

Monthly Newsletter

VOLUME - 36 November - 2020



Shri Rajesh Verma
Secretary, MCA

Secretary's Desk

The Insolvency and Bankruptcy Code (Code) was enacted on 28th May, 2016 which reformed the existing institutional structure for insolvency and bankruptcy resolution and replaced the erstwhile regime with a modern and well-structured law. The objective of the Code is 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. The IBC marked a paradigm shift in the approach to resolution by shifting to the creditor-in-control model from the debtor-in-possession model resulting in the jump in India's rank in the World Bank's Ease of Doing Business from 130th in the year 2016 to 63rd in the year 2019. Of the total 3,774 cases admitted into Corporate Insolvency Resolution Processes (CIRPs) till the end of March 2020, 914 ended into liquidation, 6 per cent of the total cases were resolved and 57 per cent of the cases still remain in the resolution process, others have either been closed or have been withdrawn.

A key innovation of the Code is the four pillars of institutional infrastructure that it establishes - Insolvency Professionals (IPs); Information Utilities (IUs); Adjudicating Authority (AA), namely, the National Company Law Tribunal (NCLT) and Debt Recovery Tribunal and finally, the Insolvency and Bankruptcy Board of India (IBBI) which has regulatory oversight over the processes and professionals under the Code.

The Code has also given birth to a new profession namely Insolvency Professionals (IPs). The IPs constitute a key institution of the insolvency regime. An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms, proprietorship firms and individuals. For example, an IP exercises the powers of the Board of Directors of the CD under resolution, manages its operations as a going concern, and complies with applicable laws on behalf of the CD. He takes important business and financial decisions having substantial bearing on CD and its stakeholders, receives, collates and verifies claims, resolves conflict of interests, conducts meetings of the CoC, invites and examines resolution plans, reports on irregular transactions and discharges other important responsibilities. In the initial days of the CIRP, an IP acts as an interim resolution professional (IRP) and then as resolution professional (RP) till its completion. A whole array of statutory and legal duties and powers is vested in him. He is the fulcrum of an insolvency proceeding and the link between the AA and stakeholders - debtor, financial creditors (FCs), operational creditors (OCs) and resolution applicants (RAs).

An IP plays a very vital role in insolvency ecosystem and has an impact beyond business; through his role and decisions, he touches lives of several stakeholders involved with the company. An IP's work affects the lives and livelihoods of both creditors and debtors and often involves dealing with many competing interests. He must have the highest integrity, objectivity, independence and impartiality. He must be a fit and proper person so that the stakeholders have confidence in the insolvency regime and its practitioners. Besides legal obligations, an IP has ethical and moral obligations to creditors, employees and other stakeholders. He must possess not only qualities such as resourcefulness and business acumen, but also a good sense of judgment and fairness when balancing the interests of stakeholders inter se or against other interests and statutory objectives. He also needs written and interpersonal skills to deal with creditors, anxious directors, concerned employees and a range of other stakeholders in the business. He must have a fair degree of appreciation of cultural, social and other factors surrounding an insolvency proceeding. He requires a range of skills to perform his role well. The insolvency profession is not just another profession, but an institution in itself.

The law facilitates and empowers the IP to discharge his responsibilities effectively. It obliges every officer of the firm to report and the promoter of the firm to extend all assistance and cooperation to him. There is an assurance of supply of essential

goods and services to, and a moratorium on proceedings against, the firm. He can seek orders from the Adjudicating Authority if he comes across any preferential, undervalued, extortionate, or fraudulent transaction.

An IP has huge responsibilities. It may not be humanly possible for him to conduct CIRP of a large and complex CD all by himself. The law enables him to take support services from an IPE of which he is a partner or director. Further, an IP may not have all expertise required to conduct the CIRP or continue operations of the CD as a going concern. The law enables him to engage the services of professionals to assist him. The Code has thus professionalised insolvency services and created markets for services of IPs and expanded the scope of services of Advocates, Accountants and other professionals. It has also created huge markets for education and capacity building of these professionals.

