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THE JOURNAL FOR CORPORATE PROFESSIONALS



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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- 01 >> Meeting of ICSI delegation with Minister of State (Independent Charge) Ministry of Commerce and Industry - Sitting clockwise from Left: Nirmala Sitharaman (Hon'ble Minister of State (Independent Charge) Ministry of Commerce and Industry), CS Rajiv Bajaj, CS Satwinder Singh, CS Mamta Binani, CS Ramasubramaniam C and CS Ranjeet Pandey.
- 02 >> Standing from Left: CS Ranjeet Pandey, CS Amit Gupta, CS Ramasubramaniam C, CS Rajeev Bajaj, CS Mamta Binani, Ravinder (IAS, Director, DIPP) and CS Satwinder Singh.
- 03 >> SIRC – Hyderabad Chapter –Release of ICSI Publication titled Challenging Opportunities for practicing Company secretaries in labour law by Hon'ble Minister for Labour and Employment (Independent Charge), Government of India -Standing from Left: CS Rahul Jain, CS Venkata Ramana R, CS Sudhir Babu C, CS Mahadev Tirunagari, Bandaru Dattatreya (Hon'ble Minister for Labour & Employment, (I/c), Government of India), CS Ahalada Rao V, CS Datla Hanumanta Raju and CS Ramakrishna Gupta R.
- 04 >> National Seminar on NCLT and NCLAT convergence of corporate jurisdiction held at Chandigarh – Sitting on the dais from Left: CS K V Singhal, CS G S Sarin, A K Chaturvedi (RD (North), MCA), CS Vineet K Chaudhary, CS Saurabh Kalia and CS Manish Aggarwal.
- 05 >> Dubai Global Convention 2016 on Empowering Boards to become Instruments of Innovation and Excellence – CS Mamta Binani addressing. Others sitting on the dais from Left: Prof Colin Coulson Thomas (International Authority on Director, Board & Business Development & Transforming Performance, UK), Dr. Mark Stevenson(Chief Executive Officer, Eternity Technologies, UAE), Nagesh Suryanarayana (Managing Director, Protiviti Middle East Member Firm) and Samira Shaloh (Director, Corporate Strategy, Development & Quality, World Security, UAE).
- 06 >> Discussion and Meeting at IIM - Ahmedabad for Signature Award - Standing from Left: CS Vineet K Chaudhary, CS Tushar Shah, CS Mamta Binani, Ashish Nanda (Director IIM-Ahmedabad), CS Ashish Doshi and CS M C Gupta.



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07 >> WIRC – Raipur Chapter - Full day seminar on critical issues under Company law and Companies (Amendment) Bill, 2016, LODR, 2015 & Insider Trading – sitting from Left: CS Ashish Jain, CS Satish Kumar Batra, Chhagan Mundra, CS Mamta Binani, CS Ashish Garg, CS Y C Rao and CS Praveen Soni.

09 >> Full Day Program on Companies (Amendment) Bill 2016, SEBI (LODR) 2015 & SEBI (Insider Trading Regulation) 2015 – CS S K Batra lighting the Lamp. Others standing from Left: CS Omprakash Bagadia, CS Tushar Pahade, CS Piyush Katariya, CS Praveen Soni, Chief Guest Sandeep Tamgadge (Senior IPS officer) and CS Ashish Garg.

11 >> EIRC – North Eastern (Guwahati) Chapter - National Seminar on Companies Act: NCLT and NCLAT Convergence of Corporate Jurisdiction – V.K Pipersenia (Chief Secretary of Assam) addressing. Others sitting from Left: CS Vivek Sharma, CS Pankaj Jain, CS Biman Debnath, CS Vineet K. Chaudhary, CS Sourav Kalia and CS Amit Pareek.

08 >> EIRC – National Seminar on Companies Act: NCLT and NCLAT convergence of Corporate Jurisdiction – CS Mamta Binani addressing. Others sitting from Left – CS Gautam Dugar, CS S K Agrawala and N K Bhola (RD, ER, MCA).

10 >> SIRC - One Day Seminar on Companies Act, 2013 –Heralding New Era of Corporate Governance organised jointly with the University of Madras, Chennai - Dr.S. Gurusamy addressing. Others sitting from Left: CS Dhanapal S, Dr. S. Karunanidhi, CS Sivakumar P, Dr. N. Ragavan and Dr. P.S. Buvanewari.

12 >> NIRC – Workshop on How to be an NCLT practitioner –Sitting on the dais from Left: CS NPS Chawla, CS Manish Gupta, Justice D R Deshmukh (Former Chairman, CLB), CS Rajiv Bajaj and CS Nitesh Kumar Sinha.



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- 13 >> NIRC – Kanpur Chapter - U P State Conference on CS - Spectrum of Opportunities - Release of Conference souvenir – standing from Left: CS Nitesh Sinha, CS Ranjeet Pandey, CS Ankur Srivastava, CS Pavan Kumar Vijay, CS Vaibhav Shukla, CS Kaushal Saxena, Chief Guest Ruvit Kumar (Dy. ROC, Kanpur), CS Manish Gupta, CS Bimal Jain and CS Pradeep Debnath.
- 15 >> SIRC - National Seminar on Companies Act: NCLT and NCLAT Convergence of Corporate Jurisdiction – CS Ramasubramaniam C addressing. Others sitting from Left: CS Dhanapal S and CS Mohan Kumar A.
- 17-18 >> NIRC - Workshop on Practical aspects of Handling Board Meeting & General Meetings (Covering SS-1 & SS-2) – CS Ranjeet Pandey addressing. Others sitting from Left: CS Nitesh Sinha, CS Ilam Kamboj (Member, SSB) and CS Manish Gupta.

- 14 >> NIRC – Allahabad Chapter - Seminar on NCLT - Emerging Scope of Judiciary - Group photo of participants alongwith CS Rajender Kumar (Asst. Official Liquidator), CS Manish Gupta, CS Pradeep Debnath, CS Nitesh Kumar Sinha, CS Shambhuvesh Dhar Tripathi and others.
- 16 >> SIRC – Mangalore Chapter –Programme on Ease of doing business-Introduction of New Form INC-29 by MCA for Incorporation of Companies under Companies Act 2013 – Sitting on the dais from Left: CS Ulhas S Bhat, CS P V Rai and CS Chethan Nayak K.
- 19-22 >> Earth Day celebrations at ICSI HQ, ICSI NOIDA Office, EIRO and at Bhubaneswar Chapter.

INTERNATIONAL ROUND TABLE ON CORPORATE GOVERNANCE

(Held on 15.04.2016 at Vigyan Bhawan Annexe, New Delhi)



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23 >> A view of the round table session in progress.

30 >> Sitting from Left: Anders Petterson, Vaneeta Patnaik (Asstt. Professor, WB National University of Juridical Sciences), Mahadev Tirunagari, Ahalada Rao V, Gopal Krishna Agrawal, Austin Tyler, Dr. Mahesh Gupta.

24-29 >> Address by CS Alka Kapoor, CS Pavan Kumar Vijay, Antonio Franchi (Partner, Cernelutti Studio Legale Associato), Anders Petterson (Owner, Magnum Opus Consultancy), Austin Tyler (Junior Policy Analyst, Corporate Affairs Division, Dte. for Financial and Enterprise Affairs), K V Achlapathi (Director, Placement Services).

INTERNATIONAL ROUND TABLE ON CORPORATE GOVERNANCE

(Held on 15.04.2016 at Vigyan Bhawan Annexe, New Delhi)



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31-32 >> Sitting from Left: Ved Jain, CS Vineet K Chaudhary, Lt. Gen. J S Ahluwalia, Dr. Mahesh Gupta, A K Chaturvedi, CS Mamta Binani, Dr. Navrang Saini and CS Dr. Shyam Agrawal.

34 >> Release of coffee Table Book titled Corporate Governance – Power of Best Practices.

33 >> Sitting from Left: P P S Harshani (Asst. RoCs, Sri Lanka), Dr. S P Narang, CS Alka Kapoor, CS Deepak Kukreja, CS Monika Kohli, Navneet Dhawan (Corporate Director Admn. and Control, CHL Ltd.), Dr. G B Rao, Ilam C Kamboj, CS Makarand M Lele, CS Rajiv Bajaj, CS Narayan Shankar (CS and Exec. VP, Mahindra and Mahindra Ltd.) and K V Achlapathi.

WHIRLWIND PLENARY ON EVANGELIZING THE INTERNATIONAL CORPORATE GOVERNANCE DAY

Pan India programmes held on 16.4.2016 including flag hoisting, release of balloons and postal stamp of logo of International Corporate Governance day- some glimpses



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35-45>> Flag hoisting by Amravati Chapter, release of balloons by Ahmedabad Chapter, cake cutting by Aurangabad Chapter, discussion meeting by Bhopal Chapter, release of postal stamp by Bengaluru Chapter, flag hoisting by Chandigarh Chapter, Saraswati Vandana before the discussion meeting at ICSI – CCGRT, discussion meeting at Surat Chapter, Flag hoisting at Dhanbad Chapter, discussion meeting at EIRC, flag hoisting at Faridabad Chapter.

WHIRLWIND PLENARY ON EVANGELIZING THE INTERNATIONAL CORPORATE GOVERNANCE DAY

Pan India programmes held on 16.4.2016 including flag hoisting, release of balloons and postal stamp of logo of International Corporate Governance day- some glimpses



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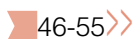
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Release of postal stamps of ICGD logo at SIRC, celebration at Ghaziabad Chapter, release of balloons at Gurgaon Chapter, release of postal stamps by Bandaru Dattatreya (Hon'ble Minister for Labour & Employment, (I/c)) at Hyderabad Chapter, discussion meeting at Indore Chapter, release of postal stamps by Bhubaneswar and Jamshedpur Chapters, release of balloons by Jodhpur Chapter, release of postal stamps by Karnal Panipat and Vadodara Chapters,

WHIRLWIND PLENARY ON EVANGELIZING THE INTERNATIONAL CORPORATE GOVERNANCE DAY

Pan India programmes held on 16.4.2016 including flag hoisting, release of balloons and postal stamp of logo of International Corporate Governance day- some glimpses



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56-66>> Release of balloons by Kochi Chapter, release of postal stamps by Kota Chapter, flag hoisting by Madurai Chapter, discussion meeting at Mangalore Chapter, release of postal stamps by Thiruvananthapuram Chapter, cake cutting at North Eastern (Guwahati) Chapter, release of balloons by Patna Chapter, discussion meetings at Pune, Raipur and Ranchi Chapters, Cake cutting at Rajkot Chapter.

ARTICLES

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Insight to the Companies (Amendment) Bill 2016 – Learn, Unlearn & Relearn » P-21

Makarand M. Lele

The Companies (Amendment) Bill 2016 upon its enactment and enforcement, will require the entrepreneurs to rethink, redefine and realign their business strategies. Company Secretaries are expected to play a vital role in the process of implementation of more new provisions within a short time span of 5 years of enactment of the new Companies Act. The fundamental and conceptual amendments have far reaching impact and Company Secretaries are expected to devote considerable time and energy in understanding it. New challenges create more opportunities but at what cost? The current Indian business scenario expects a stable platform to have a quantum jump. The quick and swift implementation of amendments with an unwritten undertaking of keeping it intact for at least the next 5 years, may help the businesses.

The Role of National Company Law Tribunal under the Companies Act, 2013 » P-28

Pradeep K Mittal

An attempt has been made here to present a concise synopsis of provisions relating to the setting up of NCLT/NCLAT meant to be a "Single Window Institution of Corporate Justice." In other words, it is a consolidation of corporate jurisdiction. The establishment of NCLT/NCLAT will, in all likelihood, reduce delays in corporate laws proceedings as well as multiplicity of litigations involved in such proceedings.

Enforcement of Foreign Arbitration Award in India - Judicial Intervention » P-36

Abha Jaiswal

Arbitration has become a dominant form of dispute resolution in international transactions owing to its speed and effectiveness in resolving commercial disputes. However, big question to take into account is whether, an arbitral award will be readily enforceable in India. The intervention of the Indian Judiciary to enforce foreign arbitration awards and the ease or hardship in doing so in light of stringent requirements provided in the Indian Arbitration Act is the focus of this Article. This Article gives the outlook of how Indian Courts has understood and applied their analysis in pronouncing landmark judgments on enforcement of Foreign Arbitration Awards in India.

Legal Regime of Winding up » P-43

B. V. Satish Kumar

The process of winding up involves identifying and realization of assets and distribution of such proceeds by determining the priorities during the course of winding up and at different stages of the winding up process, occasions may arise for intervention of various other laws into the framework of the process of winding up. Courts will examine various factors before making winding up order and while doing so, the Courts will look into the contractual terms and decide the same by applying the provisions of the Indian Contract Act, 1872, The Limitation Act, 1963 and other applicable laws. SARFAESI has an overriding effect over the Companies Act. The rights of the secured creditors and right of the Liquidator to protect the workmen dues are explained with the help of case laws. Due to the Supreme Court Judgment the order of priority in payment of debts has been changed and the same is explained by taking into account the new provisions in the Companies Act, 2013.

Supreme Court Reaffirms Directors' Liability in Cheque Bouncing Cases » P-47

Delep Goswami & Anirrud Goswami

Bouncing of cheques in commercial transactions inflict a crippling blow on the recipient of the amount and even though such bouncing of cheques is treated as a criminal offence, and the Directors are required to personally appear in the concerned Court on all days, yet repeated attempts are made by such accused Directors by filing petitions after petitions to claim immunity from prosecution. In Standard Chartered Bank v. State of Maharashtra & Ors., the Supreme Court of India in its judgement dated April 6, 2016, analysed and referred to its various previous judgements to trace the development on this subject and where clear principles were enunciated, which are expected to be followed by the Courts below when it receives petition for quashing of summoning orders by the Trial Magistrate. The judgement highlights the importance of stricter interpretation of the law in this regard and expectation that the High Court will give due weightage to the law developed by the Supreme Court in this regard. The article highlights the significance and importance of this judgement and its impact on corporate professionals advising companies, both as in-house counsel or external advisor.

Performance Evaluation of Board » P-52

Komal Patwari

The enforcement of Companies Act, 2013 (the Act) mandates the need to assess the board performance. The Act contains provisions that require a mechanism to be put in place by the company to conduct performance evaluation of the board collectively as well as of the directors individually. Appropriate amendments have further been made in Clause 49 of the Listing Agreement that emphasizes the need for board assessment. Board evaluation is an extremely sensitive corporate governance process and shall help to improve board governance in companies and catalyse personal effectiveness of directors—by both improving board composition and enhancing competencies. If evaluation is undertaken just for the sake of it—because the law mandates it—the evaluation process may become difficult, superficial and possibly, counter-productive. If carried out in earnest, board evaluation has the potential to improve the Board's effectiveness.

Exit Options to the Investors of the Companies Exclusively Listed on the Regional Stock Exchanges now being de-recognised » P-57

Manisha Saboo

Our country has one of the largest numbers of stock exchanges as trading platforms, for dealing in the securities of the companies listed thereat, by the small investors who invest their accumulated savings in the capital of listed companies through trading in those securities. Nevertheless, majority of these Stock exchanges being regional only, did not have nation-wide terminals and were limited in operations to a particular state or region only, and also were not being recognised by Securities and Exchange Board of India (SEBI), thereby making trading by the investors cumbersome. Therefore, time and again, SEBI had been coming up with circulars for these regional stock exchanges to either get themselves voluntarily de-recognised or fulfill the criteria for getting recognised by SEBI failing which these would be compulsorily de-recognised by SEBI. Upon majority of regional stock exchanges been de-recognised, either voluntarily or compulsorily, the investors of the companies which were exclusively listed on these regional stock exchanges only would be adversely affected, upon being unable to trade in their securities. Therefore, to protect the interest of these investors, SEBI advised formation of Dissemination Boards by the recognised stock exchanges having nation-wide terminals where securities of these companies would be placed for buying and selling by investors. Further SEBI advised these exclusively listed companies to either obtain listing at the recognised stock exchanges having nation-wide

terminals to provide trading platform to the investors or provide options to the investors to exit from the securities of these companies. A detailed study to understand this framework of SEBI and examine the plausible options available with these exclusively listed companies for providing exit option to their investors is summarised herein to decipher the same unambiguously.

Corporate Social Responsibility: Compliance challenges

» P-60

Pankaj Mundra

Incorporation of section 135 in Companies Act, 2013 is a revolutionary effort for institutionalising legal framework for CSR in India. The law and related rules governing CSR is nicely crafted so as to avoid any ambiguity and to give clear direction to Companies for their compliance efforts. The position is further clarified with certain amendments in rules and frequently asked questions on CSR. However, Indian companies may have their own ways of interpretation of law. This interpretation when grappled with their way of operations, will lead to various compliance challenges. Therefore, implementation of CSR requirements will not be so easy as it looks like. The article highlights various scenarios where CSR compliance will be a challenge for companies and what are the best ways to come out of these challenges.

RESEARCH CORNER

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Critical Analysis of Indian Balance of Payments

» P-67

Dr. K. Kanaka Raju

The current account as well as the capital account plays an important role in determination of Indian Balance of payments position. The study found that the higher amount of a net balance of invisibles were acquired through the services followed by the transfers and also there was a significant difference between the invisibles to the incomes and services and the more amount contributed as a net balance to the capital account was the banking capital followed by the loans, foreign investment, rupee debt services and other capital and loans. It is suggested that the concerned authority should take necessary steps to increase the favourable balance of Indian capital account as well as the Indian current account by increasing exports and reducing the imports and enhance the inflows rather than outflows in a capital account.

Audit Committees Characteristics Quality and Earnings Quality

» P-72

Prof. K. Shankaraiah & Seyed Masoud Sajjadian Amiri

The study focuses on the relationship between audit committee and earnings quality, aiming at improving the quality of earnings by understanding and managing the audit committee characteristics. The concept of management of earnings quality and its relationship with audit committee characteristics by testing the hypothesis are presented in the context of select Indian companies. It is found in the study that the most of the equity based listed companies at BSE under study, have complied with the legal formalities like appointment of independent directors, number of meetings, size of the audit committee, legal qualifications and financial qualifications of the directors, as they were required for the listing at a stock exchange in India. Further, the analysis and tests stated that though the audit committee quality characteristics have relationship with earnings quality, except numbers of audit committee meetings, others have shown no impact on later. Thus, it may be suggested that the companies may improve the earnings quality by conducting more number of audit committee meetings.

ICSI – CCGRT Jointly with Hyderabad Chapter of ICSI -
Embarking Upon the Voyage of Research » P-79

ICSI - CCGRT - Research Paper Competition » P-81

ICSI - CCGRT Opinion Writing Competition Results » P-83

LEGAL WORLD

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► LMJ: 07:05:2016 Registrar of Companies is a person aggrieved to file a complaint against delay in despatching share certificates under section 113 of the Act. [SC] ► LW: 26:05:2016 In case if the Registered Offices of the two Companies are situated in two different States, requiring such Orders, sanctioning the Scheme to be passed under Section 394 of the Companies Act by two different High Courts, then in that event, the order of this High Court which sanctions the Scheme passed under Section 394 of the Companies Act will be the instrument chargeable to stamp duty. [Bom] ► LW: 27:05:2016 Supreme Court imposes heavy exemplary costs on parties to various share purchase agreements for indulging in inter-se vexatious and frivolous litigation. ► LW: 28:05:2016 Supreme Court approves the good Samaritan guidelines and makes it a law. ► LW: 29:05:2016 The proceedings have been initiated against the appellant as a part of an ongoing dispute between the parties and seem to be due to a private and personal grudge. Prosecution proceedings quashed. [SC] ► LW: 30:05:2016 In order to get benefit of any exemption notification, assessee has to fulfil all the conditions contained in the notification. [SC] ► LW: 31:05:2016 Supreme Court refers the matter, involving the contrary interpretation of the interplay of sections 3 & 4 of the Central Excise Act by two different coordinate benches, to a larger bench for determination. ► LW: 32:05:2016 CCI dismisses complaint made by the association of distributors against Britannia Industries, regarding restrictive clauses in the distributorship agreement. ► LW: 33:05:2016 CCI directs investigation into the complaint made by department of sports against athletic federation of India.

FROM THE GOVERNMENT

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► Clarification with regard to Companies (Accounting Standards) Amendment Rules 2016 ► Substitution of words in Notification No. GSR 832(E) dated 03.11.2015 ► Relaxation of additional fees and extension of last date of filing of various e-Forms under the Companies Act - reg. ► Amendments to Schedule III of the Companies Act, 2013 ► Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016 ► Disclosure of Proprietary Trading by Commodity Derivatives Broker to Client and "Pro - account" Trading terminal ► Electronic book mechanism for issuance of debt securities on private placement basis.

OTHER HIGHLIGHTS

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- Ethics & Code of Conduct Corner
- Ethics & Sustainability Corner
- Brain Teasers

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2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
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11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

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(Signature)



**Every Job is a Portrait of the Person Who Did It.
Autograph Your Work with Excellence.**



Esteemed Professional Colleagues

Greetings from ICSI!

It is my privilege as well as honour to orchestrate my words for this prestigious journal in this august chair of the President, ICSI. Scribbling my pen for this page, it inspires me to take our esteemed Institute on the voyage of sustainable prosperousness and momentum which in turn solicits floating myriad ventures to take our revered profession to the next level. For doing this, it is my firm belief that with the support of all my learned fraternity members and ICSI team, we can travel further milestones for the enrichment of the profession.

“Study hard what interests you the most, in the most undisciplined, irreverent and original manner possible.” As a chieftain of ICSI and a Company Secretary, I believe that these words of Richard Feynman are so apt for advancement of our profession too. The reliance of the stakeholders and society from CS fraternity propels our responsibility towards them and stimulates us to update our knowledge and expertise in our sphere of knowledge. We are guards of Corporate Governance in our respective Boardrooms and ensure that corporate laws are followed in our companies ‘in letter and in spirit’. As these laws are changing like a flash, therefore, we need to keep ourselves wised up of the new developments, to understand and elucidate the spirit behind the change in these laws on a regular basis; so my dear friends, my appeal to your good selves is.....never tire, lose your interest, grow indifferent or lose your invaluable curiosity as there is nothing better in life than commitment to lifelong learning.

