the IBC, if a debt existed and the Corporate Debtor was in default of payment of debt. In other words, the Adjudicating Authority (NCLT) found Section 7(5) (a) of the IBC to be mandatory. The Adjudicating Authority (NCLT) was of the view that Section 7(5)(a) did not admit any other interpretation, with which the Appellate Tribunal (NCLAT) agreed.

However, the Hon'ble Supreme Court took note that *there can be no doubt that a Corporate Debtor who is in the red should be resolved expeditiously, following the timelines in the IBC. No extraneous matter should come in the way. However, the viability and overall financial health of the Corporate Debtor are not extraneous matters.*

Further observed that *"In our view, the Appellate Authority (NCLAT) erred in holding that the Adjudicating Authority (NCLT) was only required to see whether there*

had been a debt and the Corporate Debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The Adjudicating Authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of APTEL referred to above and the over all financial health and viability of the Corporate Debtor under its existing management".

Further the Hon'ble Supreme Court observed that in this case, the Adjudicating Authority (NCLT) has simply brushed aside the case of the Appellant that an amount of Rs.1,730 Crores was realizable by the Appellant in terms of the order passed by APTEL in favour of the Appellant, with the cursory observation that disputes if any between the Appellant and the recipient of electricity or between the Appellant and the Electricity Regulatory Commission were inconsequential. We are clearly of the view that the Adjudicating Authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a Corporate Debtor was in default in payment of the debt there would be no option to the Adjudicating Authority (NCLT) but to admit the petition under Section 7 of the IBC.

In view of the above the Appeal was allowed.

Thus the key takeaway from the above judgment is that, **debt and default are not the only ingredients to be present** so as to allow a Sec. 7 petition, the financial health of the company, and other contributing factors to repay the debt are also to be looked into and the AA can admit such petitions not for the reason that it is mandatory.

Madras High Court
M/S. Dishnet Wireless Limited
VS
Assistant Commissioner of Income Tax (OSD)
W.P.No.34668 of 2018
17th June 2022

The issue for the above Writ petition was whether the proceeding under Section 148 of the Income Tax Act, 1961 were without jurisdiction since the respective petitioners had voluntarily filed Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016 on 28.02.2018 before the "National Company Law Tribunal, Mumbai ("NCLT") and was admitted on 19.3.2018.



(Image source: website)

Summary of the issue

- a) The petitioner (M/s. Dishnet Wireless Ltd) had approached the NCLT, Mumbai for Corporate Insolvency Resolution Process (CIRP) voluntarily under Section 10 of the Insolvency and Bankruptcy Code, 2016, and the CIRP order was passed on 19.03.2018. Thereafter, the Respondent issued Assessment notices under Section 148 of the Income Tax Act, 1961 in March 2018 which falls after the CIRP admission order of the petitioners M/s Dishnet Wireless Ltd.
- b) On 26.12.2018, the petitioners challenged the assessment notice issued by Income Tax Department under the Writ Petition and an interim order was passed by the Court on 27.12.2018 wherein the respondent Income Tax Department was allowed to proceed with the assessment but was directed to keep the assessment under a sealed cover.
- c) In the meanwhile, the NCLT, Mumbai approved a resolution plan on 09.06.2020.

Courts' observations

- a) The court observed that the arguments in the Writ Petition are inspired from the decision of the Hon'ble Supreme Court in **Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.**, (2021) 9 SCC 657.
- b) The Resolution Plan submitted on behalf of the petitioners by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 on 21.05.2019 has not contemplated any concession from the Income Tax Department though Notices under Section 148 of the Income Tax Act, 1961 had already been issued during March 2018.
- c) The Corporate Insolvency Resolution Plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 (IBC) did not contemplate tax dues under the Income Tax Act, 1961. Further, at this stage, the proceedings under 148 of the Act, 1961 had not crystallized.

- d) The objections of the respective petitioners were also not in the light of the voluntary Corporate Insolvency Resolution Proceedings initiated by the petitioners.
- e) Since the proceedings under the Code were initiated by the petitioner few days prior to the initiation of the proceedings under Section 148 of the Income Tax Act, 1961, it was incumbent for the petitioners to have ensured proper notice to the Income Tax Department and obtained appropriate concession in Corporate Insolvency Resolution Plan.
- f) The claims of the Income Tax Department were not considered by the NCLT, Mumbai, while approving the Resolution Plan and therefore the question of abetment of such rights of the Income Tax Department cannot be countenanced.
- g) The provisions of Insolvency and Bankruptcy Code, 2016 (IBC) cannot be interpreted in a manner which is inconsistent with any other law in the time being in force.
- h) Therefore, Corporate Insolvency Resolution Plan sanctioned and approved cannot impinge on the rights of the Income Tax Department to pass any fresh Assessment Order under Section 148 read with Sections 143(3) and 147 of the Income Tax Act, 1961.
- i) Therefore, the proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) cannot be pressed into service to dilute the rights of the Income Tax Department under the Income Tax Act, 1961 to re-open the assessment under Section 148 of the Income Tax Act, 1961.
- j) In my view, the Income Tax Department was not precluded from reopening the assessment completed under Section 143(3) of the Income Tax Act, 1961.
- k) Therefore, these Writ Petitions filed by these petitioners have to be dismissed. The Assessment Orders which have been passed pursuant to the interim order dated 27.12.2018 are directed to be given to the respective petitioners by the respondent, within a period of thirty days from the date of receipt of a copy of this order.

