



## **Directorate of Student Services**

### **Part-I**

### **Important Information for the months of March, April & May 2011**

#### **Important cut-off dates:**

- 1. Last date for submission of examination form for appearing in June 2011 exam** : Friday, 25<sup>th</sup> March 2011  
( without late fees )
- 2. Last date of admission to Foundation Program** ( if student wishes to appear in December 2011 exam ) : Thursday, 31<sup>st</sup> March 2011
- 3. Last date for submission of examination form for appearing in June 2011 exam** : Monday, 11<sup>th</sup> April 2011  
( with late fees of ₹ 100/- ) ( 9<sup>th</sup> April & 10<sup>th</sup> April 2011 being Saturday & Sunday )
- 4. Last date for applying for all types of Changes in examination form for appearing in June 2011 exam** ( i.e. change of centre, Module, Medium ) : Wednesday, 18<sup>th</sup> May, 2011  
( Students are advised to avoid contacting the institute for such changes at eleventh hours )
- 5. Last date of registration for Executive Program** ( if student wishes to appear in single module of Executive Program in December 2011 exam ) : Tuesday, 31<sup>st</sup> May 2011
- 6. Last date of registration for Professional Program** ( if student wishes to appear in any two module of Professional Program in December 2011 exam ) : Tuesday, 31<sup>st</sup> May 2011

#### **Important points to be noted:**

- 1. Recently three more examination centers [ i.e. Salem ( code no. 318 ), Sonepat ( code no. 229 ) & Jabalpur ( code no. 418 ) ] have been opened, which will be operative from June 2011 examination onwards on experimental basis. Students residing in & around these places may avail the opportunity.**

2. If any student wishes to apply for claiming exemption from any subject of Executive/ Professional Program on the basis of qualification, he/she is advised to submit his/her application for exemption ( *along with a demand draft @ ₹ 100/- per subject and attested photocopies of mark sheets of all parts of relevant qualification*) at the earliest to avoid last minutes complications.
3. If any student wishes to apply for extension of registration / or registration de-novo, he/she is advised to submit his/her application for extension of registration / or registration de-novo at the earliest.
4. Subject-wise Exemption fees / De-novo / extension fees should never be clubbed with examination fees. Students are advised to apply for the same separately. They should also mention about the same in examination form at appropriate place.
5. **Cancellation of Registration**  
Registration of students registered up to and including April 2006 stands terminated on expiry of five-year period on 31<sup>st</sup> March 2011 leading to the following immediate consequences :
  - (a) Supply of “Student Company Secretary” bulletin will be discontinued from April 2011 onwards.
  - (b) Response sheets will not be accepted even if submitted and coaching completion certificates will not be issued ( after the expiry of registration period ).

**Important:**

Students whose registration is valid up to February 2011 ( i.e. students registered in March 2006 ) are, however, eligible to appear in June 2011 examination without seeking extension of registration / registration de-novo subject to fulfilling other requirements as laid down in the regulations.

## **ATTENTION**

### **Students of Final ( under old syllabus )**

#### **Regarding Compulsory switchover to New Syllabus**

All students of Final who are presently pursuing the Company Secretaryship Course under old syllabus are hereby informed that from next examination onwards ( i.e. June 2011 session onwards ) institute’s examination will be conducted under new syllabus only.

As such all concerned students may note that w.e.f. 26<sup>th</sup> February 2011 all students who are presently in Final ( old syllabus ) will be compulsorily switched-over to Professional Program ( i.e. under new syllabus ).

Students who have already passed any group of Final ( under old syllabus ) / or exempted in any subject ( under old syllabus ) may note that they will be eligible for exemption in corresponding subjects under new syllabus as per details mentioned below :

SI No	FINAL ( old Syllabus )	Subject Code	PROFESSIONAL PROGRAM ( New Syllabus )	Subject Code
1	Advanced Company Law and Practice ( ACLP)	131	Company Secretarial Practice ( CSP)	231
2	Secretarial Practice relating to Eco. Laws and Drafting & Conveyancing ( SPRELDC)	132	Drafting, Appearances and Pleadings ( DAP)	232
3	Secretarial, Management and System Audit ( SMSA)	133	Due Diligence & Corp. Compliance Mgt. ( DDCCM) ( Module –IV)	237
4	Financial, Treasury and Forex Management ( FTFM)	134	Financial, Treasury and Forex Management ( FTFM)	233
5	Corporate Restructuring Law and Practice (CRLP)	135	Corporate Restructuring and Insolvency ( CRI)	234
6	Banking and Insurance – Law and Practice ( BILP)	136	Governance, Business Ethics and Sustainability ( GBES) ( Module –IV)	238
7	WTO-International Trade, Jt. Venture and Foreign Collaborations ( WTO-ITJVFC)	137	Strategic Mgt, Alliances and International Trade ( SMAIT)	235
8	Direct and Indirect Taxation – Law and Practice ( DITLP)	138	Advanced Tax Law and Practice ( ATLP)	236
9	Human Resources Mgt & Industrial Relations ( HRMIL)	139	Governance, Business Ethics and Sustainability ( GBES) ( Module-IV)	238

## Online Services for Students through students' portal [www.icsi.in](http://www.icsi.in)

Students of ICSI may avail following online services:

- i) Students can view the status of his/her application form already submitted for registration as student.
- ii) Students can take printout of Admit Card ( i.e. Roll No. of exam ), Registration letter, Deno-vo letter, extension letter etc.
- iii) New students can submit their online registration form
- iv) Students can take printout of Duplicate Identity Card
- v) Students can change their address, Mobile no. and e-mail ID etc. instantly.



## Part-II

### General Information students must know

#### CHANGE IN FREQUENCY OF DESPATCH OF STUDENT COMPANY SECRETARY BULLETIN

As per the existing system, the Student Company Secretary Bulletin is dispatched by post to all active regular students on monthly basis.

Keeping in view the changing times, The Council of the Institute has decided that the Student Company Secretary Bulletin ( in physical form ) will be sent to the students on bi-monthly basis, instead of on monthly basis, w.e.f. January 2011.

However, the academic inputs as is being covered in the Student Company Secretary Bulletin will be uploaded on the website of the Institute, viz., [www.icsi.edu](http://www.icsi.edu) and the same will also be sent through e-mail on monthly basis. With this arrangement, it is expected that the students will get updated contents promptly with the latest academic developments.

All students are advised to take a note of it.

### Important Telephone Nos. of Directorate of Student Services

Sl No.	Nature of Query	Telephone Numbers	E-mail IDs
1	Issue of study materials	(0120) 4522061	<a href="mailto:rajni.sharma@icsi.edu">rajni.sharma@icsi.edu</a>
2	Registration Status of Foundation/Executive Program	(0120) 4522061	<a href="mailto:ms.bhagwan@icsi.edu">ms.bhagwan@icsi.edu</a> (for Foundation Program) <a href="mailto:anju.gupta@icsi.edu">anju.gupta@icsi.edu</a> (for Executive Program)
3	De-novo/ Extensión /Professional Enrolment	(0120) 4522072	<a href="mailto:archana.goel@icsi.edu">archana.goel@icsi.edu</a>
4	Paperwise Exemption	(0120) 4522074	<a href="mailto:s.hemamalini@icsi.edu">s.hemamalini@icsi.edu</a>
5	Non-receipt of Registration Letter/Identity Cards/Student Company Secretary Bulletin/E-mail Registration/Change of Address	(0120) 4522071	<a href="mailto:naveen.kumar@icsi.edu">naveen.kumar@icsi.edu</a>
6	Coaching Completion Certificates/ Suggested Answers and Response Sheets Status/ Examiners (DPTS)	(0120) 4522074	<a href="mailto:sp.singh@icsi.edu">sp.singh@icsi.edu</a>
7	Compulsory Computer Training	(0120) 4522075	<a href="mailto:prem.lata@icsi.edu">prem.lata@icsi.edu</a>
8	Public Private Partnership Scheme	(0120) 4522083	<a href="mailto:ashvini.srivastava@icsi.edu">ashvini.srivastava@icsi.edu</a>
9	Issue of Admission Certificate for Examinations	(0120) 4522085/87	<a href="mailto:rahul.adhikari@icsi.edu">rahul.adhikari@icsi.edu</a>
10	Duplicate pass certificate of Final/Professional	(0120) 4522082	<a href="mailto:rajesh.sharma@icsi.edu">rajesh.sharma@icsi.edu</a>
11	Transcript/Verification of Qualification (only for students)	(0120) 4522081/82	<a href="mailto:siyaram@icsi.edu">siyaram@icsi.edu</a> (for Executive Program) <a href="mailto:rajesh.sharma@icsi.edu">rajesh.sharma@icsi.edu</a> (for Final/Professional Program)

## **GUIDELINES FOR SEEKING EXTENSION OF REGISTRATION**

### **EXECUTIVE PROGRAMME EXAMINATION**

No extension of registration will be allowed to any student if he/she has not passed/completed the Executive Programme (Inter) examination during the validity of registration period. All such students will have to seek registration *de novo* only.

### **PROFESSIONAL PROGRAMME EXAMINATION**

1. Students whose registration expires between 28th/29th February and 31st May and between 31st August and 30th November will be allowed extension of time without payment of extension of registration fee for the limited purpose of appearing in the ensuing June or December examination, respectively, as the case may be.
2. Registration of a student may be extended beyond a period of five years on year-to-year basis for appearing in the Professional Programme (Final) examination:
  - (i) if he/she has completed postal/oral coaching and has been issued with coaching completion certificate for all **modules** (groups) of the Professional Programme examination (Final) under new syllabus during the validity of the previous registration period or has passed at least **one module** (group) of the Professional Programme (Final) examination under the New Syllabus during the validity of the previous registration period as the case may be; and
  - (ii) makes an application for extension of registration period along with requisite fee within six months from the date of expiry of registration or within six weeks of the declaration of results of the last examination in which he/she appeared, whichever is later.
3. Extension of registration shall be granted for one year at a time on payment of extension of registration fee of Rs. 500 per annum, arrears of fee, if any, under the previous registration and service charges @ Rs. 150 per module (group) for which the student has not been issued with the coaching completion certificate for the Professional Programme (Final).
4. On the student's application for extension of registration being accepted by the Institute, the extended period will be counted in continuation of his previous registration. He/she will also continue to bear the same registration number.
5. No candidate will be allowed more than two extensions including the extension, if any, already availed under old/new syllabus for completing Professional Programme (Final) examination under the new syllabus.
6. A student who completes the Professional Programme (Final) examination (of the Institute) during the extended period of registration will be required to comply with the practical experience and practical training requirements as stipulated under Company Secretaries Regulations, 1982 and guidelines framed there under in this regard.
7. Study material will not again be supplied on seeking extension of registration. However, it can be had on payment of Rs. 160 per subject.
8. A student, on being granted extension of registration, shall be eligible to get the 'Student Company Secretary' from the month next to the month in which his application for extension of registration is accepted by the Institute.
9. The Secretary - on being satisfied that application of any of the guidelines cause undue hardship to a candidate - may relax any of the said guidelines by recording reasons in writing.

