



# SURAT BRANCH OF WIRC OF ICAI



E-NEWSLETTER  
SEPTEMBER  
2020

# SURAT BRANCH OF WIRC OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA



## CHAIRMAN's MESSAGE

Dear Professional Colleagues,



Greetings of the season, hope you all are enjoying this monsoon season and the festivities with proper precautions. People are getting back to their routine and along with that Indian economy have started taking step forward again and soon it will regain its momentum. Last month of August brought a welcomed change from the Government of India and CBDT with respect to Assessments of cases related to Income Tax matter. I would say it is the most sought development desired by our fraternity regarding easing the hassle faced by Tax payers and their business. The launching of faceless assessment will bring immense transparency in assessment proceedings and will surely be celebrated by all the stakeholders. The core of this faceless assessment is based on the effective use of technology and this signifies the role of technology in our profession also.

Further, as GSTN is ready to roll out the e-Invoicing under Goods and Service Tax Act our esteemed Institute has conducted a timely webinar in this regard and discussed the procedures and how this would be implemented effectively. Moreover in the webinar the motive of e-Invoicing was also discussed and brought forward that it will ease businesses in claiming ITC will gradually replace the e-way bill system.

'Kaizen Approach' a Japanese term which signifies the continuous improvement at all level proactively and in incremental manner. I believe this approach would apply to every aspect from micro to macro level, in our routines, professional duties, and social responsibilities as well as in development of economy. Kaizen approach signifies holistic inclusion of people to work together proactively to achieve regular and incremental improvements. With this significance as our role as partner in nation building we should too adopt the 'Kaizen Approach' and bring incremental development in our nation.

In this September edition of e-Newsletter of Surat Branch of WIRC of ICAI, we have tried to include various updates with respects to our profession for ready reference to our members. Further, I would like to encourage our beloved members of Surat branch to contribute to the e-Newsletter and make it a success.

### **Office Bearers:**

CA. Ishwar Jivani – **Chairman**  
CA. Naveen Jain – **Vice-Chairman**  
CA. Pooja Murarka - **Secretary**  
CA. Rahul Agarwal – **Treasurer**  
CA. Mihir Thakkar - Imm. **Past Chairman**

### **Co-opted Members:**

CA Manoj Jain  
CA Chayan Agrawal  
CA Joni Jain  
CA Ashwin Bhauwala

### **Ex-Officio (Council Members):**

CA. Jay Chhaira - (CCM)  
CA. Balkishan Agarwal -(RCM)

### **NEWS LETTER COMMITTEE**

CA IP Pradeep Kabra  
Coordinator

### **SPECIAL INVITEE MEMBERS**

CA Pankaj Singhal  
CA Shiv Baser  
CA Amit Mehta  
CA Gaurav Jain



### **EDITORIAL MESSAGE**

Dear Professional Colleague,

The Indian Government unveiled a new platform Transparent Taxation – Honouring the Honest on August 13, 2020. The Government unveiled country's first charter of taxpayers rights and duties. We have seen certificates being issued by CBDT for different category, Platinum, Gold, Silver, Bronze. With the implementation of faceless assessment, all income tax scrutiny cases, except those relating to search and seizure and international taxation, will be under Faceless Assessment Scheme. We do have one article also on this in our current newsletter. Hence, we are expecting many more changes and challenges in future. We are thankful to members for their contribution in newsletter and expect more participation on the new changes that are coming in future.... You may write to us at [surat@icai.org](mailto:surat@icai.org).

Stay healthy, wealthy and safe....

CA IP Pradeep Kabra

### **Faceless Assessment: A deep dive.**

#### **Background**

The foundation stone for e-assessment scheme were laid through Finance Act, 2016. The purpose and intent of faceless assessment can be seen in following extract of memorandum explaining provision of Finance Bill 2016;

- 1 to impart greater transparency and accountability,
- 2 by eliminating the interface between the Assessing Officer and the assessee,
- 3 optimal utilization of the resources, and
- 4 introduction of team-based assessment.

