

# BHUJBRANCH OF

WESTERN INDIA REGIONAL COUNCIL OF  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

ISSUE: March - 2018

For Private Circulation Only

**#YOUR  
BUDGET  
2018**



CA. Darshan V. Khandol

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**9824096112**

## Chairman's Message

Dear Professional colleagues,

It is undoubtedly a great honour for me to be blessed with a unique opportunity of serving the members and students as 4<sup>th</sup> chairman of Bhuj Branch of WIRC of ICAI. I would like to extend my heartfelt gratitude towards my managing committee members, supporters and well wishers for their immense support, faith and confidence in me for this Post. My new responsibility brings both opportunity and challenges. But hope that I will continue to enjoy your faith, affection, love, support and most importantly active involvement in all the branch activities.

Firstly, I would like to congratulate all of the members & students as WICASA of Bhuj Branch of WIRC of ICAI is awarded with 2<sup>nd</sup> rank by WIRC in respective branch category. I thank all the members & students for the support throughout the year and hoping for the same during this year also. Although it's our duty as a managing committee to conduct programs, I can't resist myself to mention the pain taken by CA Bhavee Thacker to do all such student activities and answering students 24\*7 with great sense of responsibility.

The CA fraternity has been presented with new torch bearers at the helm of affairs. On behalf of all the members of Bhuj Branch, I congratulate all the newly elected office bearers of the Institute of Chartered Accountants of India, Western India Regional Council of ICAI and all the Branches.

With great sense of responsibility, we have planned various programs for the upcoming year for members and students and will share events from time to time. At the same time we invite suggestions from all of you to make all the activities of the branch more fruitful for the stake holders.

**Coming together is beginning,  
Keeping together is progress,  
and  
Working together is Success.**

The functions of any organizations are through the means and efforts of members of the organization. And we have many such young members who can contribute their talents to the branch. So we request the interested members to nominate themselves for the following sub committees of the branch up to 17<sup>th</sup> March, 2018 :

1. CPE Committee
2. Taxation Committee
3. News Letter Committee
4. Students Committee
5. Library and Infrastructure Committee
6. Women's CA Committee
7. IT Committee

Continue...

# Chairman's Message

Before we look to the future, the year ahead, it will be worthwhile to have a few words on the month that passed by. February, the shortest month of the calendar proved to be a hectic one for our Branch. It started with the Union Budget and we had a CPE on the very next day where we discussed the finance bill clause by clause. We also came out with a special Budget Edition of our Branch Newsletter on 3<sup>rd</sup> of February. We also had the opportunity to be host to two young and dynamic Central Council members, CA Anil Bhandari and CA Jay Chhaira. While CA Anil Bhandari introduced us to the nuances of new age accounting, CA Jay Chhaira enlightened us about how we can apply management principles in our practices and life to grow. Regional Council member CA Preeti Savla also visited us at the branch premises and had a good interaction with the members. And off course, that communication from the WIRC that our WICASA Branch got second rank has made this month a historical one for the Branch.

Now let us try and look ahead. I take this opportunity to share with you all, the broad road map of activities that we can carry out during the course of the year. The list that follows is "illustrative" and not "exclusive." This may serve a variety of purposes. It shall keep us focused and motivated. It may also serve as a yardstick for us to measure our own performance at a future date. It may also give the members a chance to identify the activities they are comfortable with and contribute their time and effort on them. Please take note of this wish list. Your suggestions and responses will be the first step towards the successful implementation of this wish list. Let me reiterate, this list is illustrative, waiting to be improved by your suggestions. Please come forward and oblige.

## **ACTIVITIES PLANNED FOR MEMBERS DURING THE YEAR :**

- Academic Programs on different subjects for at least 60 CPE Hours (30 Local Speakers, 15 Invited Speakers, 15 CCM/RCM etc)
- Study circle meetings for different subjects
- 1 Certificate Course in which we get sufficient participants
- 2-3 awareness programs with trade associations
- 1-2 advisory program to help general public
- 1-2 Awareness programs with other professional association
- 1 Program on Capital market with known speakers of the industry
- 1-2 spiritual program for members like Yoga, Meditation etc.
- 1 Entertainment evening with orchestra for members and family
- 1 RRC / Picnic as per the suggestions of the members
- Sports Competition (Chess / Table Tennis / Badminton / Caroms / Cricket etc.)
- Cricket match with Income Tax Department / GST Department / Gandhidham Branch.
- Health awareness / Stress management program for members
- Blood Donation Camp on CA Day
- Tree Plantation on CA Day
- Swachh Bharat Abhiyan on CA Day

## **ACTIVITIES PLANNED FOR STUDENTS DURING THE YEAR :**

- Management and Communication Skills Program
- Elocution Competition
- Sports Competition (Chess / Table Tennis / Badminton / Carrom / Cricket etc.)
- Essay competition
- Training for article clerks on subjects like Tax Audit / Bank Audit etc.
- Career guidance camp at commerce schools for 11-12 class students.

