



Hyderabad

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A News Magazine from
the Hyderabad Chapter of
The Institute of Cost Accountants of India



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From the Edit Room...

Professionals to note the impact of decisions of the Supreme court in the case of applicability of PF on allowances to employees and coverage of Gratuity to teachers, GST Notifications effective from 1st April, 2019, requirements of filing of copy of Advertisement under SEBI provisions, revised Format of Shipping Bill for Exports, declaration of governmental dues as operational debts under Insolvency and Bankruptcy code etc., Further, Extension of linking PAN with AADHAAR upto 30th Sept 2019, increase in the basic exemption limit of Gratuity to Rs 20 lacs for PSU and other employees which are very important events of professional interest where we need to contribute our expertise in discharging various functions to industry.

Further, a landmark achievement by ICAI in preparing and providing Accrual Based Financial statements for FY 2015-16 & FY 2016-17 to Indian Railways which will smoothen the process of Indian Railways shifting to Accrual based accounting from cash based accounting. But, Indian Railways need to maintain accounts under Cash based system too, as they are drawing funds from the Consolidated Fund of India which is continuing with Cash based approach in accounting. This would also pave way for quick implementation of Costing and Management Techniques etc., in the Railway Industry which one of the biggest industry in the governmental sector.

CMA Rajapeta Satyanarayana

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ACTIVITIES SCORE BOARD

Professional Development Sub-Committee

Month (2018-19)	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	Year-to-date
No. of Programs	1	0	1	1	2	0	1	0	0	1	2	1	10
CEP Hours	2	0	1	4	2	0	10	0	0	2	5	8	34

Practitioners' Forum Sub-Committee

Month (2018-19)	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	Year-to-date
No. of Programs	1	2	3	2	2	2	0	3	2	1	2	3	23
CEP Hours	1	3	5	4	3	2	0	3	2	2	6	4	35



Performance Track

Professional Development Programmes

S. No.	Date	Programme	By	CEP Hours
1	04.03.19 to 05.03.19	<p>24 Hrs Programme – Latest Developments in Accounting Profession including Corporate Laws and CMAs</p> <p>Topics:</p> <ul style="list-style-type: none"> ● Over View of Companies Act ● CMA – Corporate Governance Bhagavad Gita & Sundarakanda ● Sustainability Reporting ● Goods and Services Tax ● Accounting Standards ● ERP & Block Chain Management ● Power of Vision ● CIRP – Resolution & Regulatory Mechanism ● Liquidation – Going Concern ● IBC Juris Prudence ● Cost Audit & Records ● IBC Practical Aspects ● Assessments, Reassessment & Revision – Law and Procedures ● Over View of Income Tax ● Excel ● SAP FICO ● E-Filing under Companies Act ● International Developments in Accounting & Reporting Cost Accounting ● Cost Accounting 	<p>Lead by CMA Dr. PVS. Jagan Mohan Rao, President-SAFA and Central Council Member-ICAI</p> <p>Speakers:</p> <p>CS M. Ravi Kumar CMA PVS. Jagan Mohan Rao</p> <p>CMA Vinulatha Goparaju CMA K. Karuna Krishna Prasad CA Sudha Murthy CMA K. Raghavender Reddy Sri Rajasekhar Sri H. Sambasiva Rao CMA TSN. Raja CMA KPC. Rao CMA AVNS. Nageswara Rao CMA KPC. Rao</p> <p>CMA AC. Gangaiah</p> <p>CMA P. Kedarnath CMA M. Venkateshwarlu CMA B. Nagesh CMA P. Chandra Sekhara Reddy CS R. Venkata Ramana CMA Dr. Chandra Sekhar Rajanala</p>	8

Practitioners Programmes

S. No.	Date	Programme	By	CEP Hours
1	29.03.19	New Mandatory Annual Compliance Under Companies Act 2013	CS M. Ramana Reddy	2
2	30.03.19	GST Recent Amendments	CA Apoorva Jayasimha	2

Other Programmes

S. No.	Date	Programme	By
1	01.03.19	Meet With Sri Injeti Srinivas Secretary - Ministry of Corporate Affairs	CMA D. Munisekhar Darapaneni Chairman CMA P. Chandra Sekhara Reddy Secretary CMA Dr. Chandra Sekhar Rajanala Immediate Past Chairman CMA AVNS. Nageswara Rao Past Chairman CMA K. Raghavender Reddy Managing Director, Daksha Ebiz Consulting Pvt. Ltd.
3	08.03.19	International Women's Day Celebrations Theme : Multi Faceted Women	Smt. Sunitha Tati, Telugu Film Producer Guru Films Pvt. Ltd. Smt. Bhargavi, Radio Jockey
2	09.03.19	Inauguration of Pre-placement Orientation Programme	CMA VV. Ravi Kumar, Executive Director & CFO Laurus Labs Limited CMA Anil Kumar, CFO Innovare Labs Pvt. Limited. CMA ARV. Badrinath Member, SIRC-ICAI CMA K. Raghavender Reddy Managing Director, Daksha Ebiz Consulting Pvt. Ltd.
3	20.03.19	Valedictory of Pre-placement Orientation Programme	Shri M. Gopala Krishna, IAS Retd. Prof S.V. Satyanarayana, Head-Department of Commerce

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)
HYDERABAD CHAPTER
1-2-56/44A, 5th STREET, HIMAYATNAGAR, HYDERABAD – 500 029

NOTIFICATION

Hyderabad, the 16th April - 2019

ELECTION TO THE MANAGING COMMITTEE 2019 - 23 FOR HYDERABAD CHAPTER

Election to the Managing Committee, 2019 -2023 for Hyderabad Chapter will be held as per the following notification:

In pursuance of Bye-Law No. 19 of the Chapter Bye-Laws, 2019 issued by the Institute of Cost Accountants of India, the Election Officer of Hyderabad Chapter hereby notifies the following for the conduct of Election to the Managing Committee, 2019 – 2023:

Total Number of candidates to be elected to the Managing Committee of Hyderabad Chapter of Cost Accountants for the years 2019 - 23 : 9 (Nine)

