

# ***BHUJ BRANCH OF WIRC OF ICAI***

**E-NEWSLETTER FOR THE MONTH OF APRIL-2018**

**(FOR PRIVATE CIRCULATION ONLY)**

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## ***CHAIRMAN'S COMMUNICATION***

Dear Professional Colleagues,

Wishing all of you a Happy New Financial Year

Many of us must have wondered and wished that the month of March should have 60 days! Such is the pressure that this month brings to bear on us. Although deadlines have become a part of our life all through the year, 31<sup>st</sup> March is perhaps the "mother of all deadlines." To look at it from a positive angle, the satisfaction and relief that one experiences on successfully attending to March deadline is also something special.

If, on 1<sup>st</sup> of April, we think that we can feel "relaxed," it is more of an "April Fool Prank," isn't it! April starts with its own set of deadlines and pressures, starting, off course with Bank Audits with new provisions, new rules, new forms, new utilities presenting themselves one by one. However, it is also true that may be all these things have made our profession that much more exciting and made professionals that much more competent and resilient.

For the Branch as well, the month of March was reasonably hectic. The month began with MCS Course for students which lasted from 1<sup>st</sup> of March to 15<sup>th</sup> of March. Total 17 students participated in the course. The course went on nicely and as it appeared from the feedback received from the students and faculties, the programme did succeed in serving its intended purpose. We also had two CPE events during the month. On 9<sup>th</sup> of March we had the opportunity to play host to respected Assistant Commissioner of Income Tax (TDS) Rajkot Range.

## CHAIRMAN'S COMMUNICATION

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We also had a CPE event on Bank Branch Audit for 4 hours on 24<sup>th</sup> March. Both the programmes were received well by the members.

At WRIC level, annual events of Branch Orientation and Award Ceremony were organised on 18-19-20<sup>th</sup> of March at Mumbai. We had the good fortune to represent all of you from Bhuj Branch at these functions. It was at this award ceremony that our Branch was handed over that Second Prize for Best WICASA Branch under Micro Branch Category. The ceremony thus carried a historical significance for our Branch.

Branch Orientation event is an event of a unique nature. I have always felt something special while attending this event. It has been a great learning experience in organisational and management skill. The chance to interact with leaders of national and regional levels and with the fellows from other Branches is most valuable. The informal interactions that we have there with CCMs and RCMs are of immense benefit. The guidance, the suggestions that we receive go a long way in developing our ability to serve the profession through serving the Branch. As the Chairman of your Branch, I had the good fortune to speak to the gathering on your behalf. The text of what I addressed there is reproduced elsewhere in this newsletter.

As said before, from March to April, from FY 2017-18 to 2018-19, life marches on, the show goes on with new challenges and opportunities. Just as I am writing this message, GST Audit Report Format is made public for comments. Immediately thereafter, we had new Income Tax Return Forms notified. The extensiveness of the GST Audit Report Format and the Changes in new ITR Formats with reference to additional details asked for in respect of GST presumptive scheme of taxation is likely to keep us busy for this month. To be positive about it, these will fulfil our CPE target for the month of April.

A few words about this edition of the Newsletter. We have two young members trying their hand at writing for the first time, CA Sonali Asodia and CA Darshana Mayecha. I welcome them. We also have the second part of article on Insolvency Code by Harsh Joshi, who is awaiting his membership. The series on International Taxation continues with one more article this month.

With these words, I dedicate this effort to you all. I sincerely hope that every one of you is enjoying the efforts and activities. We value your participation. Let me tell you that even a suggestion is a form of participation. We respect you, we value your suggestions. Please give us a chance to prove it.

Thank you  
CA Darshan Khandol  
Chairman, Bhuj Branch of WIRC of ICAI

## LIABILITY OF AGRICULTURIST UNDER GST

CA SONALI ASODIYA

B.Com., ACA

**India is a nation of farmers with the agriculture sector contributing a large chunk of the economy. Small scale agriculture has been exempted under GST and most of the basic produce sold in fresh form do not attract any GST. However, GST registration and GST compliance may be mandatory for large scale farmers and companies involved in agriculture. In this article, we look at the taxation of agriculture under GST in detail.**

First of all who is covered under the definition of ‘**an agriculturist**’? Section 2 of CGST Act defines the word ‘agriculturist’. As per definition

*‘Agriculturist’ means an individual or a Hindu Undivided Family who undertakes cultivation of land-*

*(a) by own labour, or*

*(b) by the labour of the family, or*

*(c) by servant on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family*

So it is clear from the definition that only **an individual** or a **HUF** engaged in agriculture business are covered.

Now what is the liability of an agriculturist under GST Act regarding taking registration and payment of tax? To understand this lets take an example.

Determining liability of an agriculturist under following situation

- An agriculturist is engaged in supply of one taxable produce cultivated by him. His income from this supply is Rs. 500000/-. Now suppose he is also engaged in retail business of taxable goods and his income out of that business is:

- i) NIL
- ii) Rs.1000000/-
- iii) Rs.1800000/-
- iv) Rs.2500000/-

First we have to decide whether an agriculturist is liable to take registration under GST Act or not.

