



Gateway

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President's Message



The new financial year has begun and all of us will be working hard amidst odds to keep up in a very challenging environment.

The recent Economic Survey of the Government of India reveals that India's real GDP growth will remain between 6.75% and 7.5%

in the 2017-2018 financial year. Even under this forecast India would remain one of the fastest growing major economies in the world, says the survey. IMF in its forecast says that India's GDP will be slightly higher than China despite a slow down due to demonetisation. It further adds that the medium term growth prospects are favourable due to implementation of key reforms - loosening of supply-side bottle necks and appropriate fiscal policies.

The Goods and Services Tax, a bold new experiment that could push India's GDP growth is expected to come into effect from July 01, 2017.

However, the current financial year is not free of challenges but every effort must be made to facilitate greater FDI inflows, improvement of infrastructural facilities, adequate measure to surge Indian exports, control of swelling oil prices etc.

IJCCI has been receiving appreciation from both Indian and Japanese circles about the recent IJCCI's economic survey report on understanding the expectations of Indian industry from Japanese companies in Tamilnadu & this should help especially when Japanese interest in India is improving.

"If you do not enter the tiger's cave, you will not catch its cub" {虎穴に入らずんば虎子を得ず} is a famous Japanese proverb. Let us venture boldly this year and work hard on our new economic agenda.

With best regards,

N. Kumar

Release of IJCCI's Economic Survey Report



Consul-General Mr. Seiji Baba receiving the first copy of IJCCI Economic Survey Report from Mr. N. Kumar, President, IJCCI.



Mr. V. Sridhar, Grant Thornton LLP, making a presentation on the Economic Survey Report.



Mr. L. Ganesh, Chairman, Rane (Madras) Ltd., addressing the gathering.



Mr. N. Ravi, Director, Kasturi & Sons Ltd., addressing the gathering.

Corporate Defaults? India Consolidates Legislation

It's a good news for all of us. Recovering debts, revival plans for defaulters and declaring defaulting debtors insolvent has finally been simplified and brought under the ambit of one main legislation, the Insolvency and Bankruptcy Code. Shutting down your own solvent company for any reason including business viability or preference to move to another jurisdiction, is also now far easier with the notification of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations with effect from 1st April, 2017.

India has till recently had to grapple with multiple laws that covered fragmented bits of liquidation and insolvency often overlapping and causing jurisdictional issues amongst the various concerned judicial forums. The average time to resolve insolvency in India was about 4.5 years, as compared to 0.8 years in Singapore, 1 year in the United Kingdom and 1.5 years in the United States of America. We also suffered one of the lowest recovery rates and causing prospective creditors to shy away from the Indian markets. The notification of the Code and the regulations thereunder is the light at the end of the tunnel and promises to pave the way to far smoother and quicker recovery processes. India has ranked a low of 136 for 'Resolving Insolvencies' in the World Bank's Doing Business Report of 2016, which is clearly due to the complexities and delays in debt recovery and liquidation of defaulting creditors. Many of the earlier complexities and delays are expected to be addressed with this new Code.

The objects and purpose of the Act says it all: “An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the 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.”

In this article we concentrate on the Code as it deals with recovery of debts and revival or liquidation of defaulting companies to highlight to our Japanese companies doing business in India some of the more relevant new provisions and rights granted under this Code.

Defaulting Creditors :

The Code addresses defaulting creditors being companies, Limited Liability Partnerships, Partnership Firms and individuals (other than financial service providers). For a debtor to initiate insolvency proceedings against a defaulting creditor, the minimum value of the default must be INR 100,000 (approx. USD 1500). The government has the power to subsequently increase this minimum amount up to INR 10,000,000 (approx. USD 150,000).

Two Stage Process

Stage 1 - Corporate Insolvency Resolution Process

The Code provides a two-stage process. The first stage is the corporate insolvency resolution process (CIRP) where financial creditors assess whether the debtor's business is viable to continue and the options for its rescue and revival. The second stage is if the CIRP fails and creditors decide to wind down the company to recover debts out of the remaining assets. The Adjudicating Authority for CIRP is the National Company Law Tribunal (NCLT). As part of this process the defaulter is given a mild reprieve of seven (7) days to repay the debt, failing which the resolution process will continue.

