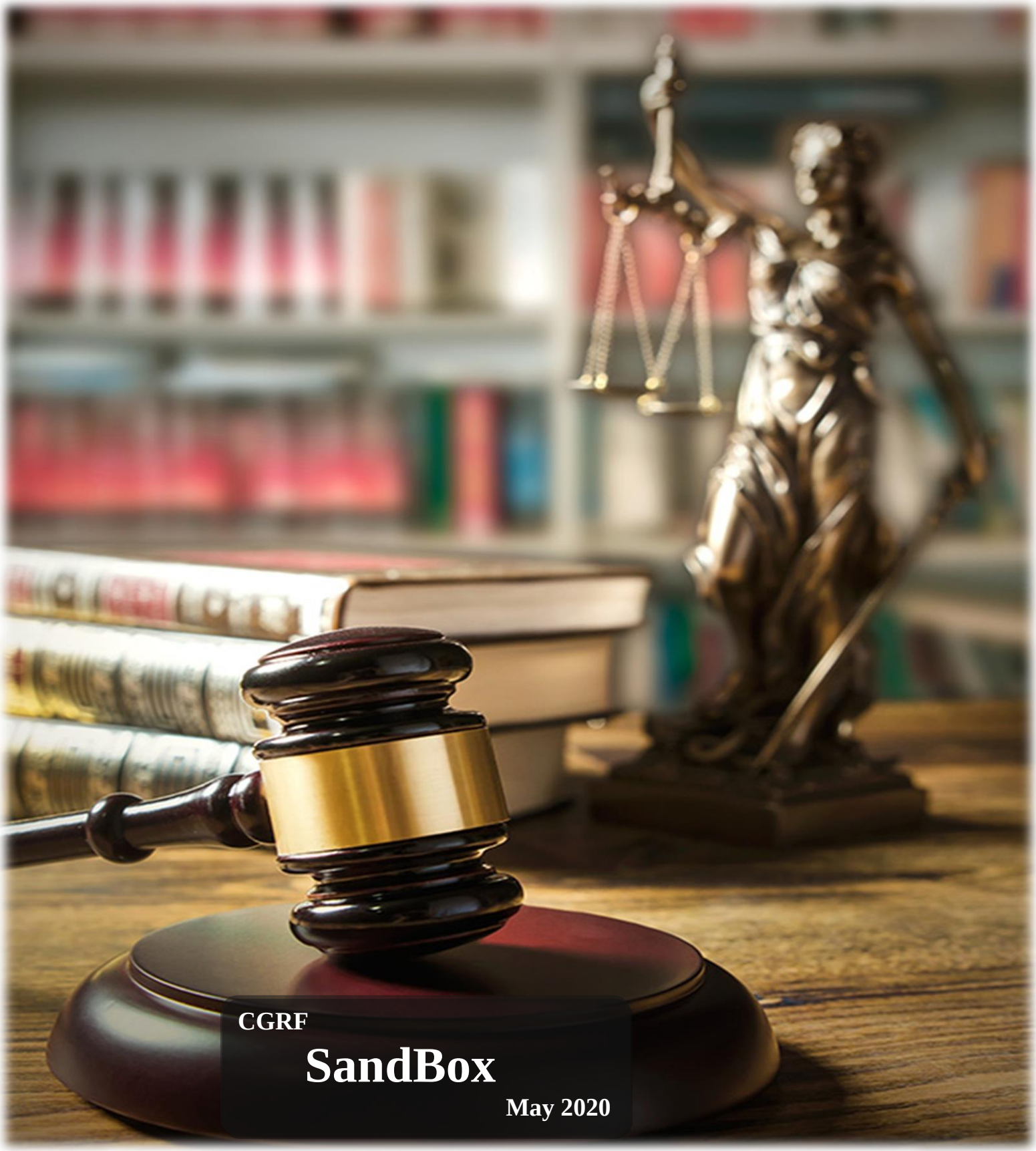


CGRF

SandBox

May 2020

CREATE & GROW

RESEARCH FOUNDATION

CREATE & GROW
RESEARCH FOUNDATION

CIN: U73200TN2019NPL132843
(A section 8 Company registered under Companies Act, 2013)

INDEX

குறள் 478:
ஆகாறு அளவிட்டி தாயினுங் கேடில்லை
போகாறு அகலாக் கடை.

Thirukkural 478:
"Even if the income is less, does not matter, if the expenditure does not exceed the income."

From the Editor's Desk

GROW
(Governance Role of Women)

As we all slowly hit the normal rhythm in our daily routines amidst the Covid-19 pandemic, the CGRF Team is happy to bring out the 2nd issue of CGRF SandBox – May 2020. In this issue, we have tried to bring you articles of relevance to banking community particularly in the context of the measures being announced by the Government to suspend fresh IBC proceedings, the dilemma faced by the banks due to provisioning requirements, etc. Also, we have brought to you provisions relating to appointment of independent directors, a subject which has gained currency in the recent days on their role for promoting corporate governance.

Yet another important issue covered in this issue of SandBox is **"GROW" – the Governance Role of Women.** You all may be aware that one of the landmark initiatives taken by the Government while introducing the new Companies Act 2013 was to provide for a woman director to be appointed mandatorily in certain class of large companies.

Five years down the line, whether the efforts of the Government have paid dividend is a moot question as we could not see any significant increase in the number of woman directors in the corporates. Rather, it is a familiar scene that even public sector undertakings, which are required to appoint woman directors, haven't complied with the requirement.

Be that as it may, there is no second thinking on the advantages of diversifying the corporate board. While on this subject, did the government think that a woman director on the board would don a superwoman role to scuttle all wrong doings of a corporate? Was she expected to be a super cop to blow the whistle on any violation? Or did the government think that a woman director on the board can play magic and lead the company to put up a stellar performance against all odds?

It is our view that the intent of the government was to set up a platform and make a humble beginning to set the tone at the top and to hear a divergent voice. The intent was to create an opportunity to the deserving colleague to speak up and infuse a different perspective on the corporate philosophy and to give a different dimension to the advisory role of the board of directors. The intent was also to forge the view that there is a gender equality in the top management to encourage more positive and vibrant participation of the members in the governance role of the corporates.

In fact the comments of the Ministry as recorded in Report of the standing committee on finance is as below:

"It is hoped that such indicative provisions will make the companies more alive to give salience to the female gender in the realm of Corporate Governance. It is also in line with Govt's policy to encourage women's participation in decision making at every level in the society."

Corporates play a pivotal role in nation building. The untimely demise of huge corporates on reasons of failure in corporate governance has shaken countries across the globe. In this context, board divergence was a very bold step in the right direction. Decisions of corporates have tremendous impact on economic development.

Are women hard-wired differently than men? The answer is an emphatic "yes". That's why they see things in a different perspective. Compassion, empathy, emotional quotient and perseverance to succeed give the women an edge in their balanced decision-making approach compared to a more prevalent matter-of-factly attitude of their male counterparts.

CGRF SandBox has great pleasure to take several initiatives to promote role of women in corporate governance. A small step in this direction is handing over the reins of editing the CGRF SandBox to a team of confident young women – **Ms. B Mekala, Ms. RV Yajura, Ms. M Sri Durga and Ms. R Charu Latha.** They have an enviable task of bringing out the CGRF SandBox every month rich in contents, delving deeper into issues of relevance to dish out articles arousing the creative minds of the esteemed readers – to those who have been doing yeomen service in the banking industry, corporates and in their chosen professional pursuits.

I have no doubt they will excel in this challenging role to be of service to the readers.

S. Rajendran

MARSHALLING OF SECURITIES

S. Srinivasan
Chairman-CGRF

Company A Limited availed term loan facilities from B Bank by creating equitable mortgage on the properties D, E, F, G & H. The Company has also availed working capital facilities from C Bank by creating second charge on the above properties. B Bank has ceded second charge and holding the title deeds for itself and trustee for C Bank. The funding pattern of B Bank and C Bank is 92:8. The company proposes to sell one of its properties say D and settle a part of the loan of B Bank. C Bank insists that it should also be paid to the extent of 8% of the sale proceeds.

(Image Source : Website)

However B Bank is not willing to part any amount and says that the second charge holder will be paid only after the dues of first charge holders is fully settled and further says it's a going company and not a company under liquidation. It further adds that the second charge holder is having other securities too. C Bank is not willing to modify the charge with ROC and because of that the buyer is reluctant to buy.

Who is right - Bank B or Bank C?

It appears that the company A limited is a going concern and is not under liquidation. Therefore, the contention of 'B' Bank is right since 'C' Bank has still got recourse to recover its money when the other properties are sold. It would have been a different matter if 'C' Bank had a second charge on only one property D and not on other properties E, F, G and H. In that case the rule as envisaged in the Doctrine of Marshalling as given in section 81 of the Transfer of Property Act, 1882, would apply

Marshalling is an equitable remedy available to protect the recovery of a junior creditor against the arbitrary actions or whims of a senior creditor. Simply stated, the doctrine of marshalling states that, "where there are two creditors of the same debtor, one creditor having a right to resort to two funds or two securities for payment of his debt, and the other a right to resort to one fund or one security only, the court will "marshal" or arrange the funds so that both creditors are paid as far as possible".

ENTRENCHMENT CLAUSE – QUESTION MARK ON VALIDITY!

NP Vijay Kumar
(Company Secretary, Advocate)

The Companies Act, 2013 has introduced "entrenchment" in Articles of Association. What is "entrenchment"? As per the Oxford Dictionary "entrenchment" means "to apply additional legal safeguards". In legal sense it means addition of provision which makes certain amendments either more difficult or cumbersome by way of procedure or checks and safeguards. Section 5(3) of the Companies Act, 2013 speaks about entrenchment. For ease of reference the said provision is reproduced below:

"The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution are met or complied with."

Articles of Association of the Company is a business document that provides for regulations to manage the affairs of the Company. It is an agreement between the Company and the shareholders. It is a public document and shareholders are presumed to have constructive notice of the regulations of the Articles of Association of the Company.

