

## From the Chairperson



Warm Greetings Dear Members...

At the outset, I express my sincere thanks to the members of Trichur Branch for giving me an opportunity to serve as the First Chairperson of Trichur Branch of ICAI, and representing the branch; heading the committee for the year 2019-20.

The whole process of election was a learning experience to me as well as my fellow members. Let me congratulate the previous Managing Committee members who conducted the whole process in a foolproof manner.

The new committee took charge on 16/02/2019 in a Joint Meeting of the Outgoing Managing Committee and the New Managing Committee. The committee include,

CA. Silpa Ramdas	Chairperson
CA. Anoop G	Vice Chairman
CA. Aryan K.K.	Secretary
CA. Ajith Kaimal R	Treasurer
CA. Jeen Paul	SICASA Chairman
CA. Satheesh T.G.	E-Newsletter in Charge
CA. Anoop V. Francis	SICASA Coordinator

I am available to all members for your opinions, suggestions, corrections or whatever helps needed of me, in my capacity as Chairperson of the branch. We are moving on to our busy audit schedules starting with Bank Audit in April.

Let me conclude with the thoughtful words of Past President of India, Sri. A.P.J. Abdul Kalam which always a Chartered Accountant should remember, "When we tackle obstacles, we find hidden reserves of courage and resilience we did not know we had. And it is only when we are faced with failure do we realise that these resources were always there within us. We only need to find them and move on with our lives".

**Best Wishes..**

## THE BANNING OF UNREGULATED DEPOSIT SCHEMES ORDINANCE, 2019



### BACK GROUND OF ORDINANCE

Finance Minister in the budget 2017-18 had announced a draft bill to curtail the menace of illicit deposit schemes. Bill was originally introduced on July 2018 in the parliament. It was submitted to standing committee on finance for scrutiny. Committee submitted its report on 03-01-2019. After incorporating modifications suggested by the committee it was presented in Lok Sabha and approved. Ordinance did not go to Raja Sabha due the lack time and later 21st February 2019 it is notified as an Ordinance.

Various Scams of fooling investors like Saradha Scam paved way to the introduction of BUDS ordinance. The only regulation to check this schemes was Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and was not effective. In 2019, it has turned into a reality with the President promulgating the Banning of Unregulated Deposit Schemes Ordinance, 2019 w.e.f. February 21, 2019 (hereinafter referred to as 'BUDS Ordinance'). 70th Standing Committee on Finance (2018-19) also submitted its report in January, 2019.



**CA VIPIN KK**

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Ordinance prohibits all deposit-taking activities that are not regulated by the country's various regulators, like the Securities and Exchange Board of India (Sebi), Reserve Bank of India (RBI), and Insurance Regulatory and Development Authority of India (IRDAI), among others.

It extends to whole of India except Jammu and Kashmir

### **Competent Authority**

Competent authority for the purpose of the ordinance shall be state governments and in the case of union territory without legislature, Central Government.

### **Deposit**

Deposit – Section 2(4) –

- ☞ An amount of money received by way of advance or loan or in any other form,
- ☞ By any deposit taker with a promise to return whether after a specified period or otherwise,
- ☞ Either in cash or in kind or in the form of a specified service,
- ☞ With or without any benefit in the form of interest, bonus, profit or in any other form.

In the case of Companies, deposit shall have the meaning assigned to it under companies act 2013 and in the case NBFC's registered with RBI deposit means deposit as defined in clause (bb) of Seciton 45I of RBI Act.