## **GUIDELINES FOR REGISTRATION DE NOVO**

*(Registration de novo pursuant to regulation 22 read with sub-regulation (2) of regulation 24.)*

**(A) Guidelines for candidates seeking registration de novo within two years of the expiry of previous registration.**

1. A person whose registration has been cancelled on expiry of five-years period or otherwise may within two years of cancellation of former registration seek registration *de novo* on payment of the following fees:
  - (i) Registration fee: Rs.1500 (**w.e.f. 1.4.2008**)
  - (ii) (a) Where a student has not completed coaching for both modules (Group) of Executive Programme (Intermediate) all modules (Group) of Professional Programme (Final), balance of Rs.5,000 of the postal tuition fee if enrolled for

Executive Programme (Intermediate) or balance of Rs. 7,500, if enrolled for Professional Programme (Final), as the case may be, after adjusting the amount paid on this account earlier. However, credit for having completed coaching in a particular module (Group) may be given if the coaching completion certificate has not been issued due to invalid registration or any other reason.

- (b) Postal tuition fee of Rs 5,000 in the case of students who have passed the Executive Programme (Intermediate) examination but not enrolled for the Professional Programme (Final).
  - (c) Arrears of postal tuition fee, if due, under former registration where the students have been issued with coaching completion certificate(s) for both modules (Group) of Executive Programme (Intermediate) all modules (Group) of Professional Programme (Final) as the case may be.
2. On the student being registered *de novo* he will be given credit for the oral or postal tuition completed during the validity of his previous registration in the corresponding paper(s) of the new syllabus. Such a student shall not be supplied with the study material afresh. Study material can however be obtained on payment of Rs. 160 per subject. Student Company Secretary will be sent free of cost during the validity period of registration *de novo* from the month subsequent to the month in which the student was registered *de novo*.

**(B) Guidelines for candidates seeking registration *de novo* after two years of the expiry of previous registration.**

1. A person whose registration has been cancelled or has terminated on expiry of five-year period and has not sought registration *de novo* within two years of the expiry of former registration may seek registration *de novo* within 5 years of the cancellation/termination of his former registration on payment of the following fees:
- (i) Registration fee Rs. 1500
  - (ii) Exemption fee for
    - (a) Foundation Programme Rs. 500
    - (b) Executive Programme (Inter) Rs. 500
    - Examination (if already passed)
  - (iii) Paperwise exemption fee
    - (a) Executive Programme (Inter) Rs. 100 per paper
    - (b) Professional Programme (Final) Rs. 100 per paper
  - (iv) Where a student has not completed coaching for both modules (Groups) of Executive Programme (Inter) all modules of Professional Programme (Final), balance of Rs. 5,000 of the postal tuition fee, if enrolled for Executive Programme (Inter) or balance of Rs. 7,500 if enrolled for Professional Programme (Final), as the case may be. However, credit for having completed the coaching in a particular module may be given if the coaching completion certificate has not been issued due to invalid registration or any other reason.
  - (v) Rs. 7,500 in the case of students who have passed the Executive Programme (Inter) but not enrolled for the Professional Programme (Final).
  - (vi) Arrears of postal tuition fee, if due, under former registration where the students have been issued with coaching completion certificates for both modules (Group) of Executive Programme (Inter) all modules (Group) of Professional Programme (Final).
2. On the student being registered *de novo*, he will be given credit for the oral or postal tuition completed during the validity of his previous registration in the corresponding paper(s) at the new syllabus. Such a student shall not be supplied with the study material afresh. Study material can however be obtained on payment @ Rs. 160 per subject. Student Company Secretary will be sent free of cost during the validity period of registration *de novo* from the month subsequent to the month in which the student was registered *de novo*.
3. The registration *de novo* will be valid for a period of five years from the month in which the student has been registered *de novo*.

**(C) No candidate shall be registered as a student *de novo* if he applies after five years of the expiry of the former registration. He may seek fresh registration as a student and no credit for the fees paid or examination passed under the former registration will be admissible on his registration as a fresh student under any circumstances.**

## 1. Concession in Registration Fees / Examination Fees for Physically Handicapped Students:

### **Concession in Registration Fee / Examination Fee for Physically Handicapped Students**

As a social welfare measure, the Council of The Institute has decided to grant further concession in Registration Fee / Examination Fee to physically handicapped students with effect from 1<sup>st</sup> July 2010, as per details given below :

#### **Registration Fee for Physically Handicapped Students**

Stage	Registration Fee to be paid by Physically handicapped students :
Foundation Programme	Only Registration Fee will be charged (At present, Registration Fee is Rs.1200)
Executive Programme	Only Registration Fee will be charged (At present, Registration Fee is Rs.1500)
Professional Programme	Only Registration Fee will be charged (At present, Registration Fee is NIL)

#### **Examination Fee for Physically Handicapped Students**

Stage	Examination Fee to be paid by Physically handicapped students :
Foundation, Executive & Professional Programme	25% of the fee applicable to general candidates.

The above concession would be granted subject to the following guidelines: -

- (i) The concerned students should submit a certificate issued by a Physician / Surgeon / Oculist working in a State / Central Government to the effect of permanent physical disability (including blindness),
- (ii) The following shall be regarded as permanent physical disability :-
  - (a) permanent physical disability of more than 50% in one limb; or
  - (b) permanent physical disability of more than 60% in two or more limbs; or
  - (c) permanent deafness with hearing impairment of 70 decibels and above; or
  - (d) permanent and total loss of voice.
- (iii) Blindness shall be regarded as permanent physical disability, if it is incurable and falls in any of the categories specified namely :-
  - 6/60 to 1/60
  - or field of vision 110-2
  - 3/60 to 1/60
  - or field of vision 100
  - FC at 1 foot to Nil
  - or field of vision 100
  - Total absence of sight

It is clarified that all other services shall be available on full payment basis as applicable to general category students.

## 2. Change of Address

Change of address, if any, should be intimated to the Institute by sending a separate letter in this regard. While intimating the change in their mailing address, the students are advised to invariably quote the PIN CODE number along with the student registration number, name and full postal address with city, state in capital letters.

PIN CODE is required to be mentioned for quick delivery of the mail. Students may, therefore, check up the computerised mailing address as printed on the 'Student Company Secretary' bulletin. In case, it does not carry or carry the wrong PIN CODE number, the same may be intimated immediately quoting student registration number and full postal address with Postal Index Number so that it could be incorporated in the computerised mailing list.

### **3. E-Mail Address of the Students**

Those students who are having e-mail address may communicate the same to the Student Services Section (giving reference of their name & registration no.) at [naveen.kumar@icsi.edu](mailto:naveen.kumar@icsi.edu), which will facilitate quick and economic communication from the Institute's side.

### **4. Students Identity Card**

All the students appearing in the examination must hold Identity Card in the manner prescribed by the Institute, if not already obtained at the time of seeking registration. For obtaining the Identity Card, students are advised to obtain a proforma from the Headquarters/Regional Offices of the Institute and send it again to the Institute duly filled up and attested as per instructions given in the prospectus/registration letter.

Students who have so far not obtained Identity Cards are advised to write to the Institute immediately. The students should carry their Identity Cards without fail for appearing in the Institute's examination. If the Identity Card already issued has been lost or mutilated, student should send a request for obtaining duplicate Identity Card together with the mutilated Identity Card/Identity Card proforma duly filled in and attested together with Rs. 50/- towards duplicate Identity Card fee.

### **5. Compulsory Enrolment for Professional Programme.**

Students who have passed/completed both modules of Executive examination are advised to seek compulsory enrolment for undergoing coaching for the Professional Programme on payment of Rs. 7500/- towards postal tuition fee.

Candidates will be admitted to the Professional Program examination, if : -

- i) He/She has registered himself/herself as a student for the Professional Programme at least nine calendar months prior to the month in which the examination commences. In other words, candidate registered as student up to and including the month of February in a year are eligible to appear in all the modules of the Professional Program examination to be held in December of that year, and those registered between March to August during a year are eligible to appear in all the four modules of the Professional Program examination to be held in the month of June next year subject to satisfactory completion of compulsory coaching.
- ii) However, a candidate registered as a student at least six calendar months prior to the month in which the examination commences may be allowed to appear in any one or two module(s) of the Professional Program examination, that is to say, a candidate registered as a student up to and including the month of May in a year will be eligible for appearing in any one or two module(s) in December examination and those who are registered from June onwards and upto and including the month of November in a year will be eligible to appear in any one or two module(s) of Professional Program examination to be held in the month of June next year subject to satisfactory completion of compulsory coaching.



## **6. Uniformity in Signatures**

It has been observed that some of the enrollment applications / letters received from the students are either unsigned or bear different signatures from time to time.

All the students are, therefore, advised to maintain uniformity in their signatures on all the correspondence with the Institute including students identity card, enrollment application and attendance sheet provided in the examination hall at the time of writing examinations.

## **7. Clarification Regarding Paperwise Exemption**

- (a) The paperwise exemption is granted only on the basis of specific request received in writing from a registered student along with the attested photocopies of marks sheets for all parts of the Degree/examination (on the basis of which the paperwise exemption is sought) and the exemption fee @ Rs. 100/- per paper. It is one time payment and not to be remitted for availing of paper wise exemption in every session of examination during the validity of registration period.
- (b) The application for claiming paperwise exemption must reach the Institute on or before the last date for submission of enrolment application i.e. 25<sup>th</sup> March and 25<sup>th</sup> September for June and December examinations respectively and with a late fee of Rs. 100/-, the application can be accepted upto 9<sup>th</sup> April and 10<sup>th</sup> October respectively.
- (c) The paperwise exemption once granted holds good during the validity of registration period or passing/completing the examination, whichever is earlier.
- (d) The paperwise exemption is cancelled only on receipt of a specific request in writing from the student concerned on or before the last date for submission of the enrolment application. If any candidate appears in the exempted paper(s) of examination without receiving the written confirmation from the Institute, but by making personal representation, appeal, request, etc., at the Examination Centre at the last moment, his/her appearance in such paper(s) shall automatically be treated as cancelled.
- (e) It may be noted that candidates who apply for grant of paper wise exemption or seek cancellation of paper wise exemption already granted, before the last date of submission of enrolment applications for a particular examination, must see and ensure that they receive written confirmation from the Institute at least 15-20 days prior to the commencement of the examination. Candidates who would presume automatic grant or cancellation of paper wise exemption without obtaining written confirmation on time and absent themselves in any paper(s) of examination and/or appear in the exempted paper(s) would do so at their own risk and responsibility and the matter will be dealt with as per the above guidelines.
- (f) Exemption once cancelled on request in writing shall not be granted again under any circumstances.

- (g) The candidates who have passed either group of the Intermediate/Final examination under the old syllabus, may claim the paperwise exemption in the corresponding subject(s) of new syllabus indicating the basis of exemption as "APO" in the appropriate column of the enrolment application.
- (h) In case the paperwise exemption has already been granted on the basis of qualification or the candidates is eligible for grant of exemption on the basis of securing 60% or more marks, a photocopy of the letter/marks-sheet issued by the Institute should be enclosed with the enrolment application while claiming such exemption, failing which the same may not be granted for the ensuing examination.
- (i) No exemption fee is payable for availing paperwise exemption on the basis of "APO" or on the basis of securing 60% or more marks in the Institute's examination.
- (j) Paperwise exemption fee is payable only when the exemption is to be availed on the basis of qualification(s) specified for the purpose.

