Excellence is discovering what you are good at and pursuing it with persistence.
~ Gaur Gopal Das

Connection

Volume VI, Issue 6 September 2017

LLB & CO.

Volume VI, Issue 6 September 2017

System based reconciliation of information furnished in GST

Sections 37, 38 and section 39 of the CGST Act, 2017 (hereinafter referred to as 'the Act') read with rules 59, 60 and 61 of the CGST Rules, 2017(hereinafter referred to as 'the Rules') require every registered person to furnish details of outward supplies made in a month in FORM GSTR-1, details of inward supplies received in a month in FORM GSTR-2 and a return in FORM GSTR-3 by the 10th, 15th and 20thof the next month respectively. Keeping in view that taxpayers may face certain issues in the initial days after the introduction of GST, the GST Council extended the date for filing of FORM GSTR-1 and FORM GSTR-2 for the months of July and August, 2017 and approved the filing of a simplified return in FORM GSTR-3Bfor these two months by the notified due dates after making the due payment of tax.

Registered persons opting to utilize transitional credit available under section 140 of the Act read with the rules made there under for discharging the tax liability for the month of July, 2017 were required to file FORM GST TRAN -1 on or before 28th August,2017. This transitional credit was to be credited to the electronic credit ledger and be available for discharging the tax liability.

As per the provisions of sub-rule (5) of rule 61 of the Rules, the return in FORM GSTR-3B was required to be furnished when the due dates for filing of FORM GSTR-1 and FORM GSTR -2 have been extended. After the return in FORM GSTR-3B has been furnished, the process of reconciliation between the information furnished in FORM GSTR- 3B with that furnished in FORM GSTR-1 and FORM GSTR-2 would be carried out in accordance with the provisions of sub-rule (6) of rule 61 of the Rules.

The detailed procedure for reconciliation of information furnished in FORM GSTR-3 and FORM GSTR-3B is detailed in succeeding paras.

Furnishing of information in FORM GSTR- 1 & FORM GSTR-2:

It may be noted that after the registered person has filed his return in FORM GSTR- 3B and the statement of outward supplies in FORM GSTR-1, the inward supplies shall be auto drafted for all registered persons (corresponding recipients of supply) and made available to them in FORM GSTR-2A as per sub-rule (3) of rule 59 of the Rules. FORM GSTR-2A is the exact replica of FORM GSTR-2 containing only those details that are auto populated from the details furnished in FORM GSTR-1 by the corresponding suppliers. Based on the details communicated in FORM GSTR-2A, the registered person shall prepare the statement of inward supplies in FORM GSTR-2 by:-

- adding, deleting or modifying the invoice level details communicated in FORM GSTR-2A;
- adding information pertaining to details that are required to be furnished in GSTR-2 but are not part of FORM GSTR-2A like details of imports, details of Supplies attracting reverse charge that have been received by registered person;
- providing details of supplies received from composition suppliers and exempt, nil-rated & non GST inward supplies;
- providing details of advances paid on inward supplies attracting reverse charge, if any, along with adjustments;
- providing details of reversal of ITC as per the provisions of rules 37, 39, 42 and 43 of the Rules, if any; and
- Providing HSN wise summary details of inward supplies.

Correction of erroneous details furnished in FORM GSTR-3B:

In case the registered person intends to amend any details furnished in FORM GSTR-3B, it may be done in the FORM GSTR-1 or FORM GSTR-2, as the case may be. For example, while preparing and furnishing the details in FORM GSTR-1, if the outward supplies have been under reported or excess reported in FORM GSTR-3B, the same maybe correctly reported in the FORM GSTR-1. Similarly, if the details of inward supplies or the eligible ITC have been reported less or more than what they should have been, the same maybe reported correctly in the FORM GSTR-2. This will get reflected in the revised output tax liability or eligible ITC, as the case may be, of the registered person. The details furnished in FORM GSTR-1 and FORM GSTR -2 will be auto-populated and reflected in the return in FORM GSTR-3 for that particular month.