- ❖ Section 22 talks about person liable to be registered under the Act. As per section 22

*Every supplier shall be liable to be registered under this Act in the state or union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.*

- ❖ And Section 23 of CGST Act,2017 deals with a person not liable for registration

*(1) The following persons shall not be liable to registration, namely:—*

*(a) any person engaged exclusively in the business of supplying goods or*

*services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;*

*(b) **an agriculturist, to the extent of supply of produce out of cultivation of land.***

*(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.*

- So from above it is clear that in first two situations he is not liable to take registration under GST. Thus no tax liability arises.
- Now in third situation, the question arise is that whether his liability arise to take registration under section 22 or not. For this query section 23 clearly says that agriculturist is not liable to take registration **to the extent** of supply of produce out of cultivation of land. Thus his turnover from agricultural activity is not considered while calculating threshold limit of 20lacs. His taxable turnover is 18lacs which does not exceeds threshold limit. So in third situation also GST liability not arises.
- In fourth situation it is clear that he is liable under section 22 to take registration under this Act. But here confusion is that what is his GST liability on his agriculture produce?
- ❖ Charging section 9 says;

*Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and service tax on all intra-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

- Now here **taxable person** means a person who is registered or liable to be registered under section 22 or section 24.

As an agriculturist is not a person liable to be register under section 22 to the extent of supply of produce out of cultivation of land, he is not a taxable person to the extent of supply of produce out of cultivation of land. Thus GST liability not arises on his agriculture produces.

So in forth situation he his liable to registered under GST but tax liability only arise on his taxable supply of Rs.25lacs and not on his agricultural turnover of Rs.5lacs

### **Conclusion**

On going through above example and provision of the Act related to an agriculturist, it may be argued that neither an agriculturist is liable to take registration under the Act to the extent of his produce out of cultivation of land nor his agriculture turnover taken into account while calculation threshold limit under section 22.

# The Insolvency and Bankruptcy Code: Introduction

By Harsh Joshi

B.Com.,

Awaiting Membership of ICAI

## A brief recap on Insolvency and Bankruptcy Code:

- The Insolvency and Bankruptcy Board regulates the code.
- The Adjudicating Authority accepts the application for Insolvency Resolution Process
- The application for initiation of Corporate Insolvency Resolution Process (hereafter called as resolution process) can be start in event of a “Default” by any of the following
  - Financial Creditor
  - Operational Creditor
  - Corporate Debtor itself

Now that we know who can start the resolution process, let’s see how the process can be initiated by each one of the above. The initiation of Resolution Process is covered by Section 7 to 10 of the code.

## Section 7 : Initiation of corporate insolvency resolution process by financial creditor.

7. (1) A financial creditor **either by itself or jointly with other** financial creditors **may file an application** for initiating corporate insolvency resolution process against a corporate debtor **before the Adjudicating Authority when a default** has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, **along with the application** furnish—

(a) **record of the default** recorded **with the information utility** or such other record or evidence of default as may be specified;

(b) the **name of the resolution professional** proposed to act as an interim resolution professional; and

(c) any **other information** as may be specified by the Board.

(4) The **Adjudicating Authority** shall, **within fourteen days of the receipt** of the application under sub-section (2), **ascertain the existence of a default** from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the **Adjudicating Authority is satisfied** that—

(a) a **default has occurred** and the **application** under sub-section (2) **is complete**, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, **admit such application**; or

(b) **default has not occurred** or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, **reject such application**:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency **resolution process shall commence from the date of admission** of the application under sub-section (5).

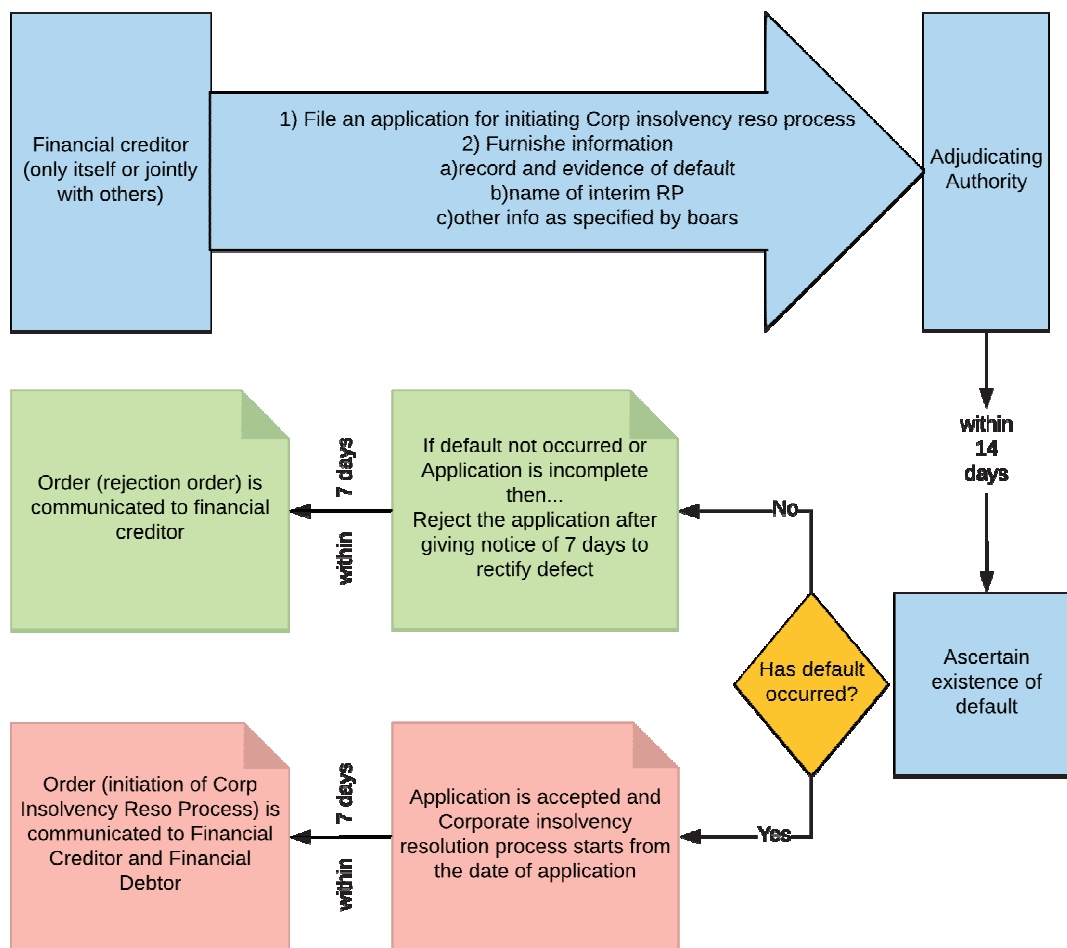
(7) The **Adjudicating Authority shall communicate**—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

