iComply

Editorial

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Interview with Dr. KS Ravichandran, the managing partner of KSR & Co.



1. Both the professional fraternity and the industry in India have welcomed the enactment of Insolvency and Bankruptcy Code, 2016. What do you think will be the short term impact of this enactment and who will be the immediate beneficiaries?

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Compliance calendar

Due dates for Income tax, Professional tax, Service tax, Companies Act, 2013 among others has been captured for your ready reference.



View the list…

Gist of Regulatory Changes in Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 in the month of May, 2017

Seven Regulatory changes in Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 was made in the month of May. View the list…

The Paradox of Digital Signatures in India? By Shankar Jaganathan



Imagine a banking customer handing over their ATM card and PIN number to another person for withdrawing cash. Read more…

Releasing this month 'CimplyFive's Report on 'Policy for Related Party Transactions'



Editorial

On May 29th, our free to use website on the Companies Act, 2013, www.ca2013.com, crossed half a million page views, i.e. 500,000 page views. We are now consistently getting about 500-700 visitors a day with over 3000 page views. What is heartening is the pace at which our site is gaining popularity. More satisfying is the repeat visitors who come to our site.

# of Page views	Days from Launch	Date of milestone
Launch		3rd October 2015
10,000	41 days	13th Nov 2015
25,000	56 days	2nd Jan 2016
50,000	91 days	29th Feb 2016
100,000	149 days	14th June 2016
200,000	255 days	15th Nov 2016
500,000	450 days	29th May 2017

As we look back at the developments, we are more than ever committed to building CAIRR as the most preferred and the most popular site for professionals who need to refer to the Companies Act, 2013 in this direction we have launched our CAIRR mobile app with push notification with changes in the Act and the IB Code. We look forward to your continued patronage as we look to cross the million page mark, possibly by our independence day, i.e. August 15, 2017.

Turning to this issue of iComply, we have interviewed Dr. KS Ravichandran, the managing partner of KSR & Co., on the Insolvency and Bankruptcy Code, 2016 and the challenges faced in its implementation, a topic of current interest. KSR as he is popularly known, is a Practicing Company Secretary with a doctorate in corporate & criminal law, a prolific author and an engineer who has served in the Indian Air Force.

Our regular article this time features the paradox of digital signature, by highlighting the limitations in its use. Our other regular features –Gist of changes in the Companies Act and the statutory calendar is also included. Please feel free to share your feedback with us at contract@cimplyfive.com. We look forward to your feedback with interest and as ever strive to improve the quality of everything we do.

Happy reading,

Shankar Jaganathan
Editor of iComply| June 5, 2017

Interview with Dr. KS Ravichandran, the managing partner of KSR & Co.

1. **Both the professional fraternity and the industry in India have welcomed the enactment of Insolvency and Bankruptcy Code, 2016. What do you think will be the short term impact of this enactment and who will be the immediate beneficiaries?**

The Insolvency and Bankruptcy Code, 2016 [IBC] is a law that operates on a very narrow domain. The fundamental aim of this law is to provide an opportunity to debtors to try an insolvency resolution process. If within a specified time frame, the resolution process does not result in sanction of a resolution plan, IBC puts the debtor in Liquidation Mode so that the economic resources at the disposal of the debtor could be disposed of as profitably as may be possible to pay off the creditors and other stakeholders as much as possible and as soon as may be possible. Hence it is a robust law. As would be the euphoria in relation to any innovative (and disruptive) legislative measure, professionals, creditors, debtors are certainly upbeat that IBC is going to make a revolutionary change that would auger well for the nation as a whole. One has to wait and watch if indeed such changes happen

The short term impact of this new law will be flooding of cases as each major stake holder will be having a specific objective to give IBC a try. While debtors may try to apply under Section 10 of the IBC so as to benefit from the insulation provided by the moratorium and be away from onslaught of suits and proceedings, creditors would want to try the insolvency resolution process and it if does not work put the debtor company in liquidation. In fact, creditors have no choice as directly bringing the debtor into winding up has been given a go by.

The financial creditor having secured assets would always have the upper hand in the resolution process because financial creditors have a "win-win" situation in this law. If the likely cash flows from the success of a resolution plan to be approved by them are going to be better and more certain than the amount they are likely to be realized by enforcement of their security interest,

financial creditors may prefer a resolution plan over a liquidation plan.

Therefore the immediate beneficiaries in the short term will be operational creditors and operational debtors and of course the professionals who will be representing any of these applicants and defendants.