<b>ANNOUNCEMENT PAPER-WISE EXEMPTIONS ON RECIPROCAL BASIS TO ICSI AND ICWAI STUDENTS</b>	
<p>The Council of the Institute has given approval that the final passed students of ICWAI can avail exemptions in the following papers of Foundation Programme, Executive Programme and Professional Programme of the Company Secretaryship Course under the New Syllabus effective from 1st November, 2007, 1st February, 2008 and 1st August, 2008 respectively.</p> <p style="text-align: center;"><b>Scheme of Exemptions</b></p>	
<b>Exemption to CS passed candidates in papers of ICWAI.</b>	<b>Exemption to CWA passed candidates in Papers of ICSI.</b>
<b>Foundation Course</b> (4 papers) - Complete exemption	Complete exemption Foundation Programme (4 papers) -
<b>Intermediate Course</b> 1. Financial Accounting (Paper 5) 2. Applied Direct Taxation (Paper 7)	<b>Executive Programme</b> 1. Company Accounts, Cost & Management Accounting (Module I, Paper 2) 2. Tax Laws (Module I, Paper 3)
<b>Final Course</b> 3. Financial Management & International Finance (Paper 12) 4. Indirect & Direct Tax Management (Paper 14)	<b>Professional Programme</b> 3. Financial, Treasury and Forex Management (Module II, Paper 3) 4. Advanced Tax laws & Practice (Module III, Paper 6)
<p>Students enrolled to Company Secretaryship Course and wish to seek above said paper-wise exemption(s) - on the strength of having passed the final examination of ICWAI - may make their request in writing to Director (Students Services) at C-37, Sector-62, NOIDA-201 309 (U.P) together with the requisite exemption fee @Rs.100 per paper by way of Demand Draft drawn in favor of 'The Institute of Company Secretaries of India' payable at New Delhi and the valid document in support of having passed the Final examination of the Institute of Cost &amp; Works Accountants of India on or before the last date of submission of enrolment application for the CS Examination. The above exemption scheme is effective from December, 2008/ June, 2009 for Foundation/Executive Programme and CS Professional Programme examination(s) respectively.</p>	

## **EXEMPTION FROM INDIVIDUAL PAPERS OF THE EXECUTIVE PROGRAMME EXAMINATION**

In pursuance of the powers conferred on it under clause(3) of the regulation 42 of the Company Secretaries Regulations,1982, the Council of the Institute of the Company Secretaries of India has decided that a candidate shall be exempted from the following paper(s) of the Executive Programme examination if he/she possesses the qualification(s) specified against each paper, having secured 50% or more marks in the aggregate and applies for exemption on or before last date for enrolment for the examination paying requisite exemption fee as may be determined by the Council from time to time :

**1. General and Commercial Laws:** M.A./M.B.A. (Corporate Secretaryship) or Degree in Law (three years or five years integrated) from a recognized University/Institute either constituted under an Act of Parliament or approved by AICTE.

**2. Company Accounts, Cost and Management Accounting :** M.A. (Corporate Secretaryship)/M.Com/M.B.A. (with Advanced Accountancy as one of the subjects at graduation/post-graduation level and with full paper in Cost Accounting/Management Accounting/Financial Management at M.A. (Corporate Secretaryship)/M.Com/M.B.A level having secured 50% marks in the subject concerned) from a recognized University/Institute either constituted under an Act of Parliament or approved by AICTE.

**3. Tax Laws:** M.A./M.B.A. (Corporate Secretaryship) from a recognized University/Institute either constituted under an Act of Parliament or approved by AICTE.

## 8. Compulsory Computer Training

### ATTENTION STUDENTS

#### CS EXECUTIVE EXAMINATIONS AND COMPULSORY COMPUTER TRAINING PROGRAM REG:

The Institute frequently receives communications from the students seeking guidance on various matters, particularly as to how to qualify the requirements of compulsory computer training program.

In terms of Company Secretaries Regulations, 1982 (as amended) all students are required to successfully undergo a compulsory Computer Training Program for becoming eligible to seek enrolment to appear in CS Executive Program examinations.

The Institute, in compliance of the above said requirements, has tied up with M/s APTECH Limited on providing Computer Training to the students of the Institute at subsidized rates; through which 70 hours of computer training shall be provided to the students/ members of the Institute in all Centers of APTECH all over the country. To undergo this course, a student/ member has to approach any APTECH center recognized for ICSI-APTECH Course on all India bases. To take admission, the student/member has to deposit the requisite fees and fulfill the formalities as per the requirements of M/s APTECH.

**The list of APTECH Centers including detailed course contents, module details and topic-wise time duration etc. can be had through the options Students ICSI Aptech Course on the Institute's website i.e. [www.icsi.edu](http://www.icsi.edu)**

Salient features of the course in brief:

Title of the Course : 'Understanding Information Technology in Corporate Environment'

Duration of the Course : 70 Hours

Fee : Rs.3000/- per participant for General Category & Rs.2500/- Per participant for SC/ST Category. [All payment will be On-line or by Credit/Debit Card or by Demand Draft (Nationalized bank and large private banks only).

Service Tax and bank charges as per the GOI rules as Applicable from time to time shall be payable by **The student. Present rate of Service Tax @10.3%.**

A student can be exempted from undergoing the course on the basis of his existing qualification/degree in the computer field subject to the conditions that he/she enrolls him/herself for an online exemption test (to be conducted by APTECH) at any of the recognized Aptech Center for ICSI-Aptech Course on all India bases and successfully clears the test. TWO attempts will be allowed for the student to clear the online exemption test within a period of 30 (thirty) days against the fees of Rs.450/-. *Service Tax and bank charges as per the GOI rules as applicable from time to time shall be payable by the student.* Present rate of Service Tax @ 10.3 %. Student has to appear for the online exemption test from the respective Aptech Testing Center, which will be allocated to him/her. All payments will be made online or credit/debit card or by demand draft.

## 9. Student Induction Program (SIP)

Every candidate registered for the Executive Programme w.e.f. 01.09.2009 are compulsorily required to undergo seven days Student Induction Programme (SIP) within 6 months of registration. Regarding any query about SIP, students are advised to contact office of their respective Regional Council / Chapter. Alternatively, they may also call to Directorate of Training & Membership of institute on telephone no. 011-49343026/27/28.

## 10. Exemption from Computer Training

A student shall be exempted from undergoing the course on the basis of he/she fulfill the following criteria:

1. He/She has the requisite knowledge of the areas/topics covered in the computer training and
2. He/She enrolls himself/ herself for an online exemption test (to be conducted by APTECH) at any of the APTECH Center on all India basis and successfully clears the test.

## 11. Discontinuation of issue of pass certificates to Foundation / Executive Program pass students:

**ATTENTION STUDENTS !**

**DISCONTINUATION  
OF ISSUE OF PASS CERTIFICATES  
TO FOUNDATION/EXECUTIVE  
PROGRAMME PASS STUDENTS**

In accordance with the decision taken by the Council of the Institute recently, it is brought to the notice of the student community that henceforth (i.e. from June, 2010 Examination Session onwards), Pass Certificates will be issued only to such students who pass Final Course/Professional Programme. However, Mark Sheets will continue to be issued to students of all stages viz. Foundation, Executive and Professional Programmes as per existing practice.

## 12. Rationalization of system for issue of Coaching Completion Certificates under Postal Coaching Scheme:

**ATTENTION STUDENTS !!!**

**Rationalization of the system for issue of Coaching Completion Certificate under Postal Coaching Scheme**

It has been decided to rationalize the criteria for issue of Coaching Completion Certificates vis-à-vis submission of Response Sheets with immediate effect which is as follows :-

Stage	No. of response sheets required to be submitted for each subject	
	Existing Criteria	Revised Criteria
Foundation Programme	Only one Response Sheet for each subject	No Change
Executive Programme	Three Response Sheets for each subject	Only one Response Sheet for each subject
Final Course/Professional Programme	Three Response Sheets for each subject	Only one Response Sheet for each subject

Keeping in view the above decision, the students are advised to send atleast one Response Sheet for each subject to make him/ her eligible for issue of Coaching Completion Certificate. It is further to clarify that he/ she has to secure minimum 40% marks in each subject for issue of Coaching Completion Certificate. The students who have already sent atleast one Response Sheet in each subject will also be guided by the same criteria and the Coaching Completion Certificates will be issued whoever meets the said criteria. However, students will be at liberty to send maximum response sheets to the Institute and all such response sheets will be evaluated and returned to them for their reference/ guidance. For any further information / clarification on the subject, please contact Shri A.K. Srivastava, Deputy Director (Student Services) at E-Mail id : ashvini.srivastava@icsi.edu or at telephone nos. 0120-4522083.

### 13. Schedule of Fees :

## SCHEDULE OF FEES

PARTICULARS	FEES (Rs.)	REMARKS
<b>FOUNDATION PROGRAMME</b>		
Admission Fee	1200	
Postal Tuition Fee	2400	Total Fees → 3600
<b>EXECUTIVE PROGRAMME (INTERMEDIATE)</b>		
Registration Fee	1500	Total Fees → 7000 (For commerce graduates)
Foundation Examination Exemption Fee	500	
Postal Tuition Fee for Executive Programme	5000	
Postal Tuition Fee for Foundation Programme ( <i>payable by Non-Commerce Graduates who are seeking exemption from passing the Foundation Programme Examination under clause (iii) of Regulation 38.</i> )	750	Total Fees → 7750 (For others)
<i>Foundation Pass Student</i>	6500	Total Fees → 6500
<b>PROFESSIONAL PROGRAMME (FINAL)</b>		
Postal Tuition Fee	7500	
<b>DE-NOVO REGISTRATION</b>		
Registration De-Novo Fee	1500	
Exemption from Foundation Examination Fee	500	
Exemption from Executive Programme Examination Fee	500	
<b>EXTENSION OF REGISTRATION</b>		
Extension of Registration Fee	500	
Service Charges for Extension of Registration	150	
<b>EXAMINATION FEE</b>		
Foundation Programme	875	
Executive Programme	900 (Per Module)	
Professional Programme	750 (Per Module)	
Late Fee for receipt of Examination Application	100	
Change of Examination Center/Module/Medium	100	
For appearing from overseas Dubai Centre : Surcharge of <b>US \$ 100</b> in addition to the applicable examination fees.		

<b>OTHER FEES</b>		
Paper-wise Exemption Fee	100	
Issue of Duplicate Identity Card Fee	50	
Issue of Duplicate Pass Certificate Fee	50	
Issue of Duplicate Mark Sheet	50	
Issue of Transcript / certified copy of Syllabus	100	
Verification of Marks Fee	100 (Per Subject)	

#### 14. ICSI Students Education Fund Trust :

##### **ICSI STUDENTS EDUCATION FUND TRUST**

With a view to encourage and motivate economically backward and academically bright students to pursue the Company Secretaryship Course, the Institute has created a Trust viz. ICSI Students Education Fund Trust.

STAGE	CATEGORIES OF STUDENTS / ELIGIBILITY CRITERIA	
	For Students with Family Income upto Rs. 1,00,000 per annum	For Academically Bright Students without any limit on their Family Income
Foundation Programme	75% Marks In both Matriculation & Senior Secondary Stages	90% Marks in both Matriculation & Senior Secondary Stages
Executive Programme	75% Marks in both Matriculation & Senior Secondary Stages and 60% Marks In Bachelor's Degree Stage	90% Marks in both Matriculation & Senior Secondary Stages and 85% Marks in Bachelor's Degree Stage

##### **NATURE AND EXTENT OF FINANCIAL ASSISTANCE**

Eligible students shall be fully exempted from paying the Registration/Admission Fee, Postal Tuition Fee, Exemption Fee and other fees usually payable at the time of admission to Foundation/ Executive Programmes. Depending upon their performance in the CS Examinations, the students may also be exempted from payment of Examination Fee and also the fees payable at the time of admission to Executive Programme and Professional Programme (for students admitted to Foundation Programme) and Professional Programme (for students admitted to Executive Programme).