### **Exclusion from Deposit**

Deposit does not include:

- ☞ Amount received from a scheduled bank or co-operative bank or other banking company defined in section 5 of the Banking regulation Act, 1949
- ☞ Amount received as loan or financial assistance from public financial institutions or non-banking financial companies registered with reserve bank of India, Regional Financial institutions or Insurance Companies
- ☞ Any amount received from appropriate government, or any amount received from other source with repayment is guaranteed by the appropriate government, or any amount received from any statutory authority
- ☞ Amount received from
  - Foreign Governments
  - Foreign or International Banks
  - Foreign Bodies Corporate
  - Foreign Citizens etc. subject to the provisions of FEMA, 1999 and the rules and regulations
- ☞ Contribution towards capital by partners of partnership firm or LLP

- ☞ Amount received by an individual by way of loans from his relatives or amount received by any firm by way of loan from relatives of any of its partners.
- ☞ Any amount received as credit by a buyer from a seller on the sale of any property (whether movable or immovable)
- ☞ Amount received from asset re-construction company which is registered with RBI.
- ☞ Any deposit made under section 34 or an amount accepted by a political party under section 29B of the Representation of People Act, 1951.
- ☞ Any periodic payment made by the members of the self-help groups operating within such ceiling as may be prescribed by the state government.
- ☞ Any other amount collected for such purpose and within such ceiling as may be prescribed by the state government
- ☞ An amount received in the course of or for the purpose of, business and bearing a genuine connection to such business including :-
  - Payment, advance or part payment for supply or hire of goods or provision of services and is repayable in the event goods are not sold or service not provided
  - Advance received in connection consideration of immovable property under an agreement or arrangement subject to condition that such advance shall adjusted against such immovable property
  - Security or dealership deposit for the performance of a contract
  - Advance under the long term projects for supply of capital goods

shall be deemed to be deposits on the expiry of 15 days from due for payment

The term 'relative' shall have the same meaning as is defined in the Companies Act, 2013. As per Section 2(77) of the Companies Act, 2013 a person shall be deemed to be the relative of another, if he or she is related to another person in the following manner:

- (a) Father
- (b) Mother
- (c) Son and his wife
- (d) Daughter and her husband
- (e) Brothers and Sisters

### **Deposit Taker**

Deposit taker includes the following

- ☞ Individual or group of individual
- ☞ Proprietorship Concern
- ☞ Partnership (registered or not)
- ☞ LLP
- ☞ Company
- ☞ AOP

- ☞ A trust (Private trust or a public trust whether registered or not)
- ☞ Co-operative society or multi state co-operative society
- ☞ **any other arrangement of whatsoever nature**

The following are excluded from deposit takers

- ☞ A Corporation incorporated under any act of centre or state
- ☞ Banking company, RRB, Co-op bank, Multi state Co-op Bank

### What is Unregulated Deposit Scheme?

Unregulated Deposit Scheme means a scheme or arrangement under which deposit are accepted or solicited by any deposit taker by way of business which is not a regulated deposit scheme. A deposit scheme has been defined as unregulated scheme if it is not registered with any of following nine regulators:

- ☞ SEBI
- ☞ RBI
- ☞ IRDA
- ☞ State Governments
- ☞ National Housing Bank
- ☞ Pension fund regulatory and development authority (PFRDA)
- ☞ Employees Provident Fund Organisation (EPFO)
- ☞ Central Registrar Multi-state Co-operative Societies
- ☞ Ministry of Corporate Affairs (MCA)

The Ordinance has specified that deposit schemes specified in following table shall be deemed as regulated deposit schemes:

Regulated By	Deposit Schemes
SEBI	<ol style="list-style-type: none"> <li>Collective Investment Schemes</li> <li>Alternative Investment Funds</li> <li>Mutual Funds</li> <li>Schemes managed under following regulations: <ul style="list-style-type: none"> <li>SEBI (Portfolio Managers) Regulation</li> <li>SEBI (Share Based Employee Benefits) Regulations</li> </ul> </li> <li>Any other scheme registered with SEBI</li> </ol>
RBI	<ol style="list-style-type: none"> <li>Deposits accepted by NBFCs</li> <li>Scheme or arrangement under which funds accepted by individuals, business correspondents or facilitators as per RBI guidelines</li> <li>Funds received by authorised system provider operating under Payment and Settlement Systems Act, 2007</li> <li>Any other scheme or arrangement regulated by RBI</li> </ol>
IRDA	Contract of Insurance
State Governments	<ol style="list-style-type: none"> <li>Scheme or arrangement by registered Co-operative society</li> <li>Chit funds business sanctioned by State Govt.</li> <li>Any scheme or arrangement as per Money Lending laws</li> </ol>

