MINISTRY OF CORPORATE AFFAIRS

Monthly Newsletter

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Economic growth of any country has a direct correlation with credit growth in the economy. Bank credit stimulates economic growth by financing capital formation which further leads to increase in production and consumption. However, as banks lend credit increasingly in a growing economy, the problem of Non-Performing Assets (NPAs) also increases. NPAs reduce bank's profitability and constrain further lending to businesses and consumers which, in turn can lead to slowdown of an economy. High level of NPAs in an economy may lead to collapse of financial system of a country and thus, it becomes imperative to address the high levels of NPAs to preserve the financial stability.

To deal with the problem of NPAs, it is important to develop a market for stressed assets and a rule based transparent framework for smooth functioning of the market. For banks, an active market for NPAs facilitates disposals and supports new lending. A secondary market for NPAs would reduce the collection burden on banks and free up resources and capital to support new lending. This, in turn, will help boost loan recovery and also support corporate restructuring and expand sources of financing. Earlier due to the absence of a robust legal, regulatory and resolution framework, investors largely avoided the 'stressed assets' market in India.

The existing schemes and laws such as the Recovery of Debts Due to Banks and Bankruptcy Act, 1993; Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002; Corporate Debt Restructuring (CDR) Scheme; Joint Lending Forum (JLF); Scheme for Sustainable Structuring of Stressed Assets (S4A) etc. were not yielding the desired results as the legal framework for insolvency and bankruptcy was fragmented and ineffective. In this backdrop the Insolvency and Bankruptcy Code, 2016 (Code) was enacted. It marked a paradigm shift in the approach to resolution or exit of stressed companies by shifting to the creditor-in-control model from the debtor-in-possession model.

The Code consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnerships firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, make availability of credit and balance the interests of all stakeholders including alteration in the order of priority of payment of Government dues. It provides for a market oriented, time bound mechanism for resolution of insolvency, wherever possible, or exit, wherever required, and thereby ensures freedom to exit. The Code's first order objective is resolution, its second order objective is maximisation of value of assets of the firm and finally, its third order objective is promoting entrepreneurship, availability of credit and balancing the interests of all stakeholders. This order of objectives is sacrosanct as per the NCLAT in the Binani Industries case.

As per the policy of the Government of India, the Code is being implemented in phases. At present, the corporate insolvency resolution process is fully operational and provisions relating to personal insolvency of individual guarantors to corporate debtors have been recently operationalized. The Code is a deep economic reform which is still evolving. Earlier experiments in terms of legislations having not been so successful i.e. 'trials' having led to 'errors', it ultimately paved the way for the enactment of the Code. The Code in its three years of existence has gone through five rounds of amendments to address emerging issues in the implementation of the Code and through several rounds of legal challenges. The Ministry of Corporate Affairs has set up an Expert Committee (Insolvency Law Committee) to monitor the working of the Code and suggest amendments to be made to the Code.

The Code has proved to be an effective and far sighted economic reform, which has brought about desired behavioural change in both the borrowers and creditors, significant conversion of sub-standard accounts into standard accounts, improvement in the quality of standard accounts, and overall reduction in non-performing assets (NPA). It has been appreciated by in the Swiss Ribbons case wherein the Hon'ble Supreme Court observed: "figures show that the experiment conducted in enacting the Code is proving to be largely successful. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained."

Prior to the enactment of the Code the average time taken to resolve insolvency was 4.3 years, resolution cost was 9% and recovery rate was 26%. Moreover, the likely outcome in majority of the cases was liquidation rather than resolution. With its enactment and proactive steps taken by the Government, India's rank in the World Bank's Ease of Doing Business Report, in the resolving insolvency parameter improved to 52nd position in 2020 Report from 108th position in 2019 Report. Recovery rate, even though incidental to the process increased from 26% in 2019 Report to 71.6% in 2020 Report. Time taken in recovery improved from 4.3 years in 2019 Report to 1.6 years in 2020 Report.

As on 31st July, 2020, 14,510 cases involving a total amount of approx. ₹5.13 lakh crores have been disposed of at pre-admission stage, 3919 cases were admitted into corporate insolvency resolution process (CIRP), out of which, 597 cases were closed by appeal/review/ settlement/withdrawn after admission of the cases by the NCLT, 258 cases have been resolved and 965 cases have resulted in liquidation. In the 258 resolved cases, an amount of ₹1,85,964 crores is realizable by claimants, which is 193.73% of the liquidation value of the resolved companies. As per statistics released by the RBI, recovery of stressed assets improved during FY 2017-18 through the IBC, 2016. The Code has also helped banks in significantly improving their balance sheets as GNPA of Public Sector Banks had improved to 12.7% in September, 2019.