Before I conclude, let me also draw your attention to some of the initiatives that we are trying to make in the Newsletter. You will notice that we are having a couple of dedicated sections from this edition of the

newsletter. We are planning to have a series of articles of International taxation. We are also trying to have a regular feature "Labyrinth (maze) of Law," under which we shall try and have a discussion on some interesting case laws or questions of law and fact which are subject matter of discussion, difference or uncertainty. Please wish us good luck that we succeed in carrying them out with reasonable regularity and success.

Wish you all very happy March Ending and Bank audit season. Please keep on giving suggestions to improve ourselves and participate in each and every activities of the branch.

With warm regards,

CA. Darshan V. Khandol  
Chairman,  
Bhuj Branch of WIRC of ICAI

## Aspects of International Taxation-Residence

-CA. Chunauti H. Dholakia  
B.Com., FCA, DISA(ICAI)

Due to liberalization and globalization, earning of person is not restricted to national boundaries. This has increased complexities in taxation laws Hence it is necessary to understand international aspects of income tax laws. Basics of international taxation as specified in Section 6 of Income Tax Act are discussed hereunder.

### **Introduction:**

International taxation is the study or determination of tax on a person or business subject to international aspects of the countries tax laws. Tax incidence varies with the residential status of the person. Non-resident persons are charged to tax on income accruing or arising, or deemed to accrue or arise or received or deemed to be received in India during the previous year. He is not chargeable in respect of income accrues or arise and received outside India. Therefore, while calculating tax liability of a person first step is to determine residential status in accordance with section 6 of Income Tax Act. This test for residential status should be carried out each year afresh and this residential status is applicable to each sources of income. Rules for determining the residential status of a person is governed by section 6 of the Income Tax Act. A person can be non-resident in any previous year if he fulfils conditions specified in section 6.

### **Test for Individual:**

Section 6 of the Act only states what constitutes “resident: and “not ordinarily resident”. If the person does not fall into either category, he would be “non-resident”. This test is based on physical presence in India and includes territorial jurisdiction of India. As per section 6(1), if either a person is in India for a period of 182 days or more during the relevant previous year; or has been in India for 365 days or more in the last 4 years; and has been in India for at least 60 days in the relevant previous year, he would be “resident”. As per section 6(6) an individual will be “not ordinarily resident” if he has been a non-resident in 9 out of 10 previous year preceding that year has been in India for a period amounting to 729 days or less. In case of crew member of a foreign bound ship leaving India, period of stay in India in respect of such voyage is determined by the CBDT notification No.70/2015 dated 17.08.2015. In such case period of stay of seafarers outside India is calculated from the date stamped on their continuous discharge certificate (CDC) at the time of joining the ship for voyage till the date entered in the CDC at the time of signing off. It is pertinent to note that residential status of an individual has nothing to do with citizenship, place of birth or domicile. Further, for the purpose of counting number of days stayed in India, both the departure and arrival date are considered to be in India. Moreover, period of stay is not necessarily to be continuous or active and the place of stay need not be usual place of residence, business or employment of the individual.

### **Test for Hindu Undivided Family (HUF)/Partnership Firm/AOP/BOI etc:**

Section 6(2) specifies that if the control and management of affairs of HUF/partnership firm/AOP/BOI is situated wholly outside India, said entities are regarded as non-resident. To determine whether HUF is “resident but not ordinarily resident” residential status of Karta has to be considered on the basis of criteria laid down for individual. The occasional or sporadic visit of a non-resident Karta to the place where the family business is carried on in India or casual directions given in respect of the business while on such visits would be insufficient to make the family resident in India. Here control does not necessarily mean where the trading activities are carried out or the business managed from a place where the books of accounts are maintained. Hence mere receipt of copies of business books of accounts in India by the Karta or a partner will not be considered as exercise of control. In fact the control and management implies directing the flow of resources and deciding the strategies and tactical moves. Therefore the control and management of a business is said to be situated at a place where the heads and brain of the entity is



situated. Hence the place of control may sometimes be different from registered office of abovementioned entities.

### **Test for company:**

Section 6(3) stipulates that a company is considered as resident in any previous year if it is an Indian Company or if its place of effective management in that year is in India. If these conditions are not satisfied, the company will be considered as “non-resident”. Meaning thereby, if a company’s place of effective management is India, it will be treated as an Indian resident and its global income will be taxable in India. The section describes “place of effective management” as “a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are in substance made.”

### **Guiding principles for determination of place of effective management of a company:**

Place of effective management (POEM) is an internationally recognized test for determination of residence of a company incorporated in a foreign jurisdiction. It should not be determined on the basis of isolated facts but it should be based on all relevant facts related to management and control of the company. For the purpose of determining POEM, guiding principles are issued by CBDT vide circular No. 6/2017, which are applicable to a company having turnover or gross receipts of Rs.50 Crore or above in a financial year. These principles create distinction between companies engaged in active business outside India and companies not engaged in active business outside India. Here, “Active business outside India” shall mean:

- (1) Income from transactions where both the purchase and sale of goods is from/to its associated enterprises and income by way of royalty, dividend, capital gains interest or rental income (aggregate of such income termed as “passive income”) does not exceed 50% of its total income: and
- (2) Less than 50% of its total income is situated in India: and
- (3) Less than 50% of total number of employees are situated in India or are resident in India: and
- (4) The payroll expenses incurred on such employees is less than 50% of its total payroll expenses.