Section 7 of IBC, 2016

This section can be easily understood with the following diagram



The above diagram explains the process for application by a Financial Creditor. Please note that the Financial Creditor need not prove that he has given enough opportunity to the Debtor for satisfaction of claim. The reason being that Financial Creditor are required to submit data regarding details of its debtors to the information utility. So enough data would be available to determine

whether any actual default has occurred or not. However the same is not in the case of Operational Creditors. So let's see how their process works!

## Section 8 : Insolvency resolution by operational creditor.

The text of section 8 is produced as under

**8. (1)** An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

**(2)** The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

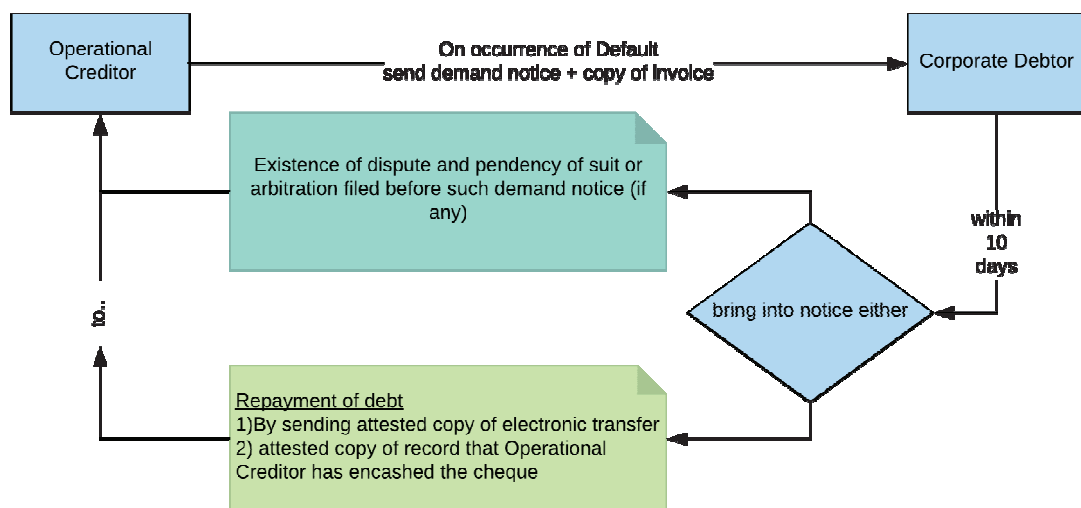
(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

*Explanation.*—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

Section 8 of IBC, 2016

This section can be easily understood with the following diagram



In case after 10 days, Operational creditor does not receive any notice of Dispute or Payment, then he may go ahead and file application to Adjudicating Authority as per Sec 9



If you read the section after having the backstory of section 7, you will realise that Operational Creditor can not file Application for initiation of Resolution Process. But he has to follow the above additional steps to be eligible to initiate the Resolution Process. In case the Creditor can not pay the amount within 10 days of giving of notice, or fails to bring into notice any dispute relating to the Operational Creditor, then he may go further and take help of section 9 to initiate the insolvency resolution process.