	regulated by State Govt.
	4. Price Chit or Money Circulation Schemes which are not banned as per Prize Chits and Money Circulation Schemes (Banking) Act, 1978
National Housing Bank	Any Scheme or arrangement for acceptance of deposits registered under National Housing Bank Act, 1987
PFRDA	Any scheme or arrangement under Pension Fund Regulatory and Development Authority
EPFO	Any scheme, pension scheme or Insurance scheme under Employees' provident fund and miscellaneous Provisions Act, 1952
Central Registrar Multi-state Co-operative Societies	Deposits taken from voting members by Multi-State Co-operative Society
MCA	1. Deposits permitted under Companies Act, 2013 2. Deposits accepted by Nidhi Company or Mutual Benefit Society under Section 406 of Companies Act, 2013

### Banning of Unregulated deposit Scheme

All unregulated deposit schemes shall be banned. No Deposit taker shall directly or indirectly promote, operate, issue any advertisement in respect of un regulated deposit scheme. No Deposit taker shall make fraudulent default in repayment or return in regulated deposit scheme. No Person shall knowingly make Wrongful inducement in relation to unregulated deposit scheme

Prize chit or money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an unregulated deposit scheme under this ordinance.

### Offences and punishment under the Ordinance

The offences, and punishment for the same have been explained in following table.

Offences	Imprisonment	Fine (in Rs.)
Solicit deposits under Unregulated Deposit Schemes	1 year – 5 years	2 lakhs to 10 lakhs
Accept deposits under Unregulated Deposit Schemes	2 years – 7 years	3 lakhs to 10 lakhs
Fraud in repayment of deposits accepted under Unregulated Deposit Schemes	3 years – 10 years	5 lakhs to 200% of aggregate funds collected
Fraud in repayment of regulated deposits	Up to 7 years	5 lakhs to higher of 25 crore or 3 times the amount of profit made out of such fraud
Failure to render service promised against regulated deposits	Up to 7 years	5 lakhs to higher of 25 crores or 3 times the amount of profit made out of such fraud
Wrongful inducements in relation to Unregulated Deposit Schemes	1 year – 5 years	Up to 10 lakhs



Repeated offenders

5 years – 10  
years

10 lakhs – 50 crores

Failure to file intimation by deposit taker about its business, or to furnish statements, information or particulars to the competent authority

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Up to 5 lakhs

The offences covered under this ordinance shall be cognizable and non-bailable, except for the following offences:

- Fraud in repayment of deposit accepted in accordance of Regulated deposit scheme
- Failure to intimate about business or to furnish the statement, information, etc., required by competent authority.

### **Powers of the Competent Authority**

The Competent Authority will have powers similar to those vested in a Civil Court, which shall be as under:

- Will have powers similar to those vested in a civil court
- Provisionally attach the property of the deposit taker as well as all deposits received
- Summon and examine any person it deems necessary for the purpose of obtaining evidence
- Order the production of records and evidence
- May impound and retain records and evidence in his custody for such period as he thinks fit.