For the purpose of determining whether the company is engaged in active business outside India the average data of previous year and two years prior to that shall be taken into account.

### **POEM of a company engaged in active business outside India:**

POEM of a company engaged in active business outside India shall be presumed to be outside India if the majority of board meetings are held outside India. However, if de facto decision making authority is not Board of directors, but Indian parent or resident, then POEM shall be in India. Further, if key decisions by the directors are in fact being taken in a place other than the place where formal meetings are held, then such other place would be relevant for POEM. Such place may be different from head office of the company.

### **POEM of a company not engaged in active business outside India:**

There is two stage determination process of POEM in case of a company not engaged in active business outside India. First stage is to identify the persons who actually make the key management and commercial decisions for the conduct of the company as a whole. Second stage is to determine the place where the decisions are in fact being made, i.e. the place where such decisions are implemented.

### **Place of decision making:**

## INTERNATIONAL TAXATION

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The term “place of decisions making” is key factor to determine place of effective management. For the purpose of determination of POEM, substance would be conclusive rather than the form. Hence in cases where a board has de facto delegated the authority for decision making related to the key management and commercial decisions of the company to the senior management (which may include managing director or CEO, Financial director or CFO, Chief Operating officer and the heads of various divisions or departments) or to any other person including a shareholder, promoter, strategic or legal financial advisor etc. and the Board does nothing more than routinely rectifying the decisions already made, the place of decision making will be the place where these senior managers or the other person make those decisions. Similarly, when company’s board has delegated some or all of its authority to one or more committees, then the location where the members of such committee are based and where such committee develops and formulates the key strategies and policies for mere formal approval by the full board will be considered as POEM of the company.

Moreover, “place of decision making” is the place where key decisions are in substance being made. Therefore physical presence of the persons making decisions is not necessary at the place of decision making. In some cases usual place of residence of majority of decision makers may be the place of decision making.

It is pertinent to note that these decisions include only key management and administrative decisions which are related to company’s strategy and policy. It does not include routine operational decisions related to day to day business operations. Hence it is necessary to distinguish these two types of decisions to determine “place of decision making”.

### Location of head office:

Head office of the company often represents the place of decision making. But the head office is not necessarily the same place where majority of employees are working. If the company is not decentralized, location of head office will be the place of working of senior management and location of direct support staff. If they are located in more than one location, the place where these senior managers are primarily or predominantly located will be the location of head office. In case of company meeting held via telephone or video conferencing, the location where the highest level of management and support staff are located will normally be the location of head office.

If above factors do not lead to clear identification of place of effective management, these secondary factors may be considered i.e.

- (1) Place where main and substantial activity of the company is carried out: or
- (2) Place where the accounting records of the company are kept.

# CHANGES MADE IN EWAY BILL ON 7TH MARCH 18

## Changes made in E-way Bill Rules on 07<sup>th</sup> March 2018 [Notification No 12/ 2018 Central Tax Dated 07<sup>th</sup> March 2018]

CA. Deep Koradia

B.com, ACA, DISA (ICAI)

1. Previously, PART-A was compulsorily needed to be filled by the person causing movement and PART B compulsorily by the transporter. **NOW, the Transporter can fill PART-A as well** after receiving authorization from registered person [1<sup>st</sup> Proviso to Rule 138(1)]
2. Now E-commerce Operator or Courier Agency Can also Fill the PART A after getting authorization from the consigner.  
[2<sup>nd</sup> Proviso to Rule 138(1)]
3. Incase of Inter-state movement of goods for job-worker, previously the principle needed to generate the Eway bill for both the movements irrespective of the value of the consignment. **Now the Change is even registered Job Worker can create the EwayBill.** [3<sup>rd</sup> Proviso to Rule 138(1)]
4. **Value of Consignment = Basic Value + Tax – value of exempted supplies.** Previously It was TOTAL invoice value i.e. Basic + Tax. A Welcome change. [Explanation-2 to Rule 138(1)]
5. Now, if the person itself causing the movement by it's own, or hired one or in public transport, He need to compulsorily Generate Ewaybill after filling Part-B. Previously Part A was compulsion and Part B was non-compulsive. [Rule 138(2)]
6. Part B for the goods transported by railways or by air or vessel, **Can be filled before or after commencement of the movement.** Previously it was needed to be filled before the movement which was not practically feasible. However, the railway shall not deliver the goods unless away bill required under the rules has been procured by them. A Welcome move. [Rule 138(2A)]  
Similar Changes made to rule 138A where if the movement is caused by rail, air or vessel, **then person-in-charge is not required to carry the documents as per Rule 138A.** [Proviso to Rule 138A]



7. Part B of the eWaybill was not required for the movement of goods between
- From the place of supplier to the transporter
  - From the place of transporter to the place of recipient
- If the distance was 10 KMs.