## **Section 9 : Application for initiation of corporate insolvency resolution process by operational creditor.**

9. (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

(d) such other information as may be specified.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

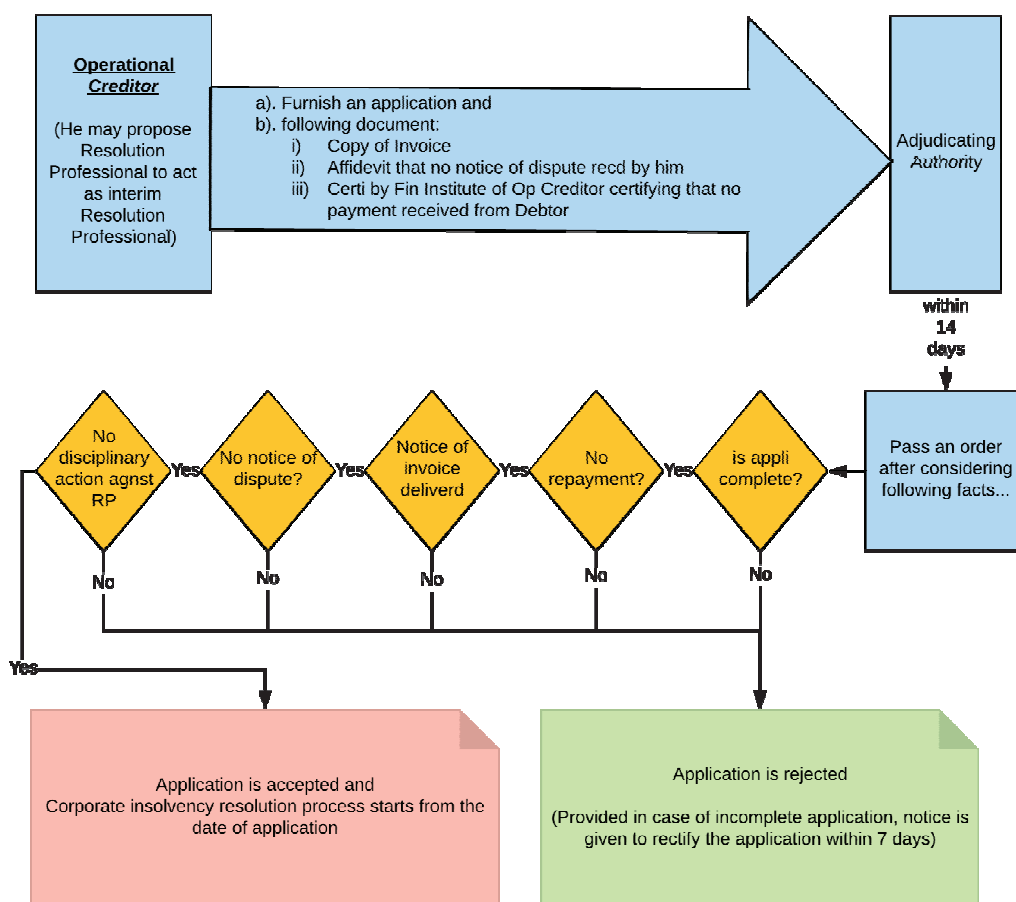
(d) notice of dispute has been received by the operational creditor or there

is a record of dispute in the information utility; or  
 (e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section. Section 9 of IBC, 2016

This section can be easily understood with the following diagram



Unlike section 7, where there were only 2 conditions regarding admission of application, there are 5 conditions here. The additional 3 conditions are whether notice has been delivered to debtor, whether any notice of dispute received and whether any disciplinary action is taken against the Resolution Professional proposed.

## Section 10 : Initiation of corporate insolvency resolution process by corporate applicant.

10. (1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

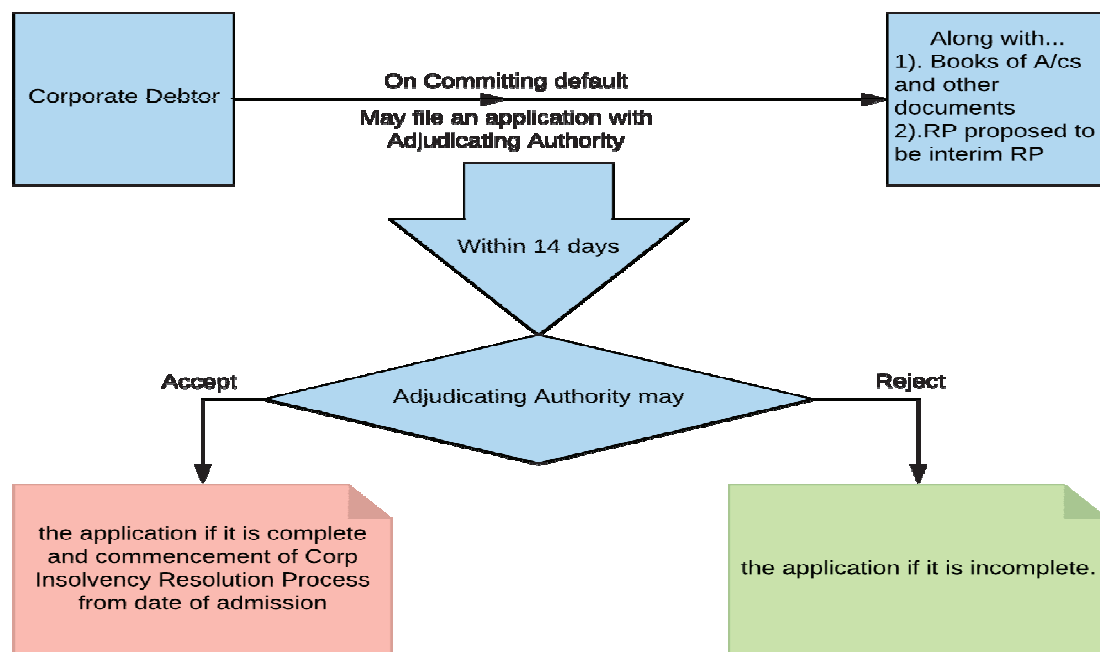
(3) The corporate applicant shall, along with the application furnish the information relating to—  
 (a) its books of account and such other documents relating to such period as may be specified; and  
 (b) the resolution professional proposed to be appointed as an interim resolution professional.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—  
 (a) admit the application, if it is complete; or  
 (b) reject the application, if it is incomplete:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section. Section 10 of IBC, 2016