Just to Remind You:

- Sept 15 - Advance payment of Tax
- Sept 15 - Payment of ESIC
- Sept 20 - Payment of GST and GSTR - 3B Filing

Inside this issue:

Action on the system-based reconciliation:

After the registered person has furnished the statement of inward supplies in FORM GSTR-2 by the extended date, the common portal shall auto-draft Part-A of the return in FORM GSTR-3 for the said month based on the information furnished in FORM GSTR-1 and FORM GSTR-2. Based on the revised figures of output tax liability and eligible input tax credit, Table 12 of Part B of FORM GSTR-3 shall be made available. The common portal would populate the correct figures of tax payable in column (2) of Table 12 of FORM GSTR- 3, based on the information furnished in FORM GSTR-1 and FORM GSTR-2. The tax paid through the electronic cash ledger and electronic credit ledger in the return in FORM GSTR-3B shall be displayed by the system in column (3) to (7) of the Table 12 of Part B of FORM GSTR-3. Where there is no difference between the details of output tax liability and eligible input tax credit furnished in FORM GSTR-3B and the details furnished in FORM GSTR-1 and FORM GSTR-2, the amount of tax payable and tax paid shall be the same in FORM GSTR-3B and FORM GSTR-3. The person can sign and submit FORM GSTR-3 without any additional payment of tax.

Additional payment of taxes:

Where the tax payable by a registered person as per FORM GSTR-3is more than what has been paid as per FORM GSTR-3B, the common portal would show another instance of Table 12 for making additional payment of taxes, in accordance with the mandate of clause (b) of sub-rule (6) of rule 61. As the tax payable in column (2) of Table 12 of FORM GSTR-3 is more than what was shown in FORM GSTR-3B, the additional amount of tax payable can be paid by debiting the electronic cash or credit ledger as per the provisions contained in section 49 of the Act along with applicable interest on delayed payment of tax starting from 26th day of August, 2017 till the date of debit in the electronic cash or credit ledger. If the eligible ITC claimed by the person in FORM GSTR-2 is less than the ITC claimed and utilized by the registered person in FORM GSTR-3B, the same would be added to his output tax liability and shall have to be paid by him along with interest by debiting the electronic cash or credit ledger as per the provisions contained in section 49 of the Act before submitting the return in FORM GSTR-3 to complete the process. It may be noted that where the transitional credit as declared in FORM GST TRAN-1 is credited to the electronic credit ledger, the same can be utilized for the payment of the said additional tax liability.

Additional claim of eligible ITC:

Where the eligible ITC claimed by the taxpayer in FORM GSTR -3B is less that the ITC eligible as per the details furnished in FORM GSTR-2, the additional amount of ITC shall be credited to the electronic credit ledger of the registered person when he submits the return in FORM GSTR-3 (in accordance with clause (c) of sub-rule (6) of rule 61). However, simultaneously, if there is an increase in the output tax liability, the registered person can utilize this additional amount of ITC eligible as per the details furnished in FORM GSTR-2 along with the balance in the electronic cash ledger, if required, for the payment of the increased output tax liability and submit his return in FORM GSTR-3.

Reduction in output tax liability:

Where the output tax liability of the registered person as per the details furnished in FORM GSTR-1 and FORM GSTR-2 is less than the output tax liability as per the details furnished in the FORM GSTR-3B and the same is not offset by a corresponding reduction in the input tax credit to which he is entitled, the excess shall be carried forward to the next month's return to be offset against the output liability of the next month by the taxpayer when he signs and submits the return in FORM GSTR-3. However, simultaneously, if there is a decrease in the eligible input tax credit, the same will be adjusted against the above mentioned reduction in output tax liability and the balance, if any, of the reduction in output tax liability shall be carried forward to the next month's return to be offset against the output liability of the next month.

Submission of GSTR-3B without payment of taxes:

Where, for some reasons, the registered person has only submitted the return in FORM GSTR-3B and has not made the payment of taxes by debiting the same from his electronic cash or credit ledger, the return shall still be subjected to the reconciliation process as detailed above. Such registered person should furnish the details in FORM GSTR-1, FORM GSTR-2 and sign and submit the return in FORM GSTR-3 along with the payment of the due taxes as per the provisions of section

49 of the Act. However, since the payment was not made on or before the due date, the registered person shall be liable for payment of interest on delayed payment of tax starting from 26th day of August, 2017 till the date of debit in the electronic cash and / or credit ledger but will not be liable to pay any late fee provided the requisite return in FORM GSTR-3B was submitted on or before the due date.