Hence, enabling provision in form of S.143(3A) were inserted. Sub-section 3B empowers central government to direct;

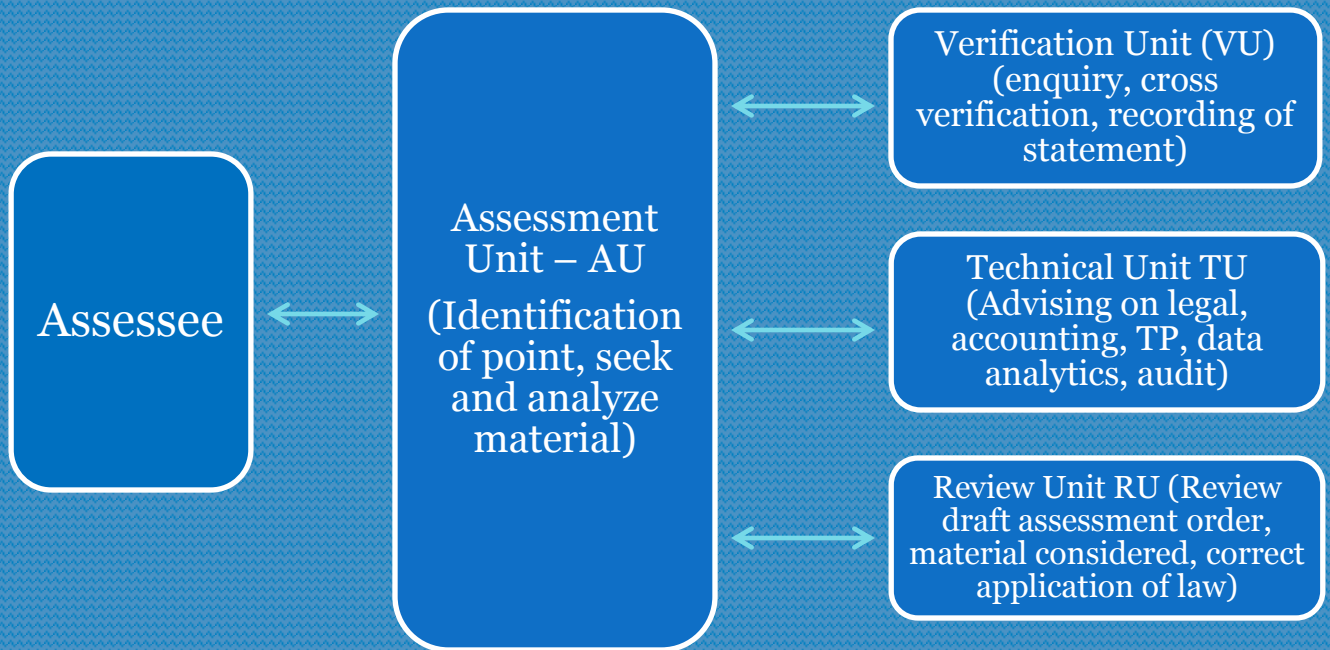
- 1 that any of the provisions of this Act relating to assessment shall not apply or
- 2 shall apply with such exceptions, modifications and adaptations as may be specified therein.