International Monetary Fund (IMF) has projected that India will keep continue to grow at a robust pace. The improvement in India's economic fundamentals has accelerated in the year 2015. It is an outcome of combined efforts of strong Government reforms, RBI focus to tame inflation, benign global commodity prices and contributions of India Inc. To shore up this pace of growth, we, the

Company Secretaries are supposed to take up active responsibility by becoming ‘Sutradhars’ of our Boards and the Country at large. Let me take a stock of the activities undertaken by ICSI, during the month of April:

International Round Table on Corporate Governance

The Institute organised International Round Table on Corporate Governance on 15th April 2016 at Vigyan Bhawan, New Delhi. Mr. A. K Chaturvedi, Regional Director, Northern Region and Dr. Navrang Saini, DII, Ministry of Corporate Affairs graced the occasion as Guests of Honour. Organization for Economic Co-operation and Development (OECD), Assocham and PHD Chambers of Commerce and Industry were the Institutional partners. The Round Table had participation from academia, industry, professionals from various countries including France, Italy, Brazil, Sri Lanka. The participants deliberated on the idea of having a day declared as ‘International Corporate Governance Day’ (ICGD) by the United Nations and bringing out an ‘International Corporate Governance Code’. The Round Table demonstrated a strong commitment on having an International Corporate Governance Day and the development and enforcement of rigorous standards of corporate governance.

Whirlwind Plenary on Evangelizing the International Corporate Governance Day

To evangelize the concept of ‘International Corporate Governance Day’, ICSI organised PAN India programmes across the length and breadth of the Country at around 44 locations, through its Regional Councils, Chapters and CCGRT on 16 April, 2016. The stimulus for organizing these programmes was to build consensus from across the Nation at all levels to have a day declared as ‘International Day for Corporate Governance’. The Chapters also released postage stamps on ICGD.

Dubai Global Convention

In its endeavour towards furthering the global footprint, Institute partnered with the Institute of Directors (IOD) in organizing the IOD's 'Dubai Global Convention 2016' (in Partnership with TIMES NOW) on the theme "Empowering Boards to become Instruments of Innovation & Excellence" from 19-21 April, 2016, at Hotel The Meydan in Dubai.

ICSI had the opportunity to address the participants at the Plenary Session on "Driving Excellence through Boardroom". The convention was addressed by eminent professionals, distinguished academicians, leading industrialists and entrepreneurs and Government Officials from Dubai (UAE). The Institute also put up a stall at Dubai Global Convention for display of ICSI Publications and dissemination of information under the Government's initiative of 'Make in India'. We also availed the opportunity to interact with Members and Students in Dubai (UAE) on 20 April, 2016.

Corporate Secretaries International Association(CSIA) Executive Meeting at London

The Institute is playing a significant role in obtaining international cooperation amongst the professional bodies, which share common aspirations and goals. The ICSI is one of the founding members of Corporate Secretaries International Association (CSIA), which is an International Body of Institute of Company Secretaries and Governance Professionals. In its Executive Committee, India holds the position of Secretary. CS Atul Mehta, Immediate Past President, ICSI and myself participated in the CSIA executive meeting on April 28-29, 2016 at London. One amongst many agenda was the point of inclusion of Secretarial Services in the list of services under WTO. The delegation also met with the representatives of International Corporate Governance Network (ICGN), wherein it was discussed to work jointly for matters relating to corporate governance; in addition it was also discussed to share research based articles on corporate governance. We emphasized on the need for organizing joint professional development programmes in India for ICSI members. The delegation also met the Chartered Institute of Securities and Investment (CISI).

ICSI Outreach

With an objective to acknowledge and reiterate the association and bondage with existing precious Memorandum of Understanding partners of ICSI and to explore the avenues of new associations with them, ICSI is celebrating 'ICSI Outreach'. ICSI has Memorandum of Understanding (MoU) with various celebrated Institutes including Government and higher educational bodies, Chambers of Commerce, Stock Exchanges etc. to create synergies for capacity building of its members and students. ICSI Outreach effort shall further the cause of the MOUs.

Professional iTellect - Series of Webcasts and Webinars

As part of building capacity for its members and students in new and emerging areas, a series of webcasts 'Professional iTellect' has been started to enrich the knowledge and wisdom of our dear members and students. A webinar was addressed by Mr. Asish Bhattacharya, Professor in the School of Corporate Governance and Public Policy of the Indian Institute of Corporate Affairs (IICA) and former Professor in Indian Institute of Management (IIM) Calcutta on 28 April on the topic 'Accounting Standard

10- Accounting for Fixed Assets'. A webinar on 'Companies (Amendment) Bill, 2016' to hold discussion on the amendments proposed in the Companies Act, 2013 and its implications on the various corporate compliances was also telecast in the month of April. Overwhelming response has been received from the stakeholders for both. We will keep on embarking this journey.

Initiatives for Members

ICSI is always keen to serve the professional interests of its members and keeps on taking new initiatives for its esteemed members. Following steps have been taken during this month, to facilitate your esteemed selves:

- In order to make the things happen with just a click on the mouse, Membership section of ICSI has been making an effort to digitize Form-D (the application form for issue/renewal/restoration of Certificate of Practice). It will enable our esteemed members to fill and file this form online in the times to come and speed up the process. Similarly, another proforma 'Know Your Member' (KYM) is also under digitisation. This will help to facilitate the members to provide the required details in an online mode in future.
- I am pleased to share with your good selves that Company Secretaries Benevolent Fund (CSBF) has launched two new schemes to augment the enrolment to Life Membership of CSBF namely (i) 'Employer's Revolving Fund Scheme' for their employees and (ii) 'General Revolving Fund Scheme' for the Members of the Institute. These schemes ensure that those members of the Institute who have not completed five years as an ACS, may also have an access to financial help to become the life members of the CSBF. Regional Councils and Chapters have also been requested to undertake diverse activities for furthering the cause of CSBF.

ICSI Ascentia 2016

Training is precious and intertwined component of CS curriculum; in fact, it is at training that our students come to learn practical aspects and the nitty-gritty of the profession. I am delighted to announce that in the month of May, the Institute is conducting a special drive across the Country to register maximum number of Companies/Practising Company Secretaries/Law firms/Universities/other entities with ICSI, for imparting training to our CS Students. It is my request to all my members to fervently come forward and assist the profession in this regard.

National Seminar Series – Companies Act, 2013: 'NCLT and NCLAT: Convergence of Corporate Jurisdiction'

The Institute initiated National Seminar Series on National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with National Foundation for Corporate Governance as the principal sponsor; for building capacity to face the professional challenges and in taking up cases with NCLT and NCLAT, which may come in the form of transitional challenges, i.e. transfer of cases from Company Law Board, High Court, BIFR to NCLT, new powers conferred on NCLT, manner of dealing with cases, drafting of applications/petitions, Court Crafts including Moot Court etc. The Institute has already organised National Seminars at Chandigarh on April 2, Guwahati on April 9, Kolkata on April 23, and Chennai on April 30. The eminent faculties gave effective key takeaways to the participants. Continuous efforts will be made by the Institute in

this direction. Please make use of it, to capitalise the opportunities.

Continuous representations to the MCA

We are all aware of the transitional issues being faced in the website of the MCA. The MCA is working incessantly on putting things in place. ICSI is making continuous representations and giving its best inputs to assist in improving the system.

Presentation before the Select Committee of Rajya Sabha on Prevention of Corruption (Amendment) Bill, 2013

The Select Committee of Rajya Sabha invited ICSI to hear its views on the proposed Prevention of Corruption (Amendment) Bill, 2013 and the amendments proposed to the Bill by the Government in 2015. Accordingly, a delegation of ICSI appeared before the said Committee on April 1, 2016 and I represented the views and suggestions of our members on the proposed Bill.

My Dear Students and Fresh Members

I am thankful to you for being there and giving such a huge and positive response to my monthly webcast talk series 'Precious You'. I have learnt that many of you have got inspired to set SMART goals in your life as indicated by me in my April webcast of 'Precious You', SMART that translates into: Specific, Measureable, Achievable, Realistic and Time bound. This strategy has to be adopted by you in your life. Then, nothing can stop you but you. Imbibe discipline in you, make it a culture and be a legend then. There is no substitute under the heavens for hard work and toil. It is the process by which dreams become realities. It is the process by which idle visions become dynamic achievements. Keep on working towards your smart goals.

Earth Day 2016

We are blessed with a splendid planet and it is our duty to protect our mother Earth, but, the challenge is, all of us think that someone else is going to save it. Today, India ranks 4th in carbon emissions among nations worldwide. Though the Environment Protection Act, 1986, was one of the first legislations brought about by the legislature to protect the environment from degradation caused by the ever-increasing pollution, yet, it is all of us, whose coming together and offering little drops from our side will fill the ocean and make our legacy for generations to come. ICSI initiated a drive to make community aware about the same by celebrating Earth day week and I firmly believe that we can and we will make a difference to protect our mother earth by taking small yet meaningful steps in our daily lives.

Festivities

May is the month symbolizing 'Knowledge'. This month makes us to celebrate 'Budh Purnima' which marks Gautama Buddha's birth, enlightenment and death. Buddha has been and is an influential spiritual teacher during and after his lifetime. He truly interpreted the meaning of education and teaching through four reliances:

**First, rely on the spirit and meaning of the teachings,
not on the words;**

**Second, rely on the teachings,
not on the personality of the teacher;**

**Third, rely on real wisdom,
not superficial interpretation;**

**And fourth, rely on the essence of your pure Wisdom Mind,
not on judgmental perceptions.**

Not only Buddha, the month of May also witnesses the Birth anniversary of Noble Laureate Guru Rabindranath Tagore, the composer of National Anthem 'Jana Gana Mana' of Independent India. The soulful symphony and the evocative lyrics of our National Anthem honor diverse ethnic and cultural groups of India, move us to the realm of national integrity and patriotism and fill us with pride of being an Indian.

Epilogue

I would be signing off with this short story from Stephen Covey's 7 Habits of Highly Effective People. Once upon a time, a very proficient and muscular woodcutter got a job in a timber company. The pay was attractive and so were the work conditions. For those reasons, the woodcutter was determined to shell his best. His employer gave him an axe and showed him the area to work.

The first day, the woodcutter brought 18 trees. "Congratulations," the boss said. "Go on that way!"

Very motivated by the boss words, the woodcutter tried harder the next day, but he could only cut 15 trees. The third day he tried even harder, but he could only cut 10 trees. Day after day he was bringing lesser and lesser trees.

"I must be losing my strength", the woodcutter thought. He went to the boss and apologized, saying that he could not understand what was going on. "When was the last time you sharpened your axe?" the boss asked. "Sharpen? I had no time to sharpen my axe. I have been very busy trying to cut trees..."

Reflection

Our lives are like that. We sometimes get so busy that we don't take time to sharpen the 'axe'. In today's world, it seems that everyone is busier than ever, but, less happy than ever.

Why is that? Could it be that we have forgotten how to stay 'sharp'? There's nothing wrong with activity and hard work. But we should not get so busy that we neglect the truly important things in life, like our personal life, taking time to get close to our Creator, giving more time for our family, taking time to read etc. We all need time to relax, to think and meditate, to learn and grow. If we don't take the time to sharpen the 'axe', we will become dull and lose our effectiveness.

My appreciation for your active participation in ICSI activities and your feedback, suggestions and recommendations are always most precious to us!!.

Best regards

May 05, 2016
New Delhi

Yours sincerely

Mamta Bini

(CS MAMTA BINANI)
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PROFESSIONAL *iTellect*

Making the most out of Possibilities

Knowledge and Change are the two sides of one coin. If knowledge brings change, then the change is also inevitable in the advancement of knowledge. Knowledge and change are so meticulously tied up that to win the world of knowledge it is imperative to opt bendable approach in upgrading one's intellect and adhering to the changes in the field of knowledge.

The Institute of Company Secretaries of India, as a premier institute on striving professional excellence has always been equipped with the modern transformations in the field of knowledge, awareness, information and acquaintance. This approach has always facilitated its members to acquire analytical understanding and updated indulgent of modern knowledge pedestal.

As a part of building capacity for its members and students in new and emerging areas, the Institute has initiated '**Professional iTellect**'.

Series of webinars, with underline objective of rendering quality information in the diverse areas will focus on the structured rising of professional learning, sharpening the knowledge and honing the skill sets of our members and students.

As an opening step, a webinar on AS-10 has been conducted on 28th April, 2016. The following subjects are also planned for the webinar series in the coming months, starting from May 6th, 2016.

- Indirect Taxation
- Real Estate Act
- Capital Markets
- Corporate Governance
- Accounting Standards
- Understanding Financial Statements
- Indian Economy
- Industrial Audit

To register for the upcoming webinars, we request the members and students to visit ICSI website www.icsi.edu on a regular basis. We would also be circulating the schedule of the webinars as and when finalized.

Stay tuned for more information on this !

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ARTICLES



- INSIGHT TO THE COMPANIES (AMENDMENT) BILL 2016 – LEARN, UNLEARN & RELEARN
- THE ROLE OF NATIONAL COMPANY LAW TRIBUNAL UNDER THE COMPANIES ACT, 2013
- ENFORCEMENT OF FOREIGN ARBITRATION AWARD IN INDIA - JUDICIAL INTERVENTION
- LEGAL REGIME OF WINDING UP
- SUPREME COURT REAFFIRMS DIRECTORS' LIABILITY IN CHEQUE BOUNCING CASES
- PERFORMANCE EVALUATION OF BOARD
- EXIT OPTIONS TO THE INVESTORS OF THE COMPANIES EXCLUSIVELY LISTED ON THE REGIONAL STOCK EXCHANGES NOW BEING DE-RECOGNISED
- CORPORATE SOCIAL RESPONSIBILITY: COMPLIANCE CHALLENGES

Safeguarding and caring for your well being



COMPANY SECRETARIES BENEVOLENT FUND

Saathi Haath Badhana
साथी हाथ बढ़ाना

CSBF MONTH - MAY, 2016

In order to bring more awareness amongst the Members of the Institute about the benefits of CSBF once they become its Life Member, the Managing Committee of CSBF has decided to organize CSBF month during May, 2016 across the country. This is yet another endeavour to bring all the Members of the Institute under the CSBF shield who are yet to become Life members of CSBF.

The Members of the Institute who are yet to become life members of CSBF are encouraged to build a security umbrella for their family.

Presently, a Member of the Institute can become a Life Member of CSBF upon making only a one-time subscription of Rs. 7500 to CSBF. The subscription to CSBF also qualifies for deduction under Section 80G of the Income Tax Act, 1961.

A small contribution now will go a long way in securing the future of their near and dear ones as well as the whole family of the Company Secretary fraternity.

Insight to the Companies (Amendment) Bill 2016 – Learn, Unlearn & Relearn



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The Government of India in order to achieve the objectives of **ease of doing business** and **give a boost to Industrial sector and start ups** decided to revisit the Companies Act 2013 and set up a Company Law Committee (CLC) in the month of June 2015. The CLC was assigned the task to study and provide solutions to the issues arising out of implementation of Companies Act, 2013 as well as on the recommendations received from Bankruptcy Law Committee, CSR committee, Law Commission, professional bodies, chambers and other agencies.

The Committee undertook the process of public consultation and met several stakeholders and understood their problems and after a series of deliberations

Bill 2016.

The Companies (Amendment) Bill 2016 (the Bill) to amend the Companies Act 2013 (CA 2013) was tabled in the Parliament on 16th March 2016.

The Bill proposes to amend about 80 sections of the Act in order to address various issues arising in the implementation of the Companies Act, 2013. Its statement of Objects and Reasons read :

- addressing difficulties in implementation owing to stringent compliance requirements;
- facilitating ease of doing business in order to promote growth with employment;

The Companies (Amendment) Bill 2016 upon its enactment and enforcement, will require the entrepreneurs to rethink, redefine and realign their business strategies. Company Secretaries are expected to play a vital role in the process of implementation of more new provisions within a short time span of 5 years of enactment of the new Companies Act. The fundamental and conceptual amendments have far reaching impact and Company Secretaries are expected to devote considerable time and energy in understanding it. New challenges create more opportunities but at what cost? The current Indian business scenario expects a stable platform to have a quantum jump. The quick and swift implementation of amendments with an unwritten undertaking of keeping it intact for at least the next 5 years, may help the businesses.

and meetings, submitted its report on 1st February, 2016. The MCA placed CLC report for public comments on its portal for few days. Several suggestions received from stakeholders and professional bodies like ICSI were considered before giving a shape to the Companies Amendment

- harmonization with Accounting Standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder and the Reserve Bank of India Act, 1934 and the

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regulations made thereunder;

- rectifying omissions and inconsistencies in the Act, and
- carrying out amendments in the provisions relating to qualifications and selection of members of the National Company Law Tribunal and the National Company Law Appellate Tribunal in accordance with the directions of the Supreme Court.

The changes proposed by the Bill can be categorized into three main areas namely:

- Amendments to the existing provisions
- Substitutions of the existing provisions
- Omission of existing provisions

It can further be divided into the following broad categories:

- Ease of Doing Business
- Encouragement for Startups
- Simplification in Compliances
- Additional Disclosures
- Harmonization
- Rectification of inconsistencies

This article is an attempt to analyze the Bill from the perspective of business, promoters and professionals. It is trying to judge the impact on business structures, business strategies, group policies and professional practices prevailing under 2013 Act.

1. DEFINITIONS – SECTION 2

- The concept of **Associate Company** is proposed to be given finishing touches by clarifying the concept of significant influence. It proposes to include control through total voting power than only through share capital. Further the term 'Joint venture' has also been clarified. The businesses need to revisit identification of Associate Companies in the group. Various governance, consolidation and disclosure requirements attached to this identification will have to be complied with.
- A major departure ie being made in the concept of **Holding Company**. It is proposed to add an explanation in the definition to include Body Corporate as holding company. The provisions of the Companies Act, 1956 were recognizing the body corporates as holding companies for Indian subsidiaries. The said identification more or less remained in the books since hardly any limits or disclosures or compliances under the old Act were based on the relationship of holding and subsidiary. Initially under CA 2013 the recognition of body corporate was not included for the purpose of identification of Holding Company under the Act. Rightfully there was never a need to bring body corporates under the Act as Holding Companies and regulate them.

Now the current proposal which seeks to correct the small anomaly has actually far reaching impact. The business and professionals will need to realign the present strategies. It has to additionally check whether its holding body corporate is Public Company under the Act or not. If so then *ipso facto* the Indian company will also be treated as a public company

under the proviso to the definition of public company [section 2(71)]. Stricter compliances are then required. The definition of 'Body corporate' is an inclusive definition and Indian Body Corporates holding voting power or controlling composition will also become Holding companies. There is need to examine the impact of holding body corporate (not being a private company under the Act) on the status of private subsidiary company by virtue of the definition of 'Public Company'.

Additionally all subsidiaries will automatically be out of the definition of Small and need to observe more compliances. Careful examination of this amendment is required before its implementation.

The definition of '**subsidiary company**' is also proposed to be amended by replacing the words 'voting power' by 'share capital'. This change is likely to make LLPs subsidiary of Indian Company on investment basis. This is going to be a major change in group structuring pattern.

Based on holding and subsidiary relationships between companies and bodies corporates, the provisions of consolidation and RPT would also apply.

- Welcome move to plug the anomaly by adding the credit balance in profit and loss account to the **Net Worth**.
 - The definition of '**Related Party**' is proposed to be enlarged by covering any body corporate which is its holding, subsidiary or associate company or a subsidiary of holding company to which it is also a subsidiary. Further a new category of **investing company** and **venturer** is proposed to be added as related party. The definition of both the concepts are not available in the Act or Bill and hence it has to be interpreted to its circumstances to determine whether such body corporate is related party or not. However it can cover the investing LLP as well as any body corporate or company which has made any kind of investment in the Company. Investment in assets, shares, stock, land, joint ventures, human resources, technology, IPR can also be covered.
- The term venturer is very relative concept and can even be attached to a potential joint venture partner with whom negotiations are in process.
- The definition of '**Small Company**' is proposed to be amended by enlarging the maximum limits set for small company criteria. Paid up capital upto Rs. 10 Cr and turnover upto Rs. 100 Cr is proposed to be prescribed. Accordingly government will be able to prescribe the limits for identification of small companies. However the Bill fails to provide any significant exemption and benefit to companies based on its small company status.
 - The definition of '**Turnover**' is being redrafted to provide ample clarity about what is turnover and what is not. The income earned from investments continues to remain out of the definition.

- New section 3A** is proposed to be added in order to fix liability of payment of debts on the members continuing the business of the Company even after the minimum prescribed number of members falls below the requirements. This provision is in line with the provisions of the 1956 Act and set to apply after

6 months of reduction of the number below required minimum.

3. The Bill proposes to provide a freeway to business by **not defining the exact main object in MOA** for which it is to be formed. Companies to be formed after commencement of new Act, will enjoy this benefit by stating that they will engage in any lawful act or activity or business. This may help the business to swiftly changeover its activities without going for any formal approval process. However this may lead to confusions about determining the exact category of the company, its NIC code for a particular year, its business segment. This may also create hardship under other laws where the registration or compliances are activity based. Hopefully some harmonized solution is expected from the government alongside the notification of new law. The doctrine of *ultra-vires* is likely to lose its sanctity. An option has also been provided to companies to specify the exact business activity in place of general clause.
4. The **Incorporation process** is likely to be on fast track mode to enable promoters to form companies in one day and to that direction name reservation period has been reduced to 20 days and affidavits are proposed to be replaced by declarations. Another major change is the proposal to move from **physical to electronic mode in respect of MOA and AOA**. This will definitely reduce the paper work and hectic signature process, but is likely to have some initial troubles as to signing, witnessing, attestation, apostilling and consularization of formation documents in electronic form.
5. For ease of doing business it is proposed to **authorize employee or officer of the Company for authentication of documents**. However the Bill is not stating the level upto which this authorization can flow.
6. **Section 42 on Private Placement is proposed to be substituted with new section**. The current provision has some confusions between invitation to offer to identified investor and Private Placement offer to a group consisting of not more than 200 persons. The same is now being removed in the proposed section. The definition of private placement is proposed to be changed to cover all securities offer and invitation to select group of persons made through private placement offer cum application after satisfying the conditions specified in this section. It is indicated that the clumsy offer letter would be replaced by private placement application form containing terms and conditions of private placement offer.

The proposed section identifies the group of persons as “identified persons”. It also provides an explanation that if offer is made to more than prescribed persons it would be treated as Deemed Public Offer.

The new provision proposes to place restriction on utilization of private placement subscription money before making actual allotment and additionally before filing the allotment return to the Registrar. This restriction appears to be little harsh, since the contract gets concluded on allotment and return filing is just a post conclusion compliance. The non filing of return in time is attracting penalty and hence there may not be a need to link utilization of money with return filing. There appears to be an intention to close all opportunities to do back date or paper based offers. However this restriction strongly highlights

the need to have a simplified money utilization process for companies not having any kind of public interest.

The period for filing return of return of allotment is proposed to be reduced to 15 days from the date of allotment.

