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Your Quarterly Companion on Tax & Allied Topics

Learning Today Leading Tomorrow...

HEAVEN BE OUR GUIDE

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The Chamber of Tax Consultants

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THE CHAMBER OF TAX CONSULTANTS
3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020
Phone : 2200 1787/2209 0423/2200 2455 • E-Mail: jou@ctconline.org
Website : www.ctconline.org

NOTE

READER'S SUGGESTIONS AND VIEWS

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Kindly send your suggestions to jou@ctconline.org

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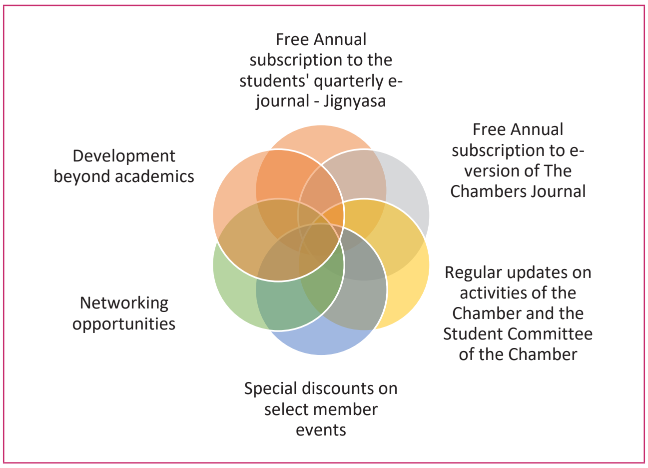
Legal Practice Orientation Course	Dastur Debate Competition	The Dastur Essay Competition	Jignyasa - A journal by the student for the students
Mediation Training in Commercial Disputes	Industrial visits	Exploring Corporate Law: Opportunities, Practice Areas, and Success Strategies	

What are the benefits of becoming a student member of the Chamber?



Who can become a Student Member?

Any person, who:

- ✓ has completed 18 years of age;
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- ✓ is pursuing his/her education as a student and has enrolled as a student of Law, Chartered Accountancy, Cost and Management Accountancy, Company Secretary, Chartered Financial Analysts, Business Management or Management Accountancy or Masters in Commerce or such other course approved for this purpose by the Managing Council shall be eligible to be a Student Member.

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Address : 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai 400 020
Email : jou@ctconline.org

For any queries, you can also get in touch with Mr. Hitesh Shah (Manager) at:
Mobile : 7977258507

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President and Chairperson's Message

CA Haresh Kenia
President

Niyati Mankad
Advocate
Chairperson,
Student Committee

YOUR ROADMAP TO SUCCESS: ENCOURAGEMENT AND TIPS FOR PROFESSIONAL EXAMINATIONS

Dear Students,

With the exam season fast approaching, it's common to feel a mix of anxiety and anticipation. These feelings are natural, but remember, the right preparation strategy coupled with a positive mindset can significantly enhance your performance in the upcoming professional exams.

We often find motivation in words of encouragement and guidance from influential figures. Inspired by our Prime Minister's insightful dialogues with students during 'Mann Ki Baat', Pariksha Pe Charcha, and other public addresses, we would like to share some valuable strategies to help you excel:

1. ***Clarity and Goal Setting***

   It has been time and again emphasized that clarity of thought and purpose is the first step towards achieving any goal. Define your goals and understand the exam structure, syllabus, and the skills required. Set clear and achievable targets. Create a study plan and organize your study schedule, allocate time for each subject, and prioritize topics based on their weightage and your proficiency.

2. ***Consistency and Dedication***

   We strongly believe that consistency in efforts is the key to success. Candidates appearing for professional exams must have a regular study routine: Last minute cramming can be counterproductive. Regular practice and revision are essential. Solve previous years' question papers and take mock tests to evaluate your preparation and improve your speed and accuracy.

3. ***Positive Mindset and Self-Belief***

   We always encourage students to believe in themselves and their abilities. Students must maintain a positive attitude towards their preparation and avoid negative self-talk. Remember, self-belief is half the battle won.

4. Healthy Lifestyle and Stress Management

Prime Minister Modi has always placed importance on health and is of the view that a healthy mind resides in a healthy body. Students must have a balanced diet rich in nutrients to fuel your brain and body. Regular physical activity or exercise in one's daily routine will help to manage stress and improve concentration. Adequate Sleep: of at least 7-8 hours of sleep is required to recharge your mind and body.

5. Seek Guidance and Support

We firmly believe in learning from others' experiences and seeking guidance. Students must Consult teachers, mentors, or seniors for guidance and tips on exam preparation. Joining study groups or discussion forums to share knowledge, discuss doubts, and learn from peers is another way of accumulating knowledge and staying motivated.

Preparing for professional examinations is not just about passing a test; it's a transformative journey that equips you with a wealth of knowledge, skills, and experiences that will shape your career. Remember, success is a journey, not a destination. Along this journey, it's natural to encounter challenges, setbacks, and even moments of doubt. These obstacles are not roadblocks but springboards for growth and learning. What truly defines you as is your resilience, adaptability, ability to learn from mistakes, and the determination to get back on track, even when faced with adversity.

Stay focused on your goals, remain dedicated to your preparation, and maintain unwavering belief in your abilities and your limitless potential. Embrace the learning process with curiosity and enthusiasm, and give your best effort in every step of the way. Consistent effort, dedication, and a positive mindset are key to achieving success in any endeavor.

Wishing you all the best for your exams! You have the potential to excel and achieve greatness. Trust in yourself and make the most of this invaluable learning experience. Remember, each step you take towards your goal is a step closer to realizing your dreams. Believe in yourself and let your hard work and dedication shine through in your exams.

Comprehensive Analysis of Operational & Financial Creditors under IBC

Anagha Pandit, Student of GLC, Mumbai

Ms. Yachika Jain, Advocate

INTRODUCTION

The Insolvency and Bankruptcy Code (**"Code"**) of India, enacted in 2016, has ushered in a new era in the country's insolvency landscape. The primary purpose of this legislation is to assist in the timely resolution of corporate insolvency. Among the key stakeholders in the insolvency resolution process are Operational and Financial Creditors, each playing a vital role in the proceedings. This article presents a comprehensive analysis of the rights, responsibilities and treatment of Operational and Financial Creditors under the Code.

The Insolvency and Bankruptcy Code, 2016 under section 3(10) defines creditor as "*any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder.*" The Code further defines the above-mentioned categories of creditors along with their rights in pre and post Corporate Insolvency Resolution Process ("**CIRP**").

OPERATIONAL CREDITOR

Operational Creditor: Section 5(20)[1] defines Operational Creditor as "*any person to whom an operational debt is owed, including any person to whom such debt has been legally assigned or transferred.*" The defining factor for an Operational Creditor is to determine whether the debt owed to that person falls in the ambit of "Operational Debt" as defined under Section 5(21)[2], it mainly constitutes Vendors, Suppliers, Employees and other Service Providers.

Under section 5(21) Operational Debt is defined as "*a claim for the provision of goods or services, including employment, or a debt for the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government, or local authority.*"

Operational creditors do not form a part of the Committee of Creditors and lack voting rights. On the other hand, the code categorically safeguards the rights and interests of the Financial Creditors, resulting in discrimination of some categories of Operational Creditors.

FINANCIAL CREDITOR

Financial Creditor: Section 5(7)[3] defines Financial Creditor as "*a person whom financial debt is owed, including a person to whom such debt has been legitimately assigned or transferred.*" The defining factor for a Financial Creditor is to determine whether the debt owed to that person falls in the ambit of "Financial Debt" as defined under

1. Insolvency and bankruptcy Code, 2016.
2. Insolvency and bankruptcy Code, 2016.
3. Insolvency and Bankruptcy Code, 2016.

Section 5(8)[4], it mainly constitutes Banks, Financial Institutions and other entities holding financial claim against the debtor.

Under Section 5(8) financial debt is defined as "*a debt together with interest, if any, that is distributed against the consideration for time worth of money and includes:*

a. Money borrowed against interest payment.

b. Any money raised through acceptance under and acceptance credit arrangement, or its dematerialized counterpart.

c. Any sum raised by a note purchase facility or the issuance of bonds, notes, debentures, loan stock, or a comparable instrument.

d. The amount of any liability related to a lease or hire purchase agreement that is deemed a finance or capital lease under the Indian Accounting Standards such other accounting standards as may be prescribed.

e. Receivables sold or discounted, excluding those sold on a nonrecourse basis.

f. Any sum raised through any other transaction, such as a forward sale or purchase agreement, that has the commercial impact of a loan.

g. Any counter-indemnity duty relating to a bank or financial institution's guarantee, indemnity, bond, documented letter or credit, or other instrument.

h. The amount of any responsibility relating to any guarantee or indemnification for any of the items listed in sub-clauses (a)-(h) of this clause."

In case wherein multiple Financial Creditors are owed financial debts, each one of such Financial Creditors shall be a part of the Committee of Creditors and their voting share shall be determined based on the financial debts owed to them.[5]

The voting rights of Financial Creditors termed as 'voting share' is defined under section 5(28) of the Code, which reads "*voting share' means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.*"

COMPARATIVE ANALYSIS OF RIGHTS OF CREDITORS

Right to file an application with the Adjudicating Authority

a. Operational Creditor

— Operational Creditors are refrained from filing an application for initiation of the CIRP without issuing a Demand Notice under section 8 of the Code on the Corporate Debtor demanding payment of an unpaid operational debt due from the Corporate Debtor.

— The Demand Notice is issued in FORM 3 provided under the Code. The Operational Creditor shall specify the total amount of debt along with the details of transactions on account of which debt fell due and the date from which the debt fell due. Furthermore, the Operational Creditor shall attach the documents to the Demand Notice that prove the existence of the operational debt and the amount in default.

4. Insolvency and bankruptcy Code, 2016.
5. Insolvency and Bankruptcy Board of India Frequently Asked Questions

— Section 21(2) clearly excludes Operational creditors as members of the Committee of Creditors. A part extract of the section 21 is reproduced herein "*21. Committee of Creditors- (1) …*

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

…"

— Section 24(3)(c) additionally imposes limitations on the entitlement of an Operational Creditor to attend a Committee of Creditors' meeting. Section 24(3)(c) states that:

"The resolution professional shall give notice of each meeting of the committee of creditors to-

(c) Operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt."

b. Financial Creditor

Financial Creditors possess the right to file an application to the Adjudicating Authority initiating the corporate insolvency resolution process under section 7(1) of the Code.

2. Committee of Creditors

a. Operational Creditor

Operational Creditors do not form a part of the Committee of Creditors.

b. Financial Creditor

As per Section 21(2) of the Code, the Committee of Creditors must be wholly composed of the Financial Creditors.

3. Financial Information

a. Operational Creditor

Section 215(3) states "*operational creditor may submit financial information to the information utility in such form and manner as may be specified.*"

b. Financial Creditor

Section 215(2) states "*financial creditor shall submit financial information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations.*"

TREATMENT OF FINANCIAL AND OPERATIONAL CREDITORS

There exists a wide gap between the powers and priority of treatment between the Financial and Operational Creditors and an order of priority has been delineated under section 53 of the Code that governs with distribution of liquidation assets owed to the Corporate Debtor. The secured Financial Creditor is given due prominence followed by the unsecured creditors.

Banking Reforms committee elucidated the wide gap that exists between the Financial and Operational Creditors as:

"The Committee reasoned that members of the creditors committee must be creditors who are able to evaluate viability and who are willing to negotiate changes to the terms of current liabilities. Ordinarily, operational creditors are neither able nor willing to make decisions on the entity's insolvency or to incur the risk of delaying payments in exchange for the entity's future prospects. The Committee concluded that the Code would stipulate that the creditors committee should be limited to only the financial creditors in order for the process to be quick and effective."[6]

6. Para 5.3.1 Banking Law Reforms Committee Report.

IMPORTANT CASE LAWS

1. ***Swiss Ribbons Pvt. Ltd. vs. Union of India [(2019) 4 SCC 17]***

   In this case, the Hon'ble Supreme Court was posed to rule on the differential treatment of Financial Creditors over Operational Creditors, the Hon'ble Supreme Court upheld the Constitutional validity of Section 53 of the Code. Additionally, the Hon'ble Supreme Court held that Section 30(2)(b) of the Code refers to Section 53 not in the context of priority of payment of creditors, but only to provide for minimum payment to Operational Creditors. However, that again does not in any manner limit the Committee of Creditors from classifying creditors as financial or operational and as secured or unsecured.

2. ***Essar Steel Ltd. vs. Satish Kumar Gupta & Ors. [(2020) 8 SCC 531]***

   In the present case, the Hon'ble Supreme Court addressed the crucial distinction between financial and operational debt, and emphasized that the nature of the underlying transaction is the primary factor in determining the category of creditor. The Hon'ble Supreme court held that "*The amended Regulation 38 of the 2016 Regulations again does not lead to the conclusion that financial and operational creditors, or secure and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditor's rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately.*"

3. ***Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors. [(2020) 11 SCC 467]***

   The Hon'ble Supreme Court in the present case held that Section 53 of the Code would be applicable only during liquidation and not at the stage of resolving insolvency. Section 30(2)(b) of the Code refers to Section 53 not in the context of priority of payment of creditors, but only to provide for minimum payment to Operational Creditors. However, that again does not in any manner limit the Committee of Creditors from classifying creditors as financial or operational and as secured or unsecured.

4. ***M. K. Rajagopalan vs. Dr. Periasamy Palani Gounder & Anr. [(2024) 1 SCC 44]***

   In the present case the Hon'ble Supreme Court recognized the claims of homebuyers as Financial Creditors against developers arising from advance payments for properties as financial in nature, and granted them voting rights along with entitlements within the Committee of Creditors.

5. ***Vishal Chelani & Ors. vs. Debasis Nanda [(2023) 10 SCC 395]***

   In this case, the Hon'ble Supreme Court built upon the M. K. Rajagopalan judgment and further expanded the definition of Financial Creditors by recognizing flat buyers under registered agreements as falling under this category whilst emphasizing the inclusion of homebuyers in the Insolvency and Bankruptcy framework.

CONCLUSION

To recapitulate, the distinction drawn under the Insolvency and Bankruptcy Code, 2016 between Financial and Operational Creditors is crucial yet tricky as Operational and Financial Creditors, when are unsecured, does not cause mere difference but a discrimination between the two. The Code's framework though extensive, lack an incentive mechanism that can ensure that the Financial Creditors' actions are not completely driven by self-interest. Judicial pronouncements have sought to clarify the rights and responsibilities of both categories of creditors, emphasizing the need for fairness, transparency, and equitable treatment in the insolvency resolution process. Moving forward, a balanced approach that takes into account the interests of all stakeholders will be crucial for the effective functioning of the insolvency regime in India.

Overview of Insolvency & Bankruptcy of Individuals & Firms


Manan Bhoota, Student of GLC, Mumbai

Ms. Aradhana Bhansali, Advocate

1. Introduction

The Insolvency and Bankruptcy Code[1], implemented in 2016, (**"IBC"** or **"Code"**) has transformed how insolvency is managed in India. It has set up a system where creditors have significant control and strict deadlines are in place for corporate insolvency proceedings also known as corporate insolvency resolution process (**"CIRP"**). The system of Corporate insolvency from the passing of the IBC upto date has evolved and become robust on account of various factors including the judgments that been passed by the competent court including the Apex Court and also the MCA which have taken measures to control the rogueness. While the Insolvency and Bankruptcy Processes for Companies had come into effect in 2016[2], it is only in 2019[3] that the Ministry of Corporate Affairs (**"MCA"**) enforced provisions in the code relating to Personal Guarantors to Corporate Debtors, Individuals and Firms.

Many concepts in the CIRP, such as obtaining a new owner with a revival plan, are not applicable for individuals, leading to a simplified process in the case of default by individuals. This includes a concept of a "Fresh Start", where specified loans of a limited class of borrowers can be waived, however this part of the Code relating to Individuals and Firms has not been enforced yet. The Code further provides an Insolvency Resolution Process (**"IRP"**) which consists of a repayment plan to be made by the debtor in consultation with the Resolution Professional (**"RP"**) which needs to be approved by the Creditors of the individual or the firm.

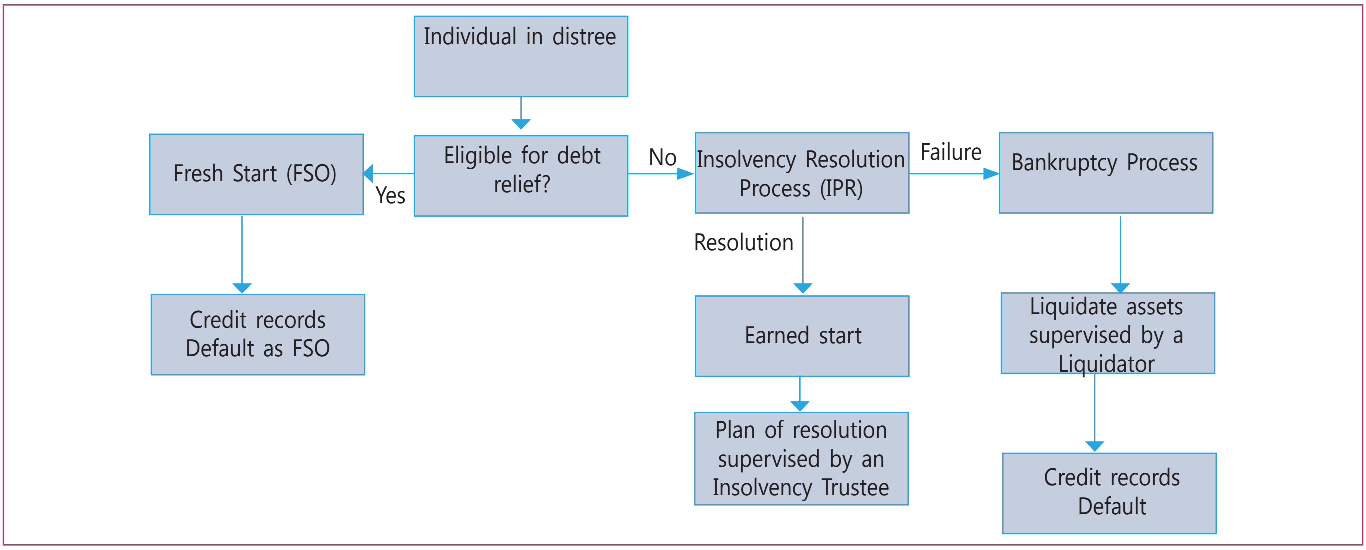
2. Need for a separate provision on Insolvency of Individuals and Firms

The Bankruptcy Law Reforms Committee's November 2015 report emphasizes the necessity of distinct provisions within the Code for individuals and firms. Recognizing the significant role of sole proprietorships, especially small and medium enterprises (**"SMEs"**), in India's economy, it addresses the challenges of loan recovery for them. To tackle insolvency, the Code introduces two processes: Fresh Start Order (**"FSO"**) and IRP, with provisions for bankruptcy in case of IRP failure. Notably, certain sections of the Code,

1. Insolvency & Bankruptcy Code, 2016 (31 of 2016).
2. Ministry of Corporate Affairs, Notification S.O. 3594(E) dated 30th November 2016.
3. Ministry of Corporate Affairs, Notification S.O. 4126(E) dated 15th November 2019.

currently in force, apply only to Personal Guarantors and Corporate Debtors, awaiting notification by the Ministry of Corporate Affairs for application to independent Individuals or Firms.

The process flow of individual insolvency is as under (*Source: Bankruptcy Law Reforms Committee Report*)



3. Fresh Start Order

Chapter II of Part III of the Code outlines a fresh start process for debtors with limited income and assets. The debtor can apply directly or through a resolution professional if they meet the eligibility criteria outlined in Section 80 of the Code. Once the application is accepted, the resolution professional reviews any objections from creditors regarding the discharge of the debtor's debts. Following this review, the resolution professional may present a final list of debts to be discharged to the Adjudicating Authority (**"AA"**)[4]. Subsequently, the AA can issue a discharge order for the debtor's debts[5], or revoke the admission of the fresh start application[6]. Revocation may occur if there is a change in the debtor's financial situation, failure to comply with imposed restrictions, or evidence of malicious behaviour by the debtor[7].

The Eligibility Criteria for making an application by a debtor finds its place under Section 80 and section 81 of the Code which entitles the debtor to apply for a fresh start if all the conditions mentioned in Section 80 of the Code are fulfilled by such an applicant/debtor which *inter alia* includes that he is not an undischarged bankrupt and he does not own a dwelling unit, irrespective of whether it is encumbered or not.

4. § 86, Insolvency and Bankruptcy Code, 2016.
5. § 92, Insolvency and Bankruptcy Code, 2016.
6. § 91, Insolvency and Bankruptcy Code, 2016.
7. § 91(1), Insolvency and Bankruptcy Code, 2016.

4. Insolvency Resolution Process

Chapter III of Part III of the Code outlines IRP, wherein creditors collaborate with each other or through a Resolution Professional to prepare a repayment plan for the debtor's debts. Unlike individual debt recovery efforts, the IRP involves all creditors of the debtor negotiating a plan for the repayment of all debts collectively. However, if the IRP fails, it may result in initiation of bankruptcy proceedings.

4.1. Important Features of the Chapter

1. Section 94 & 95 – Initiation of the process by the debtor or creditor

The application for initiation of IRP can be filed by the Debtor, the Creditor or a Creditor(s) through a Resolution Professional. The application under Section 94, should only pertain to debts that are not 'excluded debts'. A debtor can be disqualified from making such an application, for being an undischarged bankrupt, undergoing a fresh start process or a bankruptcy process. Additionally, a debtor cannot apply if an application under this chapter has been admitted for them within the preceding twelve months[8]. Even the creditors can apply for IRP by themselves, with other creditors, or through a Resolution Professional.

2. Interim Moratorium & Moratorium

Interim Moratorium[9]: Section 96 establishes an interim moratorium when an application is filed under Section 94 or Section 95 of the Code. During this period:

— The interim moratorium begins on the date of filing an application and will end upon admission of the application.

— Any legal actions or pending proceedings related to debts are deemed to have been stayed.

— Creditors are prohibited from initiating any separate legal proceedings against the debtor regarding any debts. If the application is filed concerning a firm, the interim moratorium applies to all partners of that firm. However, the Central Government has the power to relax application of the provision relating to interim moratorium in respect of transactions as may be notified by the Central Government in consultation with financial sector regulators.

Moratorium[10]: Once the application is admitted by the AA under section 100, moratorium commences in respect of any debts for a period of 180 days or on the date when the AA passes an order under section 114 on the Resolution Plan. The provisions made for Moratorium under section 101 are the same as under Interim Moratorium in addition to a restriction on the debtor against transferring, alienating, disposing off or creating encumbrances on any of his assets.