Where the registered person has not submitted the return in FORM GSTR-3B, he is required to furnish the details in FORM GSTR-1 and FORM GSTR-2 and sign and submit the return in FORM GSTR-3 along with the payment of the due taxes as per the provisions of section 49 of the Act. However, since the payment was not made on or before the due date, the registered person shall be liable for payment of interest on delayed payment of tax starting from 26th day of August, 2017 till the date of debit in the electronic cash and / or credit ledger. No late fee, however, would be levied for late filing of return in terms of section 47 of the Act, in accordance with the recommendation of the GST Council, as notified vide Notification No. 28/2017 -Central tax dated 01.09.2017. Processing of information furnished:

After submission of the information in FORM GSTR-1 and FORM GSTR-2, the process of matching as per section 41, 42 and 43 of the Act read with rules 69 to 76 of the Rules shall be carried out as if these details were submitted in the regular course. Any amendment in the details furnished in FORM GSTR-1 and GSTR-2 shall be done following the procedure laid down under sub-section (3) of section 37 and sub-section (5) of section 38 of the Act respectively. The return shall be considered to be a valid return when the tax payable as per FORM GSTR-3 has been paid in full after which the return shall be taken up for matching.

GST – Extension of Due Dates

G.S.R.(E).- In exercise of the powers conferred by the second proviso to sub-section (1) of section 37, first proviso to sub-section (2) of section 38 and sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supercession of notification No. 29/2017-Central Tax, dated the 5th September, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1129 (E), dated the 5th September, 2017, except as respects things done or omitted to be done before such supercession, the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details or return, as the case may be, under sub-section (1) of section 37, sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, as specified in column (2) of the Table below for the month of July, 2017,for such class of taxable persons or registered persons, as the case may be, as specified in the corresponding entry in column (3) of the said Table till the time period as specified in the corresponding entry in column (4) of the said Table, namely:-

- GSTR – 1- Having Turnover of more than one hundred crore rupees - Upto 3rd October, 2017
- GSTR – 1- Having Turnover of upto one hundred crore rupees - Upto 10th October, 2017
- GSTR – 2 – Upto 31st October 2017
- GSTR – 3 – Upto 10th November 2017

Explanation.- For the purposes of this notification, the expression “turnover” has the same meaning as assigned to it in clause (112) of section 2 of the aforesaid Act.

The extension of the time limit, for furnishing the details or return, as the case may be, under sub-section (1) of section 37, sub-section (2) of section 38 and sub-section (1) of Section 39 of the aforesaid Act, for the month of August, 2017 shall be subsequently notified in the Official Gazette.

Due date to file ITR & Income Tax Audit Reports extended to 31.10.2017

The Goods and Services Tax ('GST') has come into effect on 01.07.2017. In recent days, dates for filing various returns and forms under GST have been extended by the Government. In this backdrop, representations have been filed by various stakeholders requesting for extending the 'due date' for filing various reports of audit as well as tax-returns under the Income-tax Act from 30th September, 2017 so as to allow sufficient time to the assessees' and tax professionals, and thus, facilitate their ease of compliance with statutory responsibilities under various fiscal laws.

On consideration of the matter, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Act, in respect of all assessees' covered under clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, hereby extends the 'due-date' prescribed therein for filing the return of income as well as various reports of audit prescribed under the Income-tax Act which are required to be filed by the said 'due date' from 30th September, 2017 to 31st October, 2017.

Due date to link Aadhar with PAN extended till 31.12.2017

Under the provisions of recently introduced section 139AA of the Income-tax Act, with effect from 01.07.2017, all taxpayers having Aadhar Number or Enrollment Number are required to link it with PAN Number for filing the tax return. The said provision was relaxed by the Central Board of Direct Taxes ('CBDT') vide its order dated 31.07.2017, in file of even number, wherein further time till 31.08.2017 was allowed to the taxpayers to link Aadhar with PAN.

On consideration of the matter, CBDT, in exercise of powers conferred under section 119 of the Act, modifies para 3 of its earlier order dated 31.07.2017 and further extends the time for linking Aadhar with PAN till 31.12.2017.