The following diagram will simplify the provision.



It is natural that if a Corporate Debtor itself want to follow the resolution procedure, then the formalities should be minimum. Therefore, the only requirement here is to complete the application form and submit your books of accounts.

Till now we understood how the Corporate Insolvency Resolution Process starts. In the next article, we shall dive into the Insolvency Resolution Process itself.

## **AMENDMENTS TO FINANCE BILL, 2018**

CA Darshana Vijaykumar Maycha  
B.Com., M.Com., ACA

By the way of Finance Bill , the government seeks to levy new taxes, make alterations in the current tax structure, or make proposals for the continuance of the present tax structure for a certain period of time beyond what was originally approved by the Parliament. The important amendments in present Finance bill and their relevance with respect to Finance Act has been discussed briefly to provide an insight about various provisions.

### **AMENDMENT No. 2**

Amendment to Explanation 4 to Section 2(42A)

Section 2(42A) deals with the definition of short term capital assets the underlying short term assets being “equity oriented fund”. Explanation 4 defined the meaning of equity oriented fund with reference to section 10(38). But in the present Finance act, section 10(38) has been made ineffective and hence section 112A is to be referred for the matters relating to calculation of taxable value of capital gain on equity shares and units of equity oriented fund.

Section 112A has its own definition of “equity oriented fund”

So, to bring harmony to the taxation of long term and short term gain from assets of similar nature, definition of equity oriented fund in explanation 4 to section 2(42A) has been amended so that it now derives its meaning from 112A and not from 10(38).

### **AMENDMENT No. 3**

Section 9 (i) Income deemed to accrue or arise in India

This section talks about “Business Connection” while deciding on income deemed to accrue or arise in India. Finance Bill expanded the scope of the expression Business Connection by introducing a new concept of “Significant Economic Presence.” In the finance Bill, this significant economic presence was made independent of two things; one, residence or place of business in India, and two, rendering of service in India. One more point has been added to these two while passing the Bill into Act. Now, it is said that whether agreement is entered into India or not will not have any effect while deciding upon significant economic presence in India, that is, whether agreement is executed in or outside India, specified activities or transactions will constitute significant economic presence in India.

### **AMENDMENT No. 4**

This amendment relates to Section 43

This section deals with definitions of certain terms which are relevant to the calculation of income from profits and gains from business or profession. Clause one

defines actual cost of the asset for the purpose of income from profits and gains from business or profession.

The present Finance Bill has introduced a new explanation 1A is inserted after explanation 1.

The Finance Bill has introduced new section 28(via) which deals with conversion of stock in trade into capital asset.

Now, if after converting such stock in trade into capital assets, if such asset is subsequently used for the purpose of business (that is, re converted to stock in trade once again) than the value of such asset as per explanation 1A will be taken as the value of such asset on reconversion to business asset will be valued at FMV which was arrived at as per 28(via) when it was converted from stock in trade to capital asset.

### **AMENDMENT No. 5**

Section 112A has been introduced to provide

Tax @ 10% of the LTCG shall be charged

Also the tax shall be charged only if LTCG of such nature exceeds Rs. 1 Lakh.

No benefit of indexation shall be allowed on such gains

Consequently, the Finance Bill said that mode of computation covered in section 48 is not to apply to the assets covered under section 112A. This was creating some sort of conflict between 48 and 112A. As the general manner of computation of capital gain is prescribed in section 48, a reference is now provided in section 48 specifying clearly that to assets specified in 112A the mode of computation specified in section 48 is not to apply.

### **AMENDMENT No. 6**

Section 54EC applies to investment in specified assets (bonds of NHAI & RECL) for claiming deduction from income under the head capital gains and the same to be held for specified period which was 3 years.

The present Finance bill has amended the lock-in-period from 3 years to 5 years with the intent of making the premature withdrawal taxable.

This amendment specifically clarifies that for investment after 1-4-18, if the amount is withdrawn before 5 years, the same will be taxable.

### **AMENDMENT No. 7**

This is a new insertion, it was not there in Finance Bill

It deals with section 55 which is about cost of acquisition

For assets covered by newly introduced section 112A, definition of cost of acquisition was in section 112A itself, at sub section 6 of that section.