1.	Date of issue of Notification	16 th April 2019
2.	In terms of the Chapter Bye-Laws 2019 issued by the Institute:	
	a	The last date, time and place for receipt of nominations
		Thursday, the 9 th May 2019 at the Institute of Cost Accountants of India, Hyderabad Chapter, CMA Bhavan, 1-2-56/44A, Street No. 5, Himayatnagar, Hyderabad - 500 029
	b	The date and place of scrutiny of nominations
		Monday, the 13 th May 2019 at the Institute of Cost Accountants of India, Hyderabad Chapter, CMA Bhavan, 1-2-56/44A, Street No. 5, Himayatnagar, Hyderabad - 500 029
	c	The last date and time for withdrawal of nominations
		Monday, the 20 th May, 2019 up to 6.00 PM
	d	The date, time and place of polling
		Thursday, the 30 th May 2019 (From 8:00 A.M. to 7:00 P.M.) at the Institute of Cost Accountants of India, Hyderabad Chapter, CMA Bhavan, 1-2-56/44A, Street No. 5, Himayatnagar, Hyderabad 500 029.
	e	The last date and time for receipt of applications for permission to vote by post
		N.A.
	f	The last date and time for receipt by post of ballot papers back from voters
		N.A.
	g	The date and time of commencement of counting of votes
		Thursday, the 30 th May 2019 (from 07:00 P.M. onwards)
	h	The date of declaration of results
		Thursday, the 30 th May 2019
3.	Fee for Election fixed by the Council	Rs.1,180/- Including GST (Rupees One Thousand one hundred and eighty only) DD in favour of the ICAI, Hyderabad Chapter.
4.	Security Deposit payable by the candidate	NA
5.	Names of the members of the panel for scrutiny of nomination papers	CMA Debaraja Sahu CMA V. Jaya Prakash Mrs. K. Kavitha, Election Officer, ICAI-Hyderabad Chapter



K. Kavitha
Election Officer



Ambati Chinna Gangaiah
agcpower@icai.org 9391142969

AP VAT / GST Update

Advance Rulings given in 2018

1	Bharat Petroleum Corporation Ltd Kerala	KERf 21 /2018 Dt.20.10.2018	activity of the applicant of sending Regasified Liquefied Natural Gas (RLNG), De-Mineralized Water (OM Water), Hydrogen Rich off Gas and Raw water free of cost to M/s. Prodair Air Products Pvt. Ltd. For manufacture of Hydrogen, Nitrogen and Steam manufactured out of its amount to 'job work' as defined under Section 2(68) read with Section 143 of the CGST/KSGST Acts.
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Advance Rulings given in 2019

1	Aravali Polyart Pvt. Ltd Rajasthan	Raj/AAR/2018-19/34 dt 15.2.19	Activity undertaken by the application is classifiable under heading 9973 (Leasing or rental services, with or without operator), as mentioned in the annexure at Serival No. 257 (Licensing services for the right to use minerals including its expolaration and evaluation) sub heading 9973377 of notification number 11/2017-CT (Rate) dated 28.06.2017. The application is liable to discharge tax liability under reverse charge mechanism vide Notification No.13/2017-CT (Rate) dated 28.06.2017 (as amended from time to time) of CGST Act, 2017. The activity undertaking by the applicant attracts 18% GST (9% CGST + 9% SGST)
2	M/ s Shambhu Traders Private Limited Rajasthan	Raj/AAR/2018-19/35 dt 15.2.19	<ol style="list-style-type: none"> The used lead acid batteries qualify to be second hand goods. Accordingly, the applicant dealer is entitled to operate under the Margin Scheme in respect of the used lead acid batteries. The query raised by the applicant is not specified in Section 97(2) of CGST Act/RGST act, 2017, therefore, no advance ruling is given. The Rule 32(5) of the CGST Rules, 2017 which provides for Margin Scheme in the case of intra-state supplies shall so be applicable in the inter-state supplies of used lead acid batteries while operating under the Margin Scheme.
3	Tewari Warehousing Co Pvt Ltd West Bengal	40/WBAAR/2018-19 dated 18/02/2019	The warehouse being constructed is immovable property. The input tax credit is, therefore, not admissible on the inward supplies for construction of the said warehouse, as the credit of such tax is blocked under section 17(5)(d) of the GST Act. This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.
4	Piyush Polytex Industries Pvt Ltd	41/WBAAR/2018-19 dated 26.02.2019	<ol style="list-style-type: none"> Bags/Sacks (both with & without Handle) made of Laminated P.P. Nonwoven Fabric is classifiable under Sub-Heading 39232990, Bags/Sacks (both with & without Handle) made of B.O.P.P. Pasted P.P. Nonwoven Fabric is classifiable under Sub-Heading 39232990, and Bags/Sacks (both with & without Handle) made of Woven Fabric Pasted with Nonwoven Fabric have to be classified as per the General Rules for the Interpretation of the First Schedule of the Customs Tariff . <p>This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.</p>
5	Sari Educational Centre, West Bengal	42/WBAAR/2018-19 dated 26.02.2019	The Applicant is offering several individual services in two different combinations to the recipients, depending upon their need for lodging facility. None of the combinations of services being offered is a composite supply, as defined under section 2(30) of the GST Act. They are mixed supplies within the meaning of section 2(74) and taxable in accordance with section 8(b) of the GST Act. Being mixed supply, value of the entire combination of services offered is taxable at the applicable rate. This Ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.
6	Prabhat Gudakhu Factory	06/ODISHA-AAR/2018-19 dt 05.02.19	'Gudakhu' manufactured by the Applicant, be classified under GST Tariff Heading '2403 99 90'.
7	Indian Institute of Science Education and Research	07/ODISHA-AAR/2018-19 dt 13.02.19	<ol style="list-style-type: none"> Notification No.51/1996-Customs, dated 23.7.1996 read with Notification No.43/2017-Customs dt 30.6.17 and Minutes of the 14th GST Council Decision Dt 18/19 May 2017 is applicable to the applicant for import of specified equipment as listed under column (3) of aforesaid notifications and said notifications are not applicable to the OEM Suppliers of imported equipment.

			<p>2. The scope of issuing ruling U/s 98 of OGST/CGST Act is limited to the extent of prescribed in sub-section (2) of Section 97 of the OGST / CGST Act.....</p> <p>3. Concessional Rate of Tax GST/CGST at 5% vide notification No.45 CGST (Rate) dt 14.11.2017 and Notification 47-IGST(Rate) dt 14.11.2017 is applicable to goods mentioned in para 6.3.0 as above whether imported or indigenous.</p>
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Appeal Orders against Advance Ruling given under GST Act in other States

1	Taraltec Solutions Pvt. Ltd. (Maharashtra)	MAH/AAAR/SS-RJ/16/2018-19 Dt. 04.02.2019	Classification under the sub-heading 8413 91 as "Hand Pumps and parts thereof" as contended by the Appellant. We hold that the same is classifiable, in line with the contention made by the Jurisdictional Officer, under the heading 8421 21 90 having description as 'filtering or purifying machinery and apparatus for liquids' – we do not see any reason to interfere with the Ruling given by AAR, Maharashtra.
2	Jotun India Pvt. Ltd. (Maharashtra)	MAH/AAAR/SS-RJ/17/2018-19 Dt. 05.02.2019	The Appellate Authority for Advance Ruling upheld the ruling given by the Advance Ruling Authority by observing that marine paints manufacture by the appellant will not be covered under Sl. No. 252 of Schedule I of the Notification No. 1/2017-C.T.(Rate) dated 28.06.2017 as the same cannot be considered as part of the ship as contended by them.