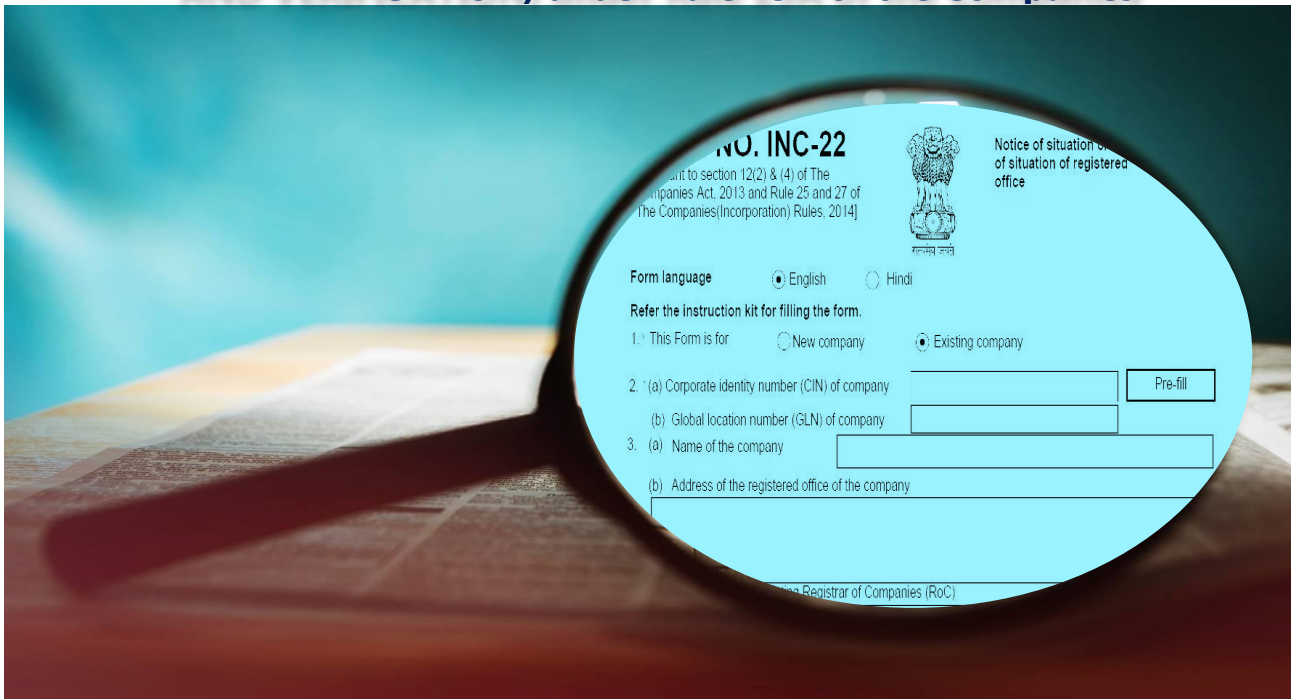
### **Offence committed under this ordinance be referred to CBI**

An offence committed under this ordinance can be referred to CBI if:

- The depositors, deposit takers or properties involved are located in more than one State or Union territory in India or outside India; and
- The total value of the amount involved is of such magnitude which can significantly affect the public interest.

## EXPERT'S TALK

### e-Form INC-22A ACTIVE (ACTIVE COMPANY TAGGING IDENTITIES AND VERIFICATION) under Rule 25A of the Companies



The Ministry of Corporate Affairs has notified the Companies (Incorporation) Amendment Rules, 2019 on 21<sup>st</sup> February 2019 under which all the companies registered on or before 31<sup>st</sup> December, 2017, are required to file e Form INC-22A ACTIVE (Active Company Tagging Identities and Verification) on or before 25<sup>th</sup> April 2019. This Rules came into force with effect from 25<sup>th</sup> February 2019. The purpose of introduction e-Form INC-22A ACTIVE is to make Corporate Governance more strengthen and to force all Companies to comply with the Rules and Regulations as prescribed by the MCA.

Through this e-Form INC-22A, the company must attach the photo of external Building of the Company as well as the photo showing one of the directors or KMP in its registered office whose Digital Signature is to be attached in the aforesaid e-Form. Further the Company has to provide longitude and latitude details about the location of the Registered office of the Company in e-Form INC-22A. This information is called as Geo-Tagged information. Unique e-mail Id is required to be given which is to be verified through One Time Password (OTP) received in that e-mail Id.



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As per MCA records till 31<sup>st</sup> March 2017 there are total 11,72,664 Companies registered. Out of that total Private Companies are 10,97,312 and Public Limited Company are 64,869 and Foreign Companies are 3,361 and Other Companies are 7,122. All the above Companies need to file this new form on or before 25<sup>th</sup> April, 2019. There are so many Companies which are operating only on Paper i.e. Shell Companies, to find out the same, Ministry of Corporate affairs introduced the Form, which can be called as **e-Form ACTIVE**.

