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CORPORATE JOURNAL

"TO FACILITATE OVERALL PROFESSIONAL DEVELOPMENT WITH ENLIGHTENED INFORMATION"

Special Issue on IBC

"IT'S GOOD TO STAND AT ZENITH AND SEE SOMEONE AS YOUR AIM
BUT IT FEELS BEST WHEN YOU STAND THERE & SOMEONE SEES YOU AS HIS AIM"

⇒ INSIDE

Articles / other materials and suggestions are invited from the Members for publication in forthcoming Issues. All articles submitted will be subjected to review and published only after accepted for publication.

Kindly send the articles and other relevant material for publication along with your photograph at ankursrivastavacs5985@gmail.com. We assure that we empower you with the knowledge you seek.

Since: January, 2013

========================== FROM THE EDITOR ==========================

CS Ankur Srivastava
Editor

Dear Professional Colleagues & Friends,

I would start with the quote “Change before you have to”. This represents that Change is constant, now it is upto us how early and easily we adopt and adapt. We have to be adaptable to the changes in the world in the direction of the quality. All the changes lead towards the betterment. It is upto us how we sync the change towards improving the quality.

We need to consider the word “Change” as “Development”.

As the above quote suggests we need to adapt the change as the process of development. Today the entire corporate jurisprudence has been drastically overhauled. Company Law has been changed, Corporate Judicial System has been changed and shifted to National Company Law Tribunals and Corporate Insolvency and Bankruptcy has also been drastically revamped and now a new code (Insolvency and Bankruptcy Code, 2016) has been developed to provide a unique and consolidated resolution to the Corporate Insolvency and Bankruptcy. Indirect Taxation went into drastic reform after independence. We are the witness of the era of change.

To survive in this complex era of change we need to prepare ourselves to deal with all these new challenge and develop ourselves by smooth transition of our knowledge base, habit and attitude. For this we need to move out our comfort zone.

We need to sync ourselves with the new concepts whether it is GST, NCLT or IBC. And this will happen only when we decide to change. To synchronize ourselves with the expected level of betterment which the change had supposed, we need to be proactive, connected and adaptable.

All the Best and keep contributing towards the betterment of our profession.

Happy Reading.

CS Ankur Srivastava
Editor

================================ **ARTICLE** ==================================

CORPORATE INSOLVENCY AND ITS RESOLUTION UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

The Insolvency and Bankruptcy Code, 2016 is truly a landmark piece of legislation which has completely re-designed the India's existing Insolvency and bankruptcy laws and consolidated them under Single Window System. In the past 70 years it is not very often that any New Body of Law has been constituted, implemented and started working in full force as we have witnessed in Insolvency and Bankruptcy Code, 2016.

CS Ankur Srivastava

We have just stepped into this unique legislature of Corporate Insolvency Resolution w.e.f. 15th December, 2016 and within a period of just 6 months entire legal framework for Corporate Insolvency Resolution has been put in place. The Code has revamped the process of Corporate Insolvency Resolution. The Code brings a paradigm shift in process by a slew of legislative amendments, establishment of regulations and model bye-laws that govern insolvency resolution professionals, and the mechanism for transitioning from existing laws such as the Presidency Towns Insolvency Act, 1990, the provincial Insolvency Act, 1920, the Sick Industrial Companies (Special Provisions) Act, 1985 to name few which have been repealed by the Code.

An effective and efficient insolvency regime is the foundation of a strong economy. Before the enactment of the Insolvency and Bankruptcy Code, 2016, there was no single legal framework in India that dealt with Insolvency and Bankruptcy. The provisions related to insolvency and bankruptcy were scattered over many legislations viz.

(1) For Companies

a. Sick Industrial Companies (Special Provisions) Act, 1985
b. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
c. The Companies Act, 2013.

(2) For Individuals

a. The Presidency Towns Insolvency Act, 1909
b. The Provincial Insolvency Act, 1920

Liquidation of Companies was dealt by the High Court while the Bankruptcy and Insolvency proceedings were handled by the District Courts or the High Court as the case may be.

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The objective of the Insolvency and Bankruptcy Code, 2016 is *to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance of interests of all the stakeholders including alteration in the order of priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India and for matters connected therewith or incidental thereto.*

Applicability of Insolvency and Bankruptcy Code, 2016: As you are aware, the Insolvency and Bankruptcy Code, 2016 (the Code) provides for a specialized forum to oversee insolvency and liquidation proceedings for individuals, firms and Corporates. Insolvency Proceedings under the Code can be initiated against a Company (Corporate Debtor) by a Financial Creditor (Sec 7), an Operational Creditor (Sec 8 & 9) or by the Corporate Debtor itself (Sec 10).

