

ICSI-EIRC NEWSLETTER



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27th Regional Conference of Company Secretaries

Governance with Excellence

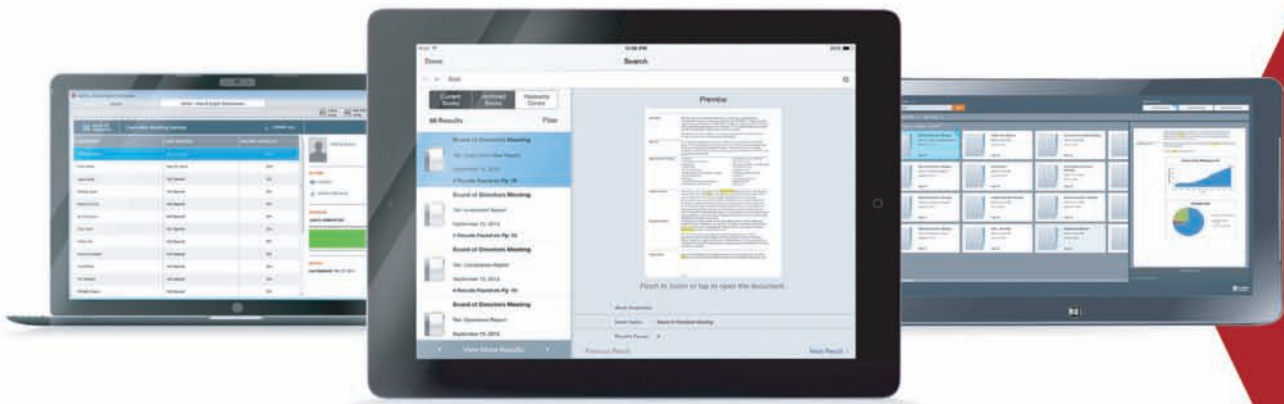
**Saturday, 5th November, 2016
J W Marriott, Kolkata**

New Initiative of EIRC

The online payment facility of the registration fee for the Seminars/ Workshops organised by ICSI-EIRC has started. ICSI-EIRC in association with Paytm is providing a new platform for the delegates and ease of doing registration for Professional Development Programmes. Please do take the maximum benefit of this.



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Om bhūr bhuva sva tát savitúr vāre(i)ya bhárgo devásya dhīmahi dhíyo yó na prachodayāt

Rigveda 3.62.10

(“We meditate on the glory of that Being who has produced this universe; may He enlighten our minds.”)

I would like to offer my best wishes to all of my professional colleagues and students on Dusshera – The festival signifying the victory of Good over Evil and Deepavali, the festival of lights. These festivals encourages us to lead a virtuous life in truth, peace and harmony. As Company Secretaries it's our job to vanquish the darkness in the annals of business and remove them with the light of fair and transparent corporate governance practice.

I would also like to thank for your unwavering support & feedback and I am really glad to present this August-September issue of newsletter of ICSI-EIRC which brings the latest news, galaxy of relevant articles and highlights of the activities of ICSI-EIRC. October is a busy month for professional and festive month for all of us.

Friends, It gives me immense pleasure to state that we have also started an online payment facility in association with Paytm (a reputed online payment gateway) for members and students to deposit their payments online for attending professional development programmes conducted by EIRC. A great initiative of EIRC.

Programmes and Activities of EIRC

The months of August & September witnessed an appreciable number of programmes for members and students both. On 20th August, 2016 ICSI-EIRC organized 28th Regional Conference of Student Company Secretaries at Bhasha Bhawan Auditorium, National Library on the theme “Together Towards Tomorrow” , where a galaxy of Speakers spoke on various relevant topics, a number of events and corporate games were conducted for the students and the event ended up with a mesmerising cultural event put up by the students.

EIRC of ICSI jointly with CII organized Seminar on “Corporate Governance, Business Ethics & Competition Law : Emerging Trends” and NCLT & GST on 26th August, 2016 at Park Hotel, where Ms Jyothi Jindgar, Adviser, Competition Commission Of India was Chief Guest, Eminent Speakers from across India spoke during the event Corporate Governance, Competition Law and Business Ethics.

Besides workshops and seminars, we also celebrated Independence Day at ICSI-EIRC House on 15th August, 2016, where cultural



program on Indian independence struggle was performed by CS students. The National Flag on the day was unfurled by Shri B Mohanty, ROC West Bengal, MCA.

In September, we organized we organized a number of Class Room Sessions for both members and students on GST and NCLT. The Chief Guest in the inaugural class on NCLT on 03rd September was Smt Manorama Kumari, Member (Judicial), NCLT Kolkata. The class room sessions on both NCLT and GST were appreciated by members, students, regulators for the variety of topics being discussed in every session and also for the initiative of a class room approach to solve queries. We have conducted a Half Day Workshop on GST –“Getting Ready for GST - Changes Called For” where CA Arun Agarwal, Practising Chartered Accountant was the Guest Speaker.

EIRC Infrastructure Development

In order to conduct training programs for students and professional development programs for members more comfortably, we had renovated the ICSI EIRC auditorium.

Forthcoming Programs

I, on behalf of EIRC sincerely request you to send your suggestions and feedback from time to time. I assure you, that we at EIRC would give importance to all your suggestions and consider them for implementation in the right perspective.

CS Sandip Kumar Kejriwal
Chairman, EIRC-ICSI

List of Activities organised by EIRC from 1.08.2016 to 30.09.2016

Date	Programme / Activity
7.8.2016	Half Day Workshop on “Role of Company Secretary in Service Tax and GST”
10.08.2016 to 30.08.2016	111th MSOP Batch
15.08.2016	Independence Day Celebration
16.08.2016 to 25.08.2016	52nd EDP Batch
20.08.2016 to 21.08.2016	28th Regional Conference of Student Company Secretaries on the theme “Together towards Tomorrow”
26.08.2016	Seminar on “Corporate Governance, Business Ethics & Competition Law : Emerging Trends” and NCLT & GST (joint programme with CII)
3.9.2016	Half Day Workshop on Stress Management (for students)
3.9.2016	Session on NCLT – “Background, Constitutional Validity & Recent Developments, Class Action Suits, Revival and Rehabilitation of sick companies, Power of NCLT under various sections”
3.9.2016	Session on GST – “Business Processes under GST, Levy of Tax and Exemptions, Refund and Returns, TDS Provisions”
5.9.2016	Session on GST – “Overview of the GST model in India”
6.9.2016	Session on NCLT – “Conversion from Public Company to Private Company; Change in Financial Year; Consolidation of Shares and Compounding of Offences”
7.9.2016	Session on GST – “Registration & Threshold limit in GST, Time and point of supply under GST & Tax”
8.9.2016	Session on NCLT – “Basic Legal Concepts and Essentials & Procedures of Drafting and filling of Application/ Petitions in the NCLT”
9.9.2016 to 27.09.2016	112th MSOP Batch
10.09.2016	Session on GST – “Valuation and Input Tax Credit, GST Valuation (Determination of the Value of supply of Goods and Services) and Input, Tax Credit under Model GST Law – transfer, recovery, distribution”
11.9.2016	Half Day Workshop on GST
15.09.2016	Session on GST – “Place of provision of services”
16.09.2016	Session on NCLT – “Class Action Suit, Court Craft & Art of Appearance”
17.09.2016	Session on NCLT - “Prevention of Oppression and Mismanagement; Appeals to NCLAT”
17.09.2016	Brainstorming Session on New Syllabus (specially for students)
17.09.2016	Interactive Session with Shri S K Panda, Chief Commissioner of Service Tax, Kolkata
17.09.2016	Session on GST – “Changing paradigm in Indirect Taxes in India and Understanding it's impact on Supply Chain Management”
19.09.2016	Session on NCLT – “NCLAT-Scope and Jurisdiction”
20.09.2016	Session on GST – “Transitional Provisions”
22.09.2016	Session on NCLT – “Compromise, Arrangement, and Mergers Winding up – Drafts, Role of NCLT, Role of ROC/ RD, other procedures”
24.09.2016	Brainstorming Session on New Syllabus (specially for students)
24.09.2016	Half Day Workshop on GST – “Getting Ready for GST - Changes Called For”
31 Career Awareness Programmes were organised during this period.	