An IP necessarily has to act with objectivity in his professional dealings, ensuring that decisions are made without any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not. The Code strives to forestall any such element of bias on part of the IPs to seep into the CIRP by articulating clear eligibility criteria to be fulfilled by an IP for appointment as the resolution professional of a CD. In order to ensure that an IP performs his role, the Code empowers IBBI and the IPA to monitor his performance. It provides for appropriate sanctions for any kind of wrongdoing. Though a client proposes the name of an IP for appointment, he is actually appointed by the AA. He may be removed from a process by the AA if it is not satisfied with his performance. The appointment and removal by the AA secure and sanctify the position of an IP. He has protection for actions done in good faith. His conduct can only be investigated by IBBI /IPA which has to follow a due process for the purpose. There is bar on trial of offences against an IP except on a complaint filed by IBBI before the Special Court.

Every Regulator regulates entry into a profession through a mandatory registration procedure. This is not an entry barrier, but allowing only deserving people to enter a profession, which is a noble occupation. The Bankruptcy Law Reforms Committee, which envisaged IPs, observed: "Licensing ensures that it is unlawful to perform certain activities without meeting the specified criteria. Occupational licensing may raise the average skill levels in the profession, thereby improving the quality of services." A formal registration process ensures that the regulator satisfies itself as to the suitability of a person for the profession and also ensures that only eligible, qualified and deserving individuals join the profession. Today, there are more than 3200 IPs registered with the IBBI.

To take the insolvency profession to the next level, the IBBI has conceived a two-year Graduate Insolvency Programme (GIP) for young and bright minds having a professional qualification or a degree in a relevant discipline but with no experience. GIP aims to groom tailor-made IPs and inculcate all those qualities that an IP needs, including the soft skills such as people management, entrepreneurship, emotional quotient, and deep-rooted ethics and integrity. GIP is the first of its kind and is an endeavour to create insolvency as a discipline of knowledge. On completion of GIP, one would be eligible for registration as an IP. The first batch of GIP with 37 students had commenced on July 1, 2019 at the Indian Institute of Corporate Affairs (IICA). They should be ready for registration as IPs in July, 2021. The next batch of GIP with 38 students commenced on July 1, 2020.

Going forward, there needs to be a focus on taking measures to build capacity of IPs with domain knowledge. The evolution of insolvency and bankruptcy processes necessitates the need for professionals to specialise, to be accommodated by the exam and registration system in order to ensure that processes under the Code find the professional best suited for the purpose. It is also important that the existing IPs keep enriching and updating their knowledge constantly. Given that Indian business is going global and in future there are many complex cross-border issues may arise, it is important that the IPs learn and emulate best practices from across the jurisdictions.

The insolvency profession is in a stage in which reputation is formed. It is, therefore, pertinent that the IPs build and safeguard the reputation of the profession. They should enjoy the trust of the society and inspire confidence of all the stakeholders.

Review of Corporate Sector:

A. As on 30.11.2020, the number of companies registered under the Companies Act was 20,93,777. Of these, 7,53,558 companies were closed, 6,844 companies were under liquidation, 39,253 companies are in the process of being struck-off from the register and 2,239 companies have so far obtained the "dormant" status according to Section 455 of the Companies Act, 2013. There are 12,91,883 active

companies, including 1,99,731 companies, which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).

B. A total of 13,453 companies, including 768 One Person Companies (OPCs), were registered under the Companies Act, 2013 during November, 2020 with authorized capital of Rs. 1,681.03 crore. The breakup of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in November, 2020	Total Authorized Capital (Rs. in Crore)
1)	2)	3)
Company limited by shares	13,378	1,680.98
Of which,		
(a) Private	13,082	1,537.89
Of which,		
One Person Companies	768	28.10
(b) Public	296	143.09
Company limited by Guarantee	75	0.05
Of which,		
(a) Private	72	0.05
(b) Public	3	0.00
Unlimited Company	-	0.00
Grand Total	13,453	1,681.03

C. During the Month of November 2020, Maharashtra had maximum number of company registrations (2,599) followed by Delhi (1,371) and Uttar Pradesh (1,306). "Business Services" topped the economic activity-wise classification (3,867) of newly registered companies.

D. During November 2020, 13,378 (out of 13,453) companies were registered as companies limited by shares with authorized capital of Rs. 1,680.98 crores. For more statistical details about the growth of the corporate sector, the reader is invited to the 'Monthly Information Bulletin on Corporate Sector', at URL: mca.gov.in/MinistryV2/InformationBulletin.html.