Insolvency and Bankruptcy Code, 2016 is applicable to:

1. All companies incorporated under Companies Act, 2013 or any other previous company law;
2. 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;
3. Any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
4. Such body incorporated under any law for the time being in force, as may be specified by the Central Government by notification in addition to partnership firms and individuals;
5. Partnership firms and Individuals.

As per Section 5(1) of the Insolvency and Bankruptcy Code, 2016, the National Company Law Tribunal (NCLT) constituted under Section 408 of the Companies Act, 2013 will be the Adjudicating Authority for corporate persons and as per section 79(1) of the Code, the Debt Recovery Tribunal (DRT) constituted under section 3(1-A) of the Recovery of Debts and Bankruptcy Act, 1993 will be the Adjudicating Authority for individuals and partnership firms.

Claim: Under Section 3(6) of the Insolvency and Bankruptcy Code, 2016 Claim has been given a very wide definition and it means following:

a. A right to payment whether or not such right is reduced to judgement, fixed, disputed, undisputed, legal equitable, secured or unsecured; and
b. A right to remedy for breach of contract under any law for the time being in force if such breach gives rise to a right to payment, whether or not such right is reduced to judgement, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

Section 8(2)(a) of IBC suggests that a dispute between the operational creditor and the corporate debtor will be in existence only if a suit or an arbitration proceeding on the dispute is pending before receipt of Demand Notice. **The Supreme Court held that such an interpretation would lead to a great hardship and therefore, a dispute in the payments, existing before the receipt of demand notice, even if the same is not a part of any suit or arbitration proceeding, would disqualify the debt from being adjudicated under CIRP.**

Debt has been categorized into two parts i.e. financial debt and Operational debt.

Financial Debt relates with 'financial products' which means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

a. Money borrowed against the payment of interest;
b. Any amount raised by acceptance under any acceptance credit facility or its de-materialized equivalent;
c. Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
d. The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
e. Receivables sold or discounted other than any receivables sold on non-recourse basis;
f. Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
g. Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
h. Any counter indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
i. The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub clauses (a) to (h) of this clause.

Operational Debt: means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

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Overall Scheme of the Insolvency and Bankruptcy Code, 2016: An Insolvency and Bankruptcy Board of India (established under 188(1) of the Insolvency and Bankruptcy Code, 2016 on 01/10/2016 vide Notification no. 3110(E) dated 01/10/2016) will oversee the work of insolvency and bankruptcy of corporate person, firms and individuals. Actual work relating to the insolvency and bankruptcy will be handled mostly by the insolvency professionals under the supervision of the Adjudication Authority (NCLT). Insolvency Professionals are the members of the Insolvency Professional Agencies which are registered with the Insolvency and Bankruptcy Board of India (IBBI). The basic crux of entire process is that when any enterprise (corporate, firm or individual) defaults, the control shifts to the Insolvency Professional who shall form a Committee of Creditors. The Committee shall within the specified time limit have to evaluate proposal for resuscitating the enterprise or move towards liquidation if any proposal does not work out.

Corporate Insolvency Resolution Process Summary: At first instance an application to initiate the Corporate Insolvency Resolution Process is made by the Creditor to the bench of the Adjudicating Authority along with the consent of the Insolvency Resolution Professional to act as the Interim Resolution Professional. Adjudication Authority decides the applicability of the Application within a period of 14 days from the date of application and appoints the Interim Resolution Professional for a period of 30 days. Who shall form a committee of creditors to evolve a resolution plan to rehabilitate the ailing corporate within a period of 180 days further extended by maximum 90 days. Committee of Creditors appoints a new or re-appoints the Interim Resolution Professional as the Resolution Professional. If the efforts fail the Corporate will be liquidated by the Adjudication Authority in a time bound manner.

<u>Initiation of Corporate Insolvency Resolution Process (CIRP):</u>

The trigger to initiate the Corporate Insolvency Resolution process against a Corporate Debtor is the occurrence of default.

1. By Financial Creditor:

Under Section 7 of the Code, a financial creditor either himself or jointly with other financial creditors may initiate the Corporate Insolvency Resolution process (CIRP) by filing an Application to Initiate Corporate Insolvency Resolution Process (without having issued any notice for default of repayment to the corporate debtor because Financial Debt is Time Value for Money) to the Adjudication Authority i.e. NCLT at the bench within whose jurisdiction the registered office of the Corporate Debtor is situated along with a filing fee as specified As per the schedule to the insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 fee of Rs. 25,000/- is required to be paid by the financial creditor).