**Now this distance has been changed to 50 KM s.** A welcome change

[3<sup>rd</sup> Proviso to Rule 138(3) & 1<sup>st</sup> Proviso to Rule 138(5)]

8. **IF consigner or the consignee has not generated the way bill & Total value in the vehicle exceeds 50000, then transporter has to generate the way bill – Very harsh provision for transporter.**

The words “in accordance with the provisions of the sub-rule (1)” which were creating confusion has been removed and intention of the law maker is now clear to burden the transporter if the individual consignment is less then 50000 Rs. but total value in the conveyance exceeds 50000 then transporter needs to prepare Ewaybill. [Rule 138(7)]

9. The validity of the Part A was 72 hrs within which one need to update PART B. The 72 hours is **now changed to 15 days.** [2<sup>nd</sup> Proviso to Rule 138(9)]

10. Validity of the eWay bill

Sr.No	Distance	validity Period
[1]	[2]	[3]
1	up to 100 km.	One day in case other than Over Dimensional Cargo
2	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional cargo
3	Upto 20 Km.	One day in case of Over Dimensional cargo
4	For every 100 km. or part thereof thereafter	One additional day in case of Over Dimensional cargo

11.

For “Over the one Dimensional Cargo” – the validity period has been smoothed [Rule 138(10)]

12. The Calculation of the days for the validity was starting from the time the Part B was updated on 24 hour basis. **Now it will be counted starting from the time Part B is updated and validity will be completed on the midnight of the last day.**

Eg. Distance for other than Over Dimensional Cargo say for an example is 150 Kms.

The Validity for the same is 2 Days. The Part B is filled at 6PM on 7<sup>th</sup> March 2018.

Previously, the validity clock was starting from 6PM on 7<sup>th</sup> March 2018, so it will end on 5.59PM on 9<sup>th</sup> March 2018

**Now, Validity will start on 6PM on 7<sup>th</sup> March and will end on 11.59PM on 9<sup>th</sup> March**[Explanation-1 to the Rule 138(10)]

13. Previously, the E waybill needed to be accepted or rejected within 72 hours else it was deemed to be accepted. Now, it need to be it needed to be accepted or rejected within **“72 hours or the goods delivered to them, whichever is earlier”** [Rule 138(12)]

14. **List of Exemption has been extended and following are the addition.** [Rule 138(14)]

(h) Where the goods are being transported—

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal;

(i) Where the goods being transported are transit cargo from or to Nepal or Bhutan;

(j) where the goods being transported are exempt from tax under notification No.

7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 679(E) dated the 28th June, 2017 as amended from time to time and notification No. 26/2017- Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1181(E) Dated the 21st September, 2017 as amended from time to time;

(k) Any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;

(l) Where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

(m) Where empty cargo containers are being transported; and

(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.

# The Insolvency and Bankruptcy Code: Introduction

By Harsh Joshi

B.Com.,

Awaiting Membership of ICAI

A hypothetical situation: I have borrowed ` 5 Crore from you. Also assume that I am not paying it back to you. What can you do? The general answer would be “Of course I will sue you!” Then again assume that I have no money to repay back. What the court will do? Again this time your answer would be “Court will sell off your assets and give us money!” Now this same statement has been written in so many different laws governing different entities, that one had to check which law to apply for the situation in hand. The companies Act, 2013 deals with winding up of Companies, SARFAESI Act majorly deals with recovery from securitised assets, The Partnership Act deals with dissolution in case of partnerships, but there was no single window legislature from where an aggrieved creditor can initiate the proceeding.

Also continuing the above hypothetical situation, you dragged me to Court. The court sold off my assets and paid you your dues. But now I don't have anything. So I will cease to continue business. I will stop providing employment to the many people who are currently working under me. I will stop contributing to the GDP of the country. In short, selling of someone's assets and paying debts is the last

2. The provisions of this Code shall apply to—
  - (a) any company incorporated under the Companies Act, 2013 or under any previous company law;
  - (b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
  - (c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
  - (d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and
  - (e) partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