Conclusion

It is observed from the judgment that, until the power conferred under section 148 of the Income Tax Act, 1961 is extinguished, section 238 of IBC, 2016 does not eclipse the powers of the Income Tax Department to continue with the proceedings initiated under section 148 of the Income Tax Act, 1961. For this conclusion, the court

carves the reason in Pars 32, 33 and 34 of the above judgment. The relevant portions are as under:

32. *Since the proceedings under the Code were initiated by the petitioner few days prior to the initiation of the proceedings under Section 148 of the Income Tax Act, 1961, it was incumbent for the petitioners to have ensured proper notice to the Income Tax Department and obtained appropriate concession in Corporate Insolvency Resolution Plan.*
33. *The claims of the Income Tax Department were not considered by the NCLT, Mumbai, while approving the Resolution Plan and therefore the question of abetment of such rights of the Income Tax Department cannot be countenanced.*
34. *The provisions of Insolvency and Bankruptcy Code, 2016 (IBC) cannot be interpreted in a manner which is inconsistent with any other law in the time being in force.*

Therefore, a pre-notice/ intimation is required during the CIRP process to pre-empt the right of the statutory claimants. If not, section 238 of IBC, 2016 does not eclipse the powers of the statutory authorities under applicable Act to continue the proceedings to recover the dues to them.

NCLAT, New Delhi
Mr. Prashat Agarwal, Member of Suspended
Board of Bombay Rayon Fashions Limited
Vs.
Vikash Parasrampuria, Operational Creditor
15th July 2022

The Present Appeal is filed against the Impugned Order dated 07.06.2022 passed in CP (IB) No. 1443/MB-IV/2020 by the NCLT, Mumbai Bench- IV, whereby, the Adjudicating Authority admitted an Application filed by Respondent under Section 9 of the IBC and appointed Mr. Santanu T. Ray as Insolvency Professional (IRP).

Mr. Prashant Agarwal preferred an appeal before the Tribunal raising a question of maintainability of the application being principal operational debt claim of only Rs.97,87,220/- which is below the threshold limit of Rs. 1 crore as per Section 4 of IBC.

During the arguments, the case of *Steel India Vs. Theme Developers Private Limited* where the operational creditor sent an email quoting delayed payment interest of 2% in case the payment was not made within 60 days has

referred. In that matter, the debtor had paid all the invoices and but did not pay the delayed payment interest. The operational creditor filed application under section 9 of the Code and claimed the Interest portion alone. The Appellant Tribunal took a view that the claim amount which is interest alone cannot be termed as “Operational Debt” and there was no proof of corporate debtor agreeing for such interest. The case got dismissed.



(Image source: website)

In the present case, it was cited that debt means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. The AA also took note of the definition of claim as mentioned in Section 3(6) of IBC, wherein it is stated that a claim means a right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment.

In the present case, the debt amount was Rs.97,87,220/- and all the invoices carried the information with regard to delayed payment interest as well, gave rise to a right to payment. Hence, relying upon the above judgements and facts of the case, the NCLAT came to the conclusion that total principal debt amount of Rs. 97,87,220/- along with interest, makes total outstanding as Rs.1,60,87,838/- which is above the prescribed threshold and the application is maintainable in the present case. The appeal was allowed.

NCLAT, Kolkata
Avantha Holdings Ltd.
Vs
Mr. Abhilash Lal, RP for Jhabua Power Ltd.
& others
4th July 2022

Facts of the Case

The Applicant no. 1, in the matter, Avantha Holdings Limited, is the promoter and shareholder of Avantha Power and Infrastructure Limited. Avantha Power and Infrastructure Limited holds 17.9% shares of Jhabua Power Limited.

The Applicant no.2 is a member of the suspended Board of the Corporate Debtor. The Applicant no.1 had submitted settlement offer to the Resolution Professional and requested him to place it before the Committee of Creditors (CoC) for deliberation, but it was not found commercially viable. National Thermal Power Corporation (NTPC) had submitted its first Resolution Plan. The Applicant alleged that the plan submitted by NTPC stands ineligible because they did not submit an affidavit under sec. 29A. NTPC was the promoter of Ratnagiri Gas and Power Private Limited (RGPPL) and Konkan LNG Limited (KLL) and held shares to the extent of 25.51% and 20.23% respectively, and both the Companies have been declared Non-performing Assets (NPAs) by their respective lenders. The other Resolution Applicant was Adani Power Limited, also submitted its plan.

The Appellant moved to NCLT, Kolkata Bench and prayed for-

- declaring that NTPC is not compliant with sec 29A of the code and is not eligible;
- setting aside the CoC's decision rejecting the settlement plan under 12A;
- a direction to the CoC to consider the proposals submitted by the Applicant no.1 under 12A

The NCLT rejected all the prayers of the appellant. Aggrieved by the said orders of NCLT, the Appellant preferred appeal before NCLAT, New Delhi. The NCLAT held that-

There is a pre-condition for accepting withdrawal application under sec 12A is on approval by CoC by 90% of its voting shares.