The Code was enacted for time-bound resolution of cases and the Government is conscious of the challenges faced by the NCLT in disposal of cases. The NCLT was initially established to deal with cases under the Companies Act, 2013 and later on insolvency cases were added by the Code. In this regard, the capacity of the NCLT is being augmented by appointment of new members, benches of NCLT are being increased in a phased manner, technology is being leveraged by implementing e-courts software for digitization of NCLT, and judicial colloquiums are being conducted for training of existing members.

Further, a continuous professional education policy has been put in place by the IBBI for continuous professional knowledge updation of insolvency professionals. Efforts are also being made to strengthen the Information Utility as an institution to ensure time-bound disposal of cases.

Moreover, the implementation of personal insolvency provisions, special framework for MSMEs, pre-pack and cross border insolvency are under consideration, which will make the Code even more robust.

The distressed assets market in India provides an opportunity for investors to invest in valuable assets. Besides providing an opportunity to invest, the Code facilitates easy exit for stakeholders in stalled projects, disputed Joint Ventures, long term concessions etc. With the robust implementation of the Code, the market for distressed assets is set to increase further in future.

Review of Corporate Sector:

As on 31.08.2020, the number of companies registered under the Companies Act was 20,44,112. Of these, 7,49,312 companies were closed, 6,726 companies were under liquidation, 41,040 companies are in the process of being struck-off from the register and 2,243 companies have so far obtained the "dormant" status according to Section 455 of the Companies Act, 2013. There are 12,44,791 active companies, including 1,85,164 companies, which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).

A total of 16,389 companies, including 914 One Person Companies (OPCs) were registered under the Companies Act, 2013 during August, 2020 with authorized capital of Rs. 32421.50 Crore. The breakup of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in August, 2020	Total Authorized Capital (Rs. in Crore)
1)	2)	3)
Company limited by shares	16,292	32420.94
Of which,		
(a) Private	15,905	1720.65
Of which,		
One Person Companies	914	34.76
(b) Public	387	30700.29
Company limited by Guarantee	97	0.56
Of which,		
(a) Private	90	0.46
(b) Public	7	0.10
Unlimited Company	-	0.00
Grand Total	**16,389**	**32421.50**

During the Month of August 2020, Maharashtra had maximum number of company registrations (2,930) followed by Delhi (1,780) and Uttar Pradesh (1,667). "Business Services" topped the economic activity-wise classification (4,790) of newly registered companies.

During August 2020, 16,292 (out of 16,389) companies were registered as companies limited by shares with authorized capital of Rs.32,420.94 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/Information Bulletin.html.*

MONTHLY MIS REPORT FROM COMPETITION COMMISSION OF INDIA

(as of August, 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	Remarks
1.		19(1)	38	-	38	36	
2.	1	19(1)(a)	95	04	99	94	@
3.	9	19(1)(b)	10	-	10	10	
	Sub Total		**143**	**04**	**147**	**140**	
4.	6(2) & 6(5)		09	06	15	08	*
4(a)	20(1)		-	-	-	-	
TOTAL			**152**	**10**	**162**	**148**	

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. [*] Combination Cases filed u/s 6(2)& 6(5).
2. [@] Out of **140** pending anti-trust cases, **72** cases are pending with DG and **68** cases (**21** cases are at prima facie stage and **47** cases for hearing) are pending with CCI.

Major Events:

1. AMENDMENT IN THE COMPANIES ACT, 2013

The Ministry is taking necessary action for amending the Companies Act, 2013 [CA-13] to implement the recommendations made by Company Law Committee (2019) to decriminalize 46 penal provision of the CA-13 as well as to facilitate ease of living to law abiding corporates. Approval of the Cabinet for such amendments in the CA-13 through Companies (Amendment) Bill, 2020 was obtained on 4th March, 2020. The said Bill was introduced in the Lok Sabha on 17th March, 2020. The Bill came up for discussion on 23rd March, 2020 but could not be considered and the House got adjourned sine die. The Bill is pending in the Lok Sabha. In view of upcoming Parliament Session, the Ministry is taking necessary action for the said Amendment Bill to be taken up for consideration and passing by the Parliament.

2. A Committee on Business Responsibility Reporting (BRR) under the Chairmanship of Joint Secretary, Ministry of Corporate Affairs was constituted to develop new BRR formats for listed and Unlisted companies. The said committee submitted its report in May, 2020 and the report was released by Secretary, Corporate Affairs on 11th August, 2020 in the presence of representative from SEBI, IICA, Professional Institutes, Business Chambers and representative from Industries. In its Report, the Committee recommended a new reporting framework called as the 'Business Responsibility and Sustainability Report (BRSR)' to better reflect the intent and scope of reporting on non-financial parameters. The Committee recommended two formats for disclosures: one 'comprehensive format' and the second a 'Lite version'. The Committee further recommended that the implementation of the reporting requirements should be done in a gradual and phased manner. The Committee also recommended that the BRSR be integrated with the MCA21 portal.