Section 2 of Insolvency and Bankruptcy Code, 2016

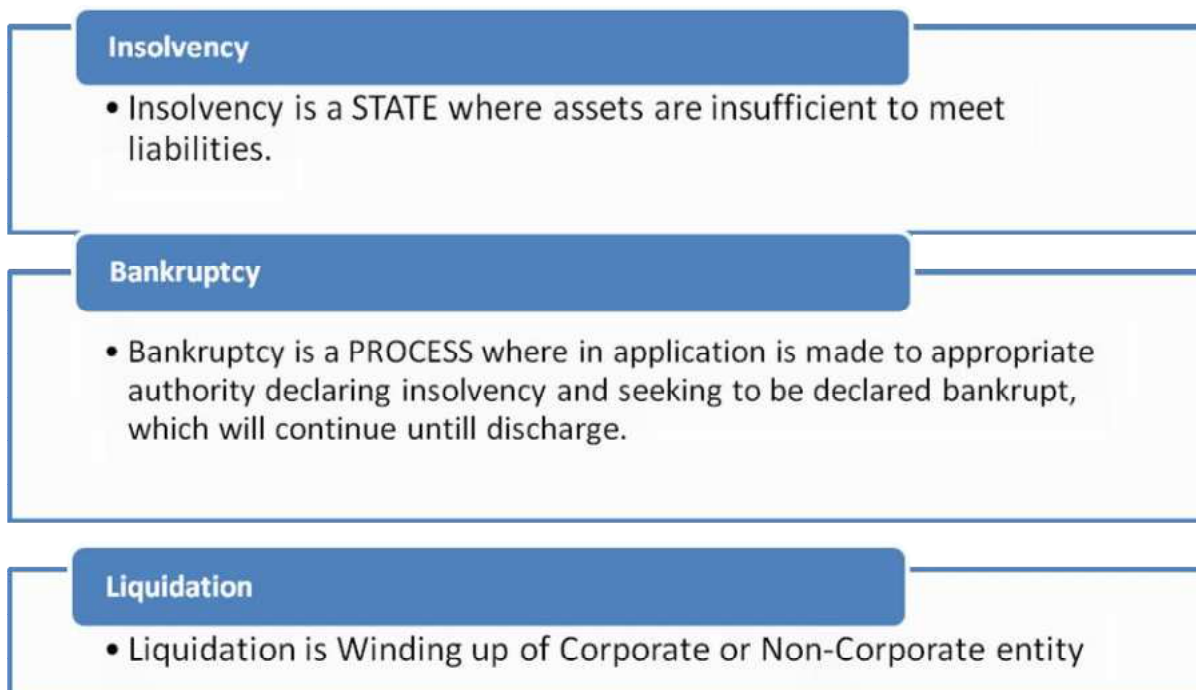
thing that should be done. So what could be done so that you can also get your 5 Crore and I

can also continue serving my nation?

The Insolvency and Bankruptcy Code, 2016 (referred to as IBC hereafter) is a new legislature for the Insolvency and Bankruptcy which tries to provide a solution to both of these above situation. It provides for insolvency process to be followed for Companies, Partnerships, LLPs, Individuals, etc... all under one legislature as under:

It also provides solution to grave problem of cessation of business by introducing a concept of insolvency resolution process. As the name suggests, the insolvency resolution process objects to resolve the insolvency rather than leading to insolvency. In the Insolvency Resolution process, a resolution plan is made and business of the defaulter debtor is run by the creditors for a certain period to recover the amount. After which it is handed back to the debtor to run. It also alters the priority levels of repayment of debt while in the course of winding up.

But before we start discussing the nitty-gritty of the IBC, let us understand three terms we will be using in the discussion.



Keeping that background in mind, let's start discussing The Insolvency And Bankruptcy Code, 2016.

### Basic Mechanism of Insolvency and Bankruptcy Code:

The basic mechanism of the code bifurcates the Administration and Adjudication authorities. The IBC is just an Act and therefore, there has to be a body governing the Act, like CBDT for Income Tax, MCA for corporate laws. Similarly, the Insolvency and Bankruptcy Board of India (hereafter referred to as Board) is regulatory body under IBC. While the IB Board is the administering authority, the Adjudicating authorities are National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Dispute Resolution Tribunal (DRT) and Dispute resolution Appellate Tribunal (DRAT). The working of Board and Adjudicating Authorities can be seen from the following diagram.