Section 12A is as follows:

“Withdrawal of application admitted under section 7, 9 or 10. – The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.”

But the said settlement proposal was not accepted by the CoC. Further observation had been made by the CoC:

“Agenda A7: To discuss the proposal submitted by the promoters of the corporate debtor”

RP team presented the contours of the restructuring proposal submitted by the promoters M/s Avantha Holdings Ltd. This proposal submitted by the promoters was discussed pursuant to NCLT directions, and after due consideration, the CoC members from PFC, SBI, Axis Bank, PNB and REC stated that they do not consider the

plan submitted by promoters to be commercially viable as the upfront payment is only INR 100 Cr, which is significantly lower than NTPC's offer. Majority of the sustainable debt payment is over a long period of 19 years and unsustainable portion of the debt is at negligible rate of interest and payable after 15 years over 5 yearly instalments. Having considered the commercials of NTPC offer and promoter proposal, it was noted that the offer from NTPC is better than the promoter proposal. Some of the CoC members also noted that some other accounts held by the promoters are under examination by various Govt. authorities/ commissions. The CoC counsel clarified that if the promoter plan is a resolution plan under the IBC, then it has potential section 29A issues and if it is a plan under 12A of IBC, then it is not in prescribed form and does not meet the requirements of 12A. RP counsel agreed that it is neither in the prescribed format nor routed through the lenders along with BG. In any event, CoC considered the commercials aspects of the proposal and have found it to be unacceptable. CoC members also informed RP that lenders have not received any formal request from Promoters under Section 12A for withdrawal of application and moreover lenders are not keen on withdrawal from the CIRP in case the plan is offered by the Promoters to the lenders to consider under Section 12A. Based on these points, the CoC unanimously decided not to pursue the restructuring plan further.”

The above consideration clearly shows that CoC had duly considered the proposal submitted by the Appellants and declined its consent to such proposal.



(Image source: website)

In January 2020, the RP presented the plans particularly NTPC & Adani before the CoC but the CoC asked for a revised plan and/or clarification from the Resolution Applicants. Letters clarifying that no dues were payable by RGPPL was issued in February 2020 and by KLL was issued in March 2020. The RP engaged Mazars Business Advisors Limited (Mazars) as consultant who submitted a Report certifying that NTPC is compliant with the requirements of sec 29A. They further reported that the lenders have confirmed about no due certificates issued by them to RGPPL and KLL. NTPC had submitted a revised Resolution Plan (2nd plan), that was lower than the initial

plan. Second plan was supported by an affidavit under sec 29A which stated that no due certificates of KLL and RGPPL had been received and there was amount overdue.

The ineligibility of the Resolution Plan submitted by NTPC was questioned on the strength of Section 29A(c) and (j), Explanation (1).

Sec 29A(c) provides that - *at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor: Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan: Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.*

According to this provision, the date on which KLL and RGPPL were classified as NPAs, the period of one year was not elapsed on the date of CIRP commencement. So, the disqualification under Section 29A(c) shall not attach to the NTPC (Resolution Applicant). The CoC is statutorily authorised to conduct the CIRP with the object of reviving the Corporate Debtor is fully competent to ask the Resolution Applicant to revise its Plan, improve its Plan and submit the revised Resolution Plan.

The Appeal was dismissed.

NCLT, Chennai
Mayank Agarwal
Vs.

Technology frontiers (India) Private Limited,
Represented by Sriram Srivatsan, PCS
1st July 2022

“Company Secretary is the Watchdog of protecting the Principles of Corporate Governance as well as the collective interest of all the stakeholders so also the Company; of course, he is not a blood hound”

An Interlocutory Application was filed by Mayank Agarwal (‘Applicant’) seeking directions to declare the main petition No. 75 of 2021 as not maintainable and direct PCS Sriram to bear cost of the proceedings. The Respondent in this matter is the company secretary of Technology Frontier India Private Limited.

Background of the main petition CP/75/2021:

The main company petition 75 of 2021 was filed by Mr. Sriram PCS under Section 90(7) of the Companies Act, 2013 to ensure compliance of mandatory requirements under Section 90 of Companies Act, 2013 which prescribes that every individual who holds beneficial interest over the company shall make a declaration specifying the nature of the interest in Form BEN 1 within 90 days of commencement; also every individual who subsequently becomes a significant beneficial owner, or where his significant ownership undergoes any change shall file Form BEN 1 to the reporting company. Upon receipt of declaration in Form BEN 1, the company has to file Form BEN 2 to the RoC.

In the present case, the company secretary has sent notice to the respondents as per Section 90(5) of Companies Act along with form to disclose their beneficial owners of the shares held.

The present application was filed by Mayank Agarwal (nominee director of Crest Investment Holdings Pte Ltd) to adjudicate the maintainability of CP 75/2021.