Companies (Arrests in connection with Investigation by SFIO) Rules, 2017

Ministry of Corporate Affairs

In exercise of the powers conferred under sub-section (1) of section 469 read with section 212 of the **Companies Act, 2013** (18 of 2013), the Central Government hereby makes the following rules namely:-

1. Short title and commencement.-

(1) These rules may be called the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. (1) Where the Director, Additional Director or Assistant Director of the Serious **Fraud Investigation** Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person;

Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.

(2) The Director SFIO shall be the competent authority for all decisions pertaining to arrest.

3. Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government.

Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of

the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.

4. The Director, Additional Director or Assistant Director, while exercising powers under sub-section (8) of section 212of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.

5. The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.

6. An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.

7. The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.

8. The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years

a) from the date of judgment or final order of the Trial Court, in cases where the said judgment has not been impugned in the appellate court; or

b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.

9. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

MCA clarifies meaning of joint venture for appointment of Independent Directors

This Ministry, vide notification number G.S.R. 839(E) dated 5th July, 2017 issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017inter-alia amending rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014. The said amended Rule 4 inter-alia provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. Stakeholders have sought clarifications with regard to the meaning of joint venture for the purposes of availing exemption under Rule 4 of the aforesaid Rules as such a term is not defined in the Companies Act, 2013.

The matter has been examined and it is hereby clarified that a "joint venture" would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

Status of the Return of SBNs – Reserve Bank of India (RBI) Annual Report 2016-17

The RBI Annual Accounts for 2016-17, at note XI.6.2 Liabilities of Issue Department – Notes Issued in para (ii) mentions –

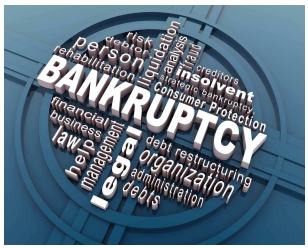
"Until June 30, 2017, SBNs were received by the Reserve Bank either directly or from bank branches/post offices through the currency chest mechanism. Some of these SBNs are still lying in the currency chests. The value of the SBNs received by the currency chests has been credited to the banks' account on "said to contain basis". Till such time these notes are processed by the Reserve Bank for their numerical accuracy and authenticity, only an estimation of SBNs received back is possible. Subject to future corrections based on verification process when completed, the estimated value of SBNs received as on June 30, 2017 is Rs.15.28 trillion."

From the reports/data earlier published by RBI, currency in Rs.1,000 and Rs.500 denomination in circulation was at Rs. 15.44 lakh crore. [6857.82 million notes of Rs.1000 and 17165.06 million notes of Rs. 500 amounting separately to Rs. 685782 crore and Rs. 858253 crore]. Taking into consideration, the value of SBNs now reported to have been counted, approximately 98.96% of SBNs in value terms have come back to the RBI after demonetization. In other words, only an estimated Rs. 16000 crore worth of SBNs have not come back to the RBI so far.

The RBI's Annual Report at page 125 under Chapter VIII – Currency Management, in Table VIII.1: informs that Rs.1,000 denomination banknotes in circulation were only 89 million pieces (value of Rs. 8900 crore) as on 31st March, 2017. If these figures are subtracted from the total figure of Rs. 16000 crore, then it implies that SBNs of Rs.7100 crore of Rs.500 denomination have not come back to RBI so far. Therefore, Rs. 1,000 denomination of value of approx. Rs. 8900 crore and Rs. 500 denomination of value approx. Rs. 7100 crore have not come back to RBI.

As per RBI's Annual Report at page 127 under Chapter VIII – Counterfeit Notes and Security Printing VIII.9 informs that during 2016-17, 762,072 pieces of counterfeit notes were detected in the banking system, of which 95.7 per cent were detected by commercial banks. Detection of counterfeit notes was 20.4 per cent higher than the previous year. Barring Rs. 100, the detection of counterfeit notes increased across denominations – notably, Rs. 500 and Rs. 1000 – during 2016-17. The study done by RBI shows that the rate of FICN detected per million pieces of notes processed at the currency chest level at 7.1 pieces for Rs. 500 denomination and 19.1 pieces for Rs. 1000 denomination, which were higher than the rate of detection at the Reserve Bank (5.5 pieces for Rs. 500 and 12.4 pieces for Rs. 1000). At the Reserve Bank's currency verification and processing system during 20156-16, there were 2.2 pieces of FICNs of Rs. 500 denomination and 5.8 pieces of FICNs of Rs. 1000 denomination for every million pieces of notes processed; which rose to 5.5 pieces and 12.4 pieces respectively during post demonetization period.