Half Day Workshop on “ Role of Company Secretary in Service tax and GST” on 07.08.2016



CS Sandip Kumar Kejriwal, Chairman, ICSI-EIRC addressing ; Others on the dais (L to R) CS Ashok Kumar Mishra, Chairman Bhubneswar Chapter of ICSI-EIRC; CS Ashok Purohit, Treasurer, ICSI-EIRC; Mr Vibhor Tondon , Regional Head (Eastern Region), MCX; CS Gautam Dugar, Secretary, ICSI-EIRC.



Group Photograph of participants at the Half Day Workshop

111th Management Skills Orientation Programme Batch from 10.08.2016 to 30.08.2016



Group Photograph of MSOP batch



Shri Pawan Agarwal (Dabawala) Renowned Management Guru addressing the MSOP session



CS Sandip Kumar Kejriwal, Chairman, ICSI-EIRC & MS Manorama Kumari, Hon'ble Member NCLT presenting MSOP certificate; Others on the dais (L to R) CS Ashok Purohit, Treasurer, ICSI-EIRC; CS Siddharth Murarka, Vice-Chairman, ICSI-EIRC; Shri DVNS Sarma, Regional Director, ICSI-EIRO

Independence Day Celebration on 15.08.2016



CS Mamta Binani, President ICSI hoisting the National Flag



Cultural Programme by CS Students

52nd EDP Batch from 16.08.2016 to 25.08.2016



Students of the 52nd EDP Batch

Interactive Session with Chief Commissioner of Service Tax



Felicitation of Shri S K Panda, Chief Commissioner of Service Tax, Kolkata, during the interactive session at ICSI-EIRC

28th Regional Conference of Student Companies Secretaries on the theme “ Together towards Tomorrow” from 20.08.2016 to 21.08.2016



Photographs of different activities performed by CS Students at 28th Regional Conference of Student Companies Secretaries

Seminar on “Corporate Governance, Business Ethics & Competition Law:Emerging Trends” and NCLT & GST (joint programme with CII) on 26.08.2016



L-R: CS Rajesh Poddar, Co-Chairman, CII ER Governance Task Force & Deputy Company Secretary, ITC Ltd; CS Sandip Kumar Kejriwal, Chairman, EIRC, Institute of Company Secretaries of India (ICSI); Mr Moly Banerjee, Chairman, CII ER Governance Task Force & MD, Linde India Ltd; Ms Jyoti Jindgar, Adviser, Competition Commission of India, Government of India; Mr Bibeekanda Mohanty, Registrar of Companies (Kolkata), Union Ministry of Corporate Affairs; and Ms Abhishikta Roychowdhury, Deputy Director, CII.

Half Day Workshop on Stress Management(for students) on 03.09.2016



Guest Speakers Ms Simi Suri & Mr Saibal Chandra Pal being felicitated

Classroom Session on GST & NCLT From 03.09.2016 to 24.09.2016



Galaxy of Speakers addressing at the GST & NCLT Classroom Sessions

112th Management Skills Orientation Programme from 09.09.2016 to 27.09.2016



Group Photograph of MSOP batch



Shri G.C Dutt (IPS), Inspector General of Police addressing the MSOP session.



Ms Manorama Kumari, Hon'ble Member, NCLT presenting MSOP certificates; Others on the dais (L toR) CS Siddharth Murarka, Vice-Chairman, ICSI-EIRC; CS Sandip Kumar Kejrival, Chairman, ICSI-EIRC; Shri Vijayraghavan, Hon'ble Member, NCLT; CS Ashok Purohit, Treasurer, ICSI-EIRC; Shri DVNS Sarma, Regional Director, ICSI-EIRO.

Disclaimer

While every effort has been made and care has been taken in preparation of this newsletter and to ensure its accuracy at the time of publication, EIRC of ICSI assumes no responsibility for any errors which despite all precautions, may creep in. ICSI-EIRC does not own any responsibility for the information and views published in the journal which are of the contributors.

Half Day Workshop on GST on 11.09.2016



CS Sandip Kumar Kejrival, Chairman, ICSI-EIRC with CS Pushpa Rani, Chairperson, Patna Chapter alongwith the Participants at the Half Day Workshop



“INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016”

CS Pooja Agarwal

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BRIEF INTRODUCTION

In India the quest of bankruptcy proceedings have been a tedious process. To deal with it, our Government introduced the Insolvency Code which was referred to the Joint Committee of Parliament. The Code was passed in both the houses and received the President's assent on 28th May, 2016 and therein named 'The Insolvency and Bankruptcy Code, 2016'

The code sets out laws relating to reorganization and insolvency resolution for the corporate persons, LLP, partnership firms and individuals. The code is vast and in order to give a brief yet good knowledge, only the first part which deals with insolvency and bankruptcy of corporate is dealt with in here.

WHO CAN APPLY?

Where any corporate debtors/financial creditor/operational creditor commits a default of a minimum amount of one lakh rupees, the application relating to insolvency and liquidation can be applied for.

INITIATION OF PROCESS BY FINANCIAL CREDITOR:

A financial creditor solely or along with other creditors can file an application against a corporate debtor before the Adjudicating Authority in the form, manner and fee as prescribed along with the default records, its supporting evidences, the name of interim resolution professional and other information specified by the Board. The Adjudicating Authority shall within 14 days of receipt of such application ascertain the correctness and admit the application and communicate the same within 7 days to the financial creditor and the corporate debtor.

INSOLVENCY RESOLUTION PROCESS:

OPERATIONAL CREDITOR:

On initiation of demanding payment of unpaid operational debt, the operational debtor shall within 10 days bring to the notice of the operational creditor either an existence of dispute or the attested repayment records. Non receipt of either empowers the operational creditor to file an application against a corporate debtor before the Adjudicating Authority. A resolution professional may be appointed to start the process. The Adjudicating Authority shall within 14 days accept / reject stating the reasons to the operational creditor and the corporate debtor.

CORPORATE APPLICANT:

Where a corporate debtor has committed a default, a corporate applicant can file an application in the prescribed form, manner and fee along with the books of accounts and the resolution professional proposed to be appointed. The Adjudicating Authority shall within 14 days pass an order of either acceptance or rejection of such applications.

The entire process shall be completed within a period of 180 days from such admission of application subject to maximum extension of 90 days after passing a resolution at the creditors committee meeting. There are certain persons who is not entitled to make an application to initiate corporate insolvency resolution process under, namely-

- A corporate debtor undergoing corporate insolvency resolution process or corporate insolvency resolution process completed 12 months preceding the date of making the application, or
- A corporate debtor or a financial creditor who has Violated the terms of resolution plan which was approved 12 months before the date of making of an application, or
- A corporate debtor in respect of whom a liquidation order has been made.

DECLARATION OF MORATORIUM:

The Adjudicating Authority shall declare temporary prohibition of Institution, pendency, transfer and disposing the suits or proceedings pending and any action to foreclose, recover or enforce any security interest under SARFAESI Act, 2002 till the completion of the corporate insolvency resolution process.

APPOINTMENT OF INTERIM RESOLUTION PROFESSIONAL:

Within 14 days from insolvency commencement date, the Adjudicating Authority on receiving the application to appoint interim resolution professional shall appoint provided that no disciplinary proceeding is pending against him. In cases of application being made by the operational creditor, the Adjudicating Authority shall refer Board, who shall within 10 days recommend an interim resolution professional to be appointed for a period not exceeding 30 days since appointment. A public announcement is to be made immediately after the appointment.

DUTIES & MANAGEMENT OF INTERIM RESOLUTION PROFESSIONAL/RESOLUTION PROFESSIONAL:

The interim resolution professional shall perform the following duties, namely:—

- Collect all financial numbers of the corporate debtor
- Receive and collate the claims submitted by creditors and constitute a creditor's committee.
- Manage assets and take control over it until a resolution professional is appointed
- Represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings
- Raise interim finances

f) Others duties as prescribed by the Board
COMMITTEE OF CREDITORS:

A committee of financial creditors should be constituted after the collection of all claims received. All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent of voting share. The resolution professional shall on demand, within 7 days make available the financial information as desired by the committee.

APPOINTMENT OF RESOLUTION PROFESSIONAL:

Within 7 days of constitution of creditors' committee interim resolution professional shall be appointed in a meeting to replace resolution professional or the interim resolution professional. The said decision shall be communicated to the corporate debtor and the Adjudicating Authority and in case of replacement, an application to be filed before the Adjudicating Authority for the appointment of the proposed resolution professional. If The Board fails to propose a resolution professional within 10 days, the Adjudicating Authority shall direct the interim resolution professional to continue until further direction.

