



# Monthly Newsletter

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## Committee of Creditors under the Insolvency Regime\*

The Insolvency and Bankruptcy Code, 2016 ('IBC/Code') has resulted in a paradigm shift in the insolvency resolution process by providing for a creditor-in-control model wherein the creditors take over the control of management of the insolvent corporate debtor through Resolution Professional (RP) appointed by NCLT, in case of default. The Committee of Creditors ("CoC") of the Corporate Debtor ("CD") is one of the crucial pillars of the Corporate Insolvency Resolution Process (CIRP) and is aided by the Resolution Professional ("RP") in carrying out its function which is to determine whether to revive the CD or to liquidate and recover. The creditor-in-control model relies upon the managerial skills of the RP to take over an ailing company and ensure that it remains a going concern while the creditors decide on the future of the CD i.e., Resolution/Liquidation.

During CIRP, the CoC is the main decision-making body. It is a transient heterogeneous body consisting of unrelated financial creditors (FCs) of the CD with diverse interests. The FCs are assigned voting shares on the basis of the debt owed to them as a percentage of the total debt. When the CD has no financial debt or where all FCs are related parties, the CoC is constituted solely of operational creditors. It acts in the best interest of all stakeholders and thus, is the custodian of public trust during the insolvency resolution process.

The Code bestows various powers on the CoC which include appointing the Interim Resolution Professional (IRP) as the Resolution Professional (RP), supervising their functioning and conduct, and in the event, the conduct of the RP is not to its satisfaction, even replace the RP. Even though it is the RP who is responsible for the management of the day-to-day affairs of the CD, it is the CoC that has been bestowed with the power and responsibility to decide on all critical matters relating to the functioning of the CD for which prior approval of the CoC has to be taken such as creation of security interest over the CD's assets, change in ownership, capital structure or management of the corporate person etc. It ensures that commercially prudent actions are taken to preserve the value of the entity.

But the most important function of the CoC is, however, to determine the viability of the CD's business, examine the feasibility of future operations, the cost and expenses involved and accordingly, resolve to either proceed with the

resolution process including the decision to extend the timeline or opt to immediately liquidate the CD, where it is convinced that the resolution process is bound to fail. Judicial pronouncements also have clarified the role and responsibilities of the CoC and established the primacy of the 'commercial wisdom of CoC' in deciding the fate of the CD undergoing CIRP. This commercial wisdom is well recognised in the landmark judgment by Hon'ble Supreme Court in *Swiss Ribbons vs. Union of India*.

The CoC has a statutory role. It discharges a public function. It must not only follow the process, but also be fair to all stakeholders and transparent in discharge of its responsibility. In *K. Sasidhar vs. IOB (supra)*, the Hon'ble Apex court held that CoC is a custodian of public interest and judicial intervention in commercial decisions of the CoC was barred to ensure completion of the process laid down under CIRP within the timelines prescribed by the IBC.

The duty imposed on the CoC to decide on the manner of distribution of the proceeds from the resolution plan among the creditors bestows a responsibility on the CoC to not just think of their own interest but to also think of others who are not part of the decision-making process. The NCLAT in the *Binani Cements* matter had ruled that the CoC must consider maximising the value of assets of the CD and also to consider the wider interests of all stakeholders in taking decisions. But at times it is seen that the CoC is not always performing its duties as per the spirit of the law.

The Report of the Insolvency Law Committee, 2022, had hence proposed laying down of a *Standard of Conduct* for the members of the CoC to follow throughout the insolvency process to promote higher responsibility on the part of the CoC to make decisions in the interest of all stakeholders, instead of their own self-interest.

IPs and the CoC constitute key institutions of public faith under the IBC. The IBC has demarcated the responsibilities of an IPs and of the CoC in the CIRP and also assigned certain responsibilities to them. Hence, the Standard of Conduct will ensure that the CoC undertakes its responsibilities with utmost importance uplifting transparency and accountability. As Mahatma Gandhi had said "*a duty well performed creates a corresponding right*". If the members of the CoC do their duty i.e. to consider of the larger impact of their decisions on the economy and not just their immediate financial gain, automatically the rights of all stakeholders under the Code will be protected.