Now, that definition from 112(6) is removed and the same is brought in section 55 by way of new sub clause (ac)

While defining fair market value, section 112A (at explanation to subsection 8) bifurcated the assets under two categories, listed in the recognized stock exchange,

and two, unlisted units. Now, the Finance Act, while moving this to section 55, identifies capital assets (covered by 112A) under three categories; one, listed on recognized stock exchange, two, unlisted units and three, not listed on a recognized stock exchange on 31-01-2018, or listed assets acquired in consideration of such unlisted assets. It is to be noted that while in respect of the first two categories, the calculation of fair market value is more or less the same, for the third category of assets (newly inserted), the benefit of Indexation is allowed, which is not the case with the first two categories of assets. Consequently, Explanation (b) to Sub Section (8) of Section 112A is omitted.

### **AMENDMENT No. 9**

Amendment in Section 112A(2)(ii)

This was introduced in Finance Bill

Sub section (2) of 112A deals with calculation of tax payable

There is a slight change in the wordings of clause (ii)

Previously it said “on balance amount”

Now it says “as reduced by the capital gains referred to in sub section (1)”

### **AMENDMENT No. 13**

The Section 139A deals with provisions relating to procurement of PAN. The said amendment replaced the words, “not being an individual” with the new set of words “being a resident other than individual” as the basic condition as to who can procure PAN card and thus the same shall now apply to residents only.

### **AMENDMENT No. 19**

The present Finance Bill has repealed PPF Act, 1968 and the same shall now be covered under the Government Savings Bank Act, 1873.

The PPF Act contained a provision protecting balance under it from court attachment which stated that balance in PPF account

--shall not be liable to attachment

--under any decree

--or order

--of any court

--in respect of liability incurred by the depositor

As the act in which it was merged lacked such a provision the major advantage of the scheme was jeopardized. So to protect the interest of depositors new section has been introduced that reinstates the benefits mentioned above.

**SEC.-9 INCOME DEEMED TO ACCRUE OR ARISE IN INDIA  
(Part-1)**

CA Jagrutkumar Avinash Anjaria  
B.Com., FCA, DISA(ICAI)

Section 9 of the Income Tax Act deals with income deemed to accrue or arise in India.

This section holds special relevance with reference to non residents. It derives its relevance from Section 5. According to Section 5(2)(b), income which is deemed to accrue or arise in India shall be included in the total income of a non-resident.

Section 9 has only two subsections. While subsection 1 lists out the incomes that shall be deemed to accrue or arise in India, subsection 2 carves out an exception to sub section 1 in respect of certain pension payments.

Subsection (1) is a very long section. It has seven clauses and each clause has its own set of explanations and provisos.

Let us start with clause (i)

This clause talks about five situations. If income accrues or arises under any of these situations, this sub clause requires it to be treated as deemed to accrue or arise in India. Such situations are;

1. Through or from any business connection in India
2. Through or from any property in India
3. Through or from any assets in India
4. Through or from any source in India
5. Through the transfer of a capital asset which is situated in India

It is not necessary that income should accrue directly in any of the above referred situations. This clause will come into play even if income accrues or arises indirectly.

This clause has seven explanations to it.

We may start with explanation 4 which seeks to clarify the expression “through” used in this clause. It assigns three meanings to the expression “through,” they are;

1. By means of
2. In consequence of
3. By reason of



It may be noted that the expression “through” is doubly defined here by using two expressions, “means” and “includes.” The use of words “shall be deemed to have always meant and included” may be taken as giving this explanation some kind of “retrospective effect.”

Coming to Explanation 1, it restricts the scope of the extent provisions of this sub clause. It narrates five situations where either the income that is deemed to accrue or arise is reduced or restricted to certain extent or is completely taken out of the purview of this clause. Let us examine each such situation as narrated by the explanation.

The first situation talks about a business in which all the operations are not carried out in India. Explanation says that in such a situation only part of the income shall be deemed to accrue or arise in India. This part income shall be calculated with reference to the operations carried out in India and only that part of Income as is reasonably attributable to operations carried out in India shall be deemed to accrue or arise in India.

Second situation talks about a non resident who purchases goods from India for export. Income confined to such operation shall not be deemed to accrue or arise in India.

Third situation relates to business of news agency and publishing of newspaper or magazine. If they collect news and views from India for transmission out of India, the income resulting from it will not be deemed to accrue or arise in India. However, only income confined to such operation shall not be deemed to accrue or arise in India.

Fourth case deals with shooting of a cinematographic film in India. Here, Income that is confined to such operation shall not be deemed to accrue or arise in India. This is applicable to individual, firm or company. This is available to individual if he is not a citizen of India. For a firm, there are two conditions; none of its partners should be citizen of India and none of its partners should be resident in India. For a company also there are two conditions; none of its shareholders should be citizen of India and none of its shareholders should be resident in India.

Fifth and final situation relates to business of mining of diamonds. It is applicable to a foreign company only. The activity covered here is display of uncut or unasserted diamonds. If such display is in notified special zone, the income confined to such operation shall not be deemed to accrue or arise in India.

Moving on to the Explanation-2, we come across certain clarifications regarding the concept of “Business Connection.” This explanation tries to explain this expression in an “inclusive” manner. The explanation declares that certain kinds of activities shall



be covered by the expression “business connection” if they are carried out through a person who is acting on behalf of a non-resident. Basically, three types of activities are mentioned here.