2. **Looking at the US history of bankruptcy code enactment in the nineteenth century, we saw a see-saw battle lasting about 2 decades where the code went from being too liberal and thereby benefiting the borrowers at the cost of lenders to the code being too stiff and not permitting liquidation of businesses? Given this historic scenario, where is the Indian code placed –is it too stringent to be effective or is it too lenient permitting borrowers to go scot-free?**

The Indian Code is very strict, in terms of timelines. It has no room for emotions. It puts the entire weight of the success or failure of the resolution process upon the financial creditors. If they reject the resolution plan, IBC automatically switches on the Liquidation Mode leaving no discretion to the operational creditors nor to the corporate debtor nor to workers; not even to the adjudicating authority. Therefore the Indian Code is specific, stringent and result oriented. It puts financial creditors in the driver's seat and they are expected to display the requisite leadership. Apart from business prospects, they are bound to look at the previous conduct of the debtor very closely before forming an opinion about the feasibility of a resolution plan. Rogue and fraudulent borrowers are not likely to get the support of the financial creditors who are going to be mostly institutions with a higher level of governance and with sufficiency of secured assets under their control, they are not going to be losers, either way.

3. **The need for Insolvency Professionals is clearly recognized by the IB code. Given this emerging need, who between the CA and CS is the more suited for this role and why?**

Insolvency professionals have to be highly dynamic. They should be having high sense of business common sense. Therefore it is not a matter whether he is a company secretary or chartered accountant. He must be an experienced & focused professional, capable of taking charge of an ailing enterprise. He should have the confidence and courage to negotiate with all stakeholders and bringing into force a resolution plan that serves substantially the interests of all the stake holders. Hence CS or CA does not really matter. In my opinion, combination will work wonders.

4. **Looking at it more generically, what are the top 3 professional and personal qualities required in an Insolvency Professional to be successful in providing effective business solutions?**

The top 3 professional qualities are

a) Commitment to the job undertaken; a direct appreciation of facts, circumstances and all relevant factors is a must.
b) Should steer clear of conflicts of interest.
c) Must have high degree of commercial & legal knowledge.

The top personal traits that an Insolvency Pro should have are:

a) Honesty
b) Transparency
c) Dynamism

The Paradox of Digital Signatures in India?

Imagine a banking customer handing over their ATM card and PIN number to another person for withdrawing cash. What do we make of that person? A gullible fool, an imbecile or a digital idiot. How many such persons would exist in India today? A handful, tiny, miniscule minority of the ATM customers at the worst.

Now, can you imagine an arena where the majority, if not substantially the whole customer population hand over their 'ATM card' and 'PIN' to another person permanently to use it? What we are talking about is not a figment of imagination or of a fictional country; rather it is the sophisticated world of Indian corporates, where directors hand over their digital signature token to their accountant or attorney to use it at their discretion. In fact if a test is conducted in which the holders of digital signatures are required to affix it to a document, I am willing to bet my last rupee that more than 90% of the 400,000+ DIN holders in

India will fail to do the basic act of affixing their digital signature on to a given document.

Digital signature is identity proof presented electronically to prove one's identify, to access information or service on the internet or to sign documents digitally. This is essential as electronic documents like e-forms filed with MCA and Income Tax returns need to be authenticated using a digital signature. Digital Signatures are legally admissible in a court of law as provided in the Indian IT Act, 2000.

Every director of a company or authorized signatory needs to get a Digital Signature Certificate (DSC) from the Certifying Authority, who is licensed to issue a DSC under section 24 of the India IT Act, 2000.

Digital signature certificates in India are classified into 3 classes based on its authenticity:

- Class I: Issued to private individuals / private subscribers –they certify User's name and email address
- Class 2: Issued to business personnel/ private individual. Use –they certify that the information provided by the subscriber does not conflict with information in well document databases
- Class 3: Issued to individuals / Organizations –high assurance certificates for e-com applications issued to individuals only on their physical appearance before the certifying authority.

However, all the three class of DSC's are not accorded the same standing in law. For example, MCA recognizes only class 2 and class 3 digital signatures for the purpose of affixing it to e-forms.

With the advent of Aadhaar two new modes of digital certificates have come up which are in the Class 2 category:

- Aadhaar e-KYC OTP based: the digital signature is affixed after an OTP authentication successfully validates the subscriber is the same as the Aadhaar holder.
- Aadhaar e-KYC biometric based: the digital signature is affixed after a biometric authentication successfully validates the subscriber is the same as the Aadhaar holder

While Aadhaar e-KYC is yet to make its mark in the Indian Corporate world today, there is every reason to believe going forward it will take the center stage and make digital certificate tokens history. Till that time we have to live with the fact that digital signatures mean far less than what a signature or thumb impression conveys on paper which is affixed by the individual authenticating it.