In a welcome move companies would be allowed to make offer of **multiple security instruments simultaneously**.

Penalty provisions relating to raising of capital are proposed to be rationalized by linking them to the amount involved in the issue.

7. Clarity has been provided regarding prohibition on **issue of shares at discount**. The current terminology “Discounted Price” is attributed even to issue of shares made below the fair value. The word “discount” is proposed to be replaced with “Discounted Price” to enable the companies to take a safe stand that there is a prohibition only on issue of shares below face value and not below fair value. Further the Companies would be permitted to issue shares at discount in the process of restructuring or as per any statutory resolution plan pursuant to directions or guidelines of RBI.
8. Restriction on issue of **sweat equity shares** within 1 year from the date of commencement of business is proposed to be removed. This would facilitate startups structuring and building up promoter’s contribution.
9. Clarity is sought to be brought about in the applicability of private placement conditions of Chapter III to **further issue of shares**. The same set of rules is currently applicable to offers to identified investor and invitation to group of investors, causing some difficulties to companies in compliances. The proposed amendment while maintaining the linkage between sections 42 and 62, has successfully avoided such confusion. It is specifying that further issue of shares under section 62 (1) (c) needs to comply with all the conditions specified in Chapter III.

Additional dispatch modes are proposed to be provided for sending **Right Issue Notice**.



A proposal is there to introduce abridged Annual Return & Board's Report for OPC & Small Companies. Inclusion of extract of annual return in Board's report is proposed to be removed by making a provision to place the entire annual return on website of the Company and by providing its link in Board's Report.

10. Provision for maintenance of **Deposit Repayment Reserve for Public Deposits** is proposed to be changed to 20% of the amount maturing during the next year in place of 15% of the amount maturing this year and next year. This will strike a perfect balance between security and liquidity and will reduce the cost of borrowings.

The **Condition of deposit insurance** for public deposits is proposed to be removed.

In order to facilitate raising of funds by the Companies, a **permanent ban on companies from raising deposits in case of defaults** is proposed to be changed to a ban for a period of 5 years from the date of making default good.

- It is proposed to extend the maximum period to **3 years for repayment of deposits** accepted under 1956 Act.

The **penalty prescribed for deposit relating to defaults** is proposed to be rationally revised by linking it to a maximum figure of twice the amount of deposits accepted.

11. It is proposed to grant **exemptions to few types of charges from registration** requirements.
12. The proposal to define the term "**beneficial interest in shares**" is indeed a welcome one. It is linked with the right or entitlement of a person to exercise rights attached to shares or to participate or receive the dividend or other distributions relating to shares. The declaration of beneficial interest under section 89 is to be given only in the event the holder of shares and beneficial ownership are distinct. However as an impact of definition, it would be essential to review the joint venture agreements after enactment to check whether granting of any rights to any party is leading to creation of beneficial interest in such shares.
13. A new terminology namely **significant beneficial ownership in the company** is proposed to be introduced as a revamp of section 90. The proposed provision as to identification of significant beneficial ownership and its disclosure is in line with the international governance standards and OECD principles. This is going to be applicable to each and every company and seems to be distinct from the requirements of declaration of beneficial interest in shares of the Company.

Every individual shareholder in the Company holding beneficial interest either alone or together or through one or more persons or trust including non residents of not less than 25% in the shares of the Company or the right to exercise, or

actual exercising of significant influence or control over the company is required to make a declaration about influence and the nature of interest etc. The declaration is mandatory to be given by holders of shares i.e. persons whose names are appearing on register of members. There is a further requirement on the Company to maintain register and file periodic return. Power has also been given to the company to enquire into the significant beneficial ownership by giving notice to an individual. Upon non compliance of provisions of this section, the Tribunal on an application can make an order for placing restriction on such shares.

14. It is proposed to drop the incidences of providing repetitive information in the **Annual Return**. A proposal is there to introduce **abridged Annual Return & Board's Report** for OPC & Small Companies. Inclusion of extract of annual return in Board's report is proposed to be removed by making a provision to place the entire annual return on website of the Company and by providing its link in Board's Report. This is a welcome move and will definitely reduce certain unproductive efforts; however there is a need to examine whether it is viable to place regulators return in a public domain as a public document and if yes, will it defeat the intent of law to provide inspection of records of the Company only on application and under the close control of Registrar? With this proposed amendment, companies would be required to prepare annual return well before approval of accounts and holding of annual general meeting to place the copy of the same on its website and to disclose the link in the board's report. Provision is also required to prescribe the mode of complying this requirement by the companies not having website.
15. The **return of changes in promoter's stake and submission of advance copy of special resolution** for place of keeping registers etc is proposed to be removed.
16. There is a proposal to allow the unlisted company to hold its **AGM anywhere in India** if consented by all its members in writing or in electronic mode. This will save time and energy of many companies in completing the formalities of holding meetings at the registered office by traveling from various places.
17. In respect of holding of EGM a proviso is proposed to be added to restrict the companies to **hold EGM at any place in India**. However the wording of the proviso suggests that WOS of companies incorporated outside India can hold EGM at any place in the world.
18. In respect of **calling of general meeting by shorter notice**, various options are proposed to be added. For AGM consent of 95% of members entitled to vote would be needed and for EGM of share capital company consent of 95% of such part of paid up capital having right to vote would be needed and for EGM of company not having share capital consent of 95% of total voting power would be needed. A proviso is also proposed to be added to give a clarity on inclusion of members entitled to vote on specific resolutions in counting the above percentages.
19. Clarity is proposed to be provided that if any business is required to be transacted by **Postal Ballot**, then it could also be transacted at a general meeting having a facility of

electronic voting. This move will enable maximum shareholders to participate in the meeting and discussions and then vote electronically and will also save the cost of conducting postal ballot and general meeting.

20. It is proposed to remove the duplicate provision of **filing of general meeting resolution** authorizing Board to borrow money and create charge on its assets. There is a proposal to grant **exemption to banking companies** from submitting Board resolutions passed by it for granting loans or giving guarantee or providing securities in its ordinary course of business.
21. Necessary clarification is proposed to be added to the provisions of declaration of **Interim Dividend** by specifying that it can be declared even after closure of financial year till holding of AGM and could be out of surplus in Profit & Loss account or out of profits of that financial year or out of profits generated till last quarter before declaration. In case of loss upto the end of the immediately preceding quarter, the rate of interim dividend should not exceed average dividend of last 3 years. The provision is clarifying all doubts, but logically it seems to be impossible to pay interim dividend once the Board concludes the accounts for the year by approving financial statements in its meeting. At the most interim dividend can be declared in the same meeting of approval of financial statements.
22. In respect of preparation of **Consolidated Financial statements** a clarification is proposed to be added by stating the need of preparing separate standalone financial statements and Consolidated Financial Statements of all subsidiaries and associate companies as per applicable Accounting Standards and laying both before the Annual General Meeting.
23. New requirement for listed company to **place on its website, separate audited accounts of its each subsidiary** is proposed. In respect of foreign subsidiary if audit of accounts is not prescribed as per law of the country, then unaudited accounts is to be so placed.
24. There would be a mandatory requirement for **Chief Executive Officer to sign the Financial Statement** even if he is not director in the Company.
25. In respect of provision for **Annual Evaluation of Board's performance** clarity is proposed to be provided by stating that evaluation is for the performance of Board, its committees and individual directors. Evaluation is to be carried out either by the Board or nomination/ remuneration committee or by an independent external agency.
26. The open ended applicability of **CSR** is proposed to be restricted to only immediately preceding financial year. Constitution of CSR committee wherein no independent director is mandated, is proposed to be removed. The explanation to section 135 is proposed to be replaced with new one containing the words "net profit" instead of "average net profits". In view of this deletion of the word 'average', calculation of net profits for the purpose of both sub sections (5) and (1) is required to be done as per the formula provided in section 198. This small change will grab many companies under the belt of CSR provisions, since profit based eligibility criteria specified in sub section (1) will now be profits before tax as calculated under section 198. For calculation of net profits in addition to specifications under section 198, Government can add more specifications.
27. **Ratification of Appointment of Auditors** in every annual general meeting during his tenure is proposed to be removed. This may lead to depriving of shareholders right to appoint or reject the appointment of auditors in every annual general meeting. The only remedy available to shareholders would be to remove the auditors during his term by passing the necessary resolution. This amendment does not seem to be a healthy sign for shareholders democracy.
28. As regards the **eligibility criteria for appointment of Auditors**, the specific definition of 'relative' is proposed to be added. It contains the criteria like financial dependency or consulting for investment. The said criteria based relationship is very difficult to prove. **Auditor's disqualification based on consulting and rendering of other services** is proposed to be restricted only to such auditor and not to a subsidiary or associate or any other form of entity. Further, disqualification based on consulting and rendering of other services is proposed to be extended to the rendering of services to holding or subsidiary companies .
29. **Criminal liability on Auditors firm** other than of fine is proposed to be restricted only to the concerned partner or partners by appropriately following the principle of *mens rea*.
30. **Resident director** requirement is proposed to be attributed to the current financial year and not previous calendar year and proportionally for newly incorporated companies.
31. Clarity is proposed to be provided for **Pecuniary Relationship** terminology for appointment of Independent Director. The remuneration as a director and transactions not exceeding 10% total income are to be excluded. Interest through relative is given a specific shape. A proposal to consider relative's interest only for the preceding three years will provide a relief to companies in the matter of technical compliances.
32. It is learnt that government is planning to switch over to "**Aadhar**" based **KYC and identification** for directors and hence enabling provision is proposed to recognize any other number equivalent to DIN. Meanwhile the professionals can start inclusion of Aadhar numbers of directors in the forms and returns, so as to build a database.
33. Independent directors and directors recommended by Nomination Remuneration Committee are proposed to be exempted from the requirements of making a **directorship election deposit**.
34. A clarity is proposed in the **appointment of Alternate directors**. Persons holding alternate directorship or directorship in the Company cannot be appointed as Alternate in the same company. The confusion about applicability of provisions of **Casual Vacancy** to private company is proposed to be cleared. The requirements of subsequent confirmation in general meeting of appointment of a director in casual vacancy is proposed to be added.

35. The **disqualification of a director** on account of non filing of returns and repayment of deposits is proposed to be made operational after a gap of 6 months from the date of appointment. The disqualification occurring due to court or tribunal order for disqualification or conviction will continue to apply even if appeal or petition is preferred.
36. In counting the **number of directorships**, dormant companies are proposed to be excluded. However a fallout provision is needed when the company ceases to be dormant.
37. The **vacation of office** by a director on account of non compliance of the provisions of section 164 (2) will take place only in companies other than defaulting company.
38. The requirement of **filing of letter of resignation by a Director** with the Registrar is proposed to be made optional.
39. In respect of **participation of director through Video Conferencing (VC) in a Board meeting** considering the specified business, clarity is proposed to be provided that if the physical quorum is present, then the other directors may participate through VC. The difference between holding of meeting through VC and participation of directors in a meeting through VC is clearly identified through this proposal. This also gives a relief to non resident directors to participate in the discussion and voting on important matters like approval of financial statements etc without traveling to the place of meeting.
40. It is proposed to restrict the requirement of having **Audit Committee, Nomination and Remuneration Committee and Stakeholders committee** only by public listed companies. In a way government has clarified its stand that there could be private listed companies also.

The role of **Nomination and Remuneration Committee** is clearly identified by specifying the manner of carrying out performance evaluation of Board, its committees and individual directors by the Board or independent external agency and to review its implementation and compliances.
41. **Ratification of Related Party Transaction** below Rs. 1 crore entered by directors or officers is proposed to be through Audit Committee within a period of 3 months. If such transaction is not ratified, then it will be voidable at the option of the Audit Committee. Audit Committee can recommend non section 188 related party transactions to the Board, if it is not approving it. Audit committee approval or ratification is proposed to be made applicable only to RPT between holding company and its WOS and not in any other case.
42. The requirement of **disclosure of Interest by a director** is proposed to be exempt even for transactions between one or more companies and one or more bodies corporate, in which director or directors hold not more than 2% of the paid up capital. It is a good move to place body corporates along with companies in the exclusion criteria. However along with paid up capital, voting power criteria is also required to be added, since all bodies corporate don't have paid up capital.
43. Major changes are proposed in section 185 regulating **loans to directors**. An appropriately worded new section is proposed

to replace existing section 185. Granting of loan, guarantee or security (referred as granting) is categorized as **prohibited, conditional and exempted**.

The **prohibition** is proposed to be made applicable for granting to director or his partner or relative or a firm in which such director or relative is a partner or to holding company of the company.

The **conditional grant** is possible to any person in whom the director is interested (other than prohibited categories). The company has to pass a special resolution and the explanatory statement to the notice should disclose all the facts and particulars. If the borrower is a company then loan should be utilized for its principal business activity. 'Any person' for the purpose of conditional granting means a private company in which director is a director or member or any body corporate in which not less than 25% of the voting power can be exercised or controlled by such director or a body corporate falling under the clause of accustomed to act.

The **exempted categories** are loan to MD/ WTD as a part of service condition or scheme and loans by companies in their ordinary course of business by charging interest as per tenure and loan, guarantee or security by holding company to its WOS and guarantee or security by holding company to its subsidiary company with a condition to use it for its principal activity.

In the list of offences under this section contravention by borrower on account of wrong utilization of loan is proposed to be added.

On the background of proposed flexibility in object clause, company can move from one activity to another within a fraction of second and then it would be difficult to keep track of its principal business activity and utilization of loan.

44. The Restriction on **subsidiary investment layers** is proposed to be removed. For **loans and investments by the company**, clarity is proposed by exempting employees from applicability. Calculation of limits is to be done on aggregate of existing and proposed loans or investments. Exemption is proposed to be provided for loan, guarantee or security to its WOS or joint venture company or for acquisition of shares in WOS.

Companies established with the object of and engaged in financing and infrastructure activities need not comply with this section. The word 'establishment' has been added to ensure that under the garb of different main object clause, company should not resort to financing activities. However regulating this aspect is going to be difficult in the era of no main object company. Core Investment Company below specific assets size are not required to obtain any license from RBI for undertaking investment and financing activities within the group. Can such company be established with no main object and then claim the exemption?

A deeming provision for principal business is proposed to be added on the line of 50% assets and income criteria adopted by RBI. The base document for this could be last years audited balance sheet and hence it would be difficult for a company to identify its principal business activity at the hitting point of

For public companies approval of Central Government would not be needed for payment of remuneration to managing director exceeding 11% of net profits. For payment of remuneration exceeding limits or for waiver of recovery of excess remuneration, prior approval of banks, financial institutions, non convertible debenture holders or secured creditors is proposed.

making loan or investments.

It is proposed to provide clarity that for the purpose of this section 'person' will not include employees of the Company.

45. In **related party transactions** voting by a related party member in the general meeting is proposed to be eased out by granting exemption to the companies having more than 90% of their members as relatives of promoters or are related parties. This exemption seems to be unwarranted because going by the interpretation of provisions and prevailing MCA clarification, only a related party member is not entitled to vote but others can, even if they are relatives or related parties of the interested member.
46. Provisions relating to **Forward Dealings and Insider Trading** are proposed to be omitted. A rightful move by the government to grant relief to companies in which public money is not involved.
47. It is proposed to clarify that only for variance in the conditions specified in Part I of Schedule V for the **appointment of MD/ WTD**, approval of the Central Government would be needed.
48. For public companies approval of Central Government would not be needed for **payment of remuneration to managing director** exceeding 11% of net profits. For payment of remuneration exceeding limits or for waiver of recovery of excess remuneration, prior approval of banks, financial institutions, non convertible debenture holders or secured creditors is proposed.

It is proposed that director should repay the excess remuneration to the Company within a maximum period of 2 years.

It is proposed to cast a duty on Auditors to report payment of remuneration in conformity with the provisions of the Act and disclose any excess remuneration.

The Central Government approval is proposed to be omitted and on commencement of the Act all pending applications for approval will abate and companies would be required to take approvals as per then applicable provisions. It seems that remuneration proposals before the commencement of the Amendment Act, needs to be dealt with under new Act and mostly there would be a need to take approval of members

by special resolution.

49. It is proposed to enlarge the powers of Central Government to **investigate ownership of the Company** by extending it to persons who have or had beneficial interest in the shares of a Company or who are or have been beneficial owners or significant beneficial owners of a Company.
50. Direct or indirect interest of **Valuer** in the Company for valuation assignment is proposed to be confined to a period of 3 years before the date of appointment and 3 years after the valuation.
51. It is proposed to allow the entities such as partnership firm, LLP, co-operative society, society, any other business entity formed under any law to **register as Private Companies** only with 2 members.
52. In a welcome move clarity is proposed to be provided about **applicability of the Act to Foreign Companies**. Presently, there is a disconnect between the definition of foreign company and section 379 and hence confusion about applicability of the Act including requirement of registration for Branch, Liaison or Project Offices established by foreign company in India. By proposed insertion in the Act, it will be confirmed that all such offices in India would need registration. A specific provision about applicability of CSR provisions is proposed to be added in Foreign Companies chapter.
53. Provisions relating to **Nidhis** and their applicability is proposed to be clarified by substituting the present section with new one.
54. Amendments are proposed in the matter of **appointment of members to NCLT** to bring it in line with the directives of the Supreme Court.
55. Another welcome move is to provide **directives to Special Courts** while deciding the amount of fine or imprisonment. The parameters would be size of the Company, nature of its business, injury to public interest, nature of default and repetition of defaults.
56. It is proposed to grant **relief to OPC & Small Companies from levy of penalties**. It would be limited to half the normal fine and imprisonment for certain non filing defaults.
57. The existing **Punishment for Fraud** is proposed to be made applicable only to the frauds involving an amount above Rs. 10 lacs or 1% of the turnover of the Company, whichever is lower. Frauds involving amounts below Rs. 10 lacs or 1% of the turnover of the Company whichever is lower, and not having involvement of public interest, will attract lesser fine.

The Companies Act 2013, its rules, notifications and clarifications issued thereunder are too fresh to have a sequel. However it appears that government under the garb of ease of doing business is keen to produce it. On implementation of 2016 amendments, we will witness a storm of amendments in operative rules. Challenging days and nights are still on for Professionals.

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The Role of National Company Law Tribunal under the Companies Act, 2013



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The NCLT and NCLAT are at last emerging after protracted litigation. Several Commissions and High-Level Committees have been suggesting early formation of NCLT/NCLAT in order to reduce litigation before various authorities like:

- CLB under Companies Act;
- BIFR/AAIFR under Sick Industrial Companies (Special Provisions) Act, 1985;

There will be at least 16 Benches of NCLT, thereby providing justice at the doorsteps of corporates. NCLT will be a statutory body and it would enjoy all the powers conferred under Companies Act, 2013. The proposed NCLT will have judicial and technical experts who will handle all matters presently being handled by CLB, Company Court and BIFR with much wider jurisdiction in terms of scope of the subjects.

An attempt has been made here to present a concise synopsis of provisions relating to the setting up of NCLT/ NCLAT meant to be a "Single Window Institution of Corporate Justice." In other words, it is a consolidation of corporate jurisdiction. The establishment of NCLT/NCLAT will, in all likelihood, reduce delays in corporate laws proceedings as well as multiplicity of litigations involved in such proceedings.

- High Court which have jurisdiction and powers relating to Corporate Restructuring, Arrangement, Amalgamation, Reduction of Share Capital and Winding up Proceedings.

In this article, the author presented the powers being conferred on the NCLT by the Companies Act, 2013 in a tabular format for easy reference.



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POWERS CONFERRED ON NATIONAL COMPANY LAW TRIBUNAL

The following Table shows the various sections of the Companies Act, 2013 under which powers can be exercised by the NCLT.