## REVIEW OF CORPORATE SECTOR

(i) As of 31<sup>st</sup> January, 2023, the number of companies registered under the Companies Act was 24, 61,937. Of these, 9, 04,723 companies were closed, 7,110 companies were under liquidation, 30,627 companies are in the process of striking-off from the register and 2,469 companies have so far obtained the "dormant" status according to Section 455 of the Companies Act, 2013. There are 15, 17,008 active companies, including 2,58,850 companies,

which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).

(ii) A total of 12,166 companies, including 769 One Person Companies (OPCs), were registered during January 2023 with an Authorized capital of Rs. 1,651.07 Crore and Paid-Up capital of Rs. 765.69 Crore. The breakup of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in January, 2023	Total Authorized Capital (Rs. in Crore)
<b>Company limited by shares</b>	<b>12,091</b>	<b>1,650.95</b>
Of which,		
(a) Private	11,879	1,568.34
Of which,		
One Person Companies	769	30.64
(b) Public	212	82.61
<b>Company limited by Guarantee</b>	<b>75</b>	<b>0.12</b>
Of which,		
(a) Private	73	0.12
(b) Public	2	-
Unlimited Company	-	-
<b>Grand Total</b>	<b>12,166</b>	<b>1,651.07</b>

(iii) During the Month of January 2023, Maharashtra had a maximum number of company registrations (2,290) followed by Uttar Pradesh (1,378) and Delhi (1,099).

(iv) "Business Services" (2,957) had a pre-dominant share in the economic activity-wise classification of registered companies

followed by Manufacturing (2,459) and Community, personal and social services (1,753) during January 2023. 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](http://mca.gov.in/MinistryV2/InformationBulletin.html).

## MONTHLY MIS REPORT FROM COMPETITION COMMISSION OF INDIA

(as of January, 2023)

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
1.	19(1)	15	-	15	15
2.	19(1)(a)	85	05	85	90
3.	19(1)(b)	07	-	07	07
	<b>Sub Total (X)</b>	<b>107</b>	<b>05</b>	<b>112</b>	<b>112</b>
4.	6(2)& 6(5)	14	04	18	17
5.	20(1)	-	-	-	-
	<b>Sub Total (Y)</b>	<b>14</b>	<b>04</b>	<b>18</b>	<b>17</b>
	<b>Grand Total (X)+(Y)</b>	<b>121</b>	<b>09</b>	<b>130</b>	<b>129</b>

\*Out of 112 pending anti-trust cases, 54 cases are pending with DG and 58 cases (17 cases are at prima facie stage and 41 cases for hearing) are pending with CCI.

### Cases remanded by Appellate Authority

6.	Remanded	11	-	11	11
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### Cases regarding contravention of orders of Commission

7.	Fresh inquiry	01	-	01	01
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## MAJOR EVENTS

- (i) Joint Secretary, Ministry of Corporate Affairs inaugurated the training programme on Specific Domain Areas (Cluster Module 2) of MCA conducted by ICLS Academy for ASO Probationers of 2018 Batch on 9<sup>th</sup> January 2023, which is scheduled till 29<sup>th</sup> March 2023, a 24 hours training programme (2 hours per week), spread over 12 weeks in online mode through the Blackboard platform.
- (ii) The Ministry of Corporate Affairs has invited public comments on amendments being considered to the Insolvency and Bankruptcy Code, 2016 on 18<sup>th</sup> January, 2023.