The insolvency resolution process envisages the appointment of a registered Insolvency Professional to conduct and manage the debtor company during the resolution process. The Insolvency Professional identifies the financial creditors of the debtor company and constitutes a Creditors Committee within 14 days of the admission. Operational creditors do not form part of the committee and are not permitted to vote on committee decisions, but those above a certain threshold are allowed to attend meetings. The Insolvency Professional under the instructions of the Creditors' Committee decisions (which are taken by a 75% majority vote) controls the management and business operations of the debtor company. Proposals for the revival of the debtor Company (by the company itself or by others) are decided upon by the Creditors' Committee. All decisions of the Creditors' Committee are binding on the debtor company and all the creditors (financial and operational). If the revival plan is rejected, the debtor company then moves to the liquidation process. The revival plan must also provide for the payment waterfall (from the realisation of assets) which must also include payment of operational debts.

The entire resolution process is to be completed within a period of 180 days from the admission of the application before the NCLT. This timeline may be extended for a further period of not more than 90 days where the NCLT is satisfied that the 180 day period is insufficient. It remains to be seen however, if in practice the resolution process will be completed within this timeline. Currently, if a resolution is not reached within this time period, the NCLT is required to order the liquidation of the company (unless the NCLT is able to use its judicial discretion to extend the time further in extenuating circumstances). There is also a fast track resolution process available for certain categories of entities which provides for completion within a period of 90 days with a possible extension of a further 45 days to be granted by the NCLT.

Stage 2 - Liquidation

If the insolvency resolution process fails or the Creditors' Committee recommends liquidation or the NCLT otherwise orders liquidation, the debtor company moves into the Liquidation phase. The Insolvency Professional appointed in the resolution phase will be the Liquidator unless replaced by the NCLT. A moratorium is imposed on all pending legal proceedings against the Company and the assets will vest in the liquidation estate. The Liquidator consolidates and holds the assets of the Company in a fiduciary capacity for the benefit of the creditors. All claims are to be made to the Liquidator within 30 days of the commencement of the Liquidation Process. The Code provides for the verification, admission and rejection of claims and the process to be followed in this respect. An interesting change is in the liquidation waterfall i.e. the priority in which claims are to be paid.

After the costs of insolvency resolution (including any interim finance), secured debt together with workmen dues for the preceding 24 months rank highest in priority. Government dues stand below even unsecured financial creditors. Under the earlier regime, Government dues were immediately below the claims of secured creditors and workmen in order of priority. Interestingly, a secured creditor may choose to recover outside the liquidation process directly from his security by staking claim to the secured asset (in the manner prescribed in the Code) or may relinquish his security to the liquidation estate and recover as per the payment waterfall below. Where a secured creditor chooses to recover by enforcing his security and selling the secured assets, he must contribute any excess proceeds to the liquidation trust. For any shortfall he will be junior to the other unsecured creditors.

The payment waterfall is now as follows:

1. Insolvency Resolution cost and liquidation cost;
2. Debts to secured creditors (where they have relinquished their security interest) and workmens' dues (for 24 months before liquidation commencement);
3. Wages and unpaid dues to employees other than workmen for 12 months before liquidation commencement;
4. Financial debts to unsecured creditors;
5. Government dues and debts for unpaid amount to secured creditors following enforcement of security interest;
6. Any remaining debts and dues;
7. Preference shareholders; and
8. Equity Shareholders or partners, as the case may be.

Once all the assets have been completely liquidated, the Liquidator will apply to the NCLT for an order of dissolution of the Company. The company stands dissolved from the date of this order.

Challenges and Conclusion

Some of the challenges that arise with the Code are:

- a. The Code depends heavily on the competency of the Insolvency Professionals and information utilities. There are diverse views on whether more stringent qualification and examinations should be put in place for these professional.
- b. There remain apprehensions over the evidence that is required to prove a debt and default to trigger a case under the Code.
- c. The Code makes provision for the Central Government to enter into agreements and MOUs with other countries to enforce the provisions of the Code and recover assets located in such foreign countries. It remains to be seen how these details will be ironed out with each country.
- d. Given that the Code replaces fragmented legislation at various levels and seeks to consolidate judicial fora for all insolvency and bankruptcy matters, this has resulted in a heavy inflow of existing matters to the NCLT. It remains to be seen whether the NCLT will be in a position to meet the heavy influx of matters and despite this meet the timelines sought to be enforced under the Code.