Case Update - Essar Steel India Ltd., NCLT— Ahmedabad



Facts of the Case

State Bank of India (SBI) and Standard Chartered Bank (SCB) initiated Corporate Insolvency Resolution Process (CIRP) under section 7 of the IBC against the respondent corporate debtor/Essar.

The case of the ESSAR is that:

- The operations of the ESSAR are very complex involving large number of stakeholders including suppliers, creditors, employees, promoters, customers, Government exchequer over and above the financial creditors.
- ESSAR is on the path of improvement to carry on the operations at 80% capacity.
- Debt Resolution Process was undertaken and there were discussions between the Lenders and ESSAR till 13th June, 2017 on the day on which Reserve Bank of India (RBI) issued a Press Release.

that the directions given by RBI to SBI triggered the reference before National Company Law Tribunal. According to ESSAR, Resolution Process has two risks. First, the process of formulation of Debt Resolution Process will have to be reinitiated and further time will be lost due to fresh start. The second one is potential risk to the operations and value of the Company under the hands of IRP

- ESSAR also stated that if the Company is in the hands of IRP who is an individual person it is difficult for him to oversee such complex operations in a short period of 180 days.
- Further, the funding supported by the creditors and suppliers which were available to the Company under the stewardship of Board of Directors and promoters may not be available to IRP. According to the ESSAR, promoters, lenders, employees, creditors, suppliers, customers have invested time, efforts and resources to revive the Company and implement a satisfactory Debt Resolution Plan and if at this stage the Insolvency Resolution Plan is invoked it would adversely affect the interest of the Company and all its stakeholders.
- It is further stated that in view of Section 13 and 16 of the IBC, the appointment of IRP shall be made only after the admission of the petition within 14 days.
- Further, there are 4500 people working in the Company and all would be affected in case of commencement of Insolvency Resolution Process.
- That National Company Law Tribunal has got discretion not to admit the petition in view of language used in Section 7.

Decision of the Tribunal

There is no dispute about the proposition of law that in order to give appropriate meaning to the words "may" and "shall" used by the Legislature, the intent of the particular enactment and the attendant circumstances must be taken into consideration.

This Adjudicating Authority is of the view that the order of admission of an Application for initiation of Corporate Insolvency Resolution Process is a judicial order which should be according to the provisions of the Code, principles of natural justice, and taking the consequences of the order into consideration. Therefore, there this Adjudicating Authority shall exercise its discretion in either admitting or rejecting the Insolvency Resolution Applications. It is needless to say that discretionary power has to be exercised in a judicious manner taking into consideration all the facts and circumstances of the case, the provisions of the applicable laws and the object of the Insolvency and Bankruptcy Code. This Adjudicating Authority shall look into the aspect of the occurrence of default, and, while doing so, shall take into consideration various factual and legal pleas raised by both parties in order to record its satisfaction. Therefore, the argument that the word "may" in Section 5(a) shall be read as "shall" and therefore it is mandatory on the part of the Adjudicating Authority to admit all the Insolvency Resolution Applications filed by the Financial Creditors, if they are complete, do not merit acceptance.

In the case on hand, from the material placed on record by SCB and SBI, it is clear that it is established that ESSAR has committed default in repayment of financial debt to SCB and SBI. The Applications filed by the SCB and SBI are complete in all respects. As can be seen from the Written Communications of proposed Interim Resolution Professionals filed by the SCB and SBI, no disciplinary proceedings are pending against them.

Whether Debt Restructuring Process or Debt Restructuring Plan is going to absolve the ESSAR, Corporate Debtor from the Insolvency Resolution Process?