The meeting of the committee of creditors can be in person or through electronic means. The resolution professional shall conduct all the meetings. A notice shall be given to the members of the committee, members of suspended Board of Directors, operational creditors/representatives if the amount of their aggregate dues is not less than ten per cent of the debt and to vote in accordance of the financial debts owed to such creditor.

INFORMATION MEMORANDUM & RESOLUTION PLAN:

The resolution professional shall prepare an information memorandum containing financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter to formulate a resolution plan. The resolution applicant will have access to all the relevant information in physical/electronic form and he may submit the resolution plan to the resolution professional. The plans approved by the resolution professional shall be tabled before the committee of creditors who may approve a resolution plan through voting and submit it to the Adjudicating Authority. If the Adjudicating Authority is satisfied that the plan meets all the requirements it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

Thereafter, the moratorium order shall cease to have effect and the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

LIQUIDATION PROCESS:

Initiation of liquidation of the corporate debtor by the Adjudicating Authority takes place by passing the order to liquidate corporate debtor, making a public announcement for said order and sending such order to the authorities where the debtor is registered:

1. Non receiving of a resolution plan within the specified period set for completion of corporate insolvency resolution or due to rejection of the resolution plan
2. On receiving resolution professional decision of committee

of creditors to liquidate the corporate debtor to liquidate the debtor

3. Any application made by any person other than the corporate debtor whose interest is affected
4. Contravention of the provisions of the resolution plan by the corporate debtor

Such Liquidation order on being passed prevents any suit or legal proceeding against the debtor excluding those notified by the Central Government, discharge of the officers, employees and workmen of the debtor unless business still continued under liquidation.

Appointment of a liquidator who happens to be the resolution professional appointed for the corporate insolvency resolution process leads to vesting of all powers of the board of directors, key managerial personnel and the partners of the corporate debtor as their powers cease to exist anymore. The Adjudicating Authority may replace the resolution professional on recommendation of the Board or rejection of the resolution plan submitted by the resolution professional.

POWERS AND DUTIES OF LIQUIDATOR

1. verify claims of all the creditors
2. take custody or control of all the assets, property, effects and actionable claims of the corporate debtor
3. protect and preserve the assets and properties, evaluate the assets and prepare a report on it
4. carry on the business for its beneficial liquidation
5. sell the immovable and movable property and
6. actionable claims of the corporate debtor in liquidation by public auction or private contract
7. to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor
8. obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities
9. invite and settle claims of creditors and claimants and distribute proceeds
10. institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor

ROLES OF THE LIQUIDATOR

1. collect or receive claims of creditors within 30 days from commencement of the liquidation process
2. verification of creditors claims within time specified by the board
3. after verification of creditors claims may accept or reject such claims
4. determination of the value of such claims after accepting such claims

Any aggrieved creditor may appeal to the adjudicating authority within a period of 14 days against the decision of liquidator.

The liquidator or the resolution professional if is of the opinion that certain transactions are undervalued after examination of such transactions may recommend the adjudication authority to

declare such transaction null and void. If the transaction has nil consideration such as gift or enters into a transaction in which value of transaction is less than the value of the consideration provided by the corporate debtor (transaction was made within one year or transaction made with a related party within two years preceding the insolvency commencement date.)

DISTRIBUTION OF ASSETS

The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority

1. workmen's dues for the period of 24 months preceding the liquidation commencement date
2. debts owed to a secured creditor in the event such secured creditor has relinquished security
3. wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date
4. financial debts owed to unsecured creditors
5. any amount due to the Central Government and State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of 2 years preceding the liquidation commencement date
6. debts owed to a secured creditor for any amount unpaid following the enforcement of security interest
7. any remaining debts and dues
8. preference shareholders, if any
9. equity shareholders or partners, as the case may be

DISSOLUTION OF CORPORATE DEBTOR

On complete liquidation of the corporate debtor's assets the liquidator shall apply to the Adjudicating Authority for the dissolution of such corporate debtor. On receiving of such application, passing of dissolution order of such corporate debtor takes place and within 7 days a copy of such order to be sent to the authority where the corporate debtor is registered.

FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS:

Fast track corporation insolvency resolution process takes place for the following corporate debtor's whose assets and income below a level, such class of creditors or such amount of debt, such other category of corporate persons, as may be notified by the Central Government.

The entire process should be completed within a period of 90 days from the insolvency commencement date. The period may

OFFENCES AND PENALTIES:

Person	Offence	Penalties
Officer of the Corporate Debtor	a) Concealment of property	Imprisonment of minimum 3 year and maximum 5 years or, Fine not less than Rs. 100000 and upto Rs. 10000000 or both
	b) Punishment for misconduct in course of corporate Insolvency resolution process.	
	c) False Representations to Creditors	
Officer of the Corporate Debtor or the Corporate Debtor	a) Wilful and Material omission from statements relating to affairs of corporate debtors	Imprisonment of minimum 3 year and maximum 5 years or, Fine not less than Rs. 100000 and upto Rs. 10000000 or both
	b) Transactions defrauding creditors	

be extended if a resolution passed at a meeting of the committee of creditors is passed by a vote of seventy five percent of the voting share. But this extended period shall not exceed a period of 45 days beyond the said 90 days.

Fast track corporate insolvency resolution process initiates by filing of application by a creditor or corporate debtor along with the proof of the existence of default as evidence and such other information as may be specified by the Board to make the corporate debtor eligible for such process.

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS:

A corporate person may, voluntarily liquidate if the directors of the company verifies by an affidavit stating that an enquiry has been made and that-

- a) no debt is pending /debts can be paid as the assets are disposed off, and
- b) it is not being liquidated to defraud any person

This shall be accompanied with financial documents. A special resolution needs to be passed in a general meeting within 4 weeks of such declaration approving voluntary liquidation and appointing of insolvency professional. Intimation will be sent to the Registrar of Companies and the Board within 7 days of passing such resolution. The adjudicating authority will, on receipt of application for the dissolution of such corporate person, pass an order approving the dissolution and send the copy of such order within 14 days to the authority with which the corporate person is registered.

ADJUDICATING AUTHORITY FOR CORPORATE PERSONS:

National Company Law Tribunal ("NCLT") is the Adjudicating Authority and will have territorial jurisdiction at the location of registered office of the corporate person. The NCLT can entertain or dispose off any application/claim/question of law & facts arising during this insolvency process.

APPEALS AND APPELLATE AUTHORITY

An Appeal to National Company Law Appellate Tribunal ("NCLAT") can be filed within 30 days from date of order passed by the NCLT. If a person is aggrieved with the order of NCLAT, he may file an appeal before the Supreme Court on a question of law within 45 days of receipt of such order subject to an extension of maximum 15 days provided a sufficient cause is stated that the person was prevented from filing an appeal.

No Civil court or authority shall have jurisdiction over the proceedings of NCLT or NCLAT. If an order is not passed within the period specified, the NCLT or NCLAT must state the reasons and the Authorities of respective tribunals shall extend the period not exceeding 10 days to pass the order.

Any Person	a) Fraudulently initiates the insolvency resolution or voluntary liquidation process	Penalty not less than Rs, 100000 but not more than Rs. 10000000
	b) False information furnished in application	
Officer of the Corporate Debtor or the Corporate Debtor	Contravention of moratorium or the resolution plan	Imprisonment of minimum 3 year and maximum 5 years or, Fine not less than Rs.100000 and upto Rs. 300000 or both
Operational Creditor	Non-disclosure of dispute or repayment of debt	Imprisonment of minimum 1 year and maximum 5 years or, Fine not less than Rs. 100000 and upto Rs. 10000000 or both
Corporate Debtor or any other person	False in material particulars or omission of material fact	Imprisonment of minimum 3 year and maximum 5 years or, Fine not less than Rs. 100000 and upto Rs. 10000000 or both
Insolvency Professional	Contravention of provisions	Imprisonment upto 6 months, Fine not less than Rs.100000 and upto Rs. 500000 or both
Any Person	Falsification of books of Corporate Debtor	Imprisonment of minimum 3 year and maximum 5 years or, Fine not less than Rs. 100000 and upto Rs. 10000000 or both

CONCLUSION:

The Code seeks to address the issues faced in context of Bankruptcy and Insolvency of Corporate persons. The new code is a boon but will take time to set its foot down strongly in the huge realm of Insolvency and Bankruptcy. We can conclude that it was worth waiting for the exhaustive and a consolidated code and we look forward that the streamline of the procedures and the fast track process of insolvency and bankruptcy leaves a hallmark in India's Lending Business.