The Supreme Court of India in ***P. Mohanraj vs. Shah Bros. Ispat (P) Ltd.*** clarified the meaning of the term 'in respect of any debt' and stated: "In respect of is a phrase which is wide and includes anything done directly or indirectly. Moreover, the phrase used is not "recovery of debt." Thus, any legal proceeding even indirectly relatable to recovery of any debt would be covered under Sections 81, 85, 96 and 101[11]."

8. § 95, Insolvency and Bankruptcy Code, 2016.
9. § 96, Insolvency and Bankruptcy Code, 2016.
10. § 101, Insolvency and Bankruptcy Code, 2016.
11. *P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258.*

3. *Resolution Professional*

An application for IRP can alternatively be made through a Resolution Professional. If an application has been made through a Resolution Professional, the AA shall appoint the Resolution Professional upon consultation with the Insolvency and Bankruptcy Board of India (**"Board"**), who, within a period of 7 days, provided no such disciplinary proceedings are pending against the Resolution Professional. Where an application under Section 94 or 95 is filed by the debtor or the creditor, the AA shall direct the Board, within seven days of such application, to nominate a resolution professional for IRP[12].

Functions of the Resolution Professional:

— to examine the application for IRP and submit a report within 10 days to the AA, recommending the approval or rejection of such application[13].

— to prepare a list of creditors according to the application filed under section 94 or 95 and the claims received by the resolution professional under section 102 of the Code[14].

— to help the debtor prepare a Repayment plan[15] and submit it to the AA along with his report[16].

— to summon and conduct the meeting of the Committee of Creditors (**"CoC"**) under sections 107 and 108 of the Code.

— to prepare a report of the meeting of the CoC on the repayment plan which has to contain whether the plan has been approved by the CoC and submit it to the AA.

— to supervise the implementation of repayment plan approved by the AA and within 14 days of completion of the repayment plan, forward to the persons bound by the plan documents prescribed under section 115 of the Code.

4. *Repayment Plan*

Section 105 of the Code provides the requirements of a repayment plan in IRP:

— debt restructuring.

— to manage the debtor's business, realise assets, or handle the debtor's funds.

— reasons for creditor agreement, details of the resolution professional's fee, and include any other specified matters.

Under section 114 of the code, the repayment plan may be approved or rejected by the AA on the basis of the report of the meeting of the creditors submitted by the resolution professional under Section 112. If the repayment plan is rejected by the AA, the Debtor or the Creditors will be at liberty to file an application for Bankruptcy under section 121 of the Code. The same will be the case if the Repayment plan comes to an end

12. § 97(3), Insolvency and Bankruptcy Code, 2016.
13. § 99, Insolvency and Bankruptcy Code, 2016.
14. § 104, Insolvency and Bankruptcy Code, 2016; § 102 & 103 IBC: Public notice inviting claims from creditors and registering claims of the creditors.
15. § 105, Insolvency and Bankruptcy Code, 2016.
16. § 106, Insolvency and Bankruptcy Code, 2016.

prematurely i.e., it has not completely been implemented in respect of all persons bound by it within the period as mentioned in the repayment plan.

4.2. *Lalit Kumar Jain vs. Union of India*

On May 21, 2021, the Supreme Court delivered its judgment in ***Lalit Kumar Jain vs. Union of India & Others***[17] concerning the legality and validity of a Notification dated November 15, 2019[18] (**"Notification"**) issued by the Government of India. This Notification selectively implemented certain provisions of Part III of the Code. Essentially, the Notification established a framework for initiating IRP under Part III of the Code specifically for personal guarantors to corporate debtors.

Following the release of the challenged notification, insolvency proceedings were commenced against personal guarantors who had provided guarantees to banks and financial institutions for loans given to their affiliated companies. Consequently, Writ Petitions were submitted under Article 32 to various High Courts nationwide. These cases were consolidated and transferred to the Supreme Court under Article 139A, as they pertained to the interpretation of shared legal issues concerning the provisions of the Code.

The following issues were raised and deliberated by the court:

a. The petitioners argued that Section 1(3) of IBC constituted conditional legislation, and the impugned notification, selectively implementing Part III provisions for personal guarantors, violated this principle. However, the Supreme Court disagreed, stating that the notification was a valid exercise of legislative power and consistent with the gradual implementation of IBC.

b. The petitioners contended that the Notification treated personal guarantors as a separate category, contrary to IBC. The Court disagreed, citing amendments to the Code and the intent to unify insolvency processes for corporate debtors and their guarantors under a common forum, the National Company Law Tribunal (**"NCLT"**).

c. The petitioners argued that the Notification created inconsistency by not bringing Section 243 of IBC into force. However, the Court held that the Notification's overriding effect under Section 238 of the Code justified this decision, ensuring all proceedings against personal guarantors fell within the Code's purview.

d. The petitioners claimed that approved resolution plans for corporate debtors extinguished guarantors' liabilities. However, the Court disagreed, stating that the guarantors' obligations continued to exist independent of the corporate debtor's resolution plan, as per the Indian Contract Act and IBC.

5. Bankruptcy Process for Individuals and Partnership Firms

The bankruptcy process of a debtor, as provided in Chapters IV and V of Part III of the Code, involves realization and

17. *Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321.*
18. Ministry of Corporate Affairs, Notification S.O. 4126(E) dated 15th November 2019.

distribution of the estate of the debtor. On failure of an IRP, an application for bankruptcy may be made by the debtor or the creditor in accordance with Section 121 to 123 of the Code.

6. Adjudicating Authority

Section 179 of the Code stipulates that the Debt Recovery Tribunal (**"DRT"**) will have the jurisdiction to entertain and dispose any and all such applications filed against individuals and partnership firms. However, for personal guarantors, jurisdiction is shared between the NCLT and DRT under different circumstances. As per Section 60(2), if there is an ongoing CIRP or liquidation process for a corporate debtor, any application for IRP or bankruptcy of the personal guarantor linked to that corporate debtor must be filed with the NCLT overseeing the ongoing CIRP or liquidation. Hence, if there is a parallel CIRP or liquidation proceeding for the corporate debtor for whom the guarantee is provided, the NCLT becomes the AA for the purpose of adjudicating the applications filed against such personal guarantors to corporate debtor. Likewise, if any insolvency or bankruptcy proceeding is underway against the personal guarantor in a court or tribunal, and an IRP or liquidation process is initiated against the corporate debtor, the jurisdiction vests with the NCLT[19].

Conclusion

In summary, IBC has revamped India's insolvency landscape, with provisions for individuals and firms added in 2019. Although these provisions are yet to be enforced fully, they aim to streamline insolvency resolution for individuals and small businesses which in today's time is not structured at all. Recent legal rulings, such as Lalit Kumar Jain vs. Union of India & Others, has clarified the validity of notifications selectively implementing Part III provisions against personal guarantors.

The Code outlines mechanisms like the FSO and IRP to provide debt relief and repayment planning. However, their implementation awaits notification by the MCA.

Overall, IBC represents a significant milestone in India's legal framework, aiming to promote economic efficiency and creditor protection. While challenges persist in implementing provisions for individuals and firms, the Code's holistic approach to insolvency resolution is a crucial step forward.

19. § 60(3), Insolvency and Bankruptcy Code, 2016.

A Criticism: CIRP and Subrogation Rights of Personal Guarantors

Vaishvik Kare, Student of MNLU, Mumbai

Ms. Aradhana Bhansali, Advocate

Introduction

The Insolvency and Bankruptcy Code, 2016 (**IBC**) introduces the concept of Corporate Insolvency Resolution Process (**CIRP**), which involves initiating proceedings upon establishing a default and consulting creditors. However, a significant concern arises regarding the impact of insolvency or liquidation proceedings on guarantors. In a landmark judgment dated 21st May, 2021, in ***Lalit Kumar Jain vs. Union of India***, the Supreme Court upheld the validity of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019[1]. These rules, notified by the Indian Government on 15th November, 2019, and effective from 1st December, 2019, are crucial in addressing the involvement of personal guarantors in insolvency resolution processes for corporate debtors.

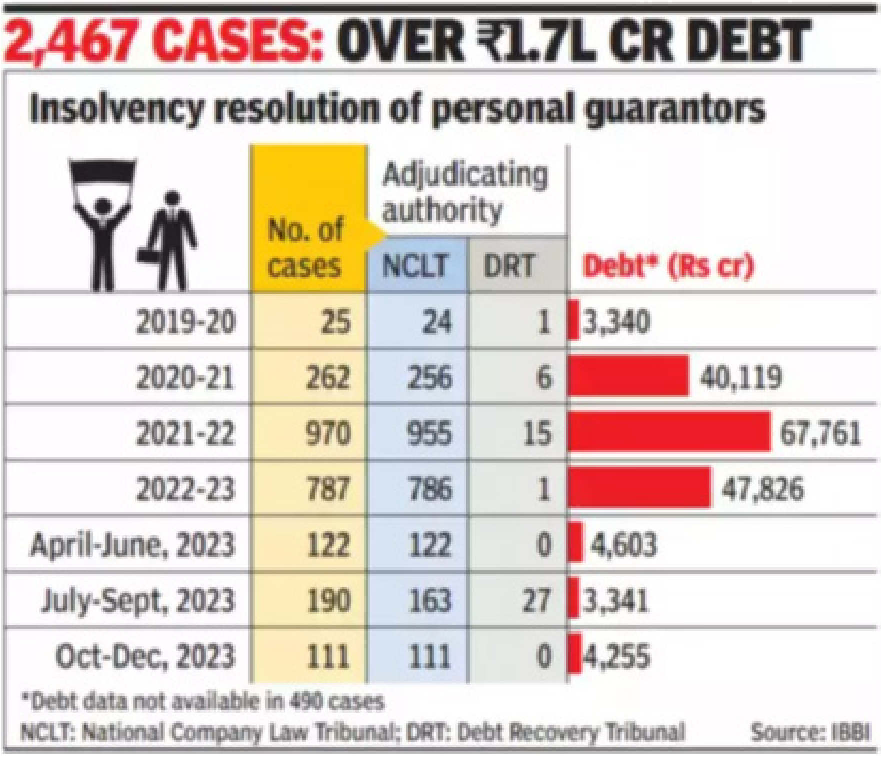
Previously, creditors lacked the option to pursue legal proceedings against guarantors under the IBC. Instead, they had to resort to filing civil suits for enforcing contractual remedies or proceed under legislation like the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, or other specialised regulations. This was because Part III of the IBC did not apply to personal guarantors before the introduction of the 2019 Rules.

Furthermore, as per Section 60(2) of IBC, any application regarding the insolvency resolution, liquidation, or bankruptcy of a corporate guarantor or personal guarantor to a corporate debtor should be submitted to the NCLT if a CIRP or liquidation process of the corporate debtor is already in progress before the same Tribunal. Additionally, Section 60(3) of the IBC requires that if a corporate guarantor or personal guarantor of the corporate debtor is engaged in a CIRP, liquidation, or bankruptcy case pending in any other Court or Tribunal, it must be transferred to the Adjudicating Authority overseeing the relevant CIRP or liquidation process. Furthermore, since Section 243 of the Code, which seeks to repeal the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, has not yet been implemented, the avenues for recovery that were accessible before the introduction of the 2019 Rules continue to remain unchanged.

Following the issuance of the notification by the MCA, there was a surge in banks taking action to seize the personal assets of prominent figures like Anil Ambani, Kapil Wadhawan, Venugopal Dhoot, and Sanjay Singal. These individuals contested

1. 2021 SCC OnLine SC 396.

these actions, arguing that the CIRP proceedings of the corporate debtor would absolve them of their concurrent liability, thus constituting a case of "double recovery". The table below illustrates the significant number of insolvency resolution initiated during the period from 2019 to 2023 against personal guarantors.



2,467 CASES: OVER ₹1.7L CR DEBT

Insolvency resolution of personal guarantors

	No. of cases	Adjudicating authority NCLT	DRT	Debt* (Rs cr)
2019-20	25	24	1	3,340
2020-21	262	256	6	40,119
2021-22	970	955	15	67,761
2022-23	787	786	1	47,826
April-June, 2023	122	122	0	4,603
July-Sept, 2023	190	163	27	3,341
Oct-Dec, 2023	111	111	0	4,255

*Debt data not available in 490 cases

NCLT: National Company Law Tribunal; DRT: Debt Recovery Tribunal Source: IBBI

The Lalit Kumar ruling, which was widely embraced, emphasised that a resolution plan does not absolve the personal guarantor of their responsibility, underscoring the significance of understanding the rights of personal guarantors under the IBC. Guarantees represent pivotal contractual arrangements crucial for the commercial viability and stability of any company. Thus, it is imperative to ensure that the legal framework adequately addresses the rights and obligations of personal guarantors.

Personal Guarantors under The Indian Contract Act, 1872

The concept of guarantee is elucidated in Section 126 of the Indian Contracts Act, 1872, which imposes an obligation on a surety to fulfil the promise of the principal debtor by settling the principal debtor's existing or future debts owed to a creditor[2]. This encompasses undertaking a specific promise or assuming responsibility for the principal debtor's obligations in the event of default.

2. Lord Chorley, Law of Banking (2nd Edn, Pitman 1947).

Section 128 of the Indian Contract Act, 1872 establishes a concurrent liability between the surety and the debtor, meaning that if proceedings are initiated against the principal debtor, the surety's actions are governed by this provision. However, there is an exception to this rule outlined in the ***Jagannath vs. Shivnarayan***[3] where the court ruled that the discharge of the principal debtor by where the court ruled that the discharge of the principal debtor by operation of law does not absolve the surety of their obligations. This exception was notably reaffirmed in the *Lalit Kumar* judgment. Additionally, Sections 134 and 135 of the Indian Contract Act permits discharge of the surety based on a contractual agreement between the principal debtor and the creditor. Nevertheless, this discharge is contingent upon happening of events as envisaged under contractual arrangement and does not extend to the surety's liability through legal means.

Therefore, if a resolution plan is approved under the IBC or the debtor undergoes liquidation, resulting in only a portion of the debt being settled, the guarantor remains accountable to the lender for the remaining outstanding balance of the debt.

Criticism: CIRP and Subrogation Rights of Personal Guarantors

Introduction

Even before the implementation of the Rules of 2019, the court in the case of ***State Bank of India vs. V. Ramakrishnan***[4] acknowledged the co-extensive liability of the surety and debtor. It ruled that the creditor has the option to pursue either of them, or both jointly, without any specific order. However, a conflicting viewpoint was later presented by the NCLAT in the case of ***Dr. Vishnu Kumar Agarwal vs. Piramal Enterprises***[5]. The Hon'ble Appellate Tribunal stated that while proceedings can be initiated separately against the Corporate Debtor and the Personal Guarantor, they cannot be pursued for the same set of claims and default that have already been initiated against one of them. Although this decision has been assailed before the Apex Court, the NCLAT upheld the stance taken in the ***Ramakrishnan case (supra)*** in the matter of ***State Bank of India vs. Athena Energy Ventures Private Limited***[6]. The Hon'ble Appellate Tribunal affirmed that concurrent proceedings can indeed be initiated against both the corporate debtor and the personal guarantor. It distinguished the judgment in the *Vishnu Kumar* case, which pertained to simultaneous initiation of CIRP against two corporate guarantors for the same debt and default. Furthermore, the NCLAT emphasized the application of Section 60(2) and Section 60(3) of the IBC in this context. The clarification provided in the *Dr. Vishnu Kumar* judgment pertained to the simultaneous initiation of CIRP against two corporate guarantors for the same debt and default, not to the possibility of filing applications against the principal borrower and the corporate guarantor concurrently. The NCLAT supported this stance by highlighting that seeking simultaneous remedies is inherent to contracts of guarantees.

The *Lalit Kumar* case conclusively settled the issue by affirming that simultaneous proceedings against the personal guarantor and corporate debtor are permissible, provided creditors do not seek to recover amounts exceeding their total claim. The challenge to the 2019 Rules in *Lalit Kumar* case, alleging governmental overreach and concerns regarding double recovery for the surety's liability, was dismissed by the Apex Court.

3. AIR 1940 Bom. 387.
4. AIR 2018 SC 3876.
5. 2019 SCC OnLine NCLAT 542.
6. CA (AT) (Ins) No. 633 of 2020.

It maintained that the rules were formulated to enhance the CIRP process and bolster recovery mechanisms. The Court clarified that since the discharge of the Corporate Debtor's liability is a result of legal provisions, it does not affect the separate liability borne by the surety.

Regarding the consolidation of proceedings, the question arose before the Hon'ble Appellate Tribunal whether CIRP could be initiated against the personal guarantor before initiation of proceedings against the Corporate Debtor? The NCLAT has addressed the issue in affirmative in the ***State Bank of India vs. Mahendra Kumar Jajodia*** case[7]. However, the Supreme Court has currently stayed this decision by the NCLAT and it will be worth a watch in relation to the matter[8].

In the case of ***State Bank of India vs. V. Ramakrishnan***, the Apex Court ruled that the moratorium period specified under Section 14 of the IBC does not extend to a personal guarantor[9]. This decision was based on the findings of the Insolvency Law Committee's report from March 2018, which also concluded that the assets of the personal guarantor are not subject to the moratorium. However, the judgment also emphasized that any actions taken by the personal guarantor that would create a charge on the assets of the Corporate Debtor would be prohibited, as it would violate Section 14 of the IBC. This stance on the exclusion of the protection of the moratorium period was also affirmed by the Bombay High Court in the case of ***Alpha & Omega Diagnostics (India) Ltd. vs. Asset Reconstruction Company of India Ltd***.[10], and by the NCLAT in the case of ***Schweitzer Systemtek India Pvt. Ltd. vs. Pheonix ARC Pvt. Ltd***.[11]

Extinguishment of Right of Subrogation Under IBC and its Implication

Guarantees play a vital role in ensuring comfort for parties involved in commercial transactions in case of default by either party. While the Indian Contract Act, 1872 primarily governs guarantees, it outlines several guiding principles aimed at protecting the rights of all parties involved, including the guarantor.

Section 127 of the Indian Contact Act states that *anything done, in favour of the party is a sufficient consideration for the guarantor*. Furthermore, the concept of subrogation is crucial in contract of guarantee as it entails the guarantor assuming all rights of the creditor against the principal debtor.

Recently, the issue of subrogation has been debated within the context of the IBC, where the right of subrogation was denied to guarantors after the approval of the resolution plan. In the notable *Essar Steel* case, endorsed by subsequent rulings, the Supreme Court approved a resolution plan that excluded the right of subrogation for guarantors[12]. This decision was reaffirmed in the *Lalit Kumar* case, which ruled that guarantors do not possess the right of subrogation.

Subrogation is rooted and also derives its' recognition under the Indian Contract Act. Despite courts justifying the denial of subrogation right with persuasive arguments, the finding is violative of the fundamental right under Article 14 of Constitution of India being unjust from the personal guarantor's perspective.

Hence, it is imperative to understand and examine the right of subrogation available under the

7. Company Appeal (AT) Insolvency Nos. 60 and 61 of 2022.
8. Taxscan Team, NCLT allows IRP Against Personal Guarantor in Absence of CIRP of Corporate Debtor: Supreme Court stays Order, Tax Scan. Available at https://www.taxscan.in/nclt-allows-irp-against-personal-guarantor-in-absence-ofcirp-of-corporate-debtor-supreme-court-stays-order/165350/.
9. AIR 2018 SC 3876.
10. Company Appeal (AT) Insolvency Nos. 116 of 2017.
11. Company Appeal (AT) Insolvency Nos. 129 of 2017.
12. (2020) 8 SCC 531.

Indian Contract Act, 1872, along with the concept of *'Equitable Subrogation'* using foreign legal precedents and assess the implications of denying the right of subrogation for guarantors on the Indian credit market.

- ***Right of Subrogation under Indian Contract Act, 1872***

  When a surety settles the debt of another party, the surety is entitled to the creditor's previous claims and remedies against the debtor to recover the amount paid. Additionally, the surety will benefit from any security interests in favour of the creditor for the original debt. This is a significant concept because the subrogation process grants the surety the same security rights held by the creditor, even if they were unaware of them initially. Therefore, it is unlikely that the right of subrogation is based on any implied terms in this legal context.

  In India, the right of subrogation is recognized under Sections 140 and 141 of the Indian Contract Act. Upon fulfilling all payment obligations, the surety assumes the position of the creditor as it inherit all the rights previously held by the creditor against the principal debtor. Essentially, the surety steps into the shoes of the creditor and can initiate legal proceedings against the principal debtor at any time. In ***Amrit Lai Goverdhan Lalan vs. State Bank of Travancore***, the Apex Court has established that the surety is entitled to all remedies available to the creditor against the principal debtor, including the enforcement of securities and the pursuit of legal action[13]. This entitlement of the surety is not solely based on contractual agreements but also a right recognized under the legislature based on principles of equity and natural justice. Section 140 of the Indian Contract Act explicitly states that the surety is endowed with all the rights held by the creditor against the principal debtor, even without the need for a formal transfer.

  Furthermore, in the case of ***State Bank of India vs. Fravina Dyes Intermediates***, the Bombay High Court held that by invoking the doctrine of subrogation, the guarantor can also seek a temporary injunction against the principal debtor even before making payment to the creditor if there is reason to believe that the principal debtor intends to fraudulently dispose of its property[14].

- ***Subrogation : An Equitable Right***

  "The surety, upon settling a debt, assumes the position of the creditor and possesses all associated rights for the purpose of seeking reimbursement. This principle is firmly grounded in fundamental principles of natural justice and reason.[15]" "*Subrogation is rooted in the doctrine of equity and is an established principle in common law.*[16]"

  In ***Kundanmal Dabriwala vs. Haryana Financial Corporation and Ors***., the Court examined the situations where the principal borrower's liability is settled through an approved arrangement under Section 391 of the Companies Act, 1956[17]. The Court ruled in favour of relieving the surety from liability, reasoning that the surety cannot

13. 968 AIR 1432 1968 SCR (3) 724.
14. AIR 1989 Bom. 95.
15. *Amrit Lai Goverdhan Lalan vs. State Bank of Travancore, 1968 AIR SC 1432.*
16. *Krishna Pillai Rajasekharan Nair vs. Padmanabha Pillai, (2004) 12 SCC 754.*
17. [2012] 171 Comp Cas 94 (P&H).

step into the shoes of the creditor and thus cannot assert the right of subrogation. This case underscores the significance of the subrogation right, as its absence renders the surety's liability devoid of substance. The Court aptly acknowledged the unfair enrichment that occurs when the surety is denied the opportunity to subrogate.