For detailed guidelines, application form, etc. please visit [www.icsi.edu](http://www.icsi.edu)

Students desirous of availing the financial assistance may submit their application in the prescribed format along with all supporting documents to **Director (Student Services), The Institute of Company Secretaries of India, C-37, Sector - 62, Noida - 201 309.**

**15. List of institutes empanelled for imparting Oral Coaching Classes to CS students Under Public Private Partnership Scheme of ICSI:**

Name & Address of Empanelled Institutions.	Validity for CS Session of Exam
<b>EASTERN INDIA REGIONAL COUNCIL</b>	
M/s Happy Coaching Institute Fatak, P.O. Budharaja Sambalpur-768 004 Orissa	December`10 & June`11 Session of CS Examinations.
M/s Ambedkar Institute of Higher Education AIHE Campus House No 21-B, Patliputra Golamber Patna-800 013 (Bihar)	June`11 & December`11 Session of CS Examinations.
M/S Solution Education Centre 116, Gandhi Path, North S K Puri PATNA- 800013	December`10 and June`11 Session of CS Examinations
M/S WISDOM Institute of Professional Learning, 3/100C, C R Colony, On Raja S C Mallick Road KOLKATA 700032	December`10 and June`11 Session of CS Examinations
M/s Gyan Bharati Institute of Higher Studies, 64A, Nimtalia Ghat Street, KOLKATA 700 006	June`11 and December`11 Session of CS Examinations
<b>NORTHERN INDIA REGIONAL COUNCIL</b>	
M/s Springdale College of Management Studies Madhotanda Road Pilibhit-262 001 (U.P)	December`10 and June`11 Session of CS Examinations.
M/S G.G.D.S.D. COLLEGE Rajpur (Palampur) Distt. Kangra Himachal Pradesh	December`10 and June`11 Session of CS Examinations.
M/s Sainath Commerce Classes C-20, Talwandi KOTA-324 005	December`10 and June`11 Session of CS Examinations.
M/s Lucknow Commerce Academy S-72/17, Old `C` Block Chauraha Rajajipuram (Near Lekhraj) Lucknow-226 017	Dec .10 Session and Jun`11 session of CS Examinations.



M/s. Institute of Systematic Studies in Commerce, Behind Maharaja Hotel, Station Road, Moradabad- 244001	June' 11 and December' 11 Session of CS Examinations.
SAI INSTITUTE Mallu Sarai, SAMBHAL, Near Chamunda Mandir MORADABAD	Dec .10 Session and Jun'11 session of CS Examinations.
M/S G. S. Institute of Professional Studies, Ahilya Bai Holkar Circle, Dampier Nagar MATHURA [UP]	December '10 and June'11 Session of C S Examination
Commerce County-Institute for Commerce Studies, 137, Red Square Market, Near Palki Hotel, HISSAR – [Haryana}	December '10 and June'11 Session of C S Examination
M/S Brain Solutions, ATS, Laxmi Bai Marg, Aligarh [UP]	December '10 and June'11 Session of C S Examination
M/S EKKISS, 1/5-B, EKKISS Road Suratgarh, Dist Sri Ganganagar RAJASTHAN	December '10 and June'11 Session of C S Examination
M/s Advanced Commerce Study , 14 Amar Complex, Dwarka More, Uttam Nagar, New Delhi 110059 Mob N0: 9818301515	June` 11 and December` 11 Session of CS Examinations
M/s Govindam Business School, 514, Industrial Estate, Patparganj Delhi – 110092	June` 11 and December` 11 Session of CS Examinations
M/S CS Academy, House N0.35, 8, Maria Colony, PANIPAT – [HARYANA]	June` 11 and December` 11 Session of CS Examinations
M/S Career Institute of Commerce & Accounts [CICA] A-781, Near I L & Indra Vihar Joint,Indra Vihar, KOTA- 324005	June` 11 and December` 11 Session of CS Examinations
M/S Vedanta Commerce Academy C-28, Rajajipuram LUCKNOW 226017	June` 11 and December` 11 Session of CS Examinations
Director M/S Bharat Sir's Commerce Institute 7445, Durga Puri Haibowal Kalan Ludhiana [Pb]	December'11 and June'2012 session of CS Examinations.

M/S Academy for Professional Studies, LUCKNOW	December'11 and June'2012 session of CS Examinations.
<b>WESTERN INDIA REGIONAL COUNCIL</b>	
M/s Career Classes 303, Shalimar Corporate Center 8, South Tukoganj Near Hotel Balwas Indore (M.P)	December`10 and June`11 Session of CS Examinations.
M/s Institute of Management Training & Research Artha Complex, 2 <sup>nd</sup> Floor Near IMA House and Tapdiya Terrace, Off. Adalat Road Aurangabad-431 001 (M.S)	June`11 and December`11 Session of CS Examinations.
M/s D.M.'s College of Arts, Science & Commerce Assagao, Bardez GOA-403 507	June`11 and December`11 Session of CS Examination
M/s NAVKAR INSTITUTION 7, Pallavi Row House Opp. Memnagar Fire Station Navrangpura Ahmedabad-380 009	December`10 and June`11 Session of CS Examinations.
M/s Geetanjali Education Systems Private Limited Geetanjali College of Computer Science & Commerce Indian Red Cross Building Suchak Road Opp. Shastri Medan RAJKOT-360 001	June`11 and December`11 session of CS Examinations.
M/s. Lex4biz 5, Rajnigandha Tithal Road Valsad-396001 (GJ)	June'11 and December'11 Session of CS Examinations
M/S Professional Excellence Academy 86, Zone-II, Third Floor, M.P.Nagar BHOPAL 462011 [MP]	December '10 and June'11 Session of C S Examination
M/S Shri Gosar Hansraj Gosrani Commerce & Shri Dharamshi Devraj Nagda BBA College,Shah Bhagwanji Kachra Education Complex Near Octroi Post, Indira Gandhi Marg, Jamnagar 351004 [Guj]	December '10 and June'11 Session of C S Examination

Professional Academy of Competitive Excellence[PACE], B-402, 403, Silver Mall, R N T Marg, Indore- 452001 [MP]	December '10 and June'11 Session of C S Examination
Arihant Institute Pvt Ltd., "Arihant House" 2, Navin Park Society, Nr Municipal School, Sardar Patel Colony Road, Naran pura, Ahmedabad – 380013	June` 11 and December` 11 Session of CS Examinations
M/S Vrajesh Sir,s Academy of Commerce, 404/B, Swapneet-V Near H L Commerce College, Navrangpura Ahmedabad 380009	June` 11 and December` 11 Session of CS Examinations
M/S Dnyanoday Corporte Training Centre N-11, E-11/3, Mayur Nagar Hudco Aurangabad 431136	June` 11 and December` 11 Session of CS Examinations

## SOUTHERN INDIA REGIONAL COUNCIL

M/s MOHANS Institute Sreyas, Chettiparambil Lane Thekkumbhagam, Tripunithura Ernakulam (Distt.), KERALA-682 301	December` 10 and June` 11 Session of CS Examinations.
M/s Dr. G.G. Shetty Educational Society ® Jnana Degula , 25/B-4 Near K.M.F. DHARWAD-580 004	June` 11 and December` 11 Session of CS Examination.
M/s Prize Academy No.2, Teachers Colony (Off V.M. Street) Royapettah Chennai-600 014	December` 10 and June` 11 Session of CS Examination.
M/sSree Saraswathi Thyagaraja College Palani Road, Thippampatti Coimbatore Distt. POLLACHI-642 107	December` 10 and June` 11 Session of CS Examination.
M/s National College Dindigul Road Karumandapam TIRUCHIRAPALLI-620 001 (T.N)	June` 11 and December` 11 Session of CS Examinations.
M/s National Management College 2/16 Thudupathi, Perundurai Erode [Dist] -638 057	December` 10 and June` 11 Session of CS Examinations.

M/s P.S.G.R. Krishnammal College For Women Peelamedu COIMBATORE-641 004	December' 10 & June'11 Session of CS Examinations.
M/S Blue Dot Academy NO.4, Balaji Avenue, 1st Street T.Nagar CHENNAI – 600017	December '10 and June '11 session of C S examinations.
M/S Centre for Human Resources Development, Thekkel, Mannarakkayam PO ., Ponkunnam [via] Kanjirapally, Kottayam Dist., KERALA – 686506	December'10 and June '11 session of C S examination.
M/S Sengunthar Prudential Academy, Erode Sengunthar Engineering College[Campus ] Thudupathi ERODE – 638057	December'10 and June '11 session of C S examination
National Institute of Continuing Education c/o S Srinivasan & CO. Corporate Services Pvt Ltd., No. 40/7, Ramakrishna street, North Usman Road, T Nagar Chennai 600017	December'10 and June '11 session of C S examination
M/s Angel Auditor College, SF NO. 37, Marakkadai Street, Brindavan Pudukottai 622001	June` 11 and December` 11 Session of CS Examinations
M/S Alva Education Foundation Alva's College. Sundari Anand Alva Campus Vidyagiri, Moodbidri Dakshina Kannada Dist [Karnataka]	June` 11 and December` 11 Session of CS Examinations
M/S R R Academy NO.2, Noor Veerasamy Street, Off Vaalluvar Kottam High Road, Nungambakkam, Chennai 600034	June` 11 and December` 11 Session of CS Examinations
M/S Kathir College of Engineering "Wisdom Tree" S.F NO. 812/1, Neelambur Coimbtore 641062	June '11 and December` 11 Session of CS Examinations
PSG Institute of Management, Post Box NO.1668, Avinashi Road, Peelamedu Coimbatore 641004	June '11 and December` 11 Session of CS Examinations

**Directorate of Academics &  
Professional Development**

# ACADEMIC GUIDANCE

## PROFESSIONAL PROGRAMME CORPORATE RESTRUCTURING AND INSOLVENCY

### A CASE OF OVERSEAS ACQUISITION – RANBAXY- DAIICHI.<sup>1</sup>

Ranbaxy Laboratories Limited., India's largest pharmaceutical company, is an integrated, research based, international pharmaceutical company producing a wide range of quality, affordable generic medicines, trusted by healthcare professionals and patients across geographies. Ranbaxy's continued focus on R&D has resulted in several approvals in developed markets and significant progress in New Drug Discovery Research. The Company's foray into Novel Drug Delivery Systems has led to proprietary 'Platform technologies' resulting in a number of products under development. The Company is serving its customers in over 125 countries and has an expanding international portfolio of affiliates, joint ventures and alliances, ground operations in 49 countries and manufacturing operations in 11 countries.

Daiichi Sanyo Company was established in 2005 through the merger of two leading Japanese pharma companies. This integration created a more robust organization that allows for continuous development of novel drugs that enrich the quality of life for patients around the world. A central focus of Daiichi Sankyo's research and development are thrombotic disorders, diabetes hypertension etc.