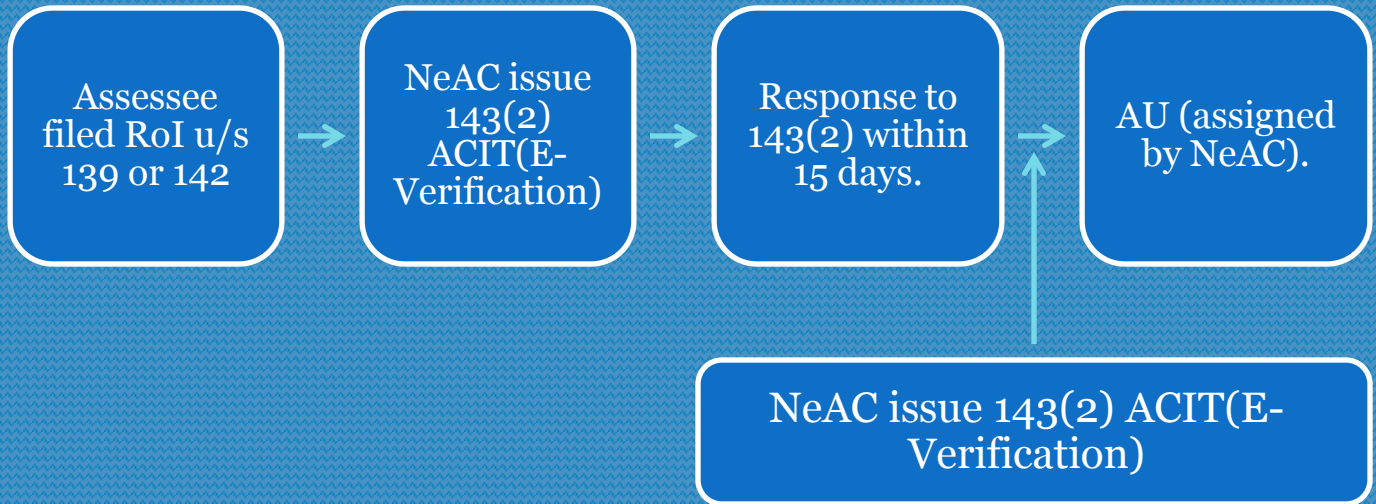
In terms of S.143(3A) r.w.s 143(3B) the e-assessment scheme (“scheme”) operationalized by issuing notification dated September 12, 2019 wherein around 55,000 and odd cases were selected for e-assessment. Initially only limited scrutiny cases were covered for e-assessment cycle and full scrutiny cases were with jurisdictional AO through e-assessment window.