(Image source: website)

Allegations of Applicants:

1. That company acts through its board of directors and that in the present case, the company secretary has not taken any approval from the board of directors to file the present petition.
2. That there is neither board resolution nor any delegated authority to file the petition.
3. Relying upon the judgment of *Nibro Limited Vs. National Insurance Co Ltd, State Bank of Travancore Vs. Kingston Computers (2011) 11 SCC 524* wherein it was settled that any suit or any other legal proceedings can be instituted by a director or officer of the company such as a company secretary only on the strength of valid board resolution duly passed authorizing them to do so and in the absence of such a board resolution, if a suit or legal proceedings is instituted, then necessarily there has to be a resolution by the board of directors of the

company ratifying the defect, failing which suit or legal proceedings cannot be maintained.

4. Further, it was argued that CS has no locus standi to file petition under Section 90 of Companies Act to bypass or supersede the board of directors of the company.

Submissions of Respondent / CS

1. That as per the board resolution passed for appointing him as CS and compliance officer stated that he shall perform duties as required under the Companies Act.
2. With reference to Section 205 of Companies Act, the Respondent stated that he is authorised to represent as that it is his duty to do so.

Observations of the Tribunal

1. The Tribunal relied upon the definition of ‘officer who is in default’, ‘key managerial personnel’ under the Companies Act, 2013.
2. It observed that *Company Secretary is the Secretary of the Company; the Secretary of the Company is the Secretary of the Company; he is not the Secretary of Shareholders.*
3. CS is the watchdog of protecting the principles of corporate governance as well as the collective interest of all the stakeholders so also the company; of course, he is not a blood hound.
4. CS is required to act not only with adequate diligence but with proper and necessary diligence while discharging his duties by sounding the knell in order to alert all concerned including the board of directors on occasions where he apprehends deviations from corporate principles and prudent governance practice in the best interest of the company and its stakeholders
5. Section 134(5)(f) of Companies Act makes it mandatory prescription to devise and put in place proper system to ensure compliance with all applicable laws. The violation will drag the company and officer in default to penal consequences including penalty.
6. Accordingly, it was held that Company Secretary in the instant situation has acted diligently and promptly to ensure compliance of the mandatory provisions by moving this tribunal.
7. Relying upon Sections 2(51), 2(60), 205 of the Companies Act, 2013, the Adjudicating Authority held that Company Secretary can represent before various regulations and other authorities under the Act in connection with discharge of various duties under the Act. NCLT being quasi-judicial authority the Company Secretary can very well do the same.

8. Accordingly, the IA filed by nominee director about the maintainability of CP/75/2021 filed by CS was dismissed.

NCLT, Indore Bench
Sajjan Kumar Dokania
(RP of M/s Divya Jyoti Industries Limited)
Vs
Mr. Gopal Nyati & Ors.
8th July 2022

Facts of the Case

An application was filed under sec 7 of IBC, 2016 for the initiation of CIRP in respect of M/s Divya Jyoti Industries Limited and the same got admitted by the Adjudicating Authority. Mr Sajjan Kumar Dokania was appointed as an Interim Resolution Professional (IRP) later he was appointed as Resolution Professional (RP). The IRP had published public announcement in Form-A as per Regulation 6 of Insolvency and Bankruptcy Board of India inviting claims from the Creditors of the Corporate Debtor.

The respondents had informed the RP that company does not have any vehicle and no director of the company had any vehicle at the cost of the company, but according to the records the company had lot of vehicles in their books.

The RP requested the respondent through email to surrender all the vehicles of the company. The RP had contended that while taking possession of the company no cash was handed over to him except petty cash. But the RP found the following cash position in the books-

Particulars	Amount (Rs.)
Cash in hand Indore	33,12,971/-
Cash in Hand Pithampur	18,686/-
Petty Cash	6,735/-

The RP had requested the respondents to hand over the said cash as early as possible. The RP in the 6th CoC meeting deliberated that vehicles and cash were not handed over to him yet. The Respondent stated that some vehicles were very old which were given to the directors and the employees of the company on their termination, and they could not be recovered.

Despite various reminders the respondent did not hand over the possession of the assets of the corporate debtor and the RP (applicant) was not able to manage the affairs of the company due to non-cooperation by the respondents. The RP had no other option except to approach the local police authorities to make complaint

against the respondent for under Sec 19 of the Code for assistance.

The Adjudicating Authority directed the respondents to cooperate with the RP as they are under obligation to extend all the assistance as required in managing the affairs of the company. It further directed to hand over all the documents, assets to the RP within 10 days from the date of the order, upon failing which the RP can reach out to local police based on the order to render all the necessary assistance.



Did You Know?

HCL Technologies heiress **Roshni Nadar Malhotra** continues to be the **wealthiest Indian woman** for a second year, with assets of over **Rs. 84,330 crore**. The **second place**, however, has seen a change with e-commerce firm's **Nykaa** founder **Falguni Nayar** overtaking **Kiran Mazumdar-Shaw** of **Biocon** to become the richest self-made woman in India with a wealth of **Rs 57,250 crore**.