Powers of NCLT	Section under Companies Act, 2013
Chapter –I “ Preliminary”	
To allow certain companies or body corporate to have a different financial year	2(41)
Chapter –II “Incorporation of Company and matters incidental thereto”	
In case a company has got incorporated by furnishing any false or incorrect information or by suppression of any material fact or information, NCLT can pass such orders as it thinks fit.	7(7)
Any asset remaining on wind-up of a Section 8 company may be transferred to another company having similar objects with the approval of Tribunal or transferred to the Rehabilitation and Insolvency Fund under section 269.	8(9)
Conversion of a public company into a private company requires the approval of NCLT.	14(1)-Proviso
Chapter -IV “Share Capital and Debentures”	
Not less than ten per cent of the issued shares of a class, who did not consent to a variation, may apply to the Tribunal for cancelling the variation.	48(2)
NCLT can approve issue of further redeemable preference shares when a company is unable to redeem its existing unredeemed preference shares or to pay dividend thereon.	55(3)
NCLT can order forthwith redemption of such preference shares the holder of which have not consented to the issue of further redeemable preference shares.	55 (3)-Proviso
To make an order prohibiting delivery of certificates for the securities issued by a company.	56(4)
The transferee of shares in a private company may appeal to the NCLT within one month from the receipt of notice of refusal or within sixty days from the date on which the instrument of transfer or intimation of transmission was delivered to the company.	58(3)
The transferee in a public company within sixty days of refusal to register transfer or transmission, or within ninety days of delivery of instrument of transfer or of intimation of transmission may apply to the NCLT for relief.	58(4)
To dismiss appeal against refusal to register transfer and transmission of shares OR to direct rectification of register and payment of damages by company.	58(5)
To order rectification of register of members on transfer or transmission of shares.	59(2)
To direct a Company or depository to set right a contravention of any provision of the SCRA or SEBI Act or any other law, resulting from transfer of securities and to rectify concerned registers and records held by the Company or depository.	59 (4)
To approve Consolidation and division of share capital resulting in change in voting percentage of shareholders.	61(1)(b)-Proviso
Where the terms of conversion of debentures into shares of a company ordered by the Government are not acceptable to the company, the company may appeal to the Tribunal for making such order as it may deem fit.	62(4)-Proviso
Confirmation by NCLT for reduction of capital in a company limited by shares or guarantee and having share capital.	66(1)
Where the assets of a company are insufficient to discharge the debentures, the debenture trustee may apply to the NCLT.	71(9)
NCLT to order redemption of debentures forthwith by payment of principal and interest due thereon.	71(10)
Chapter V “Acceptance of Deposits by Companies”	
To direct the company to make repayment of the matured deposits or for any loss or damage incurred by him as a result of non-payment.	73(4)
On an application by the company, NCLT may allow further time to the company to repay the amount of deposit or part thereof and the interest payable.	74(2)
Chapter –VII “Management and Administration”	
On the application of a member, the Tribunal may call or direct the calling of an annual general meeting if default is made in holding the Annual General Meeting.	97(1)

Powers of NCLT	Section under Companies Act, 2013
In case it is impracticable to call a meeting, the Tribunal may either <i>suo motu</i> , or on application of a director or member of the company who is entitled to vote at the meeting, order calling of extra ordinary general meetings and give such directions as may be necessary.	98(1)
The Tribunal may direct that inspection of minute book of general meeting by a member be permitted.	119(4)
Chapter –VIII “ Declaration and Payment of Dividend”	
To sanction utilization of IEPF for reimbursement of legal expenses incurred on class action suits by members, debenture holders or depositors.	125 (3)(d)
Chapter –IX “Accounts of Companies”	
The Tribunal may allow a company to recast its financial statements.	130(1)
With the approval of NCLT, a company may prepare revised financial statement for any of the three preceding financial years.	131(1)
Chapter-X “Audit and Auditors”	
To restrict copies of representation of the auditor to be removed to be sent out.	140 (4)
The Tribunal may, on the application of the company or any aggrieved person, order that copy of representation by the Auditor need not be sent to members nor read at the meeting.	140(4)(iii)(b)-Second Proviso
Where the NCLT is satisfied that the Auditor has acted in a fraudulent manner, it may order that the Auditor may be changed.	140(5)
Chapter- XI “Appointment and Qualifications of Directors”	
Regarding removal of director, NCLT may order that representation from the director need not be sent to the members nor read at the meeting.	169(4)(b) proviso
Chapter –XIV “ Inspection, Inquiry and Investigation”	
To order investigation of the affairs of the company.	210(2)
The Tribunal may ask the Central Government to investigate into the affairs of the company in other cases on application where the business of the company is being conducted with an intent to defraud creditors, or where persons concerned in the formation of the company or management of its affairs have been guilty of fraud, misfeasance or other misconduct and members have not been given all the information with respect to the affairs of the company.	213
To order investigation of ownership of company.	216 (2)
NCLT may pass suitable orders for the protection of the employees in respect of investigation under sections 210,212,213 or 219.	218(1)
To order freezing of assets of company on inquiry and investigation in case of complaint made by its members, for a period of three years.	221(1)
To impose restrictions in connection with securities.	222(1)
To entertain petition for winding up of a company or body corporate in pursuance of Inspector’s report.	224(2)
To hear petition for winding up of a company presented by the Central Govt.	224(2)
NCLT may, on an application by Central Government, pass an order for disgorgement of assets and other matters.	224(5)
To pass orders after inspector’s intimation of pendency in investigation proceedings.	226 First Proviso
Chapter –XV “Compromises, Arrangements and Amalgamations”	
With reference to compromise or arrangements between the company and its creditors and members, the Tribunal may order a meeting of creditors or class of creditors or members of the company.	230(1)
To sanction compromise or arrangement agreed to at the meeting of creditors/ members ordered by the Tribunal.	230 (6)
To dispense with calling of meeting of members/ creditors for approving compromise or arrangement.	230(9)
To pass orders on a grievance application in respect of takeover offer of companies other than listed companies.	230 (12)
To enforce compromise and arrangement as sanctioned under Section 230.	231(1)
If the Tribunal is satisfied that the compromise or arrangement sanctioned under Section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up of the company.	231(2)

Powers of NCLT	Section under Companies Act, 2013
To sanction a scheme of merger and amalgamation.	232(1)
To call meeting of creditors or members for facilitating merger and amalgamation of companies.	232 (2)
If the Central Government is of the opinion that the scheme filed under section 233 is not in public interest, it may file an application before the Tribunal within Sixty days of receipt of the scheme under sub section (2).	233(5)
To entertain the application made by the dissenting shareholders of the scheme approved by the majority.	235(2)
Any aggrieved person in respect of compensation made by the prescribed authority may file an appeal to the Tribunal within 30 days.	237(4)
Appeal to the Tribunal against the refusal of the Registrar to register the circular.	238(2)
Chapter- XVI “Prevention of Oppression and Mismanagement”	
Complaints of oppression and mismanagement will be heard by the Tribunal.	241(1)
Where the company’s affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company, Tribunal may pass necessary orders.	242(1)(a)
To make an order where winding up the company would unfairly prejudice such member or members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the Company should be wound up.	242(1)(b)
Tribunal may pass orders for regulation of conduct of affairs of the company in future.	242(2)(a)
To make an order for purchase of shares or interests of any members of the company by other members thereof or by the company.	242(2)(b)
To make an order for reduction of share capital consequent to purchase of shares of the company in the manner envisaged under Section 242(2)(b)	242(2)(c)
The Tribunal can restrict transfer or allotment of the shares of the company.	242(2)(d)
To terminate, set aside or modify any agreement, however arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the NCLT, be just and equitable in the circumstances of the case.	242(2)(e)
To terminate, set aside or modify any agreement between the company and any person other than the managing director, any other director or manager referred to in Clause (e) of sub-section (2) of Section 242. Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned.	242(2)(f)
To set aside any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within 3 months before the date of the application made pursuant to section 241, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference.	242(2)(g)
Removal of the managing director, manager or any of the directors of the company.	242(2)(h)
Recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilization of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims.	242(2)(i)
Manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company.	242(2)(j)
Appointment of such number of persons as directors, who may be required by the NCLT to report to NCLT on such matters as the NCLT may direct.	242(2)(k)
Imposition of costs as may be deemed fit by the NCLT	242(2)(l)
Any other matter for which, in the opinion of the NCLT, it is just and equitable that provision should be made.	242(2)(m)
In case of termination or modification of certain agreements by the Company with managing directors or other directors, leave be granted by the NCLT.	243(1)
To pass specified order on receipt of application by members or depositors or any class of them in case they are of the opinion that the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.	245(1)

Powers of NCLT	Section under Companies Act, 2013
To punish for the contempt of the Tribunal in cases where a fraudulent application is made u/s 241(Oppression and Mismanagement) and 245(Class Action Suits). This power shall apply for Sections 337 to 341.	246
Chapter –XVIII “Removal of Name of Companies from the Register of Companies”	
To wind up a company the name of which has been struck off by Registrar from the register of companies.	248 (8)
Tribunal may order restoration of the name of a company to the register of companies in case of an appeal made to the tribunal within three years of the order of the Registrar.	252(1)
To entertain the application made by the secured creditors of a company representing 50 per cent or more of its outstanding amount of debt and the company has failed to pay the debt within a period of 30 days of the service of the notice of demand.	253(1)
NCLT may appoint an interim administrator within seven days of receipt of application under Section 256.	254(1),(3)
NCLT may appoint interim administrator to be the company administrator in case of an application made by the creditors that the company can be revived.	258
NCLT can delineate or direct the functions and duties of the Company administrator.	260
To sanction the scheme of revival and rehabilitation of sick industrial companies as prepared under Section 261 of the Companies Act, 2013.	262
To implement the scheme of revival and rehabilitation of sick industrial companies.	264
Where the scheme is not approved by the creditors, NCLT may issue orders for the winding up of the sick company.	265
To assess damages against the delinquent Directors in the course of the scrutiny or implementation of any scheme or proposal and pass suitable orders.	266
To punish in case of making a false or incorrect evidence to the NCLT or the NCLAT.	267
Chapter-XX “Winding Up”	
To pass order of winding up of the company.	270 (1)
To wind up companies under various circumstances.	271 (1)
To decide about the inability of the company to pay its debts.	271(2)(c)
To grant leave to prospective creditor for filing petition of winding up.	272 (6)
On receipt of petition for winding up, NCLT may either dismiss the petition with or without costs; make any interim order as it thinks fit; appoint a provisional liquidator of the company till the making of a winding up order, make an order for the winding up of the company with or without costs; or any other order as the NCLT thinks fit.	273 (1)
NCLT may ask the company to file its objections, if any, along with a statement of its affairs within 30 days of the order in the manner prescribed.	274
NCLT shall appoint Official Liquidator from the panel maintained by the Central Government, as the Company Liquidator.	275(1)
To limit and restrict the powers of the Official Liquidator or Provisional Liquidator as the case may be.	275(3)
It can remove the Provisional Liquidator or the Company Liquidator as the Liquidator of the company on specified grounds.	276(1)
Where loss or damage is caused due to fraud or misfeasance or where liquidator fails to exercise due care or diligence in the performance of its powers, NCLT can pass orders to recover loss or damage from the liquidator.	276(3)
To give intimation of order for winding up to Company Liquidator, Provisional Liquidator and Registrar of Companies.	277(1)
On application of company liquidator, NCLT to constitute winding up committee.	277(4)
To order stay on suits or other legal proceedings on winding up order.	279(1)
To give directions on report of Company Liquidator	282(1)
During liquidation, the custody of company's property passes to the NCLT.	283(1)
The list of contributories and application of assets in all cases where rectification is required will be settled by the Tribunal.	285(1)
To constitute an advisory committee to advise the Company Liquidator and to report to the NCLT.	287(1)

Powers of NCLT	Section under Companies Act, 2013
To stay the proceedings of winding up on application of promoter, shareholders or creditors or any other interested person.	289(1)
To issue directions and to exercise control on the powers of the Company liquidator.	290
To issue directions and to exercise overall control on the powers of the liquidator.	290 (1)
To sanction the appointment of professionals (CA, CS, CWA or Legal Practitioners) for assistance to Company Liquidator in the performance of his functions and duties.	291(1)
To Confirm, reverse or modify the act or decision complained of for the company liquidator.	292 (4)
For better accountability in company's winding up, NCLT to order the audit of accounts of Company Liquidator.	294(1)
To exercise control on inspection of books by creditor or contributory.	293 (2)
To cause accounts of the company liquidator to be audited.	294 (3)
To pass an order requiring any contributory for the time being on the list of contributories to pay any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call.	295(1)
To make calls on the contributories on the list for payment of money to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.	296
To adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.	297
To make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up.	298
To summon persons suspected of having property of company in case the person is capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, of affairs of the company.	299
To order examination of promoters, directors in case the Company Liquidator is of the opinion that a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation.	300
In case a person is having property, accounts or papers of the company in his possession and is trying to leave India or abscond NCLT to order detention and arrest of such person.	301
NCLT, after considering the report of the company liquidator, shall pass order dissolving the company.	302
To hear winding up petition where company is being wound up voluntarily.	306 (3) (b)
Where in a voluntary winding-up the company liquidator reports that a fraud has been committed, NCLT may pass such order and give such directions as are necessary.	317
When the affairs of the company have been completely wound up, NCLT can pass order for dissolution of the company in a voluntary winding up.	318(5)
To vary, confirm or set aside arrangement between the company and its creditors.	321 (2)
To determine questions in winding up or exercise powers as to staying of proceedings etc.	322 (1)
NCLT determines the questions arising out of winding up of the company where an application has been made for determining any question arising in the course of winding up of the Company, or exercise the staying of proceedings or any other matter with respect to the enforcing of the calls.	322(3)
To give an option to company to declare the transaction relating to transfer of property, delivery of goods etc as fraudulent preference and to restore the position as if the company had not given such preference.	328 (1),(2)
To determine liabilities and rights of certain fraudulently preferred persons who acted as surety or guarantor or creditor to the company.	331 (3)
To grant leave to disclaim the onerous property in case of a company likely to be wound up.	333
To pass orders against avoidance of transfers including actionable claims or alteration in the status of members of company etc, after commencement of winding up.	334 (2)
To grant permission to enforce any attachment, distress or execution after the commencement of winding up.	335(1)
To direct liability for fraudulent conduct of business to any person on application of Company Liquidator.	339(1)

Powers of NCLT	Section under Companies Act, 2013
To assess damages against delinquent directors, manager, liquidator or officer of the Company for misapplication, misfeasance or breach of trust.	340
Liability of partners or directors of the company under Section 339, Companies Act, 2013 relating to fraudulent conduct of business or under section 340, Companies Act, 2013 relating to misfeasance or breach of trust can be extended by the NCLT.	341
The delinquent officers and members of the Company who are found to be guilty of any offence in relation to the company are liable to be prosecuted by the NCLT.	342
To sanction powers to be exercised by liquidator for payment to creditors in full etc.	343 (1)
To direct the manner for disposal of books and papers of company after the complete winding up of the company or of the company likely to be dissolved.	347 (1)(a)
To permit company liquidator to open account in a bank other than scheduled bank for the deposit of the monies received.	350 (1)-Proviso
To disallow the payment of remuneration in part or in full to the liquidator in case money which is required to be deposited in Company Liquidation Account and Undistributed Assets Account is not deposited by the liquidator.	352 (8) (c)
To pass order to make the default good by filing the returns etc with the company liquidator on request of any creditor or contributory or the Registrar.	353
To ascertain the wishes of creditors or contributors by calling their meetings in all matters relating to winding up of the company.	354
To declare dissolution of company void on an application made by the Liquidator of the Company or by any other person at any time within 2 years from the date of dissolution.	356
Chapter- XXI “ Companies Authorized to Register under this Act”	
To grant leave to institute suits or any legal proceedings against the company or any contributory after passing of winding up order.	373
Powers regarding winding up of unregistered company in case of inability of the Company to pay its debts or it is considered equitable and just to wind up the company or the company is carrying business only for the purpose of winding up.	375 (3)
To exercise powers or to do any act for winding up of Unregistered Companies.	377
Chapter- XXVII “National Company Law Tribunal and Appellate Tribunal ”	
NCLT can rectify any mistake in any order passed by it, within 2 years from the date of order.	420
General Power to amend any defect or error in any proceeding before NCLT and to make all necessary amendments for the purpose of determining the real question or issue raised by or depending on such proceeding.	
The NCLT shall have the powers of a Civil Court under the Code of Civil Procedure, 1908. In this regard, the NCLT can pass order in the following circumstances: (a) Summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act 1872, requisitioning any public record or document or copy of such record or document from any office; (e) issuing commissions for the examination of witnesses or documents (f) dismissing a representation for default or deciding it <i>ex-parte</i>; (g) setting aside any order of dismissal of any representation for default or any order passed by it <i>ex parte</i>; and (h) any other matter which may be prescribed by the Central Government. Matters prescribed by the Central Government for the purpose, are as under:- (1) Granting stay or order status quo (2) Ordering injunction or cease and desist; (3) Appointing commissioner(s) under the Companies Act, 2013 (4) Exercising limited power to review its decision to the extent of correcting clerical or arithmetical mistakes or any accidental slip or omission as provided in rule 140 of NCLT Rules, 2013; (5) Passing such order or orders as it may deem fit and proper in the interest of justice.	424(2)

Powers of NCLT	Section under Companies Act, 2013
Power of Bench of NCLT to call for further information or evidence.	
Where the applicant appears but respondent does not appear at the hearing, NCLT has the Power to hear and decide a petition or application <i>ex parte</i> .	
NCLT to dispose of application or petition expeditiously within 3 months from the date of presentation before it. Extension period of 90 days may be granted for disposal.	422
NCLT has the power to regulate its own procedure for the purpose of discharging its functions under the Companies Act, 2013.	424(1)
Power to pass order after giving the parties to any proceeding before it a reasonable opportunity of being heard, thereby observing the principles of natural justice. The NCLT shall send a copy of every order passed to the parties concerned.	424
Power of NCLT to pass orders and directions to prevent abuse of its process or to secure the ends of justice.	
Power of NCLT to make orders necessary for meeting the ends of justice or to prevent abuse of process of NCLT is absolute and inherent and nothing in the NCLT Rules, 2013 shall limit such power of the NCLT.	
NCLT has the powers to issue commission for examination of witnesses or documents.	424(2)(e)
<i>Power to punish for contempt</i> The NCLT shall have the same jurisdiction, powers and authority in respect of contempt of themselves as a High Court has and may exercise, for the purpose, the powers under the provisions of the Contempt of Courts Act, 1971. <i>Powers of High Court under Contempt of Courts Act, 1971</i> The High Court has and exercises the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself. Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860) These powers of the NCLT shall have the effect subject to the modification prescribed in Section 425 of the Companies Act, 2013, namely as under:- (a) The reference to a High Court shall be construed as including a reference to the NCLT and the NCALT; and (b) The reference to Advocate-General in section 15 of the Contempt of Courts Act, 1971 shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.	425
NCLT has the power to delegate powers to any officer or employee or any person to inquire in to the matter connected with any proceeding and report to it.	426
To impose such conditions or restrictions as it thinks fit subject to the payment of fee, while according approval, sanction, consent, confirmation etc. giving directions or granting exemptions.	426
NCLT can seek assistance of Chief Metropolitan Magistrate, Chief Judicial Magistrate, or District Collector to take possession of property, books of accounts or other documents on behalf of the NCLT.	429
Chapter- XXVIII “Special Courts”	
NCLT can compound certain offences in certain cases before the investigation has been initiated or pending.	441
Offences punishable with fine only, either before or after the institution of any prosecution, can be compounded by NCLT.	441
Chapter- XXIX “Miscellaneous”	
Power to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter.	459

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Enforcement of Foreign Arbitration Award in India - Judicial Intervention



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BACKGROUND

The First Ordinance on Arbitration and Conciliation came into force on 25th January, 1996 and the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), came into force on 22nd August, 1996. The Supreme Court in *Fuerst Day Lawson Ltd v Jindal Exports Ltd.*¹ held that the Arbitration Act came into force in continuation of the first Ordinance and this makes the position clear that although the Act came into force on 22nd August, 1996, for all practical and legal purposes, it shall be deemed to have been effective from 25th January, 1996, particularly when the provisions of the Ordinance and the Arbitration Act are similar and there is nothing in the Arbitration Act to

enforcement of awards thereunder. Part II relates to enforcement of foreign awards. Chapter 1 of Part II deals with Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 i.e. New York Convention Awards and Chapter 2 deals with Geneva Convention on the Execution of Foreign Arbitral Awards 1927 i.e. Geneva Convention Awards.

FOREIGN AWARD

Section 44 of the Arbitration Act deals with Foreign Award. Under this section, the Indian court recognizes and enforces foreign arbitral awards [i.e. *an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as*

Despite the fact that elaborate provisions have been made in Part II of the Arbitration and Conciliation Act, 1996 for enforcement of foreign arbitral awards, controversies and problems do arise in the matter of enforcement of foreign awards. The Supreme Court of India had considered this aspect in several cases and rendered important decisions. The Indian judiciary is giving the much deserved attention to the various challenges on technical grounds in enforcement of foreign awards in India.

the contrary so as to make the Ordinance ineffective as to either its coming into force on 25th Jan., 1996 or its continuation up to 22nd Aug., 1996.

The Indian Arbitration Law is based on the United Nations Commission on International Trade Law (UNCITRAL). India is also a signatory to the New York Convention signed on 10th June, 1958 and ratified on 13th July, 1960 and the Geneva Convention (1924).

Part I of the Arbitration Act provides for any arbitration conducted in India and

commercial under the law in force in India, made on or after the 11th day of October, 1960] only if the awards satisfy the following two conditions:

1. there is a valid agreement in writing for arbitration to which the New York Convention applies; and
2. the arbitral award is made in a territory which the Indian Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be a territory to which the New York Convention applies.

*ACIS (UK). The views expressed in this article are personal views of the author.

¹ 2001 (2) RAJ 1 (SC); AIR 2001 SC 2293.

Similar key checks have been laid down in section 53 of the Arbitration Act which deals with the Geneva Convention awards.

From a perusal of sections 44 & 53 of the Arbitration Act, it appears that in order to come to a conclusion that a particular award is a foreign award the following conditions have to be satisfied:

- a) The legal relationship between the parties must be commercial.
- b) The award must be made in pursuance of an agreement in writing.
- c) The award must be made in a convention country.²

Therefore, an award made in a non-notified convention country will not be considered as a 'foreign award' within the meaning of section 44 & 53 of the Arbitration Act.

'COMMERCIAL': MEANING

In Black's Law dictionary, "commercial" is defined as: "Relates to or is connected with trade and traffic or commerce in general is occupied with business and commerce". [Anderson v. Humble Oil & Refining Co., 226 Ga. 174 S.E. 2d 415, 416]

The Supreme Court in the case of RM Investments Trading Co Pvt. Ltd v Boeing Co & Anor³, while construing the expression 'commercial relationship', held that "the term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not."

WHAT CONSTITUTE 'AGREEMENT IN WRITING'

What is an agreement in writing is explained by para 2 of Article II to the First Schedule of the Arbitration Act. If we break down para 2 into elementary parts, it consists of four parts. It includes an arbitral clause:

- in a contract containing an arbitration clause signed by the parties,
- an arbitration agreement signed by the parties,
- an arbitral clause in a contract contained in exchange of letters or telegrams, and
- an arbitral agreement contained in exchange of letters or telegrams.

If an arbitration clause falls in any one of these four categories, it must be treated as an agreement in writing.⁴

In Sara International Ltd. v Golden Agri International Pte Ltd. decided on 04.06.2010 the relevant clause referred in sale contract reads : "All other terms and conditions in accordance with FOSFA B1 ruling currently in force with the exception of Arbitration. Arbitration, if any, shall be in accordance to the PORAM rules of Arbitration and Appeal currently in force at the date of contract." The Delhi High Court held that a perusal of the quoted clause shows that the parties to the agreement

were not sure or determined at the time of the sale contract about reference of the dispute to arbitration. While reading the words "Arbitration, if any" in the clause it appears that the parties were yet to decide whether the future disputes between them were to be referred or not. Where there is merely a possibility of the parties agreeing to arbitration in future as contrasted with an obligation to refer disputes to arbitration, there would be no valid and binding arbitration agreement as per settled law. The words used in a said clause should disclose a determination and obligation to go to arbitration and not merely the contemplation of the possibility of going to arbitration. It appears that the said clause of arbitration is vague and uncertain and cannot be the basis for arbitration or binding on the parties.

In *Great Offshore Ltd v Iranian Offshore Engineering & Construction Company*⁵, the Supreme Court accepted faxed agreements as other means of telecommunication and concluded that there is no requirement of the document containing the contract to be original. It can be a copy of the original.

In *Shakti Bhog Foods Limited v. Kola Shipping Limited*⁶, the Supreme Court held that from the provisions made under section 7 of the Arbitration Act that the existence of an arbitration agreement can be inferred from a document signed by the parties, or an exchange of letters, telex, telegrams or other means of telecommunication, which provide a record of the agreement

In the absence of signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letter, telex, telegrams and other means of telecommunication.⁷



² CentroTrade Minerals & Metals Inc. v. Hindustan Copper Ltd. (2006) 11 SCC 245, 283
³ (1994) 5 SCC 54
⁴ Smita Conductors Ltd vs Euro Alloys Ltd (2001) 7 SCC 728

⁵ 2008 (11) SCALE 776: 2008 (9) JT 339

⁶ (2009) 2 SCC 134

⁷ Trimex International Fze v Vedanta Aluminium Limited (2010) 3 SCC 1.