### **Various Units**

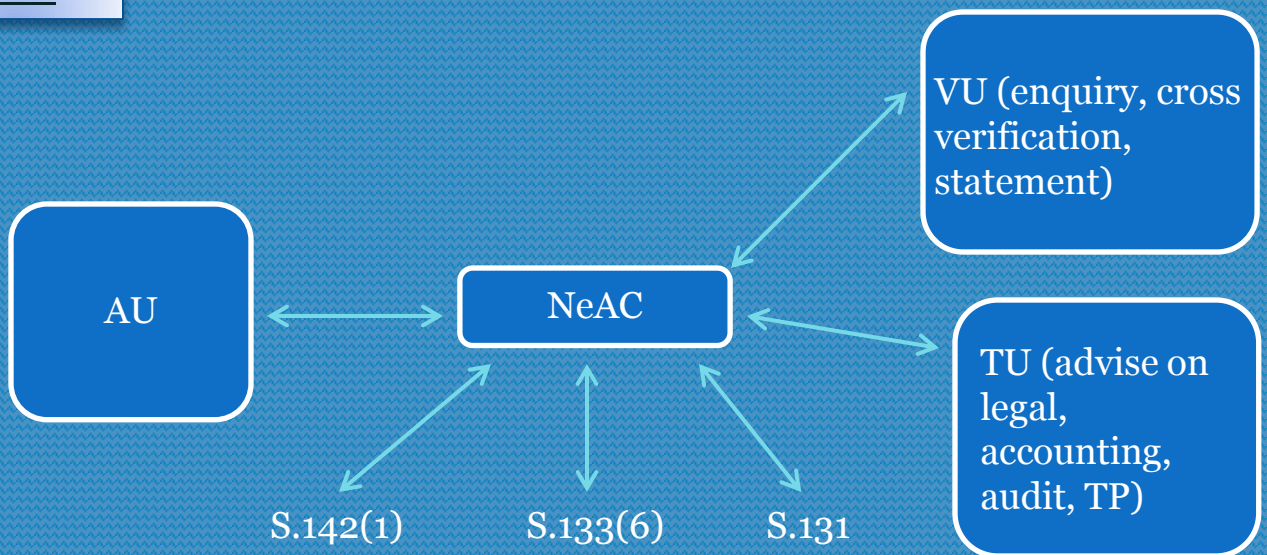




## Part A

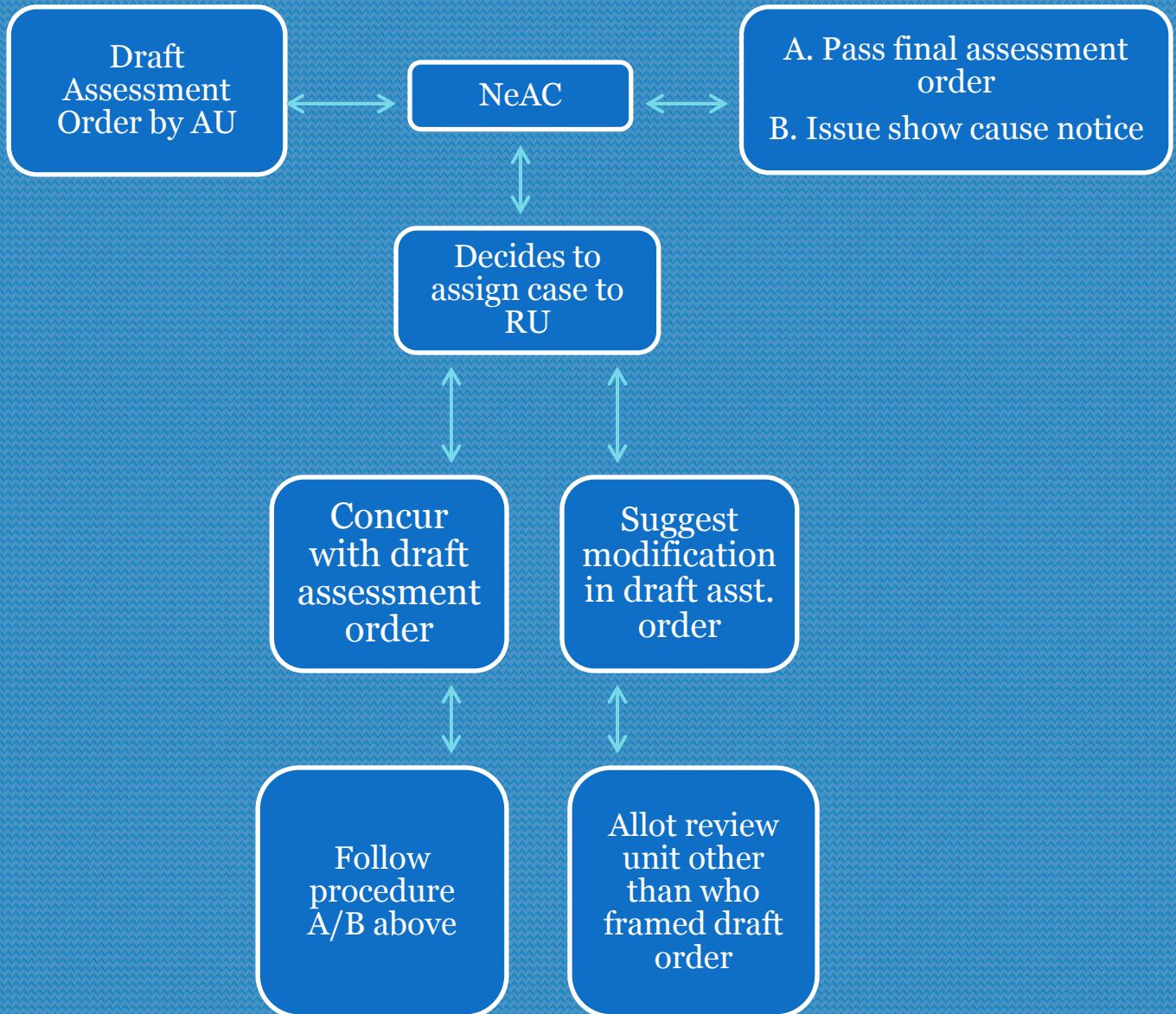


## Part B





**Part C**





## **Broad function**

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Essentially, the functions of AO is divided into four parts – Assessment Unit, Verification Unit, Technical Unit and Review Unit which, obviously, performed by different person (unit) located at any part of country. This functions, hitherto, are looked after by one person/AO that too located at territory of assessee.