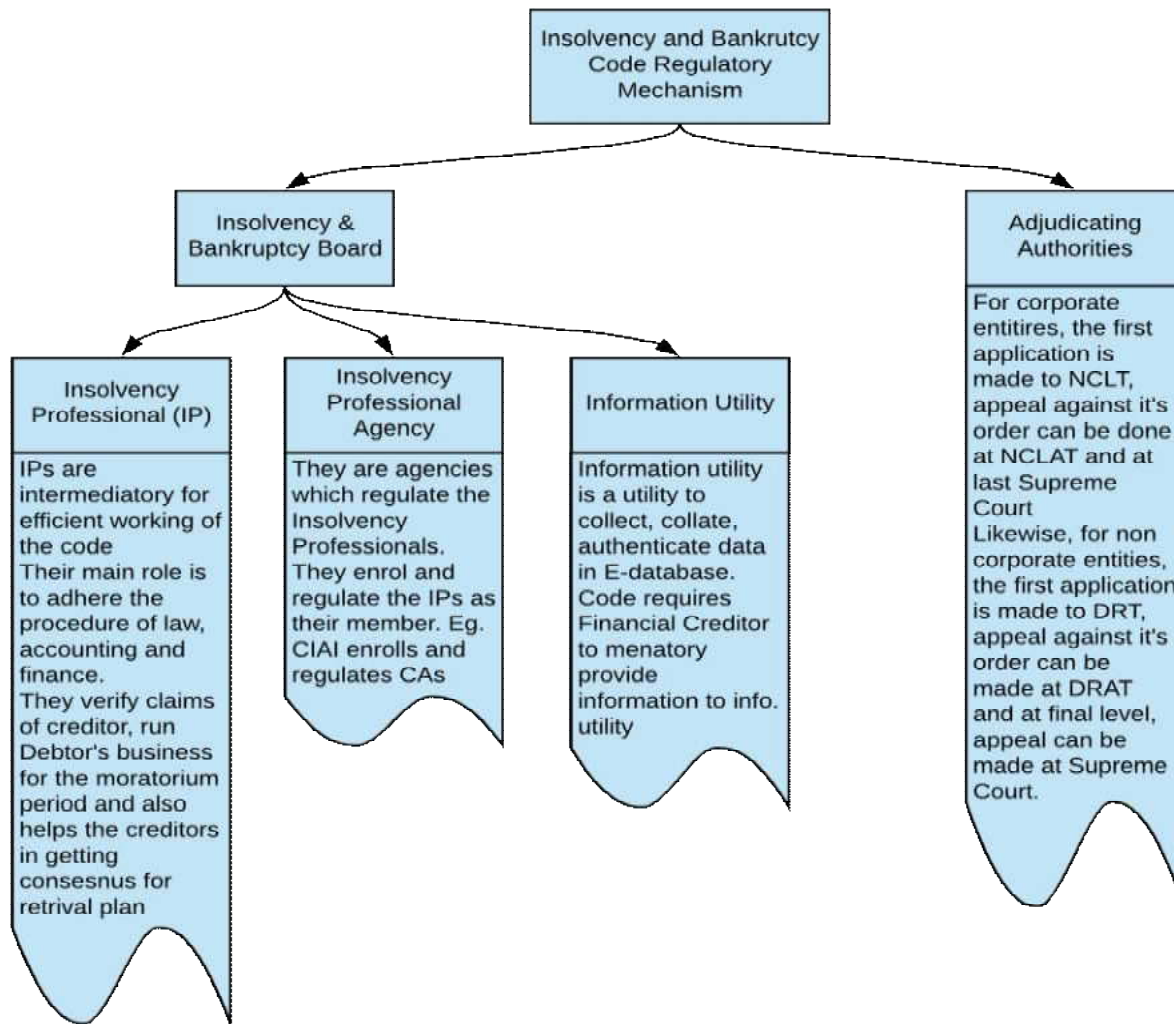


Diagram 1: Mechanism of IBC

## Insolvency of a Corporate Entity

### When can Corporate Insolvency resolution process initiate

Chapter II of IBC deals with insolvency of Corporate Entity. Now, section 6 states the circumstances under which corporate insolvency resolution process can be initiated. It says, there should be a default.

6. Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter

Section 6 of Insolvency and Bankruptcy Code, 2016

The term default has been defined in IBC as under:



3.(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be

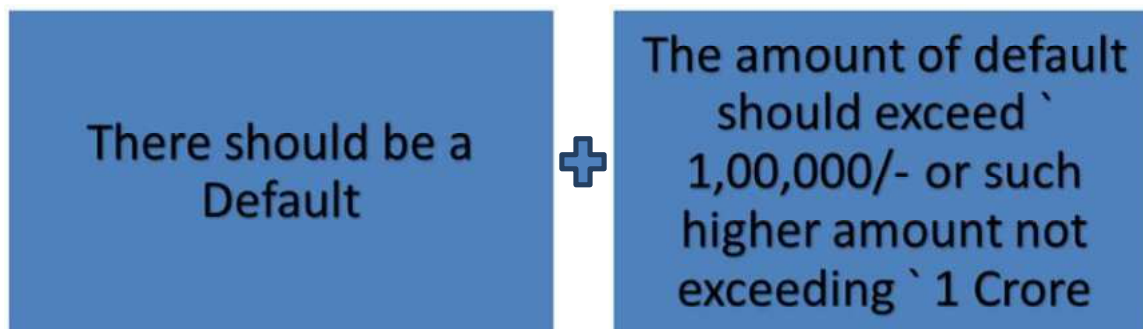
Section 3(12) of Insolvency and Bankruptcy Code, 2016

Also, section 4 of the IBC states that...

4. This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees: provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Section 4 of Insolvency and Bankruptcy Code, 2016

So to sum up, the following conditions should be satisfied to initiate the corporate insolvency resolution process:



### Who can initiate Corporate Insolvency Resolution Process

IBC states that following set of persons can make application to adjudicating authority and initiate the process: (Also refer to section 6 stated above)

Financial Creditor	Operational Creditor	Corporate Debtor
<ul style="list-style-type: none"> <li>Eg. providers of finance, i.e. Banks, Financial Institutes etc</li> </ul>	<ul style="list-style-type: none"> <li>Eg. Supplier of goods or Services</li> </ul>	<ul style="list-style-type: none"> <li>The corporate entity itself</li> </ul>

All these processes are covered by Section 7 (Financial Creditors), Section 8 (for Operational Creditor) and Sec 9 & 10 (For corporate debtor), which we shall cover in the next article.