Understanding Gig Economy

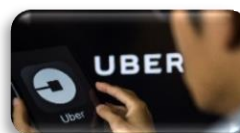
S. Venkataraman
Chief General Manager (Retd.) SBI
Insolvency Professional



In the recent past, especially during the Covid 19 pandemic, we have been hearing the term “GIG Economy” or “GIG worker” quite often. The ‘GIG Economy’ concept is gaining further momentum due to the phenomenal growth seen in the communication and information technology field. In this article, let’s try to understand what is Gig Economy, how is it developing and what is its future, merits and demerits of it etc.,

1. What is “gig economy”

The gig economy gets its name from each piece of work being akin to an individual 'gig'. It has previously been called the "sharing economy". The term “gig economy” was coined by Ms. Tina Brown former editor of the ‘The New Yorker’ in 2009. The Oxford dictionary defines GIG Economy as an economic system in which many short periods of work are available rather than permanent jobs. If one has ever used an app to call a Ola / Uber freelance taxi driver, book a holiday rentals, ordered food or buy some items online then one has probably participated in this segment of the economy. The ‘gig economy’ involves the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment-by-task basis.



(Image source: website)

Working in the gig economy means constantly being subjected to last-minute scheduling for executing a particular job. Therefore, Gigs are short term, defined projects that match the skills or interests of individuals. A gig economy is a free market system in which temporary positions are common and organizations hire independent

workers for short-term commitments. Gig workers enter into formal agreements with on-demand companies to provide services to the company's clients.

Gigs allow organizations the ability to get their work done without enrolling the individual in their rolls. It allows an individual the choice to select and pursue what they would like to do in the process to improve their skills and enhance their contacts. A significant benefit for organizations in hiring a gig worker is that they simultaneously save both time and money. An organization does not need to spend huge money to onboard workers and train them, as they already have the prerequisite knowledge to accomplish their intended work.

The increase in preference for gig workers is not surprising considering the exponential growth the gig economy has seen in recent years. Ballooning by over 30-35% during the pandemic, the gig workforce is now on track to surpass the full-time workforce in size by 2027/28. This phenomenon is prompting changes in business strategies that will assist organizations as they battle labour shortages, inflation, and prepare for the future of work. The increase in cost of living world over has caused many individuals to seek supplemental income. As a result, more and more full-time workers are searching for additional ways to make ends meet. Inflation has also driven businesses to look for opportunities to cut costs while still meeting labour demands.

2. Routes to enter the GIG economy

- a) Doing something one knows to do out of the experience already gained.
- b) Doing something one loves, like a passionate job/hobby in which one has developed expertise over the years.

3. Benefits of GIG economy

Flexibility to Work from Anywhere: In the digital age, the worker need not sit at a fixed location—the job can be done from anywhere, so employers can select the best talent available for a project without being bound by geography. Consequently, not only lower space costs for organisations but also reduced cost of providing healthcare and other benefits.

Changing Work Culture / Approach: The millennial generation now seems to have quite a different attitude to careers they want to create a bridge between personal interests and motivations. They seek to do work that they want to do rather than have careers that may not satisfy their inner urges. Ability to hire experts for services not needed on a regular basis. Employers benefit from gig work by gaining access to skilled talent at a time when hiring full-time employees has become more challenging.

Emergence of a Start-up Culture: The start-up ecosystem has developed rapidly world over. For start-

ups, hiring full-time employees leads to high fixed costs and therefore, contractual freelancers are hired for non-core activities and may be even for core activities. Start-ups are also looking at hiring skilled technology freelancers (on a per project basis) in areas such as engineering, product, data science and ML to bolster their tech platforms. They can now access the talent from across the globe.

Rising demand of Contractual Employees: MNCs are adopting flexi-hiring options, especially for niche projects, to reduce operational expenses after the pandemic. This trend is significantly contributing to the gig culture world over. Agility in scaling the workforce up and down quickly to meet business demand. It has created new business models to cater to the growing requirement for on-demand staffing.

4. Issues of GIG economy

The main issue with gig economy is the employment relationship. Most of the time, it is the ambiguity around the rights of workers and the responsibilities of platforms that allows businesses to treat workers as employees in terms of the control, but without the cost of hiring. With the loss of the social safety net typically afforded by employer-provided benefits and without a corresponding increase in governmental replacements for these benefits, the gig economy is neither sustainable nor desirable.

5. Future of GIG economy

NITI Aayog report titled 'India's Booming Gig and Platform Economy' states that gig workforce is expected to expand to 2.35 crore by 2029-30. India's gig sector is likely to grow to \$455 billion at a CAGR of 17 percent by 2024. It has the potential to grow at least 2 times the pre-pandemic estimates, according to the ASSOCHAM report. The demand for freelancers is increasing, and several supportive and purpose-driven platforms have emerged to aid this.

- According to a report by Boston Consulting Group, India's gig workforce comprises 15 million workers employed across industries such as software, shared services and professional services.
- According to a 2019 report by the India Staffing Federation, India is the fifth largest in flexi-staffing globally, after the US, China, Brazil and Japan.
- An estimated 56% of new employment in India is being generated by the gig economy companies across both the blue-collar and white-collar workforce.
- The gig economy can serve up to 90 million jobs in the non-farm sectors in India with a potential to add 1.25% to the GDP over the long term.