CESTAT

1	Allied Blenders and Distillers Pvt. Ltd Vs CCE and ST	ST/87204/2017 dt 25.06.18 (CESTAT Mumbai)	it was noticed that the appellant had been receiving services from the directors, but failed to discharge service tax under reverse charge mechanism, on the remuneration paid, in accordance with Notification number 30/2012–ST dated 20.06.2012 and Notification number 45/2012 dated 07.8.2012.....company are paying them remuneration which is nothing but salary. All the necessary deductions on account of Provident Fund, Professional Tax and TDS under Section 192 of the Income Tax Act are made as applicable; also they were issuing Form-16 like it is issued to all other employees. Even in the salary return filed by the appellant company before the Income Tax authorities, the director's names have been included. The company does not pay the director's company are paying them remuneration which is nothing but salary. All the necessary deductions on account of Provident Fund, Professional Tax and TDS under Section 192 of the Income Tax Act are made as applicable; also they were issuing Form-16 like it is issued to all other employees. Even in the salary return filed by the appellant company before the Income Tax authorities, the director's names have been included. The company does not pay the director's No contrary evidence has been brought on record by the Revenue to show that the Directors, who were employee of the appellant received amount which cannot be said as 'salary' but fees paid for being Director of the company. The Income Tax authorities also assessed the remuneration paid to the said directors as salary, a fact cannot be ignored.
2	AKZO Nopal India Limited	ST/61022/2018 dt 01.11.18 (Chandigarh CESTAT)	Unless until the goods are not marketable, they are not excisable. Therefore, any activity/services availed by the assessee till the product become excisable is entitled for input services credit in terms of Rule 2 (I) of Cenvat Credit Rules, 2004. As the said rule provides that any service directly or indirectly availed in relation to manufacture of final product is an input service. Accordingly, the service availed by the appellant before the stage the paint becomes marketable, I hold that the appellant is entitled to avail cenvat credit on Repair & Maintenance Service of Automatic Dispensing Machines which enables their product marketable consequently excisable.
3	Great India Steel Fabricatros Vs CCE	E 60833, 836/18 dt 14.2.18 (Chandigarh Bench)	Considering the fact that on introduction of Central GST Act, 2017, Section 142 deals the situation which directs the authorities to sanction all the refund claims in cash, therefore, no authority can sanction refund claim to be credited in Cenvat credit account. In that circumstances, I modify the impugned orders to the extent that refund claims are to be allowed in cash, instead of crediting in Cenvat credit account. Accordingly, the appellant is entitled the refund claims in cash.

CMA UPDATE



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LABOUR

- **Applicability of PF:** PF is applicable on Basic salary and all allowances except HRA vide decision of the Supreme Court in the case of Regional Provident Fund Commissioner (II) West Bengal Vs Vivekananda Vidyamandir and Others in Appeal Number: Civil Appeal No. 6221 of 2011.
- **Teachers are entitled to Gratuity:** In the light of the amendment made in the definition of the word 'employee' as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997. In other words, the teachers were brought within the purview of "employee" as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997 vide decision of the Supreme Court in the case of Birla Institute of Technology Vs The State of Jharkhand & Ors in the Appeal Number : Civil Appeal No.2530 of 2012
- **Gratuity Limit increased:** Ministry of Finance has enhanced the exemption limit under section 10(10) (iii) of the Income Tax Act 1961 to Rs 20 lacs. It would benefit those employees of PSUs and other employees not covered by Payment of Gratuity Act for details refer to www.mf.gov.in

GST

- **No GST on TCS:** CBIC has clarified that for the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the

provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax vide Corrigendum Circular No.76/50/2018-GST dated 7th March, 2019

- **Composition supplier:** composition scheme for supplier of services with a tax rate of 6% having annual turnover in preceding year upto Rs 50 lakhs. Those who opt to pay GST under this scheme shall issue, instead of a tax invoice, a bill of supply vide Notification No.2/2019-Central Tax (Rate) dated 8th March, 2019.

RBI

- **Hedging of operational Risk:** RBI has released Operational Guidelines on Hedging of Exchange Risk by Foreign Portfolio Investors (FPIs) and Voluntary Retention Route (VRR) vide Notification No. RBI/2018-19/136 A.P. (DIR Series) Circular No. 22 dated 1st March, 2019

IRDA

- **Conflict of Interest:** SEBI in order to address conflicts of interest arising out of the appointment of common directors between insurance companies, insurance company and insurance intermediaries and common promoters of Health and General Insurers, in exercise of the powers conferred under sub-section (1) of Section 14 of the Insurance Regulatory and Development Authority Act, 1999 proposes to issue No: 228/F&A (NL)/COI-DIR/01/2018-19 Date: 08-03-2019 on www.irda.gov.in



CUSTOMS ACT AND RULES

- **Shipping Bill for Exports:** CBIC revised format of Shipping Bill for Export of Goods and for details refer to Notification No.25/2019-Customs (N.T) dated 25th March, 2019.

FEMA/DGFT

- **Condonation of EPCG Scheme:** One time condonation under EPCG Scheme extended to 30th Sept, 2019 and for details refer to DGFT Public Notice No.78/205-20 dated 11th March, 2019.
- **Online Module for filing complaints:** DGFT informed that presently complaints/Trade Disputes are being filed, received and processed manually. Now an Online module has been created to facilitate filing and tracking of these Quality Complaints/Trade Disputes. It has been decided that with effect from 11/02/2019, all such complaints should be filed online as per the protocol given in the Trade Notice No.47/2015-2020 dated 11th Feb, 2019 of DGFT.