In foreign jurisprudence, subrogation is seen as a means to remedy 'unjust enrichment' under the law of restitution[18]. In the case of ***Swynson Ltd. vs. Lowick Rose LLP***[19], the UK Court discussed equitable subrogation and unjust enrichment in the following words:

"Equitable subrogation as a remedy for unjust enrichment

...It belongs to an established category of cases in which the claimant discharges the defendant's debt on the basis of some agreement or expectation of benefit which fails....

...The cases on the use of equitable subrogation to prevent or reverse unjust enrichment are all cases of defective transactions. They were defective in the sense that the claimant paid money on the basis of an expectation which failed....

...What this suggests is that the real basis of the rule is the defeat of an expectation of benefit which was the basis of the payer's consent to the payment of the money for the relevant purpose..."

When a party experiences a significant improvement in their financial situation or is relieved of a financial burden, they are considered to be enriched[20]. This enrichment occurs at the expense of another party if the improvement was facilitated by that party's funds[21]. Given that the principal borrower holds the legal responsibility to repay, and the surety possesses an equitable right to be subrogate, if the surety pays on behalf of the principal borrower but is denied the right of subrogation, it results in unfair and unjust enrichment for the principal borrower. Highlighting the equitable nature of the right of subrogation is crucial in determining the position of the guarantor under the IBC, even though the concept of "Equitable Subrogation" pertains more to the law of restitution rather than contract law directly.

- ***Denial of Right of Subrogation***

It is well-established that even following the approval of a resolution plan and the subsequent release of the Corporate Debtor's obligations, the guarantor remains bound under the Indian Contract Act[22]. This is mainly due to the discharge of the Corporate Debtor's liability being governed by the legal framework of the Insolvency and Bankruptcy Code[23].

Upon affirming the continued obligation of the guarantor to repay the principal creditor despite the discharge of the corporate debtor's debts, the question of the right of subrogation naturally emerges. Subrogation is viewed as an inherent and just entitlement of the guarantor against the corporate debtor, for whose benefit the payment was rendered. In the case

18. Rory Gregson, Is subrogation a remedy for unjust enrichment?, Law Quarterly Review (L.Q.R. 481), 2020.
19. [2017] UKSC 32.
20. *Eileen Joan Rosina Filby vs. Mortgage Express (No 2) Limited, [2004] EWCA Civ 759.*
21. ibid.
22. *State Bank of India vs. V. Ramakrishnan, (2018) 17 SCC 394.*
23. *Maharashtra State Electricity Board, Bombay vs. Official Liquidator, High Court, Ernakulam and Ors., AIR 1982 SC 1497.*

of *Essar Steel*, creditors of the corporate debtor sought to enforce guarantees for the outstanding amount subsequent to receiving a reduced payment under the Resolution Plan[24]. In this same case, the Supreme Court referred ***SBI vs. V. Ramakrishnan*** and upheld the persistence of the guarantor's liability post-approval of the resolution plan. However, the Court endorsed a resolution plan in the case which deprived the guarantors of their right of subrogation.

In the case of ***Lalit Mishra & Ors. vs. Sharon Bio Medicine Ltd. & Ors***.[25], the NCLAT dealt with the matter of subrogation concerning promoters who, also acting as personal guarantors, asserted their entitlement under Sections 133 and 140 of the Indian Contract Act. The NCLAT once again confirmed that the resolution process under the IBC does not function as a recovery forum, and it was not the legislative intent to advantage personal guarantors by excluding legal remedies accessible to creditors for recovering rightful dues through the enforcement of personal guarantees.

Furthermore, the NCLT Mumbai, in cases such as ***State Bank of India vs. Calyx Chemicals & Pharmaceuticals Limited***[26] and ***IDBI Bank Ltd. vs. EPC Constructions India Limited***[27], approved resolution plans that did not grant subrogation rights to the guarantors of the Corporate Debtor, despite payments being made on their behalf.

- ***Impact of Denial of Subrogation***

It is essential to assess the repercussions of denying subrogation right under the IBC. In the case of ***Davinder Ahluwalia vs. Sumit Aviation***, the NCLT Mumbai bench ruled that granting the right of subrogation would undermine the resolution process's effectiveness[28]. The pertinent excerpt from the ruling states: "*The guarantor would subsequently be able to invoke their right of subrogation against the Corporate Debtor, which is then managed and controlled by the Resolution Applicant. Consequently, the Resolution Applicant would be compelled to repay the guarantor's debt under the subrogation right. As a result, the Resolution Applicant would effectively settle the creditors' full amount, leaving no purpose for submitting the resolution plan and acquiring the debtor company to settle creditor dues. This cyclical process is never-ending and certainly not the intention of the legislators when drafting the IBC Code*."

Now that it has been established that enforcing the right of subrogation post-acceptance of the resolution plan *would* contradict the objectives of the IBC and is not enforceable, it is crucial to assess its implications on the market. Given that transactions heavily rely on the credit market, the reluctance of guarantors to provide guarantees without recovery rights will likely decrease. This reluctance could hinder the smooth operation of various businesses.

The constant influx of credit is essential for all sectors of the economy, and any disruption in this process can have long-term repercussions on the credit and commercial markets. Denial of right of subrogation will only hinder the personal guarantors from extending guarantees owing to the jurisprudence and the provisions of the Code towards personal guarantors. India's *stance* on this matter, while understandable, may negatively

24. Supra Note at 12.
25. 2018 SCC OnLine NCLAT 669.
26. 2018 SCC OnLine NCLT 28227.
27. 2018 SCC OnLine NCLT 24901.
28. IB No. (IB)-229 (ND)/2017.

impact its commercial reputation. Therefore, exploring potential solutions to address this issue is not only vital in the interest of fairness and equity but also necessary for recognizing the right of subrogation under IBC.

Suggestion & Conclusion

Since the enforcement of the IBC, the primary focus of the IBC has been on revitalising insolvent companies and resolving debts rather than solely on recovery. While one of its stated objectives is "value maximisation", it is crucial to maintain a balance in safeguarding the rights of stakeholders. Despite being labeled as "debtor-centric", the IBC's narrow interpretation concerning the rights of personal guarantors could potentially negatively impact the commercial viability of future guarantees.

Although the rationale presented in ***Davinder Ahluwalia vs. Sumit Aviation***, regarding the avoidance of an endless cycle, holds merit, it appears to disregard fundamental principles of contract law and natural justice[29]. In the researcher's perspective, the argument that a surety cannot recover funds from the debtor without any wrongdoing or failure to meet obligations is untenable.

Despite the overarching effect of Section 238 of the IBC, the equitable right of subrogation cannot be completely extinguished. While the IBC may not be able to enforce the right of subrogation strictly without significant amendments, disregarding it entirely would contradict the legislative intent of the Code. Any alternative solution must be carefully considered to ensure it aligns with the overarching objectives of the legislation.

The researcher proposes several measures to strike a balance between the objectives of the Code and the commercial aspects of guarantee contracts:

a. If simultaneous proceedings are initiated against both the corporate debtor and the personal guarantor, they should be heard by the same Tribunal as per Section 60(2). This would enable the NCLT to issue appropriate orders regarding the guarantor's discharge of debt to the creditor. Subsequently, the guarantor could assert their claim in the resolution plan, with safeguards in place to prevent related parties from benefiting, in accordance with Section 21(2) of the Code.

b. Additionally, the NCLT could devise mechanisms to differentiate between independent guarantors and related parties. This would prevent promoters, who may have contributed to the insolvency, from gaining undue advantage, while ensuring that independent guarantors retain the incentive to provide guarantees. This approach aligns with the *Lalit Kumar* judgment.

c. Similar to the approach proposed, the United States Bankruptcy Code treats insider guarantors who have fulfilled their obligations as creditors of the corporate debtor under Section 547(b). This allows them to exercise their right of subrogation and recover their assets, incentivising guarantors to ensure the company's functioning while preserving commercial interests.

d. In other common law jurisdictions like the United Kingdom and Australia, insolvency resolution procedures do not typically extinguish the guarantor's right of subrogation statutorily. However, this right may be waived through contractual clauses or the conduct of the parties involved.

e. A mechanism should be established to allow guarantors to assert their subrogation rights

29. IB No. (IB)-229 (ND)/2017.

at any time during the CIRP. Guarantors should have the absolute right to participate in the Committee of Creditors meetings. Expanding the definition of "Creditor" in the Code to include guarantors would be appropriate, aligning with the addition of sub-section 3(b) to Section 14 of the Code.

In conclusion, efforts should be made to accommodate the rights of personal guarantors within the Code's framework without compromising the commercial nature of transactions or the principles of natural law and equity. The IBC can take incremental steps to achieve this objective. The elimination of the personal guarantor's right of subrogation is not an inevitable truth, but rather a consequence of a flawed insolvency resolution system that has become overly focused on the debtor's interests. One of the main aims of the IBC is to enhance the ease of doing business for all stakeholders, promote transparent corporate structures, and improve corporate governance.

India holds the 63rd rank in the World Bank's Ease of Doing Business 2020 report. However, this objective is hindered by the IBC's deliberate undermining of guarantee contracts, which are essential components of business transactions. Contracts involving personal guarantors provide reassurance to creditors and facilitate the smooth flow of capital into the market. Interfering with such agreements could harm the economy by diminishing the eagerness of both lenders and sureties to engage in such agreements. Any system that restricts the assets of the corporate debtor after the CIRP, particularly for the advantage of personal guarantors, might not be in line with the goals of the IBC. However, considering the direction in which IBC jurisprudence is evolving regarding the rights and obligations of personal guarantors, this stance may be subject to change.

It is evident that personal guarantors bear responsibility to creditors for any outstanding debts owed by the corporate debtor. However, it is equally important to respect the rights of personal guarantors and treat them fairly alongside other members of the company's management. Personal guarantors deserve proper consideration, as the primary goal of the Code is the revival and rehabilitation of the company.

Powers/jurisdiction of NCLT under section 60(5) of IBC, 2016

Sahil Sachin Salve, Student of MNLU, Mumbai

CA Kanak Jani

Introduction

A vital part of the insolvency process is the authority granted to the National Company Law Tribunal (NCLT) by Section 60(5) of the Insolvency and Bankruptcy Code (IBC). This clause, which is essential to the effective and efficient operation of the IBC, gives the NCLT substantial jurisdiction to decide on cases arising out of the corporate insolvency resolution proceedings. Stakeholders in insolvency proceedings must comprehend the nuances and ramifications of Section 60(5), which outlines the NCLT's authority, functions, and duties in managing insolvency cases. This article delves deeply into Section 60(5) of the IBC, examining its application, interpretation, difficulties, and effects on Indian insolvency proceedings.

Let us first get into the interpretational aspect of Section 60(5) of IBC, Section 60(5) states: Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) 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 about the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

On the plain reading of the above provision, it can be understood that under Section 60(5)(a), the NCLT is empowered to consider any application or action filed by or against a corporate debtor or corporate person. Claims made against or on behalf of the company, including its Indian subsidiaries, must likewise be filed under clause (b) with the NCLT[1]. NCLT is granted residual jurisdiction under Section 60(5)(c). The NCLT has broad authority due to residuary jurisdictions, but whereas its jurisdiction should not be extended beyond what is strictly necessary for the purpose of deciding on questions of law or facts or priorities administering relating to the insolvency law. Cases about insolvency proceedings must be submitted to the NCLT, per clause (c). The Supreme Court examined the NCLT's residuary jurisdiction in the ***Essar Steel Ltd. vs. Satish Kumar Gupta*** case[2], citing Section 60(5)(c). According to the precedent, the clause was a

1. Aayush Akar. "Section 60(5) IBC- Is There a Limitation on Jurisdiction of NCLT?" Tax Guru, Tax Guru, 21 Nov. 2021, https://taxguru.in/finance/section-605-ibc-limitation-jurisdiction-nclt.html.
2. *Essar Steel India Ltd. Committee of Creditors vs. Satish Kumar Gupta, (2020) 8 SCC 531.*

residuary jurisdiction of the NCLT, giving the NCLT the power to adjudicate disputes arising out of or connected to the corporate debtor's questions of law in insolvency proceedings][3]. When it comes to applications and proceedings by or against a corporate debtor covered by the Code, the non-obstante clause in this provision, as upheld in the ***Arcelor Mittal*** case, ensures that the NCLT alone has jurisdiction, when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose off such applications or proceedings. The provision's residuary jurisdiction is sufficiently broad to address legal and factual disputes resulting from or connected to the insolvency resolution procedures.

A cursory reading "The nature of the proceedings has to be considered, and it has to be observed whether such proceedings are in the favour of the Corporate Debtor or against the Corporate Debtor." From the above section though would lead one to believe that NCLT has jurisdiction over any matter, to entertain all questions of law and facts, about or associated with the corporate debtor's insolvency but there exists limitations under the same statute and judicial pronouncements which are discussed further in the article.

Section 25(2)(b)

To preserve and protect its assets, Section 25(2)(b) requires the corporate debtor to be represented by its resolution professional before any court, tribunal, arbitration proceedings or other authority against third parties for the benefit of the Corporate Debtor. If the legislature intended for the NCLT to hear any disputes brought by or against the corporate debtor, then the use of phrase under Section 25(2)(b): "judicial, quasi-judicial or arbitration proceedings" would be not required.

Section 14(1)(a)

The institution of lawsuits and the continuation of ongoing legal actions or proceedings against the corporate debtor are prohibited by Section 14(1)(a). The institution or continuation of proceedings for the benefit of the corporate debtor is not prohibited. The resolution professional may be required to continue or initiate suits or legal proceedings before the appropriate for a (suits being instituted before a civil court) to protect and preserve the assets of the corporate debtor under the provisions of Section 25(2)(b).

Section 63

Section 63 stipulates that no civil court or authority can hear a suit or proceedings regarding "any matter over which" the NCLT or the National Company Law Appellate Tribunal ("NCLAT") has jurisdiction under the IBC. This suggests that the legislature may have intended for proceedings to take place that would not fall under the purview of the NCLT or NCLAT[4].

Important Judicial Pronouncements on 60(5)

1. Embassy Property Developments Pvt. Ltd. vs. State of Karnataka[5]

The conflict in the Embassy resulted from the Karnataka government's rejection of a resolution

3. Prarthana Gupta and Tanya Shukla. "Limiting the Jurisdiction of NCLT under Section 60(5) of Insolvency Code: A Jurisprudential Trend." IBC Laws , IBC Laws, 6 Feb. 2023, https://ibclaw.in/limiting-the-jurisdiction-of-nclt-under-section-605-of-insolvency-code-a-jurisprudential-trend-by-prarthana-gupta-and-tanya-shukla/.
4. Ameya Gokhale and Radhika Indapurkar. "Section 60 (5) of the IBC: An Unresolved Conundrum." Global Law Experts, Global Law Experts, 18 Aug. 2021, https://globallawexperts.com/section-60-5-of-the-ibc-an-unresolved-conundrum/.
5. *Embassy Property Developments (P) Ltd. vs. State of Karnataka, (2020) 13 SCC 308.*

professional's proposal to extend the mining lease granted to the corporate debtor, citing the debtor's breach of several lease provisions. The resolution professional applied with the NCLT requesting that the government's decision to reject the proposal for extension be overturned and that the government be instructed to extend the lease. The NCLT's lack of authority to decide cases involving mining leases granted under the "MMDR Act" was one of the arguments used by the Government to oppose the NCLT's granting of any relief. In an order against the government, the NCLT (i) overturned its decision to reject the proposal to extend the mining lease and (ii) mandated that it sign a longer-term supplemental lease with the corporate debtor. The Government filed writ proceedings against the NCLT to challenge this order, and the Karnataka High Court heard the case and issued a stay of the NCLT's order. The Indian Supreme Court heard a challenge to this stay order.

To emphasize that the NCLT's order was null and void, the Karnataka government made the case before the Supreme Court that the NCLT's jurisdiction is limited to judicial matters, while an order made by a statutory or quasi-judicial body under a special enactment like the MMDR Act is covered by public law and cannot be subject to judicial review by the NCLT.

The State of Karnataka owns the land that is the subject of the disputed lease, according to the Supreme Court, and the corporate debtor's relationship with the Government under the terms of the lease is governed by statutes rather than just contracts.

Thus, the Supreme Court ruled that the Government's decision to reject the deemed lease extension fell within the public law domain and that a superior court with the authority to review administrative action is the only forum in which the validity of the Government's decision can be questioned. The NCLT cannot be elevated to the status of a superior court with the authority to judicially review administrative action because it is a special statute created to carry out specific functions.

Interestingly, the Supreme Court chose not to address the question of whether a government or statutory authority's decision would be covered by clause (a) of Section 60(5), which grants the NCLT the authority to consider and decide "any application or proceeding by or against the corporate debtor or corporate person," notwithstanding any provisions to the contrary in currently in effect laws. The NCLT exercised jurisdiction that it did not have, and as a result, the Supreme Court determined that the NCLT lacked the authority to consider an application against the Government. Accordingly, the High Court of Karnataka was justified in considering the writ petition, finding that the NCLT was "coram non judice."

2. *Gujarat UrjaVikas Nigam Limited vs. Amit Gupta & Ors.*[6]

The appellant, Gujarat Urja Vikas Nigam Limited ("GUVNL"), had served notice of termination of the power purchase agreement (the "PPA") it had entered into with the corporate debtor because the corporate debtor's CIRP had started, which amounted to a "event of default" under the terms of the PPA. An injunction was requested to prevent GUVNL from terminating the PPA after this the notice was contested before the NCLT. GUVNL was ordered by the NCLT to refrain from terminating the PPA and to set aside the notice of termination. When the case went to appeal, the NCLAT ruled against GUVNL as well, concluding that the PPA could not be ended based only on the corporate debtor's start of CIRP. The

6. *Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta, (2021) 7 SCC 209.*

case ultimately made its way to the Supreme Court, where two questions were raised: (i) Could disputes arising from contracts like the PPA fall under the jurisdiction of the NCLT and NCLAT under the IBC, and (ii) could GUVNL's ability to terminate the PPA by its terms be governed by the IBC?

The Supreme Court looked into the parameters of the jurisdiction granted to the NCLT by Section 60(5) in order to answer these queries. Curiously, however, the Supreme Court restricted its ruling to clause (c) of the statute. Based on the language found in Section 60(5)(c) and other comparable clauses in other statutes about insolvency, the Supreme Court stated that the NCLT is empowered to decide cases arising exclusively from or connected to the corporate debtor's insolvency.

The Supreme Court ruled that the conflict in this case stemmed exclusively from and was connected to the corporate debtor. The Supreme Court recognised that the PPA was essential to the corporate debtor's CIRP's success and held that the NCLT, acting under Section 60(5)(c), had the authority to prevent GUVNL from ending the PPA. The disagreement was deemed to fall under Section 60(5) since the corporate debtor's insolvency was the only reason for the termination (c). The Supreme Court further noted that in situations where a termination occurs for reasons unrelated to the corporate debtor's insolvency, the NCLT's jurisdiction cannot be used.

3. *Tata Consultancy Services vs. Vishal Ghisulal Jain*[7]

In this case, the question of the NCLT's authority to decide when to terminate a facilities agreement was brought up. It was claimed that the Corporate Debtor's insolvency was the driving force behind the agreement's termination. The court dismissed the appeal because the contractual dispute was outside the purview of NCLT's jurisdiction. After all, complaints about the facilities agreement had been made on multiple occasions long before CIRP was launched.

4. *Renusagar Power Co. Ltd. vs. General Electric Co.*[8]

Supreme Court held that NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. The Court also issued a note of caution to the NCLT and the NCLAT in this regard, holding that they must ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and for a when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.

5. *Power Grid Corporation of India Ltd. vs. Jyoti Structures Ltd.*[9]

The Hon'ble Delhi High Court held that the proceedings that do not endanger, diminish, dissipate, or adversely impact the corporate debtor's assets shall be continued, if initiated by the Corporate Debtor.

6. *K.L. Jute Products Private Limited vs. Tirupti Jute Industries Ltd. & Ors.*[10]

In this matter on the aspect of the Civil Court's jurisdiction, it was held that; Section 63 of the Code bars the jurisdiction of 'Civil Court' or an Authority to entertain any suit or proceedings in respect of any matter over which the 'NCLT' or

7. *Tata Consultancy Services Limited vs. Vishal Ghisulal Jain, 2020 SCC OnLine SC 1254.*
8. *Renusagar Power Co. Ltd. vs. General Electric Co., 1994 Supp (1) SCC 644.*
9. *Power Grid Corporation of India Ltd. vs. Jyoti Structures Ltd., 2017 SCC OnLine Del 12729.*
10. *K. L. Jute Products Private Limited vs. Tirupti Jute Industries Ltd. & Ors.*

'NCLAT' has necessary jurisdiction under the Code. A cumulative reading of Section 63 of the Code and Section 430 of Companies Act, 2013 makes it clear that the 'NCLT' or 'NCLAT' have sole jurisdiction to determine the all issues pertaining to the IBC.

Analysis:

Even though SC via Embassy & Gujarat Urja Case has made the legal standing of Section 60(5)(c) clear there are still some ambiguities over the interpretation of Section 60(5). The meaning and interpretation of clause (a) of the Section, which seems to have far more scope than clause (c) and which, by its very language, gives the NCLT exclusive jurisdiction to entertain and dispose of all applications or proceedings by or against the corporate debtor notwithstanding any other law currently in effect, does not appear to have been taken in absolute terms into consideration by the Supreme Court in the said judgements.

Another important aspect is that Section 424 of the Companies Act, 2013 grants the NCLT and NCLAT the same powers as a civil court under the Code of Civil Procedure, 1908, so they can carry out their duties under the IBC. These powers include the ability to examine evidence and take testimony under oath. It could be argued that the NCLT's powers under Section 60(5) are far more substantive, as indicated in the Embassy and Gujarat Urja judgements, given the scope of Section 424.

Conclusion

In conclusion, Section 60(5) of the Insolvency and Bankruptcy Code (IBC) plays a pivotal role in shaping the jurisdiction and authority of the National Company Law Tribunal (NCLT) concerning corporate insolvency matters. This provision empowers the NCLT to address a wide range of applications, claims, and legal questions related to insolvency proceedings involving corporate debtors. However, while the statute appears comprehensive, some nuances and limitations require careful consideration of situations and circumstances involved. Judicial interpretations, such as those seen in the ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** and ***Gujarat Urja Vikas Nigam Limited vs. Amit Gupta & Ors.*** cases, shed light on the practical application and scope of Section 60(5).

Despite these clarifications, ongoing debates and disputes over the interpretation of various clauses within Section 60(5) persist, highlighting the need for continuous refinement and clarity in insolvency law. Furthermore, the interplay between Section 60(5) of the IBC and resolving of conundrum surrounding its applicability under other enactments and other relevant provisions, such as Section 25(2)(b) and Section 14(1)(a), with simple interpretations, adds complexity to the legal landscape surrounding insolvency proceedings. Ultimately, a comprehensive understanding of Section 60(5) is essential for all stakeholders involved in insolvency matters, as it delineates the contours of the NCLT's authority and responsibilities in ensuring fair and effective corporate insolvency resolution. The test of nexus to insolvency as laid down by the Supreme Court limits the scope of the provision to some extent, the clarity of authority to give directions, as to the ambit of the scope of jurisdiction is still awaited.