Despite a certain amount of scepticism and the above concerns, corporate and professional India has clearly welcomed the Code. It provides succinct legislation in place of the earlier chaos of regulation and has already addressed several glitches and loopholes. The author remains positive that several concerns are teething issues, which will soon sort themselves out.

Hufriz Wadia, Partner, Kochhar & Co., Advocates and Legal Consultants.

IJCCI's Economic Survey Report on Indian Industry Expectations from Japanese Companies

Taking another step towards fostering close relations between Indian and Japanese businessmen the Indo-Japan Chamber of Commerce and Industry has conducted an Economic Survey on Understanding Indian Industry Expectations from Japanese Companies in Tamil Nadu in association with Grant Thornton India LLP and A. K. Mylsamy & Associates LLP. The survey captures the perceptions and understanding that Indian industrialists have about doing business with their Japanese counterparts and what they expect from Japanese companies in Tamil Nadu.

The following are a few key takeaways from the survey:

- Almost 95% of the constituents responded positively, signifying a pleasant experience citing reasons which include professionalism in work, quickness, planning, efficiency, punctuality, learning, reliability and technology.
- There is a very positive and eager willingness to collaborate with the Japanese. Establishing joint ventures is the most preferred mode of engagement while technical collaboration/ technology transfer comes a close second. The respondent's sentiments towards partnering with the Japanese showed their interest in taking a long-term view about Japanese collaboration.
- The willingness to collaborate leans more towards getting technology know-how. The ultimate intent is to introduce more innovative goods and services in India. Only a small proportion of the respondents were interested in the Japanese to support in financing their businesses.
- The respondents want the Japanese to help them make goods and provide services to be sold in India.
- The respondents want the Japanese to share and implement their best practices.
- The respondents want the Japanese to collaborate in the areas of strength of Tamil Nadu, i.e., manufacturing (automotive), transportation and logistics, power and renewable energy and chemicals.
- The respondents were clearly aware of the strengths of the Japanese on account of their disciplined work culture while also appreciating that the language gap needs to be bridged.
- Overall, the respondents were open and willing to learn from Japanese collaborators. There is generally a good understanding of the strengths that their Japanese counterparts can provide.
- Most of the respondents found that the Japanese style of working was collaborative, reflecting a positive outlook on the style of working of the Japanese.
- Pricing of Japanese products and services is perceived to be expensive and this is a deterrent to promote Japanese products and services. This is an important area of improvement where the respondents felt that reducing the price of Japanese products and services can improve the image of the Japanese.
- Indian corporates are very well aware that Japanese can contribute to CSR initiatives by sharing their experience in environment protection and disaster prevention.

Tamil Nadu has much to offer as a destination for FDI. It has a diversified manufacturing sector with leaders in several industries such as automobiles and auto components, engineering, pharmaceuticals, garments, textile products, leather products, chemicals, plastics, etc. It ranks first among Indian states in terms of number of factories and industrial workers.

Tamil Nadu has a well developed infrastructure with excellent road and railway network, three major ports, 23 minor ports, and seven airports across the state providing excellent connectivity. It has the second longest coastline (1076 km) in India, with three major ports connecting the state with trade centres across the world. The excellent connectivity of Tamil Nadu (both nation and international) permits its use as a good base for not only domestic manufacturing but also to export to Africa and South East Asian countries.

Overall, Japanese companies already enjoy a good presence in Tamil Nadu. They have been doing quite well and have shown a positive trend from their experience of working in Tamil Nadu. The Japanese businesses should exploit Tamil Nadu's potential and forge greater economic cooperation with Tamil Nadu for mutual benefits.

In order to strengthen the SME co-operation between Japan and India, IJCCI offers assistance to the Japanese/Indian enterprises who are desirous of establishing business links with their counterparts. Please feel free to write to IJCCI with details of organisation indicating the desired area of co-operation.