INSOLVENCY & BANKRUPTCY BOARD

- **Charter of Responsibilities:** Insolvency and Bankruptcy Board of India released a Charter containing the responsibilities of IPS and CoC for details refer to Facilitation / 002 / 2019 dated 1st March, 2019.
- **Accounting support services:** The IBBI seeks to appoint a Chartered Accountant firm/LLP for providing Accounting support and Related Services as defined in the later part of this tender document. The appointment of CA firm/LLP shall be for a period of two years, i.e. for the financial year 2019-20 (from 22nd April, 2019 to 31st March, 2020) & 2020-21. However, the period of contract may be curtailed / terminated any time before the completion of the specified period, including on the ground of IBBI, not being satisfied with the performance of such firm and for details refer to www.ibbi.gov.in

- **Administrators:** Guidelines have been released for Appointment of Insolvency Professionals as Administrators under the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 and for details refer to File No.IP-12011/1/2019-IBBI 26th March, 2019 on www.ibbi.gov.in
- **Operational Debts:** All statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt' under the Insolvency and Bankruptcy Code 2016 vide NCALT decision given in the case of Pr. Director General of Income Tax (Admn. & TPS) Vs M/s. Synergies Dooray Automotive Ltd. & Ors. In Appeal Number : Company Appeal (AT) (Insolvency) No. 205 of 2017

COMPANIES ACT

- **HC quashes MCA order:** MCA order in publishing the list of directors associated with 'struck off companies' under Section 248 of the Companies Act, 2013 on the Website of MCA, showing the status of assessee as "disqualified" Directors was not legally tenable as section 164(2) of the Companies Act would take effect only from the financial year 2014-15. Also, their DIN could not be deactivated as that would run counter to the provisions contained in the Rule 11 of the Companies (Appointment of Directors) Rules 2014 vide decision given by HC Gujarat in the case of Appeal Number: R/Special Civil Application No. 22435 of 2017.
- **Transfer of Securities in Physical Form:** The earlier deadline to convert shares in dematerialized form was with effect from December 5, 2018. Subsequently, SEBI had received representations from shareholders for extension of the date of compliance. In view of the same, the deadline was extended and the aforesaid requirement of transfer of securities only in Demat form shall now come into force from April 1, 2019 and for details refer to www.sebi.gov.in

LEGAL UPDATES

By **K P C Rao,**

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"Thousands of candles can be lighted from a single candle, and the life of the candle will not be shortened. Happiness never decreases by being shared."

- Buddha

1. HIGHLIGHTS OF SWISS RIBBONS PVT. LTD. V. UNION OF INDIA [Writ Petition (Civil) No. 99 of 2018]

Background

The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, trial having led to repeated errors, ultimately led to the enactment of the Code. However, in numerous matters the Constitutional validity of the various provisions of the Insolvency and Bankruptcy Code, 2016 have been challenged. These numerous attacks challenging the validity of the Code as well as the constitutional validity of the National Company Law Tribunal (NCLT) prompted the Apex Court to direct the Gujarat High Court to not to enter the debate pertaining to the validity of the Code or the constitutional validity of the NCLT.

Finally on 25-01-2019, with the Swiss Ribbons Pvt. Ltd. v. Union of India, the Supreme Court has finally settled the challenges which mounting against the constitutional validity of the Code.

a) Obvious Intelligible Differentia Between Financial Creditor and Operational Creditor

The court held that financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code.

Referring to the code, the bench explained the difference between Financial Creditor and operational Creditor. It said:

"A perusal of the definition of financial creditor and financial debt makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, and 'operational debt' would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority."

The court made following observations regarding Intelligible Differentia:

- 1) Most financial creditors, particularly banks and financial institutions, are secured creditors whereas most operational creditors are unsecured, payments for goods and services as well as payments to workers not being secured by mortgaged documents and the like.
- 2) The nature of loan agreements with financial creditors is different from contracts with operational creditors for supplying goods and services.
- 3) Financial creditors generally lend finance on a term loan or for working capital that enables the corporate debtor to either set up and/or operate its business. On the other hand, contracts with operational creditors are relatable to supply of goods and services in the operation of business
- 4) Financial contracts generally involve large sums of money. By way of contrast, operational contracts have dues whose quantum is generally less. In the running of a business, operational creditors can be many as opposed to financial creditors, who lend finance for the set up or working of business.
- 5) Financial creditors have specified repayment schedules, and defaults entitle financial creditors to recall a loan in totality. Contracts with operational creditors do not have any such stipulations.





- 6) The forum in which dispute resolution takes place is completely different. Contracts with operational creditors can and do have arbitration clauses where dispute resolution is done privately. Operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts. A simple example will suffice. Goods that are supplied may be substandard. Services that are provided may be substandard. Goods may not have been supplied at all. All these qua operational debts are matters to be proved in arbitration or in the courts of law. On the other hand, financial debts made to banks and financial institutions are well-documented and defaults made are easily verifiable.
- 7) Financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganization of the corporate debtor's business when there is financial stress, which are things operational creditors do not and cannot do.
- 8) Whereas a 'claim' gives rise to a 'debt' only when it becomes 'due', a 'default' occurs only when a 'debt' becomes 'due' and 'payable' and is not paid by the debtor. It is for this reason that a financial creditor has to prove 'default' as opposed to an operational creditor who merely 'claims' a right to payment of a liability or obligation in respect of a debt which may be due. When this aspect is borne in mind, the differentiation in the triggering of insolvency resolution process by financial creditors under Section 7 and by operational creditors under Sections 8 and 9 of the Code becomes clear.

b) Section 12-A Upheld

While upholding this section, the bench said:

"The main thrust against the provision of Section 12A is the fact that ninety per cent of the committee of creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the committee of creditors do not have the last word on the subject. If the committee of creditors

arbitrarily rejects a just settlement and/or withdrawal claim, the NCLT, and thereafter, the NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12A also passes constitutional muster."

c) Evidence furnished by the private Information Utilities is merely prima facie evidence of default & can be refuted

It was purported that the private information utilities are not regulated by proper norms & therefore their certification cannot be irrefutable evidence of default. The Court held that the Information Utilities are regulated by stern norms by virtue of which the moment information default is received, it is divulged to all parties & sureties to the debt. The Court contemplated that the certification of default by the Information Utilities is merely prima facie evidence of default, which is confuted by the CD.

d) Resolution professional has no adjudicatory powers.