SECRETARIAL STANDARDS 2 – QUIZ

CS Erina Chakraborty

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- Who can call a general meeting?**
(a) Board (b) Director (c) Independent Director (d) Chairman
- Notice for the meeting shall be given to:**
(a) Members (b) Directors (c) Debenture Trustees (d) All of the above
- The Notice shall specify:**
(a) Day (b) Nature of the meeting (c) Business to be transacted (d) All of the above
- Notice shall be accompanied with:**
(a) attendance slip (b) Proxy form (c) Both a & b (d) None of the above
- At least [] days in advance of the Meeting, the Notice and accompanying documents shall be given.**
(a) at least 21 clear days (b) 21 days (c) 7 days (d) 15 days
- In case of a public company, the quorum for a general meeting shall be [.....] members personally present if the number of members is more than 1000 but upto 5000 :**
(a) 5 (b) 7 (c) 15 (d) 30
- Who shall be the Chairman of a general meeting?**
(a) Chairman of the Board (b) Key Managerial Personnel (c) Any Member (d) None of the above
- A Proxy can act on behalf of Members not exceeding [o] and holding in the aggregate not more than [o] of the total share capital of the company carrying Voting Rights.**
(a) 5 and 10% (b) 50 and 10% (c) 25 and 10% (d) None of the above
- Every Resolution shall be proposed by [.....] and seconded by [.....]**
(a) All Members and any Member (b) Any Member and all Member (c) a Member and another Member (d) None of the above
- Minutes of general meeting in electronic form shall be maintained with [.....]**
(a) Page numbers (b) Minutes entry date (c) Timestamp (d) All of the above
- Minutes Books shall be kept at :**
(a) Registered Office of the company (b) Corporate Office (c) AGM venue (d) Chairman's office
- Contents of Minutes shall include :**
(a) name of the company (b) day, date and venue (c) time of commencement and conclusion of the Meeting (d) All of the above

13. Each item of business taken up at the Meeting shall be numbered in a manner which would enable ease of [...] (a) understanding (b) reference or cross-reference (c) minuting (d) All of the above
14. Minutes shall be entered in the Minutes Book within ... (a) 30 days from the date of conclusion of the Meeting (b) 30 clear days from the date of conclusion of the Meeting (c) 30 working days (d) 30 days
15. The date of entry of the Minutes in the Minutes Book shall be recorded by the (a) Company Secretary (b) Manager (c) Any Director (d) Independent Director.
16. Who are entitled to inspect the Minutes of all General Meetings? (a) Directors and Members (b) Only Independent Directors (c) Chairman and Independent Directors (d) Members
17. Minutes Book shall be kept under whose custody? (a) Chairman (b) Company Secretary (c) Director (d) Manager
18. Report on AGM shall be prepared by (a) top 100 listed companies (b) Every company (c) Public companies (d) Every listed company
19. Report on AGM shall be signed by the following : (a) Chairman and Company Secretary (b) by any two Directors including MD (c) Company Secretary (d) Independent Director
20. Report on AGM shall be filed with the ROC within (a) 15 days of the commencement of the AGM (b) 15 days of the conclusion of the AGM (c) 30 days of the commencement of the AGM (d) 30 days of the conclusion of the AGM
21. The Annual Return of a company shall disclose the held during the financial year. (a) date of AGM (b) date of board meeting (c) Both a & b (d) None of the above
22. What is the effective date of commencement of Secretarial Standard on General Meeting? (a) 1st July, 2015 (b) 1st April, 2013 (c) 1st December, 2015 (d) 1st October, 2015
23. A single postal ballot form may provide for of business to be transacted (a) Multiple (b) Single (c) Two (d) One
24. A resolution passed by postal ballot shall not be rescinded otherwise than by a resolution passed subsequently (a) Through postal ballot (b) By Board Meeting (c) In a general meeting (d) In an extra ordinary general meeting
25. Minutes of meetings, if maintained in loose-leaf form, shall be bound (a) 8 years (b) Periodically (c) Permanently (d) As a when required
26. Extract of the minutes shall be given: (a) any time after the conclusion of the meeting (b) only after the minutes have been duly signed. (c) after entry in the minutes book (d) none of the above
27. Scrutiniser's report shall be preserved for (a) 8 years (b) Permanently (c) 7 years (d) 8 financial years
28. Gifts, gift coupons, or cash in lieu of gifts shall be distributed to Members at or in connection with the meeting : (a) False (b) True (c) True if only provided at the venue of the meeting (d) True if only provided at the registered office
29. Minutes shall contain a summary of the proceedings of the meeting : (a) fair and correct (b) detailed (c) Both a & b (d) None of the above
30. No amendment or modification shall be made to any resolution circulated to the members for passing by means of : (a) Ordinary resolution (b) Special resolution (c) Postal ballot (d) None of the above
31. Remote e-voting means the facility of casting votes by a member using an electronic voting system from a place (a) Where general meeting is held (b) other than venue of a general meeting (c) as may be decided by the Board (d) None of the above
32. General meetings shall be called during business hours, i.e. between : (a) 9 a.m. and 6 p.m. (b) 10 a.m. to 6 p.m (c) 9 a.m to 7 p.m (d) 10 a.m to 7 p.m
33. One person can be an authorised representative of more than one body corporate: (a) True (b) False (c) True but for not more than 2 companies (d) True but for not more than 3 companies
34. Directors who attend General Meetings of the company and the Company Secretary shall be seated with the : (a) Independent Directors (b) Chairman (c) Members (d) Managing Director
35. If a poll is demanded on the election of the Chairman, it shall be taken in accordance with the provisions of the Act : (a) Within 48 hours (b) Within 24 hours (c) Forthwith (d) None of the above
36. A proxy be informed of the revocation of the proxy issued by the Member (a) need not (b) shall (c) may (d) none of the above
37. A proxy vote on a show of hands (a) Can (b) Cannot (c) Can if permitted by the Chairman (d) Can if holding more than 10% of the total shareholding
38. Notice of general meeting placed on website shall remain till (a) The date of filing Annual Return (b) The date of general meeting (c) The date of next general meeting (d) None of the above
39. Each resolution put to vote by poll shall be put to vote (a) separately (b) together (c) as may be decided by the Board (d) none of the above
40. Based on the scrutiniser's report, the Chairman shall declare the result of the poll (a) Forthwith (b) Within 24 hours (c) Within two days (d) Within 7 days

(For Answers Keys see page no. 15)



SOME RECENT CASES WHICH MAY BE RELEVANT TO OUR PROFESSIONAL FRATERNITY :

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1. The Principle of Mutuality does not vanish on change of form of business i.e., from an Association to a Company. Also the income in respect of which Principle of Mutuality is not applicable, would nevertheless be entitled to exemption u/s 11 of the Income Tax Act, 1961 subject to satisfaction of conditions laid down in that section. [Calcutta Cricket & Football Club vs. CIT] In the instant case, the assessee, Calcutta Cricket & Football Club (CC&FC), filed IT return declaring nil income for the A.Y. 2011-12 and the IT Assessing Officer (AO) accepted the same.

However, in view of the Commissioner of Income Tax (CIT) the order of AO was erroneous and prejudicial to the interest of the revenue and set aside the order of the AO.

The CIT noted that the assessee was incorporated in 2003 u/s. 25 of the Companies Act, 1956 as a not-for-profit company and the assessee took over the unincorporated association, CC&FC, a members' club which traces its origin in 1792 and hence the assessee was no longer a mutual association, which could be governed by Principles of Mutuality.

The CIT further noted that the assessee company had income from trade / commercial activities like 'bar, catering and events' and 'sports event' during the year and the assessee company, not being a mutual organisation, gross receipts from such activities exceeded Rs. 10 lakhs and therefore exemption u/s 11 of the IT Act was not applicable. Aggrieved by the order of CIT the assessee preferred appeal before the Tribunal.

ITAT while quashing the order of CIT held that the element of mutuality is not lost after CC&FC got itself incorporated as a company as the use of the club facilities is restricted only to members and their guests. Also, the use of the facilities by outsiders of the club is in connection with promotion of sports which is well within the main objects of CC&FC; the Principle of Mutuality does not vanish because of the change in form i.e., from an Association to a Company.

Further, the income in respect of which Principle of Mutuality is not applicable, would nevertheless be entitled to exemption under section 11 of the IT Act, subject to satisfaction of other conditions laid down in that section.