From the material placed on record, it is in the year 2014 that Debt Reconstructing Process commenced. For one reason or the other, the Debt Reconstructing Process has not been finalised till today or till the date of filing of the Applications. It is not a case where ESSAR owed monies to Lenders in the previous year. The Lenders are there from the beginning of the ESSAR Company. As contended by ESSAR there are several reasons that prevented it from discharging the debts. No doubt, there are no allegations of siphoning of funds, diversion of funds or fraud. But, the fact remains that except showing a little progress in the last financial year, there appears to be no scope for the ESSAR to repay its debts till 25

years or in a span of 25 years. Therefore, the Debt Restructuring Process, which is going on for the last two years, may not be a factor not to enter into Insolvency Resolution Process. It is pertinent to mention here, that even in the Corporate Insolvency Resolution Plan, Debt Restructuring Plan can be taken into consideration by the Committee of Creditors as one of the Resolution Plans, if submitted by any of the Resolution Applicants. Therefore, commencement of Insolvency Resolution Process cannot be construed as putting an end to the Debt Restructuring Process which has been commenced. The apprehension of ESSAR, that, to again start Debt Restructuring Process would consume lot of time, appears to be

not acceptable for the reason that Insolvency Resolution Plan is a time bound programme. There is no scope for the stakeholders to prolong the process without taking a decision and without finalising the Resolution Plan. Therefore, on the ground that when a Debt Restructuring Process is going on there is no need to commence the Insolvency Resolution Process under the IBC does not hold the field. If Insolvency Resolution Process is commenced by appointing Interim Resolution Professional, no doubt the Board of Directors would be suspended. That does not mean the entire machinery of the Company is suspended. Even after appointment of IRP, all the employees of the Company, top to bottom, would

continue to function under the control of IRP instead of the Board of Directors. Therefore, the apprehension of ESSAR that suspension of Board of Directors may cause prejudice to the interest of the Company and the stakeholders may not be correct. The Object of the IBC is to chalk out a Resolution Plan to revive the Company, but not to liquidate the Company straightway. It is needless to say that a company like ESSAR need not be liquidated and there are several other alternatives to revive the Company. If all the eligible Creditors sit together; evolve a Resolution Plan, it would help not

only the Company, its stakeholders, Steel Industry, and ultimately the economy of India. In chalking out such Resolution Plan, mainly the Lenders, must sacrifice to a great extent which makes the Company to revive. If a Resolution Plan is chalked out with such objectives in mind, the Resolution Plan will certainly help the Company and it would come out of the present situation. Therefore, as opined by the Hon'ble High Court of Gujarat (in Essar Steel India Ltd. Vs. RBI & others, Special Civil application No. 12434 of 2017), taking all the material facts, and the Debt Restructuring Plan, and the objects of the 1B Code, into consideration this Adjudicating Authority is of the view that it is only the Resolution Plan

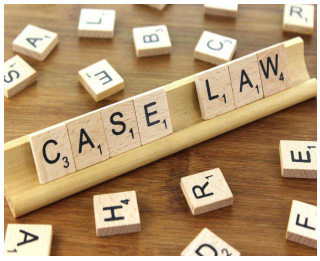
that would make the ESSAR Company survive which course would safeguard the interest of all the stakeholders of the Company. Therefore, there is no need for an apprehension that Resolution Plan is going to be detrimental to the interest of the Company. The finding of this Authority, after taking into all factual aspects, the complex activities of ESSAR, the ongoing Debt Restructuring Process, is that both Applications merit admission.

In view of the above discussion, this Adjudicating Authority is of the considered view that the applications filed by the SCB and SBI are complete, there is occurrence of default in respect of financial debts, and there are no disciplinary proceedings pending against the Insolvency Resolution Professionals proposed by both the Applicants, i.e., SCB and SBI. Hence, this Adjudicating Authority is hereby admitting both the Applications filed by SCB and SBI.

Whether there is no need to appoint Interim Resolution Professional on the same day on which date admission order is passed and it can be passed within 14 days of the admission of the Applications?

In case of admission of an Application under Section 7 of the Code, the Corporate Insolvency Resolution Process commences.

Section 13 of the code says that after the admission of the Application under Section 7, the Authority shall declare moratorium, cause public announcement of initiation of Corporate Insolvency Resolution Process, and call for submission of claims under Section 15 of the Code, and appoint Interim Resolution Professional in the manner laid down in Section 16.



No doubt, a reading of Sections 13, 14, 15 and 16 (1) of the Code goes to show that Adjudicating Authority need not appoint the Interim Resolution Professional on the same day on which Application under Section 7, 9 or 10 is admitted. But, there is no provision which bars the Adjudicating Authority from appointing Interim Resolution Professional on the same day on which the admission order was passed and simultaneously with the admission order. In an application filed under Section 9, in case if the

LLB & CO.