3. A webinar on the Ease of Doing Business was conducted by The Institute of Companies Secretaries of India(ICSI), Secretary MCA mentioned the various steps taken by the Government that helped increase India's ranking significantly in World Bank's Doing Business index. Secretary, MCA emphasized on the need for incorporating more companies in order to reach $5 trillion economy and induction of MCA21 version 3 for better ease of doing business, compliance management system and quicker processing. Secretary, MCA also talked about various reforms in Companies Act, 2013 and IBC, 2016 and simplification of forms and procedures to ease compliance burden on businesses.

4. Secretary, Corporate Affairs addressed a Webinar on the existing Regulatory Regime for Nidhi Companies. He emphasised that Nidhi Companies should strictly adhere to all the prescribed rules and investors should invest their money only in those Nidhi Companies which have been declared as such by the Government under Section 406 of the Companies Act, 2013 and are following all rules.

5. The 1st Webinar of the Cartel Working Group (CWG) for discussion and exchange ideas pertaining to conduct of the research' under the auspices of Network of Indian Competition Experts (NICE) was conducted online Chairperson-CCI addressed the webinar. The webinar was attended by CWG members' eminent academicians of prime institutions of Country.

6. The Centre for Insolvency and Bankruptcy, IICA organised an E-Conference on Interface between IBC & GST with the senior industry professionals. The main objective of the conference was to understand the interplay between GST and IBC and other aspects triggering indirect tax implications.

7. The Forum of Indian Regulators(FOIR) and the School of Competition Law & Market Regulation, Indian Institute of Corporate Affairs (IICA) in collaboration with the Bank of Mauritius and the Financial Services Commission, Mauritius organized a Virtual conference on "Digital Assets Regulation in India: Learning's from the Mauritius Model Framework."

Notifications

(i) Vide notification no. S.O. 2920(E) dated 28.08.2020, clause (ii) of section 23 of the Companies (Amendment) Act, 2017 has been brought into force w.e.f. 28.08.2020. (Notification no. S.O. 2920(E) dated 28.08.2020).

(ii) Vide notification dated 28.08.2020, the amendment to Companies (Management and Administration) Rules, 2014 has been notified vide which a proviso to Rule 12(1) has been inserted which provides that in case the web link of annual return has been disclosed in the Board's report as per section 92(3) of the Companies Act, 2013 then a company shall not be required to attach the extract of the annual return with the Board's report in Form No. MGT-9. This would remove duplication in filings and facilitate ease of doing. (Notification no. G.S.R. 538(E) dated 28.08.2020).

(iii) Vide gazette notifications no. G.S.R 525(E) and G.S.R 526(E) dated 24.08.2020 the Companies (Corporate Social Responsibility Policy) Rules, 2014 and Schedule VII of the Companies Act, 2013 has been amended respectively to enable Pharma Companies to undertake research and development activity for development of new vaccine, drugs and medical devices related to COVID-19 for the period of three financial year starting from FY 2020-21. The notifications are available on the website of this Ministry i.e. www.mca.gov.in.

Circular

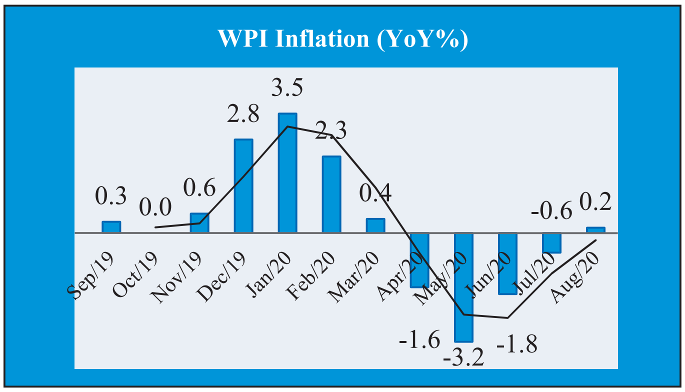
(i) Through the General Circular no. 27/2020 dated 03.08.2020, the Ministry has extended the validity of clarification issued vide General Circular no.21/2020 dated 11.5.2020 regarding dispatch of notice under section 62(2) of the Companies Act, 2013 by listed companies for rights issues opening upto 31st July, 2020. Vide the said circular the clarification given under para 2 of General Circular No.21/2020 would continue to be applicable for the rights issues opening upto 31st December, 2020.