The bench observed that, under the Code, the resolution professional is given administrative as opposed to quasi-judicial powers. It added that, even when the resolution professional is to make a 'determination' under Regulation 35A, he is only to apply to the Adjudicating Authority for appropriate relief based on the determination. It said: "Unlike the liquidator, the resolution professional cannot act in a number of matters without the approval of the committee of creditors under Section 28 of the Code, which can, by a two-thirds majority, replace one resolution professional with another, in case they are unhappy with his performance. Thus, the resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority."

e) Section 29A constitutionally Valid- 'Related Person' not connected with the business of the activity of the resolution applicant cannot be disqualified

The challenge against Section 29A of the Code, which deals with eligibility of persons to be a resolution applicant, has been dealt with elaborately in this judgment. The bench referred to the judgment in Arcelor Mittal, in which it had held that resolution applicants have no vested right to be considered as such in the resolution process. The contention raised by the petitioners was that the Section 29A(c) treats unequals as equals and that a good erstwhile



manager cannot be lumped with a bad erstwhile manager. According to them, keeping out good erstwhile managers from the resolution process would go contrary to this objective. Rejecting this argument, the bench said that this ineligibility is not restricted to malfeasance. It said: "Even the categories of persons who are ineligible under Section 29A, which includes persons who are malfeasant, or persons who have fallen foul of the law in some way, and persons who are unable to pay their debts in the grace period allowed, are further, by this proviso, interdicted from purchasing assets of the corporate debtor whose debts they have either wilfully not paid or have been unable to pay. The legislative purpose which permeates Section 29A continues to permeate the Section when it applies not merely to resolution applicants, but to liquidation also. Consequently, this plea is also rejected." The court also observed that the one-year period in section 29A(c) cannot be faulted with as it is a policy matter decided by the RBI.

f) Related Party Unconnected With The Business Of The Activity Of The Resolution Applicant

The judgment only makes some intervention in the interpretation of Section 29A(j) which defines 'related party'. The court dealt with the contention that, mere fact that somebody happens to be a relative of an ineligible person cannot be good enough to oust such person from becoming a resolution applicant, if he is otherwise qualified. The court held that, in the absence of showing that such a 'related person' is connected with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29A(j). "We are of the view that persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, all the categories of persons mentioned in Section 5(24A) show that such persons must be 'connected' with the resolution applicant within the meaning of Section 29A(j). This being the case, the said categories of persons who are collectively mentioned under the caption 'relative' obviously need to have a connection with the business activity of the resolution applicant. In the absence of showing that such person is 'connected' with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29A(j). All the categories in Section 29A(j) deal with persons, natural as well as artificial, who are connected with the business activity of the resolution applicant. The expression 'related party', therefore, and 'relative' contained in the definition Sections must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant.", the

bench said. The bench also observed that the rationale for excluding such industries from the eligibility criteria laid down in Section 29A(c) and 29A(h) is because qua such industries, other resolution applicants may not be forthcoming, which then will inevitably lead not to resolution, but to liquidation.

g) Section 53 not violative of Article 14

Another contention made, while challenging Section 53, was that, in the event of liquidation, operational creditors will never get anything as they rank below all other creditors, including other unsecured creditors who happen to be financial creditors. The court said: "It will be seen that the reason for differentiating between financial debts, which are secured, and operational debts, which are unsecured, is in the relative importance of the two types of debts when it comes to the object sought to be achieved by the Insolvency Code. We have already seen that repayment of financial debts infuses capital into the economy inasmuch as banks and financial institutions are able, with the money that has been paid back, to further lend such money to other entrepreneurs for their businesses. This rationale creates an intelligible differentia between financial debts and operational debts, 148 which are unsecured, which is directly related to the object sought to be achieved by the Code. In any case, workmen's dues, which are also unsecured debts, have traditionally been placed above most other debts. Thus, it can be seen that unsecured debts are of various kinds, and so long as there is some legitimate interest sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 does not get infringed."

Conclusion

While delivering the verdict the Bench observed that "The experiment contained in the Code, judged by the generality of its provisions and not by so called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster." Therefore, the Code has passed the constitutional validity which will certainly put rest to some of the vexed questions surrounding the interpretation of the provisions of the Code. The Judgment reiterates the contribution of the Code in increasing the flow of the financial resources to the commercial sector as a result of repayment of financial debt. Also, the direction to Union of India to set up circuit benches of the NCLAT in different cities within the period of 6 months from the day of Judgment in order to ensure quicker disposal of appeals.

2. SUPREME COURT STRIKES DOWN RBI CIRCULAR ON DEBT RESOLUTION [The Judgment



dated 2nd April, 2019 of the Hon'ble Supreme Court in the matter of Dharani Sugars and Chemicals Ltd. Vs. Union of India & Ors. (Transferred Case (Civil) No. 66 of 2018 in Transfer Petition (Civil) No. 1399 of 2018 with several Writ Petitions and Transferred Cases and a SLP)].

The Supreme Court struck down a Reserve Bank of India (RBI) circular that gave defaulting companies 180 days to agree on a resolution plan with lenders or be taken to bankruptcy court to recover debt of Rs 2,000 crore and above. The bench said the February 12, 2018, circular was beyond the scope of the RBI's powers. "The impugned circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law," said the two-judge bench led by justice RF Nariman."

"Consequently, all actions taken under the said circular, including actions by which Insolvency Code has been triggered must fall along with the said circular." The court's decision restored the discretion of banks on debt resolution. The ruling may affect stressed assets worth around Rs 2.2 lakh crore in many sectors and mean unwinding the insolvency resolution process in some instances.

While declaring the circular dated 12th February, 2018 issued by RBI as ultra vires of section 35AA of the Banking Regulation Act, 1949, the Hon'ble Supreme Court of India made several important findings and rulings as under:

a) Constitutional validity of sections 35AA and 35AB introduced by the Banking Regulation (Amendment) Act, 2017.

- 1) The provisions are not excessive in any way nor do they suffer from want of any guiding principle. These are in the nature of amendments which confer regulatory powers upon the RBI to carry out its functions under the Act and are not different in quality from any of the sections which have already conferred such power. For example, section 21 makes it clear that the RBI may control advances made by banking companies in public interest, and in so doing, may not only lay down policy but may also give directions to banking companies either generally or in particular. Similarly, under section 35A, vast powers are given to issue necessary directions to banking companies in public interest, in the interest of banking policy, to prevent the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the banking company, or to secure the proper management of any banking company. Therefore, these provisions which give the RBI certain regulatory powers cannot be said to be manifestly arbitrary.
- 2) As regards guidelines for exercise of powers, such guidance can be obtained not only from the Statement of Objects and Reasons and the Preamble to the Act,

but also from its provisions. Sections 22, 25, 29, 30, and 31 give guidance as to how the RBI is to exercise these powers under the newly added provisions. There is no dearth of guidance for the RBI to exercise the powers delegated to it by these provisions. In view of the above, sections 35AA and 35AB are constitutionally valid.

b) Scope of power of the RBI under Section 35AA vis-a-vis the impugned circular.