525, The Summit Business Bay,
Behind Gurunanak Petrol Pump,
Near W.E. Highway Metro and
Cinemax, Andheri (East),
Mumbai - 400 093

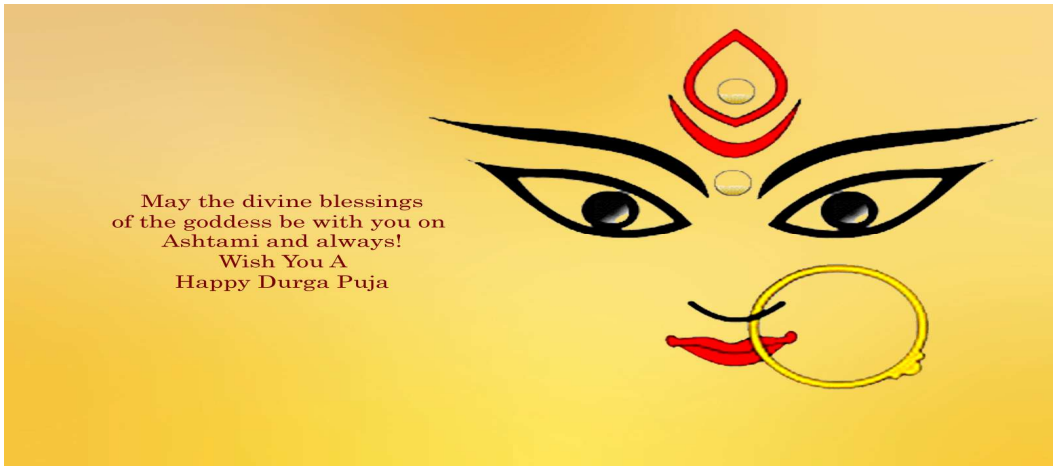
Office No.: 5, Barsana,
Salasar Brij Bhoomi,
Near Maxus Mall,
Bhayandar (West),
Thane - 401101

Phone: +91 - 22 - 26831036
+91 - 22 - 49242456
+91 - 22 - 28040048
E-Mail: info@llbco.in
Web: www.llbco.in

Operational Creditor did not give the name of the IRP, then the Adjudicating Authority, availing the 14 days' time provided under Section 16(1), can appoint the Interim Resolution Professional within 14 days from the date of admission order. Suppose in a given case there is some omission in the Written Communication or there is some difficulty in the appointment of the recommended IRP, in such Cases the Adjudicating Authority may appoint IRP even in an application under Section 7 not on the date of order of admission, but on a subsequent date, but before 14 days from the date of admission. Therefore, there must be facts and circumstances that warrant the Adjudicating Authority to defer the appointment of IRP in an application filed under Section 7 of the Code. In the case on hand, no such circumstance exists which warrant deferring the appointment of Interim Resolution Professional to some other date but not on the date of admission order.

No two stages or no two separate hearings are contemplated under the Code, namely, the first stage is admission and the second stage is appointment of Interim Resolution Professional. The object of the Code is to complete the entire process in a time bound programme. When such is the object of the Code, without any compelling circumstances, there is no need to defer the appointment of Interim Resolution Professional only to give an opportunity to the Corporate Debtor to agitate the decision of this Adjudicating Authority twice in two Appeals. The Corporate Debtor is entitled to prefer an Appeal against the order of admission and also against the appointment of Interim Resolution Professional. If both the orders, namely admission order and the order appointing Interim Resolution Professional are made separate, then the Corporate Debtor will file two Appeals at two stages and thereby gain more time, which is not the object of the Code. Therefore, the Code enjoins upon this Authority to declare Moratorium; to make public announcement of initiation of Corporate Insolvency Resolution Process; and to appoint Interim Resolution Professional on the date of commencement of Insolvency Resolution Process as Rule and the exception is differing the appointment of Interim Resolution Professional

to some other date that depend upon the facts of the case.



Disclaimer:

This newsletter is prepared strictly for private circulation and personal use only. This newsletter is for general guidance on matters of interest only and does not constitute any professional advice from us. One should not act upon the information contained in this newsletter without obtaining specific professional advice. Further no representation or warranty (expressed or implied) is given as to the accuracy or completeness of the information contained in this newsletter.