2. Where the shareholders willing to participate in the meeting, it cannot be held that it is impracticable to call the meeting. [VIL Ltd. v. Raibareilly Allahabad Highway (P.) Ltd.]

The petitioner sought relief under section 186 of the Companies Act, 1956 [Section 98 of the Companies Act, 2013] submitting that it has become impracticable for calling, holding and conducting general meeting as the respondent director cum shareholder was wantonly avoiding attending board and general meetings of the company.

However, it was noticed that the respondent was always ready and willing to attend any meeting provided the meetings are held at a place convenient to the respondent and the company provides relevant information on the agenda items for discussion at such meetings.

The CLB held that relief under section 186 could only be passed where it is impracticable to call a meeting and not in a case where shareholders express their willingness to attend the meeting as in the instant case.

3. Holding of meeting of Board of Director by video conferencing does not mandatorily require prior intimation from Directors at the beginning of the calendar year. [Rupak Gupta v. U. P. Hotels Ltd.]

In the instant case the applicant and his mother, who were directors of the company, were denied to participate in the board meeting through video

conferencing on the ground that provisions under Rule 3(3)(e) of Companies (Meeting of the Board and its Power) Rules, 2014 mandates that whoever desires to participate in board meeting through video conferencing shall intimate his intention of participation through electronic mode at the beginning of the calendar year to make it valid throughout that calendar year.

The National Company Law Tribunal (NCLT) pointed out that when a provision is read, it has to be read wholly and not in pieces. Sub-rule 3(e) only says that if intimation is given at the beginning of the calendar year that will remain valid for the entire calendar year, it is not said anywhere that if it is not given at the beginning of the year, video conference is not to be provided in that calendar year, therefore, it does not mean that the directors are not entitled for video conferencing if intimation is not given at the beginning of the calendar year.

Indeed it is duty of the directors convening the Board meeting to inform the other directors regarding the options available to them to participate in the video conferencing mode or other audio video mode or other options available to them. It is the obligation upon the directors convening the meeting to provide every facility to the directors asking video conference and enable them to participate in the Board meeting.

4. Where the information sought under RTI is just unwarranted invasion of privacy of individual and its disclosure serves no public interest, the request for disclosure is to be disallowed. [Arun Kumar Agrawal v. SEBI]

RTI application by appellant seeking assets and liability statement of Chairman, SEBI and his emoluments were refused by the Central Information Commission dismissing the appeal on the ground that disclosure of information sought is likely to cause unwarranted invasion of privacy of the individual concerned.

The details of assets and liabilities of an individual constitute personal information and is exempted from disclosure under RTI Act provisions and such personal information can only be divulged if the Commission reaches a conclusion that it would be in larger public interest to reveal such information.

5. Where the petitioner has sold his shares for a consideration and is no longer a shareholder, he cannot file petition under section 397/398 of the Companies Act, 1956. [Yerramaneni Rama Krishna vs. Peddi Venkata Koteswara Rao]

In the instant case, a petition was filed against the company under Section 397 / 398 of the Companies Act, 1956 (Act) before the Company Law Board (CLB) to seek order that the affairs of the company to be investigated by an Inspector and to appoint a fresh Board of Directors by superseding the existing Board.

The company submitted that the petitioner is not eligible under Section 399 of the Act to maintain the petition since the petitioner had transferred his entire shares in the company and thereby ceased to be a shareholder; although the said transfer was denied by the petitioner as a deceitful event.

The CLB, after examining relevant documents, held that since the shares have been duly transferred complying with the provisions of Act and Articles of Association, the petitioner is no longer a shareholder of the company and thus has no locus standi to file a petition under section 397 / 398 of the Act.

The views if any expressed hereinabove are not necessarily the views of the organization. The contributor would like to thank CS Erina Chakraborty for her assistance in the research work. Facts and judgment has been summarized for sake of brevity – Reading the full case is suggested to gain clear understanding of the Orders cited herein in the context of facts of each case.



TRANSITIONAL PROVISIONS UNDER GST

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The Government is trying its level best to introduce Goods and Service Tax (GST) from 1st April, 2017. Later or sooner GST is going to be implemented, it is the biggest indirect tax reform since independence.

An effort has been made to give brief idea about basic of GST and its transitional approach.

GST- A Brief Introduction:

Goods and Service Tax (GST) is a tax law which stipulates provisions regarding taxation of goods and services simultaneously. At present, selling and manufacturing of goods is taxed under VAT and Excise laws respectively whereas rendering of service is taxed under Service Tax law.

After introduction of GST major indirect taxes such as State VAT, State Entry Tax, State Entertainment tax, State Luxury Tax, Central Sale Tax, Service Tax, Central excise, Duty of excise on medicinal and Toilet preparation act shall be merged into GST. In the model GST law there is three types of GST and existing indirect taxes shall be merged as below:-

PRESENT INDIRECT TAXES	SHALL BE MERGED INTO
State VAT, State Entry Tax, State Entertainment tax, State Luxury Tax,	State Goods And Service Tax (SGST)
Service Tax, Central excise, Duty of excise on medicinal and Toilet preparation	Central Goods And Service Tax (CGST)
Central Sales Tax (CST)	Integrated Goods And Service Tax (IGST)

The term "Transition" in the context of GST Law means migration from old tax laws to new GST law. As we know that in case of migration from one set of law to another set of law, various problems arise and which are needed to solve properly.

The Model GST law has transitional provisions as below:-

1. Transitional provision of Existing Tax officers into GST Act (Section 128)

All the officers under State tax and Central Tax laws shall be redesignated as State GST and Central GST Officers or competent authorities.

2. Transition provision of Input VAT or CENVAT Credit-Section 143

As per section 143(1) of GST Act all registered taxpayers shall be allowed to brought forward the Input Vat and Cenevat credit as per return submitted by them under earlier laws. The only condition is that if any Input VAT or Cenevat of a particular item is not allowed in GST law then brought forward shall not be admissible.

3. Transitional provision of un-availed credit on capital goods –Section 144

If there is any un-availed credit on capital goods, all registered tax payers shall be allowed to take credit under proposed GST Act.

4. Transitional provision of un-availed credit on closing stock of goods or services–Section 145

If there is any input vat or cenevat credit held in stock as on closing day for which ITC or cenevat was not availed by the taxpayer because either the goods or services were exempted or the person was not liable to register under earlier law then credit on those goods is eligible under GST Act, provided that all conditions mentioned below are satisfied:-

- The goods or services on which credit is held in stock must be used or intended to be used for taxable supplies.
- The said taxable person is eligible for credit under GST Act.
- The said taxable person is in possession of tax invoice and all related documents evidencing that tax has been paid under earlier law.
- The tax invoice or related papers shall not be old more than 12 months from the appointed date (the date on which GST is applicable).

5. Transitional provision of un-availed credit for taxpayers covered under composition scheme under earlier law–Section 146 & 147

- As per section 146 of GST Act, in a case where a taxable person was cover under composite scheme in earlier law and because of that he could not availed Input Tax Credit or Cenevat credit. He/She can avail Input Tax Credit or Cenevat Credit on stock of goods or services as laying in closing stock provided that he shall not opt for composite scheme under GST Act. The credit shall be allowed only when following conditions are satisfied:-
 - The goods or services on which credit is held in stock must be used or intended to be used for taxable supplies.
 - The said taxable person is eligible for credit under GST Act.
 - The said taxable person is in possession of tax invoice and all related documents evidencing that tax has been paid under earlier law.
 - The tax invoice or related papers shall not be old more than 12 months from the appointed date (the date on which GST is applicable).

b. As per section 147 of GST Act, in a case where a taxable person was not cover under composite scheme in earlier law but he/she wants to opt for composite schemed under GST Act, then he/she has to pay an amount equivalent to un-availed credit on closing stock of goods or services.

6. Transitional provisions of exempted goods returned to place of business (Section 148)

NO GST shall applicable if any exempted goods were removed 6 months prior to enactment of the GST Act and returned within 6 months of the enactment. If it is returned after 6 months from the date of enactment then GST shall be applicable.

7. Transitional provisions of duty paid goods returned to place of business (Section 149)

NO GST shall applicable if any duty paid goods were removed 6 months prior to enactment of the GST Act and returned within 6 months of the enactment. If it is returned after 6 months from the date of enactment then GST shall be applicable.

8. Transitional provisions of goods sent for approval basis and returned to place of business (Section 162D)

NO GST shall applicable if any goods were sent for approval 6 months prior to enactment of the GST Act and returned within 6 months of the enactment. If it is returned after 6 months from the date of enactment then GST shall be applicable.