The financial creditor shall along with the application furnish to the Adjudication Authority:

i. Record of the default recorded with the information utility or such other record or evidence of default as may be specified;
ii. The name of the resolution professional proposed to act as an interim resolution professional (with his consent in specified form).

The Adjudication Authority shall within a period of 14 days of the receipt of the application ascertain the existence of the default from the records or on the basis of the evidence furnished by the Creditor and:

i. If it is satisfied that the default has occurred and application is complete and there is no disciplinary proceedings are pending against the proposed resolution professional, it may, by order, admit such application; or
ii. If it is satisfied that the default has not occurred or the application is incomplete or any disciplinary proceedings are pending against the proposed resolution professional, it may, by order, reject such application or give a notice to the applicant to rectify the defects in his application within 7 days of receipt of such notice from the Adjudication Authority.

2. By Operational Creditor:

Under Section 9 of the Code, an operational creditor has to issue a demand notice to the Operational Debtor with the copy of invoice demanding payment of the amount involved in the default in the specified form. The Corporate debtor shall within a period of 10 days of the receipt of the demand notice bring to the notice of the operational creditor:

i. 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;
ii. the payment of unpaid operational debt to the corporate creditor by sending the adequate proof.

After expiry of the period of ten days from the date of delivery of the notice, if the operational creditor does not received payment or proof of payment from the corporate debtor or any notice of the existence of dispute, the Operational Creditor may file an application to the Adjudication Authority i.e. NCLT at the bench within whose jurisdiction the registered office of the Corporate Debtor is situated along with a filing fee as specified. As per the schedule to the insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 fee of Rs. 2,000/- is required to be paid by the operational creditor)

The operational creditor shall along with the application furnish to the Adjudication Authority:

i. copy of the demand notice or invoice delivered to the operational creditor;
ii. an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

iii. a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor;
iv. Record of the default recorded with the information utility or such other record or evidence of default as may be specified;
v. The operational creditor may also propose the name of the resolution professional to act as an interim resolution professional (with his consent in specified form);

The Adjudication Authority shall within a period of 14 days of the receipt of the application ascertain the existence of the default from the records or on the basis of the evidence furnished by the Creditor and:

i. If it is satisfied that the default has occurred and application is complete, there is no repayment of the unpaid debt, demand notice was delivered to the debtor, there is no dispute in existence and there is no disciplinary proceedings are pending against the proposed resolution professional, it may, by order, admit such application; or

ii. If it is satisfied that the default has not occurred or the application is incomplete or there has been payment of unpaid debt or the creditor has not delivered the demand notice or invoice to the debtor for payment or notice of dispute has been received by the operational creditor or there is record of dispute in the information utility or any disciplinary proceedings are pending against the proposed resolution professional, it may, by order, reject such application or give a notice to the applicant to rectify the defects in his application within 7 days of receipt of such notice from the Adjudication Authority.

3. By Corporate Applicant

Wherein a Corporate Debtor has committed a default, a Corporate Application **thereof** may file an application for initiating Corporate Insolvency Resolution Process (CIRP) to the Adjudication Authority i.e. NCLT at the bench within whose jurisdiction the registered office of the Corporate Debtor is situated along with a filing fee as specified. As per the schedule to the insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 fee of Rs. 25,000/- is required to be paid by the Corporate Applicant).

The Corporate Applicant of the Corporate Debtor shall along with the application furnish to the Adjudication Authority:

iii. Its books of accounts and such other documents relating to such period;
iv. The name of the resolution professional proposed to act as an interim resolution professional (with his consent in specified form).

The Adjudication Authority shall within a period of 14 days of the receipt of the application ascertain the existence of the default from the records or on the basis of the evidence furnished by the Corporate Applicant and:

iii. If it is satisfied that the default has occurred and application is complete and there is no disciplinary proceedings are pending against the proposed resolution professional, it may, by order, admit such application; or
iv. If it is satisfied that the default has not occurred or the application is incomplete or any disciplinary proceedings are pending against the proposed resolution professional, it may, by order, reject such application or give a notice to the applicant to rectify the defects in his application within 7 days of receipt of such notice from the Adjudication Authority.

Under above 1, 2 and 3, the Corporate Insolvency Resolution Process (CIRP) shall commence from the date of admission of the application.