Whether the Companies Act, 1956 provided for entrenchment clause or is it an introduction made in the Companies Act, 2013? Though there was nothing specific as "entrenchment" clause in Companies Act, 1956, the old Act did recognise the concept of additional legal safeguards and checks and controls through judicial decisions. The Supreme Court in V.B. Rangaraj vs V.B Gopalakrishnan [73 Comp Cas 201] laid down the law that private agreement between shareholders would not bind the Company unless the Articles of Association of the Company provides for such restrictions. The new Act refers to "Amendment of specified clauses of Articles of Association" as the entrenchment clause. In effect it means that Articles of Association is a constitution document of the Company and any amendment to the specified clauses of Articles of Association may require additional conditions to be fulfilled which clauses are referred to as Entrenchment Clauses. Amendment of specified clauses also would include addition of new clauses in the Articles. The new Act does not define entrenchment nor provides an explanation for identifying entrenchment clause. As stated supra, entrenchment has been provided only with reference to amendment to Articles of Association. The entrenchment clause when introduced by an existing private company, the same needs to be approved by all shareholders and in case of public limited company the same needs to be approved

by special resolution. The reason for variance in manner of voting in private and public company limited by shares for introduction of entrenchment clause is not reasoned. In fact there needs to be special procedure even to introduce such entrenchment clause in public company as promoters may overpower the minority shareholders and bring in these restrictions much against the wish of minority.

Eg: Unless the Agarwal family which holds not less than 10% of paid up capital of the Company (Listed) votes in favour of amendment of Articles of Association, there cannot be any amendment of Articles. This Clause is unreasonable in case of public listed Company The Entrenchment Clause, however, needs to be in accordance with the Memorandum of Association of the Company and the Companies Act, 2013. Any entrenchment clause which is against the provision of Companies Act, 2013 or Memorandum of Association is void and unenforceable. The additional safeguard provided by the Entrenchment Clause will raise number of legal issues about their validity. Whether the validity of Entrenchment Clause can be tested on the grounds of reasonableness is a moot question.

For example-

- Whether any Clause in the Articles of Association which grants special rights in terms of voting or veto power to a minority group against the wisdom of majority of shareholders is valid or is such clause against the very basis of corporate democracy of one share one vote and that all shares rank paripassu?

- Can a public listed Company by virtue of entrenchment Clause grant special privilege to its Promoters in terms of voting powers on Amendment to Articles of Association?

Entrenchment Clause as defined supra requires registration with Registrar of Companies. Any clause in Articles which grants veto right to Banks or Venture Capital Investor on issues/proposal of Company like raising of capital, sale of undertaking of the Company etc. are not entrenchment clauses and are mere clauses regulating the business decision making of the Company.

Finally, the term 'Entrenchment' and the procedure associated with it is an introduction in the New Act. However the concept of additional safeguards or additional compliance for bringing about amendment to Articles which is constitutional document of Company has always been recognised. It is shareholders document and shareholders are free to agree upon its term.

TENURE OF INDEPENDENT DIRECTOR

R. Charu Latha & M.S. Elamathi
(Under-Studies)
SR Srinivasan & Co. LLP

Introduction:

Independent directors act as a guide to the company. Their role broadly includes improving corporate credibility and governance standards, functioning as a watch dog and playing a vital role in risk management. Independent directors play an active role in various committees set up by the committee to ensure good governance.

According to Section 2(47) read with Section 149(6) of Companies Act, 2013, "an independent director in relation to a company, means a director other than a managing director or a whole- time director or a nominee director …" satisfying the exhaustive eligibility criteria under Section 149(6).

The provisions relating to appointment of independent directors are contained in Section 149 of the Companies Act, 2013 which should be read along with Rule 4 and Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014. The Company and independent directors shall abide by the provisions specified in Schedule IV which lists down guidelines for professional conduct, role and functions, duties, manner of appointment, re-appointment, resignation or removal and evaluation of independent directors.

Under the Act, an independent director can have a maximum of two tenures of five consecutive years each (a total of ten years), followed by a cooling off period of three years. However, MCA vide **circular no. 14/2014 dated 9th June, 2014** has clarified that one term of appointment can be of less than 5 years but appointment shall not be for more than two consecutive terms.

Case Study

Background

1. The Board of Directors of ABC Ltd. vide its circular resolution dated 25.06.2015 appointed Mr. X as an additional director w.e.f. 25.06.2015 to hold office till the date of the next AGM as per the provisions of section 161(1) of the Companies Act, 2013.
2. By the same circular resolution, the Board also appointed him as an independent director subject to the approval of the shareholders at a general meeting. The resolution, however, did not specify the term of his office.

3. At the 10th AGM held on 22nd July, 2015, X was not appointed as a regular director u/s 160(1) of the Companies Act, 2013 since he was appointed only as additional director on 25th June 2015, a date which fell after dispatch of notice to the members for the aforesaid AGM and his appointment as a regular director, therefore, it did not find a place as an item in the Agenda to the Notice sent to the members. For the same reason the Agenda did not contain an item for his appointment as an independent director and hence the question of approval of his appointment by the members at the same AGM did not arise.
4. Therefore, the 10th AGM was held on 22nd July, 2015 on which date X ceased to hold office as an additional director and consequently as an independent director.
5. The Board at its meeting held on 22nd July, 2015, (presumably held after the AGM) appointed X as an additional director w.e.f. 23rd July, 2015, a day after the date of AGM, to hold office till the date of the next AGM i.e. 11th AGM.
6. In the same Board Meeting held on 22nd July, 2015, X was appointed as an independent director subject to the approval of the Members at the next General Meeting.
7. Notice of Postal Ballot was issued to the members in relation to the 11th AGM which included inter alia proposed resolutions in respect of:
   I. Appointment of X who till then was an additional director, as a regular director u/s 160(1) of the Companies Act, 2013; and
   II. Appointment of X as an independent director for a term of five years w.e.f. 23rd July, 2015 to 22nd July 2020.
8. Both the resolutions were passed in the 11th AGM.

Question

1. Whether X's service from 25th June, 2015 till 22nd July 2015 (the date of 10th AGM) as an independent director can be considered as one term?
2. Whether X can be reappointed as an independent director for another term of 5 years w.e.f 23rd July, 2020?

Substantiating Provisions

The term of office of an independent director is stipulated in Section 149(10), and (11) of the Companies Act, 2013 read with item IV of Schedule IV, the relevant gist of which is reproduced hereunder:

Section 149(10) –

An independent director shall hold office for a term up to five consecutive years on the Board of a company but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Section 149 (11) –

"No independent director shall hold office for more than two consecutive terms ..."

Schedule IV -

"IV. MANNER OF APPOINTMENT

1. ….
2. **The appointment** of independent director(s) of the company **shall be approved at the meeting of the shareholders.**
3. The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.
4. The appointment of independent directors shall be formalized through a letter of appointment, which shall set out:
   (i) The term of appointment; …."

Appointment of X as an Independent Director gives rise to a contract for service (and not contract of service as he is not in employment with ABC Ltd.). X has been appointed as an Independent Director based on an implied contract, by the Board on 25th June 2015 subject to the approval of the shareholders at the General Meeting of the Company. Hence, it is a conditional appointment.

According to Section 32 of the Indian Contract Act, 1872,

> **Enforcement of contracts contingent on an event happening. — Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. —If the event becomes impossible, such contracts become void.**

A contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. Execution of these obligations may be affected by unforeseen or supervening events, i.e. events which are unexpected or incapable of being known in advance by either of the parties and which ultimately discharge the parties from their contractual obligations.

It is a fact that the approval for appointment of X as an Independent Director was not considered by the members

at their meeting held on 22nd July, 2015 to give their approval. Therefore, the contract for service between the Board and X, became infructuous on that day and impliedly stood to be terminated. This may also be construed as '*Doctrine of Frustration.'*

Therefore, the tenure of office of independent director held by X between 25th June, 2015 and 23rd July, 2015 was non-est in law and hence, cannot be considered as a tenure of his directorship as an independent director.

We now examine whether the two terms of office as Independent Director already held by X were consecutive or not. The first term was from 25th June till 22nd July 2015 and the second term was from 23rd July 2015 till 22nd July, 2020.

Crux of the matter to be examined is whether these two terms were consecutive or not. Various English Dictionaries define "consecutive" as under:

"Following one after another without interruption or break; successive."

Ramanathan's Law Lexicon has defined in a different context the word consecutive as under:

"Consecutive period of three years" means a period of three years without any break or interval in succession one after another, or uninterrupted train of three years (*Kashiram v State of M.P.*, AIR 1996 MP 247,253).

In the case of X the tenure for the period 25th June 2015 to 22rd July 2015 cannot be taken as a period for his directorship, as his appointment was subject to the approval of shareholders, which did not materialize. Therefore, the question of counting the said period (25th June 2015 to 22rd July 2015) as a term does not arise.

Therefore, to sum up, X can be appointed as an independent director for a second consecutive term w.e.f. 23rd July, 2020. A good corporate governance practice would be to get the appointment approval by the Board prior to the expiry of the existing term.

Solution:

Therefore, after analysing Section 32 of Indian Contract Act, 1872, it can be summarized that agreement entered between ABC Ltd and X on 25th June,2015 till 22nd July 2015 became infructuous. Hence, as per provisions of Companies Act he can be reappointed as an independent director for a second consecutive term w.e.f 23rd July, 2020 by passing a special resolution.

DO AWAY WITH REDUNDANT CHARGES

S. Srinivasan
Chairman-CGRF

Ideally the Register of Charges maintained by the company u/s. 85 of the Companies Act, 2013 (earlier section 143 of the Companies Act, 1956) must be in tandem with the Register of Charges being maintained by the Registrar of Companies.

For a Credit Manager, insisting on such an exercise to be done by the Company would give lot of clarity on who is holding charges on the assets of the Company, to what extent and their priority vis-a-via his/her bank. The exercise of getting the redundant charges deleted from the Index of Charges is time consuming though not necessarily nerve-wracking.

This exercise has to be systematically addressed, since some of the redundant charges may relate to period stretching over 20 years or so as no action would have been taken by the Company as and when a loan is repaid in full, by obtaining the relevant No-Due-Certificate from the charge holder concerned and filing the necessary e-form CHG 4.