Ranbaxy and the Singh family, the largest and controlling shareholders of Ranbaxy (the "Sellers"), entered into a binding Share Purchase and Share Subscription Agreement (the "SPSSA") with Daiichi Sankyo, pursuant to which, Daiichi Sankyo will acquire the entire shareholding of the Sellers in Ranbaxy and further seek to acquire the majority of the voting capital of Ranbaxy at a price of Rs 737 per share with the total transaction value expected to be between US\$3.4 bn to US\$4.6 bn. On the post closing basis, the transaction would value Ranbaxy at US\$8.5 bn.

### Highlights of the Acquisition

- Will take the Company to a new orbit and a higher growth trajectory
- To catapult the combined entity as the World's 15th biggest drug maker
- Aiming to become the largest generic Company in Japan, the world's second largest pharma market
- Complementary business model
- Global reach covering mature and emerging markets
- Strong growth potential
- Cost competitiveness

### Acquisition stages

Date	Particulars
June 11, 2008	Signing of Agreement by Daiichi with Ranbaxy and its Promoters
June 14, 2008	Public announcement by Daiichi to the shareholders of Ranbaxy to acquire additional 20% equity shares at Rs.737 per share under the Takeover Code.
June 27, 2008	Submission of draft letter of offer by Daiichi to SEBI for its observations.
July 15, 2008	Approval of preferential allotment of equity shares and warrants to Daiichi by the shareholders of Ranbaxy.
August 16, 2008	Opening of open offer
September 4, 2008	Closing of open offer
October 15, 2008	Acquisition of 20% equity stake by Daiichi pursuant to open offer
October 20, 2008	Ranbaxy becomes subsidiary of Daiichi upon increase in Daiichi's stake to 52.5% (including preferential allotment and transfer of 1st tranche shares from Promoters)
November 7, 2008	Daiichi acquires balance 11.42% shares from the Promoters off the stock market and the deal is concluded. Daiichi's equity stake in Ranbaxy up to 63.92%

<sup>1</sup> Prepared by Lakshmi Arun, Education Officer.

## **Approvals Obtained**

Ministry of Finance mandates prior approval of FIPB, if the foreign investor is already having an existing joint venture or technology transfer / trademark agreement in the 'same' field, as on January 12, 2005. Since Daiichi was already holding equity stake in Uni-Sankyo Limited, a company engaged in 'same' business as Ranbaxy, prior approval of FIPB was obtained.

As this foreign investment required prior approval of Cabinet Committee on Economic Affairs (CCEA), the clearance was received from CCEA by Daiichi in the month of October, 2008.

## **Synergies**

The Synergies are

1. Their respective presence in the developed and emerging markets.
2. Ranbaxy's strengths in the 21 emerging generic drug markets can allow Daiichi Sankyo to tap the potential of the generics business.
3. Both Daiichi Sankyo and Ranbaxy possess significant competitive advantages, and have profound strength in striking lucrative alliances with other pharmaceutical companies.
4. R&D perhaps playing the most important role in the success of these two players.
5. The patent perspective of the merger clearly indicates the intentions of both companies in filling the respective void spaces of the other and emerge as a global leader in the pharmaceutical industry.

According to Ranbaxy newsletter it would provide a new and stronger platform to harness Ranbaxy's capabilities in drug discovery/development, manufacturing and global reach, helping it establish a significant milestone in the Company's mission of becoming a '*Research based International Pharmaceutical Company*'.

This transaction will create significant long-term value for all stakeholders through:

- A complementary business combination that provides sustainable growth by diversification, that spans the full spectrum of the pharmaceutical business;
- An expanded global reach that enables leading market positions in both mature and emerging markets with proprietary and nonproprietary products;
- Strong growth potential by effectively managing opportunities across the full pharmaceutical life cycle, cost competitiveness by optimizing usage of R&D and manufacturing facilities of both companies, especially in India.
- Ranbaxy will be able to leverage its extensive front-end presence through a larger product flow and ascend the pharma value chain by enhancing drug discovery capabilities. It will also widen the scale and scope of the biosimilars opportunity.

Ranbaxy has also established the 'Synergy Office' in July 2009 which has the task of promoting synergies and thereby helping maximize the opportunities for Ranbaxy and Daiichi Sankyo to expand their global operations.

## **Conclusion**

Pharmaceutical companies are working together on a number of areas including drug discovery and development, marketing and manufacturing. This healthy trend will go a long way in addressing the growing imperative of the global pharmaceutical industry to lower the cost of medicines while addressing availability challenges around the world.

## COMPANY LAW/COMPANY SECRETARIAL PRACTICE UPDATES<sup>2</sup>

### **Amendment in Schedule XIII**

Ministry of Corporate Affairs (MCA) vide its Notification No G.S.R. 70(E) dated 8<sup>th</sup> February, 2011 has made the following amendments in Schedule XIII to the Companies Act, 1956:

(i) In the Schedule XIII, in part II, Section II, sub-para (C), third proviso, after the word, “scale” occurring at the end, the following words are inserted, namely :-

“If the company is a listed company or a subsidiary of a listed company”.

It means that a listed company or a subsidiary of a listed company which has no profits or inadequate profits can pay managerial remuneration exceeding Rs. 48,00,000 per annum or Rs. 4,00,000 per month only with the prior approval of the Central Government. However, in the above situation, previous approval of the Central Government is not required if the company is an unlisted company or a subsidiary of an unlisted company. Provided further that the company has to comply with certain other requirements in this regard such as –

- Payment of remuneration has to be approved by a resolution passed by the Remuneration Committee.
- The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person.
- A special resolution has to be passed at the general meeting of the company for payment of remuneration for a period not exceeding three years.
- a statement along with a notice calling the general meeting as mentioned above has to be given to the shareholders containing general information about the company, information regarding loss or inadequate profits and disclosures regarding the remuneration package of managerial person.

(ii) In the Schedule XIII, in Explanation IV, to the Section II, the meaning of Remuneration Committee has been amended. Now, the Remuneration Committee means:-

- In respect of a listed company, a committee which consists of at least three non-executive independent directors including nominee director or nominee directors, if any ; and
- In respect of any other company, a Remuneration Committee of Directors.

Source: [www.mca.gov.in](http://www.mca.gov.in)

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<sup>2</sup> Compiled by Vivek Banerjee, Assistant Education Officer under the guidance of Ms. Alka Kapoor, Joint Director, The ICSI.



## **ATTENTION STUDENTS!**

**Applicability of the latest Finance Act and other changes for Company Secretaries June, 2011 Examination.**

### **DIRECT TAXES**

All students may note that for the June 2011 Examination Session in respect of Direct Taxes the applicable Assessment Year shall be 2011-12 (Previous Year 2010-11). Thus, they will have to study Finance Act, 2010 for June 2011 Examination. Further as per the Syllabus, (of Executive Programme and Professional Programme) students are required to update themselves about all the Circulars, Clarifications, Notifications, etc., issued by the CBDT & Central Government, which come into effect on or before six months prior to the date of the respective examinations.

Gift Tax Act has been excluded from the scope of the examination from June 1999 session onwards unless otherwise informed.

### **INDIRECT TAXES**

Students appearing in the 'Tax Laws' (Indirect Tax Portion to the extent of topics covered in the syllabus, of 'Executive Programme') and Advanced Tax Laws and Practice (Professional Programme) respectively may take note of the following changes applicable for June 2011 Examination.

1. All changes made by the Finance Act, 2010.
2. All Circulars, Clarifications/Notifications issued by CBEC / Central Government which became effective six months prior to the date of examination.

# Important Gist of Cases

## CORPORATE LAWS

**SESA INDUSTRIES LTD v. KRISHNA H. BAJAJ & ORS. [SC]**

**Civil Appeal Nos. 1430-1431 Of 2011 (Arising Out Of S.L.P (C) Nos. 8497-8498 Of 2009)**

**D.K. Jain & H.L. Dattu, JJ. [Decided on 07/02/2011]**

**Companies Act, 1956 - Sections 209(A), 235, 391, and 394 - amalgamation of companies - Objections as to non disclosure of inspection - OL filing reports ob behalf of himself and Regional director - Single Judge sanctioned the scheme - Division bench set aside the sanction - Appeal to Supreme court - Whether the setting aside of sanction order was valid - Held, No.**

**Brief facts:** Sesa Goa Ltd (SGL) is the holding company of the appellant Sesa Industries Ltd (SIL). On 26th July, 2005, a resolution was passed by the Board of Directors of SIL to amalgamate SIL with SGL, effective from 1st April, 2005. In pursuance thereof, on 12th January, 2006, SIL and SGL filed respective company applications in the Bombay High Court seeking the Court's permission to convene a general body meeting. Respondent No. 1 herein, holder of 0.29% of the shares in SIL, intervening in the afore-mentioned company petitions stating investigations are pending against the companies and objected to the amalgamation by filing the inspection report. Ignoring the objections raised by respondent No.1, the High Court, allowed SIL and SGL to convene meetings for seeking approval of shareholders for the said amalgamation, and directed the companies to disclose, as part of the Explanatory Statement to be sent with individual notices, particular observations from the inspection report. Thereafter, the shareholders of SIL and SGL, by 99% majority, approved the scheme of amalgamation, and respondent No.1 was the sole shareholder who objected to the said scheme. SIL and SGL both filed petitions in the High Court for according approval to the amalgamation scheme. The Registrar of Companies, Goa filed an affidavit as the delegate of the Regional Director stating that SIL and SGL were inspected under Section 209A of the Act by the Inspecting Officers of the Ministry of Company Affairs during the year 2005 and "any violation which may be noticed during the course of inspection, there will be no dilution for initiating legal action under the Act and that will not in any way affect the amalgamation". The Registrar stated save and except the observations in para 4 of the affidavit, which included forwarding of two complaints received from respondent No.1, he had no objection to the scheme of amalgamation. On the same day, Official Liquidator, respondent No.1 in these appeals, also filed a report in the High Court, inter alia, stating that in light of the Auditor's report dated 2nd August 2006, according to him the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or the public. Respondent No.1 filed an affidavit objecting to the sanctioning of the scheme. Meanwhile, Respondent No.1 was filing applications over application to stall the amalgamation process on various grounds which were dismissed by the Court. Finally, vide judgment dated 18th December, 2008, the learned Company Judge sanctioned the scheme of amalgamation between SGL and SIL.

Aggrieved, respondent No.1 preferred an intra-court appeal before a Division Bench of the Court. The Division Bench has, vide the impugned judgment, set aside the order of the learned Single Judge and revoked the sanction to the amalgamation scheme. The division bench has, inter-alia, observed that: (i) when serious irregularities have been found in the inspection report and when the proceedings on the basis of the said inspection report are still pending and no further decision has been taken in this behalf and the Registrar as a delegate of the Regional Director who was in possession of such inspection report, should not have filed affidavits both, as the Official Liquidator as well as the Registrar as the delegate of the Regional Director; (ii) once it is found that the report/affidavit on behalf of the Registrar/Regional Director is not in conformity with the statutory provisions, this Court mechanically cannot sanction the scheme simply because the majority of the shareholders have approved the scheme and the majority shareholders in their wisdom have accepted the valuation regarding exchange ratio; (iii) as per the provisions of Section 393, the Registrar as well as the Liquidator, both are required to submit their separate reports and both are,

therefore, functioning in a different capacity. It is surprising as to how the Official Liquidator who was the in charge of the Registrar could have filed the affidavits one in the capacity as a delegate of the Regional Director and the other in the capacity as the Official Liquidator; (iv) the Affidavit of the Registrar is absolutely noncommittal. In the affidavit of the Official Liquidator, he has mentioned that the affairs of the company are not being conducted in a manner prejudicial to the interests of its members or to public interest. But when the same person filed affidavit as Registrar, this aspect is clearly omitted in his reply and (v) the learned Company Judge himself has found that from the stand taken by the Registrar, he has failed in his duty and it cannot be said that the requirement of Section 394 has been complied with. In fact, two contradictory affidavits have been filed by the same gentleman, one in his capacity as the delegate of the Regional Director and the other in his capacity as the Official Liquidator. When the law requires that there should be two independent reports, it is clear that the statutory provision has not been complied with. SIL appealed to the Supreme Court of India.