*Inaugural of Training Programme of ASO Probationers of 2018 Batch by Shri Inder Deep Singh Dhariwal, IA&AS (1992), Joint Secretary, MCA on 19.01.2023.*

- (iii) Acting Chairperson, Competition Commission of India (CCI) delivered keynote address in an Interactive session on 'Amendments to the Competition Act & their Relevance to the Digital Markets' organised by PHD Chamber of Commerce and Industry, Chandigarh in Hybrid mode on 25<sup>th</sup> January 2023.
- (iv) Director (Law), Joint Director (Law), and members of the Procurement Standing Committee attended the Global Procurement Summit 2023 (GPS 2023) organised by the All India Management Association (AIMA) in partnership with the World Bank and the Department of Expenditure, Ministry of Finance, GoI, on 17<sup>th</sup>-18<sup>th</sup> January, 2023 at Hotel Lalit, New Delhi. The theme of the Summit was "Procurement for Infrastructure Development".
- (v) A peer-to-peer (P2P) session was conducted by the Director (FA), on the topic "Google-Android Matter-Part II" for the officers and professionals of CCI & O/o DG, CCI, on 12<sup>th</sup> January, 2023.
- (vi) The 36<sup>th</sup> lecture under the Special Lecture Series (SLS) was delivered on the topic "Demystifying AI" on 13<sup>th</sup> January, 2023 for the officials of CCI & O/o DG, CCI.

## NOTIFICATIONS

- (i) Pursuant to implementation of the V3 version of MCA21, amendment has been made in the (Registration of Foreign Companies) Rules, 2014 vide notification no. G.S.R. 36(E) dated 20.01.2023 through which modified e-forms FC-1, FC-2, FC-3 and FC-4 relating to filing by foreign company has been notified along with consequent amendments in respective rules.
- (ii) An amendment has been made in the Companies (Prospectus and Allotment of Securities) Rules, 2014, vide notification no. G.S.R. 37(E) dated 20.01.2023 through which modified e-forms PAS 2, PAS 3, PAS 6 relating to allocation of shares and filing related to the compliance thereto has been notified along with consequent amendments in respective rules.
- (iii) An amendment has been made in the Companies (Authorised to Register) Rules, 2014, vide notification no. G.S.R. 39(E) dated 19.01.2023 through which modified e-forms FORM URC-1 has been notified along with consequent amendments in respective rules.
- (vii) An amendment has been made in the Companies (Accounts) Rules, 2014, vide notification no. G.S.R. 40(E) dated 20.01.2023 through which modified e-forms AOC-5 relating to notice of address at which books of accounts are maintained has been notified.
- (viii) An amendment has been made in the Companies (Appointment and

Remuneration of Managerial Personnel) Rules, 2014, vide notification no. G.S.R. 41(E) dated 19.01.2023 through which modified e-forms MR-1 and MR-2 relating to appointment and approval of managerial personnel has been notified.

- (ix) An amendment has been made in the Companies (Incorporation) Rules, 2014, vide notification no. G.S.R. 42(E) dated 19.01.2023 through which modified e-forms RUN, INC-4, INC-6, INC-9, INC-12, INC-13, INC-18, INC-20, INC-20A, INC-22, INC-23, INC-24, INC-27, INC-28, INC-31, SPICE+ (INC-32), INC-33, INC-34, INC-35 and RD-1 relating to filing made by company for incorporation has been notified and Form Numbers INC-3, INC-14, INC-15 and RD-GNL-5 have been omitted and consequent amendments in respective rules have been carried out.
- (x) An amendment has been made in the Companies (Share Capital and Debenture) Rules, 2014, vide notification no. G.S.R. 43(E) dated 21.01.2023 through which modified e-forms SH-7, SH-8 and SH-9 relating to share capital and debentures has been notified along with consequent amendments in respective rules. Further, the processing type for few purpose of form SH-7 has been changed from Non-STP to STP to ease the compliance and doing business.
- (xi) An amendment has been made in the Companies (Management and Administration) Rules, 2014, vide notification no. G.S.R. 44(E) dated 21.01.2023 through which modified e-forms MGT -3 related to notice, change or discontinuation of a situation and MGT-14 relating to filing of resolutions and agreement has been notified. Further, the processing type for few purposes of MGT-14 form has also been changed from Non-STP to STP to ease the compliance and doing business.
- (xii) An amendment has been made in the Companies (Registration Office and Fees) Rules, 2014, vide notification no. G.S.R. 45(E) dated 20.01.2023 through which modified e-forms GNL-2, GNL3 and GNL-4 relating to intimation to the Registrar has been notified along with consequent amendments in respective rules. Further, the processing type for Red Hearing Prospectus of GNL-2 form has also been changed from Non-STP to STP to ease the compliance and doing business.
- (xiii) An amendment has been made in the Companies (Miscellaneous) Rules, 2014, vide notification no. G.S.R. 46(E) dated 20.01.2023 through which modified e-forms MSC-1, MSC-2 and MSC-3 relating to compliances of Dormant Company has been notified along with consequent amendments in respective rules. The processing type of MSC-3 form has also been changed to STP from Non-STP to ease the compliance and doing business.
- (xiv) An amendment has been made in the Companies (Appointment and Qualification of Directors) Rules, 2014 vide notification no. G.S.R.38(E) dated 20.1.2023 through which modified e-forms DIR-3, DIR-3C, DIR-5, DIR-6, DIR-8, DIR-9, DIR-10, DIR-11 and DIR-12 relating to filing of details regarding appointment and qualification of directors has been notified along with consequent amendments in the respective rules. Further, the processing type of form DIR-6 has been changed from Non-STP to STP to ease the compliance and doing business.