**To whom Rule 25A is applicable:**

Every company incorporated on or before 31<sup>st</sup> December, 2017 shall file the particulars of the company and its registered office, in e-Form INC-22A ACTIVE on or before 25<sup>th</sup> April 2019.

**Which Companies does not Require to File e-Form INC-22A ACTIVE:**

Companies which have been:

- Struck off or under process of striking off or under liquidation;
- Amalgamated or dissolved,

as recorded in the register, shall not be required to file e-Form ACTIVE

**Which Companies are not allowed to file this e-form ACTIVE:**

- Any company which has not filed the due Annual Financial Statements under Section 137 or due annual accounts under Section 92 or both is restricted from filing e-form ACTIVE unless such company is in a Management dispute and the Registrar has recorded the same on the Register.
- When, number of directors is less than the minimum as prescribed under the Companies Act, 2013.
- When DIR-3 KYC of all the Directors not filed.
- When any member of the Board is under the status "*Disqualified under Section 164(2)*".
- When the Company fails to appoint Key Managerial Personnel, which required to be appointed under Companies Act, 2013 (i.e., If the company fails to appoint Company Secretary/Chief Financial Officer/ Mg. Director/Whole-time Director/ Chief Executive Officer, when the company falls under the category of any such compulsory appointment under the Act.)
- When Company does not appoint Cost Auditor when it requires to be appoint under the Companies Act, 2013.

*Hence please ensure before trying to file e-Form ACTIVE that the DINs of all Directors are in 'Approved' status and are neither 'De-activated due to non-filing of DIR-3 KYC' nor 'Disqualified u/s 164(2), Annual Filing for the financial year 2017-18 has been completed, Form ADT-1 for the Auditor appointment towards the ensuing year(s) has be filed.*

*Please also note that the Company is not allowed to file this e-form until the company has appointed the Company Secretary and other Key Managerial Personnel, if it fall under such compulsory appointment category under any provision of the Act. Until then, if the Company proceeds to file this e form the system will show the error message with regard to this non-compliance.*

**What will be the consequences if the companies which are required to file the e-Form INC-22A ACTIVE, is not filed within the due date 25<sup>th</sup> April 2019**

The Company will be marked as "Active Non-Compliant" on or after 26<sup>th</sup> April 2019 and the Company will not be allowed to file the following event based forms until it files the e-Form INC-22A ACTIVE:

1. Form SH-7 (Change in Authorised Share Capital)
2. PAS-03(Change in paid up Capital)
- 3.DIR-12(Changes in Director except cessation)
4. INC-22(Change in Registered Office)
5. INC-28(Amalgamation, demerger, Orders etc.)

The company shall also be liable for action under Sub-Section (9) of Section 12 of the Act.(i.e., If any default is made in complying with the requirements of this Section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.) The Registrar may initiate action for the removal of the name of The company from the Register of Companies Under Chapter XVIII.

**How to bring the company status as "Active Compliant" when it has not filed the e-form Active within the due date:**

If, Form INC-22A filed on or before 25th April 2019 there is no Fees levied. But after the due date for filing, the Company must file the e-Form INC-22A ACTIVE alongwith the fees of Rs.10,000.00/- Once the form is filed, the company's status will be changed into "Active Compliant".

**What are the Important details required to be fill up in e-Form ACTIVE:**

Address of registered office (Photo of the Registered Office also showing therein at least one Director(s)/ KMP who has affixed his/her Digital Signature to this form is mandatory). Photograph showing external building and internal office of registered office with director/KMP who is signing this form. This will be considered as a major requirement for Filing e-Form ACTIVE. While taking photograph showing external building, please ensure that Board in front of the building should be made with full compliance of Section 12(3) regarding writing name and other details in the Board affixed there to.

Details regarding exact location such as latitude and longitude, of the Company to be given in the e-Form

**Whether the Form needs the Certification:**

It needs to be certified as follows:

- One Director and a Practicing Professional in case of OPC
- One Director and One KMP or 2 Directors and a Practicing Professional in case of Companies other than OPC

**Is e-Form ACTIVE required to be signed by Professional:**

e-Form INC-22 ACTIVE, is mandatorily required to be attested by CA/CS/CMA. It is advisable to Professionals to obtain a Declaration cum Engagement Letter from the respective company for Filing of e-Form INC-22 ACTIVE, to comply in case of any enquiry is carried out by MCA in Future.