- As India moves towards its stated goal of becoming a USD 5 trillion economy by 2025, the gig economy will be a major building block in bridging the income and unemployment gap.



(Image source: website)

6. Challenges Associated with the Gig Sector

Unregulated Nature: The gig economy thrives largely unregulated; therefore workers have little job security and few benefits. However, some argue that the gig economy in India with respect to workers not getting any social security, insurance, etc. is an extension of India's informal labour, which has been prevalent for a long time and has remained unregulated.

Skilling Needs: A worker needs to be skilled enough. Unless a person is extremely talented, his/her bargaining power will necessarily be limited. While companies routinely invest in training employees, a gig-economy worker will have to upgrade his/her skills on his/her own at his own cost.

Demand-Supply Mismatch: There are already many more potential online independent workers than jobs, and this demand-supply mismatch will only get worse over time, depressing wages.

7. Benefits of the gig economy

The gig economy has various driving factors including work flexibility and the choice to work remotely from anywhere in the world. Further, the gig workers work on the fixed-fee (while doing a contract) model, time & effort model etc. and start-up culture has also promoted the idea of freelancing and contractual work.

The labour contract is usually shorter and more specific to the task or job assigned, and the nature of payment against the work is more of a piece rate, negotiable and flexible time with a choice on when and where to work.

The problem with this kind of employment is the lack of social security, working conditions and working rights etc. It is largely unregulated which results in less job security and nominal benefits. In other words, it is an extension of India's informal or unorganised labour, which is yet to be reformed by the government.



Did you know

Einstein's brain was stolen when he died.

When Nobel Prize-winning physicist Albert Einstein passed away on April 18, 1955, he left behind specific instructions. He didn't want his body to be "worshipped" or his brain to be studied so he wished to be cremated.

However, Thomas Harvey, the pathologist who was on call when Einstein died didn't quite respect Einstein's wishes. Instead, he stole Einstein's brain. When Einstein's family found out, they didn't press charges or quite object to the theft and Harvey was able to keep the brain in two jars in his basement.

Legal Maxim

"Nullus Commodum Capere Potest De Injuria Sua Propria"

"No one can make gains from their own wrong."

The above maxim is derived from the general principle of good faith. It means that one party may not avail itself of the fact that the other party has not fulfilled a contractual obligation or has not had recourse to some means of redress, if the former party has, by some illegal act prevented the latter from fulfilling the obligation in question or having recourse to that redress. The maxim may be applied generally to the case of contracts. If the oblige of a bond has prevented the obligor from fulfilling the condition of the bond, he shall not take advantage of the non-performance of the condition, since that would be enabling him to benefit by his own wrong.

Orders Reserved

Savitha Mahaadevan
Advocate



Most of the professionals, advocates, practicing company secretaries, Insolvency Professionals appearing and representing before Courts and those others who simply observe and attend court hearings would be familiar with the term ‘Orders Reserved’. But what does it mean?

“Orders reserved” means, that the arguments of parties to the proceedings have been heard and concluded and it is now before the Judge to decide on the outcome of the case. Normally, when orders are reserved, a particular date is fixed for pronouncing the orders/judgment in the matter and the final decision of the Judge is rendered in open court on the fixed date.

But there are cases where after lengthy arguments and reservation of orders, the Judge/Judges/Members who heard the matter are transferred to another court or retire in the normal course without pronouncing the orders in matters where judgment was reserved. Is there a time period within which an order is to be delivered after it is reserved for judgment? Is there a timeframe for delivering a judgment? Both questions are answered in the negative.

As far as the judiciary is concerned, it is an independent body which is not controlled by any governmental or other bodies. The justice delivery system performs its duties free from any external influence whether political or otherwise and therefore, provided with the freedom to take as much time as required to arrive at a judgment. This is just to start with why a timeframe for rendering judgments can’t be fixed. Well, there are several other reasons why, no time limit is generally not fixed but, for now, we are going to stay focused on what happens when orders are reserved but not pronounced and the presiding bench retires.

In the High Courts of India and the Hon’ble Supreme Court, when orders are reserved and not pronounced and the Judge who reserved orders is elevated, retired or transferred, wherever applicable, it would be placed before the Chief Justice and the matter would be posted for hearing before the portfolio judge or any other judge as may be decided by the Chief Justice and the matter will have to be argued afresh just like any other case. But no such practice seems to exist for Tribunals where orders are

reserved but not pronounced. There is no mechanism for automatically listing such matters.

However, there is a certain Rule under the National Company Law Tribunal Rules, 2016 where a Member of the Bench may pronounce the order for and on behalf of the Bench, provided, the Court Master makes a note in the order sheet, that the order of the Bench consisting of President and Members was pronounced in open court on behalf of the Bench under Rule 151.



(Image source: website)

Rule 152 goes a step further and confers powers on the President to authorise any Member to pronounce orders on behalf of the Members of the Bench who heard the case but were not readily available or have ceased to be Members of the Tribunal, provided the order has been duly prepared and signed by all the Members who heard the case. But, for Rule 152 to apply, an order that was reserved ought to have been decided, made ready and signed by the Members of the Bench but left unpronounced.