CONVENTION COUNTRIES

List of Signatories of the New York Convention, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards*: -

Afghanistan	Germany	Nigeria
Albania	Ghana	Norway
Algeria	Greece	Oman
Antigua and Barbuda	Guatemala	Pakistan
Argentina	Guinea	Panama
Armenia	Haiti	Paraguay
Australia	Holy See	Peru
Austria	Honduras	Philippines
Azerbaijan	Hungary	Poland
Bahamas	Iceland	Portugal
Bahrain	India	Qatar
Bangladesh	Indonesia	Republic of Korea
Barbados	Iran (Islamic Republic of)	Republic of Moldova
Belarus	Ireland	Romania
Belgium	Israel	Russian Federation
Benin	Italy	Rwanda
Bolivia (Plurinational State of)	Jamaica	San Marino
Bosnia and Herzegovina	Japan	Sao Tome and Principe
Botswana	Jordan	Saudi Arabia
Brazil	Kazakhstan	Senegal
Brunei Darussalam	Kenya	Serbia
Bulgaria	Kuwait	Singapore
Burkina Faso	Kyrgyzstan	Slovakia
Cambodia	Lao People's Democratic Republic	Slovenia
Cameroon	Latvia	South Africa
Canada	Lebanon	Spain
Central African Republic	Lesotho	Sri Lanka
Chile	Liberia	St. Vincent and the Grenadines
China	Liechtenstein	Sweden
Colombia	Lithuania	Switzerland
Cook Islands	Luxembourg	Syrian Arab Republic
Costa Rica	Madagascar	Tajikistan
Côte d'Ivoire	Malaysia	Thailand
Croatia	Mali	The former Yugoslav Republic of Macedonia
Cuba	Malta	Trinidad and Tobago
Cyprus	Marshall Islands	Tunisia
Czech Republic	Mauritania	Turkey
Denmark	Mauritius	Uganda
Djibouti	Mexico	Ukraine
Dominica	Monaco	United Arab Emirates
Dominican Republic	Mongolia	United Kingdom of Great Britain and Northern Ireland
Ecuador	Montenegro	United Republic of Tanzania
Egypt	Morocco	United States of America
El Salvador	Mozambique	Uruguay
Estonia	Myanmar	Uzbekistan
Fiji	Nepal	Venezuela (Bolivarian Republic of)

8 Source: www.newyorkconvention.org

Finland	Netherlands	Vietnam
France	New Zealand	Zambia
Gabon	Nicaragua	Zimbabwe
Georgia	Niger	

List of Countries notified by the Government of India under section 2 of the Foreign Awards (Recognition and Enforcement) Act, 1961

Name of the Country	No. & Date of Notification	Name of the Country	No. & Date of Notification
Austria	11(4)/72-P&P-24-1-1972	Republic of Korea	12(10)/75-E.Pol.9th Jan., 1979
Australia	N.A.	Malagasy Republic	12(10)/75-E.Pol.7-1-1978
Belgium	12(10)/75-E. Pol. 28-4-1980	Mexico	12(10)/75-E.Pol.7-1-1978
Botswana	12(10)/75-E. Pol. 7-1-1978	Morocco	11(4)/72-P&P-16th May, 1973
Bulgaria	11(4)/72-P&P-14-6-1972	Nigeria	11(4)/72-P&P-16th May, 1973
China	S.O. 580(E), 19-03-2012	The Netherlands	11(4)/72-P&P-24-11-1972
Cuba	12(10)/75-E.Pol.7-1-1978	Norway	11(4)/72-P&P-14-6-1972
Central African Republic	9(18)/80-E.Pol.3-2-1983	Philippines	11(4)/72-P&P-24-11-1972
Czechoslovak Socialist Republic	40(8)-Com.(Genl.) 66 10-3-1967	Poland	31(21)/67-Bot 29-2-1968
Chile	12(10)/75-E.Pol. 1-3-1980	Romania	11(4)/72-P&P-14-6-1972
Denmark	12(10)/75-E.Pol. 7-1-1978	San Marino	9(18)/80-E.Pol.3-2-1983
Ecuador	11(4)/72-P&P-14-6-1972	Singapore	10/5/99-Leg.III, 06-07-1999
The Arab Republic of Egypt	12(10)/75-E.Pol.7-1-1978	Spain	12(10)/75-E.Pol. 1-3-1980
Finland	18(7)/70-P&P-7-2-1978	Sweden	11(4)/72-P&P-24-11-1972
France	18(6)/70-P&P-3-8-1970	Switzerland	40(5)-Com.(Gen.) 66 2-2-1967
German Democratic Republic	12(10)/75-E.Pol.7-1-1978	Syrian Arab Republic	12(10)/75-E.Pol.25-9-1978
Federal Republic of Germany	11(2)-Com.(General)19-12-1966	Thailand	11(4)/72-P&P-24-11-1972
Ghana	11(4)/72-P&P-16th May, 1973	Trinidad and Tobago	12(10)/75-E.Pol.7-1-1978
Greece	11(4)/72-P&P-15-6-1972	Tunisia	11(4)/72-P&P-16th May, 1973
Hongkong	S.O. 580(E), 19-03-2012	U.S.S.R.	18(6)/70-P&P-7-2-1972
Hungary	31(8)/167-Bo T&FT (Coord.) 14-6-1967	U.K.	12(10)/75-E.Pol.-25-10-1976
Italy	12(10)/75-E.Pol.1-3-1980	United Republic of Tanzania	11(4)/72-P&P-24-11-1972
Japan	11(4)/72-P&P-24-11-1973	United States of America	11(4)/72-P&P-24-11-1972
Kuwait	9(18)/80-E.Pol.-3-2-1983		

EFFECT ON ARBITRATION POST DIVISION OF COUNTRY

In the case of *Transocean Shipping Agency Pvt. Ltd v Black Sea Shipping & Ors*⁹, the venue of arbitration was Ukraine which was then a part of the USSR — a country recognized and notified by the Government of India as one to which the New York Convention would apply. However, by the time disputes arose between the parties the USSR had disintegrated and the dispute came to be arbitrated in Ukraine (which was not notified). The question arose whether an award rendered in Ukraine would be enforceable in India notwithstanding the fact that it was not a notified country. Both the High Court of Bombay (where the matter came up initially) and the Supreme Court of India in appeal, held that the creation of a new political entity would not make any difference to the enforceability of the award rendered in a territory which was initially a part of a notified territory. On this basis the court recognized and upheld the award.

LAW APPLICABLE TO COMMERCIAL CONTRACT BETWEEN PARTIES OF DIFFERENT COUNTRIES

In international contracts, it is likely that laws of more than one country may get applied until specified in the contract itself. In arbitration, chosen law may regulate the procedures to be used in arbitration and, may also affect decisions concerning the hearings' procedure and enforcement of the decision. The Supreme Court in *National Thermal Power Corporation v. Singer Company & Ors*¹⁰ observed as under:

⁹ (1998) 2 SCC 281
¹⁰ (1992) 3 SCC 551

‘ In international contracts, it is likely that laws of more than one country may get applied until specified in the contract itself. In arbitration, chosen law may regulate the procedures to be used in arbitration and, may also affect decisions concerning the hearings’ procedure and enforcement of the decision. ’

"23. The proper law of the arbitration agreement is normally the same as the proper law of the contract. It is only in exceptional cases that it is not so even where the proper law of the contract is expressly chosen by the parties. Where, however, there is no express choice of the law governing the contract as a whole, or the arbitration agreement as such, a presumption may arise that the law of the country where the arbitration is agreed to be held is the proper law of the arbitration agreement. But that is only a rebuttable presumption.

25. The parties have the freedom to choose the law governing an international commercial arbitration agreement. They may choose the substantive law governing the arbitration agreement as well as the procedural law governing the conduct of the arbitration. Such choice is exercised either expressly or by implication. Where there is no express choice of the law governing the contract as a whole, or the arbitration agreement in particular, there is, in the absence of any contrary indication a presumption that the parties have intended that the proper law of the contract as well as the law governing the arbitration agreement are the same as the law of the country in which the arbitration is agreed to be held. On the other hand, where the proper law of the contract is expressly chosen by the parties, as in the present case, such law must, in the absence of an unmistakable intention to the contrary, govern the arbitration agreement which, though collateral or ancillary to the main contract, is nevertheless a part of such contract."

In case of *Kitechnology NV v Unicolor GMBH Plastmaschinen*¹¹ both the parties to the agreement were foreigners and the agreement specifically provided that the agreement was to be governed by German laws, the dispute was to be resolved by arbitration and the seat of arbitration was to be at Frankfurt. It was held that this Act applies in cases where one or more parties is a foreigner but the place of arbitration is India. According to the arbitration agreement of the parties, the German court has exclusive and competent jurisdiction with respect to the dispute. It follows that where the parties to the agreement were foreigners and the place of arbitration was not in India and a foreign law was applicable, then provisions of Part I of this Act are not applicable. In view of section 2(2), this is not international commercial arbitration to which Part I will apply.

In *Yograj Infrastructure Ltd. v. Ssang Yong Engg. & Construction Co. Ltd.*,¹² it was provided that the Indian Laws shall be the governing law of the agreement. Further,

it was provided that the arbitration proceedings shall be conducted in Singapore in accordance with Singapore International Arbitration Centre (SIAC) Rules. While deciding the case, Supreme Court made a distinction between proper law and curial law. While proper law is the law that governs the agreement/contract itself, curial law regulates the procedure to be adopted in conducting the arbitration. It was ultimately held by the Supreme Court that the applicability of Part I of the Arbitration Act is excluded. Later the Supreme Court clarified on 15.12.2011 that:

"the observations made in paragraphs 35 and 37, if read together, indicate that, although, when the seat of arbitration was in Singapore, the SIAC Rules would apply, the same included Rule 32 which provides that it is the International Arbitration Act, 2002, which would be the law of the arbitration. Accordingly, it is clarified that while mention had been made in paragraph 35 that the Curial law of the arbitration would be the SIAC Rules, what has been subsequently indicated in paragraph 37 of the judgment is that International Arbitration Act of Singapore would be the law of the arbitration.."

By agreeing upon the particular law governing the contract, the arbitration procedures and the arbitration agreement itself can have a significant impact on the resolution of disputes between the parties to the contract.

CHALLENGES FOR ENFORCEMENT OF FOREIGN AWARDS

It is now a settled law as laid down in *Fuerst Day Lawson Ltd. v. Jindal Export*¹³ that it is not necessary to take up separate proceedings one for deciding the enforceability of the award and the other to take up execution thereafter and that both the reliefs could be sought for in the same proceeding and one single petitioner, where both the reliefs could be combined together and sought for.

It was said in *Austbulk Shipping Sdn Bhd v. P.E.C. Limited*¹⁴ that once a foreign award is passed, the same cannot be enforced immediately like a domestic award. The said award has to be initially put through the process of enforcement, which is mandatory before an award could be executed. The provisions of the Arbitration Act, particularly sections 47, 48 and 49 envisage the mode and manner in which a foreign award is to be enforced



11 1999 (1) RAJ 385 (Del).
12 (2011) 9 SCC 735

13 2001 (2) RAJ 1 (SC); AIR 2001 SC 2293.
14 (2005) 2 Arb LR 6 (Del)

“ The party seeking to enforce the award has to make an application under section 47 of the Act enclosing therewith the evidence as mentioned therein. Such an application could be resisted by the party against whom enforcement is sought by furnishing proof to the court of the existence of one or more of the defenses as set out in section 48 of the Arbitration Act. It is only when the Court decides and records its satisfaction that the award is enforceable, then only the award could be enforced as a decree of the court. ”

and could be executed. The party seeking to enforce the award has to make an application under section 47 of the Act enclosing therewith the evidence as mentioned therein. Such an application could be resisted by the party against whom enforcement is sought by furnishing proof to the court of the existence of one or more of the defenses as set out in section 48 of the Arbitration Act. It is only when the Court decides and records its satisfaction that the award is enforceable, then only the award could be enforced as a decree of the court.

Section 48 lays down seven grounds where the court may refuse enforcement of the foreign award. The first five grounds indicated in the said section deal mainly with the procedural defects where the party resisting the enforcement of the award makes an application to the court for refusing its enforcement and furnishes proof to it on existence of one or more of said grounds.

The other two grounds are:

- a) The subject-matter of the difference is not capable of settlement by arbitration under the law of India; or
- b) The enforcement of the award would be contrary to the public policy of India.

PUBLIC POLICY – GROUND FOR REFUSAL

In *Renusagar Power Plant Co. Ltd. v. General Electric Co.*,¹⁵ the court in view of the absence of a workable definition of “international public policy” found it difficult to construe the expression “public policy”. In the *Renusagar case*, while giving narrow meaning to the expression ‘public policy of India’ the Supreme Court observed that “It is obvious that since the Act is calculated and designed to subserve the cause of facilitating international trade and promotion thereof by providing for speedy settlement of disputes arising in such trade through arbitration, any expression or phrase occurring therein should receive, consisting with its literal and grammatical sense, a liberal construction.”

In *Shri Lal Mahal Ltd v. Progetto Grano Spa*¹⁶, the Supreme Court held that the expression “public policy of India” used in section 34 is required to be given a wider meaning. It can be stated that the

concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Hence, in view of the narrower meaning given to the term “public policy” in *Renusagar Power Plant Co Ltd v General Electric Co* it is required to be held that the award could be set aside if it is patently illegal. The result would be - award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interests of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void. Therefore, the scope for challenging a foreign award with respect to a domestic award has been restricted.

FOREIGN SEAT OF ARBITRATION FOR INDIAN ENTITIES

In *M/s Addhar Mercantile Private Limited v. Shree Jagdamba Agrico Exports Private Ltd*¹⁷ both parties were from India but had mutually decided to have the seat of arbitration in Singapore or India under English Law. The question to be decided was whether choosing foreign law and foreign seat of arbitration by Indian Parties to the contract is against the public policy. The Bombay High Court decided that both parties are Indian having been registered in India, the arbitration cannot be treated as an International Commercial Arbitration as per section 28(1) of the Arbitration Act and therefore Indian law has to be applied.

Reference was drawn from the case *TDM Infrastructure Private Limited v UE Development India Private Limited*¹⁸ in which the Supreme Court held that when both the companies are incorporated in India having Indian nationalities, then the arbitration between them cannot be said to be an international commercial arbitration under section 2(1)(f) of the Arbitration Act.

PROVISION FOR TWO-TIER ARBITRATION: CONTRARY TO PUBLIC POLICY

In *Centrotrade Minerals & Metal. Inc. v. Hindustan Copper Ltd.*¹⁹, Centrotrade entered into an agreement with HCL where Centrotrade was the seller and the HCL was the purchaser of copper concentrate. The agreement provided for arbitration before the Indian Council of Arbitration (“ICA”) and, if either party was in disagreement with the award rendered by the ICA, the right to appeal to a second arbitration under the rules of the International Chamber of Commerce (“ICC”) in London. A dispute arose between the parties and was referred to the ICA for arbitration leading to an award in favour of HCL. Centrotrade then initiated

¹⁵ AIR 1994 SC 860.

¹⁶ (2014) 2 SCC 433

¹⁷ Arbitration Application No 197/2014

¹⁸ (2008) 14 SCC 271

¹⁹ (2006) 11 SCC 245 (270)

arbitral proceedings in London, before the ICC, appealing the ICA's award. The ICC arbitrator rendered an award in favour of Centrotrade. Centrotrade sought to enforce the award in India and applied to the Court of the District Judge in Alipore. HCL resisted the enforcement application on the basis of section 48 of the Arbitration and Conciliation Act 1996. The District Judge found for Centrotrade, a decision which HCL appealed to the High Court. The High Court held that although successive arbitrations were not permissible in India, the two awards cancelled each other out. Both Centrotrade and HCL appealed the High Court's decision to the Supreme Court. The Supreme Court allowed HCL's appeal, granting an order to stay the enforcement of the award, as it held that the part of the dispute resolution clause concerning the appeal of the ICA's award was void ab initio and did not have effect. The Supreme Court held that serious procedural defects in the arbitral proceedings would be contrary to public policy, as the concept is understood in Indian law, and could therefore constitute a ground for refusing an award's enforcement. Turning to the clause at hand, the Supreme Court stressed that Indian law did not allow the parties to agree on whether an award could be appealed. Such a contractual arrangement, the Court held, would be void as contrary to public policy. The Supreme Court considered that if a court has the power, under section 45 of the Arbitration to determine whether an agreement to arbitrate is valid for the purpose of referring the parties to arbitration, a court should also have the power to arrive at a finding with respect to the validity of an arbitration agreement in the context of enforcement of an award.²⁰

APPLICABILITY OF PART I OF THE ARBITRATION ACT

In *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc*²¹ the Supreme Court gave the landmark judgment on 06th Sept., 2012 deciding that Part I of the Arbitration Act, 1996 is applicable only to all the arbitrations which take place within the territory of India. However, the notable point is that the judgment has a prospective applicability. This judgment delivered by five judges' bench overrules the earlier decision of the Supreme Court given in case of *Bhatia International v Bulk Trading S.A & Anr*²² wherein the Supreme Court held that provisions of Part I of the Arbitration Act would apply to international commercial arbitrations taking place outside India "unless the parties by agreement... exclude all or any of its provisions", meaning thereby that the courts had the same powers of intervention in a foreign arbitration as they would have had in an Indian arbitration.

Further in *Harmony Innovation Shipping Ltd. v. Gupta Coal India Ltd. & Anr*²³ the Supreme Court clearly identified that though there is no exclusion of Part I of the Arbitration Act yet the agreement clearly states that if any dispute or difference would arise under the charter, arbitration in London to apply; that the arbitrators are to be commercial men who are members of London Arbitration Association; the contract is to be construed and governed by English Law; and that the arbitration should be conducted, if the claim is for a lesser sum, in accordance with small claims procedure of the London Maritime Arbitration Association. There is no other provision in the agreement that any other law would govern the arbitration clause. So once the parties had consciously agreed

that juridical seat of the arbitration would be London and that the agreement would be governed by the laws of London, it was no longer open to contend that provisions of Part I of the Act would also be applicable to the arbitration agreement.

COURT FOR FILING ENFORCEMENT APPLICATION

Perusal of section 47 of the Arbitration Act shows that enforcement application shall be made to a Court. The term "Court" used in section 47 has been defined in explanation as a principal civil Court of original jurisdiction. Thus, after the principal civil court of original jurisdiction records a finding that the award is enforceable, that award is deemed to be a decree of that court.

In *Brace Transport Corporation of Monrovia, Bermuda v. Orient Middle East Lines Limited, Saudi Arabia & Ors*²⁴ the Supreme Court quoted the extract from the "Law and Practice of International Commercial Arbitration by Redfern and Hunter (1986 edition)" stating that "A party seeking to enforce an award in an international commercial arbitration may have a choice of country in which to do so; as it is sometimes expressed, the party may be able to go forum shopping. This depends upon the location of the assets of the losing party. Since the purpose of enforcement proceedings is to try to ensure compliance with an award by the legal attachment or seizure of the defaulting party's assets, legal proceedings of some kind are necessary to obtain title to the assets seized or their proceeds of sale. These legal proceedings must be taken in the state or states in which the property or other assets of the losing party are located."

The place of arbitration will have been chosen as a neutral forum, thus enforcement proceedings can be brought where the property of the judgment debtor may be situated.²⁵

CONCLUSION

As things stand today, Indian courts' role does not end with the progression of arbitration as one of the preferred alternative for dispute resolution. The success of arbitration depends upon on the fast and speedy enforcement of the awards delivered. Any delay in the realization of the foreign award will often have serious commercial consequences for the party entitled to the benefit of the award. It is a welcome step that Indian judiciary is giving a much deserved attention to the various challenges on technical grounds in enforcement of foreign awards in India. CS

²⁴ 1995 Supp (2) SCC 280

²⁵ 2012 (2) ARBLR 397 (Bom)

Corrigenda

April 2016 issue of Chartered Secretary

1. In the Article titled "Transparency in Related Party Transactions: A Key to Good Corporate Governance", on page 23 in clause (iv) under the heading Identification of Related Parties after the word "manager" the word "or his relative" shall be inserted.
2. In the Article titled 'Mind the Gap: Quorum Voting at the Committee Level', on page 51 under the heading Current Regulatory Framework the last line of first para be read as under:
would require 6 members to be present.

The inadvertent errors are regretted.

²⁰ Source: www.newyorkconvention1958.org

²¹ (2012) 9 SCC 552

²² (2002) 4 SCC 105

²³ AIR 2015 SC 1504

Legal Regime of Winding up



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Winding up is a process by which the affairs of the company come to an end. The winding up of a Company will ultimately result in dissolution thereof and all legal and financial affairs will come to an end and thereafter its name will be struck off from the records of Registrar of Companies. The Company Court will have a supervisory and/or administrative jurisdiction in the whole process of winding up and the Official Liquidator will act as custodian of the company in liquidation subject to the supervision of the Court. Where a company passes a resolution for voluntary winding up or Court admits the winding up petition, it marks the end of business of the company but its corporate existence continues for

which are frequently invoked during the process of winding up of a company are The Indian Contracts Act, 1872, The Limitation Act, 1963, Transfer of Property Act, 1882, SARFAESI - 2002, SICA 1985 and The Employees Provident Funds and Miscellaneous Provisions Act, 1952. Depending on the nature of transaction, other laws like Income Tax Act, 1961, Sale of Goods Act, 1930, Sales Tax Acts may come into operation during the process of winding up.

THE COMPANIES ACT 1956 / 2013

Section 443 of The Companies Act, 1956

While the Companies Act provides the basic legal framework for the winding up of a company, several other legislations also get invoked in the process of winding up. The whole process of winding up is very complex and involve web of legislations at various stages of winding up process. The Courts will take into account various laws not only at the time of admitting the winding up petition but also throughout the process of winding up until the company is finally dissolved by the Court.

the limited purpose of realization of assets and paying off debts and liabilities of the company. Finally it will be dissolved with the approval of the Court.