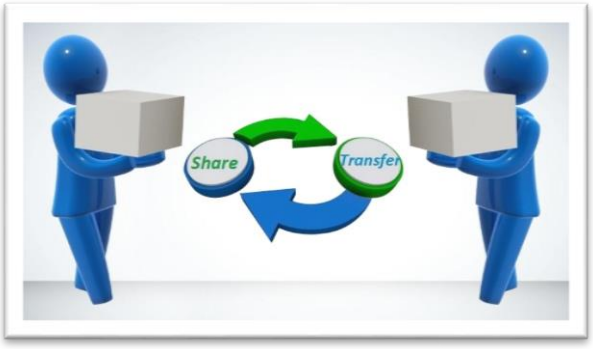
While there is no material impact on the claims of a bank, even as redundant charges exist on the Index of Charges, it is good practice and good governance in the interest of both the Company and the Bank. A Bank which is further funding the Company will be aghast to find that charge on the assets of the Company to the extent of abnormally high amount are already existing on the assets of the Company, giving no room for further funding, which certainly will be an impediment to the Company, which has to run around to get the redundant charges deleted at a very short time which may delay further borrowing.

Pro bono publico

Pro bono publico is a Latin phrase for professional work undertaken voluntarily and without payment. Unlike traditional volunteering, it uses the specific skills of professionals to provide services to those who are unable to afford them.

LAWS GOVERNING TRANSFER OF SHARES OF A COMPANY

Sidharath Jain
SR Srinivasan & Co. LLP



(Image Source : Website)

1. Companies Act, 2013

Section 56:

A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form (Form SH-4) as may be prescribed, **duly stamped, dated and executed** by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

2. The Indian Stamp Act, 1899

Section 9A (1) (a) and (b) of the Indian Stamp Act, 1899

(Image Source : Website)

Liability to pay stamp duty	Responsibility to collect stamp duty
Sales of shares through the stock exchange	
Buyer of shares	Stock exchange or a clearing corporation
Transfer of shares made by depository otherwise than above	
Transferee of shares	Depository

Article 56A to Schedule I of Indian Stamp Act, 1899: Stamp Duty Payable:

Instruments	Rate of Stamp Duty
Issuance of debenture	0.005%
Transfer or re-issuance of debentures	0.0001%
Issue of security other than debenture	0.005%
Transfer of security other than debenture on delivery basis	0.015%
Transfer of security other than debenture on non- delivery basis	0.003%
Futures derivate (equity and commodity)	0.002%
Options derivatives	0.003%
Currency and interest rate derivatives	0.001%
Other derivatives	0.002%
Government Securities	0%
Repo on corporate bonds	0.00001%

3. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Regulation 40 (3):

On receipt of proper documentation, the listed entity shall register transfers of its securities in the name of the transferee(s) and issue certificates or receipts or advices, as applicable, of transfers; or issue any valid objection or intimation to the transferee or transferor, as the case may be, within a period of fifteen days from the date of such receipt of request for transfer:

Provided that the listed entity shall ensure that transmission requests are processed for securities held in dematerialized mode and physical mode within seven days and twenty-one days respectively, after receipt of the specified documents.

Regulation 40(9) of SEBI (LODR):

The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practising company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.

NOTE: Stamp Duty shall not be levied on Transmission of Shares since such rights in shares is transmitted by operation of law.

NOTE: In case of Listed Company, collection of Stamp duty shall be levied in the same way as Securities Transaction Tax is being levied.

Hence, the transfer of shares has to comply with:

1. The Companies Act, 2013 as to duly stamped, dated and executed in the prescribed share transfer form SH-4.

2. The Stamp Act, 1899 as to appropriate stamp duty paid on the transfer of shares.

However, in case of listed companies, with effect from 01.04.2019, no investor will be allowed to transfer the shares held in physical form. The transfer will be possible only after dematerialization of these physical shares.

Do You Know?

According to a World Bank Statement, IBC has improved the recovery rate of stressed assets to 48% in 2 years from 26 % in the pre IBC era.

MCA CIRCULARS AND NOTIFICATIONS

(Image Source : Website)

MCA General Circular No. 20/2020 dated 5th May, 2020 stated the Clarification on holding of annual general meeting (AGM) through video conferencing or other audio visual means. Link: Circular No.20/2020

MCA General Circular No. 21/2020 dated 11th May, 2020 Clarified on dispatch of notice u/s 62(2) of Companies Act, 2013 by listed companies for right issue opening up to 31st July, 2020. Link: Circular No. 21/2020

Amicus curiae

***Amicus curiae* is someone who is not a party to a case who assists a court by offering information, expertise, or insight that has a bearing on the issues in the case. The decision on whether to consider an amicus brief, lies within the discretion of the court. In short Amicus Curiae means friend of the court.**

IBC AMENDMENT ORDINANCE DATED 5TH JUNE, 2020

N Nageswaran
&
S Rajendran

6-months ban on filing of applications under IBC

Preamble:

The much-awaited ordinance suspending IBC proceedings for a period of six months is finally out now. A copy of the Ordinance is placed elsewhere in this issue for immediate reference. Two important aspects of the ordinance are highlighted here:

1. No application under section 7, 9 and 10 of IBC can be filed for a period of 6 months w.e.f 25th March 2020. This period may also be extended by a maximum of 6 more months by way of a notification.

2. No application shall be made by a Resolution Professional under section 66 (2) of IBC, 2016 in respect of a default happening during the above said period.

The intent for the first aspect:

To quote the words of Mr.M.S.Sahoo, Chairperson of IBBI, "It is dangerous for an economy if the market fails to rescue a viable firm, as this cannot be rectified. It is bad for an economy if it fails to liquidate an unviable one, but this can be rectified. Typically, rescue of a viable firm requires a saviour."

The predominant reason for the Ordinance is that in the troubled times of Covid-19 pandemic, it would be difficult to find "**White Knights**" to rescue failing companies. Allowing companies to go for liquidation during this unprecedented crisis would seriously erode the value of the assets of the Corporate debtor.

The Government was talking about suspending IBC provisions relating to filing of insolvency applications for a period of 6 months to one year. While this move was welcomed by the corporates in general, there was a stoic silence for some time as the cabinet approval was not happening. Presumably the banking industry saw red in giving a blanket ban on IBC proceedings irrespective of the cause of default. To keep things simple, the Government after prolonged thinking, made it clear that only defaults occurring during the Covid-19 lockdown period shall get the relief.

At this juncture, identifying whether the default happened during the specified period is really due to Covid-19 impact or not is possibly left open and may even be irrelevant. Because when a default has happened at a prior point of time, the applications can still be filed at any time subject to law of limitation. It is perhaps presumed that the defaults happening on or after 25th March, 2020 could be largely due to Covid-19 induced circumstances.

Another note-worthy intent one should see in the Ordinance is that in respect of default happening during the specified period, no application under section 7, 9 or 10 can *ever* be filed. One wonders as to why this provision has been thought of. Perhaps the objective of the Government was to avoid any ambiguity whether the defaults during this period can still be acted against after the suspension is lifted.

It has been argued in many circles that the suspension could have been done specific to defaults attributable to Covid-19 disruption. But then, it would have been thought that it is better left to the jurisprudence to evolve on this aspect, considering the preamble articulated by the Government for bringing out the Ordinance.

Interestingly, the amendment has put the ban on application stage itself rather than taking matters to the admission stage which would have put the judiciary into unnecessary burden of examining the applications before admission.

The intent for the second aspect:

As regards the second aspect of the amendment, it is envisaged that the Resolution Professional shall not initiate any action under section 66(2) of IBC in respect of such default happening during the period starting from 25th March, 2020 and ending in six months or such extended period as the case may be.

Sec. 66(2) deals with a situation of a **"twilight zone"** and the conduct of the directors during such period resulting in potential loss to the creditors. The twilight zone is the time zone between –

- **The period when the directors of the company knew or ought to have known that there was no reasonable prospect of avoiding the commencement of an insolvency process; and**
- **The actual commencement of insolvency process.**

The Adjudicating Authority on an application filed by the resolution professional, may direct that the directors of the corporate debtor shall be liable to contribute to the assets of the corporate debtor towards potential loss to the creditors of the corporate debtor.

When this "twilight zone" falls during the above-notified Covid-19 pandemic period commencing from 25th March 2020, the amendment restrains the resolution professional from making an application under Sec.66(2).

In another words, this is a kind of immunity provided to the directors for things committed or omitted during the said period involving potential loss to the creditors. It is a good move to avoid unnecessary litigation as otherwise the resolution professional might have proceeded under Sec 66(2) for a direction against the directors.

Conclusion:

The intent of the Ordinance is laudable. The impact remains to be seen. The moratorium given by the banks for defaults during the Covid-19 period may, as well act as a dampener to cases of default prompting to initiate NCLT proceedings.

Be that as it may, this Ordinance demonstrates the intent of the Government to provide a calm period to the corporate debtors who have been hit very hard by the Covid-19 pandemic.

Quid pro quo

Quid pro quo is a Latin phrase used in English to mean an exchange of goods or services, in which one transfer is contingent upon the other; "a favour for a favour". Phrases with similar meanings include: "give and take", "tit for tat", "you scratch my back, and I'll scratch yours", and "one hand washes the other".

RS. 1 LAKH TO RS. 1 CRORE THRESHOLD INCREASE FOR DEFAULT UNDER IBC APPLICABILITY OF THE NOTIFICATION - RETROSPECTIVE OR PROSPECTIVE?

CGRF Bureau

Ministry of Corporate Affairs vide notification dated 24.03.2020 increased the minimum amount of default specified under Sec.4 of IBC from Rs.1 Lakh to Rs.1 Crore. Readers may be aware that this quantum jump in the default amount was announced by the Government as a measure to mitigate the financial crisis faced by MSME units. A question arose in this context as to whether in respect of an application already filed before the Adjudicating Authority (AA) prior to 24.03.2020, for a default amount less than Rs.1 crore, the application should be admitted by the AA or the revised threshold would be applicable and hence the application should be rejected.

The applicability of the notification with reference to default occurring prior to the date of notification was questioned in M/s. Arrowline Organic Products Pvt Ltd. v. Rockwell Industries Ltd. Arrowline, (corporate debtor/applicant) is a MSME engaged in supply of organic milk and milk products. An application under Section 9 was filed on 26.07.2019 by the operational creditor (Rockwell Industries Ltd.) before the NCLT, Chennai Bench, for a default occurred on 14.05.2019 amounting to Rs.21,00,000. After hearing the case NCLT reserved the matter for orders on 04.03.2020. Finally, an order of admission initiating a corporate insolvency resolution process was issued on 05.05.2020. The Notification dated 24.03.2020 enhancing the default threshold triggered the corporate debtor to make an application under Section 420 of the Companies Act,2013 read with Rule 11 of the NCLT Rules before the NCLT challenging the order dated 05.05.2020.