It appears that in the absence of any clarification or intimation of process to be followed, filing an Interlocutory Application (IA) with a prayer to list the matter again before the currently presiding Bench would be the right course. It is unfortunate that the whole process gets repeated. Consuming time, efforts and cost, but the consolation would be that matters are likely to be listed and heard rather than left untouched for a long time.



This appears to prove 1=2

Let's assume $a=b$

Then, $ab=a^2$

$ab-b^2 = a^2-b^2$

$b(a-b) = (a+b)(a-b)$

$b = a+b$

$b = b+b$

$b = 2b$

$1=2$

Do you Know the Different Types of Collar Jobs?

Blue-Collar Worker

It is a member of the working class, who performs manual labour and earns an hourly wage.

White-Collar Worker

It is a salaried professional, typically referring to general office workers and management.

Gold-Collar Worker

It is used to refer to highly-skilled knowledgeable people who are highly valuable to the company.
Example: Lawyers, doctors, research scientists, etc.

Grey-Collar Worker

It refers to the balance of employed people not classified as white or blue-collar.

- Although grey-collar is something used to describe those who work beyond the age of retirement. Example: Firefighters, police officers, health care professionals, Security Guards, etc.

Green-Collar Worker

It is a worker who is employed in the environmental sectors of the economy.

- Example: People working in alternative energy sources like solar panels, Greenpeace, World Wide Fund for nature, etc.

Pink-Collar Worker

It is employed in a job that is traditionally considered to be women's work and is often low-paid.

Scarlet-Collar Worker

It is a term often used to refer to people who work in the pornography industry, especially women entrepreneurs in the field of internet pornography.

Red-Collar Worker

Government workers of all types.

Open-Collar Worker

It is a worker who works from home, especially via the internet.



Student's Corner

Types of Companies

CGRF Bureau



(Image source: website)

The types of companies can be classified under the following heads:

- 1) Number of members
- 2) Liability of members
- 3) On the basis of control
- 4) On the basis of Size
- 5) Others

1) On the basis of number of members there are three companies under this category

a) One Person Company

One Person Company (OPC) is a newly introduced type of company. OPC was introduced in the Companies Act 2013 to support entrepreneurs who, on their own, are capable of starting a venture by allowing them to create a single person economic entity. One of the biggest advantages of an OPC is that there can be only one member in an OPC. Similar to a Company, an OPC is a separate legal entity from its members, offers limited liability protection to its shareholders, continuity of business, and is easy to incorporate.

b) Private company

Private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred.

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

Provided further that—

- a) persons who are in the employment of the company; and
- b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- c) prohibits any invitation to the public to subscribe for any securities of the company;

c) Public limited company

Public company means a company which:

- (a) is not a private company and;
- (b) has a minimum paid-up share capital as may be prescribed.

As per the Section 149 of the Companies Act, 2013 a Public Limited company shall have a minimum of 3 directors.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its Articles of Association.



(Image source: website)

2) On the basis of Liability of members

When we look at the liabilities of members, companies can be limited by shares, limited by guarantee or simply unlimited.

i) Company Limited by Shares

A company limited by shares is the most common type of Private Limited Company. A company limited by shares means a company is having the liability of its members limited by the memorandum to the amount if any, unpaid on the shares respectively held by them.

ii) **Company Limited by Guarantee**

A Company limited by guarantee means a company is having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound-up.

iii) **Unlimited Company**

An unlimited company means a company is not having any limit on the liability of its members.

3) **Companies on the basis of Control or Holding**

In terms of control, there are two types of companies.

a) **Holding and Subsidiary Companies**

In some cases, a company's shares might be held fully or partly by another company. Here, the company owning these shares becomes the holding or parent company. Likewise, the company whose shares the parent company owns becomes its subsidiary company.

b) **Associate Companies**

Associate companies are those in which other companies have significant influence. This "significant influence" amounts to ownership of at least 20% shares of the associate company. Associate companies can also exist under joint venture agreements.

4) **Companies based on Size:**

The MSME Act classifies companies based on their size to give benefits provided by the government for MSMEs. The differentiation of companies based on size to obtain MSME benefits is as follows:

i) **Micro Companies**

A micro company is a company whose investment in plant and machinery does not exceed Rs.1 crore, and the annual turnover does not exceed Rs.5 crore.

ii) **Small Companies**

A small company is a company whose investment in plant and machinery does not exceed Rs.10 crore, and the annual turnover does not exceed Rs.50 crore.

The Companies Act, 2013 also provides for the definition of a Small Company. It defines as a company which has a paid-up share capital of not exceeding Rs.2 crore and turnover of not exceeding Rs.20 crore.

iii) **Medium Companies**

A medium company is a company whose investment in plant and machinery does not

exceed Rs.50 crore, and the annual turnover does not exceed Rs.250 crore.

5) **Others:**

a) **Listed Company**

As per Section 2 (52) of the **Companies Act, 2013**, A Listed company means a company which has any of its securities listed on any recognized stock exchange.