- 1) A cursory reading of section 35A makes it clear that there is nothing in the aforesaid provision which would indicate that the power of the RBI to give directions, when it comes to the Insolvency Code, cannot be so given. The width of the language such as 'public interest', 'banking policy', etc. used in section 35A makes it clear that if otherwise available, use of section 35A as a source of power for the impugned circular cannot be interdicted on the ground that the Insolvency and Bankruptcy Code, 2016 (Code) could not have been in the contemplation of Parliament in 1956, when section 35A was enacted.
- 2) If a specific provision of the Banking Regulation Act makes it clear that the RBI has a specific power to direct banks to move under the Code against debtors in certain specified circumstances, it cannot be said that they would be acting outside the four corners of the statutes which govern them, namely, the RBI Act and the Banking Regulation Act.
- 3) Section 35AA makes it clear that the Central Government may, by order, authorise the RBI to issue directions to any banking company or banking companies when it comes to initiating the insolvency resolution process under the provisions of the Code. Therefore, without authorisation of the Central Government, no such directions can be issued by the RBI.
- 4) Prior to the enactment of section 35AA, it may have been possible for the RBI to issue directions under sections 21 and 35A to a banking company to initiate insolvency resolution process under the Code. But after introduction of section 35AA, it may do so only within the four corners of section 35AA.
- 5) If a statute confers power to do a particular act and has laid down the manner in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner other than that which has been prescribed.
- 6) The RBI can only direct banking institutions to move under the Code if two conditions precedent are specified, namely, (i) that there is a Central



Government authorisation to do so; and (ii) that it should be in respect of specific defaults. The section, therefore, by necessary implication, prohibits this power from being exercised in any manner other than the manner set out in section 35AA.

- 7) The words “without prejudice” appearing in a section make it clear that powers that are enumerated are only illustrative of a general power and do not restrict such general power. The power to issue directions given by section 35AB is, therefore, in addition to the power under section 35A.
- 8) The scheme of sections 35A, 35AA, and 35AB is as follows:
 - a) When it comes to issuing directions to initiate the insolvency resolution process under the Code, section 35AA is the only source of power.
 - b) When it comes to issuing directions in respect of stressed assets, which directions are directions other than resolving this problem under the Code, such power falls within section 35A read with section 35AB.
 - 9) When one section of a statute grants general powers, as opposed to another section of the same statute which grants specific powers, the general provisions cannot be utilised where a specific provision has been enacted with a specific purpose in mind.
- 10) Stressed assets can be resolved either through the Code or otherwise. When resolution through the Code is to be effected, the specific power granted by section 35AA can alone be availed by the RBI. When resolution de hors the Code is to be effected, the general powers under sections 35A and 35AB are to be used. Any other interpretation would make section 35AA otiose.

c) Constitutional validity of the impugned circular issued by the RBI.

- 1) Section 35 AA enables the Central Government to authorise the RBI to issue such directions in respect of “a default”. Default would mean non-payment of a debt when it has become due and payable and is not paid by the corporate debtor. Therefore, what is important is that it is a particular default of a particular debtor that is the subject matter of section 35AA. Any directions which are in respect of debtors generally would be ultra vires section 35AA.
- 2) The power to be exercised under the authorisation of the Central Government requires “due deliberation and care” and hence refer to specific defaults.

- 3) There is nothing to show that the provisions of section 45L(3) have been satisfied in issuing the impugned circular. The impugned circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets.
- 4) The impugned circular applies to banking and non-banking institutions alike. Non-banking financial institutions are inseparable from banking institutions insofar as the application of the impugned circular is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the circular applicable to them even if it is ultra vires insofar as banks are concerned.

In view of the above, the impugned circular is ultra vires, and has no effect in law. Consequently, all actions taken under the said circular, including actions by which the Code has been triggered must fall along with the said circular. As a result, all cases where debtors have been proceeded against by financial creditors under section 7 of the Code, only because of the operation of the impugned circular, are non-est.

3. NO STIPULATION OF PERIOD OF COMPLETION OF SERIOUS FRAUD INVESTIGATIONS UNDER COMPANIES ACT - SUPREME COURT

The Supreme Court Bench consisting of Abhay Manohar Sapre and UU Lalit, JJ in the case of [Serious Fraud Investigation Office v. Rahul Modi, 2019; SCC OnLine SC 423, decided on 27.03.2019] held that Section 212 of the Companies Act, 2013 does not prescribe any period within which a report has to be submitted by Serious Fraud Investigation Office (SFIO) to the Central Government.

Lalit, J, writing for himself and Sapre, J listed down the following ‘basic features’ that were considered while coming to this conclusion:

1. Absolute transfer of investigation in terms of Section 212(2) of 2013 Act in favour of SFIO and upon such transfer all documents and records are required to be transferred to SFIO by every other Investigating Agency.
2. For completion of investigation, sub-Section (12) of Section 212 does not contemplate any period.
3. Under sub-Section (11) of Section 212 there could be interim reports as and when directed.



He said that in the face of these three salient features it cannot be said that the prescription of period within which a report is to be submitted by SFIO under sub-Section (3) of Section 212 is for completion of period of investigation and on the expiry of that period the mandate in favour of SFIO must come to an end. If it was to come to an end, the legislation would have contemplated it.

“In the absence of any clear stipulation, in our view, an interpretation that with the expiry of the period, the mandate in favour of SFIO must come to an end, will cause great violence to the scheme of legislation. If such interpretation is accepted, with the transfer of investigation in terms of sub Section (2) of Section 212 the original Investigating Agencies would be denuded of power to investigate and with the expiry of mandate SFIO would also be powerless which would lead to an incongruous situation that serious frauds would remain beyond investigation. That could never have been the idea.”

The Court hence concluded that the only construction which was, possible therefore, was that the prescription of period within which a report has to be submitted to the Central Government under sub-Section (3) of Section 212 is purely directory. It added:

“Even after the expiry of such stipulated period, the mandate in favour of the SFIO and the assignment of investigation under sub-Section (1) would not come to an end. The only logical end as contemplated is after completion of investigation when a final report or “investigation report” is submitted in terms of sub-Section (12) of Section 212.”

Sapre, J in his concurrent opinion said:

“If the submission of the learned counsel for the respondents (writ petitioners) that the compliance of sub-section (3) of Section 212 of the Act in relation to the submission of the report be held mandatory is accepted (which I am afraid, I cannot accept) in our view, the very purpose of enacting Section 212 of the Act would get defeated and will become nugatory.”