\*

Technical Unit – has only role to guide AO on any accounting, legal, TP or audit related issue.

\*

Assessment order will be passed under the name and signature of NeAC so as to maintain anonymity.

\*

Assessment Unit – Performs verification, appreciation and analysis of material. However, it'll have no power of verification. i.e recording statement u/s 131. Further, it can only pass draft assessment order which is subjected to review at instance of NeAC.

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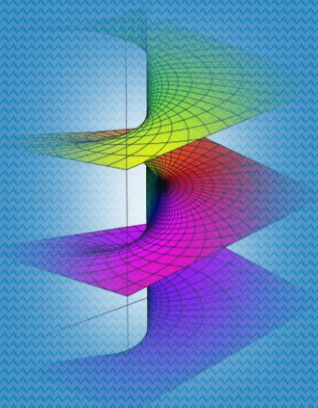
Review Unit - only review the draft assessment order and provide suggestion (if any) thereon.

\*

Verification Unit – Has only limited right of enquiry, cross verification and recording of statement u/s 131. It'll have to only communicate outcome to AU through NeAC. It has no power to frame the order or even to draw conclusion of enquiry. Functions is similar to that of statement recorded for commission issued.

\*

National e-Assessment Centre – Its functions include assigning RU, VU, TU & RU to case selected for scrutiny. This would done through automated allocation system without human intervention. The officials at NeAC have no control over allocation made. Also perform functions similar to postman which would facilitate the interaction between assessee and AU. It is further stated that various unit inter se would not communicate directly but only through NeAC.







### **Applicability**

- The new scheme will apply to all assessment whether initiated by NeAC or jurisdictional AO. From now onwards, subject to certain exceptions, all assessment orders will be framed/concluded through faceless mode only.
- It will apply to all type of assessment i.e 143(3), 144 & 147
- It will not apply to cases transfer pricing cases and cases with central charge. It is mentioned that exception is circle based not section based. It may happen that case u/s 147/143 be centralized and concluded by offline/conventional mode.
- Revision u/s 263 would be done offline.
- All existing cases where jurisdictional AO issued notice u/s 143(2), 142, 148 will now be conducted through faceless mode. Henceforth, order thereof will be passed by NeAC.

### **Applicability to reassessment**

- As sated earlier all reopened assessment would now be conducted or rather concluded through faceless mode.
- The scheme, unless law is amended, suggest that reopening can only be initiated at the instance of jurisdictional AO as done earlier. Issuance of notice u/s 148 till stage of issuing notice/questionnaire u/s 142(1) will be done by jurisdictional AO and thereafter proceeding will be taken over by NeAC. As natural corollary, the provision of recording reasons, sanction thereof, objection to reasons will apply intact.

### **Fundamental issue**

- Para 5(1) of scheme states that *the National e-Assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143, specifying the issues for selection of his case for assessment.* Whilst in full scrutiny cases there are no predetermined specific issues to be examined. This may raise doubt as to applicability of faceless assessment scheme to full scrutiny cases.





- The lifeline in terms of S.144A seems to have been scrapped. It is learnt that AU are advised to issue questionnaire of faceless scheme under guidance of Additional or Joint CIT.
- Minute examination of para xvi(a) & xvi(b) of scheme suggest that discretion is granted to NeAC to decide whether in given case show cause notice is to be issued or not. This would pose serious challenge on constitutional validity of scheme.
- As scheme suggest that opportunity of personal hearing (through video conferencing) would be with Verification Unit whilst assessment order taking adverse view would be passed by Assessment Unit. This is against principle of “*those who decides does not hear*”. Only time Will tell whether this would pass the muster of principle of natural justice.
- The window of e-submission would closed seven days prior to time barring date. Provision of act does not say so. This is amenable to challenge.

### **Post assessment**

- After passing assessment order, NeAC will transfer all records, documents, materials to AO having territorial jurisdiction
- For collection recovery
- Rectification of order (if any)
- Launch prosecution and compounding thereof

### **Summary of Unit**

- Composition of officer in each unit is

Unit	Pr.CIT	Addl./Joint CIT	DCIT/ACIT	ITO	Total
AU	1	4	4	20	29
VU	1	3	3	15	22
TU	1	3	6	9	19
RU	1	3	6	9	19

- As of now total 30 ReAC (Regional e-Assessment Centre – work only as cadre controlling authority), 96 AU, 34 VU, 21 RU and 4 TU is established.