**Why such Form Introduced by MCA:**

This form has been introduced by MCA to Identify the Shell Companies operating in India and to strengthen Corporate Governance by complying with Rules and Regulations as prescribed. The e-Form INC 22A-ACTIVE will record details pertaining to the address of the registered office along with Photographs. By such exercise, it will be easy to find bogus address of shell companies. This is in continuous efforts to clean up the registry, which result into strengthen Corporate Governance and create a transparent and compliant corporate system. This may be considered as a Red Alert for Shell Companies. And It will help the Government to weed out the shell companies which are used for Black Money and Money Laundering activities.

## Insolvency and Bankruptcy Code-Impact Analysis



**I**nsolvency is a state of affairs, which triggers the legal process of bankruptcy. Through this article I have made a critical analysis of Insolvency and Bankruptcy Code (IBC in short) by highlighting the key parts of the Code. This has been done by assessing its likely impact on the Indian debt market and what does the Code contain and how effective will it be in promoting the efficient and timely resolution of insolvent entities.

It's no secret that the Indian banking industry has a rather large number of loans outstanding that have simply gone wrong. With non-performing loans estimated at just over INR 8.3 trillion.

The process was actually initiated in the year 2015. It was first passed in Lok Sabha and later in Rajya Sabha in the month of May, 2016. The IBC (Amendment) Ordinance, 2017 was promulgated on November 23, 2017. The Ordinance amends Sections 2(e), 5(25), 5(26), 25(2)(h), 30(4), 35(1)(f) and 240(2) of the Code, and inserts new Sections 29A and 235A in the Code. While the enactment of the IBC, 2016 brought significant improvements to the insolvency resolution process in India, recent cases highlighted several practical issues and interpretational anomalies under the Code. These issues were considered by an insolvency law committee constituted by the MCA in consultation with key stakeholders. Based on the recommendations of the Committee, the IBC (Amendment) Ordinance 2018 was notified on 6 June 2018.



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Since the code came into being, at least 2,434 fresh cases have been filed before the (NCLT) till 30 November, 2017 and at least 2,304 cases seeking the winding-up of companies have been transferred from various high courts. Of these, 2,750 cases have been disposed of and 1,988 cases were pending during the period under review (as of December), according to a reply to the Lok Sabha by the minister of state for finance, Shiv Pratap Shukla.

Two years after enactment of the Insolvency and Bankruptcy Code, it has become clear that creditors, particularly financial ones, cannot focus only on recovery of value for themselves. In these two years, 800 companies have been undergoing the insolvency process.

At a recent event, Insolvency and Bankruptcy Board of India (IBBI) chief M S Sahoo said creditors need to show more initiative. "The objective of a CoC (committee of creditors) is to generate competitive resolution plans and then approve that which maximises the value for everybody — in contrast to recovery which maximises the value only for one set of people. There is a lot of facilitation in the law for making it happen. The objective is to revive if viable or close it (the asset) if not viable. You can't directly go to liquidation," he said.

Resolution professionals (RPs) agree but bankers find it too idealistic, for lenders to be told at such a pressing juncture to look at broader issues.

### **Issues having an Impact.....**

RPs feel bankers do not come prepared for creditor meetings. One of the former, handling one of the first list of 12 big cases referred by the Reserve Bank of India, now coming close to the end of its moratorium period, says: "There were 14 banks in the case. They treated the meetings like their Joint Lenders Forum (JLF), which is why many meetings went inconclusive."

Another RP says banks often choose not to decide. He adds that at least for public sector banks, whose parent is the government, there should be a rule that one person should represent all these entities, to stop the multiplicity of divergent views, leading to no resolution.

"It would help PSBs to maximize value if they were able to take bolder decisions in such cases without constraints like CVC (Central Vigilance Commission) guidelines. I do not believe the CVC guidelines should be applicable in IBC cases," adds Nikhil Shah, an insolvency professional with Alvarez and Marsal.