**Decision:** Appeal allowed.

**Reason:** Thus, the first question is as to whether the appellant and SGL had disclosed sufficient information to the shareholders so as to enable them to arrive at an informed decision? The proviso to Section 391 (2) requires a company to "disclose pendency of any investigation in relation to the company under Sections 235 to 351, and the like". Though it is true that inspection under Section 209A of the Act, strictly speaking, may not be in the nature of an investigation, but at the same time it cannot be construed as an innocuous exercise for record, in as much as if anything objectionable or fraudulent in the conduct of the affairs of the company is detected during the course of inspection, it may lay the foundation for the purpose of investigations under Sections 235 and 237 of the Act, as is the case here. Therefore, existence of proceedings under Section 209A must be disclosed in terms of the proviso to Section 391(2). In any event, we are of the opinion that since the said issue is a question of fact, based on appreciation of evidence, and both the Courts below have held that the information supplied was sufficient, particularly in light of the order passed by the Single Judge on 18th March, 2006, we are not inclined to disturb the said concurrent finding of the Courts below, particularly when it is not shown that the said finding suffers from any demonstrable perversity. (See: Firm Srinivas Ram Kumar Vs. Mahabir Prasad & Ors., 1951 SCR 277 and Ganga Bishnu Swaika Vs. Calcutta Pinjrapole Society, AIR 1968 SC 615)

The next issue that arises for our determination is whether the Division Bench was correct in holding that the affidavit filed by the Official Liquidator was vitiated on account of non-disclosure of all material facts. From a bare perusal of the affidavit dated 10th February, 2006, it is manifest, ex facie, that before filing the affidavit, the said official had not examined and applied its mind to the findings contained in the inspection report under Section 209A of the Act. While it is true that it was not within the domain of the Official Liquidator to determine the relevancy or otherwise of the said report, yet he was obliged to incorporate in his affidavit the contents of the inspection report. We are convinced that the official liquidator had failed to discharge the statutory burden placed on him under the second proviso to Section 394(1) of the Act.

An Official Liquidator acts as a watchdog of the Company Court, reposed with the duty of satisfying the Court that the affairs of the company, being dissolved, have not been carried out in a manner prejudicial to the interests of its members and the interest of the public at large. In essence, the Official Liquidator assists the Court in appreciating the other side of the picture before it, and it is only upon consideration of the amalgamation scheme, together with the report of the Official Liquidator, that the Court can arrive at a final conclusion that the scheme is in keeping with the mandate of the Act and that of public interest in general. It, therefore, follows that for examining the questions as to why the transferor-company came into existence; for what purpose it was set up; who were its promoters; who were controlling it; what object was sought to be achieved by dissolving it and merging with another company, by way of a scheme of amalgamation, the report of an official liquidator is of seminal importance and in fact facilitates the Company Judge to record its satisfaction as to whether or not the affairs of the transferor company had been carried on in a manner prejudicial to the interest of the minority and to the public interest.

In the present case, we are unable to appreciate why the Official Liquidator, who was aware of the inspection report dated 17th February, 2006 under Section 209A containing adverse comments on the affairs of both the companies,

relied only on the report of the auditors, which admittedly was not even verified. We can only lament the conduct of the official liquidator.

Having held that the Official Liquidator had failed to discharge the duty cast on him in terms of the second proviso to Section 394(1) of the Act, the next issue that requires consideration is whether sanction of a scheme of amalgamation can be held up merely because the conduct of an Official Liquidator is found to be blameworthy? We are of the view that it will neither be proper nor feasible to lay down absolute parameters in this behalf. The effect of misdemeanor on the part of the official liquidator on the scheme as such would depend on the facts obtaining in each case and ordinarily the Company Judge should be the final arbiter on that issue. In the instant case, indubitably, the findings in the report under Section 209A of the Act were placed before the Company Judge, and he had considered the same while sanctioning the scheme of amalgamation. Therefore, in the facts and circumstances of the present case, the Company Judge had, before him, all material facts which had a direct bearing on the sanction of the amalgamation scheme, despite the aforesaid lapse on the part of the Official Liquidator. In this view of the matter, we are of the considered opinion that the Company Judge, having examined all material facts, was justified in sanctioning the scheme of amalgamation, particularly when the current investigation under Section 235 of the Act was initiated pursuant to a complaint filed by respondent No.1 subsequent to the order of the Company Judge sanctioning the scheme.

For the foregoing reasons, the appeals are allowed; and the impugned judgment is set aside. Consequently, the order passed by the Company Judge sanctioning the scheme of amalgamation is restored. However, it is made clear that the scheme of amalgamation will not come in the way of any civil or criminal proceedings which may arise pursuant to the action initiated under Sections 209A or 235 of the Act, or any criminal proceedings filed by respondent No. 1.

## **BHUSHAN ENERGY LTD & ORS v. SECURITIES AND EXCHANGE BOARD OF INDIA & ANR [SAT]**

**Appeal No.65 of 2010**

**N.K. Sodhi (P), Samar Ray & P.K. Malhotra (M) [Decided on 28/12/2010]**

**Companies Act, 1956 - Section 108(1) - Transfer of shares - Transfer recorded in the books of the company - consideration paid later date - SEBI considered the date of payment as the material date of transfer and held the appellants guilty of violating the Takeover rules - whether correct - Held, No.**

**Brief facts:** Orissa Sponge Iron and Steel Ltd. is listed companies which shall be referred to hereinafter as the target company whose shares were acquired over a period of time by the Bhushan group (the appellants) and the second respondent. It is common ground between the parties that on January 29, 2009 which is the material date for our purpose, the Bhushan group and the second respondent were holding 14.85 and 2.56 per cent shares respectively of the target company. It is, thus, clear that if the second respondent also belonged to the Bhushan group on the material date, it would be regarded as a person acting in concert with that group and its shareholding would be clubbed with that of the Bhushan group in which case the shareholding of the two would exceed 15 per cent of the voting rights in the target company and Regulation 10 of the takeover code would get triggered. Regulation 10 provides that no acquirer shall acquire shares or voting rights which taken together with shares or voting rights, if any, held by him or by persons acting in concert with him, entitle such acquirer to exercise 15 per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of that company in accordance with the takeover code. Admittedly, the Bhushan group did not make any public announcement within four days from January 29, 2009 which it would have had to make under Regulation 14(1) of the takeover code if Regulation 10 had got triggered.

The case of the Securities and Exchange Board of India (for short the Board) is that the second respondent was a part of the Bhushan group on the material date and their combined shareholding being in excess of the threshold limit prescribed by Regulation 10, they were required to make a public announcement and not having done so, they all violated Regulation 10 of the takeover code. The case of the appellants (Bhushan group) and respondent

no.2, on the other hand, is that the second respondent, a private limited company was a part of the Bhushan group prior to October 6, 2008 on which date the shares of the second respondent held by this group were sold to M/s. Prime Nutrient Pvt. Ltd. and Hariom Yarns Pvt. Ltd. both of which shall collectively be referred to hereinafter as the Jain group. According to the appellants, the second respondent came to be owned and controlled by the Jain group with effect from October 6, 2008 and was not a part of their group on January 29, 2009 and, therefore, the shares of the target company held by this respondent could not be clubbed with their shareholding. The adjudicating officer has not accepted this claim of the appellants and has found the appellants and the second respondent guilty of violating Regulation 10 of the takeover code and by his order dated January 18, 2010 imposed a monetary penalty of Rs. 4.5 lacs. Their liability is joint and several. This order is now under challenge in these appeals.

**Decision:** Appeals allowed.

**Reason:** The total issued share capital of respondent no.2 is 19,60,000 shares of Rs. 10 each which was held by four different companies namely, Adamine Construction Pvt. Ltd., Starlight Consumer Electronics Pvt. Ltd., Super Star Agency Pvt. Ltd. and Goldstar Cement Pvt. Ltd. which also form part of the Bhushan group of companies. All these four companies transferred their shareholding in respondent no.2 to the Jain group and we have on record copies of share transfer forms/deeds by which the shares were transferred in favour of this group. The share transfer forms are dated October 4, 2008 and the approval date on them is October 6, 2008.

The genuineness of the share transfer deeds transferring the shares has not been disputed or doubted by the adjudicating officer. The only ground on which he does not accept October 6, 2008 as the date of transfer is that the consideration for the transfer of shares was paid by the transferees on February 27 and February 28, 2009 which date is subsequent to the material date (January 29, 2009). We are afraid that the adjudicating officer has misdirected himself and has not appreciated the legal position correctly while recording the aforesaid findings.

We have heard the learned counsel for the parties and what emerges from the record is this. Four companies belonging to the Bhushan group entered into SPA on October 4, 2008 for the transfer of their shares of respondent no.2 in favour of the Jain group. In pursuance to this agreement, the parties executed share transfer deeds on October 6, 2008 duly stamped whereafter the board of directors of respondent no.2. on the same day by their resolution approved the transfer. After the approval of the transfer, the names of the transferees (Jain group) were entered in the register of members maintained by the second respondent. Transfer of shares, thus, got completed and respondent no.2 came to be owned and controlled by the Jain group with effect from October 6, 2008. It is common ground between the parties that payment of consideration for the sale of shares was made on February 27 and 28, 2009 which was in accordance with clause 5 of SPA. In this view of the matter, we answer the question posed in the opening part of the order in the negative and hold that respondent no.2 ceased to be a part of the Bhushan group with effect from October 6, 2008. In view of this finding of ours, respondent no.2 could not be said to be acting in concert with the appellants on January 29, 2009 and the shares of the target company held by this respondent could not be clubbed with those of the appellants (Bhushan group). It is, thus, clear that the shareholding of the Bhushan group on January 29, 2009 was 14.85 per cent and being less than 15 per cent, Regulation 10 of the takeover code was not attracted. It follows that neither the appellants nor respondent no.2 violated Regulation 10 of the takeover code and the charge against them must fail

## GENERAL LAWS

**HARSHENDRA KUMAR v. REBATILATA KOLEY [SC]**

**Criminal Appeal Nos.360-377 of 2011 (Arising out of SLP (Criminal) Nos. 3008-3025 of 2008)**

**Aftab Alam & R.M. Lodha, JJ. [Decided on 08/02/2011]**

**Negotiable Instruments Act, 1881 - Sections 138, 141- Criminal Procedure Code, 1973 - Sections 397, 401, 482 - Cheque dishonor - Petition to quash the proceedings - Director of the company pleading his resignation before the issue of the dishonored cheque - High Court holding that this fact of resignation has to be proved in the trial refused to quash the proceedings - Whether the High Court was correct in holding so - Held, No.**

**Brief facts:** The complainants were interested in business relationship with Rifa Healthcare (India) Pvt. Ltd. (for short, 'the Company') for the sale of bio-ceramic products. The complainants, for the orders they had placed, issued demand drafts in favour of the Company. It appears that the Company had not delivered the products ordered by the complainants and accordingly they asked the Company for return of their money. On April 30, 2004, the Company issued 18 cheques, for various amounts in favour of the complainants. These 18 cheques were dishonoured by the Bank/s on presentation.