Directory / Mandatory Time Period:
One of the basic objectives of the IBC, the resolution of corporate insolvency in time bound banner is the utmost important.
However in relation to 14 days time period within which the adjudication authority has to admit / reject the application caused quite a lot of chaos. The controversy was resolved in the case of JK Jute Mills Compound Limited V M/s Surendra Trading Company wherein the NCLAT has held that the time period of 14 days from receipt of the application from the financial creditor within which the NCLT has to admit or reject the application is directory/procedural in nature and not mandatory. The NCLAT also clarified that the receipt of application means the date on which the application is listed before the NCLT for admission / order, and not the date of filing of the application.

Persons not entitled to make application
Under Section 11 of the Insolvency and Bankruptcy Code, 2016 following persons shall not be entitled to make an application to initiate CIRP:

a) A corporate debtor undergoing a corporate insolvency resolution process;

b) A corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making the application;

c) A corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter;

d) A corporate debtor in respect of whom a liquidation order has been made.

Explanation: For the purpose of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

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After admission of the application the Adjudication Authority shall by order:

1. Declare a moratorium :
    a. for the purposes of institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
    b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
    c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property;
    d. the recovery of any property by an owner or less or lessor where such property is occupied by or in the possession of the corporate debtor.

2. Cause a public announcement of the initiation of CIRP and call for the submission of claims with details of the Insolvency Professional and time limit to file claim;

3. Appoint an Interim Resolution Professional for a period of 30 days to:
    a. Collect all information relating to the assets, finances and operations of the corporate debtor including business operations, finances and operational payment for the previous two years, list of assets and liabilities and such other information as may be specified;
    b. Receive and collage all the claims submitted by the creditors to him;
    c. Constitute a committee of creditors;
    d. Monitor the assets of the corporate debtor and mange its operations until a resolution professional is appointed by the committee of Creditors;
    e. File information collected with the information utility, if necessary;
    f. Take control and custody of any assets over which the corporate debtor has ownership rights as recorded in the balance sheet or information utility or any other registry;
    g. Perform such other duties as may be specified by the Board.

Management of the affairs of Corporate Debtor by Interim Resolution Professional: Form the date of appointment of the interim resolution professional:

i. The management of the affairs of the Corporate Debtor shall vest in the interim resolution professional;

ii. The powers of the Board of Directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the Interim Resolution Professional;

iii. The officers and managers of the Corporate Debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;
iv. The financial institution maintaining account of the corporate debtor shall act on the instruction of the interim resolution professional in relation to such accounts and furnish all information relation to the corporate debtor available with them to the interim resolution professional.

The Interim Resolution Professional shall manage the affairs of the Corporate Debtor on a going concern basis.

Committee of Creditors(CoC): The Interim Resolution Professional shall after collation of all claims received by him against the Corporate debtor and after determination of the financial position of the corporate debtor, constitute a Committee of Creditors. The CoC shall comprise of all financial creditor of the corporate debtor.

Appointment of Resolution Professional: At the First meeting of the CoC which shall be held within 7 days of its constitution, may, by a majority of votes not less than seventy five percent of the voting share of the financial creditors either appoint the interim resolution professional as a Resolution Professional or replace the interim resolution professional with a new Resolution Professional (with the approval of the Adjudication Authority).

The Resolution Professional shall conduct the corporate insolvency resolution process and manage the operations of the Corporate Debtor during CIRP. The Resolution Professional shall exercise powers and perform duties as are vested or conferred on the Interim Resolution Professional.

Information Memorandum and Resolution Plan:

The Resolution Professional shall prepare an information memorandum for formulating a Resolution Plan. The Resolution Professional shall collect the information relating to the assets an affairs of the Corporate Debtor and prepare the Information Memorandum on the basis of which the Resolution Professional would invite and collect the Resolution Plans to keep the Corporate Debtor going.

The Copy of Information Memorandum to be given to every member of the CoC and every member shall have a right to submit a resolution plan. The Resolution Professional shall examine each resolution plan received by him and present before the CoC such plans which have complied the provisions of Section 30(2). The CoC may approve the resolution plan by a vote of not less than seventy percent of voting share of the financial creditors.

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The Resolution Professional shall submit the resolution plan as approved by the Cos to the Adjudication Authority for approval. The Adjudication Authority shall, if it is satisfied with the Resolution Plan, approve the resolution plan which shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan and the moratorium order passed by the Adjudication Authority shall cease to have effect.

Otherwise the Adjudication Authority, if it is not satisfied with the Resolution Plan, shall reject the resolution plan and pass appropriate orders for the liquidation of the Corporate Debtor and the Corporate Debtor move towards liquidation.

With Kind Regards:
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CMA D.S. Kapoor

Hello Dear Friends,

Greetings of the Day..!