Senior PSB executives, however, say asking the CoC to look at broader concerns (the interest of all stakeholders) at a time of grappling with sickness and recoveries is not practical.

A senior advisor to the Indian Banks' Association says lenders are driven by the immediate objective of recovering as much as possible of the money at stake, within the parameters laid down by the bankers' grouping.

Another factor is fear of legal action at a later date for decisions taken in IBC cases. An example is the legal troubles for bank executives in cases such as Kingfisher Airlines, says the head of recovery management at a large PSB.



## **The Journey till Date.....**

Assented by the President in May 2016, the Act took six more months to become active, by December. Rules were framed, professional standards were made, professionals enrolled. Thus began the regime outside the erstwhile Board for Industrial and Financial Reconstruction (BIFR). The code gained momentum when RBI identified 12 big-size bad loans for banks to take to the insolvency route.

Of these, Bhushan Steel has just got resolved —Tata Steel bought it for Rs 32,500 crore. The fact that the lenders took a 60 per cent haircut (write off) shows creditors do also look for something beyond recovering all their money. However, the decision has irked Larsen & Toubro, which has asked NCLT, the appellate body, to treat it as a financial creditor, not an operational creditor.

The Code has succeeded in deterring corporates from defaulting, says Anuj Jain, who handled the Jaypee Infratech insolvency case.

The preliminary results of the new insolvency regime seem to indicate a significant improvement for financial creditors. The new regime has enabled an average 40-50 per cent recovery rate for them in large cases, in a time-bound manner. The earlier recovery rates were about 25 per cent."

## **Ahead**

There has been a mindset shift for corporates as well – they are beginning to take steps much earlier to avoid going into insolvency. This will help prevent the creation of more stressed assets.

Experts add that in future cases, resolution will yield better results, as cases being filed might not have a backlog as in the ones so far, where debt has accumulated over decades. Many of these cases have been through JLFs and the BIFR. After no resolution, they have been referred to the National Company Law Tribunal (NCLT) under the IBC regime.

There are 11 benches of NCLT handling insolvency cases, with one appellate tribunal. In a newsletter of the ministry of corporate affairs, the secretary says pressure is mounting on these 11 tribunals and these need to be strengthened.

In these two years, the bankruptcy board has notified rules for corporate insolvency; those for individuals' bankruptcy are still being prepared.

## **Timeline.....**

- Parliament passed Insolvency and Bankruptcy Act in May 2016
- Insolvency and Bankruptcy Board of India from Oct 2016
- Starting end-December, cases filed at NCLT



- First case resolved under IBC was of Synergies Dooray, with a 94 per cent haircut
- Code got momentum when RBI recommended 12 big cases to banks
- First case from RBI's list to see takeover is Bhushan Steel; Tata Steel bought it in the resolution process for Rs 32,500 cr and lenders took a 60 per cent writeoff
- Government introduced Section 29A to stop promoters and defaulters from bidding for companies undergoing resolution
- This, for instance, made ArcelorMittal ineligible from bidding; it challenged this
- Government set up committee under corporate affairs secretary Injeti Srinivas to review IBC
- Union cabinet passed ordinance to amend IBC, to give home buyers status of creditor. Also, to change some bidding norms

On 6th June 2018, President Ram Nath Kovind gave his nod to promulgate the Insolvency and Bankruptcy code (Amendment) Ordinance 2018.

#### **The key amendments to IBC:**

- **Homebuyers as financial creditors**

In a major change, homebuyers would now be treated as financial creditors or, in other words, on par with banks. The amendment enables homebuyers (either as an individual or group) to initiate insolvency proceedings against errant builders. Homebuyers shall have the right to be represented in the committee of creditors (CoC), which takes the key decision regarding revival of the company or its liquidation.

- **Definition of a related party in relation to an individual**

The amendment now defines related party in relation to an individual running the firm and they would be barred from bidding for the firm under the resolution process.

Prior to the amendment, related party was defined only with reference to a company facing insolvency.