NCLT Chennai Bench on 02.06.2020 passed an order stating that "the Notification issued by the Central Government through the Ministry of Corporate Affairs dated 24.03.2020 bearing S.O.1205(E), in view of the detailed discussions in relation to the issue of its Applicability, can be considered only as prospective, (i.e.) applicable from 24.03.2020."

Hence, for any default by the corporate debtor prior to the date of said notification the pecuniary limit shall continue to be Rs. 1 Lakh. The application was dismissed accordingly and the initiation insolvency process was confirmed.

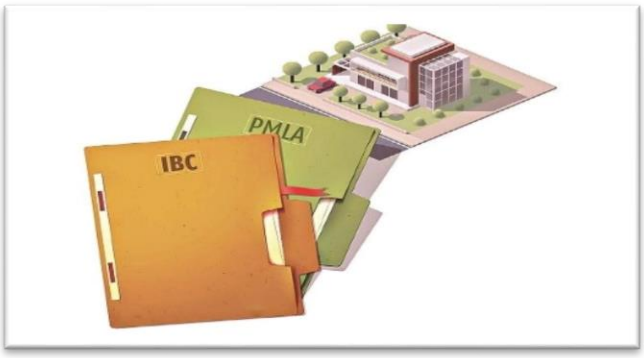
IBC vs PMLA

R. Charu Latha & M.S. Elamathi

Preamble

This article gives a picture of the prevailing conflict between the two special legislations dealing with Insolvency & Bankruptcy and Money Laundering.

The Insolvency and Bankruptcy Code, 2016 (IBC) was introduced in Lok Sabha in December 2015. It was passed by Lok Sabha on 5 May 2016 and by Rajya Sabha on 11 May 2016. It was enacted with an intention to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and to establish an Insolvency and Bankruptcy Board of India and for matters connected therewith or incidental thereto.



(Image Source : Website)

Similarly Prevention of Money Laundering Act, 2002 (PMLA), was enacted by the Parliament of India on 17th January 2003. The Act came into force with effect from July 1, 2005. It is an Act to prevent money laundering and to provide for confiscation of property derived from, or involved in, proceeds of crime and for matters connected therewith or incidental thereto.

The conflict between PMLA and IBC has emerged because of two primary arrangements of the Act. Section 14 of the IBC provides for the declaration of the moratorium prohibiting coercive steps including the institutions of the suits or continuation of pending suits or proceedings against the corporate debtor.

If the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be. On the other hand, Section 5 of PMLA states that where the Directorate of Enforcement or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe, on the basis of material in his possession, that any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, he may, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order.

Which Act prevails over the other?

'Non-obstante' is a Latin word which means 'notwithstanding anything contained'. This clause empowers the legislation or a provision in which it contains, to override the effects of any other legal provisions contrary to this under the same law or any other laws for the time being in force. On a closer examination of which of the Act prevails over the other in case of conflict, it is interesting to note that both the above Acts have non-obstante clauses giving an overriding effect.

The non obstante clauses are provided in Section 238 of IBC and Section 71 of PMLA. When there are two special legislations enacted, the non-obstante clause of the later law prevails, which is reiterated under various judgments. The rationale behind this as stated in *Kohinoor Creations & Ors. Vs. Syndicate Bank* is that the legislature at the time of enactment of the later statute was aware of the earlier legislation containing a non-obstante clause and if it wanted that later enactment should not prevail, it would provide that provisions of earlier enactment would continue to apply.

However, in certain unforeseen and unpredictable circumstances, the rule of harmonious interpretation is opted to resolve the conflicts. In *Rotomac Global Pvt. Ltd., and Varrsana Ispat Limited cases* it was held by NCLAT that the PMLA relates to different fields of penal action of 'proceeds of crime', it invokes simultaneously with IBC, having no overriding effect of one Act over the other.

The *Punjab National Bank v. Director, Directorate of Enforcement*, and the PMLA Appellate Tribunal held that, "The proceeding under section 8 of PMLA, 2002 before the PMLA Adjudicating Authority under PMLA is civil in nature and the PMLA adjudicating authority should have stayed the proceedings on passing of the moratorium order by NCLT. The continuation of proceedings from the date of commencement of the moratorium order is contrary to the intention of the legislature; hence the consequential order of confirmation of Provisional Attachment Order is contrary to law."

In *JSW Steel Ltd. v. Mahendra Kumar Khandelwal & Ors.*, the NCLAT held that the assets of the corporate debtor are immune from attachment by Directorate of Enforcement. The intent of the 'I&B Code' got affected

by the attachment of the assets of the corporate debtor made by the Directorate of Enforcement after approval of the 'Resolution Plan'. It may be worthwhile to mention that, at this point of time Section 32A of IBC was introduced providing immunity to Resolution Applicants after approval of the Resolution Plan by AA against prior offences. However, the judgment passed by the Adjudicating Authority (National Company Law Tribunal) and the Appellate Tribunal will not come in the way of the Directorate of Enforcement or the 'Serious Fraud Investigation Office' or the 'Central Bureau of Investigation' to proceed with investigation or to take any action in accordance with law against erstwhile promoters, officers and others of the 'Corporate Debtor'.

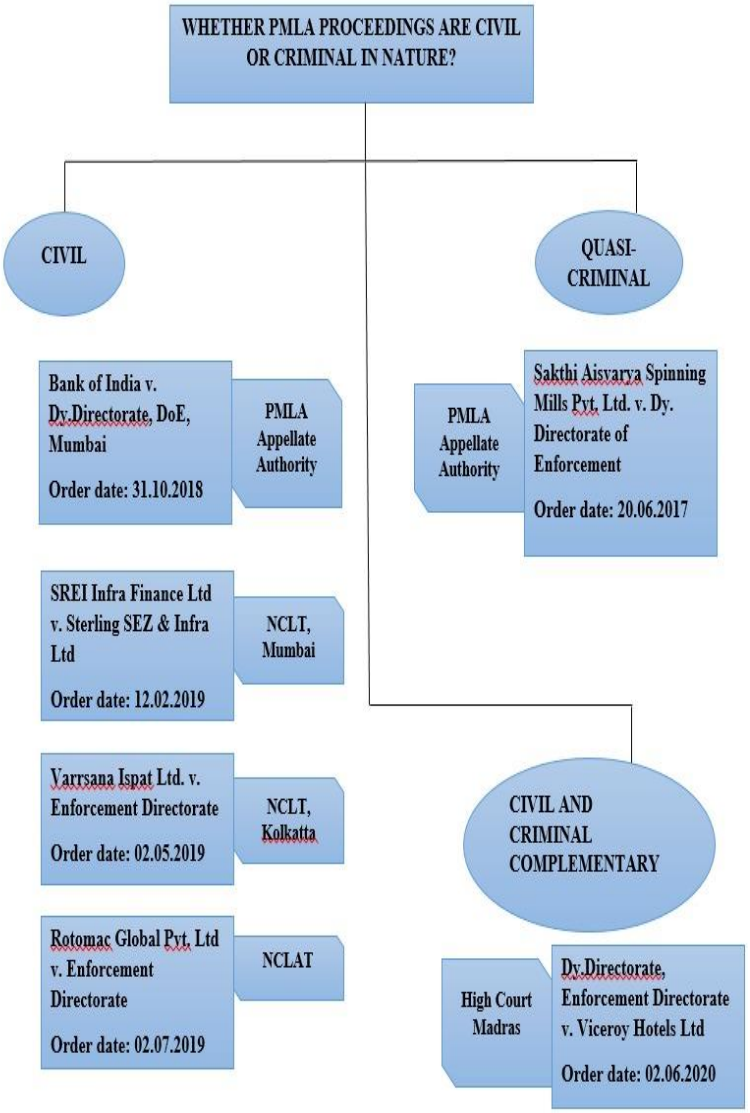
Latest order by Madras High Court

The latest judgement in Deputy Director, ED vs Viceroy Hotels Limited (Viceroy Hotels Limited), Hyderabad, in a similar matter, has been pronounced by Madras High Court on 2nd June 2020. The petitioner raised a query whether NCLT as a forum was trying to exercise a power which it inherently lacked. The Honourable Court went into the question of jurisdiction of the NCLT in entertaining the application of the Resolution Professional against an order issued under PMLA and deciding on merit. On the question of whether PMLA proceedings are civil or criminal in nature, the court has put it that both civil and criminal proceedings under the PMLA complement each other to achieve the object. According to the High Court, there is no conflict between the IBC and PMLA which are having distinct roles with their objectives and the attachment order issued under PMLA is only a follow-up action over a property by ED and that proceedings cannot be a subject matter under Section 14 of IBC. According to the judgement, the scope of enquiry under PMLA is rather wide and comprehensive. Quoting the judgement of Delhi High Court in a similar matter in Dy. Director, ED vs Axis Bank and also the Apex court ruling in Embassy Property Developments Pvt Ltd vs State of Karnataka which dealt with the Jurisdiction and the powers of the High Court under Article 226 over the scope of section 60 of IBC, the Madras High Court held that NCLT has got no jurisdiction to go into the matters governed under PMLA.

Conclusion:

As could be seen from the conflicting judgments, whether the nature of PMLA proceedings are criminal or civil nature is yet to be decisively declared. In such conditions, applying the lawful guideline of 'Ut res magis valeat quam pereat' meaning 'that the thing may rather have effect than be destroyed', it would be ideal to give effect to both the laws in a harmonious manner. Comparing a similar conflict of law, in MBL Infrastructure Ltd. & Anr vs Sri Manik Chand Somani it was decided by the Calcutta High Court that 'declaration of moratorium itself does not create any bar for continuation of the criminal proceedings under Section 138/141 of the Negotiable Instruments Act.' Similar approach may be used in the conflict between IBC and PMLA, since the above provision under PMLA is penal in nature.

Be that as it may, it is interesting to note that, in the matter of *JSW Steel Ltd. v. Bhushan Power & Steel Ltd*, the Hon'ble Supreme Court has not given its verdict on this crucial issue of PMLA vs. IBC and also a few other associated questions raised by the parties. Perhaps, the apex court's view will put an end to this intriguing question which could have significant ramifications on insolvency resolution of tainted assets.