It is my pleasure to share with you all, my weekly USD/INR hedging guide aimed at providing guidance to Importers and Exporters to hedge their forex exposure.

During last week, Open / High / Low / Close have been **63.3300 / 63.8450 / 63.2400 / 63.6000 (earlier week's closing 63.3300).** After opening at 63.3300 on 8th, it went down to 63.2400 (earlier week's low 63.3125) on the same day, from where it retraced up to 63.8450 (earlier week's high 63.8600) on 10th, from where it again started correcting and after moving lower to 63.4800, it finally closed at **63.6000**, being higher than last week's close. Thus, movements have been in line with expectations and expectations of preparations for upward retracements came true.

Moving Averages **:** The position is presently as under**:**

21DMA	63.81	**3 WMA**	63.58	**3 MMA**	63.97	**3 QMA**	64.24
30DMA	64.00	**5 WMA**	63.76	**5 MMA**	64.39	**5 QMA**	64.44
50DMA	64.35	**21WMA**	64.44	**21MMA**	65.73	**21QMA**	63.39
200DMA	64.43	**30WMA**	64.39	**30MMA**	65.97	**30QMA**	59.37

Technical Facts

The following major technical facts deserve attention:

i. 50DMA (64.35) has moved below 200DMA (64.43) last week;
ii. Daily RSI has moved from 24.75 to 38.74 indicating bottoming process;
iii. 3WMA (63.58) is running below 5WMA (63.76), however currency has closed above 3WMA;
iv. Daily, Weekly & Monthly Crossover signal are running negative;
v. Daily, Weekly & Monthly MACD all are running below zero line;
vi. The currency is running below the crucial levels of 8QMA (65.52) / 10QMA (65.66) / 13QMA (65.23); **8QMA has moved below 10QMA during week ending 5th Jan'18 and this has happened after Dec'11;**
vii. The major resistances for currency should be around 10WMA (64.26) / 200WMA (64.45) / 50WMA (64.73); the major support should lie around 21QMA (63.39).

Short / Medium Term View

We are of the view that, as expected last week, the process for base building to be followed by upward retracement has started. The 1st resistance has come around 21DMA (presently 63.81). Now, it is expected that the currency may consolidate within 63.80 – 63.40 for next 2-3 days and after completion of this consolidation, may attempt to move above 21DMA (63.81). Once 21DMA gets decisively crossed, upper end of the consolidation range should shift to 30DMA (64.00). The major supports should continue to remain around 21QMA (63.39) / 65MMA (62.70). We reiterate that the currency may not go below 62.70 in the current round and may rather be getting ready for upward retracement. Stop loss to this view should be closing below 62.70 (65MMA).

We further reiterate that Indian Stock Markets are expected to top out somewhere in Jan'18 or at the most by mid-Feb'18, and this may help in changing intermediate trend of the currency for about next 2-3 months resulting into Rupee depreciation to a certain extent. Whenever this Stock market correction starts, the probable resistance levels, up to which Rupee may depreciate, should be around 64.30 (50MMA) / 64.47 (65DMA) / 64.73 (50WMA) and in the extreme circumstances around 65.41 (DSV2) as well.

Long Term Trend :

In view of the fact that 8QMA (65.52) has moved below 10QMA (65.66) (happened after Dec'11 i.e. after 6 years), we are of the view that the long term trend of the Currency has finally reversed. Momentum is likely to speed up, once 8QMA moves below 13QMA (65.23). Please further note that Rupee entered long term appreciation zone, when it came below DSV2 (64.46 at that time, presently around 65.41) for the 1st time in April'17 and as to our preferred view, Rupee should continue to remain below DSV2 for a much longer period of time.

The above indicates that we are set to see **very long spell of Rupee appreciation (though along with volatility)**, **wherein we are likely to see levels below 60 in next 3-4 years (i.e. around / before 2020 or so).**

Dollar Index (90.7350):

We are of the view that, daily RSI having gone below 30, intermediate downtrend of Index has gathered momentum and further lower levels seem to be in offing now. The bottom of 90.99 created on 8th Sept'17 has already been broken. Now, the next crucial target should possibly be around 200MMA (88.37).

We have indicated earlier that Index had moved below 120DMA (presently 93.08) in April'17 and below DSV2 (presently 96.38) in July'17 (happened after 2012) making it long term negative; which clearly implies that, along with both-sided volatility, Index should continue to move lower in long term and one should remain ready for much lower targets in next 2-3 years. We reiterate this view.