9. Transitional provisions of input, semi finished and finished goods sent for job work and returned to place of business (Section 150, 151 and 152)

NO GST shall applicable if input or semi finished goods or finished goods were sent for job work 6 months prior to enactment of the GST Act and returned within 6 months of the enactment. If it is returned after 6 months from the date of enactment then GST shall be applicable.

10. Transitional provision in case of upward revision of price of goods or services after enactment of GST Act (Section 153).

Where goods or service has been supplied prior to enactment of GST Act and there is upward revision in bill after the enactment of GST Act. In this situation supplier of goods and service shall issue supplementary bill or debit note within 30 days of such revision and collect GST as per the provision of GST Act. Needless to say he has to deposit to the account of State and Central Government as per the provision of the act.

11. Transitional provision in case of downward revision of price of goods or services after enactment of GST Act (Section 153).

Where goods or service has been supplied prior to enactment of GST Act and there is downward revision in bill after the enactment of GST Act. In this situation supplier of goods and service shall issue supplementary bill or credit note within 30 days of such revision. He can reduce his GST liability only when receiver of goods or service has reduced his input tax

credit.

12. Transitional provision in case of refund under earlier tax law

If there is any refund with respect to VAT, Service Tax, Central Excise and other state or central laws prior to the enactment of GST Act the same shall be refunded as per the provision of earlier law.

13. Transitional provision in case of continuous supply of goods and service

a. Where full consideration has been received for supply of goods and services before enactment of GST Act and due tax has already been paid under earlier law, NO GST is payable under GST Act (Sec.160)

b. Where part consideration has been received for supply of goods and services after enactment of GST Act and due tax has already been paid under earlier law, NO GST is payable under GST Act (Sec.161).

14. Transition provision in case of goods of principal lying with agent

Where goods/capital goods belonging of principal lying with agent after enactment of GST Act then agent is eligible to take input tax credit u/s.162A and 162B if following conditions are satisfied:-

- Agent must be registered under GST.
- A declaration must be furnished by both agent and principal regarding stock prior to the enactment of GST Act.
- The invoices should be immediately 12 months back from the date of enactment of GST Act.
- The principal has either not availed or reverse ITC as applicable.

15. Transitional provision in case of long term construction or Works Contract.

Where any construction or works contract order was signed when earlier law was in force and goods or service is supplied after enactment of GST Act then all applicable provisions of GST Act shall apply.

Answer Keys of page no. 11

Que. No.	Ans	Que. No.	Ans	Que. No.	Ans	Que. No.	Ans
1	a	11	a	21	a	31	b
2	d	12	d	22	a	32	a
3	d	13	b	23	a	33	a
4	c	14	a	24	a	34	b
5	a	15	a	25	b	35	c
6	c	16	a	26	b	36	a
7	a	17	b	27	d	37	b
8	b	18	d	28	a	38	b
9	c	19	a	29	a	39	a
10	c	20	d	30	c	40	c



3RD QUARTER COMPLIANCES

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After AGM season been over and beginning of the festive season, it hard time to ensure that none of the mandatory compliances be missed out. Keeping into consideration the same, this Article is an attempt to cover the highlights on the ROC Compliances (based on e-forms) and mandatory disclosures/intimations to be made to Stock Exchanges by the listed entities during third quarter.

This write up is intended for academic purpose and not intended to be a professional advice.

MANDATORY ROC COMPLIANCES BASED ON E-FORMS BY ALL COMPANIES

Sl. No.	Form	Section of the Companies Act 2013	Particulars	Time Limit	Applicability
1.	MGT 14	Sec. 117 & Ors	Approval of Special / Ordinary Resolutions by shareholders at AGM (as applicable)	Within 30 days of approval in AGM	All Companies
2.	MGT 15	Sec. 121	Report on AGM	Within 30 days of AGM	Listed Companies
3.	ADT 1	Sec. 139 to 141	Re-appointment / Appointment of Auditors (as applicable)	Within 15 days of AGM	All Companies
4.	DIR 12	Sec. 152/149/161 & Ors.	Appointment / Change in designation of Directors	Within 30 days of approval in AGM	All Companies
5.	AOC 4 / (AOC 4 XBRL)	Sec. 129 / 137	Filing of Standalone Financial Statements	Within 30 days of approval in AGM	All Companies (XBRL as applicable)
6.	AOC 4 CFS	Sec. 129/137	Filing of Consolidated Financial Statements	Within 30 days of approval in AGM	All Companies to which consolidation applicable
7.	MGT 7	Sec. 92	Filing of Annual Return	Within 60 days of AGM	All Companies
8.	MGT 8	Sec. 92	Obtaining MGT 8 Certificate from PCS	Within 60 days of AGM (Attachment to MGT 7)	ALL Companies with paid up Capital – Rs. 10 Crs or Turnover – Rs. 50 Crs
9.	CRA 3	Sec. 148 & Rule 6(4&5) of Companies (Cost Records and Audit) Rules 2014	Obtain Cost Audit Report in CRA 3 from Cost Auditor	180 days from the closure of Financial Year	* Cos. with T/O Rs. 35 Crs. Or more during P. F.Y. (as applicable)
10.	CRA 4	Sec. 148 & Rule 6(6) of Companies (Cost Records and Audit) Rules 2014	Submission of CRA 3 to Central Gov.	30 days from the date of receipt of a copy of the cost audit report	* Cos. with T/O Rs. 35 Crs. Or more during P. F.Y. (as applicable)

*To be read along with Rule 4 of Companies (Cost Records and Audit) Rules 2014

II. MANDATORY COMPLIANCES BY EQUITY LISTED COMPANIES AS PER SEBI LISTING REGULATIONS 2015 (LODR).

1. SEBI/LODR COMPLIANCES

Sl. No.	Regulations	Particulars	No. of Days from the end of Quarter
1.	Regulation 13 (3)	Submission of Statement of Investor complaints	21 days
2.	Regulation 27 (2)	Submission of Quarterly compliance report on Corporate Governance	15 days
3.	Regulation 29 (1)(a) and 29 (2)	Prior Intimation of Board Meeting for consideration of Quarterly Financial Results	at least 5 days in advance (excluding the date of the intimation & date of the meeting), and such intimation shall include the date of such meeting of board of directors
4.	Regulation 30 (6) (2nd proviso)	Outcome of Meetings for matters specified in sub-para 4 of Para A of Part A of Schedule III (Dividend & Financial Results)	within 30 minutes of the closure of BM

5.	Regulation 31	Submission of Shareholding Pattern	21 days
6.	Regulation 33(3)	Submission of Quarterly and year-to-date Financial Results	45 days
7.	Regulation 34(1)	Submission of Annual Report to Stock Exchange	21 working days of being adopted in AGM
8.	Regulation 47(1)(a) and 47(3)	Advertisements in Newspapers for notice of meeting of the board of directors where financial results shall be discussed	simultaneously with the submission of the same to the stock exchange(s)
9.	Regulation 47(1)(b) and 47(3)	Advertisements in Newspapers for financial results	within 48 hours of conclusion of BM
10.	Reg.55A SEBI- DP	Submission of Certificate on Reconciliation of Share Capital Audit.	30 days



IS GOODS AND SERVICE TAX (GST) OVER RATED

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While GST has become popular as a 'ONE NATION ONE TAX' formulation, the implementation is really a tough job for the Government. After a wait of more than a decade the 122nd Constitution Amendment Bill, 2014 (popularly known as GST bill) has been approved by the President of India post its passage in Parliament (Rajya sabha on 3rd August, 2016 and Lok Sabha on 8th August, 2016) and ratification by more than 50% of the State Legislators. Experts are of the view that this is the Country's biggest reforms since independence. The new tax regime will clean up the complex and cumbersome indirect tax structure of the Country. GST is likely to be implemented from 1st April, 2017 and as things stand, the Centre has agreed to subsume excise duty, additional excise duty, service tax, countervailing duty, surcharge and cess and central sales tax to be merged with GST. The States will also give up VAT (sales tax), entertainment tax, luxury tax, taxes on gambling, octroi and entry taxes, cess and purchase tax. GST will thus replace all these taxes and will be brought under one umbrella.