FACILITY FOR REGISTRATION OF IRPs/RPs MADE AVAILABLE ON THE GST PORTAL

(Source: www.gst.gov.in)

CMA Vinod Kannan T
Vinod Kannan Associates

1. Interim Resolution Professionals/ Resolution Professionals (IRPs/RPs), appointed to undertake Corporate Insolvency Resolution proceedings for Corporate Debtors, in terms of Notification no. 11/2020-CT, dated 21st march, 2020 can apply for new registration on GST Portal, on behalf of the Corporate debtors, in each of the States or Union Territories, on the PAN and CIN of the Corporate Debtor, where the Corporate Debtor was registered earlier, within thirty days of their appointment as IRP/RP.
2. They should select the Reason for Registration as "Corporate Debtor undergoing the Corporate Insolvency Resolution Process with IRP/RP" from the drop down menu.
3. The date of commencement of business for IRP/RPs will be the date of their appointment. Their compliance liabilities will also come into effect from the date of their appointment.
4. The person appointed as IRP/RP shall be the Primary Authorized Signatory for the newly registered Company.
5. In the Principal Place of business/ Additional place of business, the details as specified in original registration of the Corporate Debtors, is required to be entered.
6. The new registration application shall be submitted electronically on GST Portal under DSC of the IRP/RP.
7. The new registration by IRP/RP will be required only once. In case of a change in IRP/RP, after initial appointment, it would be deemed to be change of authorized signatory and not an appointment of a distinct person requiring a fresh registration.
8. In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by a non- core amendment in the registration form.
9. The change in Primary Authorized Signatory details on the portal can be done either by the authorized signatory of the Company or by the concerned jurisdictional officer (if the previous authorized signatory does not share the credentials with his successor) on request of IRP/RP.

Is it so?

The insolvency professionals are highly regulated lot. IBBI and IPAs exercise strict vigil on their conduct. It's a tight rope walk for them. A slip here and a slide there, his career is done with. Several disciplinary proceedings have been taken by IBBI against erring IPs. However, the only provision under IBC where an insolvency professional is liable to be punished is Sec.70 (2) which states:

"If an insolvency professional deliberately contravenes the provisions of Part-II, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which shall not be less than Rs.1 lakh but may extend to Rs.5 lakhs, or with both."

Do you know?

Sabotage

In many cases under IBC, the delinquent management of the corporate debtor tries to sabotage the books of accounts or the accounting systems to prevent detection of preferential, fraudulent transactions or unlawful transactions. Sec.71 of IBC provides for a stringent punishment in such cases.

As per this section, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than 3 years, but which may extend to 5 years, or with fine which shall not be less than Rs.1 lakh but may extend

CIRCULARS AND NOTIFICATIONS

(Image Source Website)

Facilitation / 001 / 2020 dated 8th May, 2020 enumerate the Role of Resolution Professional /Liquidator in respect of Avoidance Transactions. Link: IBBI Facilitation 001 2020

NCLT Order dated 12th May, 2020 directed applicant Financial Creditor to file default record from Information Utility along with the new petitions being filed u/s 7 of IBC, 2016. Link: NCLT Order

HIGH COURT of Judicature Madras R.O.C.NO. 23991-C/2020/C3 (High court website)

(Image Source Website)

Notification No. 47-A/2020 Dated May 01, 2020

It is reported that there is an increase in the number of detected cases of Coronavirus and a large number of Districts of the State are within red-zones, including the Districts of Chennai and Madurai, where the Principal Seat and the Bench of the High Court are situate. The spread may gain higher proportions in the coming week of May 2020. In between, the State Government also intensified the lockdown from 26.4.2020 to 29.4.2020 in several Corporations, including the Municipal Corporation of Chennai and Madurai. The state of uncertainty with regard to either the lifting of the lockdown or staggered functioning is yet to be declared by the State Government as well as by the Central Government. In view of the above, and considering the various suggestions that have been made by the State Bar Council the respective Bar Associations of the High Court, whose opinions have been received the opinion of the Advocate General, and the views of certain other District Bar Associations and individual lawyers, including Senior Advocates, Notification No.47/2020 dated 18.04.2020, issued for regular functioning in the month of May, 2020 stands modified to the effect that instead of the regular functioning of Courts, the High Court at Principal Seat shall function through video-conferencing only, with the Hon'ble Judges from their residences. This staggered functioning be conducted with the strength of Two Division Benches and Ten Single Judges.

The Bench at Madurai having a slightly different set up, being at a considerable distance from the township and with all the Judges living within the campus of the High Court, presently 15 in number including the Hon'ble Administrative Judge, will function from their residences or their chambers through video-conferencing only. The subject matter of urgent cases to be taken up can be allocated amongst all the available Judges at Madurai Bench and the Additional Registrar General (i/c) cum Registrar (Judicial), the Registrar Administration and the Additional Registrar (I.T.) shall make all necessary arrangements for the same with the permission of the Hon'ble Administrative Judge. In addition to, the Hon'ble Chief Justice having taken notice of the Notification No.40-3/2020 DM-I (A) dated 1st of May, 2020 issued by the Ministry of Home Affairs, Government of India, New Delhi was pleased to direct that the judicial functioning of the High Court, both at Principal Seat and at Madurai Bench, shall be conducted strictly through video-conferencing only and the e-filing / e-mail filing system, as was being done before subject to all the prescriptions additionally provided in the aforesaid Notification of the Ministry of Home Affairs restricting movement in Containment Areas.

Mutatis mutandis

Mutatis mutandis is a Medieval Latin phrase which is used when comparing two or more cases or situations, making necessary alterations while not affecting the main point at issue.

COURT ORDERS

(Image Source : Website)

Supreme court of India order dt. 06-05-2020 (IBBI Website)

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION

SUO MOTO WRIT (CIVIL) NO. 3 of 2020

On 23.03.2020 the Hon'ble Supreme Court passed a Suo Motu order in Writ Petition (Civil) No.3/2020. Considering the National Lockdown Situation due to the COVID – 19 pandemic and resultant difficulties faced by the lawyers/litigants, the Hon'ble Supreme Court of India ordered that the period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order is passed by the Apex Court in present proceedings. Further on 06.05.2020 stated that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders. The Hon'ble Court further clarified that in case the limitation expires after 15.03.2020, then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises, shall be extended for a period of 15 days after the lifting of lockdown.

(Image Source : Website)

High Court of JHARKHAND at Ranchi (IBBI Website)

W.P. (T).No. 6324 -6327 of 2019 dated 1.5.2020

In the matter of Electrosteel Steels Limited Vs. The State of Jharkhand and Ors.

The petitioner Company, Electrosteel Steels Limited had challenged the garnishee order, issued under Section 46 of the Jharkhand Value Added Tax (JVAT) Act, 2005 by the Tax Authorities, to the State Bank of India (SBI), asking SBI to pay into the Government Treasury, the tax and penalty amount due from the petitioner Company, who failed to deposit the taxes as the said garnishee order was issued much after the Resolution Plan was approved and management was taken over by the successful Resolution Applicant.

It was observed that the registered office of the petitioner Company is at Ranchi, and its principal place of business is in the District of Bokaro, both of which, situated in the State of Jharkhand, but no public announcement as per the provisions of the IBC, 2016 was made in the State of Jharkhand. Thereby, it was never brought to the knowledge of the Commercial Tax authorities of the State of Jharkhand that the CIRP had been initiated against the petitioner Company. Thus, admittedly, the State Government was not involved in the CIRP, and as such, the resolution plan cannot be said to be binding on it as Section 31 of the Code clearly lays down that the approved resolution plan shall be binding only on those stakeholders who were involved in the resolution plan. Accordingly, the Writ Petition was dismissed.

(Image Source : Website)

National Company Law Appellate Tribunal, New Delhi.

Company Appeal (AT) (Insolvency) No. 49 of 2020 dated 22.5.2020

In the matter of Bank of India Vs. M/s. IRIS Electro Optics Pvt. Ltd. &Ors.

BOI filed an appeal contending that the CIRP initiated by the 3rd Respondent - Mr. Laxmi Kantha Rao was fraudulent with malicious intent alleging that it was collusive step taken by the 3rd Respondent - related party to annul the action taken by the Bank of India under Section 34 of the SARFAESI Act 2002. It was observed that there was also material irregularity in conduct of CIRP excluding the Appellant who is 'Sole Secured

Financial Creditor' in the CoC. And subsequent determination of Voting Share has also been detrimental to the Appellant and that the Resolution Process has failed to fructify and the Adjudicating Authority is considering the recommendation for liquidation of the 'Corporate Debtor'. Further observed that "It is queer that the pivotal issue remains to be determined while the 'Corporate Debtor' may go into liquidation leaving the Appellant remediless, which would result in great miscarriage of justice". Therefore the Appellate Bench passed an order allowing the appeal and setting aside the impugned order while also directing Adjudicating Authority to accord fresh consideration in the matter and record finding about the status of Respondent No.3 as a 'related party' and also a finding on the issue whether Respondent No.3 has fraudulently initiated 'Corporate Insolvency Resolution Process' by filing application under Section 7 of the 'I&B Code' against the 'Corporate Debtor'.

National Company Law Appellate Tribunal, New Delhi

Company Appeal (AT) (Insolvency) No. 1340 of 2019 dated 22.5.2020

In Re: Interpretation of Section 18 of Limitation Act.

In Re: Restoration of the Company by removal of CIRP.

In the matter of Ritu Murli Manohar Goyal Vs. SVG Fashions Ltd. &Anr.

An appeal was filed by the Promoters of the Corporate Debtor against the CIRP admission order contending that the Application filed by the Applicant creditor in NCLT was hit by limitation. NCLT had admitted the Application considering the issue of Cheques by the Corporate Debtor as an Acknowledgement of debt.

In the instant case, the invoices were raised in the year 2013 the prescribed period of limitation being three years in terms of Article 137 of the Limitation Act, 1963 expired in the year 2016 and the issuance of cheques by the 'Corporate Debtor' in the year 2017 being well beyond the prescribed period of three years would not be construed as an acknowledgment in writing within the prescribed period of limitation in terms of Section 18 of the Limitation Act, 1963.

In view of Section 18 of the Limitation Act, 1963 which deals with "effect of acknowledgment in writing", the Hon'ble Appellate Bench, interpreted that an acknowledgment of liability in respect of a right made in writing by a person against whom such right is claimed shall have the effect of computation of fresh period of limitation from the time of signing of such acknowledgment provided such acknowledgment of liability has been made before the expiration of the prescribed period of limitation for a suit or application in respect of such right. The provision is in the nature of having the effect of the period of limitation being reckoned afresh from the date of such acknowledgment in writing being signed by the person of incidence. However, such acknowledgment will take effect only if the liability in respect of such right is acknowledged in writing and signed before the expiration of the prescribed period of limitation for such suit.