Major Possible Triggers

The following major important economic events of the world (including India) are likely to exert pressure on Rupee during next 2-3 months:

- **Industrial growth** for November'17 has been impressive at 8.4% led by manufacturing sector in particular, however **CPI inflation** has gone up to 5.2%;
- **Indian GDP growth** may slow down to 6.5% in FY 2018 because of the disruption caused by GST and the lingering impact of demonetization;
- **Stock market** movements– markets are getting volatile; there are possibilities that our long term Nifty target of 11000 may be achieved to certain extent. One should now remain in caution mode, as after achieving this target or even before that, **final correction may start;**
- **Quarterly Results** of Companies for quarter ending Dec'17 have started and are expected to be better than earlier;
- Indian Union **Budget** to be presented on 1st Feb'18
- **Approval of Tax Overhaul finally by** President Trump - being the largest change to US tax laws since 1980s;
- **States Elections** in Karnataka possibly to be held in April'18;
- Implementation of **GST** has been done from 1st July'17 – initial glitches are being experienced, continuous strong monitoring done by Govt., however most of the issues may settle down by March'18 – June'18 or so.
- **Standard & Poor's** has retained its sovereign rating for India at BBB- with a stable outlook;

- **Moody's Investor Service** has upgraded India's sovereign rating for the first time since 2004, citing continued progress in the nation's economic and institutional reforms. The rating agency upgraded India's rating to Baa2 from Baa3 with 'stable' outlook;
- **Crude oil** price movements – uptrend continues, however it has entered caution zone;
- **USA - North Korea tension –** there are some signs of positive dialogue;
- Jerome H Powell has been announced to be the next **Chairman of Federal Reserv**e from early 2018 replacing Janet Yallen;

Importers should utilize current levels (i.e. 63.60 – 63.40) for hedging short & medium term payables.

Exporters should still postpone hedging medium term receivables and wait for rates to move higher. Short term receivables may be settled at market rates till then. Review for hedging to be made, once rates move above 64.10. Total hedging may be reduced and maintained around **60%** of 6 months receivables.

Major Resistances : 63.80 / 64.10 / 64.45 / 64.75
Major Supports : 63.50 / 63.40 / 63.25

Note: All the above rates are from Meta Stock

DISCLAIMER: The opinion expressed in this column is based on technical analysis. There is risk of loss in trading, as markets get affected by multiple factors, which cannot be fully accounted for in preparation of the above opinion. The contents are for academic circulation only. Those following the above do so at their own risk. Any recommendation does not constitute an offer to buy or sell or the solicitation of an offer to buy or sell any currency / cross. One should fully understand risks in trading of currency / cross before trading.

Regards,
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================================ UPDATES ================================

Ministry of Corporate Affairs
Government of India

CIRCULARS/ NOTIFICATIONS ISSUED DURING THE PERIOD

Ref No.	Date	Description
S.O. (E)	04.12.2017	Designation of Special Court for the state of Karnataka.
General Circular 15/2017	04.12.2017	Relaxation of additional fees and extension of last date of filing of Form CRA.4 under the Companies Act, 2013

REACTIVATION OF DIN OF DIRECTORS IN VIEW OF CONDONATION OF DELAY SCHEME 2018 NEW

Stakeholders of Condonation of Delay Scheme (CODS) (notified vide General Circular No.16/2017 dated 29th December 2017) may kindly note that the process for 'reactivation' of the DINs in respect of disqualified Directors has been **completed** and the status of the relevant DINs can be checked now. Stakeholders are therefore requested to file necessary 'overdue documents' as per the scheme. They may further note that the scheme is not applicable for those Directors who may have been associated with a company which was struck off under Section 248(1) of the Companies Act-2013 and DINs for such individuals shall be re-activated only upon receipt of orders for revival of the said company, as per due process laid down under Section 252 of the Companies Act-2013.

DISQUALIFIED DIRECTOR NEW

All Disqualified Directors under section 164(2) of the Companies Act, 2013 [the Act] are advised not to act as director during the period of the disqualification and not to file any document or application with MCA as the same shall be summarily rejected. However, this shall be without prejudice to the liability of the said person for violation of section 164(2) read with section 167 of the Act including the action under section 448 r/w 447 of the wherever warranted.

================================== **UPDATES** ==================================

Ministry of Corporate Affairs
Government of India

SPICe NEW

A new name reservation service is being developed and is likely to be deployed on 26th January, 2018. Therefore, w.e.f. 00:00 hours of 06-01-2018, INC-1 will not be available on the MCA Portal. Stakeholders are advised to submit INC-1 application till 23:59 hours of **05-01-2018**. Stakeholders who reserved names using INC-1 are requested to use SPICe for incorporation immediately. However, resubmission of INC-1 is allowed till 23:59 hours of **11-01-2018**. INC-7 form is likely to be discontinued w.e.f **10.01.2018**. In case the name reserved using INC-1 is to be used for incorporation through SPICe form, users should file the form latest by **17.01.2018**. It is requested that SPICe should be filed with due care which has to be completed latest by **24.01.2018**. Stakeholders may plan accordingly.