The complainants filed 18 complaints under Section 138 read with Section 141 of the NI Act. It was alleged in the complaint that the Managing Director and the two Directors (including the appellant) were responsible for day-to-day affairs of the Company and that it was on their assurance that the complainant issued demand draft in favour of the Company and when the products of the Company were not received by the complainant, she contacted the accused persons and told them that she could not continue business with them and asked for return of her money. Accordingly, for and on behalf of the Company, in discharge of the existing liability, an account payee cheque was issued but the cheque was returned by the complainant's banker on presentation with the endorsement 'insufficient fund'.

The concerned Metropolitan Magistrate issued summons to all the accused persons including the appellant. The appellant challenged the proceedings initiated by the complainants against him by filing 18 revision applications before the Calcutta High Court on the ground that at the time when the cheques were issued or when the cheques were dishonoured, the appellant had no concern or connection with the Company.

The High Court holding that resignation by the petitioner as director of the Company is a defence of the accused and the defence is a matter for consideration at the trial on the basis of evidence which cannot be decided by the Court in revisional jurisdiction. The appellant challenged this order before the Supreme Court.

**Decision:** Appeal allowed

**Reason:** It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents - which are beyond suspicion or doubt - placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company. As noticed above, the appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed

to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court.

## **SUDHIR GENSETS LTD v. INDIAN OIL CORPORATION LTD [DEL]**

**FAO 253/2008**

**Mool Chand Garg, J. [Decided on 11/02/2011]**

**Contract Act - Sections 73, 74 - Liquidated damages specified in the contract -whether damages have to be proved - Held, No.**

**Brief facts:** The respondent placed upon the appellant two work orders for supplying, testing and commissioning of DG sets at various locations. The work was to be completed by stipulated dates i.e. by 17.11.2000 and 12.01.2001 respectively. However, the work was not completed by the specified dates and therefore the appellant sought extension of time from the respondent. The extension of time was not granted. The respondent also withheld an amount of Rs 10,77,714/- as liquidated damage from the dues payable to the appellant as per Clause 13 of Special Terms and Conditions.

The appellant raised a claim for recovery of the aforesaid amount by invoking Clause 23 of Special Terms and Conditions of the Contract (hereinafter referred to as the "STCC") before the Arbitrator. The Arbitrator came to the conclusion that the time was essence of the contract. Delay was caused by the claimant i.e. the appellant in supplying, testing and commissioning of DG sets. The Arbitrator further observed that respondent has a right to withhold the said amount of Rs 10,77,714/- as liquidated damages. So, there was no question of making refund of the same and it was them who were at fault in causing the delay in performance of the contract in question.

Appellant filed objections to the award before the Addl. District Judge by pleading that not only that the impugned order was illegal, perverse and against substantial provisions of law. The ADJ rejected the plea of the appellant to set aside the arbitral award and dismissed the petition of the appellant. The appellants appealed to the High Court.

**Decision:** Appeal Dismissed.

**Reason:** In this appeal filed under section 39 of the Act, similar pleas which were taken before the Addl. District judge have been reiterated. It has been submitted that under Section 73 & 74 of The Indian Contract Act, 1872, the compensation can only be granted to the other party on account of breach of a contract but where no loss has been occasioned, no question of award of compensation arises. The appellant further submits that the language of Section 74 of the said Act, provides that the award of compensation only be given to the extent fixed in the contract and in some cases it only dispenses with the proof of "quantum of loss" on the basis of "genuine-pre-estimate" already arrived at between the parties to the contract. Thus according to appellant no compensation could be awarded where no loss or damage has been pleaded or proved.

When it is apparent that the parties had agreed to fix the liability of the appellant in terms of Clause 13 for payment of damages as per the formula contained in that clause 13, it was not a case of penalty but what was recovered is the amount of damages pre-fixed by the parties with regard to loss suffered by the respondent on account of delay in supplying the equipment. In such circumstances, it was not necessary for the respondent to prove actual damages. Thus, the arbitrator was justified in dismissing the claim of the appellant directing return of the amount out of the dues payable by virtue of Clause 13 of the STCC. The Additional District Judge has upheld the aforesaid order. It is also well settled that the Civil Court is not to act as an Appellate Court to dissect the reasoning of the Arbitral Forum. The scope of objections is limited by Section 34 of the Act. Once the Court is satisfied that the Arbitrator has given the award after taking into consideration all the available facts and the said award is in accordance with the applicable law, the scope of interference is nil. In these circumstances, the decision given by the Addl. District Judge on both the issues relating to delay and liquidated damages by way of deduction of the amount payable to the appellant is fully

justified and does not call for any interference by this Court. Consequently, the appeal filed by the appellant is dismissed with no orders as to costs.

**LATIF ESTATE LINE INDIA LTD & ORS v. MRS. HADEEJA AMMAL & ORS [Mad-FB]**

**W.A. No. 592 & 938 of 2009**

**Mr. M.Y.Eqbal CJ,P.Jyothimani & T.S.Sivagnanam, JJ. [Decided on 11/02/2011]**

**Registration Act - Sections 17, 18, 32(A) - Sale of immovable property under registered sale deed - Unilateral cancellation of the sale deed and registering the same with the Registrar - Whether such unilateral cancellation and registration is valid - Held, No.**

**Brief facts:** In W.P.No. 17555 of 2008, the writ petitioner (respondents 2 and 3) claims to be the owner of Plot No.223. The said property allegedly purchased by the writ petitioner by means of registered sale deed dated from the 2nd respondent/appellant. She claims that the entire sale consideration was paid and she was also put in possession. However, the 2nd respondent/appellant unilaterally executed the cancellation deed which was registered by the 1st respondent, being Document No.16826/07. The 2nd respondent/appellant denied the allegation and stated that the writ petitioner was not in possession of the property and the appellant continued to be in possession of the same. It was also contended that the sale consideration was not paid. The single Judge held that the cancellation deed was executed unilaterally by the 2nd respondent/appellant without the knowledge and consent of the writ petitioner and without complying the requirements of Section 32-A of the Registration Act. Hence, the writ petition was allowed and the registration of cancellation deed was quashed.

In W.P.No. 27291 of 2008, the writ petitioner/respondent claimed to be the owner of Plot No.24, which was purchased by means of registered sale deed from the 3rd respondent/appellant. She claimed that the entire sale consideration was paid and she was put in possession of the same. However, the 3rd respondent/appellant unilaterally executed a cancellation deed and the same was registered by the 2nd respondent. The writ petitioner, therefore, sought quashing of the said cancellation deed. The case of the respondent/appellant was that the writ petitioner was never put in possession of the property after the execution of the sale deed. Rather, because of the non-payment of consideration, the appellant executed the cancellation deed nullifying the earlier sale deed. Learned single Judge, following the decision in W.P. No.8567/08 came to the same conclusion as noted above in W.A. No.938/09. The judgment and order has been challenged by the appellant on the same grounds as made out in the aforesaid appeal, W.A. No.938/09.

A Division Bench of this Court while hearing the appeals found that the learned single Judge relied on the earlier decision passed in W.P.No.8567 of 2008 and doubting the correctness of the judgment rendered in W.P.No.8567 of 2008, as also the Division Bench judgment in W.A.No.194/2009, these appeals have been referred to a Full Bench for deciding the correctness of these judgments, and also for deciding the following questions formulated by the Bench.

(i) Whether cancellation of a registration of a registered sale deed of an immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act?

(ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property is required to sign the document, if no such stipulation is made under the Act? and

(iii) Whether the decisions of the single Judge dated 10.2.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 1.4.2009 made in W.A.No.194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed thereunder, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules.?



**Decision:** The appeals are referred back to the concerned Court for deciding the case on merits.

**Reason:** After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

## TAX LAWS

**COMMISSIONER OF CENTRAL EXCISE v. M/s. MEHTA & CO [SC]**

**Civil Appeal No. 1090 Of 2009**

**Dr. Mukundakam Sharma & Anil R. Dave, JJ. [Decided on 10/02/2011]**

**Central Excise Act, 1944 - Sections 11(A) - Manufacture of furniture - Interior decorator - Manufacture of furniture items and sale thereof - Department holding that the items are liable to excise duty - Tribunal held otherwise - Whether the Tribunal was right in holding that the furniture manufactured by the assessee was not liable to excise duty - Held, No.**

**Brief facts:** It appears that the assessee manufactured goods covered under different chapter headings at the customer's site and removed them without payment of proper duty of excise with an intention to evade payment of duty. The contract between the assessee and M/s Adyar Gate Hotel Ltd., clearly mentions that the assessee has quoted rates which include the excise duty and it had been made in the contract that the contractor would not have any claim subsequently after execution of the work for excise duty, sales tax etc. from M/s. Adyar Gate Hotels Limited. After issuing a show cause notice on the assessee the Commissioner of Central Excise confirmed the demand.

Aggrieved thereby, the respondent filed an appeal before the CESTAT, Bangalore, which allowed the appeal and remanded the matter to the concerned adjudicating authority to examine the matter afresh and to pass an appropriate order in accordance with law by providing an effective hearing to the parties. Thereupon, the Commissioner confirmed the demand of Rs. 14,94,656/- with penalty of Rs. 7,47,328/- with interest as per Section 11 AB of the Central Excise Act, 1944 (for short "the Act") and also imposed a penalty of Rs. 5,00,000/- under Rule 173Q. Aggrieved thereby the respondent filed an appeal before the Tribunal and the Tribunal allowed the appeal and set aside the order of the Commissioner, Central Excise & Customs under the impugned judgment and order as against which the present appeal was filed by the Revenue.

**Decision:** Appeal allowed.

**Reason:** Two primary issues fall for consideration in this appeal. The first issue is, as to whether or not the demand for payment of duty is barred by limitation, whereas the second issue is whether the items like chairs, beds, tables, desks, etc., affixed to the ground could be said to be immovable assets and not liable to excise duty. The aforesaid two issues have arisen in the light of the rival submissions made on the basic facts of this appeal which are hereinafter being set out.

We propose to look into the first issue in the light of the background facts as stated hereinbefore. The specific case of the appellant is that the respondent having manufactured the excisable goods covered under different chapter headings, removed them without payment of proper duty of excise and that from the aforesaid action it is explicit that there was an intention on the part of the respondent to evade payment of duty particularly when the contract clause between the respondent and M/s. Adyar Gate Hotel Ltd. clearly mentioned that the contractors quoted rate would also include excise duty. Although, the respondent has pleaded that it was done out of ignorance, but in our considered opinion there appears to be an intention to evade excise duty and contravention of the provisions of the Act. Therefore, proviso of Section 11A (i) of the Act would get attracted to the facts and circumstances of the present case.