It was also observed that the situation would have been different if such cheques issued by the 'Corporate Debtor' towards the part payment of the operational debt had been issued prior to 7th October, 2016 as the date of default occurred on 7th October, 2013

NCLAT held that the application filed by the operational under Section 9 was hit by limitation. The appeal was allowed and the impugned order is set aside.

COMPANY APPEAL (AT) (Insolvency) NO. 28 of 2020 Dated 22.5.2020

In Re: Exercise of inherent powers under Rule 11 of the NCLT Rules, 2016 by the NCLT or Rule 11 of the NCLAT Rules, 2016 by the Appellate Tribunal

In the matter of Gopal Krishan Bathla Vs. Crown RealtechPvt. Ltd &Anr.

An appeal was filed by the promoters to set aside the admission order of CIRP of the Corporate Debtor stating that Promoters had arrived at a settlement with the applicant creditor just before the impugned order passed for admission of CIRP.

However it was observed that none of the parties reported any development in regard to this Settlement with the Applicant creditor, when the matter was pending before the NCLT prior to passing of the impugned order or even thereafter until constitution of the Committee of Creditors.

Also few other allottees of the project have filed an Intervention Application in the said Appeal, praying for dismissal of the Appeal on the ground that the Settlement inter se the 'Corporate Debtor' and the Respondent No.2 relied upon by the Appellant was designed to defraud other 'Financial Creditors' i.e., allottees who had filed separate applications under Section 7 of the 'I&B Code' and their claims are pending consideration before the 'Committee of Creditors'.

It is a settled law that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem.

Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual creditor is allowed to settle its claim.

It was noted that, although the National Company Law Tribunal can exercise inherent powers vested in it under Rule 11 of the National Company Law Tribunal Rules, 2016 to allow or reject an application for withdrawal or settlement prior to the constitution of the 'Committee of Creditors' and a parallel provision is Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 where similar power is vested in the Appellate Tribunal such exercise of power would depend on consideration of all relevant factors in each individual case, after providing an opportunity of hearing to all concerned parties and considering if the particular case is a fit one for exercise of such power. (Swiss Ribbons Private Limited and Anr. V. Union of India and Ors.)

In the instant case the Hon'ble Bench observed that factual position and the ground on which the appeal was preferred did not warrant exercise of inherent powers under Rule 11 to allow exit of the Corporate Debtor from Corporate Insolvency Resolution Process as the legitimate interests of all other stakeholders, including the Intervenors whose claims were admitted would be seriously jeopardised.

Thus, it was held that no ground for exercise of inherent powers under Rule 11 of the NCLAT Rules, 2016 by the Appellate Tribunal was made out and that the appeal lacked merit and accordingly dismissed.

(Image Source : Website)

National Company Law Tribunal, Hyderabad IA No.54 of 2020 in CP (IB) No.43/ 07/HDB/2018

In Re: Applicability of Section 32A

In the matter of Leo Meridian Infrastructure Projects & Hotels Limited.

An application is filed by the Resolution Professional on behalf of the Corporate Debtor objecting the provisional attachment order passed by the PMLA authorities, post the commencement of CIRP. It is the contention of the applicant that such attachment order is in violation of the moratorium which is in effect. The applicant also sought protection under Section 32A (2) of I&B Code, wherein the liability of corporate debtor for an offence committed during the pre-CIRP period shall cease

The adjudicating Authority held that the applicant cannot seek shelter under section 32A(2) of the I&B code, as at the stage of filing the Application, there is no approved Resolution Plan and that the shelter under section 32A can be resorted to only when there is an approved resolution plan. Also that, when Provisional Attachment Order was passed there was no resolution plan approved by the COC. Thus the application was dismissed.

National Company Law Tribunal, Chennai

IA.335/IB/2020 in MA /689/2019 IN CP/1140/IB/ 2018 Dated 5.5.2020

In the matter of KMC Speciality Hospital (I) LTD vs. Liquidator of M/S Sri Lakshmi Hotels Ltd

An application was filed by the successful bidder to defer the payment of balance consideration towards the auctioned property and not to levy interest for delayed payment during this lockdown period, in view of the suo motto order passed by the Hon'ble Supreme Court of India in WP (Civil) No. 3/2020 dated 23.03.202. The Apex Court had extended the time limit for the purpose of reckoning for all matters in which the limitation factor need to be considered with effect from 15.03.2020, further the suo moto notice dated 24.03.2020 issued by the NCLAT concerning the extra ordinary situation prevalent under COVID 19 infection, whereby, the period of limitation for filing Appeal with the Appellate Tribunal was extended with effect from 15.03.2020 till further order/s in terms of the direction dated 23-03-2020 passed by Hon'ble Apex Court. It was observed that in view of the above, payment of interest will arise only if there is a delay in depositing the consideration even after the lifting of Lockdown. Also, the Application in relation to the challenge of the auction of the property, stands deferred till the lock-down is lifted by Central Government or State Government.

Pari passu

Pari passu is a latin phrase that literally means "with an equal step" or "on equal footing". It is sometimes translated as "ranking equally", or "without partiality."

THE POWER OF DECISION MAKING

S. Rajendran, quoting Anthony Robbins

We all encounter situations every day where we need to take decisions. We also make decisions sometimes. Is there any difference between taking a decision and making a decision? Well, on the face of it, it looks both terms connote a similar action of coming to a decision. But, going deeper into the skin, I am of the view that making a decision has got more profound involvement and expectations. And more rejoice upon the decision bearing fruits. On the other hand, taking a decision is in a situation confronting you with multiple choices and you simply tick the box.

When you make a decision, action follows. You set yourself on an irreversible journey towards the destination. There is no looking back. Well, this is purely a thought occurring in my mind. Of course, there are pundits and management gurus who have dissected the term "decision" and extracted elixir, enlightening us on the positive aspects of decision-making.

Anthony Robbins, in his book, "Awaken the Giant Within" deals with decisions in a convincing way. He says that "the true power of making decisions is a tool you can use in any moment to change your entire life." He encourages us to make more decisions. "The more decisions you make, the better you're going to become at making them. Muscles get stronger with use and so it is with your decision-making muscles. Unleash your power right now by making some decisions you've been putting off. You won't believe the energy and excitement it will create in your life!"

Do we all make right decisions all the time? No way. After all, to err is human. One should learn from wrong decisions. "Choose to learn lessons that can save you time, money or pain, and that will give you the ability to succeed in the future."

Enjoy making decisions. You never know the entire constellation can conspire to bring before you that defining moment of glory when you make conscious efforts to achieve what you have decided. "Know that it's your decisions and not your conditions that determine your destiny."

"The human spirit is truly unconquerable. But the will to win, the will to succeed, to shape one's life, to take control, can only be harnessed when you decide what you want, and believe that no challenge, no problem, no obstacle can keep you from it. When you decide that your life will ultimately be shaped not by conditions, but by your decisions, then, in that moment, your life will change forever, and you will be empowered to take control of it."

RULES AND REGULATIONS

CGRF Bureau

Very often, we utter the phrase "RULES AND REGULATIONS" without even an iota of thought that these are two different terms --- one "Rules" and the other "Regulations". There must be a difference between the two, however subtle it may be, as otherwise the word "or" would have been used between the two term instead of "and". Now let us understand the difference with an example.

The urban population by and large lives in apartment. The owners of these apartments either form a co-operative society and register the society under the Co-operative Societies Act or get the society registered under the Societies Registration Act. Whichever it may be, the members are governed by a set of documented norms under the Bye-laws of the society. These Bye-laws govern the administration of the apartment by some office bearers. These Bye-laws are meant for the consumption of the apartment owners.

(Image Source : Website)

We also see sign boards on the gate of the apartment such as "Visitors vehicles to be parked outside". This message is not meant for apartment owners but for visitors only. The Bye-laws are the regulations and the notice on the gate forms the rules. Rules or guidelines can be changed informally from time to time by the rule framers, that is, the office bearers. Whereas the regulations such as Bye-laws has a legal force and cannot be altered that easily by the office bearers. The apartments being formed as a society, the members only have the authority to change the clauses in the Bye-laws by following certain procedures. Rules are a less formal set of guidelines which has little or no consequences depending on the person who is enforcing them.

But, Regulations are more rigid. Regulations can be used to define two things; a process of monitoring and enforcing legislations and a written instrument containing rules that have law on them. Regulation creates, limits, or constrains a right, creates or limits a duty, or allocates a responsibility. It can come in many forms including legal

restriction, contractual obligations, self-regulations, co-regulation, third party regulations, certification, accreditation or market regulation. Regulation is basically ensuring that a law or legislation is put into effect and the details of how it is put into effect. The regulations are the responsibility of the executive branch.

Another example was the Companies Regulations, 1956 and the Companies (Central Government) General Rules and Forms, 1956. While the former derived its authority from section 609(2) of the erstwhile Companies Act, 1956, the latter derived its authority from section 642 of the Same Act. The Regulations governed *inter alia* the administration of the ROC's office while the rules were meant for the corporate world to follow the Companies Act.

ANNOUNCEMENT OF GOVERNMENT REFORMS BY FINANCE MINISTER

(Image Source : Website)

Finance Minister announces Government Reforms and Enablers across Seven Sectors under Aatma Nirbhar Bharat Abhiyaan.

Smt. Nirmala Sitharaman said that in order to prove the resolve of *Aatma Nirbhar Bharat*, land, labour, liquidity and laws have all been emphasised in ***Aatma Nirbhar Bharat* Package**.

The crisis and the challenge is an opportunity to build a self-reliant India. The Finance Minister said announced in continuation in the series of reforms. Soon after lockdown, we came up with **Prime Minister Garib Kalyan Package (PMGKP)**. As part of the Rs 1.70 lakh crore PMGKP, the Government announced distribution of free food grains, cash payment to women and poor senior citizens and farmers etc. The swift implementation of the package is being continuously monitored. Around 41 crore poor people received financial assistance of Rs 52,608 crore under the PMGKP. The Finance Minister also said PMGKP used technology to do Direct Benefit Transfer (DBT) to people. We could do what we did because of the initiatives taken during the last few years, she added.