The Companies Act is the main legislation which governs the process of winding up of a company. The process of winding up involves identifying and realization of assets and distribution of such proceeds by determining the priorities. During the course of winding up and at different stages of the winding up process, occasions may arise for intervention of various other laws into the framework of the process of winding up. The most important laws

(Section 273 of The Companies Act, 2013) empowers the Courts to dispose of the winding up petitions. The Court has power to dismiss or admit a winding up petition. Ordering winding up is the discretion of the Court. Merely because any one of the circumstances enumerated in section 433 of the Companies Act, 1956 (Section 271 of The Companies Act, 2013) exists, it is not mandatory for the court to order winding up of the company. It will examine various factors before making a winding up order. It will check the bonafides of the petitioner before admitting the petition. While deciding the bonafides, the Court

Once the winding up order is passed, the secured creditor has two options in relation to realization of his secured debt. He can remain in the scheme of the winding up and file a claim before the official liquidator and the official liquidator will settle the same as per order of priority prescribed in The Companies Act. In the alternative, he can stand outside the winding up order and proceed to realize his debt by taking steps as per the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002.(SARFAESI).

will look into the contractual terms and decide the same by applying the provisions of the Indian Contract Act, 1872, The Limitation Act, 1963 and other applicable laws.

THE INDIAN CONTRACT ACT, 1872

Existence of a legally enforceable debt and company's inability to pay are *sine qua non* for admission of a winding up petition. A valid, definite and quantifiable debt is necessary to create a jural relationship between debtor and creditor. Any question of legality of debt or any dispute or difference regarding the existence of debt and the company's inability to pay such debts are to be determined by interpretation of contractual terms and conditions between the parties. If there is a dispute between the parties regarding debt and it is bona fide, Court will not admit the winding up petition.

While deciding the validity of debt, the Delhi High court held that when a company defied the terms and conditions of the contract, such claim is not categorized as debt for the purpose of a winding up proceedings as the claim is disputable.[European Metal Recycling Ltd v. Blue Engineering P Limited (Delhi, C.P No.154 of 2009)]. In the absence of written contract between the parties the court cannot ascertain what was the exact nature of the transaction and the winding up petition is dismissed by the court. [Welldone Estate Projects Ltd v. Today Homes & Infrastructure P Ltd, (Delhi High Court C.P. No. 380 of 2008)]. If the defence of the company is that agreement in question is void and it is substantial and bonafide, Court will not admit the winding up petition.

After a winding up order is made by the Court, the Official Liquidator takes possession of the assets and realizes the assets through public auction. The whole process of public auction i.e. right from the advertisement inviting bids to confirmation of sale by Court will be conducted as per the provisions of the Indian Contract Act, 1872. In the case of sale by auction, issuing advertisement for the purpose of auction is a mere invitation to offer and the acceptance of highest bid by the official liquidator is provisional and it will become absolute when confirmed by the Court. Under

the condition of sale, the Court may set aside a sale even after the purchase consideration is paid by the bidder and the sale is confirmed by the Court.

The auctioneer can prescribe his own terms and conditions on the basis of which the property is exposed to sale by auction. The acceptance of the bid as well as the passing of the property in the goods sold at the auction would be governed by those terms and conditions. (Consolidated Coffee Ltd. v. Coffee Board, AIR 1980 SC 1468).

The most common condition one usually finds in the terms and conditions of auction sale is that the assets or property are put to sale on as is where is and whatever there is basis. The phrase as is where is and whatever there is basis entails that you get everything that comes with a property, at its present form, good or bad, when you buy it. The principle of caveat emptor will apply here and the buyer has the responsibility to conduct proper checks and inspect the property thoroughly beforehand and once he exercised his option to buy the property, he has no right to complain regarding the actual state and condition of such property.

However, the official liquidator is under the statutory obligation to disclose all material facts relating to the property under the sale while issuing the advertisement for auction of assets. The condition as is where is basis and whatever there is basis should not be used for misrepresenting the facts.(Madras High Court in TCI Distribution Centre Ltd v. Official Liquidator., O.S.A. No.85 of 2009)

THE LIMITATION ACT, 1963

The Limitation Act, 1963 plays a vital role in the whole process of the winding up of a company i.e. from the date of filing of winding up petition till the dissolution order is passed by the Court. The winding up petition shall have to be filed within the period of limitation. For a normal debt, the period of limitation is 3 years. In case of decreed debt, it is 12 years from the date of decree. A time barred debt is not legally enforceable and courts will not admit the winding up petition on such debts.

Any acknowledgement of debt before the expiry of the original limitation period will give rise to new limitation period. To constitute a valid acknowledgement of debt, such acknowledgement will have to be as per the provisions of Section 18 of the Limitation Act, 1963. Admission of liability in the statement of accounts and balance sheet of a company is a valid acknowledgement of debt as per the provisions of Section 18 of the Limitation Act, 1963. (ESPN Software India P Ltd v. Modi Entertainment network)

Section 458A of The Companies Act, 1956 (Section 358 of The Companies Act, 2013) provides exclusion of certain period in computation of limitation period for any suit or application in the name and on behalf of a company which is being wound up by the Court.

Some important decisions of the courts on Limitation Act, 1963:-

- An application for leave to proceed with a pending suit or proceeding, under section 446 (Section 279 of The Companies Act, 2013) not being an application for relief and being in the nature of interlocutory application, will not attract section 137 of the Limitation Act, 1963. (Supreme Court in Harihar Nath and Others v. SBI and Others, 2006 74 CLA 74 SC)

- Power to make calls on contributory can be made within a period of 12 years.
- Section 458A (Section 358 of the Companies Act, 2013) cannot be constructed to mean that even a time barred debt or claim which was not enforceable on the date of the winding up of a company will stand revived once a winding up application filed
- In misfeasance proceedings against the directors, the period of limitation as per the Section 543 (Section 340 of The Companies Act, 2013) is to be calculated by taking into consideration the provisions of Section 458A. (Section 358 of The Companies Act, 2013)

SARFAESI – 2002

Once the winding up order is passed, the secured creditor has two options in relation to realization of his secured debt. He can remain in the scheme of the winding up and file a claim before the official liquidator and the official liquidator will settle the same as per order of priority prescribed in The Companies Act. In the alternative, he can stand outside the winding up order and proceed to realize his debt by taking steps as per the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. (SARFAESI)

SARFAESI has an overriding effect over the Companies Act in view of the provisions contained in section 35 of that Act and the same is confirmed by Supreme Court in the case of Allahabad Bank v. Canara Bank. [2000] 101 Comp Cas 64 : [2004] 4 SCC 406. Thus even though the Company court had by an order, appointed the official liquidator as provisional liquidator of the company, the banks were not barred from initiating proceedings under the SARFAESI.

However, the supervisory role of the Company Courts is well recognized and accepted by the courts. The Punjab & Haryana High Court held that where a secured creditor opts to keep itself out of winding up process to enforce security interest under section 13 of the SARFAESI, it has to submit to the supervisory jurisdiction of the company court. (Haryana State Industrial & Infrastructure Development Corporation v. Haryana Concast Ltd, CAP P No. 23 of 2009)

Where the secured creditors choose to remain in the scheme of winding up, they will not get priority *per se*. The claims of the secured creditors get priority over those of unsecured creditors but they would be *pari-passu* with the workman. (Andhra Bank v. O.L. & another, SC AIR 2005 SC 1814). SARFAESI is applicable to secured assets only. Where the secured creditor wants to move an application against the unsecured assets also when its dues are not fully satisfied, he can move a separate application before the Official Liquidator in respect of such unsecured assets.

SICA, 1985

The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was enacted with a view to determine sickness and expedite the revival of potentially viable units or closure of unviable units. (Sections 253 to 269 of The Companies Act, 2013 now deal with the sick ness of the companies.)

As per section 22 of the SICA, 1985 (similar provisions are

incorporated in Section 253 of the Companies Act, 2013) when an inquiry is under section 16 of the Act or any scheme is referred to under section 17 is under preparation or consideration by BIFR or any appeal under section 25 of the Act is pending then certain legal proceedings and contracts against the industrial company are to be suspended or presumed to be suspended. If any winding up proceeding is pending before company court, then such proceedings shall be suspended or abated.

Under the provisions of Section 22 of SICA, 1985 suspension or abatement of legal proceedings are automatic. Under the provisions of Section 253 of the Companies Act, 2013, a separate application shall be filed before the Court for stay of any proceeding for the winding up of the company or for execution, distress or the like against any property and assets of the company and the Court will decide the suspension or abatement.

POWER OF BOARD OF DIRECTORS TO FILE REFERENCE AFTER WINDING UP

The Supreme Court held that even after the order of the winding up of the company, the board of directors has the power to file reference under section 15 of the SICA. Despite appointment of the Official Liquidator, the Board of Directors continues to hold all residuary powers for the benefit of the company which includes the power to take steps for its rehabilitation. [Rishabh Agro Industries Limited v. P.N.B. Capital Services Limited (2000) 5 SCC 515]

However, where the motive to file such reference was nothing but a deliberate attempt to forestall the process of winding up such power is not available. [Kamlapur Sugar and Industries Ltd. A.P.O. No. 450 of 2014, C.P. No. 241 of 2009(Calcutta)] In Bank of New York Mellon v. Zenith Infotech Ltd, C.P. No.28 of 2012, the Bombay High Court admitted the winding up petition despite the existence of reference before the BIFR and directed the BIFR to decide the case independently.

TRANSFER OF PROPERTY ACT, 1882

On confirmation of sale by the winding up Court and on receipt of full sale consideration, the official liquidator, with the permission of the court, executes the sale deed in favour of the successful bidder. On a question as to whether such a sale deed / certificate of sale is required to be registered and proper stamp duty need to be paid on such sale, the Madras High Court in Official Liquidator v. Ramasubramanian (C.P. No:1928 of 2009) clarified that sale by liquidator of the property of a company in liquidation is not a sale by operation of law, nor it is an execution of decree passed by the court and it would not fall within the ambit of Section 2(d) of the Transfer of Property Act, 1882. Sale deed / Certificate of sale shall be required to register as per the provisions of section 54 of the Transfer of Property Act, 1882 and proper stamp duty need to pay on such instrument as per the Indian Stamp Act, 1899.

EFFECT OF VARIOUS LAWS ON THE SETTLEMENT OF CLAIMS

Sections 529A & 530 of The Companies Act, 1956 (Section 326 & 327 of The Companies Act, 2013) provide the guidelines for determination of priorities and discharge the dues accordingly.

The Companies Act, 2013 has further protected the wages and salaries of the workmen by inserting a proviso to Section 326. It says that any wages or salaries of workmen which are payable for a period of two years preceding the winding up order shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

They can be categorized into overriding preferential payments and preferential payments.

OVERRIDING PREFERENTIAL PAYMENTS

1. Workmen dues.
2. Debts due to secured creditors to the extent such debts rank *pari passu* as per the provisions of Section 529 of The Companies Act, 1956 (Section 325 of The Companies Act, 2013).

The debts mentioned above shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

The Companies Act, 2013 has further protected the wages and salaries of the workmen by inserting a proviso to Section 326. It says that any wages or salaries of workmen which are payable for a period of two years preceding the winding up order shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

The impact of the above provision is that a charge is created in favour of the workmen towards their wages or salaries which are pending for two years before the order of winding up.

PREFERENTIAL PAYMENTS

1. Revenue, taxes cesses and rates due to Central Governments, State Governments or local authorities etc.
2. Wages, salaries of any employee
3. Accrued Holiday Remuneration
4. Dues under Employees State Insurance Act, Workmen Compensation Act and Provident fund dues
5. Expenses of Investigation.

The debts enumerated above shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

The official liquidator after realizing the assets of the company shall discharge the overriding preferential payments and preferential payments according to the order given under The Companies Act. Any claim seeking priority over the other debts is decided by courts by applying the provisions of Section 529A and 530 of The Companies Act, 1956 (Section 326 & 327 of The Companies Act, 2013).

THE EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

The whole scenario has changed when the Supreme Court held that dues of provident fund of employee have priority over dues of secured creditors, whereas payment of other dues of workmen have priority at par with secured debtors (Employees Provident Fund Commissioner v. Official Liquidator, (2012) 104 Comp. Cas. 389 (SC)). The Supreme Court has decided that in terms of Section 11(2) of the EPF Act any amount due from an employer in respect of the employees contribution is treated as first charge on the assets of the company and is payable in priority to all other debts and in view of the *non obstante* clause contained in Section 11(2) of the EPF Act, priority given to the dues payable by an employer will prevail over the priority given under Section 529A of The Companies Act, 1956.

The effect of the said decision is that when the secured creditors choose to remain in the scheme of winding up, from the proceeds of the realization of the assets, the official liquidator shall pay the provident fund dues first, then proceed to pay workman dues, secured creditors and unsecured creditors as per sections 529A and 530 of the Companies Act, 1956 (After coming into effect of Section 326 & 327 of The Companies Act, 2013, official liquidator shall pay the provident fund dues first, then pay workmen salary or wages (pending for two years,) and proceed to pay other elements of workman dues, secured creditors and other unsecured creditors) Where the secured creditors stand outside the purview of winding up and realize the secured assets, the official liquidator will receive the workman portion as per section 529 of The Companies Act, 1956 and pay the provident fund dues first and proceed to pay workman dues and other unsecured creditors (After coming into effect of Section 326 of The Companies Act, 2013, official liquidator shall pay the provident fund dues first then pay workmen salary or wages (pending for two years) and proceed to pay other elements of workman dues, and other unsecured creditors).

CONCLUSION

The whole process of winding up is very complex and involve web of legislations at various stages of winding up process. The Courts will take into account various laws not only at the time of admitting the winding up petition but also throughout the process of winding up until the company is finally dissolved by the Court. When there is an uncertainty and the rules are silent, Courts will apply the provisions of Civil Procedure Code 1908 to determine the questions arising during the course of winding up. Due to concurrent jurisdictions enjoyed by various laws over the assets of the company in winding up, more often than not, the process of winding up is getting involved in the prolonged legal battles.

CS

Supreme Court Reaffirms Directors' Liability in Cheque Bouncing Cases



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The subject of “liability of company directors” is intricate and exhaustive. Since the Board of Directors of a company is responsible for the conduct of the affairs of a company, the directors of the company are expected to exercise due diligence, honesty, care and caution in discharging their duties and responsibilities. Courts in India generally have accepted the position that since a person voluntarily accepts the position of directorship of a company, such a person cannot unilaterally claim relief from prosecutions for non-compliances of the provisions of the Companies Act and other connected legislations, unless such person can prove and establish that he was not concerned with and not in-charge of the day-to-day management and control of the affairs of the company and that the offence was committed

India in the case of Standard Chartered Bank v. State of Maharashtra & Others [Criminal Appeal Nos.271-273 of 2016 arising out of SLP-Crl Nos.484-486 of 2016] (hereinafter referred to as “ABG Judgement” in short) whereby and wherein the apex court has once again, reiterated the role played by the Chairman, Managing Director, Whole-time Directors and Executive Director who were in-charge of the day to day affairs of the company and as such were liable to face prosecution in cases filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (“NI Act”).

Since the ABG Judgement analyses some of the other important judgements passed earlier by the Supreme Court dealing with

As is well-known in the country, bouncing of cheques in commercial transactions inflict a crippling blow on the recipient of the amount and even though such bouncing of cheques is treated as a criminal offence, and the Directors are required to personally appear in the concerned Court on all days, yet repeated attempts are made by such accused Directors by filing petitions after petitions to claim immunity from prosecution. In the recent judgement of the Supreme Court in Standard Chartered Bank v. State of Maharashtra & Ors., the Supreme Court in its judgement dated April 6, 2016, has once again examined the law relating to cheque bouncing. The judgement highlights the importance of stricter interpretation of the law in this regard and expectation that the High Court will give due weightage to the law pronounced by the Supreme Court in this regard.

without his consent or connivance or is not attributable to any neglect on his part.

It is in this context that a landmark judgement has been delivered recently, on April 6, 2016, by the Supreme Court of

the subject as to who, in the company, can be prosecuted, being in-charge of and in-control over the management and affairs of an accused company, it would be appropriate to highlight some of the said cases referred to in the ABG Judgement.

‘ In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in-charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141. ’

Brief facts leading to the filing of the criminal appeal are that the company, ABG Shipyard Ltd. approached the Standard Chartered Bank ('SCB') for a short-term loan facility of Rs.200 crore and the bank extended the loan to the company and the company executed an indemnity in favour of the SCB and issued three cheques towards payment of the said liability. As per the dates mentioned on the cheques, those were presented before the bank, but due to "insufficient funds" and "account blocked", the said cheques were dishonoured. The SCB issued requisite statutory notice for each of the bounced cheques but no response was given by the respondents. Therefore, SCB filed three criminal complaints under Section 138 read with Section 141 of the Negotiable Instruments Act ('NI Act') before the Metropolitan Magistrate, Esplanade, Mumbai who took cognizance and issued summons against all the accused persons.

In its complaint, SCB made ABG Shipyard Ltd as accused no. 1 and accused nos.2 to 7 were the Chairman, Managing Director, Executive Director, Whole-time Director and Authorized Signatories of the said cheques, namely accused nos.6 & 7. In its complaint SCB mentioned that being the Chairman, Managing Director, Executive Director and Whole-time Director, these accused were the persons responsible and were in charge of day-to-day business of the accused company when the offence was committed. It was also averred that accused nos.6 and 7 being the signatories to the said cheques, they were also aware of the transactions and therefore, were liable to be prosecuted. Further, it was averred by SCB that accused nos. 2 to 7 were liable to be prosecuted jointly or severally for having consented and/or connived in the commission of the offence and therefore, the offence under Section 138 read with Section 141 of the NI Act was attributable to the accused nos. 2 to 7 on account of their neglect to ensure and make adequate arrangements to honour the cheques issued by accused no.1 and further that, on account of the neglect of accused nos. 1 to 7 to comply with the requisition made in the statutory notice issued by SCB under provisions of Section 138(c) of NI Act within the stipulated period, the accused were liable to be proceeded against.

The SCB, in its complaint, further alleged that accused nos. 2 and 3, on behalf the accused no.1 company had approached SCB for availing of short-term loan facility of Rs.200 crore and that the

terms and conditions mentioned in SCB's sanction letter were duly accepted by accused no.1 by signing the same and agreeing to pay interest to SCB at the negotiated rate. The SCB further averred that accused nos. 1 to 7 were aware that the aforesaid cheques would be dishonoured owing to "insufficient funds"/ "account blocked" and that all the accused, in active connivance, mischievously and intentionally issued the said cheques in favour of the complainant bank SCB.

The Metropolitan Magistrate, Esplanade, Mumbai, therefore, took cognizance of the complaint by SCB and issued summons against all the accused persons. Accused nos. 2 to 4, being aggrieved by the said issuing of summons, preferred revision petitions before the City Civil and Sessions Court, Mumbai, which were considered on merit and were dismissed.

Thereafter, the petitioners filed criminal Writ Petitions in the High Court of Bombay and the learned Single Judge by the impugned order allowed the Writ Petitions preferred by accused nos. 4 and 5, holding that the complainant bank (i.e., SCB) had averred that the said respondents to be responsible, without making any specific assertion in the complaint about their role. The High Court of Judicature at Bombay dismissed the writ petition preferred by respondent no.4. Summons against the two accused were quashed by the High Court singularly on the ground that there were no allegations against the successful writ petitioners/accused connecting them with the affairs of the accused company.

The learned counsel for SCB submitted before the Supreme Court that the Bombay High Court had failed to properly scrutinize the assertions made in the complaint, because the complainant clearly stated the role of the accused persons in the complaint. It was also submitted that the cheques issued by the accused company were in discharge of the loan, which cheques were dishonoured on presentation and thus the High Court should not have exercised its inherent jurisdiction under Section 482 of the CrPC to set aside the order issuing summons against the executive director and the whole-time director, who were really the persons responsible and in charge of day-to-day affairs of the accused company.

The counsel of the accused contended that the learned Metropolitan Magistrate had taken cognizance in a mechanical manner, without perusing the averments made in the complaint and thus the exercise of jurisdiction by the High Court setting aside the order issuing summons, could not be faulted. The Counsel also commended the decision of *SMS Pharmaceuticals Ltd. v . Neeta*



Bhalla & Anr (2005) 8 SCC 89 ('SMS Pharma I'), Gunmala Sales Pvt. Ltd. v. Anu Mehta & Ors (2015) 1 SCC 10 ('Gunmala Sales'), National Small Industries Corporation Ltd. v. Harmeet Singh Paintal & Anr. (2010) 3 SCC 330 ('NSICL'), Tamil Nadu Newsprint and Papers Ltd. v. B. Karunakar & Ors. (2015) 8 SCALE 733 ('TNNPPL'), A. K. Singhania v. Gujarat State Fertilizer Company Ltd. & Anr. (2013) 16 SCC 630 ('AKS').

The Supreme Court, after referring to the provisions of Section 138 of the NI Act, stated that it was quite clear and transparent that to constitute the criminal liability, the complainant is required to show that a cheque was issued which was presented in the bank and on due presentation it was dishonoured and thereafter, notice was served on the person who was sought to be made liable for criminal liability and that despite service of notice, the person who had been arraigned as an accused, did not comply with the notice by making payment or fulfilling other obligations within the prescribed period.

The Supreme Court also referred to Section 141 of the NI Act dealing with offences by companies and upon perusal thereof, it became crystal clear to the Court that if the person who commits an offence under Section 138 of NI Act is a company, the company as well as other person in-charge of or responsible to the company for the conduct of the business of the company at the time of commission of the offence is deemed to be guilty of the offence and it therefore, creates a constructive liability on the persons responsible for the conduct of the business of the company.

With regard to the issue whether a complaint would be held to be maintainable without making the company a party, a three-Judge Bench of the Supreme Court in Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. ('Aneeta Hada' (2012) 5 SCC 661) wherein it was held that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence, subject to the averments in the petition and proof thereof. It had further been held in Aneeta Hada (supra) that there cannot be any vicarious liability, unless there is prosecution against the company. The Supreme Court, in the ABG Judgment, noted that in its complaint, SCB had arrayed the accused company along with the Chairman and others of the accused company.

With regard to the question whether every director of a company could be prosecuted in a cheque-bouncing case, the three-Judge Bench of the Supreme Court in SMS Pharma I (supra) observed that the complaint must contain material to enable the Magistrate to make up his mind for issuing process and if this requirement was not fulfilled, the consequences would be far reaching, and would lead to tremendous harassment of the accused in every complaint case. The Supreme Court had noted that Section 204 of the CrPC commences with the words 'if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding' and that apart, the words 'sufficient grounds for proceeding' again suggest that the ground should be made out in the complaint for proceeding against the respondent. In the said SMS Pharma I (supra) case, the three-Judge Bench had ruled that it is settled law that at the time of issuing of the process, the Magistrate is required to see only the allegations in the complaint and where the allegations in the complaint or in the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed.

As far as officers responsible for conducting the affairs of the

company ABG Shipyard were concerned, the Supreme Court referred to SMS Pharma I (supra) where the provisions of the Companies Act, 1956 and Section 141 of the NI Act were analysed and it was laid down as follows:

"What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of "every person" the section would have said "every director, manager or secretary in a company is liable"..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action."