The first is authority to conclude contract. If a person concludes contracts on behalf of a non-resident, it is business connection. Whether that person has express authority or he habitually concludes contracts, is immaterial. In either case, it will be a business connection. The exception is, if the activity is restricted to purchase of goods or merchandise for non-residents, it will not be a business connection.

**Finance Act, 2018 has substituted this sub clause to explanation-2. The substituted provision talks about three situations;**

- 1. Authority to conclude contracts on behalf of the non-resident. Whether the person “has” this authority or he “habitually exercises” it, both the situations are covered here.**
- 2. Habitually concludes contracts**
- 3. Habitually plays the role of principal and such role leads to the conclusion of contract by that non-resident**

**The new sub clauses goes on to specify the types or natures of contracts covered here. It says that the contracts talked about here are;**

- 1. In the name of non-resident**
- 2. When the non-resident owns the property, contract for transfer of ownership; and where the non-resident has the right to use, contract for granting of the right to use**
- 3. For the provision of service by the non-resident.**

The second is maintenance of stock of goods or merchandise and making delivery from such stock. If this is done on behalf of a non-resident, it is business connection. It will be a business connection even if the person doing such activities on behalf of a non-resident does not have an authority to do so but is habitually (regularly) doing so.

Third is securing orders. If orders are secured for a non-resident by a person, it will be a business connection. The orders may be secured “wholly” (exclusively) for a non-resident or “mainly” for a non-resident, in either case, it will be a business connection. Orders secured for that non-resident, for those who control such non-resident, for those who are controlled by such non-resident and for those non-residents who are under common control with that non-resident, if orders secured “wholly or mainly “ for all or any of those, it will make it a business connection.

There is a proviso to Explanation-2 which goes on to make an exception when the business activity is carried out through agent. The proviso refers to broker, general commission agent and any other agent. Two conditions are there; the agent should

have an independent status; and two, he should be acting in the ordinary course of his business. If these are satisfied, such an activity will not result into a business connection.

Further proviso restricts what the proviso gives. Further proviso restricts the independent status of such broker/agent. If the agent/broker works “wholly or mainly” for non-residents, he shall not be deemed to be having an independent status. Even if the agent/broker is working wholly and mainly for those who control the non-resident, who are controlled by that non-resident or who are under common control with that non-resident, the agent/broker will lose his independent status. The result will be that the activity will result into a business connection.

**Finance Act, 2018 has inserted new Explanation 2A. The newly inserted Explanation seeks to further clarify the expression “business connection.” For this, it introduces a new concept “significant economic presence” in India. It essentially clarifies that significant economic presence of a non-resident in India shall constitute business connection in India.**

**It further goes on to clarify as to what is “significant economic presence” by way of definition. This is explained by way of two sub clauses and two provisos.**

**Clause (a) talks about transactions, transactions carried out by a non-resident in India. Transactions covered here are;**

- 1. In respect of goods**
- 2. In respect of services**
- 3. In respect of property**
- 4. Provision for download of data are included**
- 5. Provision of download of software are included**

**However, this clause is applicable only if aggregate of payments from such transactions exceed an amount that will be specified.**

**A proviso is there with reference to “transactions.” The proviso identifies three situations with reference to the transactions. It says that transactions or activities will constitute significant economic presence;**

- 1. Whether agreement for that is entered in India or outside**
- 2. Non-resident has a residence in India or not**
- 3. Non-resident has a place of business in India or not**
- 4. Non-resident renders service in India or not.**

**Clause (b) identifies further situations which will constitute significant economic presence in India. They are;**

1. **Activities of soliciting of business if such activities are systemic and continuous.**
2. **Engaging in interaction with users in India, if,**
  - a. **Such engagement is through digital means**
  - b. **Number of users exceed such number as is prescribed**

**Finally, there is a further proviso to clarify that only so much of income as is attributable to what is covered by (a) and (b) shall be deemed to accrue or arise in India.**

Explanation-3 restricts the quantum of income that will result from business connection with reference to business connection on account of holding of stock, supply from such holding of stock and securing of order. It clarifies that only income attributable to operations carried out in India shall be deemed to accrue or arise in India.

Now let us move to explanation—5 as we have discussed explanation 4 earlier. It talks of share or interest in a company registered or incorporated outside India. It says that if such share or interest derives its value from assets located in India, such capital asset (share or interest) shall be deemed to be situated in India. Retrospective effect is implied to it by the use of the words “shall always be deemed to have been situated.” Even if the value is indirectly derived from assets held in India, it will be covered by this explanation.

This will not apply to assets held by way of investment in FII for AY 2012-13 to AY 2014-15. This is by virtue of proviso to this explanation.

Further proviso excludes when such assets are held by way of investment in Foreign Portfolio Investor category-1 or 2.

Before moving to Explanation-6, let us have a look at Explanation-7 which also, in a way, restricts the scope of what is covered by Explanation-5.

Explanation-7 either excludes entire income from the deeming fiction or deems only such part as is reasonably attributable under the circumstances referred to therein.