As per **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**, a listed entity means an entity which has listed, on a recognized Stock Exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognized stock exchange(s).

b) **Unlisted Company**

An unlisted company is a company which is not listed on any of the recognized stock exchange and its securities are not freely traded on the exchange. Such companies are not required to comply with the regulations issued by SEBI.

c) **Government Company**

"Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary company of such a Government company.

d) **Section 8 Company**

A Section 8 company is a Company which—

- a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- b) intends to apply its profits, if any, or other income in promoting its objects; and
- c) intends to prohibit the payment of any dividend to its members.

e) **Nidhi Company**

"Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

f) Producer Company

“Producer Company” means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956 having the below as its objects: production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit.



(Image source: website)

g) Dormant Company

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

“Inactive Company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statement and annual returns during the last two financial years.

h) Foreign Company

Under the Companies Act 2013, a ‘Foreign Company’ has been defined under Section 2 (42). It defines a foreign company as any company or body corporate incorporated outside India which -

- has a place of business in India either physically, through any other agent or via electronic/digital means and
- conducts any business activity in India in any other manner.



**Cost & Grow
Business Analytics & Solutions - AUOU**

CGRF is proud to form a separate specialised Costing Cell to assist emerging corporates, MSMEs to optimise their cost of commercial operations. “**Cost & Grow – Business Analytics & Solutions – All Under One Umbrella**” is an initiative to bring together the best minds in the specialised area of costing for a quick response to any type of industry.



The “**CG-BAS-AUOU**” has more than 100 years of collective, pure and sublime costing exposure in a wide range of industries including manufacturing and service sectors. The team members consisting of specialist Cost & Management Accountants have a powerful bias towards devising solutions to any industry in any situation. After all, any business analytics worth its salt should provide a lasting solution as well. Here comes the rich experience of the team which can set up an effective costing system in no time.



“Sharpen your skills”

“Crash course for college students and working executives for acquiring practical skillsets”

About us

We are a Not-for-Profit organization established as a Section 8 Company under the provisions of Companies Act, 2013. CGRF is founded by senior Company Secretaries/Cost and Management Accountant, having wide experience of more than 90 years in aggregate. Very successful professionals having extensive corporate exposure and Network, CGRF has conducted several training programs for students/ executives/professionals.

Scope of training

Finance, Accounts & Taxation (B.Com., Finance & Accounts)

- Bookkeeping process
- Tally operations
- Financial statements analysis
- GST, TDS compliances
- Business entities & Compliances
- Business communication
- English language skills
- Overview on IBC
- Group discussion
- Team Dynamics
- Sports Activities

Corporate Laws (B.Com., Company Secretaries)

- Corporate Laws & Secretarial compliances
- Financial statements analysis
- GST, TDS compliances
- Business entities & Compliances
- Business communication
- English language skills
- Overview on IBC
- Group discussion
- Team Dynamics
- Sports Activities

Who should participate?

- Students
- Working Executives

Duration of course

- 2 months (4 days/week, daily 4 hours, Total: 128 Hours)

Format

- Offline mode

Advantage

- Very good learning opportunity for aspiring candidates to have hands on experience working closely with senior professionals.
- Solid foundation for a bright future.
- Excellent job opportunity likely in our client companies based on merit and vacancies.

Venue

Create & Grow Research Foundation

1st Floor, Hari Krupa,
No.71/1, Mc Nichols Road, Chetpet,
Chennai – 600 031 (off Poonamallee High Road)
Phone: 044-28141604/Mob: 9444648589/9841092661

Course fee:

- Rs. 10,000/- plus GST @ 18%

Certificate

At the end of the course, test will be conducted, and a proficiency certificate will be issued.

Interested Candidates may contact us at the above location or send your CV along with a passport size photo to the following mail ID:

createandgrowresearch@gmail.com



Registered Address: 1st Floor Hari Kripa, 71/1, Mc Nicholas Road, Chetpet, Chennai – 600 031

Phone: 044 28141604, 9444648589

Email: create.and.grow.research@gmail.com

Find the words!!!

CLUES	WORDS
1. Where an auction fails at the first instance, the liquidator may reduce the reserve price up to _____ of such value to conduct subsequent auction.	
2. How many days' notice is generally required to convene a meeting of the committee of creditors?	
3. A _____ is a loan or advance for which the principal or interest payment remained overdue for a period 90 days.	
4. The rates of Income Tax are specified in _____	
5. The powers of the Board of Directors of a company undergoing corporate Insolvency Resolution Process is exercised by _____	
6. Appeal against an order of the National Company Law Appellate Tribunal (NCLAT) may be preferred before the _____	
7. Who was the first person in space?	
8. Which blood group is called the universal donor?	
9. Which Language is recognized as the oldest in the world?	
10. What is "DRHP" under Companies Act, 2013?	

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

1. Fund of Insolvency and Bankruptcy Board 2. Rs. 50 crores 3. Interim resolution professional 4. Central Board of Direct Taxes (CBDT) 5. Quorum 6. 8 Years 7. Elon Musk 8. The Himalayas

Answers for June Month's Find the words

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.

Registered Office:



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