Adjudication Dilemma: NCLT vs. Civil Courts - A Clash of Jurisdiction


Pranav Joshi,
GLS University,
Ahmedabad

Mr. Rahul Hakani,
Advocate

Basic Overview of Interplay between Jurisiction of Civil Courts and Company Law Tribunal

When a tribunal is established under a special Act, the Civil Court retains the power to determine if the tribunal has acted within its jurisdiction. However, if the issue clearly falls within the tribunal's specified jurisdiction, the Civil Court cannot re-evaluate the evidence presented to reach a different conclusion from that of the tribunal.

This Article delves into the dynamic world of legal jurisdiction, focusing on the clash between the National Company Law Tribunal (NCLT) and the Civil Courts.

A. Historical Background and Legal Provisions

The Constitution Bench of the Supreme Court, in ***Dulabhai vs. State of M.P. (AIR 1969 SC 78***), established principles to determine if a suit is barred under Section 9 of the Civil Procedure Code, 1908 (CPC). These principles are as follows:

— **Finality of Special Tribunals' Orders**: Civil Court's jurisdiction is excluded if adequate remedy provided. Exceptions: non-compliance with Act's provisions or violation of judicial procedure principles.

— **Express Bar on Court's Jurisdiction**: Without express exclusion of civil courts jurisdiction, there may not be bar on civil courts jurisdiction.

— ***Ultra Vires* Challenge**: Tribunals under Act cannot entertain challenge to constitutional validity of a statute.

— **No Machinery for Tax Refund**: Suit permissible if Act lacks mechanism for refund of excess or illegal tax collection.

— **Correctness of Assessment**: Authorities decide correctness; civil suit barred if authorities' orders final or Act expressly prohibits. Act's scheme relevant for assessment.

B. Limitation of Civil Court Jurisdiction and Companies Act Provisions

The Companies Act, 2013 significantly limits the power of Civil Courts. It creates new forums like the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). These new forums take over many responsibilities from the Company Law Board and the Civil Courts. So, only a few matters related to companies will still be handled by Civil Courts. The knowledge gained from past court decisions will still be helpful in understanding company law. This is because decisions made by the new forums can be appealed all the way to the Supreme Court.

So, the guidance provided by past court decisions will remain important.

C. Civil Suits and Relevant Legal Precedents

Civil suits can be filed on various matters, mentioned here below:—

1. Challenge director election.
2. Challenge director appointment/removal.
3. Implement director election.
4. Direct MD to file accounts.

In ***Vithalrao Narayanrao Patil vs. Maharashtra State Seeds Corporation Ltd. (1990) 68 Com Cases 608 (Bom)***, the Bombay High Court ruled that Civil Courts lack jurisdiction unless specifically conferred by the Central Government, favoring the High Court's jurisdiction under Section 10 of the Companies Act.

However, in ***Santosh Poddar vs. Kamal Kumar Poddar (1992) 3 BCR 310 (Bom-DB)***, the Bombay High Court disagreed, asserting that Civil Courts retain jurisdiction unless expressly ousted by specific provisions of the Companies Act. This view was also upheld in ***Maheshwari (K.K.) vs. Rockhard Building Materials Ltd. (1993) 12 Corpt LA 14 (AP)***.

The case of Vithalrao Narayanrao Patil was followed by the Andhra Pradesh High Court in ***Nizamabad Corn Products P. Ltd. vs. Vasudev Dalia (1992) 3 ALT 303, 305 (AP)***, where it was held that Civil Courts have no jurisdiction in such matters. Similarly, in ***Golden Wine Agencies vs. Venedela Distilleries (P.) Limited (AIR 1984 AP 274)***, the Andhra Pradesh High Court held that relief in the form of temporary mandatory injunction cannot be granted unless the plaintiff demonstrates a clear right and a case of necessity and of extreme hardship.

The distribution of jurisdiction among different bodies under the Companies Act often leads to confusion and litigation. The Kerala High Court emphasized in ***Rajendra Menon (No. 1) vs. Cochin Stock Exchange Ltd. (1990) 69 Com Cases 231 (Ker)*** that unless a matter is explicitly assigned to the Company Court, it cannot claim jurisdiction solely because it relates to a company.

NEED for NCLT & NCLAT

The constitution of NCLT & NCLAT was a step towards improving and easing all the judicial matters relating to the Company law under one roof. The most important benefit isthat the tribunals will act as a single window for settlement of all Company law related disputes effectively. It shall avoid unnecessary multiplicity of proceedings before various authorities or courts. The NCLT and the NCLAT are under a mandate to dispose of cases before them as expeditiously as possible. The speedy disposal of cases will save time, energy and money of the parties. The number of pending cases with High Court is too high and now the matters in respect to compromise, arrangement, amalgamations and winding-up transferred to NCLT. Accordingly, NCLT and the NCLAT will reduce the work of overburdened High Courts.

D. Analysis of Legislative Intent and Role of Legal Precedents

The legislative intent behind the establishment of the NCLT and NCLAT and the limitation of Civil Courts' jurisdiction is to streamline the adjudication process, promote efficiency, and ensure specialized expertise in resolving company-related disputes. The role of legal precedents in shaping the interpretation and application of jurisdictional provisions is crucial in maintaining consistency and clarity in the legal framework.

E. Challenges Faced by NCLT and Civil Courts and Reform Proposals

The challenges faced by NCLT and Civil Courts in adjudicating company-related matters and the impact of the jurisdictional conflicts on the efficiency and effectiveness of the legal system necessitate specific reforms to address these issues. The proposals include:

Clarity in Legislation: The legislature should strive to provide clear and unambiguous provisions regarding the jurisdiction of NCLT and Civil Courts to prevent disputes and streamline the adjudication process.

Harmonization of Procedures: Establishing harmonized procedures between NCLT and Civil Courts can promote consistency and efficiency in handling company-related matters.

Specialized Training: Providing specialized training to judges and legal professionals involved in company law matters can enhance their understanding of jurisdictional nuances and facilitate informed decision-making.

Alternative Dispute Resolution: Encouraging parties to explore alternative dispute resolution mechanisms, such as mediation or arbitration, can offer a quicker and less adversarial means of resolving conflicts outside of traditional court proceedings.

Interpretative Guidance: Continual guidance from higher courts on the interpretation and application of jurisdictional provisions can offer clarity to stakeholders and contribute to the consistent application of law.

Collaboration and Communication: Foster open communication and collaboration between NCLT and Civil Courts to address jurisdictional issues proactively and avoid unnecessary conflicts.

F. Conclusion and Future Outlook

In conclusion, it's crucial to clarify that there isn't a clash between the National Company Law Tribunal (NCLT) and Civil Courts. They each have specific roles outlined by the government. Civil Courts handle matters like director removal, while NCLT deals with various company law disputes.

Implementing proposed strategies can help minimize any potential confusion between NCLT and Civil Courts, making the legal process more efficient for resolving company-related disputes. NCLT and its appellate body, NCLAT, are designed to resolve cases swiftly, within a timeframe of three months, with a possible 90-day extension if needed. This ensures timely resolution, saving time and resources for all parties involved. Additionally, transferring cases to NCLT alleviates the workload on Civil Courts, contributing to a more balanced distribution of judicial responsibilities. Let's strive for harmony among NCLT, NCLAT, and Civil Courts as we navigate corporate law's intricacies, ensuring fairness and efficiency for all parties involved.

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Remedies Available for Home Buyers under Insolvency and Bankruptcy Code and Consumer Protection Act

Riya Pimple,
Student of PGCL,
Mumbai

Shruti Desai,
Advocate

Introduction

In recent years, the real estate sector has experienced a surge in disputes between home buyers and developers, resulting in a notable imbalance in their contractual relationship. To address the concerns of aggrieved home buyers, various legal remedies are available under Indian law, Civil and criminal avenues allow buyers to seek redress and legal action against builders, ensuring their rights are upheld and grievances promptly resolved. Additionally, home buyers may pursue remedies under the Arbitration & Conciliation Act, 1996, if there is an arbitration agreement with the developer. Moreover, since the enactment of the Real Estate Regulation and Development Act, 2016, Real Estate Regulatory Authorities, including the Real Estate Appellate Tribunal, have been established in each state. These bodies enable buyers to claim refunds with interest for delays and impose penalties for violations. Furthermore, the Insolvency and Bankruptcy Code (IBC) 2016 and the Consumer Protection Act (CPA) 2018 offer specific remedies for home buyers, as explored in this article, supported by recent Indian judicial precedents.

Remedies for Homebuyers under Consumer Protection Act

The Consumer Protection Act (CPA) extends remedies for deficiencies in services, unfair trade practices, and misinformation, empowering homebuyers to pursue redressal.

Before passing of the RERA Act, typically a buyer could approach a consumer forum for resolution of disputes and grievances. The erstwhile Consumer Protection Act, 1986 and the present Consumer Protection Act 2019 provide for various redressal forums at different levels - District Commission, State Commission and National Commission. Such Commissions had been set-up with jurisdictions being defined in terms of territorial limits where either the complainant or the opposite party resides or works or where the cause of action has arisen, and the monetary value of the goods or services. Under the Consumer Protection Act, a complaint could be made by the home buyer regarding delay in delivering possession of the property or deficiency in service arising out of using inferior quality of materials and sub-standard products. The home buyers could seek an order directing the developer to refund the money along with interest and compensation including damages caused to the home buyers due to the deficiency in service.

The Supreme Court in ***M/s Amrapali Sapphire Developer Private Limited vs. M/s Amrapali Sapphire Flat Buyers Welfare Association [Civil Appeal No. 10882 of 2016, 10954 of 2016, 10979 of 2016 and 11094 of 2016***.] had approved the jurisdiction in case of an aggrieved group to file its complaint directly before the NCDRC, if the claim exceeds the threshold of one crore rupee.

In terms of the relief granted to aggrieved home-buyers, the relevant Agency may pass an order directing the builder or developer to return the money paid to them along with compensation for any loss or damage caused to the concerned home-buyers due to the negligence of builders or developers. They also have the power to grant punitive damages if deemed fit. Penalties may also be imposed on such erring developers, and they may also be imprisoned for a maximum period of 3 years ***[Section 72 of CPA 2019]***. While dealing with these offenses, the commissions have been given the power to try the case and dispose off them summarily.

In a pivotal legal precedent, the judgment in ***Imperial Structures Limited vs. Surinder Anil Patni and Anr. [Civil Appeal No. 3591 of 2020]*** has firmly established the settled position that homebuyers unequivocally qualify as consumers under the purview of the law. The court's resolute stance emphasized that the existence of an alternative remedy under the Real Estate Regulation and Development Act (RERA) does not preclude homebuyers from pursuing relief under the Consumer Protection Act (CP Act). Effectively dismissing developers' contentions that homebuyers don't fall within the ambit of 'consumers' under the CP Act, the court asserted that possession acquired for investment purposes still squarely fits within the definition. This landmark judgment underscores the coexistence of the CP Act and RERA, providing homebuyers with the crucial flexibility to select the forum that aligns with their preferences. Furthermore, the court's insightful interpretation of RERA provisions, particularly sections 71(1) and 18, serves to fortify the homebuyers' inherent right to initiate proceedings under the CP Act. In essence, this legal precedent not only reinforces the protective intent inherent in consumer laws but also ensures that homebuyers maintain unimpeded access to remedies without undue restrictions imposed by alternative mechanisms. The Consumer Protection Act, as highlighted, stands as a robust safeguard shielding the rights of consumers, including homebuyers, against unfair trade practices and service deficiencies. Homebuyers can leverage the provisions of the CPA to file complaints seeking compensation, rectification of defects, replacement of subpar offerings, and various other remedies, thereby cementing their position as empowered consumers in the real estate landscape.

Remedies for Specific Issues

The CPA provides specific remedies for the various issues faced by homebuyers:

1. ***Delayed Possession:*** In the realm of real estate, the delayed possession of properties by developers has become a pervasive issue, causing significant distress to homebuyers. This problem is exacerbated by the financial burdens borne by homebuyers, such as increased expenses on rent, EMI payments, and ancillary costs. Fortunately, the Consumer Protection Act (CPA) provides a robust framework for redressal. Section 2(11) of the CPA defines deficiency in service, encompassing the failure to adhere to prescribed service standards. Section 39 empowers the District Commission to issue orders in favor of consumers when their complaints about defective goods or deficient services are found valid. A landmark case, ***Sanjay Gupta vs. Three C Shelters [2020 SCC OnLine NCDRC 178***], underscores the significance of consumer protection. Despite the developer's claims of a breach due to payment cessation, the court ruled in favor of the homebuyers facing a 42-month delay, considering the delay "inordinate" and ordering a substantial refund of nearly 12 crores. This case sets a precedent, affirming the legal recourse available to homebuyers suffering from unjustifiable delays in property possession.

2. ***Structural Defects:*** Homebuyers often encounter structural defects in their newly acquired properties, ranging from cracks in walls to leaks in roofs and faulty plumbing. These issues not only compromise the safety and livability of the property but also necessitate additional expenditures for repairs and

maintenance. Fortunately, the Consumer Protection Act (CPA) provides recourse for aggrieved homebuyers. Section 2(11) of the CPA defines deficiency in service to encompass the "failure to maintain or take adequate precautions and safeguard the health and safety of the consumer." Additionally, Section 39 empowers the district commission to compel the defaulting party to rectify or compensate for losses incurred by the consumer. A notable legal precedent, ***Raj Caprihan & Anr vs. Tata Housing Development Company Limited,*** exemplifies the effectiveness of these consumer protection provisions. In this case, the complainants faced deficiencies in the apartment offered as an alternative to their initially booked villa due to project delays. Despite the builder's insistence on full payment before addressing the defects, the National Consumer Disputes Redressal Commission ruled in favor of the complainants. The commission ordered Tata Housing to refund the money with interest, provide compensation for mental agony and harassment, and cover litigation costs, emphasizing the significance of consumer protection in addressing structural defects and ensuring fair compensation for homebuyers.

3. ***Causing bodily injury due to poor construction***

Homebuyers wield the power to seek justice when substandard construction practices result in injuries, offering not just recompense for the physical and emotional toll endured but also acting as a deterrent against future negligent practices. The responsibility squarely rests on developers and builders to adhere rigorously to safety standards, ensuring the well-being of those who will inhabit these structures. A pivotal legal precedent reinforcing this principle is found in the case of ***M/s Shreenath Corp. & Ors. vs. Consumer Education & Research Society & Ors [(2014) 8 SCC 657***]. In this case, a section of a building constructed by the developers collapsed due to poor construction, leading to fatalities and injuries among residents. The National Consumer Commission mandated the builder to provide compensation, which prompted an appeal by the builder. While complying with the law by depositing ₹ 35,000, the builder challenged a conditional stay on the compensation order before the Supreme Court. The Court, in its wisdom, clarified that the pre-appeal deposit and the interim order deposit serve distinct purposes. Upholding the Commission's jurisdiction, the Supreme Court affirmed the additional condition, considering the case's merits and the potential harm to residents, thereby underscoring the legal system's commitment to holding accountable those responsible for substandard construction practices.

4. ***Breach of obligation on behalf of the builder:*** In instances where builders fail to meet their obligations, homebuyers, as consumers, possess the right to seek remedies such as specific performance, claiming damages, or approaching redressal forums. A landmark case exemplifying this principle is ***Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd. [(2008) 10 SCC 345***]. In this case, a collaborative effort between the complainant and a builder for an apartment building led to construction shortcomings and plan violations. When the complainant sought rectification, the question arose about the builder's breach of obligations. The Supreme Court ruled affirmatively, asserting the maintainability of such complaints. It established that owners entrusting construction have the right to complain about deficiencies, and apartment purchasers similarly have the right to raise concerns about construction, delivery, or amenities. Importantly, the court emphasized that a builder breaching their obligations provides the owner with the right to seek specific performance, claim damages, or approach consumer courts for appropriate

relief. This case serves as a legal precedent, reinforcing the rights of homebuyers and the avenues available to them for seeking redress when faced with breaches of obligation by builders.

Can a Buyer Approach both Consumer Forum as well as Authority Established under RERA?

Homebuyers encountering issues with real estate transactions can concurrently approach both the Consumer Forum and the regulatory authority established under the Real Estate (Regulation and Development) Act (RERA). The Supreme Court, in the case of, ***Secretary Thirumurugan Cooperative Agricultural Credit Society vs. M. Lalitha***, clarified that the remedies available under the Consumer Protection Act are supplementary and not derogatory to other existing laws. Similarly, Section 18 of the RERA Act explicitly states that an allottee's right to seek a refund is "without prejudice to any other remedy available to him." The jurisdictional bar under Section 79 of the RERA Act doesn't extend to Consumer Forums, as established in ***Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee***. In ***Pioneer Urban Land and Infrastructure Ltd. & Anr. vs. Union of India & Anr.,*** the court affirmed that remedies under Consumer Protection Act, RERA, and the Insolvency and Bankruptcy Code can be concurrently availed. In ***M/s. Imperia Structures Ltd. vs. Anil Patni & Anr.***, the Apex Court clarified that Section 79 of the RERA Act doesn't prohibit Consumer Forums from entertaining complaints. The court underscored that consumers have the choice to pursue remedies under either the Consumer Protection Act or the RERA Act. Even with the enactment of the Consumer Protection Act, 2019, the provisions remain supplementary to other laws, reinforcing the idea that homebuyers can access remedies under multiple legislations without derogation. This legislative framework ensures that consumers have the flexibility to choose the most suitable avenue for seeking redress, preserving their rights in complex real estate matters.

Remedies under the Insolvency and Bankruptcy Code (IBC)

Homebuyers as financial creditors

The Jaypee Infratech case and subsequent legal developments have significantly impacted the rights of homebuyers, recognizing their status as financial creditors under the Insolvency and Bankruptcy Code (IBC). In the ***Chitra Sharma vs. Union of India (2019)*** judgment, the Supreme Court acknowledged the financial investments made by homebuyers and granted them a say in the insolvency proceedings of real estate companies. Subsequently, the 2018 amendment to the IBC explicitly included homebuyers as financial creditors, emphasizing their entitlement to protection under the law.

The ***Pioneer Urban Land and Infrastructure Ltd. & Anr. vs. Union of India & Ors. (2019)*** case further upheld the constitutional validity of this amendment, reinforcing the court's recognition that homebuyers are deserving of financial creditor status due to their significant investments.

In the landmark ***Bikram Chatterji vs. U.O.I.*** case, the Supreme Court addressed the plight of homebuyers of the Amrapali Group, declaring them victims of collusion among statutory authorities, bankers, and the developer. Recognizing the unique challenges faced by homebuyers, the court directed the National Buildings Construction Corporation (NBCC) to complete the remaining projects and canceled the registration of Amrapali Group under the Real Estate (Regulation and Development) Act (RERA).

Further, in the case of Jaypee Infratech Ltd., homebuyers sought protection against resolution proceedings initiated by IDBI Bank. The court, acknowledging the vulnerable position of homebuyers, directed the Interim Resolution Professional (IRP) to consider their claims, showcasing the judiciary's commitment to protecting the interests of homebuyers in insolvency resolution processes.

Homebuyers : Secured or Unsecured financial creditors?

The distinction between secured and unsecured financial creditors in the context of homebuyers is a crucial aspect that demands careful consideration. The Insolvency and Bankruptcy Code (IBC) defines a secured creditor as one in whose favor a security interest is created, encompassing rights, titles, or interests for the security of debt or loan repayment. This includes various forms of security such as mortgage, charge, hypothecation, assignment, or encumbrance on a property.

In the case of ***Flat Buyers Association vs. Umang Realtech Pvt. Ltd.,*** the National Company Law Appellate Tribunal (NCLAT) emphasized that the assets, constituting infrastructure or apartments, created for homebuyers by the Corporate Debtor (CD), serve as security for secured creditors. However, the NCLAT's crucial observation highlights that these assets should not be distributed among secured creditors like banks and financial institutions. Instead, the assets are liable to be transferred to homebuyers, who, as unsecured creditors, have a rightful claim over the flats and apartments. This perspective has been reaffirmed in subsequent decisions, including ***Rajesh Goyal vs. Babita Gupta***.

The Supreme Court's ruling in ***Union Bank of India vs. Rajasthan Real Estate Regulatory Authority*** further underlines the importance of protecting homebuyers' interests. The court affirmed that if a bank, as a secured creditor under the SARFAESI Act, takes possession of a project due to the promoter's default, complaints against the bank can be filed under the Real Estate (Regulation and Development) Act (RERA). The court rightly prioritized RERA over recovery proceedings under SARFAESI, emphasizing the supremacy of RERA in case of conflicts.

Addressing the scenario where homebuyers often secure loans for flat purchases and mortgage their flats to lending banks, it's crucial to recognize that although homebuyers are generally considered unsecured creditors, their interests must be safeguarded. This necessitates ongoing judicial interpretations that favor the protection of homebuyers' rights within the framework of different statutes. The judiciary's proactive stance in this regard ensures a balanced approach that considers the unique position of homebuyers in real estate transactions and financing arrangements.

What are the steps for seeking remedy as a homebuyer under Insolvency and Bankruptcy code?

1. Initiation of Insolvency Proceedings

The legal landscape for homebuyers seeking remedies through insolvency proceedings underwent significant changes with the amendments to the Insolvency and Bankruptcy Code (IBC). The 2018 Amendment categorized homebuyers as financial creditors, granting them the authority to file insolvency applications against defaulting builder companies. However, the 2020 Amendment introduced a crucial alteration, mandating that homebuyers, to collectively initiate the corporate insolvency process, must file applications jointly, involving either a minimum of 100 homebuyers or at least 10% of the homebuyers within the same real estate project. The Supreme Court, in the case of ***Manish Kumar vs. Union of India***, upheld the constitutionality of the 2020 Amendment, solidifying the requirement for a minimum of 10% or at least 100 homebuyers to pool together for filing insolvency applications. This means that, for instance, in a real estate project with 1500 allottees, a minimum of 100 allottees must unite to file an insolvency application. Similarly, in a project with 80 allottees, a minimum of 8 allottees is required to jointly initiate insolvency proceedings. Homebuyers, now classified as financial creditors, must follow this collective approach for insolvency initiation. The process involves filing a petition before the National Company Law Tribunal (NCLT), providing details of the debt, default, and grounds for insolvency. This shift underscores the legal complexities homebuyers navigate while seeking redress through the evolving framework of the IBC.