Many experts believe that GST will bring India into the big league in global supply chain and its implementation will ease the much needed India's cumbersome indirect tax structure, will curb tax evasion, help goods move seamlessly across cross borders, increase revenue, boost export, reduce cumbersome compliance under various laws and most importantly attract investments globally by improving ease of doing business in the country. India's dual GST structure will be jointly administered by Central and State Governments which means that each of the 29 states and 2 union territories (SGST), a central GST (CGST) and an integrated GST (IGST) which will be combination of CGST and SGST on inter-state supply of goods and services. GST will replace most indirect taxes as:

Central Taxes (CGST)	State Taxes (SGST)
1. Central Excise Duty	1. Value Added Tax
2. Additional Excise Duty	2. Sales Tax

3. Service Tax	3. Octroi and Entry tax
4. Additional Customs Duty (CVD)	4. Purchase Tax
5. Special Additional Duty of Customs (SAD)	5. Luxury Tax
6. Central Sales Tax and Cesses.	6. Taxes on lottery, betting and gambling
	7. State Cesses and surcharges
	8. Entertainment Tax

IMPACT OF GST ON BUSINESS HOUSES

Sourcing of goods and services

- Inter-state procurement of goods and services will be easier and faster.
- Option of consolidated supplies from vendors.
- Additional duty, Special duty of customs will be subsumed.

Distribution

- Consolidation and optimisation of warehouses and supply chains.
- Distribution of finished goods arrangement to change.
- Flow of goods to be reviewed because removal of excise duty.

Pricing and Profitability

- Change in tax structure resulting levy of GST would require change in pricing which may increase or decrease.
- Profitability will also increase or decrease with the impact of GST on particular product.

Cash Flow

- Removal of excise duty can result in improved cash flow and inventory cost since GST is payable at the time of sale or supply of goods whereas in the excise regime duty is payable at the time of removal of goods from the factory.

Change in systems

- Accounting and IT systems to be changed in line with GST.

- Existing transaction and balances to be streamlined for smooth transition to GST.
- Changes in logistics, warehouses and supply chain records.
- Compliance and tracking of inventory records for optimum utilisation of available resources and better cost control.
- Higher level of operational and quality compliance with more system driven training of employees.

Many international and Indian experts have called GST as one of the most complex tax reforms which needs to be supported and serviced by high quality technology support. INFOSYS, the leading software company of India has already started building massive electronic infrastructure for GST which is called as GST Portal in which tax payers can register themselves and file returns. Around 7.5 million businesses are expected to be covered under GST but there are still many questions which are unanswered like:

1. What will be realistic time frame for its implementation whether it will be implemented from 1st April, 2017 or any day before or after and whether will be implemented partially or fully?
2. What will be impact of GST on manufacturing and service sectors and which sector will be benefitted or which sector will be losing once GST is implemented?
3. What process will be followed for implementation and what types of difficulties will be faced by Government agencies as well as business houses once GST is implemented?
4. When and under what time frame benefits will accrue to the Government as well as business houses and consumers?
5. How will GST impact exports of the country and how global investors will look India for investments once GST is implemented?
6. How to resolve existing indirect tax laws litigations pending with the authorities and various courts within a fixed time frame?

In spite of all the complex and cumbersome issues yet to be decided by the authorities, business houses have welcomed GST because it is destination based tax where tax is not applied at the point of production but at the point of supply or consumption which will make the life easier for the business houses. Further business houses will now not have to file multiple returns and comply and handle multiple departments and statutes under various central and state authorities. The experts are confident that upon implementation of GST, the country will become one common market with uniform pricing across states with optimum utilisation of resources so that cost of production is reduced to the competitive level globally. The subsuming of major central and state taxes in GST and major comprehensive setoff of input goods and services would increase the competitiveness of Indian goods and services in international markets and give a boost to exports.

Apart from this there will be very strong positive impact on the logistic sector. Now under the present tax regime, due to octroi and entry tax, the transporters are the worst sufferer with the inter-state movement of goods and we most of the time see long queue of trucks and other vehicles carrying goods in check posts for inspection of goods and payment of taxes. Even one official in Government department is of the view that vehicles

carrying goods and trucks are on an average spend 48 hours stranded at different check posts due to entry taxes levied by the states. It is expected that GST will clear all these hurdles faced by the business houses. It will lower the inventory and working capital, less documentation, less compliance, better asset utilisation and less litigation.

India is not the first country with indirect tax regime like GST, but many other countries already have some form of GST or Value Added Tax. Potential inflation will depend significantly on the final rate of GST and the basket of goods and services that will be exempt from GST. Our ex RBI Governor Mr Raghuram Rajan had cautioned the industry that there could be generalised inflationary effect on the economy due to price adjustment after implementation of GST however he had also clarified that he expects the inflationary pressure will be negligible and short lived as was in Malaysia due to one time adjustment of goods and services. If you look countries like Malaysia, Canada, Australia and New Zealand who opted the GST recently have been known to have faced high inflation and low consumption initially but situation normalised within a very short period. If tax rates in high income countries and emerging economy countries are compared, most of the European countries are following higher tax rate, a comparative table of these countries given below:

High Income Countries(in %)			Emerging economies (in %)		
1.	Japan	8	1.	Malaysia	6
2.	New Zealand	15	2.	Indonesia	10
3.	Germany	19	3.	Korea	10
4.	France	20	4.	Phillippines	12
5.	UK	20	5.	Mexico	16
6.	Spain	21	6.	China	17
7.	Netherlands	21	7.	Russia	18
8.	Italy	22	8.	Chile	19
9.	Norway	25	9.	Greece	20
10.	Sweden	25	10.	India	18 (proposed)

The successful implementation of GST will very much depend on the consensus on rates, exclusion lists, applicability limit, principles of supply, special provisions for certain states and finalisation of other rules and regulations. Also Central Government to ensure before implementation that full fledged IT system is in place so that no hardship is faced by the business houses as well as the states. Most important is the timing of implementation which should be preferably be mid of 2017-18 as per view expressed by Mr Ashok P Hinduja of Hinduja Group. Whatever be the time frame and hassles faced by the business houses, GST is a big step towards making India as unified market.

IT IS TO BE SEEN WHO WILL WIN WHO WILL LOSE BUT CERTAINLY BENEFICIAL FOR GROWTH OF ECONOMY OF OUR COUNTRY, GST WILL CHANGE THE BUSINESS WHAT INDIA DOES.



NCLT AND NCLAT - FINDS PLACE IN THE BANKRUPTCY CODE

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NCLT and NCLAT

The proposal for constituting National Company Law Tribunal ('NCLT') was made by the Eradi Committee. The NCLT is designed to replace the jurisdiction of the existing Company Law Board (CLB), the BIFR and the High Court in the exercise of its jurisdiction as a Company Court. NCLT was originally proposed to be established pursuant to an amendment in the Act, 1956 in 2002. However, the provisions of the Companies (Second Amendment) Act, 2002 could not be notified due to non-establishment of the NCLT pursuant to petition filed before the Madras High Court. Madras High Court, in Thiru. R. Gandhi v. Union of India (Writ Petition No.2198 of 2003) by its order dated March 30, 2004 held that the establishment of NCLT and NCLAT was not unconstitutional. Supreme Court in Madras Bar Association v. Union of India & Anr. disposed of the writ petition stating that the constitution of NCLT and NCLAT is not unconstitutional and the respondent should take remedial measures as per the directions contained in this judgment at the earliest, so that the NCLT & NCLAT are adequately manned and start functioning in near future. Understanding the need, the Central Government came up with the notification announcing the constitution of the NCLT and NCLAT.

Constitution of NCLT & NCLAT

The Central Government constituted the National Company Law Tribunal and National Company Law Appellate Tribunal to exercise and discharge the powers and functions as conferred on it under the Co Act, 2013 and for hearing appeals against the orders of the National Company Law Tribunal, respectively, with effect from the 1st day of June, 2016. In furtherance to the notification already issued, the Central Government came up with another notification notifying 29 sections of the Co Act, 2013 and specifying the locations from where the benches of the NCLT would be operating and jurisdiction over that area. Further, the Central Government by way of notification date June 1, 2016 transferred all the matters/ proceedings/ cases pending before the Board of Company Law Administration (Company Law Board) to the National Company Law Tribunal which shall be disposed by the NCLT in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956 (to the extent applicable).

The Insolvency and Bankruptcy Code, 2016

The Bankruptcy Law Reforms Committee, in its Final Report, identified two important sources of delay in the insolvency procedures, one of which lies in the adjudicatory mechanisms. In order to address this, the Committee recommended that the National Company Law Tribunals (for corporate debtors) and Debt Recovery Tribunals (for individuals and partnership firms) be provided with all the necessary resources to help them in realising the objectives of the Code.