## SECTION 43B AND SERVICE TAX

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

We all are aware of the provisions of section 43B of the Income Tax Act, 1961. The section carries a heading that states “Certain deductions to be only on actual payment.” The section refers to seven categories of items, broadly classified as under;

1. Tax, duty, cess or fee
2. Contribution to certain funds for employee welfare
3. Bonus or commission (36(1)(ii))
4. Certain interest on loans-Public Financial Institution
5. Certain interest on loans-Banks
6. Payments by employer in lieu of leave
7. Payment to railways for use of its assets.

In this article, we are going to focus on payments of the nature of “tax, duty, cess or fee” only.

Payments of this particular nature are referred to in clause (a), which reads as under;

“any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, . . .”

The effect and applicability of this section has more or less got settled in the minds of all. Still, at times, we find it difficult to convince ourselves as to why the unpaid amount of tax standing to the credit of the balance sheet (and not routed through the profit and loss account) should get added to the income of the assessee.

The confusion gets confounded when we read the line that commences the section. The section begins with the following line;

“Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this act in respect of-“

The expression “deduction otherwise allowable,” is the expression that causes the confusion. An argument is put forward that when a tax is separately collected and parked directly as “Liability” in the Balance Sheet,” does it become a “deduction?” It is further argued that as the amount is never routed through the Profit and loss account (or trading account), how can it be described as a deduction? Moreover, the heading of section 43B itself categorically states “Certain deductions to be only on actual payment.” Thus, an inference is drawn that section 43B is applicable only to “deductions,” and that as the amount of tax collected and parked directly to the liability side of the balance sheet, is not a “deduction,” because it has neither been added to revenue nor been reduced from the income or revenue as an item of expense. It has just been identified and parked separately in the balance sheet. To give effect to section 43B in such a situation, what we are doing is not reducing the allowable expenditure but we are adding to the income; this is the way taxpayers feel.

Recently, I came across a judgment by the Hon’ble Bombay High Court which has dealt with this question while deciding on a specific question of applicability of section 43B to the Service Tax

liability in certain situations. Here is an effort to share with you all, my understanding of the principle enunciated by the said judgment.

The judgment seems to address this question by reading section 43B along with section 145A of the Income Tax Act. The judgment appears to be concluding that taxes are not routed through the profit and loss account mainly when they are subsequently recoverable. In such an eventuality, they are parked separately in the balance sheet and paid after adjusting available input credit. However, it is section 145A that will bring even such taxes within the four corners of revenue and expenses.

The declared purpose of section 145A is restricted to determination of income chargeable under the head profits and gains of business or profession and it is an accepted position that it will not have any effect on the accounts or accounting statements. It is the wordings of 145A(a)(ii) that brings these amounts (taxes etc) within the folds of revenue and expenses. It reads as under;

*“further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.”*

The effect will be that income chargeable under the head profits and gains of business, determined in accordance with the method of accounting regularly employed by the assessee (145A9a)(i)), shall be further adjusted to include such taxes by virtue of 145A(a)(ii). As the explanation to 145A clarifies, even if such taxes carry any rights (of input credit), 145A(a)(ii) will still apply.

Here, the court opines that Section 145A, particularly its sub section (a)(ii), has different implications for those who are engaged in manufacturing or trading of goods vis a vis those who are engaged in provision of services. It is held that 145A(a)(ii) has no relevance for those who are providing services only and do not have any inventory. So, if such a service provider has any unpaid liability of Service Tax, 145A(a)(ii) will not come into play if there are no “goods.” In other words, tax duty etc, even if not routed through profit and loss account, will get coloured into the character of revenue and expenses only when there are “goods” and such tax, duty etc have any role in bringing such goods to its present location and condition. The final effect is, if one is a provider of services and has unpaid liability of service tax, don't worry about 43B if there are no goods having direct nexus to the tax. Unpaid liability of service tax will attract 43B only in cases where such tax is debited to the profit and loss account and remains unpaid. If kept out of the profit and loss account, it will not attract 43B.

The decision has been delivered by the Hon'ble Bombay High Court in the case of “CIT2 V/s. KNIGHT FRANK (INDIA) PVT.LTD.” It was delivered on 16-08-2016 and pertains to assessment year 2007-08. It can be accessed at the following link;

Being a judgment of Bombay High Court, how far will it be applicable to Gujarat, is a question. Opinions continue to be divided on this particular issue. However, unless there is a contradictory verdict by the jurisdictional high court, any decision of any high court should be a good law. According to one view, even in case there is a contradictory judgment by the jurisdictional high court, the decision of non jurisdictional high court does not become irrelevant at the outset. Let us leave it at that, as I do not think I am capable of discussing anything more on this point.

Next question that may crop up in our mind is, what about GST, as Service Tax is a thing of past, off course, it will be relevant till the AY 2018-19. The ratio of this judgment should hold good in

GST regime also so long as the facts remain in agreement with those discussed in this case. That is, even in GST regime, if one is a service provider only and there is no connection whatsoever with “goods,” the unpaid GST liability should be subjected to the same treatment that was given to the unpaid service tax by this decision.

One more twist in the tale is provided by the Finance Bill, 2018. It has inserted new Section 145A (and 145B) to replace existing section 145A. The wordings of the relevant new sub section are;

*(ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;*

This section is made applicable from 1<sup>st</sup> April, 2017, so whatever we discussed with reference to the GST in the preceding paragraph, goes out of the window.