Compliance Calendar

June 5, Monday	Physical payment of Excise duty, Non-SSI for the month of May, 2017
	Physical payment of Service Tax.
June 6, Tuesday	E-payment of Excise duty, Non-SSI for the month of May, 2017
	E-payment of Service Tax.
June 7, Wednesday	TDS return for May, 2017.
June 15, Thursday	Pay PF contribution for May, 2017
June 20, Tuesday	Professional Tax payment
June 21, Wednesday	ESIC monthly deposit
June 25, Sunday	PF Return for May, 2017

Gist of regulatory changes in Companies Act, 2013 in the month of May, 2017

- **05.05.2017**
  Clarification for IBBI (Voluntary Liquidation Process) Regulations, 2017

  Insolvency and Bankruptcy Board of India has clarified to read the term 'Corporate Debtor' mentioned in the said regulations as 'Corporate Person'. *By the said clarification, Regulation 10 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 has been amended. Regulation 10 relates to* maintenance of registers and books by the liquidator.
- **11.05.2017**
  Companies (Acceptance of Deposits) Amendment Rules, 2017

  MCA vide a notification has amended the said rules by virtue of which any amount received by a company from Infrastructure Investment Fund will

not be considered as 'deposits'. *Recently, SEBI has notified the provisions of Infrastructure Investment Fund. With an objective to encourage the fund-raising from Infrastructure Investment Fund, MCA has amended the Deposit Rules under Company Law.*

Further, MCA has also extended the time period for applicability of deposit insurance from March 31, 2017 till March 31, 2018 or availability of deposit insurance product, whichever is earlier. *Since the date of commencement of Companies Act, 2013, 'deposit insurance' has not been notified. In case of default, 'Deposit insurance' protects investors to a limited extent. However, payment of premium for obtaining the Deposit insurance increases the cost of raising finance.*

- **15.05.2017**

  Provisions of Voluntary Liquidation or bankruptcy come into force

  The Central Government has appointed 1StApril, 2017 as the date on which provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy came into force. *Till March 31,2017, provisions of the Companies Act, 1956 w.r.t. the Voluntary Liquidation were in force, even after the constitution of NCLT and certain provisions being notified under Insolvency and Bankruptcy Code. After the issue of this Notification, both Creditors Liquidation and Voluntary Liquidation will be regulated by the Insolvency and Bankruptcy Code*

- **16.05.2017**

  Clarification regarding applicability of section 16(1)(a) of the CA 2013 with reference to cases under corresponding provisions of Companies Act, 1956

  MCA has clarified that applications which were rejected by Regional Directors regarding 'Rectification of name by the Central Government' under the Companies Act, 1956 on the grounds that such applications were made after the requisite period of twelve months specified therein, cannot apply afresh under the Companies Act, 2013, as the extinguished limitation cannot be considered to be revived even if no limitation period has been prescribed in the new Act. *MCA has provided clarity on the transition provisions relating to Companies Act, 1956 and 2013 w.r.t. the Applications for Rectification of name by Central Government. The timelines for 'rectification of name' under Companies Act, 1956 and 2013 are different. Also, such clarification has been issued as there is a reference of 'previous company law' in Section 16 of Companies Act, 2013.*

➢ Transfer of shares to IEPF Authority

MCA has issued a circular withdrawing the previous Circular issued on April 27, 2017 w.r.t transfer of shares to IEPF Authority. *Taking into account the operational difficulties in implementing the provisions of the Circular and several interpretation arising there from, MCA has withdrawn the Circular w.r.t. transfer of shares to IEPF Authority.*

- **24.05.2017**

  Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017

  Central Government has issued Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017 on 24th May, 2017 by virtue of which the schemes which were sanctioned under Sick Industrial Companies (Special Provisions) Act, 1985 [SICA,1985] are deemed to be approved under the provisions of the Insolvency and Bankruptcy Code,2016.

  Further, any appeal for which statutory period had not lapsed under SICA, 1985 can be referred to National Company Law Appellate Tribunal within ninety days with effect from 24 May, 2017.