2. Appointment of Insolvency Resolution Professional (IRP)

In the context of homebuyers seeking remedies under the Insolvency and Bankruptcy Code (IBC), the appointment of an Insolvency Resolution Professional (IRP) holds paramount significance. When a real estate developer, designated as the corporate debtor, enters the Corporate Insolvency Resolution Process (CIRP), the control of the board of directors is relinquished. Instead, an independent IRP is appointed to oversee and manage the insolvency resolution process, ensuring that the management no longer exercises control over the company's activities. This transition is crucial from the homebuyers' perspective as it marks the beginning of a comprehensive evaluation of the debtor's financial position by the IRP. The IRP plays a pivotal role in safeguarding the interests of homebuyers by meticulously assessing the debtor's assets and exploring viable restructuring options. Throughout the CIRP, the IRP works towards achieving a resolution that maximizes the value of the debtor's assets, ultimately benefiting the homebuyers and other creditors. Section 12 of the IBC outlines the procedural aspects of appointing an IRP, underscoring its significance in facilitating a fair and effective insolvency resolution process, ensuring that the interests of homebuyers are duly considered and protected.

3. The moratorium period

A moratorium, essentially signifying a temporary suspension of activities, plays a pivotal role in the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC). Section 14 of the IBC imposes a prohibition on various actions against the corporate debtor (CD) during the moratorium period. This encompasses the institution of suits, continuation of pending suits, execution of judgments, transferring or disposing of assets, and actions related to the recovery or enforcement of security interest. The moratorium creates a serene period for the resolution professional to take charge of the CD's business and focus on activities essential for the insolvency process, shielding it from disruptions caused by litigations. However, the moratorium ceases to have effect upon the completion of the CIRP, marked by the approval of the resolution plan or the order of liquidation. It is during the liquidation phase that the CD may initiate legal proceedings through the liquidator or continue with litigations, subject to prior approval from the Tribunal. The interpretation of moratorium provisions, particularly regarding the initiation and continuation of legal proceedings during CIRP or liquidation, has been a subject of some divergence in legal perspectives, highlighting the need for clarity in this crucial aspect of insolvency proceedings.

4. Verification and analysis of claims

Upon the commencement of the Corporate Insolvency Resolution Process (CIRP), the resolution professional's foremost duty, as mandated by Section 18 of the Insolvency and Bankruptcy Code (IBC), is to collate and verify the claims of creditors. This step is indispensable for the constitution of the Committee of Creditors (CoC), and the ensuing deliberations and decisions within the CIRP heavily rely on the accuracy of claim verification. The procedural aspects of claim filing underwent significant amendments, particularly through the 2018 and 2023 Amendments to the CIRP Regulations. Prior to the 2018 Amendment, the timelines for submitting claims were relatively lax, allowing creditors to submit claims until the approval of a resolution plan by the Committee. However, the subsequent amendments aimed to introduce stricter timelines to avoid delays caused by repeated revisions to incorporate belated claims. The 2023 Amendment established a concrete time frame, eliminating Regulation 12(2) and restricting claim filing up to the date of the issue of the resolution plan request under Regulation 36-B or ninety days from the insolvency commencement date, whichever is later. This article navigates through the legal debates arising from these amendments, primarily focusing on the nature of prescribed timelines, the power of the adjudicating authority and resolution professionals to condone delays, and the permissible extent of such condonation. The conflicting perspectives on the nature of timelines – whether mandatory or directory – have been addressed by various judicial authorities, with divergent opinions contributing to a lack of clarity in the legal landscape. Despite the directory nature of these timelines, the practical implications have led to debates on the power of resolution professionals to reject claims solely based on delay. Judicial precedents have held that the timeline is a guiding factor, allowing for flexibility in exceptional circumstances, but the 2023 Amendment signifies a concrete attempt to streamline the process by eliminating room for belated claims and, consequently, reducing the need for subsequent condonation applications.

5. Resolution Plan and acceptance of resolution plan

A resolution plan, as stipulated within the context of insolvency proceedings, constitutes a comprehensive proposal presented by a resolution applicant with the intent of facilitating the insolvency resolution of the corporate debtor while ensuring its continued operation. This plan possesses the flexibility to incorporate various restructuring measures, such as mergers, amalgamations, or demergers, thereby aiming to reorganize the corporate debtor's structure. The resolution applicant, duly confirming their eligibility under Section 29A, is entitled to submit this plan to the resolution professional, relying on the information memorandum. Subsequently, the resolution professional is mandated to lay forth such resolution plans for the scrutiny and approval of the Committee of Creditors, accompanied by the requisite affidavit affirming the eligibility of the submitting party. The Committee of Creditors, wielding significant decision-making authority, may sanction a resolution plan through a vote garnering no less than 66% of the voting share of financial creditors. This approval process is contingent upon a meticulous assessment of the plan's feasibility, viability, and proposed distribution mechanism, which duly considers the hierarchy of creditors, inclusive of the prioritization and value of security interest held by secured creditors. It is imperative to note that any submission under Section 29A by an ineligible entity is expressly prohibited.

6. Liquidation

In the event that attempts to revive a business entity through a resolution plan prove unsuccessful, the subsequent course of action is liquidation. Notably, the preamble of the Insolvency and Bankruptcy Code (IBC) does not explicitly mention liquidation, emphasizing it as a measure of last resort when viable resolution plans are absent or deemed inadequate. During the liquidation process, the liquidator possesses the authority to sell the corporate debtor's business as a going concern. The issuance of a liquidation order is contingent upon various scenarios, including the non-receipt or rejection of a resolution plan within the specified timeframe, the approval of the Committee of Creditors (CoC) to liquidate the corporate debtor, or the corporate debtor's opposition to an approved resolution plan.Upon the Adjudicating Authority (AA) issuing a liquidation order, the resolution professional initially appointed for the corporate insolvency resolution process assumes the role of the liquidator. It's noteworthy that the liquidator's eligibility is dictated by the provisions of the IBC. The liquidator is entrusted with the responsibilities throughout the liquidation process, ensuring its orderly and lawful conclusion. This role can be maintained or altered by the Adjudicating Authority based on the evolving circumstances under the IBC. The liquidation phase serves as a crucial juncture where the resolution journey transitions to a meticulous winding down of the corporate entity.

Liquidation and consequences to homebuyers

In the unfortunate event of the insolvency process of a real estate company concluding unsuccessfully and leading to liquidation, homebuyers find themselves in a challenging position within the complex hierarchy outlined in Section 53 of the Insolvency and Bankruptcy Code (IBC). Currently categorized as unsecured financial creditors, homebuyers fall under Section 53(d) of the IBC, placing them at a disadvantageous fourth position in the waterfall mechanism. This prioritization means that, after satisfying insolvency process costs, dues of secured creditors, and obligations to workmen and employees, homebuyers' claims are addressed, emphasizing the potential financial setback for this group.

Given the unfavorable position of homebuyers in the liquidation process, strategic and collective decision-making within the committee of creditors becomes imperative to navigate these challenges effectively. The careful exercise of their role in decision-making processes can significantly impact the outcomes for homebuyers, making it crucial for them to collaborate and endeavor collectively to avert the undesired outcome of liquidation.

Section 53 of the IBC delineates the order of priority for the distribution of proceeds from the sale of liquidation assets among stakeholders, aptly termed the "Waterfall Mechanism." This hierarchical structure underscores the importance of understanding the nuances within the mechanism. CIRP costs take precedence, followed by the parallel satisfaction of debts owed to secured creditors and workmen. Subsequently, dues to non-workmen employees and debts are addressed, marking the third tier. Unsecured creditors, including homebuyers, assume a lower priority in the waterfall. Further down the line are dues to the Central Government and State Government, spanning two years preceding the Liquidation Commencement Date. The hierarchy concludes with preference shareholders and equity shareholders, each accorded the least priority. Navigating this complex prioritization underscores the need for a concerted effort by homebuyers to advocate for their interests and contribute actively to the decision-making processes within the insolvency proceedings.

The journey of homebuyers within the framework of the Insolvency and Bankruptcy Code (IBC) is marked by notable legal empowerment as financial creditors, yet it is riddled with challenges that demand a nuanced understanding of the hurdles they face in reclaiming their investments and dream homes. Homebuyers face a limitation on their active participation as it is contingent upon the selection of a competent Authorised Representative (AR), adding complexity to the voting and selection process within the Committee of Creditors (CoC). The 2020 amendment, while strengthening collective power, introduces challenges in initiating collective action, necessitating a substantial number of participants, a criterion that poses hurdles for smaller projects or regions with fewer buyers. Formal submission of claims through Form CA becomes a bureaucratic hurdle, demanding a comprehensive set of documents and potentially hindering the claim verification process. The IBC's stipulated timeframe of 330 days is often exceeded, introducing financial and emotional strain on homebuyers. Despite the IBC's intent to revive debtor companies, the looming risk of liquidation remains a formidable challenge, emphasizing the need for strategic engagement and persistent efforts by homebuyers to influence decisions within the CoC. Proactive strategies, such as seeking legal counsel and forming support groups, face challenges of limited accessibility to legal expertise and coordination difficulties. Recognizing the evolution of the homebuyer's status from unsecured creditors to financial creditors, the legislature amended the IBC to provide recognition to homebuyers. Presently, homebuyers are entitled to a portion of the sale proceeds under the liquidation process, permitted to initiate insolvency resolution, participate in the CoC, and vote during the corporate insolvency resolution process, reflecting a substantial legal shift.

Conclusion

In conclusion, the home buying journey in India poses challenges, but legal avenues exist to safeguard the rights of homebuyers. Both the Consumer Protection Act (CPA) and the Insolvency and Bankruptcy Code (IBC) offer valuable tools for addressing issues with builders and developers. However, it's crucial to recognize the distinct features and limitations of each.

The IBC provides a meaningful recourse for dealing with insolvent builders, but it remains a distant remedy for common grievances like delays or minor defects. The lengthy and complex process of the IBC might prioritize other creditors over homebuyers, making it less suitable for addressing everyday concerns. On the other hand, the CPA offers a quicker and more direct route for homebuyers to protect their rights, providing remedies such as compensation or repairs.

It's essential to understand that the protection provided by the IBC is limited and only becomes relevant when a company faces insolvency or bankruptcy. This makes it unsuitable for addressing most cases and can only be utilized by homebuyers when the concerned real estate company is in a dire financial position, unable to continue or complete the project.

Until the adjudicating mechanism under the Real Estate Regulation and Development Act (RERA) is fully established by each State Government, homebuyers and potential buyers are best served by seeking relief from the agencies under the CPA. This strategic approach ensures a more immediate and effective means of addressing grievances and securing the rights of homebuyers in the absence of a comprehensive regulatory framework.

Unraveling the Legality of Ipso Facto Clauses in Insolvency Proceedings: A Comparative Analysis

*Soham Patil,
Student of MNLU,
Mumbai*

CS Raj Kapadia

1. Ipso facto Clauses

An "ipso facto clause" grants one party the authority to adjust or terminate a contract or demand accelerated payment if specific events unfold, such as default by the other party or qualification for insolvency proceedings. In essence, this clause offers creditors an automatic recourse, sparing them the time and expenses associated with legal enforcement proceedings. It serves as a protective measure for lenders extending financing to businesses, stipulating reasons for loan repayment demands. The term "ipso facto," literally translating to "by the fact itself," indicates that certain actions are triggered automatically based on the occurrence of particular circumstances as carved out in the contract.

When evaluating whether to curtail the effectiveness or enforceability of ipso facto clauses during insolvency proceedings, several crucial considerations emerge. It is imperative to grasp the underlying rationale for intervening in parties' contractual autonomy, balancing the explicit objectives of provisions that render these clauses unenforceable, such as facilitating restructuring or ensuring liquidation as a going concern. Striking a balance between the individual and collective interests of debtors and creditors is paramount.

Moreover, even after opting to restrict the enforceability of ipso facto clauses, policymakers confront further decisions. These may involve delineating the scope of unenforceability based on contract type, implementing safeguards for affected creditors, and granting exemptions for specific financial or other contracts aligned with broader public policy goals. Determining the precise juncture at which an ipso facto clause becomes unenforceable—whether upon the debtor's insolvency as legislatively defined or the initiation of proceedings—is integral to this deliberation. Attention must also be given to any incentive effects stemming from limiting creditor rights at specific junctures or events, such as the commencement of legal proceedings.

Thirdly, ensuring clarity within the actual provision is imperative. The certainty, transparency, and predictability for contracting parties—both pre-insolvency and during proceedings—hinge on well-articulated ipso facto clauses. Lastly, the ramifications across borders warrant careful consideration. Diverse policy choices regarding ipso facto clauses across jurisdictions may impact commercial relations. A thorough understanding of how such provisions interact and their potential effects on cross-border cooperation and comity is necessary.

2. Indian Legal Framework regarding Ipso Facto Clauses

The validity of an ipso facto clause within a Power Purchase Agreement (PPA) was the central concern before the Supreme Court of India in a case involving Gujarat Urja Vikas Nigam Ltd. (the appellant) and the Corporate Debtor (CD), Astonfield Solar (Gujarat) Private Limited. This contentious clause granted the appellant the unilateral right to terminate the PPA solely based on the CD's insolvency.

The appellant, successor to the Gujarat Electricity Board, had entered into the PPA in April 2010, committing to purchase all power generated by the CD. However, natural disasters severely hampered the power plant's capacity, causing the CD to default on its obligations.

Subsequently, A CIRP Application was filed by the Corporate Debtor under Section 10 of the IBC, 2016. The Application was accepted towards the end of 2018 and as the CIRP was initiated, moratorium was imposed. The insolvency resolution process began, and a moratorium was imposed after the application was accepted in November 2018. The ipso facto clause in the PPA was invoked by the creditor (appellant in this case) in May 2019, pursuant to the initiation of the CIRP.

The CD contested this action, leading to the NCLT granting interim protection. In its final ruling, the NCLT barred the appellant from terminating the PPA, asserting that certain clauses in the agreement contradicted the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and thus held no sway. The National Company Law Appellate Tribunal (NCLAT) later dismissed the appeal stemming from the NCLT's decision.

The Supreme Court of India ultimately decreed that the Power Purchase Agreement (PPA) between the appellant and the Corporate Debtor (CD) should remain intact. This agreement was the primary contract governing the supply of electricity generated by the CD. Its termination would inevitably lead to the liquidation and corporate demise of the CD. Adding a safeguard to this pronouncement, the Court has also held that such clauses should continue operating only if they are central to the successful conduct of the insolvency proceedings.

The doctrine of pro-corporate debtor as a going concern bias was introduced, emphasizing the importance of keeping the corporate debtor operational during insolvency proceedings to maximize asset value and balance stakeholder interests. The invalidation of ipso facto clauses was deemed crucial to achieve these objectives, as such clauses could hinder restructuring efforts and diminish the chances of successful recovery. Various legal perspectives from international jurisdictions were examined, highlighting the need for exceptions and safeguards to prevent abuse of termination rights. Recommendations included treating ipso facto clauses as invalid with retrospective effect and empowering adjudicating authorities to decide on the validity of such clauses based on certain criteria. The conclusion underscored the importance of invalidating ipso facto clauses to improve India's ease of doing business rankings and emphasized the need for a clarificatory amendment to the I&B Code to achieve these goals effectively.

Previously, under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), contracts could be suspended during insolvency. However, the ***Swiss Ribbons (P.) Ltd. vs. Union of India*** judgment clarified that the Insolvency and Bankruptcy Code, 2016 (IBC) was instituted due to the failures of the SICA regime. Since the IBC does not explicitly address ipso facto clauses, their applicability cannot be inferred through interpretation.

The Board for Financial Reconstruction (BIFR) suggested that contracts with automatic termination provisions upon insolvency filing should be stayed during insolvency proceedings. However, this recommendation was not integrated in the IBC, 2016 and hence, there is no clarity on this issue to date.

Under Section 14(2) of the IBC, it is guaranteed that during the moratorium period, the provision of essential goods and services to the Corporate Debtor (CD) cannot be terminated. Consequently, ipso facto clauses are rendered inapplicable to suppliers offering essential goods and services and critical services under Section 14(2A). This was discussed in depth in the Go First Section 10 CIRP Case.

Furthermore, the Insolvency and Bankruptcy Code (Amendment) Act, 2020 clarified that licenses, permits, registrations, quotas, concessions, etc. given by the Government (both State and Centre) shall not be terminated or suspended due to the insolvency of the CD. This is subject to the condition that there is no default in payment of ongoing dues arising from the use of the said permits. This amendment aims to preserve the CD as a 'going concern' during the moratorium, preventing depletion of its assets and allowing it sufficient 'breathing space' to manage its affairs and continue business. While the legal stance is clear concerning government grants and permits, ambiguity persists regarding private contracts.

3. Differences in Rationale

United States

Within this jurisdiction, many contractual provisions, known as ipso facto clauses, are rendered unenforceable. The rationale behind nullifying these clauses is twofold:

firstly, to prevent creditors from gaining unfair advantages over debtors by circumventing bankruptcy proceedings pre-petition, and secondly, to deter creditors from attaining preferential treatment over other equally positioned creditors. Despite the limited enforceability of ipso facto clauses, they persist in contracts. In the United States of America, ipso facto clauses are generally unenforceable in executory contracts or unexpired leases, except for certain exceptional contracts like swap agreements and securities.

Canada

Canada's insolvency laws pursue various overarching remedial objectives that reflect the broad and potentially catastrophic consequences of insolvency. The objective of both the Bankruptcy and Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA) is to enable the prompt, effective, and unbiased resolution of a debtor's insolvency, safeguard and optimize the worth of their assets, guarantee equitable handling of claims against the debtor, uphold public interest, and in cases of commercial insolvency, strike a balance between the expenses and advantages of restructuring or liquidation.

Singapore

Ipso facto clauses pose substantial hurdles for firms aiming to reorganize their debts. The cessation of vital contracts can greatly hinder the company's operations, worsening its financial strain and impeding restructuring endeavors. Hence, operation of such ipso facto causes is restricted by several safeguards. In the Singaporean legal framework, the ipso facto clauses are suspensory in nature and they do not terminate contracts outright. However, counterparties retain the ability to terminate contracts on grounds other than insolvency, even with the presence of ipso facto clauses.

4. Safeguards/Interests of Third Parties

Singapore

The ipso facto system in Singapore leads to unintended outcomes, as emphasized in the 2013 findings of the Insolvency Law Review Committee. These consequences encompass unfair treatment of contractual partners, the potential for insolvency among small suppliers and customers, and constraints on contractual autonomy. Despite these drawbacks, restrictions on ipso facto clauses were eventually introduced. Under this regime, counterparties may find themselves obligated to fulfill contractual obligations without the prospect of receiving payment, especially in contracts with exclusivity provisions or requiring periodic payments to distressed companies. However, relief may be available under Section 440(1), allowing parties to effectively enforce ipso facto clauses triggered by factors other than the company's insolvency or commencement of restructuring.

Canada

The Bankruptcy and Insolvency Act (BIA) allows for relief from ipso facto clause limitations if the operation of these clauses would likely cause significant financial hardship to the party seeking relief. Additionally, the court may modify these limitations upon application by a party to an agreement or a public utility. These provisions aim to enhance the likelihood of successful restructuring by prohibiting ipso facto clause enforcement and permitting debtors to disclaim and assign contracts while treating counterparties fairly.

United Kingdom

Introduced by the Corporate Insolvency and Governance Act of 2020, Section 233B of the Insolvency Act, 1986, renders ipso facto clauses void if the terminating party provides goods and services to the corporate debtor, unless the termination results in "financial hardship" for that party. Conversely, these clauses remain enforceable when the corporate debtor provides essential goods and services.

5. Exempted Contracts and Exceptions

United States

Historically, ipso facto clauses were enforceable until the Bankruptcy Code was codified in 1979. Despite their limited enforceability, they continue to be prevalent in contracts. Moreover, the Bankruptcy Code's rules against ipso facto clause enforceability only apply if a bankruptcy case is actually filed, allowing parties to rely on such clauses if no bankruptcy filing occurs. However, if the terminated party later files for bankruptcy, the pre-bankruptcy filing termination could potentially be invalidated by the bankruptcy court.

Exception for Personal Services

In accordance with Section 365(e)(2) of the Bankruptcy Code, in conjunction with Section 365(c)(1), ipso facto clauses may be enforced if permitted by law for a party to withhold acceptance or performance to the trustee or an assignee of such a contract or lease, unless otherwise agreed. In essence, if the law prohibits the assignment of an intellectual property (IP) license without the consent of the other party, then that party can utilize the ipso facto clause. This exception primarily concerns contracts involving unique personal services provided by individuals possessing specialized knowledge, judgment, taste, skill, or ability – commonly known as the "personal services" exception. These contracts entail performances by debtors that are so distinctive that expecting another party to perform them would be unreasonable. For instance, this exception would be applicable if the debtor were a renowned singer, not able to perform, i.e. to provide his personal services.

Singapore

In Singapore, Section 440(4) provides relief from ipso facto restrictions, allowing a counterparty to seek relief from the court based on "significant financial hardship."

Section 440(5) delineates specific categories of contracts, including financial contracts, ship charters, and government contracts, which are exempted from the ipso facto framework. The delineation of "financial contracts" is provided in the Insolvency, Restructuring, and Dissolution (Prescribed Contracts under Section 440) Regulations, 2020.

Section 440(6) carves out the specific proceedings to which restrictions under Section 440 regarding ipso facto clauses apply. It's important to note that these restrictions don't apply if the distressed company undergoes insolvency proceedings unrelated to its rehabilitation, such as winding up and receivership.

Canada-UK

The narrow application of the prohibition on ipso facto clauses leads to a wider safe harbor akin to exemptions found in Canadian or UK legislation. Financial contracts, as expansively outlined in Section 104 of the Insolvency Act, are excluded from the insolvency practitioner's authority to assume or reject and consequently fall outside the purview of the ban safeguarding this authority. This same reasoning extends to other categories of executory contracts automatically terminated or assumed by legal mandate, encompassing real estate leases or rental agreements, employment contracts, loan agreements, and even contracts not traditionally categorized as executory contracts.

Germany

German insolvency case law imposes a very narrow scoped ban on such ipso facto clauses, reflecting a legislative decision not to expressly prohibit such clauses. Many types of contracts still raise legal questions regarding the applicability of ipso facto clauses. Today, German legislators rely on courts to further clarify the scope of the ban, which may lead to greater certainty over time.

European Union

The ipso facto prohibition within the EU specifically impacts the entitlements of counterparties engaged in executory contracts, leaving ipso facto clauses in other contractual agreements unaffected. Executory contracts, broadly defined as agreements where both parties retain outstanding obligations during the suspension of individual enforcement actions, encompass financial contracts within this scope. Article 7(6) of the EU Directive grants signatory States the discretion to exempt netting arrangements, from the suspension of individual enforcement actions, provided they are upheld under national insolvency legislation. However, the EU Directive does not provide the same level of exemption for financial contracts as seen in the UK, German, and Canadian provisions or the US Bankruptcy Code. Additionally, the Directive's provisions regarding debtors primarily concern financial institutions, rather than counterparties that are financial institutions.