In addition, 84 lakh metric tonnes of food grains has been lifted by States and also more than 3.5 lakh metric tonnes of pulses has been dispatched to various States. And for this, Smt. Sitharaman appreciated the concerted efforts of FCI, NAFED and States, giving pulses and grains in huge quantities, despite logistical challenges.

Announced the 5th and last Tranche of measures towards Government Reforms and Enablers, Smt. Sitharaman detailed seven measures for providing employment, support to businesses, Ease of Doing Business, and State Governments as well sectors such as Education and Health.

1. Rs 40,000 crore increase in allocation for MGNREGS to provide employment boost

The Government will now allocate an additional Rs 40,000 crore under MGNREGS. It will help generate nearly 300 crore person days in total addressing need for more work including returning migrant workers in Monsoon season as well. Creation of larger number of durable and livelihood assets including water conservation assets will boost the rural economy through higher production.

2. Health Reforms & Initiatives

Public Expenditure on Health will be increased by investing in grass root health institutions and ramping up Health and Wellness Centres in rural and urban areas. Setting up of Infectious Diseases Hospital Blocks in all districts and strengthening of lab network and surveillance by Integrated Public Health Labs in all districts & block level Labs & Public Health Unit to manage pandemics. Further, National Institutional Platform for One health by ICMR will encourage research. And implementation of National Digital Health Blueprint under the National Digital Health Mission.

3. Technology Driven Education with Equity post-COVID

PM eVIDYA, a programme for multi-mode access to digital/online education to be launched immediately. Manodarpan, an initiative for psycho-social support for students, teachers and families for mental health and emotional well-being to be launched immediately as well. New National Curriculum and Pedagogical framework for school, early childhood and teachers will also be launched. National Foundational Literacy and Numeracy Mission for ensuring that every child attains Learning levels and outcomes in grade 5 by 2025 will be launched by December 2020.

4. Further enhancement of Ease of Doing Business through IBC related measure

Minimum threshold to initiate insolvency

proceedings has been raised to Rs. 1 crore (from Rs. 1 lakh, which largely insulates MSMEs). Special insolvency resolution framework for MSMEs under Section 240A of the Code will be notified soon.

Suspension of fresh initiation of insolvency proceedings up to one year, depending upon the pandemic situation. Empowering Central Government to exclude COVID 19 related debt from the definition of "default" under the Code for the purpose of triggering insolvency proceedings.

5. Decriminalisation of Companies Act defaults

Decriminalisation of Companies Act violations involving minor technical and procedural defaults such as shortcomings in CSR reporting, inadequacies in Board report, filing defaults, delay in holding of AGM. The Amendments will de-clog the criminal courts and NCLT. 7 compoundable offences altogether dropped and 5 to be dealt with under alternative framework.

6. Ease of Doing Business for Corporates

Key reforms include:

- Direct listing of securities by Indian public companies in permissible foreign jurisdictions.
- Private companies which list NCDs on stock exchanges not to be regarded as listed companies.
- Including the provisions of Part IXA (Producer Companies) of Companies Act, 1956 in Companies Act, 2013.
- Power to create additional/ specialized benches for NCLAT Lower penalties for all defaults for Small Companies, One-person Companies, Producer Companies & Start Ups.

7. Public Sector Enterprise Policy for a New, Self-reliant India

Government will announce a new policy whereby -

- List of strategic sectors requiring presence of PSEs in public interest will be notified
- In strategic sectors, at least one enterprise will remain in the public sector but private sector will also be allowed
- In other sectors, PSEs will be privatized (timing to be based on feasibility etc.)
- To minimise wasteful administrative costs, number of enterprises in strategic sectors will ordinarily be only one to four; others will be privatised/ merged/ brought under holding companies.

8. Support to State Governments

Centre has decided to increase borrowing limits of States from 3% to 5% for 2020-21 only. This will give States extra resources of Rs. 4.28 lakh crore. Part of the borrowing will be linked to specific reforms (including recommendations of the Finance Commission). Reform linkage will be in four areas: universalisation of 'One Nation One Ration card', Ease of Doing Business, Power distribution and Urban Local Body revenues. A specific scheme will be notified by Department of Expenditure on the following pattern:

- Unconditional increase of 0.50%
- 1% in 4 tranches of 0.25%, with each tranche linked to clearly specified, measurable and feasible reform actions
- Further 0.50% if milestones are achieved in at least three out of four reform areas

The Finance Minister concluded by providing a breakup of the stimulus measures provided so far in order to become *Aatma Nirbhar Bharat*.

NEW DEFINITION FOR MICRO, SMALL & MEDIUM ENTERPRISES

Source: MSME Notification dated 1st June, 2020 and PIB Delhi dated 3rd June, 2020.

This new definition and criterion notified will come into effect from 1st July, 2020.

In accordance with the provision of Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 the Micro, Small and Medium Enterprises (MSME) are classified as:

MSME Enterprises		
Enterprises	Plant & Machinery	
	Investment does not exceed	Turnover does not exceed
Micro Enterprises	Rs. 1 Crore	Rs. 5 Crore
Small Enterprises	Rs. 10 Crore	Rs. 50 Crore
Medium Enterprises	Rs. 50 Crore	Rs. 250 Crore

Note: As part of new definition, Exports will not be counted in turnover for any enterprises whether micro, small or medium.

(Image Source: Website)

FINANCING SCHEMES FOR MSMEs UNDER SELF RELIANT INDIA MISSION PACKAGE TO FIGHT COVID 19 EFFECT

CGRF bureau

I. Rs. 3 lac crore Emergency Credit Line Guarantee Scheme

Rate of Interest: 9.25% p.a.
Guarantor : National Credit Guarantee Trustee Company
Funding of : Additional funding upto Rs. 3 lac crores to eligible MSMEs and, interested MUDRA (Micro Un Development and Refinance Agency) registered institutions
Corpus provided by GoI : Rs. 41,600 crores spread over current and next 3 FYs
Period of scheme : Upto 31st Oct 2020 or till an amount of Rs. 3 lac crores is sanctioned, whichever is earlier
Eligibility : (1) Existing borrowers with Rs. 25 crores outstanding as on 29.2.2020
(2) Whose accounts fall under regular, SMA-0 and SMA-1 that the Account should not be irregular for more than 60 days
(3) The annual turnover of the unit should be less than Rs. 100 cr
Tenor of Loan : Four years repayment with one year of moratorium for Principal amount

II. Rs.20,000 crores of subordinate debt scheme for equity support

The eligibility criteria for this is that MSMEs should be functioning but are stressed or have been categorized as non-performing assets. A subordinate debt is an unsecured loan which ranks below secured loans. In other words, in the event of a liquidation, a subordinate debt can only be paid after the claims of secured creditors have been met. GoI will facilitate provision of Rs 20,000 crore as subordinate debt. The government will also support them with Rs. 4,000 Cr. to Credit Guarantee Trust for Micro and Small Enterprises (CGTMSE). Banks are expected to provide the subordinate-debt to promoters of such MSMEs equal to 15% of his existing stake in the unit subject to a maximum of Rs. 75 lakhs.

III. Equity infusion through MSME Fund of Funds

The eligibility criteria for this is that the business should have a high credit rating (AAA-rated) and wants to list itself on stock exchanges. A Fund of Funds (FoF) with Corpus of Rs10,000 crores will be set up which will provide equity funding for MSMEs with growth potential and viability. FoF will be operated through a Mother Fund and few daughter funds and will buy upto 15% equity. It is expected that with leverage of 1:4 at the level of daughter funds, the FoF will be able to mobilize equity of about Rs 50,000crores.

CHAMPIONS

(Image Source : Website)

Creation and Harmonious Application of Modern Processes for Increasing the Output and National Strength *(www.champions.gov.in)*
It has been felt necessary to put up and promote a unified, empowered, robust and technology driven platform for helping and promoting the Micro, Small and Medium Enterprises (MSMEs) of the country. As the name suggests, it will aim at Creation and Harmonious Application of Modern Processes for Increasing the Output and National Strength. Accordingly, the name of the system is CHAMPIONS.

This is basically for making the MSME sector robust by solving their grievances and by encouraging, supporting, helping and handholding them. That's how the tagline: ***Our small hands to make you LARGE!***
Operating Procedure:

1. Broad objectives of CHAMPIONS

- **Grievance Redressal:**

  Resolve the problems of MSMEs including those of finance, raw materials, labor, regulatory permissions etc. particularly in the Covid created difficult situation;

- **To help them capture new opportunities:**

  Including manufacturing of medical equipment and accessories like PPEs, masks, etc. and supply them in National and International markets;

- **To identify and encourage the sparks:**

  I.e. the potential MSMEs who are able to withstand the current rough weather and can become national and international champions.

2. The System and the Technology:

- It is a bundle of technologies put together to handhold, guide, empower, ease and encourage the MSME sector of India;
- In simple terms, it is a web based portal which will provide facilities to the MSMEs and other related stakeholders to voice their issues and grievances and get resolution and way forward;
- Extensive use of AI, Machine learning and Data analytics is being done to avoid and reduce human intervention, delay and duplication in the processes;
- The system also has seamless integration with other grievance related portals of GOI like CPGRAMS and a number of other portals of the MSME Ministry;
- A large number of FAQs listed herein will also help answer many of the queries of the applicants.

3. The Five Focus Areas (Catchment):

- Now onwards, Grievances of the MSME Units and stakeholders will be invited and enlisted only on the Champions platform and dealt with through the system made herein for purpose. They will be given an auto generated unique ID number starting with GR;
- Grievances being registered on GOI's CPGRAMS portal as well as any other portal of the Ministry of MSME will also be directly fetched by the Champions platform. They will be given an auto generated unique ID number starting with CP;
- This Portal will also capture and encourage ideas and collaborative, supportive ecosystem of experts and technocrats who can guide in the technical, managerial and financial issues faced by the MSMEs. They will be given an auto generated unique ID number starting with CO;
- Champion's platform will also capture the self pro-active administrative interventions by the functionaries of the Ministry of MSME. They will be given an auto generated unique ID number starting with IN.
- It will also capture the VIP References coming from Hon'ble Ministers and other dignitaries. They will be given an auto generated unique ID number starting with VI.