### **A Comparative**

<b>Particulars</b>	<b>Conventional mode</b>	<b>Faceless mode</b>
Applicable to	143(3), 144, 147, 153A/C, 263	143(3), 144, 147
AO	Jurisdictional AO	NeAC
Jurisdiction decided	Territorial based on place of residence/business or type of income	Assigned on basis of automated allocation system.
AO consist of	Only one officer	Involvement of various officer in form of various unit.
S.142/143(2) Notice issued by	Jurisdictional AO	NeAC
Case is with	Jurisdictional AO	Any AU through NeAC
Inquiry by	Jurisdictional AO	AU/VU through NeAC
Draft order	No such concept	Applicable
Final order	Jurisdictional AO	NeAC
Communication	Physical interface	Exclusively online
DIN	No such concept	Applicable
Final say	Jurisdictional AO	Team based. No single person/unit has final say.

### **Concluding remark**

No one can doubt the intention of scheme, however, the success of scheme solely depends on calibre of departmental official posted at various units. In absence of any benefit of oral explanation, officer concern must tune themselves to read, examine and appreciate the submission/details/documents. We must make habit of filing synopsis in case where submission/details/documents filed are lengthy. I failed to understand as what are the purpose to keep devious revisionary powers alive in state book.

Contributed by:-  
CA Jayraj Dhakan



## **INSOLVENCY & BANKRUPTCY CODE, 2016 – POST COVID 19**

If we look back in the recent times one of the major reform in the laws related to insolvency in India was the introduction of The Insolvency and Bankruptcy Code, 2016 (“**IBC**”). The code came into force on 28<sup>TH</sup> May 2016. This act aimed to “consolidate and amend the laws related to reorganization and insolvency in India”. To understand why this law was enacted we need to have a look at the laws and situation that existed before this act was enacted.

Before 2016 India did not had one single law dealing with Insolvency, Bankruptcy and Liquidation of different entities. There were different laws for Individuals, Partnership firms and Corporates such as SARFAESI Act 2002, Provincial Insolvency Act, 1920, The Recovery of Debt Due to Bank and Financial Institutions Act, 1993, Sick Industrial Companies Act, 1985. A major drawback of all these laws was that the process of debt realization, insolvency or bankruptcy would take a considerable amount of time. According to the data available with the World Bank in 2016, insolvency resolution in India takes around 4.3 years on an average. This was because there were numerous authorities involved in these acts which caused undue delay in resolution. All this led to degradation of the value of the assets due to which creditors were able to realize only a small portion of the debt due to them. To overcome all these shortcomings of existing system Insolvency and Bankruptcy Code was enacted. The code provided framework for insolvency and liquidation of all type of entities. The code also prescribed a time span of 330 days for completion of the insolvency process for maximization of the value of the assets of the corporate debtor. The code introduced a creditor driven procedure for resolving insolvency and bankruptcy. Against Rs 1.66 lakh crore claims involved under IBC, the recovery was Rs 70,819 crores in 2018-19 which was around 42.5% of the claims filled.

But recently due to the outbreak of Covid-19 pandemic many reform were made in the laws by the Government of India and IBC was also one of them. On 24<sup>th</sup> March 2020 the central government by a notification increased the threshold limit of the default for initiation of Corporate Insolvency Resolution Process from Rs. 1 lakh to Rs.1 Crores. Along with this by an ordinance on 5<sup>th</sup> June 2020 the operation of Sections 7, 9 & 10 of the Code which dealt with filling of application for initiation of Corporate Insolvency Resolution Process, were suspended for a period of 6 months, which may be extended up to one year. As a result of which no fresh application can now be filed for 6 months under the Code for initiation of CIRP. This was done in order to stop MSME companies from being forced into insolvency during such trying times faced worldwide.

