



# Monthly Newsletter

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## Secretary's Desk

Indian economy is on an upward trajectory with immediate impact of demonetization and GST settling down. According to the second advanced estimates released by CSO, Indian economy has regained its momentum with a GDP growth of 7.2% in the December Quarter (Q3) of 2017-18 (fastest in the last five quarters). Based on Q3, the full year's growth for 2017-18 has been revised upwards to 6.6% from its earlier projection of 6.5%. One of the significant contributors to this recovery is the increase in investment demand in the economy as evidenced by growth of Gross Fixed Capital Formation (GFCF) of 12%.

The Government has proposed major amendments to the Prevention of Money-laundering Act (PMLA), 2002 through the Finance Act, 2018 to enhance the effectiveness of PMLA, which among other amendments also proposes to include corporate fraud as a 'scheduled offence'. It is pertinent to note here that corporate fraud mentioned in Section 447 of Companies Act, 2013 is proposed to be included as scheduled offence under PMLA as it would enable RoCs to report suitable cases of corporate frauds for action by the Enforcement Directorate under the provisions of the PMLA also.

Aiming at making the resolution process more transparent and maximizing the value of assets, the fixing of a fair value of a Company under IBC has been made mandatory. In this regard, the amended rules for the insolvency resolution process for corporate persons have made it mandatory for resolution professionals to ascertain "fair value" of the corporate debtor besides the "liquidation value". This will enable banks to ascertain the economic value of the distressed company. So far, the banks only had the liquidation value as a guidepost before starting the resolution process but the liquidation value is usually much lower than the fair value. As per the rules, the Committee of Creditors, the Resolution Professionals and the Valuers will have to maintain confidentiality of both the fair and liquidation values.

In another significant development, Independent Directors appointed for a second term at corporates can now be removed only by a special resolution passed by shareholders, as per the new norms. This comes against the backdrop of concerns raised about independent directors not being allowed to carry out their functions and instances of some of them being removed from the boards of companies by promoter entities. MCA has issued a 'Removal of Difficulties' order on 21<sup>st</sup> February, 2018 to introduce a new provision under Section 169 of the Companies Act.

## **Amendments to IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017**

The Insolvency and Bankruptcy Board of India (IBBI) has amended the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 on 7<sup>th</sup> February, 2018. According to the Amendments:

- a. The Resolution Professional shall appoint Registered Valuers to determine the fair value and the liquidation value of the Corporate Debtor. After the receipt of Resolution Plans, the Resolution Professional shall provide the fair value and the liquidation value to each member of the Committee of Creditors in electronic form, on receiving a confidentiality undertaking. The Resolution Professional and Registered Valuers shall maintain confidentiality of the fair value and the liquidation value.
- b. The Resolution Professional shall submit the information memorandum in electronic form to each member of the Committee of Creditors within two weeks of his appointment as resolution professional and to each prospective resolution applicant latest by the date of invitation of resolution plan, on receiving confidentiality undertaking.
- c. The Resolution Professional shall issue an invitation, including the evaluation matrix, to the prospective Resolution Applicants. He may modify the invitation as well as the evaluation matrix. However, the prospective resolution applicant shall get at least 15 days from the issue of invitation or modification thereof, whichever is later, to submit resolution plans. Similarly, he will get at least 8 days from the issue of evaluation matrix or modification thereof, whichever is later, to submit resolution plans. An abridged invitation shall be available on the web site, if any, of the corporate debtor, and on the web site, if any, designated by the IBBI for the purpose.
- d. While the Resolution Applicant shall continue to specify the sources of funds that will be used to pay insolvency resolution process costs, liquidation value due to Operational Creditors and liquidation value due to dissenting financial

creditors, the Committee of Creditors shall specify the amounts payable from resources under the Resolution Plan for these purposes.

- e. A Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the Corporate Debtor for maximization of value of its assets. These may include reduction in the amount payable to the creditors, extension of a maturity date or a change in interest rate or other terms of a debt due from the Corporate Debtor, change in portfolio of goods or services produced or rendered by the Corporate Debtor, and change in technology used by the Corporate Debtor.
- f. The Resolution Professional shall submit the Resolution Plan approved by the Committee of Creditors to the Adjudicating Authority, at least 15 days before the expiry of the maximum period permitted for the completion of the fast track Corporate Insolvency Resolution Process.