6. Positives of the Indian Legal Framework

India's Flexible Legal Framework

India's legal system, rooted in common law traditions and supplemented by statutory laws, provides a flexible framework for interpreting and adapting insolvency laws. The Insolvency and Bankruptcy Code, 2016 (IBC), represents a significant overhaul of India's insolvency regime, consolidating various laws and regulations into a single legislation. This consolidation enables greater clarity and coherence in addressing insolvency issues.

The IBC incorporates principles of fairness, transparency, and efficiency, allowing for the interpretation and application of laws to evolve in response to changing economic and legal landscapes. Courts in India have demonstrated a willingness to interpret and apply insolvency laws dynamically, taking into account the unique circumstances of each case. This flexibility enables courts to tailor solutions to address specific challenges faced by debtors, creditors, and other stakeholders in insolvency proceedings.

Judicial Recognition of Conflicting Interests

India's judiciary has demonstrated a nuanced understanding of the complex and often competing interests at play in insolvency proceedings. Recognizing the need to balance the rights of debtors, creditors, and other stakeholders, courts have adopted a pragmatic approach to resolving insolvency disputes.

In landmark judgments such as the Swiss Ribbons judgement, the Supreme Court of India emphasized the importance of balancing the interests of all stakeholders in insolvency proceedings. The court determined that the primary aim of the IBC is to foster the resolution of distressed assets in a manner that optimizes asset value and safeguards the continuity of viable businesses. This recognition of conflicting interests underscores the judiciary's commitment to ensuring fairness and equity in insolvency proceedings.

Furthermore, courts have relied on principles of equity and justice to craft innovative solutions to complex insolvency issues.49 For example, in cases involving the enforcement of ipso facto clauses, courts have considered the unique circumstances of each case and have applied the law in a manner that protects the rights of all parties involved. This approach reflects the judiciary's nuanced understanding of insolvency complexities and its commitment to upholding the principles of fairness and equity.

7. Suggestions for India

India's legal framework governing insolvency, as outlined in the Insolvency and Bankruptcy Code, 2016 (IBC), requires legislative clarity concerning the treatment of ipso facto clauses. The ambiguity surrounding these clauses necessitates legislative clarification to ensure consistency and fairness in insolvency proceedings. To address this, India could draw upon the specificity and clarity found in the Bankruptcy Code of the USA, particularly Section 365(e)(2) in conjunction with Section 365(c)(1), which provides clear guidelines on the enforceability of such clauses. Additionally, specific legislation addressing ipso facto clauses, similar to provisions in the UK's Insolvency Act, 1986 and Singapore's Insolvency, Restructuring, and Dissolution Act, could offer greater clarity and certainty.

India might consider prohibiting ipso facto clauses that unreasonably impede a debtor's ability to restructure or continue operations during insolvency proceedings. Criteria for assessing reasonableness should be established, drawing inspiration from provisions in the Canadian Bankruptcy and Insolvency Act (BIA) that prohibit enforcement of ipso facto clauses in certain circumstances. By establishing clear guidelines for what constitutes a reasonable prohibition, India can ensure that the rights of debtors and creditors are balanced effectively India can bring clarity regarding the interpretation of 'significant financial hardship' for the supplier in the Indian regime.

Safeguards might be introduced to protect distressed companies from arbitrary contract terminations based solely on insolvency. Relief for significant financial hardship, as provided for in the Canadian BIA, could serve as a model for India. By allowing distressed companies to seek court intervention to prevent unfair terminations, such provisions ensure a more equitable outcome for all parties involved. Additionally, provisions for hardship relief, akin to those in the UK's Insolvency Act, 1986, could further strengthen protections for distressed companies in India.

In addition to safeguards, India could benefit from adopting clearer exemptions and exceptions for certain types of contracts during insolvency proceedings. Singapore's approach of carving out specified classes of contracts exempted from ipso facto restrictions provides clarity and consistency in treatment. By defining 'executory contracts' and specifying exemptions for financial contracts, India could enhance transparency and ensure equitable treatment of different contract types.

Parties should be encouraged to clearly outline ipso facto clauses in contracts to mitigate ambiguity and prevent disputes during insolvency proceedings. Mandating disclosure of ipso facto clauses can enhance transparency and informed decision- making by all parties involved. This approach aligns with practices in jurisdictions such as the USA and the UK, where transparency in contractual provisions is emphasized to facilitate fair resolution of disputes.

Legislative reforms might also balance the rights of creditors, debtors, and third parties, drawing on principles of fairness and equity observed in other jurisdictions. Germany's approach of considering the interests of all stakeholders, as reflected in legislative decisions and case law, offers valuable insights for India. By adopting principles from the USA's Bankruptcy Code, India could enhance fairness by ensuring that ipso facto clauses do not unfairly advantage creditors over debtors.

Going a step ahead, India can learn from international best practices to innovate its approach to regulating ipso facto clauses, adapting reforms to suit its unique legal and economic context. Drawing from the flexibility in legislative provisions observed in the UK, Germany, and Singapore, India can tailor its legal framework even further to address specific challenges in insolvency resolution. Continuous review mechanisms should be established to ensure the effectiveness and responsiveness of ipso facto provisions to changing economic conditions and emerging challenges. By incorporating elements from foreign jurisdictions, India can strengthen its legal framework for insolvency and enhance the efficiency and fairness of insolvency proceedings.

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Taxation of Income from Salary

*Yash Meshram,
Student of MNLU,
Mumbai*

*Ms. Radha Halbe,
Advocate*

> ***"Taxation is the price which civilized communities pay for the opportunity of remaining civilized."***
>
> *Albert Bushnell Hart*

Introduction

'Salary' is a form of payment from an employer to an employee, which may be specified in an employment contract. It is contrasted with piece wages, where each job, hour, or other unit is paid separately, rather than on a periodic basis.

From the point of a business, salary can also be viewed as the cost of acquiring human resources for running operations and is then termed personnel expense or salary expense. In accounting, salaries are recorded in payroll accounts.

Salaries are part of the remuneration received by employees. Salary is typically determined by comparing market pay rates for people performing similar work in similar industries in the same region. Salary is also determined by leveling the pay rates and salary ranges established by an individual employer. Salary is also affected by the number of people available to perform the specific job in the employer's employment locale.

Salary defined under Income Tax Act

According to Section 17 of the Income Tax Act, the term 'salary' includes wages, annuities, pension, gratuity, fees, commissions, perquisites, profits in lieu of, or in addition to, any salary or wages, advance of salary, any payment received by an employee in respect of any period of leave not availed of, etc. This comprehensive definition aims to cover a wide range of monetary benefits that an employee receives in the course of their employment. In the case of ***CIT vs. Telsuo Mitera [17.05.2012 - DELHC : MANU/DE/2689/2012]*** the Delhi High Court used the definition of Salary from various sources to concluded what can be defined as Salary.

1. **Wages**: A sum of money paid under contract by the employer to the employees for services rendered is called wages. The payment may be for paid leaves, actual work, or the actual amount received or due during the relevant previous year.

2. **Annuity or Pension**: Annuity or pension is the payment received from the previous or present employer after attaining retirement. It may be a payout from the pension plans created by the employer.

3. **Perquisites**: Perquisites are additional benefits received over and above the salary due to the employee's official position. It may be provided in cash or kind.

Section 16 of Income Tax Act provides deductions from the income chargeable to tax under the head salaries. It offers deductions for the standard deduction, entertainment allowance and profession tax. A taxpayer who has the income that is charged under salaries should allow a deduction of ₹ 50,000 or the salary amount, whichever one is lesser for the computation of the taxable income.

Salary under Section 15 of the Income Tax Act

Section 15 of the Income Tax Act, 1961, plays a pivotal role in determining the taxation of salaries in India. This section delineates the basis of charge for salaries and provides a framework for taxing income from salaries, emphasizing either a due basis or a receipt basis, whichever occurs earlier in a given scenario. The crux of Section 15 lies in its assertion that salaries are chargeable to tax based on when they are due or when they are received, whichever eventuality transpires first. This means that even if an employee hasn't physically received the salary, it may still be taxable if it is due. The due basis of taxation aligns with the accrual system, wherein income is considered earned when it becomes due, irrespective of the actual receipt.

One of the notable aspects of this section is its treatment of amounts paid in advance to an employee before they are due or payable. According to the provision, income from salary includes any amount paid in advance to an employee before it becomes due or payable. This ensures that even if the salary is paid in advance, it is still subject to taxation, contributing to the overall income computation.

The due basis of taxation established by Section 15 has significant implications, especially when employees forego or waive their salaries. It explicitly clarifies that foregone salary, once accrued to an employee, remains taxable. This provision is crucial in preventing individuals from manipulating their taxable income by waiving or forfeiting their salaries after they have accrued.

The section's insistence on taxing salary on a due basis underscores the principle that the right to receive income is pivotal for taxation purposes. The mere act of waiving or forsaking the salary after it has accrued does not absolve it from the tax liability. This ensures that individuals cannot exploit the system by manipulating the timing of recognizing income.

Section 15 of Income Tax Act, clearly states that, salaries include:

(a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;

(b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year

Employer-Employee Relationship

The employer-employee relationship is a symbiotic bond between an organization and its workforce. It's not just about job titles and paychecks; it encompasses the dynamics, interactions, and mutual responsibilities between those who provide the work (employees) and those who provide the jobs (employers). This relationship is the heart of any organization. Employees contribute their skills and effort, while employers provide opportunities and support. It's like a dance, where both partners work together to create a harmonious and productive workplace.

The success of this relationship not only benefits the organization but also the well-being and growth of its employees, making it crucial for success. The four essential elements of this relationship are mutual expectations, mutual commitment, mutual respect, and knowing each other.

In ***"EASTEX, INC. vs. NLRB U.S. Supreme Court" [437 U.S. 556 (1978)],*** the court held that the National Labor Relations Act protects the right of employees to "engage in ... concerted activities for the purpose of collective bargaining or other mutual aid or protection." That protection encompasses efforts by employees "to improve terms and conditions of employment" through appeals to third parties standing "outside the immediate employee - employer relationship.

Employer-Employee in Contractual Relation

If an employee is hired on a contract basis, they are not considered as an employee under the Income Tax Act, 1961. Instead, they are considered as self-employed professionals and their income is taxed under the head Income from Business or Profession. Such employees are required to maintain a record of all their expenses and maintain their Profit & Loss A/c and Balance Sheet. They are also required to disclose their income under the head Income from Business or Profession and file their Income Tax Returns in ITR Form 3/ITR Form 4. The manner of computation of tax of such employees differs from that of regular employees. As there is no employer-employee relationship in this case, the Tax deducted on the amount paid to such contract employees won't be deducted under Section 192 but would be deducted under other section 194C. The tax so deducted by the company can be verified easily by the recipient through the Form 26AS which can be downloaded online.

Perquisites

Perquisites, commonly known as perks or fringe benefits, are additional benefits or amenities provided by employers to employees, and their taxability is determined by the Income Tax Act, 1961. The Act classifies perquisites into taxable and non-taxable categories, and understanding these distinctions is crucial for both employers and employees to ensure compliance with tax regulations and optimize tax planning. The dictionary meaning of the word covers a wide field and include casual emoluments, profits attached to an office, or position or incidental and consequential benefits, left-overs, tips falling to one by right, etc. The legal concept is explained in ***Pook (Inspector of Taxes) vs. Owen, [(1969) UKHL J0326-2, 45 TC 571; AC 244; 2 All ER 1]*** where Lord Pearce described 'perquisite' as "something that benefits a man by going 'into his own pocket'." It does not, however, cover a mere reimbursement. The Income-tax Act, 1961 defines perquisite in section 17(2) which is for the purpose of sections 15 and 16.

Taxable Perquisites

Taxable perquisites are considered part of the employee's total income and are subject to taxation. Examples of taxable perquisites include rent-free accommodation, company-provided vehicles, and interest-free or concessional loans. Rent-free accommodation is valued based on specified rules in the Income Tax Act, while the personal use of a company-provided vehicle or the benefit of an interest-free loan results in a taxable perquisite.

Non-Taxable Perquisites

Non-taxable perquisites do not contribute to the employee's total income and are exempt from taxation. Some examples of non-taxable perquisites include medical facilities provided by the employer, refreshments in office premises, and recreational facilities available uniformly to all employees. The classification of perquisites into taxable and non-taxable categories is based on the principle that any benefit resulting in a monetary advantage to the employee should be taxed, except for certain exceptions deemed necessary for the performance of duties or employee welfare. Medical facilities, for instance, are considered non-taxable if they meet specific conditions outlined in the Income Tax Act.

Similarly, refreshments provided within office premises and recreational facilities available uniformly to all employees are exempt from tax.

The tax treatment of perquisites aims to ensure fair and equitable taxation of all forms of income while making exceptions for benefits deemed essential for employee well-being or job performance. This distinction becomes essential for employers in designing effective compensation packages and for employees in optimizing their tax liabilities.

Below down is list which reflects taxable and non taxable perquisites

Taxable Income	Non-Taxable Income
Taxable Income	Non-Taxable Income
Wages	Inheritances
Salaries	Gifts
Commissions	Cash rebates
Stock options	Disability benefits
Fringe benefits like off-site gym memberships	Child support payments
Company vehicles for personal use	Most healthcare benefits
Holiday gifts from employers	Welfare payments
	Health insurance provided by the employer
	Certain fringe benefits like tuition reimbursement under specific plans
	Money from a qualified scholarship (portion used for educational expenses)

Rent Free Accommodation as Taxable Perquisite

Rent-free or concessional accommodation provided by employers to employees is a valuable employee benefit. This accommodation may be furnished and often includes provisions for utilities such as gas, electricity, and water.

Employees residing in rent-free or concessional accommodation experience financial relief as they are not required to pay rent for their housing. Additionally, furnished accommodation with utilities provided enhances convenience and comfort for employees.

In case of Government Employee the value of perquisites for rent free accommodation is Licence Fee determined as per the Government Rules, as reduced by rent actually paid by the employee for unfurnished accommodation. For a furnished accommodation, 10% p.a. of the furniture cost is added to the value obtained above for unfurnished. In case the furniture is hired, the actual hire charges would be added to the value obtained above for unfurnished.

In case of Non Government Employee In instances where employers provide unfurnished accommodation, the taxable value of the perquisite hinges on whether the lodging is owned by the employer or leased. If owned, the taxable value varies based on the city's population size. For cities with over 25 lakh inhabitants, it's 15% of the employee's salary; for those with populations ranging between 10 lakh and 25 lakh, it's 10%; and for cities with fewer than 10 lakh residents, it's 7.5%. Conversely, if the accommodation is leased, the taxable value is the actual lease rentals paid by the employer, capped at 15% of the employee's salary. Additionally, for furnished accommodations, 10% per annum of the furniture cost is added to the value derived from unfurnished premises, or the actual hire charges if furniture is rented. Any reimbursement from the employee is subtracted to determine the taxable value. In cases where employers offer accommodation in hotels, excluding temporary transfers, the taxable value is either 24% of the employee's previous year's salary or the actual charges paid to the hotel, whichever is less, after deducting any rent paid by the employee for the accommodation. These regulations aim to ensure fair and consistent determination of the taxable value of the perquisite, considering factors like location, ownership, and furnishings of the provided accommodation.

Taxation on Reimbursement

According to the Income Tax Act, allowances provided to employees are generally exempt from tax if the expenses for which they are provided are actually incurred. This principle reflects the idea that allowances are meant to reimburse employees for specific expenses related to their job responsibilities, and taxation is only applicable when there is an actual financial gain. Reimbursement of expenses is a common practice in employment contracts, where employees are compensated for certain costs they bear in the course of their duties. The Act specifies that the reimbursement allowed to an employee is the lower of the actual bill amount or the predetermined amount specified in the salary package. This ensures that the reimbursement is reasonable and directly related to the actual expenses incurred by the employee.

Leave Salary – When Exempt (See Section 10(10AA))

Section 10(10AA) of the Income Tax Act offers a significant tax benefit to employees by providing an exemption for leave encashment received upon retirement, resignation, or termination of employment. This exemption is subject to various conditions that aim to ensure fair and consistent tax treatment for employees across different sectors. The provision applies to both government and private sector employees, offering relief on the tax liability associated with leave encashment. To qualify for the exemption under Section 10(10AA), employees must meet specific criteria.

Leave encashment received upon retirement, resignation, or termination of employment is fully exempt in case of Central or State Government Employees.

For others, the exemption amount is calculated based on the least of

(a) the actual leave encashment received,

(b) the government-specified maximum limit (currently ₹ 25,00,000),

(c) the earned leave balance not exceeding 30 days for every year of actual service rendered by him as an employee of the employer from whose service he has retired.

Earned leave so encashed must not be for more than 10 months. Leave Salary must be based on average salary drawn by employee during 10 months immediately preceding his retirement.

It is essential for taxpayers to understand the nuances of Section 10(10AA) to maximize the tax benefits available to them. The provision not only outlines the conditions for claiming the exemption but also addresses scenarios where the exemption may not apply, such as early resignation or termination before completing the requisite service period. Additionally, the tax treatment of excess leave encashment, leave encashment in case of retirement versus resignation or termination, and the tax implications for legal heirs in case of a deceased employee are crucial aspects to consider. By delving deeper into the intricacies of Section 10(10AA), employees can make informed decisions regarding their leave encashment benefits, optimize their tax planning strategies, and ensure compliance with the relevant tax regulations. Understanding the detailed provisions of Section 10(10AA) empowers taxpayers to leverage the tax exemptions available to them effectively and navigate the complexities of leave encashment taxation with confidence.

Tax on Gratuity

The Income Tax Act, 1961, governs the tax treatment of gratuity. If an employee receives gratuity during their service, it is fully taxable as income. The gratuity amount received by an employee is treated as income under the head 'Salaries'. In the case of the employee's death, the gratuity paid to the nominee or legal heir is treated as their income under the head 'Income from other sources' if gratuity is received due to death, retirement, or resignation, tax exemption is provided under section 10(10) of the Act. The exempted amount is subject to certain limits, which vary based on the type of employment.

- Retirement gratuity for members of the Defense Service is entirely exempt from tax.
- For Government employees, any death cum retirement gratuity is entirely exempt from tax under section 10(10)(i).
- Private sector employees covered by the Payment of Gratuity Act, 1972, can avail tax exemption up to a certain limit, which is the least of the following: (a) ₹ 20 lakhs, (b) actual gratuity amount received, and (c) 15 days' wages for every completed year of service or part thereof in excess of six months, based on the rate of wages last drawn.

Salary received as a Partner – Not to be treated as Income from Salary – Section 15 – Explanation-2

Section 15 of the Income Tax Act is a fundamental provision that governs the computation of income chargeable under the head "Salaries." It establishes the framework for determining taxable salary income for individuals. However, *Explanation* 2 to Section 15 provides an important clarification regarding the treatment of salary received by a partner from a partnership firm.

When a partner receives salary from a partnership firm, it is not considered income from salary under the Income Tax Act. Instead, it is treated as a distribution of profits or a share of profits from the partnership. This distinction is crucial because it reflects the unique nature of a partner's role in a partnership firm.

Unlike an employee who receives salary for services rendered under an employer-employee relationship, a partner actively participates in the management and operations of the partnership. A partner's remuneration, often referred to as a partner's salary, represents a share of the profits earned by the partnership, rather than compensation for employment services.

Explanation 2 to Section 15 ensures that the tax treatment of partner's remuneration aligns with the principles of partnership taxation. By clarifying that such income is not to be treated as salary income, it acknowledges the partnership's structure and the collaborative nature of the business entity.

To qualify for the deduction of Partner's Remuneration, the following conditions must be satisfied:

- Remuneration is only paid to working partners.
- Remuneration should be authorized by the partnership deed, which should mention the amount of salary or the method of calculation.
- The remuneration should be for a period from the date on which such partnership came into existence and not from any period prior.
- The remuneration should be within the permissible limits as specified by Section 40(b) of the Income Tax Act.

The maximum permissible limit under Section 40(b) is as follows:

- On the first ₹ 3,00,000 of book-profit or loss: ₹ 1,50,000 or 90% of the book-profit, whichever is higher.
- On the remaining balance of book-profit: 60% of the book-profit.

These limits apply to the total salary of all partners, not per partner.

This provision recognizes that partners contribute both capital and labor to the partnership, and their remuneration reflects their share of the profits generated by the firm. As such, it ensures that partner's remuneration is taxed appropriately, taking into account its character as a distribution of profits rather than salary income.

In summary, Explanation 2 to Section 15 plays a crucial role in distinguishing between salary income earned by employees and remuneration received by partners in a partnership firm. It ensures that partner's remuneration is taxed in accordance with the principles of partnership taxation, reflecting the unique nature of a partner's role in the business entity.

House Rent Allowance (HRA)

House Rent Allowance (HRA) is an allowance provided by employers to employees to assist them in meeting their rental accommodation expenses. It forms a part of the employee's salary package and is designed to help employees cope with the high cost of renting accommodation, especially in urban areas.

HRA is typically paid monthly along with the salary, although the frequency of payment may vary depending on the employer's policies. The amount of HRA granted to an employee is usually calculated as a percentage of their basic salary, but it can also be a fixed amount specified in the employment contract or as per company policy serves as a significant component of an employee's salary package, particularly in urban areas where rental accommodation costs are often high. It is provided by employers to assist employees in meeting their rental accommodation expenses. However, not all HRA received by an employee is taxable. Under the Income Tax Act, HRA can be either partially or fully exempt from taxation under Section 10(13A) and Rule 2A of the Income Tax Rules, subject to specific conditions and limits.

Exemption Limits under Section 10(13A) and Rule 2A:

- *Actual HRA Received:* The exemption is limited to the actual HRA received by the employee from the employer.
- *Rent Paid*: The exemption is also subject to the actual rent paid by the employee for the accommodation in which they reside. However, if the rent paid is less than the prescribed limits, the lower amount will be considered for exemption.
- *50% of Salary for Employees in Metro Cities*: If the employee resides in metro cities like Delhi, Mumbai, Kolkata, or Chennai, the exemption is limited to 50% of their salary (basic salary + dearness allowance if any + turnover-based commission).
- *40% of Salary for Employees in Non-Metro Cities:* For employees residing in cities other than metro cities, the exemption is limited to 40% of their salary.
- *Excess Rent Paid over 10% of Salary:* In addition to the above limits, if the rent paid by the employee exceeds 10% of their salary, the excess amount is eligible for exemption.