While this amendment to increase the limit of default was made for the protection of the MSME businesses, it has created a new problem for the creditors. The creditors whose amount of debt is less than Rs. 1 Core and had sent a demand notice but could not file application because of the closure of the filling counters are unsure about the future of their applications. If we talk about MSME units, their receivables from corporate debtors are generally below Rs. 1 Crore and because of the amendment in the I & B code, they will now not be able to take any legal action under the code against the corporate debtor.





Another significant amendment in the IBC was took place on 15th November 2019. The Central Government vide a notification brought into effect from 1st December 2019 Part III of the Insolvency and Bankruptcy Code, 2016 dealing with the Insolvency and Bankruptcy of Individuals and Partnership Firms in so far as it is applicable to Personal Guarantors of a Corporate Debtor. Along with it the Government also notified various rules and regulations related to the same. The provisions would be applicable only to those Guarantors where the guarantee has been invoked by the creditor and remains unpaid in full or in part.

The notification which suspended the operations of Section 7, 9 & 10 for a period of 6 months is not applicable to proceedings against personal guarantors as it is dealt by Section 94 and 95. Jet Airways founder Naresh Goyal, whose company owes lenders more than Rs 11,000 crore, had given a personal guarantee for some of the loans. So did Amtek Auto's Arvind Dham and Bhushan Power & Steel chairman Sanjay Singhal, who is also facing an Enforcement Directorate inquiry for siphoning off funds. Until now, Goyal, Dham or Singhal could only be tried in the Debt Recovery Tribunal (DRT) under the old Presidency Towns Insolvency Act, 1902. However, with the amendment, banks will now be able to take recourse against them under the IBC.

Recently State Bank of India (SBI) has filed an application against Mr. Anil Ambani (personal guarantor) before the National Company Law Tribunal (NCLT), seeking to recover dues of Anil Ambani group Companies by invoking personal guarantee given by Anil Ambani. Hon. NCLT ordered to initiate bankruptcy proceedings against Mr. Anil Ambani. According to the Supreme Court's recent ruling in the Essar Steel case, overturning an order of the National Company Law Appellate Tribunal, claims against a personal guarantor would not extinguish once a resolution plan for the corporate debtor was approved. The new framework will allow creditors to continue the recovery process with personal guarantors after the completion of the corporate insolvency resolution process.

With this amendment the personal guarantors will have to be more vigilant because if their company is not able to pay the debts they will have to face trouble.

So with this we can conclude that the recent amendment had both favorable and unfavorable effect on the business. On one hand it relieved the business from the risk of going into insolvency in this unprecedented situation and on the other hand it has created the problems for various MSME creditors.

Contributed By- 1. CA IP Kailash Shah,  
2. CA Shreyans Shah





**Micro, Small and Medium Enterprises (MSME) sector – Restructuring of Advances (RBI Circular date August 06, 2020)**

Sr. No.	Particular	Parameters
1	Title	Micro, Small and Medium Enterprises (MSME) sector – Restructuring of Advances
2	RBI Circular reference	- RBI/2020-21/17 DOR.No.BP/4/21.04.048 /2020-21 dated August 06, 2020 - RBI/2019-20/160 OR.No.BP.BC.34/21.04.048 /2019-20 dated February 11, 2020 - RBI/2018-19/100 BR.No.BP.BC.18/21.04.048 /2018-19 dated January 01, 2019 -RBI/2017-18/129 DBR.No.BP.BC.100/21.04.048/2017-18 February 07, 2018 - RBI/2017-18/186 DBR.No.BP.BC.108/21.04.048/2017-18 dated June 6, 2018
3	Applicable	Micro, Small and Medium Enterprises (MSME) sector
4	Type of Advance Cover	The term 'Advances' will mean all kinds of credit facilities including cash credit, overdrafts, term loans, bills discounted / purchased, receivables, etc. and investments other than that in the nature of equity.
5	Interest Rate	As per bank management decide.
6	Security Coverage	As per bank management decide.
7	Restructuring Included	Restructuring would normally involve modification of terms of the advances / securities, which would generally include, among others, alteration of repayment period / repayable amount / the amount of instalments / rate of interest
8	Condition	(a) One Time Restructuring, borrower which have already been restructured in terms of the circular dated January 1, 2019/February 11, 2020 shall be ineligible for restructuring under this circular. (b) The aggregate exposure, including non-fund based facilities, of banks and NBFCs to the borrower does not exceed Rs. 25 crore as on March 1, 2020. Aggregate exposure should be as per master circular – Exposure Norms July 01, 2015 para 2.2.2. (c) The borrower's account was a 'standard asset' as on March 1, 2020. (d) The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on March 1, 2020. (e) Asset classification of borrowers classified as standard may be retained as such, whereas the accounts which may have slipped into NPA category between March 2, 2020 and date of implementation may be upgraded as 'standard asset', as on the date of implementation of the restructuring plan. The asset classification benefit will be available only if the restructuring is done as per provisions of this circular.