MONTHLY MIS REPORT FROM COMPETITION COMMISSION OF INDIA

(as of November, 2020)

S. No.	Sections	Cases pending as on last day of previous month (A)	Cases received during the month (B)	Total Cases (A+B)	Net Cases pending with CCI for final disposal	Remark's
1.	19(1)	36	3	39	39	
2.	19(1)(a)	100	04	104	101	@
3.	19(1)(b)	10	1	11	11	
	Sub Total	146	8	154	151	
4.	6(2)& 6(5)	10	8	18	10	*
4(a)	20(1)	-	-	-	-	
TOTAL		156	16	172	161	

Cases remanded by COMPAT

5.	Remanded	11	-	11	11	
----	----------	----	---	----	----	--

Cases regarding contravention of orders of Commission

6.	Causing fresh inquiry	02	-	02	02
----	-----------------------	----	---	----	----

Notes and references:

1. Kindly refer to Annexure-1 for 3 oldest pending anti-trust cases.
2. Out of 151 pending anti-trust cases, 76 cases are pending with DG and 75 cases (28 cases are at prima facie stage and 47 cases for hearing) are pending with CCI.

MAJOR EVENTS:

1. CCI organised a virtual workshop of BRICS Competition Agencies on 'Competition Issues in Automotive Sector' during 5-6 November 2020. Chairperson CCI addressed the workshop on the first day of the workshop. The common issues being faced by all BRICS nations, and the way forward to tackle them, including the importance of advocacy, were also debated during the workshop.
- 2- Chairperson, CCI participated in an inter-ministerial meeting organized under the chairmanship of Hon'ble Commerce and Industry Minister (CIM), Shri Piyush Goyal on the 'Draft e-Commerce Policy' during which substantial inputs were provided by the CCI, for the draft policy.
- 3- The Commission, vide its directions dated 9.11.2020, ordered the DG to cause an investigation to be made into the matter against Google, after prima facie finding its conduct with regard to its Android app, 'Google Pay' in contravention of relevant provisions of the Competition Act 2002.
- 4- IICA has organized lectures on "UK Rescue System & the European Insolvency Regulation" from 31st Oct, 2020 – 1st Nov, 2020 which covered various aspects of the 'UNCITRAL Model Law on Cross Border Insolvency' and the 'European Insolvency Regulation'.
- 5- The Centre for MSME, IICA has successfully conducted Virtual (Online) Capacity Building Program on 'Corporate Affairs' from 18th November, 2020 – 1st December, 2020. The program was designed to provide intensive training to the Senior Level Officers including the officers working on Board positions at the level of CEO, Director, Managing Director, GM, Advisor and Finance Secretary in the various departments/ State Public Sector undertakings to provide insights on major issues like provisions of Companies Act, 2013, best practices and guidance of Corporate Governance, Key concepts of Goods and Service Tax (GST), Emerging Alternate Dispute Resolution Mechanism etc.
- 6- Indian Institute of Corporate Affairs (IICA) with National Bank for Agriculture and Rural Development (NABARD) concluded a three days online program on Corporate Governance.

NOTIFICATIONS

1. Vide notification dated 27.11.2020, the Ministry has designated the Special Courts in the States of Maharashtra, West Bengal and Tamil Nadu for the purposes of trial of offences under the Act, in respect of cases filed by the Securities and Exchange Board of India. [Notification No.S.O.4283(E)].

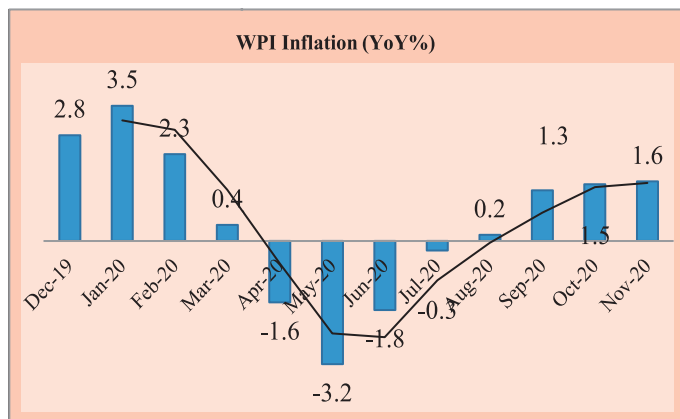
CIRCULARS

1. A General Circular has been issued on 09.11.2020, in continuation to this Ministry's General Circular No. 13/2020 dated 30.03.2020 and General Circular No. 31/2020 dated 28.09.2020. Through the said circular, the belated documents which were due for filing till 31st August, 2020 has been extended to 30th November, 2020 for filing under the LLP Settlement Scheme, 2020 by the defaulting LLP's. Further, if a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of six months from the end of financial year but not later than 30th November, 2020, the same shall not be deemed as non-compliance. (General Circular No.37/2020, dated 09.11.2020).