4. PRESUMPTION UNDER S. 139 NI ACT NOT AVAILABLE IN CASE OF PRINCIPAL-AGENT RELATIONSHIP BETWEEN ACCUSED AND COMPLAINANT - MADRAS HC

In the case of G. Dhanasekar v. T.A. Jayaprakash, 2019 [SCC OnLine Mad 820, decided on 19-03-2019] Madras High Court dismissed an appeal directed against the judgment of the first Appellate Court whereby it had reversed the conviction and sentence of the respondent-accused awarded by the trial court for an offence

punishable under Section 138 of the Negotiable Instruments Act, 1881 (dishonour of cheque).

As per the appellant-complainant, he had lent Rs 10 lakhs to the accused, who issued three cheques in his favour for discharging his liability. However, on presentation to the bank, the cheques were returned dishonoured with an endorsement “account closed”. Subsequent to codal formalities, a case was filed against the accused and the trial court convicted him for an offence punishable under Section 138. On appeal by the accused, the first Appellate Court acquitted him. Aggrieved thereby, the complainant filed the present appeal.

The High Court noted that the first Appellate Court found that the cheques in question were given to the complainant for payment of taxes and compensation to tenants for vacating certain premises. And a criminal complaint was also filed against the complainant for misappropriation of blank cheques and jewels. On perusing the record, the Court held that a principal-agent relationship was clearly established between the parties. It was observed, “When there is principal-agent relationship, unless and until the material evidence are placed to prove legally enforceable debt, mere issuance of cheques cannot lead to the presumption under Section 139 of the Negotiable Instruments Act.” Stating that the trial court failed to properly consider the defense exhibits, the Court held that there was no merit in the appeal and the impugned order passed by the first Appellate Court required no interference. [G. Dhanasekar v. T.A. Jayaprakash, 2019 SCC OnLine Mad 820, decided on 19-03-2019]

5. AADHAAR AND OTHER LAWS (AMENDMENT) ORDINANCE

The Aadhaar and Other Laws (Amendment) Ordinance, 2019 was promulgated. It amends the Aadhaar Act, 2016, the Indian Telegraph Act, 1885, and the Prevention of Money Laundering Act, 2002. The Aadhaar Act provides targeted delivery of subsidies and benefits to individuals residing in India by assigning them unique identity numbers, called Aadhaar numbers. In September 2018, the Supreme Court struck down certain provisions of the Aadhaar Act, including those in relation to mandatory linking of Aadhaar with bank accounts and mobile phones. Previously, a similar Bill was passed by Lok Sabha on January 4, 2019. The Key features of the Ordinance include:

- a) Offline verification: Under the Aadhaar Act, an individual’s identity may be verified by Aadhaar ‘authentication’. Authentication involves submitting the Aadhaar number, and their biometric or demographic information. The Ordinance additionally allows ‘offline verification’ of an individual’s identity,



without authentication, through modes specified by the Unique Identification Authority of India by regulations.

- b) Voluntary use: The Act provides for the use of Aadhaar number as proof of identity of a person, subject to authentication. The Ordinance replaces this provision to state that an individual may voluntarily use his Aadhaar number to establish his identity, by authentication or offline verification. Such use of Aadhaar must be permitted by an Act of Parliament. Further, mandatory use of Aadhaar for authentication requires an Act of Parliament.
- c) Verification of the identity by banks and telecom companies: The Ordinance allows banks and telecom companies to verify the identity of their clients by: (i) authentication or offline verification of Aadhaar, (ii) passport, or (iii) any other documents notified by the central government. The client has the choice to use any of these modes to verify his identity and no person shall be denied any service for not having an Aadhaar number.
- d) Disclosure of information in certain cases: Under the Act, information on Aadhaar may be disclosed on the order of a District Court (or above) or when made in the interest of national security, by a designated officer of the rank of Joint Secretary (or above). The Ordinance amends this to allow such disclosure only on orders of High Courts (or above), and Secretary to GOI respectively.
- e) Aadhaar number of Children: The Ordinance specifies that at the time of enrolling a child to obtain an Aadhaar number, the enrolling agency shall seek the consent of his parent or guardian. Further, it specifies that after attaining eighteen years of age, the child may opt out of Aadhaar.

6. NEW DELHI INTERNATIONAL ARBITRATION CENTRE ORDINANCE

The New Delhi International Arbitration Centre Ordinance, 2019 was promulgated. It seeks to establish an autonomous and independent institution for better management of arbitration in India. Previously, a similar Bill was passed by Lok Sabha on January 4, 2019. The Key features of the Ordinance include:

- a) New Delhi International Arbitration Centre (NDIAC): The Ordinance provide for the setting up of the NDIAC to conduct arbitration, mediation, and conciliation proceedings. It declares the NDIAC as an institution of national importance.
- b) International Centre for Alternative Dispute

Resolution (ICADR): The ICADR is a registered society to promote the resolution of disputes through alternative dispute resolution methods (such as arbitration and mediation). The Ordinance seeks to transfer the existing ICADR to the central government. Upon notification by the central government, all the rights, title, and interest in the ICADR will be transferred to the NDIAC.

- c) Composition: The NDIAC will consist of seven members including: (i) a Chairperson who has been a Judge of the Supreme Court or a High Court, or an eminent person with special knowledge and experience in the conduct or administration of arbitration, (ii) two eminent persons with knowledge and experience in institutional arbitration, (iii) three ex-officio members, including a nominee from the Ministry of Finance and a Chief Executive Officer, and (iv) a representative from a recognised body of commerce and industry, appointed as a part-time member, on a rotational basis.
- d) Objectives and functions of the NDIAC: The key objectives of the NDIAC include (i) promoting research in alternative dispute resolution matters, (ii) providing facilities and administrative assistance for conducting arbitration, mediation and conciliation proceedings, and (iii) maintaining a panel of accredited arbitrators, mediators and conciliators.
- e) Key functions of the NDIAC include: (i) facilitating conduct of arbitration and conciliation in a timely and cost-effective manner, and (ii) promoting studies in the field of alternative dispute resolution.
- f) Institutional support: The Ordinance specifies that the NDIAC will establish a Chamber of Arbitration which will maintain a permanent panel of arbitrators.

7. CERTAIN RECOMMENDATIONS OF THE HIGH LEVEL EMPOWERED COMMITTEE ON STRESSED THERMAL PROJECTS ACCEPTED

The Cabinet Committee on Economic Affairs approved the recommendations of the Group of Ministers constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects. The approved recommendations provide for certain changes to the coal linkage policy, SHAKTI. The key recommendations that have been approved include:

- a) All power plants (including private), which do not have power purchase agreements (PPAs), will be granted coal linkages by Coal India Limited (CIL), as per SHAKTI. These linkages will be provided for a period



from three months up to one year. The power from these plants must be sold: (i) in the day-ahead market on power exchanges, or (ii) in short-term through transparent bidding process.