9	Implementation	The restructuring of the borrower account is implemented by March 31, 2021.
10	Provision	Bank Should make additional provision of 5% in place of normal provision (0.25% for Small and Micro Enterprises (SME)/0.40% for Medium Enterprise) as per IRAC norms.
11	Reversal of Provision	Bank can reverse this additional provision if account demonstrates satisfactory performance during the specified period as defined below. 'Specified Period' means a period of (1) one year from the commencement of the first payment of interest or principal, whichever is later, on the credit facility with longest period of moratorium under the terms of restructuring package. 'Satisfactory Performance' means no payment (interest and/or principal) shall remain overdue for a period of more than (30) thirty days (SMA 1/ 2 classification) and if this condition violate than normal rule of restructuring applied that means downgrade on step, which are fall into existing for term loan account and in case of cash credit / overdraft account, satisfactory performance means that the outstanding in the account shall not be more than the sanctioned limit or drawing power, whichever is lower, for a period of more than 30 days and if this condition violate than also normal rule of restructuring applied.
12	Disclosure Requirements	Banks should make appropriate disclosures in their financial statements as per Master Circular – Disclosure in Financial Statement under 'Notes on accounts' July 01, 2015, relating to MSME accounts restructured under these instruction as per specified format include Number of accounts restructured and amount into million.

**MSME**  
*The growth engine  
 of New India*



Contributed by:-  
 CA Gopal Dhakan





MSME  
Exposure  
Less than  
Rs 25  
Crore

- (1) One Time Restructuring (OTR)
- (2) Credit Limit less than Rs. 25 Crore as on March 1, 2020.
- (3) The borrower's account was a 'standard asset' as on March 1, 2020.
- (4) The borrowing entity is GST-registered. (MSMEs that are exempt from GST-registration as on March 1, 2020.)
- (5) Asset classification of borrowers classified as standard may be retained as such, whereas the accounts which may have slipped into NPA category between March 2, 2020 and date of implementation may be upgraded as 'standard asset', as on the date of implementation of the restructuring plan. The asset classification benefit will be available only if the restructuring is done as per provisions of this circular.
- (6) Bank Should make additional provision of 5%
- (7) Bank can reverse this additional provision if account demonstrates satisfactory performance during the specified period.
- (8) Banks should make appropriate disclosures in their financial statements

### **CONGRATULATION MESSAGE FOR WRITING OF BOOK**



Surat branch of WIRC of ICAI promotes writing of books by members of the branch at large. In this chain, our beloved CCM CA Jay Chhira and Branch Chairman CA Ishwar Jivani as on 29.08.20 launched a book written by CA IP Pradeep Kabra and CA IP Vineeta Maheshwari on the "Personal Guarantee " provisions of Insolvency and Bankruptcy Code with the title "UNLOCKING PERSONAL GUARANTEE PROVISIONS under IBC for effective recovery for Banks/ Fin. Institutions" We hope that this book will be useful for the members and other users for better understanding of the subject.

*Author: CA IP Pradeep Kabra and CA IP Vineeta Maheshwari*

We invite our members at large to come up with new initiatives like writing books, research papers etc. and we all managing committee members at Surat Branch will support the same whole-heartedly...

**CA. Ishwar Jivani Chairman**

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