4. Dealing with the Issues:

- All the above five category of issues will be bundled together and as soon they land on the portal a unique ID and acknowledgement as above will go to the person writing the same;
- The bundle of issues so received will get automatically segregated subject wise and officer wise and get transferred to concerned officials (Branch/Bureau/Office Heads) under the MSME Ministry (including those of DC office and other organizations);
- The concerned officers will deal with issues with utmost promptness, sensitivity and seriousness;
- In any case, the matters should NOT remain unattended for more than three days and should NOT remain inconclusive after seven days;

5. Resolving / Closing the Issues:

- After dealing with the issues and after satisfying that all aspects of the issue have been taken into account, the concerned officer may take a final decision including to close the matter;
- However, if there is an extreme humanitarian case or a case of injustice and / or harassment or undue delay, and if the decision is against the individual or unit, the unit or its promoters must be heard telephonically or in person;
- The Control rooms being set up as part of this mechanism can be used for this purpose.

6. Open issues:

- After the above process, there would still be a basket of those grievances / issues which have not been closed as above. Thus, for the top leadership of the MSME Ministry, there are two tasks:
- To Monitor and ensure that the above system runs smoothly and effectively;
- To pro-actively take up those issues and grievances which have not been closed as above yet.

7. Intervention by Secretary MSME:

- Secretary MSME will keep reviewing the overall functioning and outcome of the Champions system on regular and day to day basis;
- Moreover, every fortnight he will also hold a formal session/ interaction with selected applicants whose grievances are not settled;

- This would be done in and through the control room wherein Video conference cum calling and other technical facilities will be used.

8. The Champion Control Room (CCR):

- It is very important to ensure that the MSME sector can avail of benefits of the Government schemes and support;
- Handholding of MSMEs needs to be done to ensure that the MSMEs do not face problem in accessing various inputs and requirements;
- This will be facilitated by and through the Champion control rooms;
- Control Rooms will be set up in Hub (Central/ New Delhi) and Spoke (States) Model.

9. The Champion Control Room (CCR): (Central Level):

- A control room will be set in the office of the Secretary MSME for handling the entire process of Champions;
- The control Room will function from 8 AM to 10 PM every day;
- Duty of the staff in two/three shifts will be put for this purpose;
- There would be Video conferencing facilities, landlines and internet connected PCs to handle, record and process the matters;
- There would be enough landline numbers to call the stakeholders and ascertain the facts or resolve the issues;
- Grievances will not be invited on telephone. They will be enlisted ONLY on and through the Portal.

10. The Champion Control Room (State Level): SCR:

- The State level Champion Control room will be set up in the Development Institutes (DIs) and other institutions of the Ministry;
- We have KVIC, NSIC, MGIRI, Coir Board and institutions like 18 Tool Rooms, 4 Testing Centers (TCs) and 7 Testing Stations (TSs) under this Ministry;
- In a State level Champion Control room, there could be representation of any of these offices or agencies under the Ministry;
- The Director of the DI or In-charge officer of the nominated institution would be responsible for functioning of the State control room;
- The control Room will function from 8 AM to 10 PM every day;
- Every nominated institution should dedicate at least 4-6 officials (preferably from Group A and B officials).
- Duty of the staff in two/three shifts will be put for this purpose;
- In addition to resolving the specific issues themselves, the SCRs will also be contacting various stakeholders at the field level including the Banks, CPSEs, DICs, State Govt. Offices, MSME Clusters and MSME Associations in their respective areas of jurisdiction to know and resolve the nature of the general problems which the MSMEs may be facing;
- The State level Champion Control rooms would also feed the information and inputs in the Champions system and would pro-actively take up the matters with the officials of the MSME Ministry to resolve the same.

11. Accountability:

- Every Branch/Bureau/Office Head and officer will devote time and energy to this system and will deal with the issues flagged thereon diligently;
- They will also bring on board and unify other processes of the Ministry or GOI or States meant for the same purpose(s);
- Performance on this front, speed, sensitivity and professionalism will form an important part of the Personal /Annual assessment of the officers of the Ministry.

CERTIFICATE OF GOOD STANDING

CGRF Bureau

(Image Source : Website)

In many of the European and other western countries there is practice of banks and financial institutions obtaining certificate from resident companies and offshore units known as a "Certificate of Good Standing" issued by the regulatory authorities in those countries. There is no such practice in India. It is an official document, issued generally by the Registrar of Companies, or his equivalent in those countries confirming that a particular company legally exists, has complied with all administrative requirements pertaining to its continued registration and has paid all government dues, and therefore, is "in good standing" in the register of companies as of the given date. In its form, the Certificate of Good Standing largely resembles the initial Certificate of Incorporation of the company.

Unlike in developed countries, the confidence level amongst officers in banks and financial institutions in India with regard to their constituents in the corporate sector to whom loans are advanced is disappointing. One cannot blame these officers since corporate governance in the country is abysmally low. The governments of the day have been making great efforts to inculcate the culture of good corporate governance in companies by appointing various committees periodically to give the desired direction and these efforts are definitely being recognized by well-run companies.

However, many companies and in particular mid-sized companies mete out step-motherly treatment to the compliance of various laws, which if properly implemented would result in good corporate governance. Financial discipline that is required is lacking in many companies particularly the mid-sized and smaller companies which results in non-compliance of laws giving way to poor corporate governance. In a country such as ours with a huge population, it is becoming increasingly difficult for the governments of the day to implement these well thought out laws.

On one side the government machinery is very weak on such implementation of laws and on the other side we have a burgeoning population with increasing intentional violations taking advantage of the situation and give too-hoots to compliances of law whether it be individuals or corporate. Therefore, the bankers being custodians of public money have an onerous task to ensure that these monies are properly deployed and very importantly well monitored. Therefore, more out of compulsion, the government relies heavily on self-regulation. As a silver lining there are qualified professionals like the Company Secretaries, Chartered Accountants and Cost Accountants who can be relied upon and whose services the bankers must avail even if there is a cost to availing such services. Such an exercise will add great comfort to the banker in discharging his duties effectively.

One such comfort is through obtaining a "Certificate of Good Standing" for a company. As stated earlier, the banks in many developed countries particularly the United States and the European countries rely on such a certificate. Why not the banks and financial institutions in India adopt the same practice? However, there is no such practice by the Registrar of Companies in India issuing such a certificate. In fact, there is no provision in the law vesting authority in him to issue of such a certificate.

Therefore, the bankers in India should commence a practice of obtaining such certificate from practicing professionals. The ideal professional to issue such a certificate is the Practicing Company Secretary who is more in tune with the corporate laws and procedures such as company law, Income tax Act, the Pollution Control Act, Factories Act, the laws relating to Central Excise, Service Tax etc. Non-compliance in some of these statutes may result in parallel financing which the banker should be bothered about. It is not as if the banks and financial institution in India are not obtaining any certificates from professionals.

The search and status report on charges, directors and shareholders and "Diligence Report" mandated by the RBI are being issued by professionals. The diligence report in its present form and which is not being effectively put to use by the banks and financial institutions is only a feeble version of a Good Standing Certificate and cannot be its substitute. The banks and financial institutions can go one step further and require the professionals to conduct a compliance audit which could be unique to each industry since each industry is governed by different laws and procedures apart from company law. Based on such an audit the professional may issue a Certificate of Good Standing.

"Only Specimen"

To whomsover this is concerned

CERTIFICATE OF GOOD STANDING

on

"_____ LTD"

I, _____, Practising Company Secretary, hereby certify under the seal of my office that _____PRIVATE / PUBLIC LIMITED was incorporated on _____ and was authorized to transact business w.e.f _____. This Company has been assigned Corporate Identity Number (CIN):_____ by the Ministry of Corporate Affairs, Government of India and currently has its registered office at _____India. GSTIN of the Company is _____I confirm that the correctness of the name of the Company, CIN and the date of incorporation and that it has been in continuous and unbroken existence since date of incorporation. Based on the records available with the Ministry of Corporate Affairs, I affirm that the Company has complied with the provisions of the Companies Act, 2013 and other allied laws that are applicable to it.
I further also certify that the Company is not declared to be defunct or struck off from the records of the Registrar of Companies and no such action has been taken or initiated by the office of Registrar of Companies as on date.

The Share capital of the Company as on date is as follows:

Authorised Share Capital: Rs. _____/- (Rupees_____Only)
Paid up Capital Share Capital: Rs. _____/- (Rupees_____Only)

The directors of the Company as on this date are as follows:

S.NO	NAME OF THE DIRECTORS	DIN	DATE OF APPOINTMENT

Other significant notes: _____

I, further certify that all the required fees owed to the Ministry of Corporate Affairs and all taxes due to other statutory authorities have been paid as on date.

Repayments of all borrowings from its creditors are generally in order and no defaults in repayment of principal or interest have been observed.

This certificate relates to the legal existence of the above named Company as on date. There does not seem to be an intent on the part of the Company or any creditor to dissolve or file an application under the Insolvency and Bankruptcy Code 2016 or for striking off the name of the Company from the records of the Registrar nor for winding up or for any other similar action in the near future with the Registrar of Companies.

I am a member of the Institute of Company Secretaries of India and am competent to issue this certificate as a professional and those dealing with the company may rely on this certificate to the extent stated above.

This Certificate has been issued at the request of the Company.

Place_____

Date_____

Practising Company Secretary

Membership No: ACS/FCS_____
C.P. No: _____
UDIN: _____

Note: This is a specimen certificate and does not reflect the intention of the Institute of Company Secretaries of India and is only recommended by the CGRF SandBox.

Congratulations!!!!
Comandur Parthasarathy Sounderarajan
Company Secretary, Tractors and Farm Equipment Limited.

"Hearty Congrats to you and the team for bringing out this very useful and informative Newsletter. May it grow from strength to strength!!!"

T N Sri Varada Desikkan FCA

Congratulations!!! Wish you all the best to your team. It is very informative and gives proper guidance. Eager and wait to receive the letters every Month.

K Shrinivas
Pioneer Jellice India Private Limited.

"Good efforts sir. Congratulations and all the best in bring new initiative and encourage us."

Praveen G
(SBI Branch Manager, Arachlaur Branch)

Providing supporting services to IRPs:

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

Independent Advisory Service:

- Admissibility of Claims.
- Validity of decisions taken by COC
- Powers and duties of directors under CIRP
- Resolutions Plan / Settlement Plan
- Repayment Plan by Personal Guarantors to Corporate Debtors

Providing Services to the Investors / Bidders / Corporates:

- 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

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