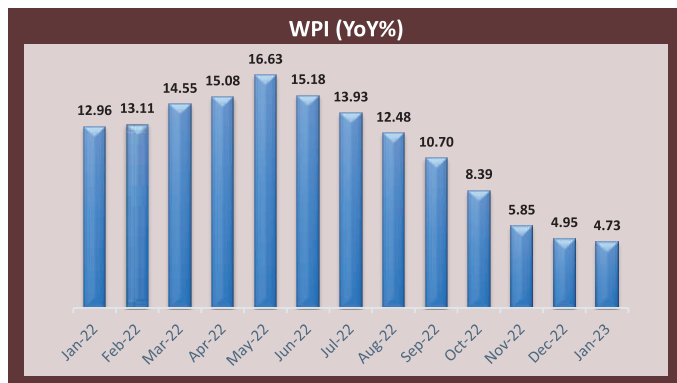
## CIRCULARS

- (i) The Ministry has issued General Circular no. 01/2022 dated 09.01.2023 on the subject matter of release plan of 45 company e-forms in MCA21 version 3.0. Through that circular, the Ministry decided to allow additional time of 15 days, without levying additional fees, in case due dates of those 45 e-forms fall during the period 07.01.2023 to 22.01.2023 i.e., the time period when the corresponding Version 2.0 forms will not be available for filing on MCA system. Those 45 e-forms are as under: DIR-11, 12, 3, 3C, 5, 6, 9, 10, INC-12, 18, 20, 20A, 22, 23, 24, 27, 28, 4 and 6, MGT-3 and 14, MR-1 and 2, NDH-1, 2, 3, 4, SH-7, 11, 8, 9, GNL-2, 3 and 4, PAS-2 and 6., FC-1, 2, 3 and 4, MSC-1, 3 and 4, RD-1 and AOC-5.
- (ii) The Ministry has issued General Circular no. 02/2022 dated 09.01.2023 to allow the companies to file GNL-2(filing of prospectus related documents) and MGT-14(filing of resolutions relating to prospectus related documents) in physical mode, along with the copy of the electronic media and take acknowledgement from the concerned Registrar without payment of fees due to migration from V2 version to V3 version in MCA21 portal from 07.01.2023 to 22.01.2023.