Conditions for Exemption:

- *Renting a House:* The employee must be living in a rented accommodation for which they are paying rent to claim HRA exemption.
- *Employment Requirement*: HRA exemption is available only to salaried individuals who receive HRA as part of their salary package. Self-employed individuals cannot claim HRA exemption.
- *Rent Receipts:* To claim HRA exemption, the employee must provide rent receipts as proof of rent paid to the employer.
- *PAN of Landlord*: If the annual rent paid by the employee exceeds ₹1,00,000, they must provide the Permanent Account Number (PAN) of the landlord to the employer to claim HRA exemption.

When HRA is Not Exempt:

- *Living in Own House:* If the employee lives in their own house or does not pay rent for accommodation, they are not eligible for HRA exemption.
- HRA Not Part of Salary: If the employee does not receive HRA as part of their salary, they cannot claim HRA exemption.

- *Rent Receipts Not Available:* Failure to provide rent receipts or other supporting documents to prove rent paid will make the employee ineligible for HRA exemption.
- PAN of Landlord Not Provided: If the employee fails to provide the PAN of the landlord when required, the employer may not grant HRA exemption.

HRA exemption provides significant relief to employees for their rental accommodation expenses. However, it is crucial for employees to understand the provisions related to HRA exemption and fulfill the necessary requirements to avail of the benefits. Compliance with the prescribed conditions and limits is essential to ensure that HRA is exempt from taxation and to avoid any potential tax implications. Therefore, both employers and employees should be aware of the detailed provisions outlined under Section 10(13A) and Rule 2A to maximize the benefits of HRA exemption while ensuring compliance with tax regulations.

Interest-Free Or Concessional Rate Loans To Employees By The Employer

According to Section 17(2) of the Income Tax Act, interest-free or concessional rate loans to employees by the employer are taxable in the hands of employees. The value of the perquisite is determined as per Rule 3 of the Income Tax Rules, which states that the benefit resulting from the provision of interest-free or concessional loans for any purpose made available to the employee or any member of their household during the relevant previous year by the employer or any person on their behalf shall be determined as follows:

- Calculate the interest at the rate charged per annum by the State Bank of India (as on the 1st day of the relevant previous year) in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance, as reduced by any interest actually paid by the employee or any such member of his household.

No value would be charged if such loans are made available for medical treatment in respect of diseases specified in Rule 3A of these Rules or where the amount of loans does not exceed an aggregate of twenty thousand rupees. However, where the benefit relates to loans made available for medical treatment, the exemption shall not apply to the portion of the loan reimbursed to the employee under any medical insurance scheme. Exemption cases include loans made available for medical treatment in respect of specified diseases as mentioned in Rule 3A of the Income Tax Rules or where loan amount does not exceed 20,000 rupees in aggregate during the previous year. The employer is responsible for determining the value of the perquisite, adding it to the taxable income, withholding taxes, and remitting them to the government on or before the due date.

Motor Car as a Perquisite

Tax Treatment An employer providing a motor car to an employee is considered a perquisite, and the taxability of this perquisite depends on various factors. If the motor car is owned or leased by the employer, it is taxable based on the usage of the car. If the car is used solely for official purposes, it is not taxable, regardless of the engine's cubic capacity. However, if the car is used for both official and personal purposes, the taxability depends on whether the running and maintenance cost is reimbursed by the employer or the employee. If the running and maintenance cost is reimbursed by the employer, the taxable value is calculated based on the engine's cubic capacity. If the engine's cubic capacity is within 1.6 liters, the taxable value is ₹ 1,800 per month + ₹ 900 per month (if a driver is provided). If the engine's cubic capacity exceeds 1.6 liters, the taxable value is ₹ 2,400 per month + ₹ 900 per month (if a driver is provided). If the running and maintenance cost is reimbursed by the employee, the taxable value is lower. If the engine's cubic capacity is within 1.6 liters, the taxable value is ₹ 600 per month + ₹ 900 per month (if a driver is provided). If the engine's cubic capacity exceeds

1.6 liters, the taxable value is ₹ 900 per month + ₹ 900 per month (if a driver is provided). If the car is used solely for personal purposes, it is fully taxable in the hands of the employee, regardless of the engine's cubic capacity. The taxable value includes the actual cost of running and maintenance of the motor car, driver's salary, and normal wear and tear at 10% per annum of the actual cost of the motor car, less any charges recovered from the employee. If the motor car is owned by the employee, the taxability depends on whether the car is used solely for official purposes or for both official and personal purposes. If the car is used solely for official purposes, it is not taxable. If the car is used for both official and personal purposes, the taxable value is calculated based on the engine's cubic capacity. If the engine's cubic capacity is within 1.6 liters, the taxable value is actual expenses less ₹ 2,700 per month. If the engine's cubic capacity exceeds 1.6 liters, the taxable value is actual expenses less ₹ 3,300 per month.

Tax Treatment of Contribution to Various Provident Funds and Interest thereon

Contributions made to provident funds and the interest earned on such contributions were exempt from tax. However, amendments by the Finance Act, 2021, have made interest accrued on provident fund contributions during the previous year taxable if the aggregate contribution made by an individual exceeds ₹ 2,50,000 (or ₹ 5,00,000 if there is no employer contribution). Separate accounts are maintained for taxable and non-taxable contributions. Withdrawals should be adjusted against the taxable component of EPF/GPF contribution to calculate the interest income.

Refreshment

The value of refreshment provided by the employer during office hours and in office premises is fully exempt, Subsidized lunch or dinner provided by employer is exempt.

Amendments in Income Tax Act through Finance Act, 2023

The Income Tax Act of 1961 has been significantly amended by the Finance Act of 2023 to simplify the tax system, provide relief to taxpayers, and broaden the tax base. As a first step toward making the tax system more equitable and effective, these modifications are anticipated to have a significant impact on the tax liabilities of both individuals and businesses.

One of the key changes is the alteration in tax slab under Section 115BAC(1A), which is expected to provide relief to taxpayers. Employees who opt for the New Tax Regime will now be able to take advantage of the standard deduction from salary income and the deduction from family pensions, providing additional relief for pensioners and salaried individuals.

The Act likewise presents another expense on web-based gaming, which is expected to bring a significant amount of online gaming under the tax net. The tax rate on royalty income and fees for technical services has been increased, which could influence organizations with global exchanges.

Besides, the Act gives exceptions from Alternate Minimum Tax (AMT) for certain sections, decreasing the taxation rate on business. These amendments mirror the public authority's commitment to working on the tax structure and making it more taxpayer friendly. However, they also emphasize the importance of keeping taxpayers informed of the most recent changes and planning their taxes accordingly.

Standard deduction in the Salary under New Tax Regime

In order to reduce the amount of income that is subject to tax, the standard deduction was introduced. Standard deduction is a flat amount that can be taken from your income under certain conditions. In the New Tax Regime, this deduction was not available until FY 2022–23 (AY 2023–24).

Notwithstanding, beginning from FY 2023-24 (AY 2024-25), the Hon. Finance Minister Smt. Nirmala Sitharaman proposed in her Budget Speech 2023 that the advantage of standard deduction has been stretched out to the salaried class and the retired people including family beneficiaries under the New Assessment Regime.

This means that if you choose the New Tax Regime and are a salaried individual or a pensioner, you can now take a standard deduction of ₹ 50,000 from your pay. Your taxable income is effectively reduced by ₹ 50,000 as a result, which might actually move you into a lower charge section or diminish your tax liability.

For instance, in the event that a salaried individual has a pay of ₹ 5.5 lakh (Basic Tax payable as per New Tax Regime ₹ 1,65,000), he would remain to benefit by ₹ 15,000 on basic tax amount because of this standard deduction. This is because their taxable income is reduced to ₹ 15 lakhs (Basic Tax payable as per New Tax Regime ₹ 1,50,000), due to Standard deduction of ₹ 50,000, which falls into a lower tax slab.

It's important to remember that pensioners and salaried workers alike can take advantage of this standard deduction. Thus, if your income is below ₹ 15.5 lakh, you can in any case benefit from this standard deduction.

In the context of computing income for the Assessment Year 2024-25, the old regime and the new regime present contrasting approaches. Under the old regime, the calculation involves a detailed assessment of various salary components such as basic salary, House Rent Allowance (HRA), special allowance, transport allowance, and other allowances. Additionally, deductions under Chapter VIA, including Section 80C, 80D, 80G, and 80TTA, are considered to determine the taxable salary. The process extends to calculating the total income by incorporating other income sources, if applicable, and applying the relevant tax slabs and deductions to establish the tax liability accurately. Conversely, the new regime simplifies the computation by excluding deductions under Chapter VIA, focusing solely on the salary components. This streamlined approach involves applying the revised tax slabs specific to the year 2024-25 to calculate the tax liability without factoring in the deductions traditionally considered under the old regime.

Computation of Income for Salary Income and Deductions under Chapter VIA and Tax thereon for A.Y. 2024-25

Income Tax Act, 1961, provides for the taxation of salary income earned by an individual in a financial year. The tax liability of an individual depends on the income earned and the deductions allowed under various provisions of the Act. The following are the steps for the computation of income for salary income and deductions under Chapter VIA and tax thereon for A.Y. 2024-25:

Step 1: Calculation of Gross Salary Gross salary is the total amount paid by the employer to the employee before any deductions. It includes basic salary, dearness allowance, house rent allowance, conveyance allowance, medical allowance, and any other allowances.

Step 2: Calculation of Exemptions under Section 10 of the Income Tax Act Exemptions are the amounts that are not included in the taxable income. The exemptions can be claimed on allowances like HRA, travel expenses, uniform expenses, children's education allowances, etc. The employer reduces such exemptions from the gross monthly income, and the net amount will be treated as the taxable salary.

Step 3: Calculation of Taxable Income Taxable income is the amount on which tax is calculated. It is calculated by deducting the exemptions and deductions allowed under various provisions of the Income Tax Act from the gross salary.

Step 4: Calculation of Tax Liability The tax liability is calculated based on the taxable income and the tax rates applicable for the financial year.

Step 5: Calculation of Tax Payable The tax payable is calculated by deducting the tax already paid by the employee, such as TDS, advance tax, and self-assessment tax, from the tax liability. Old Regime and New Regime The Finance Act, 2020, introduced a new tax regime under Section 115BAC of the Income Tax Act, which provides an option to the taxpayers to pay tax at lower rates without claiming deductions and exemptions. The taxpayer can choose either the old regime or the new regime at the time of filing the income tax return. The basic tax rates under the old regime and the new regime for the Assessment Year 2024-25 are as follows:

Old Regime:

Up to INR 2.5 lakhs - Nil

INR 2.5 lakhs to INR 5 lakhs - 5%

INR 5 lakhs to INR 10 lakhs – 20%

Above INR 10 lakhs - 30%

New Regime:

Up to INR 3 lakhs - Nil

INR 3 lakhs to INR 6 lakhs - 5%

INR 6 lakhs to INR 9 lakhs - 10%

INR 9 lakhs to INR 12 lakhs - 15%

INR 12 lakhs to INR 15 lakhs - 20%

Above INR 15 lakhs - 30%

The computation of income for salary income and deductions under Chapter VIA and tax thereon for A.Y. 2024-25 requires the calculation of gross salary, exemptions, deductions, taxable income, tax liability, and tax payable. The taxpayer has an option to choose either the old regime or the new regime at the time of filing the income tax return.

In conclusion, the taxation of 'Salary' and 'Perquisites' under the Income Tax Act is a dynamic and evolving area. The recent amendments to the Act, particularly those related to the introduction of a new tax regime and changes in tax slabs, reflect the government's efforts to simplify the tax system, provide relief to taxpayers, and broaden the tax base. These amendments are expected to have a significant impact on the tax liabilities of both individuals and businesses.

However, as we look to the future, it's clear that further amendments and reforms will be necessary to address the emerging challenges. These include the increasing complexity of tax laws, the changing nature of work, issues of tax evasion and avoidance, and the complexities of international taxation.

The goal should be to create a tax system that is not only easy to understand and fair, but also flexible enough to adapt to changing economic conditions and employment practices. Achieving this will require ongoing review and amendment of the Income Tax Act, as well as a commitment to transparency, fairness, and simplicity.

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Overview of Discounted Cashflow Method of Valuation

Dhruv Shah, Article Assistant at SSPA & Co.

CA Vitang Shah

We've all seen this headline recently: *"Tata Technologies Limited, a recent IPO subscribed 70x times by the retail segment."*

How does a common man interpret the given statement? One would say, *"Getting an allotment in such a scenario is difficult as the probability of getting allotment is 1/70th. However, if such shares are allotted to a person, the short-term returns earned on such shares are quite high as compared to returns for other various listed well-established companies.*

However, the primary question should be 'Why a public offer would be subscribed so many times, eventually leading to a blockage of an amount equivalent to INR 1 Lakh crores just for allotment of such shares?' The reasons for the same could include:

- Trust in the Tata Group.
- Rarity of a Tata Group listing through IPO.
- Perception that the issue price undervalues the company's future operations.

The first two points link to the brand value of the Tata group created by the front runners of the Group which includes names like Mr. Jamshedji Tata and Mr. Ratan Tata. It is an emotional decision. However, the third point is a technical reason which refers to the valuation of the company.

One might wonder why the public considers the issue price to be undervalued. To answer that question, let us first understand the fundamentals of valuation of a share.

The issue price is the value per share of the business determined after taking into consideration the various approaches available for valuation. The most used methods from the set of valuation methods prescribed are the Discounted Cashflow method under Income Approach (**'DCF'**) and the Comparable Companies Multiple method under Market Approach (**'CCM'**).

Broadly, discounted cashflow method values a business by **discounting its free cash flows for the explicit forecast period and the perpetuity value (also known as terminal value) after that**; whereas comparable companies multiple method uses price and other relevant information generated by market transactions involving identical or comparable assets, liabilities, or a group of assets and liabilities, such as a business.

In this article, we will dive deep into the Discounted Cashflow Method and understand the technicalities involved in computing the value of the business/equity shares using this method.

Basics of Discounted Cashflow Method

Consider the scenario of purchasing a property in 2001 and projecting its rental income over the course of 25 years. One would calculate the net income by subtracting maintenance costs each year. Similarly, when dealing with debt securities offering fixed income, one would assess the yearly income generated by these securities. However, a fundamental aspect often overlooked is the Time Value of Money. For instance, INR 100 received today (Year 0) holds more value than INR 100 received after 4 years (Year 4). The

Discounted Cash Flow (**DCF**) method incorporates this concept to discount future earnings, deriving the present value based on future estimates of the company or financial instruments. This discount determines the present value of free cash flow over the projected period, including both the explicit period and terminal value. Terminal value encapsulates all future cash flows beyond the projection period into a single value, reflecting the long-term potential and sustainability of the investment. To simplify, enterprise value is the sum of the present value for an explicit forecast period and the terminal value.

In simpler terms, the enterprise value would be displayed as Present Value for an Explicit Forecast Period + Terminal Value.

Multiple inputs are essential for conducting a valuation using the DCF method. Here's a concise overview of the necessary inputs.

1. Cashflows

The earnings/cashflow can be determined from the perspective of two people i.e., Firm/Company and the Equity Shareholders due to their different accountability. This gives rise to two concepts which are key to understanding the purpose of value determined from discounted cashflow method.

— ***Free Cashflow to the Firm ('FCFF')***

The starting point to calculate the cashflow would be to add back the non-cash items to the Profit earned by the Company after considering the tax payments for the said period (Profit after Tax). The certain non-cash items which are to be added back include Depreciation, Amortization, Deferred Tax as they are mere accounting entries and do not account for actual cash outflows. Additionally, when you wish to compute Free cash flow to the firm, you need to add back the Interest expense as it goes to the debt holders which would include to calculate the cashflow from the perspective of the providers of capital. To operate a business, the company would be required to spend on the working capital items which would increase or decrease basis the operations for a particular year. In case there has been a reduction in working capital requirements by the company, then the same should be added back to arrive at the free cashflow whereas any increase in the working capital requirement should be reduced to indicate the free cashflow to be considered. In a general scenario, a company would try to invest in fixed assets which would help the company improve its operations/improve its market position/get accustomed to modern technology so the cash outflow on account of capital expenditure should also be factored in to arrive at the free cashflow.

FCFF = Profit After Tax + Non-Cash Expenses (Depreciation, Amortization, Deferred Tax) + Interest -/+ (Increase)/Decrease in Working Capital Requirements – Capital Expenditure

— ***Free Cashflow to the Equity Holders ('FCFE')***

The equity shareholders stand at the lowest position in case of the ranking for repayments. Thus, to calculate the free cashflow for the equity holders we should consider the payments to be made to various capital providers of the company. Thus, the interest expense which was added back in case of FCFF would not be added back as the same would be a charge against the providers of capital. In the case of preference shareholders present in a company, the dividend payment/payable to them should also be subtracted to arrive at the cashflow for the equity holders. The net borrowings received by the company (amount raised less amount prepaid) should also be considered to arrive at the equity holders' funds. The other adjustments of non- cash items, working capital requirements and capital expenditure would remain the same.

FCFE = Profit After Tax + Non-Cash Expenses (Depreciation, Amortization, Deferred Tax) -/+ (Increase)/Decrease in Working Capital Requirements – Capital Expenditure + Net Borrowings – Preference Dividend

Theoretically speaking, a value using a FCFF or a FCFE approach must yield a similar result but the selection of which cashflow to be considered would depend on a range of factors such as capital structure, nature, and size of business etc. The value of an asset would be independent of the manner of finance in most cases, thus FCFF is considered in the valuation exercise. However, FCFE would be considered in the case of various finance companies, certain infrastructure companies, limited life businesses, etc.

This leads to another query: what should be the typical duration of the explicit period? The length of this period depends on factors such as asset characteristics, adequacy of time frame, and the availability of accurate data. The reliability of data assumes paramount importance, given that the assumptions drive the projections which form the backbone of valuation. For instance, if an income stream from a contract is anticipated over a four-year period, projections should ideally encompass the entire contract term.

Moving forward, let's understand the crucial phase known as Assumption drivers. It's essential to scrutinize these assumptions as the entire valuation of the company depends on its forward- looking projections. These assumptions must encompass a comprehensive view of the business landscape, including various macroeconomic factors such as the GDP growth of the operating country, fluctuations in exchange rates for export-oriented companies, market demand elasticity, and governmental fiscal incentives. Equally significant are microeconomic factors like demand elasticity, production capacity constraints, and pricing dynamics, which directly influence the company's revenue streams. Meanwhile, service-oriented industries must factor in contracted obligations over specific periods, with short-term arrangements necessitating consideration of future contracts based on reasoned assumptions about demand elasticity and market conditions.

2. Discounting Parameters

The discount rate chosen varies depending on the type of cash flow under consideration. For FCFF, we utilize the Weighted Average Cost of Capital (**WACC**) to discount cash flow projections across the explicit forecasted period. Conversely, for FCFE, we consider the cost of equity as the discounting factor. This reflects the anticipated returns and risks specific to equity shareholders, excluding other capital providers. WACC is derived by considering the proportional costs of debt and equity based on their respective outstanding or future balances. Additionally, in the calculation of WACC, we include the cost of preference shares if it forms a part of the capital structure.

To calculate **cost of equity**, Capital Asset Pricing Model (**'CAPM'**) is used. The derivation of the same is as follows:

$$Ke = Rf + (Rm - Rf) \times \beta$$

Ke = the cost of equity captial

Rf = Risk free rate

Rm = Market rate

β = Beta (measure of systematic risk)

The risk-free rate signifies the return provided by riskless securities, typically referring to government securities.

The market rate of return represents the average return provided by the market index over a significant period, chosen to mitigate the influence of both adverse and favorable events.

Beta, a crucial element in this formula, denotes the security's price movement concerning changes in the index over a specified period. It must be meticulously determined for comparable companies, factoring in various considerations such as geographical operations, revenue segmentation, profitability before tax, and market capitalization.

For the cost of debt calculation, the interest rate on borrowed funds should be assessed after adjusting for tax effects.

In scenarios where interest-free loans or no debt is present as of the valuation date, the cost of debt is determined by the anticipated interest rate applicable to new loans, adjusted for the impact of applicable tax rates.

3. Calculation of Terminal Value

Since one cannot estimate cashflows forever, we estimate cashflows for a certain number of years ('explicit period') and then estimate the terminal value. The terminal value in basic terms represents the present value at the end of the explicit forecast period of all subsequent cashflows to the end of the life of the asset or into perpetuity if the asset has indefinite life. The terminal value arrived is discounted using the discounting factor to arrive at the terminal value as on the valuation date. The starting point of the terminal value is a subjective decision as the following points need to be considered before calculating the terminal value:

— Product Life cycle

— Optimal capacity utilization

— Going concern assumption

— Future Opportunities

Based on the above-mentioned factors, one of the different methods available for determining the terminal value should be considered.

— ***Gordon Growth Model***

In the given model, the perpetuity value is calculated using the Gordon Growth formula. The basic formula for the same is:

Gordon Growth Model

$$P = \frac{D1}{r - g}$$

A constant rate of growth is considered post the explicit period and a slight change in the growth rate would impact the entire calculation. In order to calculate the Terminal Value, we would consider the Cashflow (FCFF or FCFE) for the first year post the explicit period by applying the stable growth rate on the cashflow for the last year of the explicit period as the numerator. For the denominator, the difference between the discount rate and the growth rate would be considered.

— ***Exit Multiple***

This method calculates the terminal value by using a market-evidence based capitalization factor or a market multiple to the perpetuity earnings/ income. The perpetuity earnings would be the maintainable future earnings for the company. The market multiple would be based on the information of the comparable companies which would be available in the public domain. A discount to the market multiple may be considered in case of difference in the size and operations of the comparable companies. The value determined by using the multiple would be discounted using the discounting factor to arrive at the value as in Year 0.

— ***Salvage/ Liquidation Value***

This method accounts for selective specific cases where the terminal value is limited and there is no relation to the cashflows projected for the future period. This kind of calculation would generally be for mines or oil fields or in the aviation industry where the aircraft are to be sold after a certain percentage of its product life. The terminal value would be calculated as the salvage value or the realizable value less the cost of disposing the asset.

4. Fair Valuation

The summation of the present value of future cashflows and the terminal value would help to arrive at the Enterprise Value. Enterprise Value indicates a company's total value and in simpler terms is the value attributable to the equity shareholders plus the value of debt. To arrive at the equity value for the equity shareholders, various adjustments would have to be made to the enterprise value. Equity value is the total value of a company that is available only to equity investors.

Equity Value = Enterprise Value – total debt + cash and cash equivalents

The above-mentioned formula is the simple form of arriving to equity value from the enterprise value. However, there might be certain additional adjustments based on the financial information for the company to arrive at the equity value.

These adjustments include Contingent Liability, Value of investment, Fair value of surplus asset, Loans and Advances provided to Related parties, Liability towards preference shares, amount payable on redemption of debentures and many more. The derived equity value after the above-mentioned adjustments is then divided by the outstanding number of equity shares to arrive at the Fair value per equity share.