Significant differences from the earlier text are;

1. New subsection, in the beginning itself, talks of valuation of purchase, sale and inventory. Whereas, the earlier sub section was focused on “goods” only. In the earlier section, words purchase and sales did appear, but they appeared in the very beginning of the section and somehow were lost when it came down to subsection (a)(ii), giving sub section (a)(ii) a very restricted meaning.
2. Second noteworthy difference is the inclusion of the words “or services” along with the word “goods.” By doing so, the outright exclusion of services from the rigors of this subsection is sought to be negated or at least made difficult.
3. However, continued presence of the expression “to bring the goods or services to the place of its location and condition as on the date of valuation,” may continue to create some confusion. However, not of the type addressed by the decision that we are discussing, as the word services has been introduced. The confusion may be on the line that whether the section intends to restrict itself with reference to the date of valuation only or not. What does it mean by expression “to bring the service to the place of its location and condition on the date of valuation?” How much importance does the expression location and condition on the valuation date carries with reference to the whole section? Does this expression carry so much importance as to take it out of the operation if on the date of valuation there is nothing on hand, say the stock of goods is nil and still there is unpaid liability with reference to the tax on those very goods?
4. The liability that generally arises for payment under the indirect tax regime that we know arises on the occurrence of “sale,” be it goods or services. The continued stress on the expression “bringing the goods/services to present location/condition,” does go on to make us wonder whether they seek to address the unpaid liability that arose on account of sale or is the real intention something different?

In the labyrinth of law, at times, time only has the ability to answer.

**Women empowerment and the CA Profession...**

**(CA Jenny Shah, M.com, FCA, DISA(ICAI))**

***This article was published in July, 2016 issue of the Branch newsletter. The same is reproduced here to co-inside with WOMEN'S DAY***

**The Women Empowerment...**

The empowerment of women refers to providing the necessary rights and responsibility to women to make them self reliant. Empowerment is the process of building capacities of women and creating atmosphere which will enable optimum utilization of their creative potentials. Empowerment gives women, the power to influence decision making process, planning, implementation and evaluation.

Economic freedom is very important for women empowerment. Women must be partner in economic development. Feminine skills are the operating system of the 21<sup>st</sup> Century.

**Role of Women in Our society...**

Traditionally, Indian women have been made to serve the man dominating world. Till now they were only a unit of family organization. Gender gap existed regarding access to education and employment. Indian Government has taken several steps towards empowering the women. Now, women are not a dormant segment of Indian population have now become active participants in all walks of life.

When the women move forward, the family moves, the village moves the nation moves. The economic empowerment will allow raising women self awareness, skill development, creative decision making and it may also lead to produce better citizen and a new and truly modern India.

**Women and the CA Profession...**

In this knowledge era, when gender doesn't matter as much as talent and expertise do, more and more women turn into professionals and are proving their mettle by playing an important role in every sphere of business and industry nationally as well as internationally. Indian accountancy profession is no exception to this phenomenon. Women are skilled at multitasking, and they tend to take a larger share of responsibility wherever they are, including in our profession.

There is a positive trend in the intake of all professional courses in general and more so in CA, because of high levels of employability it offers and its flexibility. Whenever the intake goes up, it is the women who contribute more to it. Girls from humble backgrounds are transforming the lives of their families through this route and in the absence of capitation fee parents are also supportive of their daughters picking CA.

In 1933, 26 year old women from Vellore, R.Sivabhogam surprised the nation when she became the first certified women Chartered Accountant. Whereas 1957 born Naina Lal Kidwai is presently the country head of HSBC India. In year 2008, women among total CAs in the country contributed only 8%, which reached to 22% by 2014 at 50000 in number. And it is predicted that this ratio would climb up to 50% by 2020. Thus number of female CAs has been rapidly growing across the country.

**CA- why an ideal career choice for Women...**

- High Employability
- Option of having own practice / working from home
- Large CA Firms' like PWC, KPMG & Deloitte workforce include about 30% women CAs



- Affordable for girls from humble families
- Huge potential to serve in corporate world

### Challenges ahead...

- Breaking “The glass ceiling”, still Less number of women employees preferred
- Gender wage gap / Lower remuneration for women employees
- Defying Social expectations / Priority of social responsibilities over professional ones
- Balancing Business and family life
- Coping with fear of failure
- Job insecurity and funding challenge

### How to overcome challenges...

- In 2014 ICAI set up a 'Women Members Empowerment Committee (WMEC) focusing upon a 'Flexi Working Portal' (<http://womenportal.icai.org/>)
- Building a Support Network / partnership
- Referral and Education Service
- On site / off site child care centers
- Flexible leave policies
- Job sharing / Part time employment



# PHOTOGALLERY



CCM Jay Chhaira on Wealth Management on 24-02-2018



CCM CA Anil Bhandari 10-02-2018 Accounting & Auditing under new digital world





Sports Day Celebration 06<sup>th</sup> and 07<sup>th</sup> January 2018.



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