- **Changes in voting share of committee of CoC**

The amendment has changed the voting share required in CoC meetings. For extending the insolvency process beyond 180 days till 270 days and for appointment of the resolution professional (who oversees the process), now a voting share of 66% is sufficient, compared with earlier requirement of 75%. Unless a specific approval is required in the Code, all other decisions of the CoC can be taken with 51% voting share against the earlier norm of 75%.

Withdrawal from the insolvency process is permitted with the approval of 90% of voting share of the CoC (the norms for which would be prescribed).

➤ **If a financial creditor is a related party**

If a financial creditor (banks and other financial institution) or his authorised representative is a related party to the company facing insolvency, it shall not have any participation or voting during a meeting of the CoC.

However, exemption is provided in case the financial creditor has become a related party on account of conversion or substitution of debt to equity shares or instruments convertible into equity shares prior to the date of commencement of insolvency proceedings.

- **Moratorium not to be available to the guarantors of a company**

For a company under insolvency, a moratorium period is provided during which no parallel proceedings are allowed. Whether such moratorium is available to guarantors of the company was a subject of debate. Now the amendment has said that the moratorium is not available to persons who provided guarantee for the loans availed by the corporate debtor.

- **Filing of application by the company**

A company can file an insolvency application, provided it seeks shareholders' approval and at least three-fourth of the stakeholders approve the proposal.

- **Operational creditor to confirm dues only if available**

Operational creditors (suppliers of the company) are required to furnish a certificate from the financial institution managing their accounts regarding pending dues from the company, only if it is available. Prior to the amendment, it was mandatory.

- **Tenure of an insolvency resolution professional**

Under the insolvency process, an interim resolution professional (IRP) is appointed first and then, a resolution professional. As per the amendment, the tenure of the IRP would continue till the appointment of the resolution professional (RP), compared with the earlier 30-day fixed tenure. Also, for the appointment of the RP, a written consent from the professional is required in a specified format.

**Despite the recent amendments to the code, and regulation changes by the Insolvency and Bankruptcy Board of India, there are still several gray areas in the code.**

As the system is new, challenges will be there. But the government has been proactive in evolution of the code, taking into account views of all stakeholders.

The Code intends to rationalize the processes and procedures for bankruptcy and insolvency, improve the recovery rates of debt and increase creditor confidence in India, and it should

hopefully go some way to address the rights of lenders to enforce security in a distress situation, potentially bringing down the rate of non-performing loans.

The ordinance, 2018 majorly focuses on applying a good resolution plan to the company. It therefore restricts the submission of the resolution plan by persons having poor antecedents and also does not allow them to bid for the assets of the company after the liquidation. The personal guarantors of the company, who are mostly the promoters of the company, are therefore barred to be a resolution applicant and restricted from bidding for the properties of the company during liquidation.



## HEALTH TIPS TO PROFESSIONALS

### 1. Make Sleep A Priority

Yes, lack of sleep throws off the balance of our hormones which can lead to weight gain. Staying up a few hours might help get things checked off your list but the overall quality of your work, activities, and general happiness is just not worth it.

### 2. Plan Ahead

Schedule small bits of time in your day for upcoming large work or home projects. This will help make certain you don't get overwhelmed and stressed out.

### 3. Just Say No!

Think very carefully before saying the often overused word "yes!" Try to remember how scarce time is when you make commitments. It is perfectly fine to say "no", and most likely necessary to maintain the healthy quality of life you seek.

### 4. Exercise

If you can get up and get going with a walk, run, yoga class, or any variety of movement then you don't have to worry about it the rest of the day. It is also a good idea to always take stairs at work, and take fitness breaks throughout the day

### 5. Ask For Help

It is not a sign of weakness yet it is a sign of strength to be vulnerable. We have ALL been there and most likely there will be many people waiting in the wings to jump in and give you a hand.

### 6. Drink Water

Proper hydration helps us manage an ideal body weight and that is always a good thing. By drinking water throughout the day you are ensuring you get up and use the bathroom which is a great time to take an exercise break.