Para 4.2.1 of the Final Report discusses the jurisdiction of Tribunals on firm insolvency and liquidation, as follows:

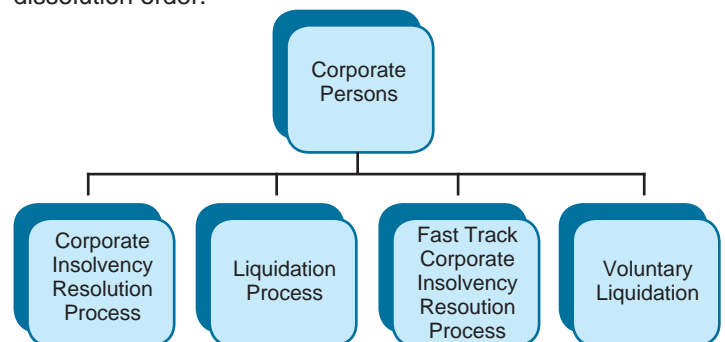
"Under Companies Act, 2013, the National Company Law Tribunal (NCLT) has jurisdiction over the winding up and

liquidation of companies. NCLAT has been vested with the appellate jurisdiction over NCLT. Similarly, the Limited Liability Partnership Act, 2008 also confers jurisdiction to NCLT for dissolution and winding up of limited liability partnerships, while appellate jurisdiction is vested with NCLAT. The Committee recommends continuing with this existing institutional arrangement. NCLT should have jurisdiction over adjudications arising out of firm insolvency and liquidation, while NCLAT will have appellate jurisdiction on the same."

Pursuant to section 60 of the Code, NCLT shall be the adjudicating authority for insolvency resolution and liquidation of corporate debtors. The application in case of corporate insolvency resolution process and liquidation shall be filed with the adjudicating authority which in case of corporate persons shall be an NCLT. Such application shall be filed before NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located. Any person aggrieved by the decision of the NCLT may file an appeal before NCLAT within a period of 30 days. However, the time limit for filing an appeal before NCLAT may be extended by 15 days, if, NCLAT is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

NCLT

Part II of the Code provides for Insolvency resolution and liquidation for corporate persons. NCLT constituted under section 408 of the Companies Act, 2013 shall be the adjudicating authority for the purpose of part II. Under the Insolvency and Bankruptcy Code, 2016, the NCLT have a vital role to play, right from accepting/ rejecting application filed for initiating the corporate insolvency resolution process till passing of dissolution order.



Powers of NCLT and NCLAT

Sub-section (5) of section 60 of the Code states that NCLT has the power to entertain and dispose of the following –

- any application or proceeding by or against the corporate debtor or corporate person;
- any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

- c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

Jurisdiction of NCLT and NCLAT

Section 63 of the Code provides that Civil Courts shall not have jurisdiction to entertain any suit or proceedings in respect

of any matter on which NCLT or the NCLAT has jurisdiction under this Code. Section 9 of the Code of Civil Procedure, 1908 gives power to the courts to try all the suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Since, section 63 has expressly barred Civil Courts, such Courts shall not have jurisdiction over the matters on which NCLT or NCLAT has jurisdiction.

Difference between the Act, 2013 and the Code

Points for discussion	Section 421 of the Co Act, 2013	Section 61 of the Code
The authority the order of which is appealable	NCLT	NCLT
When an appeal cannot be filed	Where the order is made by NCLT with the consent of parties.	No such provision
Who can file an appeal?	Any person aggrieved	Any person aggrieved
Appellate authority	NCLAT	NCLAT
Time-limit for filing an appeal	Within 45 days	Within 30 days
Extension of time-limit	Not exceeding 45 days	Not exceeding 15 days

Opportunity for Company Secretaries

Sub-section (2) of Section 207 of the Code provides that the Insolvency and Bankruptcy Board of India ('Board') may specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency or such other field, as it deems fit. Such professional shall render services as insolvency professional under the Code only after being enrolled as a member of an insolvency professional agency registered with the Board. Various terms are used under the Code i.e. interim resolution professional, resolution professional, liquidator and insolvency professional. A question may arise as to whether a professional need to register under any of the aforementioned categories?

Section 5 (18) of the Code defines the term 'liquidator' as follows—

"liquidator" means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be"

Section 5 (27) of the Code defines the term 'resolution professional' as follows –

"resolution professional", for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional."

Therefore, based on the above provision, it is clear that even a single professional can act as an interim resolution professional, resolution professional or a liquidator. This provision may be an opportunity for the Company Secretary fraternity!

Process	Appointment of professional	Tenure
Corporate Insolvency Resolution Process	NCLT shall appoint an interim resolution professional	30 days (shall be appointed within 14 days from the insolvency commencement date)
	Committee of creditors shall either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.	Resolution professional shall be appointed in the first meeting of the committee of creditors till completion of corporate insolvency resolution process.
Liquidation Process	The resolution professional appointed for the corporate insolvency resolution process under Chapter II shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.	From the date of appointment of liquidator till completion of liquidation process (i.e. dissolution of corporate debtor).

Transfer of pending proceedings

Section 60 (3) of the Code states that an insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to the NCLT dealing with insolvency resolution process or liquidation proceeding of such corporate debtor. Section 225 read with eleventh schedule of the code provides for modification in the Companies Act, 2013. Section 434 shall be substituted and shall come into effect from the date as may be notified by the Central Government. It provides that all the matters, proceedings or cases pending before the Board of Company Law Administration shall stand transferred to the

Tribunal. Also, all proceedings under the Act, 2013 including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies shall stand transferred to the Tribunal. However, proceedings relating to the winding up of companies shall be transferred to the Tribunal that is at a stage as may be prescribed by the Central Government.

Read articles on:

1. Our various write-ups on Bankruptcy Code can be viewed at: <http://www.india-financing.com/component/content/article/325.html>
2. Read other articles on Companies Act, 2013 at: <http://www.india-financing.com/component/content/article/281.html>

Bhubaneswar Chapter	
15.08.2016	Celebration of 70th Independence Day of the Nation
23.08.2016	Study circle meeting on GST-General Exposure
27.08.2016	Panel Discussion on GST
30.08.2016	Workshop on GST
11.09.2016	35th Foundation Day Celebration of Bhubaneswar Chapter
19.09.2016	Inauguration of MSOP
21.09.2016	Meeting with Shri Anupam Mallik, Addl. Labour Commissioner, Govt. of Haryana at Bhubaneswar.
23.09.2016-24.09.2016	Commencement of 2nd 2 days induction
24.09.2016	Talk on GST
9 CAREER AWARENESS PROGRAMME were organized during this period.	
Dhanbad Chapter	
15.08.2016	Independence Day Celebration
30.08.2016	Panel Discussion on GST
Hooghly Chapter	
07.08.2016	5th & 6th Study Circle Meeting of 2016 on "Preparation and Filing Before Statutory Authorities : NCLT, RD Etc." and "Recent Changes in Company Law"
07.08.2016	7th & 8th Study Circle Meeting of 2016 on "Adjudication of Service Tax" and "Introduction of Goods & Service Tax"
04.09.2016	5th Half Day Workshop on "Cost Records and Cost Audit and Reporting under Annual Report"
04.09.2016	6th Half Day Workshop on "Role of CS in GST Eco System and Impact on GST on Businesses"
21 CAREER AWARENESS PROGRAMME were organized during this period.	
Jamshedpur Chapter	
27.08.2016	Panel Discussion on GST
North-Eastern (Guwahati) Chapter	
15.08.2016	Independence Day Celebration
01.09.2016-03.09.2016	Workshop on "Know your MCA" (for PDP)
07.09.2016	Felicitation Programme for CS Passed Students
07.09.2016	S.C Meeting on Awareness on Hedging with commodity futures
08.09.2016-24.09.2016	1st MSOP of North Eastern Chapter
29 CAREER AWARENESS PROGRAMME were organized during this period.	
Patna Chapter	
28.08.2016	Professional Development Programme on GST
05.09.2016	Swachha Bharat Mission
11.09.2016	Educational Tour (Rajgir)
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Ranchi Chapter	
07.08.2016	Interactive meet with President, The ICSI
24.09.2016	Study Circle on 'Due Diligence'
5 CAREER AWARENESS PROGRAMME & 1 INVESTOR AWARENESS PROGRAMME were organized during this period.	



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