## SOME MACRO INDICATORS

### Wholesale Price Index (WPI)

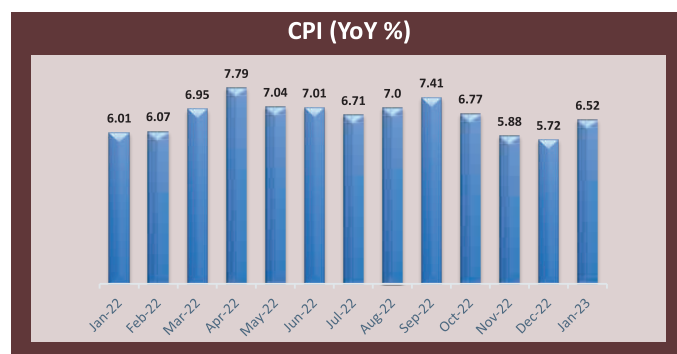
The annual rate of inflation, based on the monthly WPI, stood at 4.73% (Provisional) for the month of January, 2023 (over January, 2022).



Source: DPIIT

### Consumer Price Index (CPI)

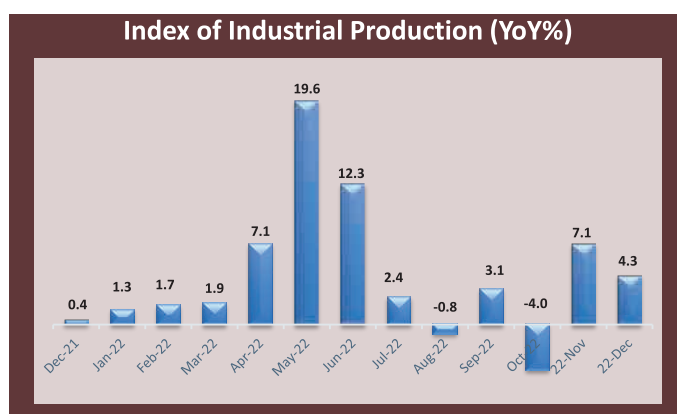
The CPI (Combined) on Base 2012, all India Inflation rates (on point-to-point basis i.e., January, 2023 over January, 2022) stood at 6.52%.



Source: MOSPI

### Index of Industrial Production

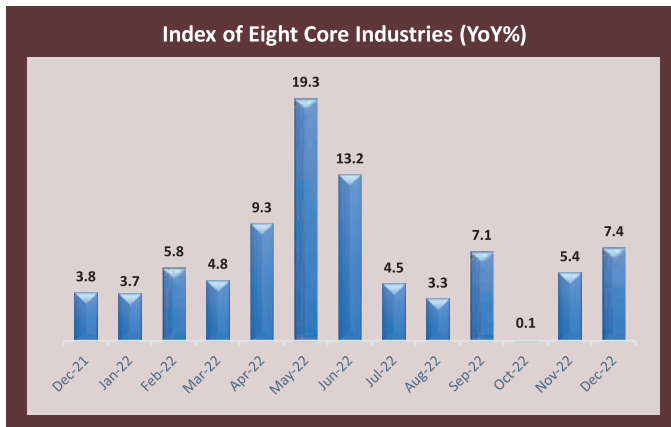
The quick estimates of Index of Industrial Production (IIP) with base 2011-12 for the month of December, 2022 stands at 144.7 which is 4.3% higher compared to December, 2021.



Source: MOSPI

### Index of Eight Core Industries

The combined Index of Eight Core Industries stood at 152.2 in December 2022, which increased by 7.4% (provisional) as compared to the Index of December 2021.



Source: DPIIT

### Performance of Listed Non-Government Non-Financial Companies-Sector - wise

Trends in the selected corporate performance indicators published by RBI of a sample of Listed Non-Government Non-Financial Companies - Sector - wise for the second quarter of FY 2022-23 is as below:

#### Performance of Listed Non-Government Non-Financial Companies- Sector wise (YOY growth in per cent)

Indicator	Manufacturing	Services (Non-IT)	IT
No. of companies	1,702	545	176
Sales	20.9	42.1	21.4
Expenditure, of which	25.8	46.7	26.2
a) Raw Material	27.8	-7.2	74.3
b) Staff Cost	9.4	19.9	24.1
Operating Profit	-13.8	16.2	7.6
Other Income	35.2	60.7	-8.3
EBITA	-7.8	22.4	5.2
Depreciation	6.6	2.2	9.9
Interest	14.3	16.8	21.4

Source: RBI