- b) A generator which terminates the PPA due to default in payment by the power distribution company (discom), may be allowed to use coal from the existing linkage for sale of power through short-term PPAs. Such sale would be allowed for a period of two years or until they find another buyer under long/medium term PPA, whichever is earlier.
- c) Central and state generation companies can act as aggregators of power of stressed power assets and procure it through transparent bidding. They can offer this power to the discoms against their existing PPAs, till their own plants get commissioned. The central and state companies may use existing unutilised bridge linkages for such stressed assets, provided they meet certain guidelines.
- d) Any net surplus generated through the above methods (after paying operating expenses) will be entirely used for servicing the debt.
- e) The Ministry of Coal may earmark more coal for power sector under special forward e-auction by reducing the equivalent quantity from spot e-auction. CIL may earmark at least 50% of the total coal for e-auction for power.
- f) Discoms, CIL, other government bodies may be advised not to cancel PPAs, or fuel supply agreements, transmission connectivity, and other approvals including water even if the project is referred to the NCLT, or acquired by another entity. All clearances may be linked to the plant and not the promoter.

8. STANDING COMMITTEE SUBMITS ITS REPORT ON RATIONALISATION OF CREAMY LAYER IN EMPLOYMENT FOR OBCS

The Standing Committee on Welfare of Other Backward Classes submitted a report on the 'Rationalisation of Creamy Layer in Employment for OBCs in Services and Posts under the control of Government of India, including Union Territories, PSUs etc. In its report, the Committee examined various issues related to the implementation of reservations for OBCs in government positions. The key findings and recommendations include:

- a) The Committee observed that an OBC candidate whose father was a Class II officer does not stand to benefit from the elevated rank of a parent who begins Class I service after the age of 40 years. Therefore, it

recommended that the exclusion should not be applied to children whose parents enter Class I service after the age of 40. Further, it recommended that the creamy layer test should not be applied to the children of Class III employees.

- b) Establishment of equivalence of posts: The Committee noted that currently the criteria for exclusion of government employees from reservations will also apply to officers holding equivalent posts in public sector undertakings, banks, insurance organisations, universities, and the private sector. It recommended that necessary steps be taken to identify equivalent posts in autonomous organisations, in coordination with the appropriate Ministries.

9. INSOLVENCY LAW COMMITTEE RE-CONSTITUTED AS A PERMANENT COMMITTEE

The Ministry of Corporate Affairs re-constituted the Insolvency Law Committee as a Standing Committee for reviewing implementation of the Insolvency and Bankruptcy Code, 2016 on a continuous basis. The Ministry noted that the provisions of the Code are constantly evolving based on various judgments and amendments to the Code. It therefore recommended having an advisory body for continuous guidance and stakeholder consultations based on issues arising out of implementation of the Code.

The Committee will identify the issues impacting the effectiveness of the corporate insolvency resolution and liquidation process under the Code and make suitable recommendations. It will also study the insolvency resolution and bankruptcy framework for individuals and partnership firms and make recommendations for its successful implementation.

The Committee will comprise 14 members, including: (i) Secretary, Ministry of Corporate Affairs as Chairperson, (ii) Chairperson of the Insolvency and Bankruptcy Board of India, and (iii) Sunil Mehta, Managing Director, Punjab National Bank.

The Committee may also invite or co-opt experts with knowledge or experience in insolvency, law and economics and representatives from other regulators or Ministries.

FINANCE CLIPS

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- **Professional Misconduct:** ICSI Disciplinary Committee has found a CS guilty of Professional Misconduct for suppressing Enrolment as Advocate vide decision given in the case of Shri Hitender Kumar Mehta Vs Shri Rajiv Bajaj in the Appeal Number : ICSI/DC/316/2015 and for details refer to www.icsi.org
- **Renewal of CoP by Cost Accountants:** ICAI (Cost) rectified its recent notification and now indicated that No mandatory training is required for Renewal of CoP to Cost Accountants and for details refer to www.icmai.in
- **Ind AS 116:** MCA has hosted on its website notice for all stakeholders which indicates -The stakeholders may note that Ind AS 116, Leases shall be applicable with effect from 01st April, 2019 and necessary notification for the same shall be issued in due course after complying with the necessary procedure and for details refer to www.mca.gov.in
- **Accrual based Financial statements for Indian Railways:** The ICAI Accounting Research Foundation (ARF) has recently submitted the accrual-based financial statements of Indian Railways for the years 2015-16 and 2016-17 comprising the Statement of Financial Position and Performance, Cash-Flow Statement as on 31st March 2016 and 31st March 2017. The accrual-based financial statements as submitted by ICAI-ARF have been approved by the competent authority in Indian Railways and for details refer to www.icai.org
- **Validity of Income Tax Returns filed:** CBDT has issued a clarificatory circular No.6/201 dated 31st March, 2019 indicating that the IT Returns filed prior to 1st April, 2019 would be valid even though no Aadhaar number was quoted.
- **Linking of PAN with AADHAAR:** CBDT extended PAN Aadhar number linking deadline FROM 31ST MARCH 2019 to 30th September 2019. It is mandatory to quote Aadhaar in ITR u/s 139AA (1)(ii) VIDE CBDT Notification 31/2019 dated 31st March 2019.
- **Filing Advertisement under SEBI:** The Mutual Funds are now advised to submit links to access the advertisements to be filed under the MF Regulations by sending the same through e-mail to SEBI at mf_advertisement@sebi.gov.in. However, advertisement materials like pamphlets may be submitted as attachment along with e-mail, if the size of the attachment does not exceed 250 KB vide SEBI/HO/IMD/DF2/CIR/P/2019/34 March 8, 2019
- **Shipping Bill for Exports:** CBIC revised format of Shipping Bill for Export of Goods and for details refer to Notification No.25/2019-Customs (N.T) dated 25th March, 2019.
- **Four changes that would be effective from 1st April, 2019:** 1. Resident individuals with taxable income up to Rs 500,000 are now eligible to a rebate of up to INR 12,500, resulting in NIL taxes for this category, 2. Standard deduction for the salaried class is enhanced to INR 50,000 from the current levels of INR 40,000, 3. The threshold for tax withholding on interest (other than interest on securities) is enhanced to INR 40,000 from the current levels of INR 10,000. Similarly, the current threshold for tax withholding on rent is increased from INR 180,000 to INR 2, 40,000. 4. Individuals can claim up to two properties as self occupied property, as against the requirement to consider the second property as deemed to be let out.



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