It says that where “all” the assets are not located in India, only such part of the income of the non-resident transferor shall be deemed to accrue or arise in India “as is reasonably attributable” to assets located in India. How to calculate such “reasonably attributable” part? The explanation says that the manner of its calculation will be prescribed.

Explanation declares that no income shall be deemed to accrue or arise in India with reference to entities referred to in Explanation-5 in certain circumstances. Such circumstances are;

1. During the 12 months preceding the transfer, transferor does not hold
  - a. Right to management or control
  - b. Voting power or share capital or interest exceeding 5% of the total

Or, does not hold

- a. Right of management or control
- b. Any right which would entitle him to right of management or control
- c. Any right in or in relation to such other entity that by virtue of holding such right in that other entity he becomes entitled to right of management and control in this company.
- d. Such percentage of voting power, share capital or interest in such other entity which results in his holding of voting power, share capital or interest exceeding 5% of the total in this company.

Explanation 6 explains terms used in explanation 5.

It explains when the assets shall be deemed to derive its value substantially from assets held in India. This is to be decided with reference to specified date.

Specified date means, date on which accounting period ends, prior to the date of transfer. However, if on the date of transfer, the book value of assets exceeds the book value on the date of ending of accounting period by 15%, date of transfer will be the specified date.

So, if on the specified date, the value of such assets exceed 10 crore rupees and represents at least 50% of the value of all assets owned by the company or entity, it shall be deemed that assets are deriving their value substantially from assets held in India.

Value here means fair market value on the specified date. It shall be determined in the manner prescribed. Liability in respect of such assets is not to be reduced

To be continued.....

***ADDRESS DELIVERED BY CA DARSHAN KHANDOL AT  
BRANCH CO-ORDINATION MEET, 2018, MUMBAI***

I am CA Darshan Khandol, representing Bhuj Branch of WIRC of ICAI. It is an honour to be in front of such an august gathering to talk about vision and mission of Bhuj Branch for the coming year.

We are a small branch, in fact we are one of the newest of Branches of the region. There is a saying, "small is beautiful." We intend to prove this statement true with the blessings of our Regional as well as Central Council.

We do realize that our basic role is to serve; to serve the members; to serve the students and to serve the society. We are also conscious that whatever we do, will also have a huge impact on the image of our Institute, the ICAI.

Being a small and new branch, we are lacking on infrastructure and resources. In spite of the best of efforts from all of us, development of infrastructure will take its time and resources are always scares for everybody.

We intend to compensate what we are lacking in terms of infrastructure and resources by harnessing the "natural resource" that we have in abundance, the "human resource."

Being small has some advantages also. One of them is the close personal relations. We have a very closely knit member base at Bhuj and most of the members know one another personally. We intend to take advantage of this by ensuring the widest possible participation of members in the activities of the Branch. We intend to try and encourage members to participate in educational activities by way of writing for Branch Newsletter and leading the CPE events as faculty. We shall also provide avenues of sports and social activities for members having aptitude in those areas.

Being small will also give us a chance to focus on basics. Last year, while studying GST through informal study groups, our members rediscovered the art and magic of learning through reading of bare act. We intend to build on such self learning through unstructured and informal study groups. We shall cover more areas of professional relevance and encourage more and more number of such study groups. We shall also try and experiment with member student joint study initiative, particularly on the elective subjects of new CA Final syllabus.

All these small study initiatives will be in addition to regular CPE and other educational activities that WIRC and various Committees of the ICAI help us with every year. We will be glad to be a medium through which experts of the Institute and members and students of Bhuj can interact with one another. I am confident of the support of all the council members on this count, so, I take this chance to thank them all in advance.

## BRANCH CO-ORDINATION MEET-2018

We also owe a lot to the society. Keeping with the tradition of our Institute to contribute to the cause of the society, we have a vision. Here also, “participation” and “keep it small” will be our motto. We intend to deal directly with different cross sections of the society such as students, senior citizens, women, investors, professionals, government and off course, the businessmen. Our efforts will be to reach out to them on points where we can help them the most and in the best of manners. We think that such a direct approach at the grassroots level will not only give the ICAI a place in the hearts of common people, it will save us on cost and resources as well. Such small but personal gestures will help improving the image of our Institute with the common men.

Kutch has become a favourite tourist destination. It has a special mixture of desert, sea and hills. It also has archeological sites and places of religious importance. I would like to draw the attention of branches that Kachchh can be an ideal place to host RRC. I take this opportunity to invite all the branch for this. We will be honoured to help you with necessary arrangements.

And off course, we always love to see our flag bearers, our RCMs and CCMs at our place. I assure you all that we are reasonably good hosts, please check it for yourself. We will be waiting eagerly to welcome you, we shall also learn a few things about professional skills from you, please oblige us.

With these words, I thank you all, requesting you all to wish us good luck in our vision and mission.

Thank you.



**TEAM BHUJ with OFFICE BEARERS OF The WIRC of ICAI**





THE AWARD



THE CERTIFICATE



Team BHUJ receiving the Award and the Certificate



Left:- Team BHUJ with the Award

Below:- CPE on Bank Branch Audit



Dignitaries at CPE on TDS Provisions

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