The Amendments have come into force since 6<sup>th</sup> February, 2018 after their publication in the Gazette of India. The Amendments are available at [www.mca.gov.in](http://www.mca.gov.in) and [www.ibbi.gov.in](http://www.ibbi.gov.in)

## **Approval of IBC (Amendment) Bill, 2017 by Cabinet**

The Union Cabinet chaired by the Hon'ble Prime Minister has given Ex-post facto approval to the modifications carried out in the replacement Bill, which replaced the Insolvency and Bankruptcy Code (Amendment) Bill 2017, and which has been passed by the Parliament as the Insolvency and Bankruptcy Code (Amendment) Act, 2018.

The amendment will bring clarity and ensure that the prohibition of certain persons in the resolution process of an insolvent corporate person does not include unintended persons and the opportunity given to a person whose account is classified as non-performing asset is more equitable.

## **CSR Expenditure**

As per the data obtained from the filings made by the companies up to 30<sup>th</sup> November, 2017 in the MCA21 registry for the year 2016-17, the expenditure made by such companies on CSR is given in table below:

## CSR Expenditure during and 2016-17

Sl. No.	Company type	Financial Year 2016-17	
		Number of companies which have reported CSR expenditure	Actual CSR expenditure (in Rs. Crore)
1.	PSUs	132	1325.83
2.	Private Sector Companies	6154	3393.17
	<b>Total</b>	<b>6286</b>	<b>4719.00</b>

### Review of Corporate Sector:

- A. As on 31<sup>st</sup> January, 2018, the number of companies registered under the Companies Act was 17,29,363. Of these, 5,38,340 companies were closed, 5,975 companies are under liquidation, 32,597 companies are in the process of being struck-off from the register, 111 companies were in the process of being re-activated and 1,184 companies have so far obtained the "dormant" status according to Section 455 of the Companies Act, 2013. Further, a total number of 3 companies have not filed their Annual Returns/ Balance Sheets for the past two consecutive years or more, and therefore not counted as active. There are 11,51,153 active companies, including 1,58,069 companies which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).
- B. A total of 8,652 companies, including 478 One Person Companies (OPCs), were registered under the Companies Act, 2013 during January, 2018 with authorized capital of ₹11,136.73 Crore. The breakup of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in January, 2018	Total Authorised Capital (Rs in Crore)
Company limited by Shares	8,620	11,134.23
Of which,		
(a) Private	8,452	780.05
Of which,		
One Person Companies	478	10.57
(b) Public	168	10,354.18
Company limited by Guarantee	18	0.11

Of which,		
(a) Private	26	-
(b) Public	6	2.5
Unlimited Company	--	--
<b>Grand Total</b>	<b>8,652</b>	<b>11,136.73</b>

- C. During the Month of January, 2018, Maharashtra had maximum number of company registrations (1,671) followed by Delhi (1,196) and Uttar Pradesh (844). "Business Services" topped the economic activity-wise classification (4,731) of newly registered companies.
- D. During January, 2018 8,620 (out of 8652) companies were registered as companies limited by shares with authorized capital of Rs. 11,134.23 crore. For more statistical details about the growth of the corporate sector, the reader is invited to the 'Monthly Information Bulletin on Corporate Sector', at URL: [mca.gov.in/MinistryV2/InformationBulletin.html](http://mca.gov.in/MinistryV2/InformationBulletin.html).

### CCI orders

CCI has found Google to have abused its dominant position in online general web search and web search advertising services in India in the informations filed by Matrimony.com and Consumer Unity & Trust Society (CUTS) in 2012. Accordingly Google was imposed a penalty of ₹ 135.86 crore considering Google's revenue from its India operations only, as per the orders of CCI on 7<sup>th</sup> February, 2018.

CCI on 28<sup>th</sup> February, 2018, imposed a penalty of ₹ 1.6 crore on Ghaziabad Development Authority (GDA) for abuse of its dominant position by imposing unfair condition on the allottees from EWS in one of its Scheme. GDA was also issued order of cease and desist

### Major Events

1. IBBI in association with ICSI IPA, IIP of ICAI, and IPA of ICAI (Cost), all the three Insolvency Professional Agencies, organised a half-day Conclave of insolvency professionals in New Delhi on 10<sup>th</sup> February, 2018. Hon'ble Justice M.M. Kumar, president, NCLT, Dr. M.S. Sahoo, Chairperson, IBBI, and Shri Uday Kotak, Executive Vice Chairman & Managing Director, Kotak Mahindra Bank addressed the insolvency professionals at the Conclave.