Activity	INC-1	INC-7	URC-1*	INC-12*	SPICe*
Deprecation/ Discontinuance of form for fresh filing	05.01.2018 (23:59 hrs)	10.01.2018 (23:59 hrs)	N/A	N/A	17.01.2018 (23:59 hrs)
Stakeholders may resubmit till	11.01.2018 (23:59 hrs)	15.01.2018 (23:59 hrs)	15.01.2018 (23:59 hrs)	15.01.2018 (23:59 hrs)	24.01.2018 (23:59 hrs)

It is also proposed to mandate SPICe (with necessary provision for incorporating Producer Companies) as the only form for incorporation of companies w.e.f. 26th January, 2018. Accordingly, INC-7 would be deprecated for incorporation of companies. A detailed notification and FAQs relating thereto would be made available as and when the same is notified. Stakeholders may kindly take note and plan accordingly.

================================ **UPDATES** ================================

Ministry of Corporate Affairs

Government of India

सत्यमेव जयते

NEW PROCEDURE FOR ALLOTMENT OF DIN NEW

It is proposed to reengineer the process of allotment of DIN by allotting DIN to individuals only at the time of their appointment as Directors (If they do NOT possess a DIN) in companies. DIR-3 (Application for Director Identification Number) would be applicable for the allotment of DIN to individuals in respect of existing companies only and shall be filed by the existing company in which the proposed Director is to be appointed. Further, DINs to the proposed first Directors in respect of new companies would be mandatorily required to be applied for in SPICe forms (subject to a ceiling of 3 new DINs) only.

It is also proposed to modify DIR-3 to permit allotment of upto 2 new DINs (since SPICe provides for upto 3 new DINs) only in respect of 'Producer Companies'. A separate notification would be issued for the same and stakeholders may plan accordingly.

To facilitate corresponding changes in LLP e-forms due to deprecation of DIR-3, it is proposed to temporarily suspend issuance of allotment of new DINs for Designated Partners/Partners of LLPs w.e.f 26th January 2018 till 31st March 2018. Stakeholders may kindly take note and plan accordingly.

Condonation of Delay Scheme-2018

Stakeholders may note that the scheme is not applicable for those Directors who may have been associated with a company which was struck off under Section 248(1) of the Companies Act-2013 and such DINs shall be activated only upon receipt of orders for revival of the said company as per due process laid down under Section 252 of the Companies Act-2013.

KEY TAKEAWAYS FROM THE COMPANIES AMENDMENT BILL, 2017

The Amendments proposed in the bill are broadly aims at addressing difficulties faced by stakeholders in implementing of the Companies Act, 2013 ('The Act'). Various difficulties have been identified and streamlined. Some of the amendments proposed by the Companies Amendment Bill 2017 are narrated herein below:

1. Relaxed norms for conversion of Partnership Firm into a Private Company: The 2017 Bill proposes that Partnership firm with two or more partners can be converted into a private company [presently, partnership must have at least seven partners for conversion into a company] These provisions are useful to convert a partnership firm, LLP, society, cooperative society or society or any other business entity formed under any law into a company under section 366(1) of Companies Act, 2013.

2. Streamlining of private placement of shares: The provisions relating to Private Placement have been revamped completely. The 2017 Bill proposes that Private placement should be only to 'identified persons'. Further, more than one issue of securities can be made to each class of identified persons.

3. Appointment of auditors: The 2017 Bill proposes to do away with the requirements of annual ratification by members with respect to appointment of auditors when auditors have been appointed for five years.

4. Prohibition on Loan & Guarantee: Section 185 has been completely re-written under the Companies Amendment Bill, 2017. This Section limits the prohibition on loans, advances, etc., to any person in which any of the director is interested in.

Under the 2017 Bill, It has been proposed to allow companies to give loan's or guarantee's or provide security to any person in whom any of the director is interested in subject to passing of special resolution by the company and utilization of loans by the borrower for its principal business activities.

Analysis of the amendment:

Section 185(1) of the 'Act' started with words 'Save as otherwise provided in this Act' Thus, the restriction under 185(1) was not applicable where loan or guarantee was permissible under Section 186 of the Act. Now, in the revised Section 185, these words have been omitted. Thus, the provisions with regards to loan can be only as per provisions of Section 185.