Conclusions

In conclusion, the Discounted Cash Flow (DCF) method stands as a powerful tool for evaluating the worth of a business or its equity shares. By meticulously considering factors such as cash flows, discounting parameters, and terminal value, one can derive a fair valuation that reflects the company's true intrinsic value. However, it's crucial to recognize the significance of accurate data and sound assumptions in this process. Ultimately, grasping the intricacies of valuation methodologies equips individuals with the insights needed to assess the true value of businesses or equity shares. While the DCF method offers a comprehensive approach, it's essential to underscore the importance of reliable data and informed assumptions. This understanding empowers stakeholders to make well-founded decisions in navigating the dynamic terrain of financial markets and corporate endeavors.

Illustration

The illustration would help you further understand the calculation by the DCF method of valuation.

XYZ Limited was incorporated in 2019 operating in the garments industry. The company currently borrows at the rate of 13.00% per annum and the applicable tax rate is 25% plus 4% health and education cess as applicable to the company. The financials for the current year are as follows:

Balance Sheet as on 31.03.XXXX

(INR crores)

Particulars	***Amount***
Equity and Liabilities	
Equity Share Capital	10.00
Reserves	64.00
Non-Current Liabilities*	30.00
Current Liabilities	60.00
Total Equity and Liabilities	**164.00**
Asset	
Fixed Asset	60.00
Non-Current Asset	14.00
Current Asset**	90.00
Total Assets	**164.00**
* Non-Current Liabilities includes INR 20 crores of Long Term Borrowings	
** Current assets comprises of INR 10 crores as cash and cash equivalent	

Profit and Loss Statement for the year ended 31.03.XXXX

(INR crores)

Particulars	***Amount***
Revenue from Operations	100
Expense	
Cost of Material Consumed	50
Employee Expenses	15
Other Expenses	10
Total Expenses	**75.00**
Operating EBITDA	**25.00**
Other Income	2.50
Depreciation	10.00
Finance Cost	2.50
Profit Before Tax	**15.00**

The future projections for the next 4 years for the company are as follows:

Financial Projections

Balance Sheet as on the end of the following years ***(INR crores)***

Particulars	***Year 1***	***Year 2***	***Year 3***	***Year 4***
Equity and Liabilities				
Equity Share Capital*	10	10	10	10
Reserves	81	103	131	168
Non-Current Liabilities	14	16	17	13
Current Liabilities	65	70	75	80
Total Equity and Liabilities	**170**	**199**	**233**	**271**

Particulars	Year 1	Year 2	Year 3	Year 4
Asset				
Fixed Asset	55	67	80	96
Non-Current Asset	18	22	27	32
Current Asset	97	110	127	143
Total Assets	**170**	**199**	**234**	**271**
* 20000000 shares of Face Value INR 5 each				

Profit and Loss Statement for the following years ***(INR crores)***

Particulars	Year 1	Year 2	Year 3	Year 4
Revenue from Operations	120	144	175	210
Expense				
Cost of Material Consumed	66	79	96	116
Employee Expenses	16	20	22	24
Other Expenses	12	14	18	20
Total Expenses	**94**	**113**	**136**	**160**
Operating EBITDA	**26**	**31**	**39**	**50**
Other Income	2	2	2	2
Depreciation	10	10	12	14
Finance Cost	1	1	1	1
Profit Before Tax	**17**	**22**	**28**	**37**

The fair valuation of the company is as follows:

Fair Valuation of the Company

(INR crores)

Particulars	Amount
Present Value as per DCF	20.91
Present Value of Terminal Value	599.59
Enterprise Value	**620.50**
Add : Cash and Cash Equivalent	10.00
Less : Loan Funds	(20.00)
Equity Value	**610.50**
No. of Shares	20,000,000
Value per Share (INR)	**305.25**

Calculation of Value using Discounted Cashflow Method

(INR crores)

Particulars	***Year 1***	***Year 2***	***Year 3***	***Year 4***
Cash inflow				
Operating EBITDA	26	31	39	50
Cash outflow				
Capital Expenditure	10	22	25	30
Incremental WC	2	8	12	11
Net Inflow/(outflow)	**14.0**	**1.0**	**2.30**	**8.70**
Discounting Factor	0.90	0.81	0.73	0.66
Present Value	12.63	0.81	1.69	5.77
Value of Business	**20.91**			

Calculation of Terminal Value

(INR crores)

Particulars	***Year 1***	***Year 2***	***Year 3***	***Year 4***
Operating EBITDA	26	31	39	50
Perpetual Growth Rate	5%			
WACC	11%			
Terminal Value	**904**			
Discounting Factor	0.66			
Present Value	**599.59**			

Calculation of Working Capital

(INR crores)

Particulars	***Year 0***	***Year 1***	***Year 2***	***Year 3***	***Year 4***
Current Asset*	90	97	110	127	143
Current Liabilities	60	65	70	75	80
Net Working Capital	30	32	40	52	63
Incremental Working Capital		**2**	**8**	**12**	**11**
* Excludes Cash and cash equivalents					

Capital Expenditure *(INR crores)*

Particulars	*Year 1*	*Year 2*	*Year 3*	*Year 4*
Cash outflow on account of capex	10	22	25	30

Calculation of Weighted Average Cost of Capital ('WACC')

Cost of Equity ('Ke')	
Riskfree Rate	7
Market Rate of return	12
Beta	1
Ke	**12.00%**
Cost of Debt ('Kd')	
Interest Rate	13.0%
Tax Rate	26.0%
Effective cost of Tax	**9.6%**
Assuming 50-50 weights to Debt and Equity	
WACC	**11%**

Report on Mediation Training in Commercial Disputes

— **Nishtha Gada**
Student of Government Law College, Mumbai

Organized by the Chamber of Tax Consultants in collaboration with the Pravin Gandhi College of Law, Mumbai

The Chamber of Tax Consultants, in partnership with Pravin Gandhi College of Law (PGCL), Mumbai, hosted a two-day comprehensive training program on "Mediation Training in Commercial Disputes" on 17th and 18th February 2024. The training aimed to equip participants with essential skills and knowledge to effectively mediate commercial disputes.

The program commenced at the PGCL campus and began with an inaugural session followed by a keynote address delivered by Mr. Shaunak Thacker, Advocate, Solicitor & Arbitrator. Mr. Thacker emphasized the significance of mediation in resolving commercial disputes. Following the keynote address, Ms. Tanu Mehta, Legal Counsel, Mediator and Arbitrator, conducted all the modules on the first day. The modules covered mediation principles, types of disputes that can be mediated, various styles of mediation, understanding disputes through principles such as the Conflict Iceberg, Conflict Wheel, and Conflict Triangle, the dispute resolution approach in mediation, and the mediation process, including the opening statement, communication, agreement, and closure.

The participants included professionals from diverse fields such as law, chartered accountancy, and company secretaryship. Notably, several senior practicing chartered accountants were among the attendees. Additionally, the training attracted participants from various regions, including Kerala and Pune, reflecting the widespread interest and importance of mediation in commercial disputes.

The second day of the training saw Mr. Parimal Shah, Advocate, discussing the formalities of mediation, the process of appointment as a mediator, and the timeline for mediation. Dr. Geetanjali Prabhu Shetty, Advocate, covered problem-solving techniques, BATNA, WATNA, MALATA, ZOPA, and the role of a mediator. Mr. Darshit Jain, Advocate, addressed the drafting of mediation settlement agreements, the legal formalities associated with them, and

the closing statements in mediation. The eighth module focused on the Mediation Act of 2023 and the role of the Mediation Council. The training concluded with a session by Ms. Manik Joshi, Advocate, discussing the road ahead for mediation, the qualities and skills required for a mediator, and the opportunities available in the field.

The Chamber of Tax Consultants would like to extend heartfelt thanks to Ms. Navshikha Duara, Principal of PGCL, and Dr. Suman Kalani, I/c Vice Principal of PGCL, for their invaluable support and collaboration in making this training program a success.

In conclusion, the Mediation Training in Commercial Disputes organized by the Chamber of Tax Consultants in collaboration with PGCL, Mumbai, was a comprehensive and insightful program. Participants, including professionals from various fields and regions, gained valuable knowledge and skills to excel in the field of mediation. The event was well-received, highlighting the effectiveness and relevance of the training program and the growing importance of mediation in resolving commercial disputes

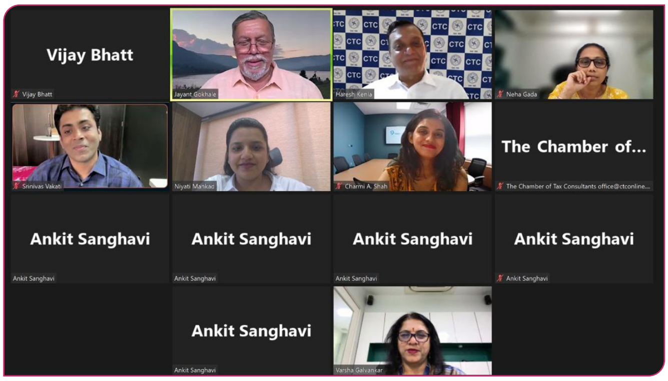
Report on CA Student's Orientation Course, 2024

— **Disha Jain**
CA Aspirant

The Student orientation program which took place virtually for five days with two-hour sessions each day ensured complete engagement and effectiveness of knowledge for CA Students.

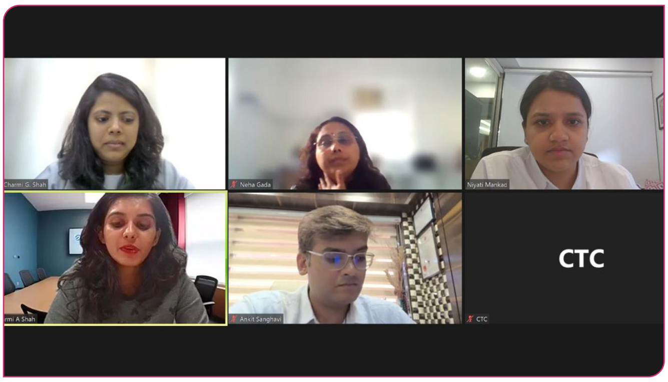
Objective

The primary objective of the orientation course was to familiarize students with fundamental insights into prominent work areas, bridging academic concepts with practical guidance for their articleship training.



By facilitating a seamless flow of office work, this course empowered students to navigate their professional journey with confidence and knowledge proficiency.

The programme was moderated by the convenor of the Students Committee, CA Charmi A. Shah followed by remarks by Advocate Niyati Mankad, Chairperson of the Student Committee, who welcomed all the participants.The programme witnessed the presence of President Haresh Kenia who gave insights to the participants about the Chamber .Neha Gada ,Secretary of the Chamber also was present to give her insights across different topics which was incredibly valuable to the participants. It helped them gain a holistic understanding of the subject matter and the organisation. There was overall participation of more than 60 students from all over India.

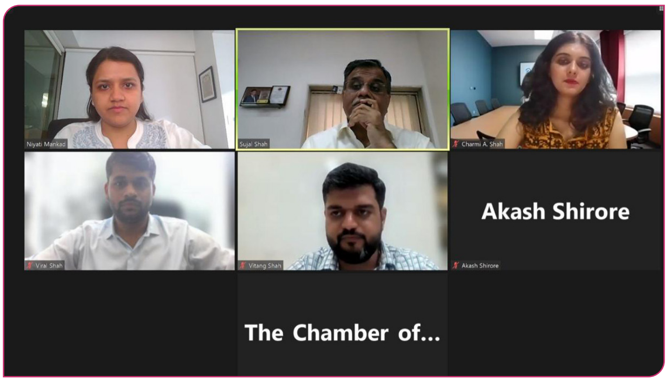


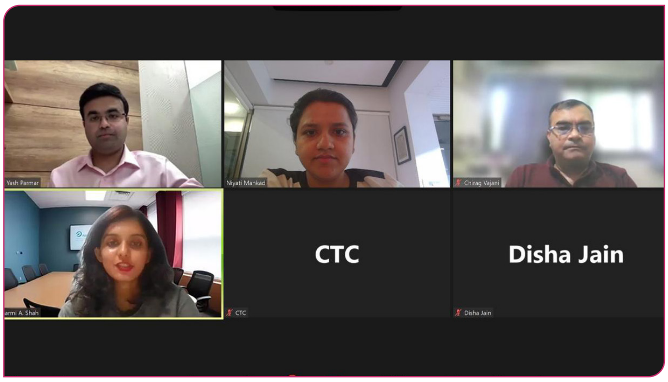
Key Highlights of all the 5 days

The program was well-rounded . Having different speakers covering various topics provided participants with diverse perspectives and expertise. The topics covered on each day were taken by the expert speaker of the topic. They are listed as hereunder.:

11th March 2024 - Day 1 covered:

- Key Note Address- Exploring Diverse Practice Areas for CAs by CA Jayant Gokhale
  - — Practice areas in Chartered Accountancy
  - — Overview of the diverse Range of Practice area available
- Masterclass in Professionalism: Soft Skills and Office Etiquette Training by CA Srinivas Vakati





- — Definition and Importance of soft skills in the workplace
- — Verbal and Nonverbal communication
- — Time management and punctuality
- — Building positive relationships with colleagues and clients

12th March 2024 - Day 2 covered:

- Mastering Income tax filings by CA Charmi G. Shah
  - — Overview of Income tax filing process
  - — Errors in tax filing and tips for reviewing and double checking.

13th March 2024 - Day 3 covered:

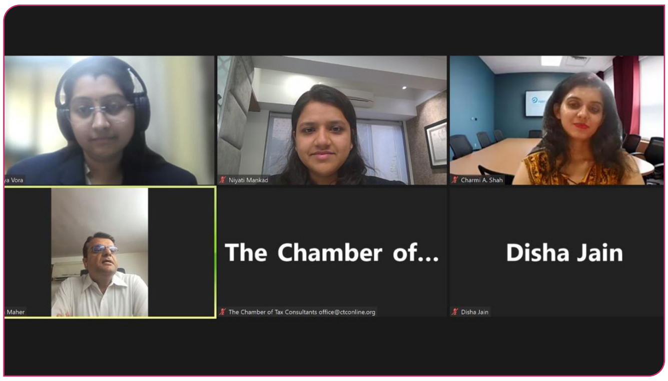
- Valuation Overview and Methodologies CA Sujal Shah and CA Vitang Shah
  - — Introduction to valuation and its significance in finance and business
  - — Valuation approaches and methodologies
  - — Understanding Key concepts in valuation
  - — Practical application and various scenarios along with challenges

14th March 2024 - Day 4 covered:

- Session on GST Landscape and Best Practices for Returns and Compliance by CA Yash Parmar
  - — Introduction to GST
  - — Understanding GST Structure and classification
  - — GST Registration and Input Tax Credit
  - — GST Return filing process
  - — Best Practices for GST Compliance
  - — Case study and practical scenarios

15th March 2024 - Day 5 covered:

- Session on Audit Insights 2.0 - Checklist, AI tools and best practices by CA Priya Vora
  - Introduction to Modern Audit Practices
  - Audit Planning and Risk Assessment
  - Audit Insights Checklist and documentation.
  - Leveraging AI Tools in Audit
  - Data Analytics in Audit
  - Audit reporting and communication.
  - Different AI tools and it uses .



Conclusion

Overall, the orientation course successfully achieved its objectives of providing participants with a solid foundation and preparing them for their future endeavours. Participants left the course with valuable insights and practical skills, ready to embark on their professional journey with confidence.

Report on the 1st National Chamber of Tax Consultants Indirect Tax Moot Court Competition, 2024

— Akash Shirore
Student of MNLU, Mumbai

The Chamber of Tax Consultants in association with ILS Law College Pune organized '1st National Chamber of Tax Consultants Indirect Tax Moot Court Competition, 2024'. The Moot Court Competition was held across two days: Saturday, March 16, 2024 (virtual) and March 30, 2023 at ILS Law College, Pune. The event was hosted at the Auditorium of ILS Law College in Pune, bringing together law students from across the country to test their legal skills and knowledge in a competitive environment. A total of 16 teams participated in this prestigious event, showcasing their expertise in indirect taxation laws. The moot proposition for the said competition was drafted by Ms. Ankita Vashistha, ensuring a challenging and comprehensive legal scenario for participants to engage with during the event.

Preliminary Rounds

The preliminary rounds were held virtually on March 16th, with a distinguished panel of judges assessing the teams' arguments and legal understanding. The judging panel comprised: (i) Mr. Sriram Sridharan, Advocate, (ii) CA Sumit Jhunjhunwala, (iii) Mr. Roshil Nichani, Advocate, (iv) CA Bandish Hemani, (v) Mr. Rajan Mishra, Advocate, (vi) CA Ankit Kabra, (vii) CA Jay Chheda, and (viii) CA Yash Parmar.

Each team presented their case, demonstrating their grasp of complex legal concepts and their ability to argue convincingly. The high level of competition and the quality of the arguments made the judging process challenging, but ultimately the top 8 teams proceeded to subsequent Quarter Final Round.

Quarterfinals and Semifinals

The quarterfinals took place with a new set of judges, including: (i) Mr. Harsh Shah, Advocate, (ii) CA Mandar Telang, (iii) Mr. Rahul Thakkar, Advocate (vi) CA Deepak Thakkar, (v) Mr. Ruturaj Bhide, Advocate, (vi) Mr. Rajat Bose, Advocate, (vii) Mr. Shankey Agrawal, Advocate, and (viii) CA Deepali Mehta.

The quarterfinals narrowed down the teams to the most skilled contenders. The semifinals saw intense competition, judged by: (i) Mr. Vikram Nankani, Senior Advocate, (ii) Mr. Vipin Jain, Advocate, (iii) CA Rajiv Luthia; and (vi) CA Naresh Sheth.

Each team displayed remarkable legal acumen and teamwork, but only the best progressed to the final round.

Final Round and Awards

The final round was judged by Hon'ble Shri. Justice Prithviraj Chavan and Hon'ble Smt. Justice Neela Kedar Gokhale, both from the Bombay High Court. The competition culminated with the awarding of several honors.

Winner:	Bharanyu Ganesh, Deon Dylan Fernandes, and Kartik Tripathi from School of Law, Christ (deemed to be University), Bangalore
Runner-up:	Ayushi Soni, Prakhar Arora, and Aditi Soni from Rajasthan University
Best Speaker:	Donna Gadiel from the School of Excellence in Law, Tamil Nadu Dr. Ambedkar Law University
Second Best Speaker:	Prakhar Arora from Rajasthan University
Best Memorial:	National University of Study and Research in Law, Ranchi (NUSRL)

The event concluded with a celebratory ceremony, featuring Chief Guest Shri. Devendra Nagvenkar, Additional Director General – DGGI, Pune and in presence of Dr. Deepa Paturkar, Principle of ILS Law College. The competition was meticulously organized, and the participants exhibited exceptional talent and dedication to the field of law. The success of this event bodes well for future moot court competitions and serves as an inspiration for aspiring lawyers throughout India.

We congratulate all the participants and ILS Law College for their support throughout this event. We encourage all the students to participate in such events organized by the Student Committee.

Announcement of the 7th The Dastur National Direct Tax Moot Court Competition, 2024

The Chamber of Tax Consultants
• 3, Rewa Chambers, Ground Floor, 31 New Marine Lines, Mumbai-400 020
• Tel.: 2200 1787 / 2209 0423 / 2200 2455
• E-mail : office@ctconline.org
• Visit us at : www.ctconline.org

Student Committee		
Chairperson	:	Niyati Mankad
Vice Chairpersons	:	Charmi G. Shah
Convenors	:	Charmi A. Shah, Viral Shah
Advisor	:	Ajay Singh

7TH THE DASTUR NATIONAL DIRECT TAX MOOT COURT COMPETITION, 2024

15th June & 29th June, 2024

The Chamber of Tax Consultants in association with the Government Law College, Mumbai are pleased to announce the Seventh Edition of The Dastur National Direct Tax Moot Court Competition, 2024.

OBJECTIVES

The objective of the Tax Moot Court Competition is to provide students from all over India with an opportunity to get an exposure to a tax moot problem, improve their oratory and intellectual skills, provide them with an opportunity to appear before the Hon'ble Members of the Hon'ble Income Tax Appellate Tribunal (ITAT) and the Hon'ble Judges of the Hon'ble Bombay High Court and to motivate students to specialise in taxation.

FORMAT AND SCHEDULE OF THE MOOT

Number of teams	• Limited number of teams shall participate • Each Team shall comprise Three Students – Two Speakers and One Researcher. • Teams from outside Mumbai shall be provided accommodation on 28th & 29th June, 2024 (2 Nights) (for semi-final & Final participants).
Sessions / Oral Rounds	**15th June, 2024** – Preliminary Rounds & Quarter Final Round (On-Line) **29th June, 2024** – Semi-Final Round & the Final Round (Off-Line)
Details of Moot Problem	This year, the Moot Proposition is based on the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
Opening of registration:	**25th April, 2024** (Registrations shall be accepted on first-come-first served basis)
Registration Fees	₹ 2,500/- per team (inclusive of GST)
NEFT Details for Payment	**NAME OF ACCOUNT** : THE CHAMBER OF TAX CONSULTANTS **NAME OF BANK** : IDBI BANK **BRANCH NAME** : NANA CHOWK, MUMBAI-400 007 **ACCOUNT TYPE** : SAVING **ACCOUNT NUMBER** : 0166104000060738 **IFS CODE** : IBKL0000166
Note	Once the payment process is done, share the transaction UTR number to events@ctconline.org for invoice generating purposes
Last date for	**Registration** – 7th May, 2024 and must be done through an e-mail to taxmootglc@gmail.com **Submission of soft copies of Memorials** – 4th June, 2024 **Submission of hard copies of Memorials** – 20th June, 2024

• Trophies and/or prizes shall be awarded to the (1) Winning Team (2) Runner up Team (3) Best Speaker (4) 1st Runner up Speaker (5) Best Memorial.

Winning Team	1st Runner up Team	Best Speaker	1st Runner up Speaker	Best Memorial
₹ 15,000/-	₹ 10,000/-	₹ 6,000/-	₹ 3,000/-	₹ 6,000/-

Rules & Regulation	Moot Proposition	Registration Schedule
CLICK HERE	CLICK HERE	CLICK HERE

For any queries please call 2200 1787 / 2209 0423 or Mobile - 90049 45579

FORTHCOMING PROGRAMMES

Sr. No.	Event	Tentative Months
1.	International Taxation for the Beginners (Online Mode)	May & June 2024

The Chamber of Tax Consultants

Estd. 1926

Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

Unveiled by **Shri S. E. Dastur,** Senior Advocate on 30th January, 2008.