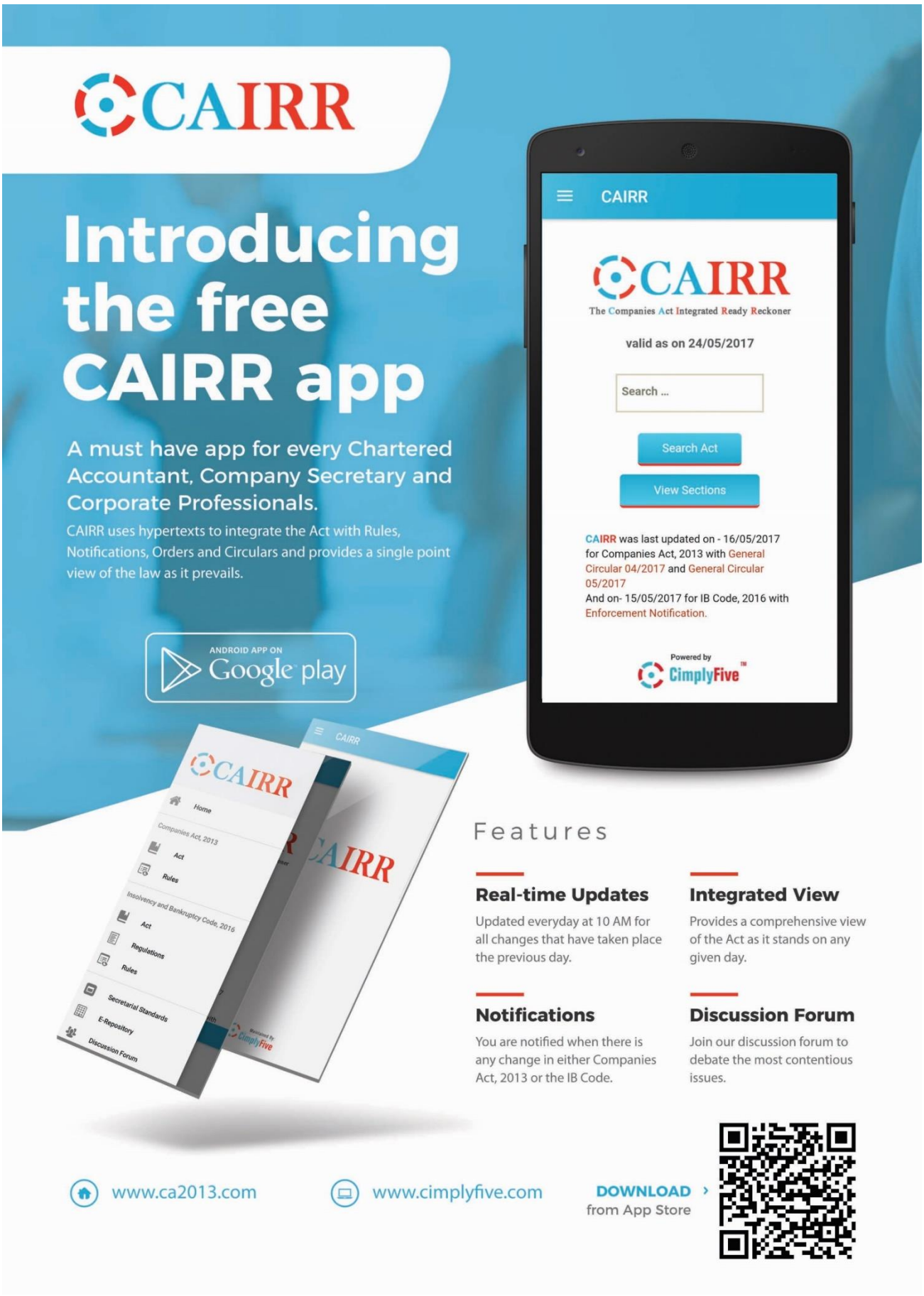
  The Removal of Difficulty Order has been issued with an objective integrate and ensure smooth transition from SICA, 1985 to Insolvency and Bankruptcy Code, 2016.

- **29.05.2017**

  Clarification regarding due date of transfer of shares to IEPF Authority (Extension of due date)

  MCA vide a general circular has extended the due date for transfer of shares till opening of the new demat accounts. A revised due date is to be soon announced.

  The circular has been issued as the modalities for transfer/ transmittal of shares from companies accounts to demat account of IEPF Authority is not finalized with the depositories.


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Provide a cost-effective, secure web-based, menu driven, subscription services that provides curated resolutions, timely alerts and informative dashboards to free the management bandwidth for pursuing business goals

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