(ii) Through the General Circular no. 28/2020 dated 17.08.2020, the Ministry has clarified that the companies which are unable to hold their AGM for the financial year ended on 31.03.2020, despite availing the relaxations provided in the General Circular no.20/2020, ought to file their applications in form no. GNL-1 for seeking extension of time in holding of AGM for the financial year ended on 31.03.2020 with the concerned Registrar of Companies (ROCs) on or before 29.09.2020. Further, the ROCs have been advised to consider all such applications (filed in Form no.GNL-1) liberally.

Some Macro Indicators

Wholesale Price Index (WPI)

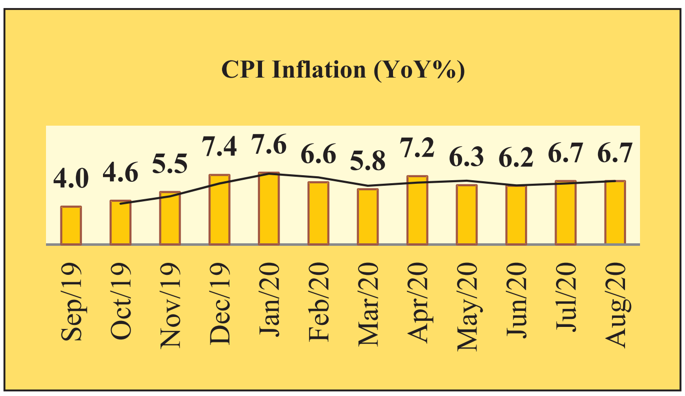
The annual rate of inflation, based on monthly WPI, stood at 0.16% (provisional) for the month of August, 2020 (over August, 2019) as compared to 1.17% during the corresponding month of the previous year.



Source: DPIIT

Consumer Price Index (CPI)

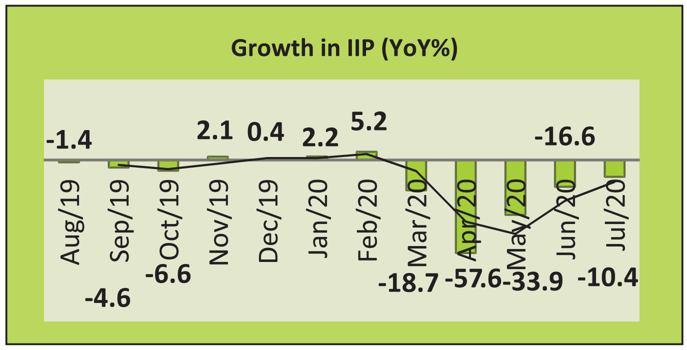
The CPI (Combined) on Base 2012, all India Inflation rates (on point to point basis i.e., August, 2020 over August, 2019) stood at 6.69%. Due to the non-availability of data for several sub-groups, index for the month of April and May is based on imputation methodology recommended in 'Business Continuity Guidelines'. However, the inflation was not computed in the MoSPI July press release. Therefore, inflation figure for two months have been retrieved from RBI.



Source: MOSPI & RBI

Index of Industrial Production

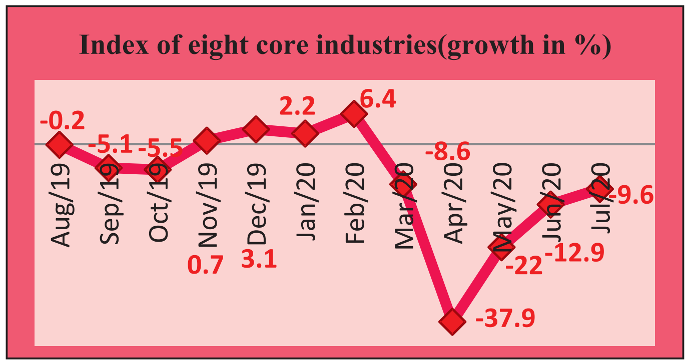
The quick estimates of Index of Industrial Production (IIP) with base 2011-12 for the month of July, 2020 stands at 118.1 as compared to 54.0, 89.5 and 108.9 for April, May and June, 2020.



Source: MOSPI

Index of Eight Core Industries

The growth rate of Index of Eight Core Industries for the month of July 2020 remained negative; however it improved from June negative figure of -12.9% to -9.6%.



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 third quarter of FY 2019-20 is as below:

Select Ratios of Listed Non-Government Non-Financial Companies - Sector - wise

Indicator	Q4:2018-19	Q4:2019-20
No. of Companies	2,701	2,620
Tax Provisions to EBT	24.2	20.7
Interest Burden	22.6	38.5
Operating Profits to Sales	14.3	13.3
EBITDA to Sales	17.5	17.3
Net Profit to Sales	4.6	-0.2

Source: RBI

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