Hon'ble Justice M.M. Kumar illustrated duties of resolution professional under IBC, 2016 & best practices with case laws and urged the IPs to read and update with

settling jurisprudence. Justice Kumar emphasised on more specialised and knowledgeable cadre of insolvency professionals by incorporating continuous professional training and in-house experts and faculties in Insolvency Professional Agencies.

Dr. M. S. Sahoo in his address on "Building the Institution of Insolvency Professional" exhorted the august to 'not look for ready-made solutions'. He added that Insolvency resolution requires dedication and, professionals should remain competitive, as well as updated on the latest developments in their field of work..

Shri Uday Kotak in his address stressed the role of 'Insolvency Professional as Key Facilitator for Value Creation' and underlined the need of more robust and sound process flow in the bidding process of stressed assets of corporates undergoing resolution or liquidation.

2. Tenth meeting of Eminent Persons Advisory Group (EPAG) was organised in CCI on 13<sup>th</sup> February, 2018 which discussed "Online platforms and anti-trust enforcement challenges".

3. CCI and National Law University –Delhi (NLUD) Moot Court was organised during 16<sup>th</sup> – 18<sup>th</sup> February, 2018.

## Notifications

- (i) Vide notification S.O. No. 528(E), issued on 5<sup>th</sup> February, 2018 this Ministry has designated Special Courts for the State of Kerala, Odisha, Assam and Union Territory of Lakshadweep with the concurrence of the Chief Justices of the respective High Courts, for providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013.
- (ii) Vide notification S.O. No. 529(E), issued on 5<sup>th</sup> February, 2018, the Government companies meeting the specified criteria have been exempted from the provisions of AS 22/Ind AS 12 regarding recognition of deferred tax assets/deferred tax liability for 7 seven years w.e.f. 1<sup>st</sup> April, 2017.
- (iii) Vide notification G.S.R No. 155(E) issued on 9<sup>th</sup> February, 2018, the Companies (Registered Valuers and Valuation) Rules, 2017 was amended for allowing the existing valuation practitioners to continue up to 30<sup>th</sup> September, 2018 instead of 31<sup>st</sup> March, 2018 without certificate of registration under the valuers rules as a transitional arrangements.
- (iv) Vide Notification S.O. No. 630(E) issued on 9<sup>th</sup>

February, 2018, for commencing 43 sections of the Companies (Amendment) Act, 2017 [1 of 2018] w.e.f. 9<sup>th</sup> February, 2018.

- (v) Vide notification G.S.R. No. 173(E), issued on 16<sup>th</sup> February, 2018, Companies (Authorized to Register) Rules, 2014 have been amended for substituting Form No. URC-1 (Application by a company for registration under section 366(conversion from firm into company and LLP into company).
- (vi) Vide notification G.S.R. No. 174(E), issued on 16<sup>th</sup> February, 2018, Companies (Audit and Auditors) Rules, 2014 have been amended for substituting Form No. ADT-1 (Notice to the Registrar by company for appointment of auditor) and ADT-2 (Application for removal of auditor(s) from his/ their office before expiry of term).
- (vii) Vide notification G.S.R. No. 175(E), issued on 16<sup>th</sup> February, 2018, Companies (Management and Administration) Rules, 2014 have been amended for substituting Form No. MGT-6 (Return to the Registrar in respect of declaration under section 89 received by the company) and MGT-15 (Form for filing Report on Annual General Meeting).
- (viii) Vide notification S.O. No. 802(E), issued on 23<sup>rd</sup> February, 2018, the Government companies engaged in defence production have been exempted from application of relevant accounting standard on segment reporting.
- (ix) Vide notification G.S.R. No. 191(E), issued on 27<sup>th</sup> February, 2018, Companies (Accounts) Rules, 2014 have been amended for inserting Form No. AOC-3A Statement containing salient features of the financial statements (Division II-Schedule III to the Companies Act, 2013). This form has been prescribed for listed companies required to comply with Companies (Indian Accounting Standard) Rules, 2015.

## Orders

A Removal of Difficulty order was issued on 21<sup>st</sup> February, 2018, wherein it has been provided that an independent director re-appointed for second term under sub-section (10) of section 149 may be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.