In SMS Pharma I (supra), the three-Judge Bench placed reliance on sub-Section (2) of Section 141 of the NI Act which talks of direct involvement of any director, manager, secretary or other officer of a company in the commission of an offence and that in the trial it is to be proved that the offence had been committed with the connivance or consent or attributable to the neglect on the part of any of the holders of the offices in a company so as to prove their involvement. It is because a person who is in charge of and responsible for conduct of business of a company would



SUPREME COURT REAFFIRMS DIRECTORS' LIABILITY IN CHEQUE BOUNCING CASES

naturally know why a cheque in question was issued and why it got dishonoured and simultaneously, it would mean that no other person connected with a company is made liable under Section 141 of the NI Act. The Supreme Court opined that liability arises on account of conduct, act or omission on the part of an officer and not merely on account of holding office or position in a company and therefore, in order to bring a case within the ambit of Section 141 of the NI Act, the complaint must disclose the necessary facts which makes a person liable.

In the said *SMS Pharma-I* (supra), after referring to several other decisions, the three-Judge Bench eventually expressed that a liability under Section 141 of the NI Act is sought to be fastened vicariously on a person connected with a company; the principle accused being the company itself. It is a departure from the rule of criminal law against vicarious liability and thus a clear case should be spelt out in the complaint against the person sought to be made liable and a case has to be spelled out that the accused falls within the parameters of Section 141 of the NI Act. The Supreme Court therefore held that merely being a director of a company is not sufficient to satisfy the requirement of Section 141 of the NI Act. Even a non-director can be liable under Section 141 of the NI Act. The averments made in the complaint would serve the purpose that the person sought to be made liable would know what is the case which is alleged against him as this will enable him to meet the case at the trial. It is necessary to specifically aver in the complaint that at the time the offence was committed, the person accused was in charge of and responsible for the conduct of the business of the company. This averment is an essential to satisfy the requirement of Section 141 of the NI Act.

In the aforesaid *ABG Shipyard Case*, the Supreme Court also referred to its earlier decision in *Sabitha Ramamurthy v. RBS Channa Basavarabhyha* (2006-10-SCC-581) wherein it had been held that it is not necessary for the complainant to specifically reproduce the wordings of the section, but what is required is a clear statement of fact, so as to enable the Court to arrive at a *prima facie* opinion that the accused are vicariously liable. Section 141 of the NI Act raises a legal fiction and by reason of the said provision, a person although is not personally liable for commission of such an offence, would be vicariously liable therefor. Such vicarious liability can be inferred so far as the companies registered under the Companies Act are concerned only if it is averred in the complaint petition that the accused therein were vicariously liable for the offence committed by the company. Therefore, before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted. The Supreme Court noted that in *Everest Advertising Pvt. Ltd. vs. State, Govt. of NCT of Delhi & Ors.* (2007-5-SCC-54) where assertions in the complaint were really vague, the Supreme Court declined to interfere with the order passed by the High Court which had opined that the complainant did not disclose commission of offence against the accused persons.

A reference was also made to another decision of the Supreme Court in *K. K. Ahuja v. V. K. Vora & Anr.* (2009) 10 SCC 48, where, in the context of Section 141 of the NI Act, it was held that in the complaint petition if it is stated that the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that at the relevant time he was in charge of, and was responsible to the company, for the conduct of the business of the company. Their designations itself speak of

their specific role in the conduct of the business of the company. In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in-charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in-charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section. Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

The Supreme Court also referred to yet another decision viz. *Gunmala Sales* (supra) where it was concerned with granting relief or not to the directors who had issued the cheques and referred to the following portions from the said judgement:-

“30. When a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, the High Court may find that the basic averment is sufficient, that it makes out a case against the Director; that there is nothing to suggest that the substratum of the allegation against the Director is destroyed rendering the basic averment insufficient and that since offence is made out against him, his further role can be brought out in the trial. In another case, the High Court may quash the complaint despite the basic averment. It may come across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be an abuse of process of court as no offence is made out against him.



31. When in view of the basic averment process is issued the complaint must proceed against the Directors. But, if any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint it must be shown that no offence is made out at all against the Director."

In ABG Judgement, the Supreme Court referred to various judgements as they explicitly state the development of law and also lay down the duty of the High Court while exercising the power of quashing, regard being had to the averments made in the complaint petition to attract the vicarious liability of the persons responsible under Section 141 of the NI Act. Referring to the complaint filed by the SCB, the Supreme Court found that it clearly met the required test. Thus, considering the totality of assertions made in the complaint, the Supreme Court was of the considered opinion

that the High Court gravely erred in concluding that there were no specific averments in the complaint for issuance of summons against the accused persons and held that the asseverations made in the complaint meet the test laid down in *Gunmala Sales* (supra). Resultantly, the appeals by SCB were allowed and the order passed by the High Court was set aside and the learned Magistrate was directed to proceed with the complaint cases in accordance with law.

CONCLUSION

The ABG Judgement once again highlights that complaint cases for bouncing of cheques would continue to be viewed strictly and the whole-time directors (including Managing Director and Chairman) and the Executive Directors cannot automatically escape criminal trial, because they would be deemed to be persons in charge of day to day affairs of the company and as such their active connivance, and mischievous and intentional actions in not honouring the cheques issued could be inferred against them. Ways and means need to be identified and legislative changes need to be made soon so as to expedite conclusion of such cheque bouncing criminal trials and to grant expeditious relief to the victims of such mischievous and mala-fide actions of company directors, especially against those who continue to prolong such litigations with repeated frivolous petitions before the higher Courts while the hearing of the main complaint case gets halted. CS

ATTENTION

Members/Doctorates/Academics/Scholars/Researchers

Invitation for Research based articles in Commerce, Economics, Management and Law, for publication in Chartered Secretary

The Editorial Advisory Board of Chartered Secretary invites Research based, Empirical, Applied or Conceptual Papers, Extracts of Ph.D. Thesis, Case Studies from Members/Doctorates/Academics/Scholars/Researchers for consideration by the Editorial Board for publication in Institute's Monthly Journal Chartered Secretary. The Board encourages research articles which may contribute significantly to issues related to Secretarial, Finance, Economics, Management & Law. The subject matters are relating to corporate laws, fiscal laws, Corporate Governance and Corporate Social Responsibility. The research papers may please be forwarded to ak.sil@icsi.edu. Double blind review system is used for reviewing the papers and once found suitable the same will immediately be taken up for publication in the Journal under intimation to the author. For further details contact the Director (Publications), the ICSI at ak.sil@icsi.edu Tel: 45341024.

Performance Evaluation of Board



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INTRODUCTION

The Companies Act, 2013 (the Act) mandates the need to assess board performance. The Act contains provisions that require a mechanism to be put in place by the company to conduct performance evaluation of the board collectively as well as of the directors individually. Appropriate amendments have further been made in Clause 49 of the Listing Agreement that emphasizes the need for board assessment. Board evaluation is an extremely sensitive corporate governance process and shall help to improve board governance in companies and catalyse

company and

- (i) all public companies with a paid up capital of ten crore rupees or more;
- (ii) all public companies having turnover of one hundred crore rupees or more;
- (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more, shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less

As a measure of ensuring better corporate governance the Companies Act, 2013 mandates evaluation of the performance of the Board of directors and of individual directors. Provisions have been made in the Act as well as Rules in this regard. Such valuations must be supportive of the board and the directors, whilst being rigorous and even handed, in order to give the best results. The process should not be just a 'box-ticking procedure' but should help in the overall development of the individual director and the Board as a whole. If carried out in earnest, board evaluation has the potential to improve the Board's effectiveness.

personal effectiveness of directors—by both improving board composition and enhancing competencies.

GENESIS

Extracts from the Companies Act, 2013

Section 178 read with Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014 provide as under:

"The Board of Directors of every listed

than one-half shall be independent directors:

The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

Schedule IV – Code for Independent Directors

Role and functions

"The Independent Directors shall

- (2) bring an objective view in the evaluation of the performance of board and management
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.
....."

Separate meetings

- (1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;
- (2) All the independent directors of the company shall strive to be present at such meeting; The meeting shall:
 - (a) review the performance of non-independent directors and the Board as a whole
 - (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors
 - (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

EVALUATION MECHANISM

- (1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.
- (2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

SECTION 134(3) READ WITH RULE 8(4) OF COMPANIES (ACCOUNTS) RULES, 2014

There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include in case of a listed company and every other public company having a paid up share capital of Rs. 25 crore or more calculated at the end of the preceding financial year, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Extracts from the Listing Agreement

Clause 49(II)(B)(5) - Performance evaluation of Independent Directors

- a. The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors.
- b. The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its

Annual Report.

- c. The performance evaluation of independent directors shall be done by the entire Board of Directors (excluding the director being evaluated).
- d. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Clause 49(II)(B)(6) - Separate meetings of the Independent Directors

- a. The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting.
- b. The independent directors in the meeting shall, *inter-alia*:
 - i. review the performance of non-independent directors and the Board as a whole;
 - ii. review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - iii. assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

GLOBAL [INTERNATIONAL LAWS]

Boards are turning to board evaluation as a major tool to assist them in improving their performance. The global trend sees specific board evaluation recommendations forming a key component of nearly every major corporate governance review or report.

EXTRACTS FROM THE UK - CORPORATE GOVERNANCE CODE**Clause B.6.2**

Evaluation of the board of FTSE 350 companies should be externally facilitated at least every three years. The external facilitator should be identified in the annual report and a statement made as to whether they have any other connection with the company.

Clause B.6.3

The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors.

The Code, further provides that the annual report, inter-alia, should also disclose the following:

- ii. A statement of how performance evaluation of the board, its committees and its directors has been conducted (Clause B.6.1);

‘ A lack of interaction between the non-executive directors and the senior managers outside the board room can make it difficult for the non-executives to get a real feel for the business. If good interaction can be achieved, then the company will gain the most from all concerned. ’

iii. *The report should identify the external facilitator that has been used for performance evaluation, statement made as to whether they have any other connection to the company (Clause B.6.2)."*

EXTRACTS FROM THE CORPORATE GOVERNANCE & RESPONSIBLE INVESTMENT POLICY - FRANCE

Board evaluation

LGIM considers board evaluation an important tool for improving board performance and expects the process to be disclosed. LGIM also encourages the disclosure of additional details, such as the outcome of these evaluations, a list of which recommendations have been addressed during the year and how, and who carried out the external evaluation. LGIM expects companies to use external consultants to undertake an evaluation at least every three years. In order to avoid any conflicts of interest, the external consultant should not be selected from the company's own executive search firm or auditor.

EVALUATION PROCESS

Board

Board evaluation is a valuable tool to accelerate, measure and assess the effectiveness of the Board. Following matters may be considered while evaluating the Board as a collective body, for example : how do the directors work as a team; what are their interpersonal skills; is there a dominant or bullying chairman or CEO; how effective is the lead independent director; is the chairman an effective leader; do all directors contribute; what is the level of commitment (preparedness, engagement, absenteeism); is the board objective in acting on behalf of the company; is it robust in taking and sticking to difficult decisions; are decisions reached by the whole board; do decisions take account of shareholders' views; are the board decisions being taken within the four lacunas of organisation's corporate governance policy / the applicable laws and regulations, is each member being given specific opportunity to raise his views on any business item, are there any "unmanaged" conflicts of interest; is the composition of the board being refreshed (succession planning)?

Non-executive director

A lack of interaction between the non-executive directors and the senior managers outside the board room can make it difficult

for the non-executives to get a real feel for the business. If good interaction can be achieved, then the company will gain the most from all concerned. The chairman and other board members should consider the following issues as : How well prepared and informed are the non-executive directors for board meetings and is their meeting attendance satisfactory? Do they demonstrate a willingness to devote time and effort to understand the company and its business and a readiness to participate in events outside the boardroom, such as site visits? What has been the quality and value of their contributions at board / committee meetings? What has been their contribution to development of company's business strategy and to risk management? How successfully have they brought their knowledge / skill and experience to bear in the consideration of strategy? How effectively have they probed to test information and assumptions? Where necessary, how resolute are they in maintaining their own views and resisting pressure from others? How effectively and proactively have they followed up their areas of concern? How effective and successful are their relationships with fellow board members, the company secretary, the chief financial officer and senior management? Does their performance and behaviour engender mutual trust and respect within the board? How actively and successfully do they refresh their knowledge and skills and are they up to date with the latest developments in areas such as corporate governance framework and financial reporting, the industry and market conditions? Do Non-executive independent directors bring an independent opinion on business items? Are their views not subsumed by the other non-executive non-independent directors?

BOARD COMMITTEES

Board committees, if not properly managed, can sometimes be divisive with committee members forgetting that they form a committee of the board, rather than a group which is divorced from it. The following questions may be considered, for example: Does each board committee is perfectly constituted with an optimum mix of knowledge and expertise? Does each board committee have adequate and appropriate written terms of reference stipulated by the Board? Is the volume of business handled by the committee (particularly the audit committee) set at the right level commensurate to the size of the company? Does the committee work in an 'inclusive' manner or has it, for example, resulted in



executive directors not involved in the respective committee feeling distanced from those matters covered by the committee's area of activity? How effective are the board committees? (Specific questions on the performance of each committee should be included such as, for example, their role, their composition and their interaction with the board)? Does board committee put important matters before the Board for its information thereof?

SPECIMEN MODEL - BOARD PERFORMANCE EVALUATION TOOL

The Companies Act 2013 / Listing Agreement require a specified class of companies to disclose the criteria of performance evaluation in its Annual Report, however, tasks of developing the criteria for and the process of evaluation have been (appropriately) left to the discretion of the companies. For this, there should be a specified methodology tool accepted in the company for carrying out performance evaluation. This specimen tool is designed to assist in assessing the effectiveness of the board. The tool takes the form of a series of assertions which should be awarded a rating on a scale of 1 to 3 by individual directors or by the board as a whole. Once complete, the matters should be discussed at a board meeting. Further, an external facilitator can play a pivotal role in board evaluation, as The Higgs Report Performance Evaluation Guidance clearly states: "The value of an external third party to conduct the evaluation will bring objectivity to the process."

1 = Hardly ever / Below average

2 = Average/ Most of the time / Above average

3 = All of the time/Fully satisfactory

S. N.	Behaviours	1	2	3	Comments
1.	Strategy All Board members have a clear understanding of the organisation's core business, its strategic direction and the financial and human resources necessary to meet its objectives.				
2.	Board performance The Board sets its objectives and measures its performance against them on a timely basis.				
3.	Managing Board meetings and discussions Board meetings encourage a high quality of debate with robust and probing discussions.				
4.	Managing internal Board relationships Board members make decisions objectively and collaboratively in the best interests of the organisation and feel collectively responsible for achieving organisational success.				

5.	Managing the relationship with others The Board communicates effectively with all of the organisation's stakeholders and seeks their feedback.				
6.	Board members' skills Board members recognise the role which they and each of their colleagues is expected to play and have the appropriate skills and experience for that role.				
7.	Reaction to events The Board responds positively and constructively to events in order to enable effective decisions and implementation and to encourage transparency.				
8.	Chairman The chairman's leadership style and tone promotes effective decision-making, constructive debate and ensures that the Board works as a team.				
9.	Chairman and CEO relationship The chairman and the chief executive officer work well together and their different skills and experience complement each other.				
10.	Attendance and contribution at meetings All Board members attend and actively contribute at Board and Committee meetings.				
11.	Open channels of communication The Board has open channels of communication with executive management and others and is properly briefed.				
12.	Risk and control frameworks The Board's approach to reviewing risk in the organisation is open and questioning. The Board contributes effectively to ensure robust and effective risk management system in the company.				
13.	Board Composition The Board is the optimum size and has the best mix of knowledge and skills to ensure its optimum effectiveness.				

14.	Committees of the Board The Board's committees are properly constituted, perform their delegated roles and report back clearly and fully to the Board.				
15.	Terms of reference The terms of reference of the Board Committees are appropriate, with clearly defined roles and responsibilities, ensuring that the right issues are being addressed.				
16.	Meetings and administration The Board / Board Committees meets sufficiently often, and with information of appropriate quality and detail, such that agenda items can be properly covered in the time allocated.				
17.	Timeliness of information Information is received in sufficient time to allow for proper consideration, with scope for additional briefing if necessary.				
18.	Agenda items The meetings' agenda covers all matters of importance to the organisation, is prioritised and includes consideration of corporate reputation, its enhancement and the risks surrounding it.				
19.	Annual General Meeting & Annual Plan Review The company makes best use of its Annual General Meeting and Annual Business Plan review.				
20.	External stakeholders The Board has defined its external stakeholders and ensures that the organisation has the right level of contact with them.				
21.	Risk management The Board uses an active and well-structured process to manage risk, taking account of the organisation's activities and the breadth of functions across the business.				
22.	Induction and training Board members receive proper induction on appointment and ongoing training is available to meet development needs.				

23.	Update The Board is up to date with latest developments in the regulatory environment and the market.				
24.	Succession planning There is appropriate succession planning for key Board members and senior Executives.				
25.	Performance evaluation Board members are individually subject to an annual performance evaluation that measures their contribution and commitment.				

BENEFITS

Effectively conducted evaluations (whether in-house or using an external facilitator) have the potential to achieve various benefits, helping the board to:

- confirm that it has a suitable balance of skills / attributes and focusing attention on the attributes required in any new director
 - focus on any inadequacies
 - identify strategic priorities
 - review its practices and procedures and thus to become more efficient and effective
 - justify recommending the re-appointment of any director
- As an appraisal is for an employee, so shall be evaluation for a director.

CONCLUSION

However a board chooses to carry out board, committee and individual director evaluations, it is necessary to consider:-

- who has the overall responsibility for the process (usually the chairman)
- who is going to have input into the process
- the structure and content of the process
- what reporting is going to take place and to whom, and
- most importantly, how the outcome will be acted upon by the board.

If evaluation is undertaken just for the sake of it—because the law mandates it—the evaluation process may become difficult, superficial and, possibly, counter-productive. Evaluations must be supportive of the board and the directors, whilst being rigorous and even handed, in order to give the best results. It needs to be recognised that this is a continuing process. The process should not be just a 'box-ticking procedure' but should help in the overall development of the individual director and the Board as a whole. If carried out in earnest, board evaluation has the potential to improve the Board's effectiveness!

REFERENCES :

1. Companies Act, 2013 & Rules thereunder
2. Listing Agreement - Revised Clause 49
3. Global Laws
4. Higgs Report Performance Evaluation Guidance
5. Board Performance Evaluation (Issue 9) published by Global Corporate Governance Forum
6. NSE – Quarterly Briefings - October 2014 – Board Evaluations
7. Best Disclosure: Board Evaluation – Council of Institutional Investors

Exit Options to the Investors of the Companies Exclusively Listed on the Regional Stock Exchanges now being de-recognised



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BACKGROUND

Stock Exchanges, being the platform for trading in securities of the companies listed thereat by the investors, play significant role in accumulation and capitalisation of the savings of the small investors across the country. With 23 stock exchanges being recognised by Securities and Exchange Board of India ('SEBI'), India had one of the largest platforms for investors to trade in securities. However, out of these, The National Stock Exchange of India Limited ('NSE') and the Bombay Stock Exchange Limited ('BSE') are the only two stock exchanges which have Nation-wide terminals and where trading is

time, such requirement being no longer applicable, and the Regional Stock Exchanges becoming more or less inoperative and non-functional, without any trading being done thereat, some of these Stock exchanges have been de-recognised by SEBI.

Further, SEBI had vide circular no. CIR/ MRD/DSA/14/ 2012 dated May 30, 2012 provided exit option to the de-recognised stock exchanges and recognised stock exchanges seeking voluntary surrender of recognition (referred as 'Exiting RSEs'). The process of De-recognition and Exit mentioned therein is as follows:

- Stock Exchanges may seek exit

India is a country which has a large number of stock exchanges as trading platforms for dealing in the securities of the companies listed thereat by the small investors who invest their accumulated savings in the capital of listed companies through trading in those securities. Nevertheless, majority of these Stock exchanges being regional only, did not have nation-wide terminals thereby making trading by the investors cumbersome. Therefore, time and again the SEBI has been coming up with circulars for these regional stock exchanges to either get themselves voluntarily de-recognised or fulfil the criteria for getting recognised by SEBI failing which these would be compulsorily de-recognised by SEBI. SEBI has also provided exit option to the de-recognised stock exchanges and recognised stock exchanges seeking voluntary surrender of recognition.

done actively. It was a requirement earlier that the companies in order to get their securities listed at any stock exchange had to first obtain listing at Regional Stock Exchange where their Registered Office is situated. However, with passage of

through voluntary surrender of recognition.

- Stock exchanges where the annual trading turnover on its own platform is less than Rs. 1,000 Crores can apply to SEBI for voluntary surrender

‘ NSE and BSE had made the listing requirements less stringent for these ELCs of the de-recognised RSEs to provide ease for getting listed. However, some ELCs may not be able to fulfil the eligibility criteria for listing even after the milder prerequisites. Therefore, it becomes imperative for these ELCs which cannot provide trading platform to their investors to provide exit option to their investors. ’

of recognition and exit, at any time before the expiry of two years from the date of issuance of the said Circular.

- For the stock exchanges which are unable to achieve the prescribed turnover of Rs. 1,000 Crores on continuous basis or do not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of said Circular, SEBI shall proceed with compulsory de-recognition and exit of such stock exchanges, pursuant to the terms and conditions as may be specified by SEBI.
- Stock Exchanges which were already de-recognised as on date of the said Circular were required to make application for exit within two months from the date of the said circular. Upon failure to do so, the de-recognized exchange would be subject to compulsory exit process.

Consequent to Regional Stock Exchanges ('RSEs') opting for voluntary de-recognition or being declared de-recognised by SEBI, the companies listed exclusively at those RSEs being referred hereinafter as Exclusively Listed Companies ('ELCs') and their shareholders would be the most effected.

SEBI had, therefore, in the said Circular, provided option to these ELCs to obtain listing at any of the recognised stock exchanges, after fulfilling their respective criteria for getting listed. However, there might be companies which fail to fulfil the criteria of getting listed at the Recognised Stock Exchanges, and subsequently, cease to be listed companies. In order to safeguard the interest of the investors of these ELCs, SEBI decided to set up a platform at the recognised Stock Exchanges having nation-wide terminals, for buying and selling of the securities of these ELCs, referred as 'Dissemination Board'.