The cause of action, i.e., date of knowledge could be attributed to the appellant in the year 1997 when in compliance of the memo issued by the appellant and also the summons issued, the hotel furnished its reply setting out the details of the work done by the appellant amounting to Rs. 991.66 lakhs and at that stage only the department came to know that the work order was to carry out the job for furniture also. A bare perusal of the records shows that the aforesaid reply was sent by the respondent on receipt of a letter issued by the Commissioner of Central Excise on 27.2.1997. If the period of limitation of five years is computed from the aforesaid date, the show cause notice having been issued on 15.5.2000, the demand made was clearly within the period of limitation as prescribed, which is five years.

So far as the second issue is concerned, we fail to appreciate as to how the Tribunal could come to a finding, as recorded in the impugned judgment and order in view of the proposition of law already settled by this Court in the decision of Craft Interiors (supra). The decision in Craft Interiors (supra) has clearly laid down that ordinarily furniture refers to moveable items such as desk, tables, chairs required for use or ornamentation in a house or office. So, therefore, the furniture could not have been held to be immovable property.

A perusal of the records would also indicate that the Commissioner in his order has listed out various items which were held as furniture and while doing so, he has scrutinized the records to determine the immovability or movability of the items. A bare perusal of the said order would also indicate that he has given deductions for the items held as immovable. So far as the items such as chairs, tables etc. listed in Annexure 5 is concerned, the same admitted to be furniture by the assessee himself. The Commissioner having considered the aforesaid issue carefully and after proper scrutiny, the Tribunal was not justified in rejecting the said findings by mere conclusion and without trying to meet the findings recorded by the Commissioner.

Accordingly, we allow this appeal and set aside the order passed by the Tribunal and restore the order passed by the Commissioner.

## LABOUR LAWS

**JASODIYA GRAM PANCHAYAT v. BHIKHUBHAI CHAKUBHAI KABIRA (legal heir of deceased Valiben) [Guj]**

**SCA/10349/2009**

**H.K.Rathod, J. [Decided on 01/01/2011]**

**Payment of Gratuity Act, 1972 - Workman applying for payment of gratuity after 4 years - Controlling authority and appellate authority allowed the claim - Whether correct - Held, Yes.**

**Brief facts:** The petitioner Panchayat has challenged order passed by Appellate Authority, Rajkot dated 2nd June 2009 in Appeal No.23 of 2009 and also order passed by Controlling Authority, Jamnagar in Order dated 31st December 2008 in Gratuity Case No.92 of 2008 on the ground that claim of workman made after period of four years, because, Valiben Rava who was permanent Safai Kamdar died on 27th October 2004 during the course of employment made an application claiming amount of gratuity as Gratuity Application No.92 of 2008.

**Decision:** Petition dismissed.

**Reason:** It is submitted from the petitioner that for four years delay, there is no liability of petitioner Gram Panchayat to pay the amount of gratuity with interest, because, there is a delay in filing gratuity application by respondent. He submitted that specific contention was raised before appellate authority, even though, appellate authority has not considered it and interest amount is not reduced, even rate of interest is also not reduced, therefore, present petition is filed.

Counsel for the workman raised contention that petitioner should not have to wait for depositing the amount of gratuity which has been found to be due in favour of workman. If it is not deposited in time under provisions of Gratuity Act, then, it is a statutory interest which requires to be paid by petitioner. For that, Controlling Authority or Appellate Authority has no discretionary power to deny such legitimate interest in favour of respondent workman. He relied upon decision of Apex Court reported in 2003 AIR SCW 885 (Coram: Hon'ble Mr. Justice Shivraj Patil), wherein, it is held that amount of gratuity cannot be paid in case of delay without interest and it does not lay in the domain of discretion of statutory authority and this being a statutory compulsion if amount of gratuity is not paid in time as specified in Gratuity Act, then, interest upon amount of gratuity is being a statutory compulsion and Controlling Authority or Appellate Authority having no discretionary power to deny such statutory interest of concerned workman.

Recently, this aspect has been considered as relied upon by learned advocate for the workman and submitted that interest amount upon gratuity is a statutory being a mandatory and cannot be denied to workman in case when payment of gratuity is not made in time by employer. He submitted that recently, Apex Court in a case reported in 2009 (13) Scale 109 held that interest on delayed payment is a mandatory. It should not have to be denied to

concerned workman who has not received amount of gratuity as per provisions made in Gratuity Act, 1972. Therefore, he submitted that Controlling Authority and Appellate Authority both have rightly come to conclusion that in case if workman is died and application is made after four years, but, it is a statutory compulsion upon employer to deposit the amount of gratuity before Controlling Authority. But, in facts of this case, amount of gratuity is not deposited by petitioner before Controlling Authority, therefore, according to my opinion, Controlling Authority has rightly granted 10% simple interest in favour of respondent w.e.f. 18<sup>th</sup> November 2004 i.e. the date on which the workman is died. The Appellate Authority has also rightly come to conclusion that amount is not deposited by petitioner before Controlling Authority, therefore, amount must have to be paid by petitioner to the workman concerned with statutory interest as specified under the provisions of Gratuity Act, 1972.

Therefore, contentions raised by learned advocate of the petitioner in light of two decisions as referred above of Apex Court cannot be accepted, hence, rejected. Therefore, there is no substance in present petition and accordingly dismissed.

# Announcements of Classes and Others

## SOUTHERN INDIA REGIONAL COUNCIL

### Oral Coaching Classes for June / December 2011 CS Examinations

The Regional Council proposes to conduct Oral Coaching Classes for June / December 2011 CS Examinations as per details given hereunder:

Stage	Date of Commencement of Classes	Timings	Fee	Last date for receipt of application
PROFESSIONAL PROGRAMME MODULE – III & IV (Morning) FOR JUNE 2011 EXAMINATION.	14.03.2011	6.30 A.M. to 8.30 A.M.	Rs.4000/-	07.03.2011
PROFESSIONAL PROGRAMME MODULE – I & II (Evening) FOR JUNE 2011 EXAMINATION	14.03.2011	6.00 P.M. to 8.00 P.M.	Rs.4000/-	07.03.2011
EXECUTIVE PROGRAMME MODULE –I (Morning) FOR DEC.2011 EXAMINATION	25.04.2011	6.30 A.M to 8.30 A.M.	Rs.3800/-	18.04.2011
EXECUTIVE PROGRAMME MODULE –II (Evening) FOR DEC.2011 EXAMINATION	25.04.2011	6.00 P.M. to 8.00 P.M.	Rs.3800/-	18.04.2011
FOUNDATION PROGRAMME (MORNING) FOR DEC.2011 EXAMINATION	18.07.2011	9.00 A.M. to 11.00 A.M.	Rs.3500/-	11.07.2011
FOUNDATION PROGRAMME (EVENING) FOR DEC.2011 EXAMINATION	18.07.2011	4.00 P.M. to 6.00 P.M.	Rs.3500/-	11.07.2011

**Interested candidates may contact the Regional Office at**

**'ICSI-SIRC House',  
9, Wheat Crofts Road,  
Nungambakkam,  
Chennai - 600 034.**

**Tel.No.: 28279898/28222212.**

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**Oral Coaching Classes Through Interactive Learning**

Fresh classes for Foundation Programme and Executive Programme Courses will be conducted for **December, 2011 Examination** and thereafter , as per the following schedule, at The ICSI- Hyderabad Chapter , # 6-3-609/5, Anandnagar Colony, Khairatabad, Hyderabad – 500 004

Course	Timings	Fees Rs.	Venue	No. of Lectures
Foundation Programme	6.30 pm to 8.30 pm	3000/-	Sujatha Degree College for Women, Chapel Road, Abids, Hyd.	120 lectures each 2 hrs
Executive Programme Module – I	07.00 am to 09.00 am	3500/-	The ICSI- Hyd. Chapter	90 lectures each 2 hrs
Executive Programme Module – II	6.30 pm to 8.30 pm	3500/-	Sujatha Degree College for Women, Chapel Road, Abids, Hyd.	90 lectures each 2 hrs
Executive Programme Module I & II	7.00 am to 11. 15 am	6000/-	The ICSI- Hyd. Chapter	180 lectures each 2 hrs

**Date of Commencement of Classes: 11<sup>th</sup> April, 2011**

Interested Candidates are advised to deposit the fee by Challan at 'The ICSI Hyderabad Chapter' by **7<sup>th</sup> April, 2011**.

The Students who undergo Oral Coaching, pass the Eligibility Tests and get the Coaching Completion Certificates, need not submit the response sheets under postal tuition scheme. For further details, please contact the The-ICSI Hyderabad Chapter. **Contact No(s) : 040-23399541, 040- 23396494, Fax:040- 23325458, e-mail: [hyderabad@icsi.edu](mailto:hyderabad@icsi.edu)**

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**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

CENTRE FOR  
CORPORATE  
GOVERNANCE,  
RESEARCH &  
TRAINING (CCGRT)

## STUDENT INDUCTION PROGRAMS (SIP)

ICSI - Centre for Corporate Governance, Research & Training (CCGRT) is organizing Student Induction Programs (SIP) from **Monday, May 09, 2011 to Monday, May 16, 2011.**

All the candidates those who have registered for Executive Program have to undergo this **7 days** Student Induction Program (SIP) within 6 months of registration.

The Fees for the program is ₹ 1750/- per participant to cover the cost of training, course material, lunch and other organizational expenses.

For details and registration interested students may email to the Program Co-ordinator (SIP), ICSI-CCGRT, Plot No. 101, Sector - 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614.

☎ (022) 4102 1504 / (022) 27577814 Fax : (022) 2757 4384.

Email : [icsiccgrt@gmail.com](mailto:icsiccgrt@gmail.com)

**ICSI-CCGRT** : Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614  
☎ 022 - 2757 7814-15, 4102 1515, **fax** 022 - 2757 4384 **e-mail** [icsiccgrt@gmail.com](mailto:icsiccgrt@gmail.com) **website** [www.ccgrt.icsi.edu](http://www.ccgrt.icsi.edu)



## ANNOUNCES

### EXECUTIVE DEVELOPMENT PROGRAM (EDP)

ICSI - Centre for Corporate Governance, Research & Training (CCGRT) is organizing Executive Development Programs (EDP) from **Monday, May 02, 2011 to Tuesday, May 10, 2011.**

All the candidates those who have qualified/ passed CS Executive Program have to undergo this **8 days** Executive Development Program.

The Fees for the program is ₹ **1750/-** per participant to cover the cost of training, course material, lunch and other organizational expenses.

For details and registration interested students may email to the Program Co-ordinator (EDP), ICSI-CCGRT, Plot No. 101, Sector - 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614.

☎ (022) 4102 1504 / (022) 27577814 Fax : (022) 2757 4384.

Email : [ccgrt@icsi.edu](mailto:ccgrt@icsi.edu)



## General Instruction :

In case of any specific problem / complaint regarding:

1. Registration, post registration, students services and postal / oral coaching, students may contact personally or write to

Mr Sohan Lal  
Director ( Student Services )  
The Institute of Company Secretaries of India  
C-37, Sector-62,  
Noida-201309,  
Tel : 0120-4522014 ( D )  
e-mail : [sohan.lal@icsi.edu](mailto:sohan.lal@icsi.edu).

2. Academic guidance and suggestions, if any, students may write to

Mr Sutanu Sinha  
Director ( Academics )  
The Institute of Company Secretaries of India  
22, Institutional Area  
Lodi Road  
New Delhi-110003  
Tel : 011-45341014 (D)  
e-mail : [sutanu.sinha@icsi.edu](mailto:sutanu.sinha@icsi.edu).