As per the substituted section 185(1), no company shall, directly or indirectly advance any loan, including any loan represented by a book debt to or give any guarantee or provide any security in connection with any loan taken by (a) any director of company or of a company which is holding company or any partner or relative of any such director or (b) any firm in which any such director or relative is a partner.

Such loan or security or guarantee can be given in connection with any loan taken by any person in whom any of the directors of the company is interested, if (a) special resolution is passed in general meeting and (b) the loans are utilized by borrowing company for its principal business activities.

From the above we can infer that, now loan can be given only to another company, not to director or his relative or any firm.

5. Managerial remuneration: It has been proposed to do away with requirement of obtaining special resolution and approval of Central Govt. for payment of managerial remuneration in excess of prescribed limits of Schedule V. However, for making such payments prior approval of bank or public financial institution or non-convertible debenture holder or secured creditor is also required before taking approval from shareholders.

6. E-voting: The 2017 Bill proviso to Section 110 has been inserted which provides that any item of business required to be transacted by means of postal ballot can be transacted at general meeting by a company which is required to provide facility to members to vote by electronic means under section 108. This means, if a company is providing facility to members to vote by electronic means then postal ballot is not required.

7. Board report: Size of Board report is proposed to be reduced as some information can be given on company's website and only its reference in Board report is required. The 2017 Bill proposed to insert first proviso to section 134(3) which provides that if disclosures as required in Board report are made in financial statement, its reference in Board Report is sufficient. Its repetition is not required.

8. Annual Return: The 2017 Bill proposes to remove the extract of annual return forming part of Board's report and provide disclosure of web address/web-link of the annual return in Board's report. It also proposes to omit requirement regarding disclosure of indebtedness, and modify requirement of disclosure of names, addresses, countries of incorporation, registration and percentage of shareholding of Foreign Institutional Investors.

9. Maintenance of registered office: Under the extant provisions, the company has to maintain its registered office on or after 15 days of its incorporation. The bill proposed to provide that a company to has to maintain its registered office within 30 days of incorporation.

10. Higher late fee for large Companies: It is proposed that if document under section 92 (Annual Return) or 137 (financial statement) is not filed with Registrar within prescribed time, the minimum additional fees of Rs. 100 per day are payable. Further, the additional fees in above cases can be different/higher for different classes of companies.

================================ **UPDATES** ================================

भारतीय रिज़र्व बैंक
Reserve Bank of India
India's Central Bank

SUBMISSION OF FINANCIAL INFORMATION TO INFORMATION UTILITIES

According to Section 215 of Insolvency and Bankruptcy Code (IBC), 2016, a financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, to an information utility (IU) in such form and manner as may be specified by regulations. Chapter V of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, which has come into force with effect from April 1, 2017, has specified the form and manner in which financial creditors are to submit this information to IUs. Further, as per Section 238 of the IBC, 2016 the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

The Insolvency and Bankruptcy Board of India (IBBI) has registered National E-Governance Services Limited (NeSL) as the first IU under the IBBI (IUs) Regulations, 2017 on September 25, 2017.

All financial creditors regulated by RBI are advised to adhere to the relevant provisions of IBC, 2016 and IBBI (IUs) Regulations, 2017 and immediately put in place appropriate systems and procedures to ensure compliance to the provisions of the Code and Regulations.

================================= UPDATES =================================

INSOLVENCY PROFESSIONAL NOT TO OUTSOURCE HIS RESPONSIBILITIES.

The Insolvency and Bankruptcy Code, 2016 (Code) read with regulations made thereunder cast specific duties and responsibilities on an insolvency professional. An insolvency professional is required to perform certain tasks under the Code while acting as an Interim Resolution Professional, a Resolution Professional, a Liquidator or a Bankruptcy Trustee for various processes. For example, an insolvency professional is required to manage the operations of the corporate debtor as a going concern. He is also required to invite resolution plans, examine them and present to the committee of creditors for its approval such resolution plans which comply with the provisions of the Code. To assist him in carrying out his responsibilities, the Code read with regulations allow an insolvency professional to appoint accountants, legal or other professionals, as may be necessary.

It has been observed that a few insolvency professionals are advising the prospective resolution applicants to submit a certificate from another person to the effect that they are eligible to be resolution applicants. This requirement amounts to outsourcing responsibilities of an insolvency professional to another person. Further, this adds to cost of the resolution applicant and delays submission of resolution plans. The Code read with regulations do not envisage such a certification from a third person.

It is hereby directed that an insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code. He shall not require any certificate from another person certifying eligibility of a resolution applicant.