Some Macro Indicators

Wholesale Price Index (WPI)

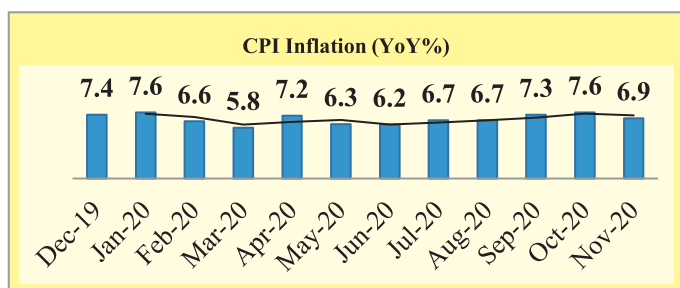
The annual rate of inflation, based on monthly WPI, stood at 1.55% (provisional) for the month of November, 2020 (over November, 2019) as compared to 0.58% during the corresponding month of the previous year.



Source: DPIIT

Consumer Price Index (CPI)

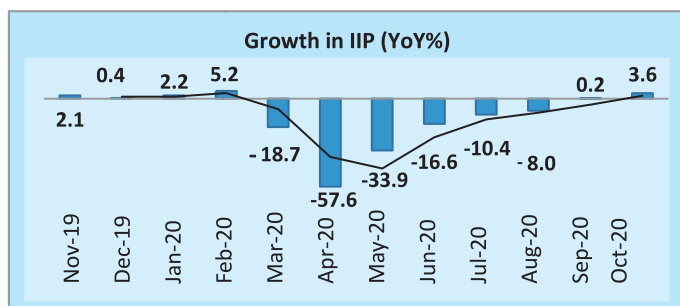
The CPI (Combined) on Base 2012, all India Inflation rates (on point to point basis i.e., November, 2020 over November, 2019) stood at 6.93%.



Source: MOSPI

Index of Industrial Production

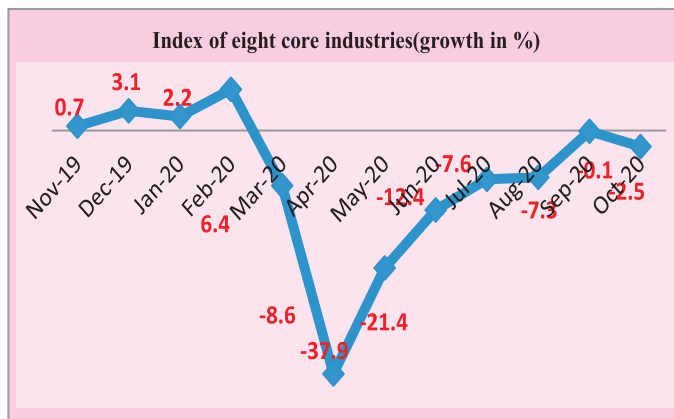
The quick estimates of Index of Industrial Production (IIP) with base 2011-12 for the month of October, 2020 stands at 128.5 which is 3.6% higher as compared to October, 2019.



Source: MOSPI

Index of Eight Core Industries

The combined Index of Eight Core Industries stood at 124.2 in October, 2020, which declined by 2.5% as compared to the Index of October, 2019.



Source: DPIIT

Performance of Selected indicators of Listed Non-Government Non-financial Companies (in Percent)

Trends in the selected corporate performance indicators published by RBI of a sample of non-government non-financial listed companies for first quarter of FY 2020-21 is as below:

Select Ratios of Listed Non -Government Non-Financial Companies (in percent)			
Indicator	Q1:2019 - 20	Q4:2019 - 20	Q1:2020 - 21
No. of companies	2,696	2,620	2,536
Cost of Raw Materials to sales	51	50	43.1
Interest Burden	23.1	38.5	48.8
Tax Provisions to EBT	26.5	20.7	21.8
Interest Coverage(times)	4.3	2.6	2.0
EBITDA to Sales	19	17.3	20.7
EBIT to Sales	14.8	11.8	12.9
Net Profit to Sales	8.2	-0.2	-0.4

Source:RBI