Thereafter, SEBI issued another circular [CIR/MRD/DSA/18/2014 dated May 22, 2014] to facilitate listing of the securities of the ELCs at the RSEs or providing option to seek voluntarily delisting by following the SEBI (Delisting of Equity Shares) Regulations, 2009. Further, SEBI recommended that the ELCs whose data were not traceable by the RSEs for more than three years as on the date of that circular be referred to Ministry of Corporate Affairs by the RSEs for inclusion in the list of Vanishing Companies.

Those ELCs which did not opt for voluntary delisting or were not identified as Vanishing Companies, cease to be listed companies upon the RSEs becoming non-operational and/or applying for voluntary de-recognition or being compulsorily de-recognised by

SEBI. For protection of interest of the investors of these ELCs, the onus was on the respective RSEs at which these were listed, to put these companies on the Dissemination Board of any one of the Recognised Stock Exchanges having nation-wide terminals.

DISSEMINATION BOARD

NSE and BSE formed Dissemination Board at their respective terminals and the exiting RSEs after entering into contract with any one of them were required to approach the ELCs listed with them for getting their securities placed on the Dissemination Board for buying and selling by their investors. Guidelines were also been framed by NSE and BSE on how the securities placed at their Dissemination Board should be bought and sold. It is pertinent to note here that these ELCs do not have to enter into any agreement with NSE and BSE and are not being listed thereat.

The major deficiency of this entire system is that the information which were otherwise required to be given by the ELCs and disseminated by the RSEs to their investors are no longer required to be provided since these ELCs are no more listed identities and thus the whole idea of SEBI to provide true and fair picture of the business of the ELCs alongwith transparency in dealings by the promoters and directors is being defeated. Further, the ELCs not being listed at any of the nation-wide stock exchanges and regular trading being not allowed in their securities, the investors of these ELCs will face problems and the ELCs will also start losing their goodwill and their rapport being distorted.

To cope up with this situation, SEBI then came up with a Circular No. CIR/MRD/DSA/05/2015 dated April 17, 2015 stating that the ELCs eligible and desirous of getting themselves listed at the nation-wide Stock Exchanges i.e. NSE or BSE shall obtain listing within eighteen months (which is construed as 18 months from the date of issue of the Circular for the companies which are already on the Dissemination Board ('DB') and 18 months from the date of being placed thereon for the companies which are/will be placed on DB after the date of this Circular) to provide trading platform to their investors.

Further, it is mentioned therein that the promoters and directors of such ELCs, which fail to provide the trading platform or exit option to their shareholders/investors even after the extended time of eighteen months allowed by SEBI will have to undergo stricter scrutiny for their any future association with securities market like public offer or any other association with SEBI, in addition to any other action that may be taken against the promoters/ directors/ companies by SEBI.

NSE and BSE had made the listing requirements less stringent for these ELCs of the de-recognised RSEs to provide ease for getting listed. However, some ELCs may not be able to fulfil the eligibility criteria for listing even after the milder pre-requisites. Therefore, it becomes imperative for these ELCs which cannot provide trading platform to their investors to provide exit option to their investors.

EXIT OPTIONS TO BE GRANTED BY THE EXCLUSIVELY LISTED COMPANIES TO THEIR INVESTORS

The following alternatives are being explored through which ELCs

can provide exit options to their investors:

- (i) Delisting of equity shares pursuant to SEBI (Delisting of Equity Shares) Regulations, 2009 or
- (ii) Open Offer to purchase the securities from the existing holders by the Promoters pursuant to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or
- (iii) Buy Back of Securities pursuant to SEBI (Buy Back of Securities) Regulations, 1998.

ANALYSIS OF THE AVAILABLE EXIT OPTIONS

(i) Delisting of their equity shares

Delisting of equity shares is one of the best ways by which an existing listed company can provide the investors an option to exit from its securities, the main advantages being there is no veto on the maximum amount of equity shares that can be purchased/bought back from the shareholders and the shares so bought back need not be extinguished, thus not affecting the net worth of the Company.

The ELCs of the RSEs which are still in the process of being de-recognised by SEBI, may offer exit option to the investors by opting for getting their equity shares delisted.

Limitation to this process

- (i) This option could be availed only if the equity shares of the ELCs are listed at any stock exchange. However, since the equity shares of the ELCs listed at RSEs which have now de-recognised, have been put on the Dissemination Board of NSE or BSE and not being listed on any stock exchange currently, the question of delisting of those equity shares does not arise. Therefore, the ELCs whose securities have already been put on the Dissemination Boards cannot opt for delisting of their equity shares.
 - (ii) This option is available only for the equity shares and the ELCs which have other securities listed at RSEs could get the benefit of exiting through this process.
- (ii) Open Offer to purchase the securities from existing holders**

The promoters of the ELCs may provide exit option to the investors of their ELCs by purchasing the securities from the existing investors after complying with the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 through open offer. Fixation of price and other compliances being done in accordance with these provisions and after obtaining requisite approvals from the SEBI, can be a viable alternative. The requirement of minimum public shareholding in terms of the Securities Contract (Regulations) Act, 1956 had also been dispensed with for these cases by SEBI since the ELCs are no more the listed companies.

Limitation to this process

Even though this is a good choice for the investors to exit from the securities of ELCs, this cannot be considered as the option

given by the ELCs itself since this is given by their Promoters. Nevertheless, since the promoters and directors of ELCs will also be held liable by SEBI for not giving exit option to investors within the time frame of eighteen months, this alternative can be taken as an effective resort and furthermore, the same being in the interest of the investors, this may corroborate to be an effective exit option to them.

(iii) Buyback of Securities

The third and the most apposite alternate as available under the current scenario for providing the exit option is Buyback of Securities from the investors which can be done by either of the following methods :-

- (a) by purchasing from the existing shareholders or security holders on a proportionate basis through private offers and/or
- (b) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

The Company has to comply with the provisions of Section 68 of the Companies Act, 2013 and 'Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999' as amended from time to time.

Limitation to this process

The process is the most direct way of providing exit opportunity to the investors, however, this is also not free from limitations which are mentioned below:

- (i) There is a prohibition on the maximum amount which can be purchased through buy back after complying with all the applicable regulations which is 25% of Paid Up Equity Capital in a financial year or 25% of the Paid Up capital and Free Reserves for all the securities. This may not suffice as exit offer to all the investors holding securities who might be holding greater percentage in aggregate than allowed herein.
- (ii) Since the securities bought back need to be extinguished, the net worth of the companies will be minimised to the extent the securities are bought back thus reducing the paid up capital of these companies.

CONCLUSION

In spite of three probable alternatives being available to the ELCs of RSEs to provide the exit options to their investors, none of the above process can be deemed to be a flawless and efficacious measure to abide by the provisions mentioned in SEBI Circular. Nonetheless, in order to adhere to the SEBI Circular, ELCs are required to follow any one of the above mentioned procedures to provide exit options to their investors and safeguard itself and its promoters and directors from the scrutiny and penal actions of SEBI. SEBI may also offer some exemptions or provide some sort of immunity to ELCs once approached, citing the practical problems being confronted by them.

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Corporate Social Responsibility: Compliance Challenges



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INTRODUCTION

Philanthropy is not a novel concept for Indian companies and this is a focal point for Corporate Social Responsibility (CSR) in India. In Indian history of corporate laws, one of the prominent legislative change is incorporation of section 135 in the Companies Act, 2013. It is a revolutionary effort for institutionalising legal framework for CSR in India. The provision requires certain companies to mandatorily spend on CSR activities. The provision, effective from 1st April 2014, requires every company, private limited or public limited, which either has a net worth of Rs 500 crore or a turnover of Rs 1,000 crore or net profit of Rs 5 crore, (termed as "Qualified Company" in this article) needs to spend at least 2% of its average net

with Section 381(1)(a) and net profit to be computed as per Section 198 of the Companies Act.

With Companies (Corporate Social Responsibility Policy) Rules, 2014, there is more clarity and companies are better placed to evaluate the implications of CSR provisions and articulate their compliance framework and strategy commensurate with their line of business and business objectives. This article highlights some granule accounting, audit and compliance aspects of section 135 of Companies Act, 2013 on Corporate Social Responsibility read with Companies (Corporate Social Responsibility policy) Rules, 2014. A closer look at current accounting, audit and compliance activities of companies in light of these newly enacted CSR

Incorporation of section 135 in Companies Act, 2013 is a revolutionary effort for institutionalising legal framework for CSR in India. The position is further clarified with certain amendments in rules and frequently asked questions on CSR. However, Indian companies may have their own ways of interpretation of law. This interpretation when grappled with their way of operations, will lead to various compliance challenges. The article highlights various scenarios where CSR compliance will be a challenge for companies and what are the best ways to come out of these challenges.

profit for the immediately preceding three financial years on CSR activities. The provision requires that the CSR activities should not be undertaken in the normal course of business and must be with respect to any of the activities mentioned in Schedule VII of the 2013 Act. In case a foreign company has its branch or a project office in India, CSR provision will be applicable to such offices. CSR Rules further prescribe that the balance sheet and profit and loss account of a foreign company will be prepared in accordance

provisions reveals that there are scenarios that can impose challenges to companies. At the same time the article also provides suggested way outs:-

(1) Computation of average net profit

Section 135(5) requires qualified companies to spend at least 2% of the average net profit made during the three immediately preceding financial years as CSR expenditure. The computation of average net profit shall be made in line with provisions of

section 198. The criteria look plain vanilla for understanding and application. However, this is not simple as it looks like. There are scenarios where the computation of net profit is difficult. Refer exhibit I for such kind of scenarios and suggested way out:-

Exhibit I

S No.	Scenario	Way out
1	A newly incorporated company not having completed three years after its incorporation may not have three years net profit to compute the CSR limit.	CSR provisions are silent for such newly incorporated company. In spirit of CSR provisions, companies can take the net profit available for less than three years period for computation of CSR limit.
2	A qualified company under project stage will also feel difficult to get the net profit (or eventually have nil profit during initial years after installation and commissioning) for the computation of net profit for CSR expenditure.	Though it would not be mandatory for such company to go for CSR expenditure, Board of directors may decide for the CSR expenditure.
3	There may be the case when:- Existing separately incorporated entities A and B merges together to create a new legal entity C. A and B losses the status of legal entity post merger to create a new and separate legal entity C. Existing separately incorporated entities A and B merges with already existed legal entity C. A and B losses the status of legal entity post merger. Such type of restructuring/ arrangement is always made pursuant to court approved schemes and application of other legal provisions.	Pre merger net profits of A and B entities can be treated as net profit of C for computation of CSR limit. Once three year net profit of C is available post merger, then net profit of C can be consider for computation of CSR limit. Two options are available in such instances:- After the merger, A and B loses the status of legal entity. Therefore, no liability of CSR expenditure exists for A and B as they are no more separate legal entities and therefore are not liable for CSR expenditure. However, C continued to be a separate legal entity at both pre and post merger stage. Therefore, net profit of entity C only can be considered for computation of net profit. In this case, two years net profit of C as pre-merged legal entity and one year post merged legal entity can be considered for computation of CSR limit. Second, use pre-merged net profit of A, B and C for two years and one year net profit of merged entity C can be used for computation of CSR limit.

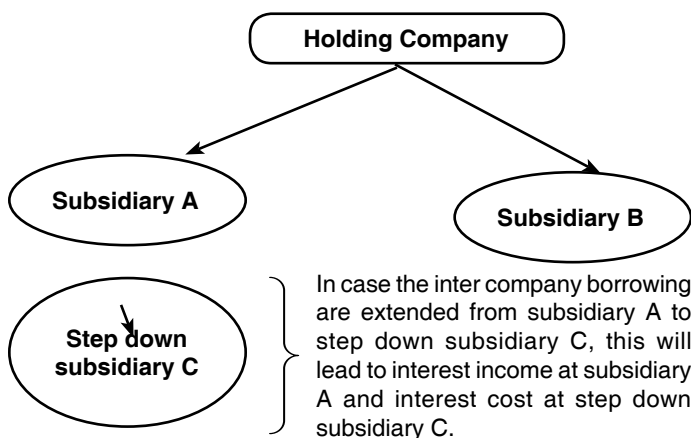
4	In case a foreign company has a branch or project office in India (i.e. Company only has branch/representative office but conducting business in India via its entity incorporated outside India), such representative office, not being a legal entity incorporated in India, is not liable for CSR activities even when it is churning profits from Indian operations. Then how the net worth or turnover criteria shall be taken into account.	Two options are available in such case viz:- 1. Consider the financials of parent company to get the net worth and turnover criteria. Even when this may be available in different generally accounting accepted principles, it can be a best premise to see the applicability of CSR provisions. 2. Duly audited branch accounts maintained by foreign company for its branch/representative or project office in India can be used to evaluate the applicability of CSR provisions.
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(2) Intercompany interest cost

The inter company borrowings are the common practice among entities within a group. Fund from one entity to another entity within the group is extended depending upon the short term and long term requirements of funds. The inter company borrowing is generally marked up keeping in view the prevailing tax laws and transfer pricing mechanism. Para 2(f)(ii) of Companies (Corporate Social Responsibility Policy) Rules 2014, scope out the dividend received from the companies in India which are covered under the provision of section 135 of Companies Act 2013 from the calculation of CSR expenditure limit. However, the existing provisions are silent about inclusion/exclusion of such intercompany interest income / interest cost.

Following exhibit II illustrate the case

Exhibit II



Assume that subsidiary A is within the ambit of CSR provisions whereas step down subsidiary C is outside this requirement. For Group as a whole, the inter company finance income at subsidiary A is notional income. However subsidiary A has to consider this finance income in computation of CSR limit. Such cases will increase the CSR expense limit for Group as a whole. This will lead senior management's time in strategising inter company borrowing.

(3) Segregation of CSR activities.

There are CSR activities being undertaken by companies that are common for its employees and general public. Educational institutions, healthcare services etc. make good example of such common CSR activities. As per the prevailing practice, most of the companies maintain one set of financial records of such common activities. Rule 8 of Companies (Corporate Social Responsibility Policy) Rules 2014 states that the CSR projects or programs or activities that benefit only the employees of the company and their family are excluded from the CSR activities. However, neither section 135 nor Companies (Corporate Social Responsibility Policy) Rules 2014 provides treatment of such common CSR activities and if these can be part of eligible CSR expenditure.

In such instance, companies have following two options viz.:-

- (i) To keep separate record of expenditure incurred for employees & their families and general public.
- (ii) Keep set of record of eligible CSR expense allocated to the CSR expenditure incurred for non employees and general public.

Accordingly, the amount incurred on general public can only be disclosed as eligible CSR expenditure in the Report annexed with the Board's Report. Company need to keep separate record of eligible CSR expenditure and its allocation as a best governance practice.

(4) Geographical area for CSR expenditure

Section 135(5) provides that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

This poses following challenges:-

- (i) These requirements can be easily met out by the companies having operational set up and have limited geographical spread. All manufacturing companies will fall under this category. However, of companies involved in services like banking/non banking finance, insurance, tour operators etc. will find it difficult to identify the areas for CSR expenditure as they derive the profits from the diverse part of their geographical spread in India.
- (ii) Directive Principles of State Policy in the Indian constitution require that the state should ensure fair and equitable distribution of the material resources of the country for the common good. For companies involved in business of natural resources of which area of operation is limited to certain geographical areas, compliance with CSR provision will certainly be challenging. If these companies undertake CSR activities in the local area and areas around it where it operates, this will defy the Directive Principal of State Policy (of course, to certain extent) as the benefits of CSR activities shall be limited to people of specified region where such natural resources company operate.

(5) Common capital CSR expenditure

Some companies incur expenditure for the development of common infrastructure facility which can be used by company *vis-a-vis* surrounding communities as well. Example of such type of common infrastructure facilities includes roads, water reservoir etc. The cost of construction of such common infrastructure is generally capitalised in books of accounts and charged-off over the period. Apart from one time development cost, companies also incur regular revenue expenditure on such common facilities. Para 8 of the Companies (Corporate Social Responsibility Policy) Rules 2014 specifically scope out the CSR activities for the benefit of employees of the company or their family members from the eligible CSR activity. But it is silent about the charging of expenditure incurred on development and maintenance of common infrastructure facilities over the period of time. Such facilities make good case of eligible CSR activities. In view of this, company may face difficulty in treatment of such common capital expenditure under eligible CSR expenditure. In such cases, companies have following options:-

Option I

Allocate the cost of development and maintenance of infrastructure facilities on any rational basis over the period. Amount attributable to surrounding community can be considered for CSR expenditure reporting.

Option II

Not to consider the development cost of such facilities in CSR reporting in a presumption that development of such facilities are predominantly for business requirements and sustenance.

Option III

Allocate the revenue expenditure on any rational basis periodically.

However, only the expenditure incurred on general public and not related with the business activities and employees benefit can only be treated as eligible CSR expenditure.

(6) Eligible CSR expenditure

Schedule VII provides the list of eligible CSR activities. As per clarification by Ministry of Corporate Affairs (MCA) vide its general Circular No. 21/2014 dated 18th June 2014, it illustrates the coverage of various activities under the CSR activities. This give more insight towards the eligible CSR activities. It specifically scope out the one-off events (like Marathons/Awards etc.) from the eligible CSR activities. It seems that MCA has tried to demarcate the CSR activities from Advertisement and brand building initiatives from CSR activities by companies.

However, looking at Schedule VII, and MCA's clarification, it looks that schedule VII is an inclusive list and not exhaustive one. Companies may face difficulty in classifying some activities as qualified CSR activities. For example, many Indian companies are involved in sponsoring of sports/art/cultural activities. Though such activities make a good case of eligible CSR activities but these are specifically scoped out from eligible CSR activities vide MCA's circular.

In view of this, companies have to make best efforts so as to find best ways to make its CSR activities qualified under schedule VII. For instance in given case, to qualify sponsoring expenditure as eligible CSR expense under schedule VII, companies can contribute the funds to the organising entity ensuring that this is for the “promotion” of sports/culture/art and not for “sponsoring” of these activities. Also companies need to ensure that there is no content of “advertisement or brand building” while “promoting” such activities. By so companies may claim such expense as eligible CSR expenditure.

(7) CSR expenditure accounting

The reporting format for Companies under revised Schedule VI on financial statement requires classification of expenditure by their nature. Therefore, expenditure incurred on employees and employees benefits pertaining to CSR department are booked under salary head and are not shown as CSR expenditure in books of accounts. Same is the case of indirect CSR expenditure like printing / stationery / courier / travel etc. pertaining to CSR activities / CSR department.

This will lead qualified companies to track CSR expenditure manually as this can't be directly tracked from normal books of accounts for reporting, periodic review and compliance. The best way in such scenario will be as under:-

- (i) Install a robust internal monitoring system for reporting of CSR expenditure.
- (ii) Prepare periodic reconciliation statement between number reported in books of accounts and number reported as CSR expenditure duly supported by evidences.
- (iii) Periodic reconciliation statements need to be reviewed and approved at appropriate level of Company Management.
- (iv) Such reconciliation statement should be taken on record by CSR Committee and Board of Directors.

DISCLOSURE OF CSR SPEND

Item 5 (a) of the General Instructions for Preparation of Statement of Profit and Loss under Schedule III to the Companies Act, 2013, requires that in case of companies covered under Section 135, the amount of expenditure incurred on ‘Corporate Social Responsibility Activities’ shall be disclosed by way of a note to the statement of profit and loss. The note should also disclose the details with regard to the expenditure incurred in construction of a capital asset under a CSR project.

All expenditure on CSR activities that qualifies to be recognized as expense may either be recognized as a separate line item as ‘CSR expenditure’ or under natural heads of expenses in the statement of profit and loss with disclosure of the break-up and the total amount spent on CSR activities during the year.

WHETHER PROVISION FOR UNSPENT AMOUNT REQUIRED TO BE CREATED?

The ICAI by its guidance note issued on 15th May, 2015 which provides that the proviso to section 135(5) of the Act, makes it clear that if the specified amount is not spent by the company during the year, the Directors’ Report should disclose the reasons for not spending the amount. However, if a company has

already undertaken certain CSR activity for which a liability has been incurred by entering into a contractual obligation, then in accordance with the generally accepted principles of accounting, a provision for the amount representing the extent to which the CSR activity was completed during the year, needs to be recognised in the financial statements.

Where a company spends more than that required under law, a question arises as to whether the excess amount ‘spent’ can be carried forward to be adjusted against amounts to be spent on CSR activities in future period. Since ‘2% of average net profits of immediately preceding three years’ is the minimum amount which is required to be spent under section 135 (5) of the Act, the excess amount cannot be carried forward for set off against the CSR expenditure required to be spent in future.

OTHER CONSIDERATIONS IN RECOGNITION AND MEASUREMENT

A company may decide to undertake its CSR activities approved by the CSR Committee with a view to discharge its CSR obligation as arising under section 135 of the Act in the following three ways:

- (a) making a contribution to the funds as specified in Schedule VII to the Act; or
- (b) through a registered trust or a registered society or a company established under section 8 of the Act (or section 25 of the Companies Act, 1956) by the company, either singly or along with its holding or subsidiary or associate company or along with any other company or holding or subsidiary or associate company of such other company, or otherwise ; or
- (c) in any other way in accordance with the Companies (Corporate Social Responsibility Policy) Rules, 2014, e.g. on its own.

In case a contribution is made to a fund specified in Schedule VII to the Act, the same would be treated as an expense for the year and charged to the statement of profit and loss. In case the amount is spent the same will also be treated as expense for the year by charging off to the statement of profit and loss. The accounting for expenditure incurred by the company otherwise e.g. on its own would be accounted for in accordance with the principles of accounting as explained hereinafter.

CSR ACTIVITIES CARRIED OUT BY THE COMPANY

In cases, where an expenditure of revenue nature is incurred on any of the activities mentioned in Schedule VII to the Act by the company on its own, the same should be charged as an expense to the statement of profit and loss. In case the expenditure incurred by the company is of such nature which may give rise to an ‘asset’, a question may arise as to whether such an ‘asset’ should be recognised by the company in its balance sheet. In this context, it would be relevant to note the definition of the term ‘asset’ as per the Framework for Preparation and Presentation of Financial Statements issued by the ICAI. As per the Framework, an ‘asset’ is a “resource controlled by an enterprise as a result of past events from which future economic benefits are expected

to flow to the enterprise". Hence, in cases where the control of the 'asset' is transferred by the company, e.g., a school building is transferred to a Gram Panchayat for running and maintaining the school, it should not be recognised as 'asset' in its books and such expenditure would need to be charged to the statement of profit and loss as and when incurred. In other cases, where the company retains the control of the 'asset' then it would need to be examined whether any future economic benefits accrue to the company. Invariably future economic benefits from a 'CSR asset' would not flow to the company as any surplus from CSR cannot be included by the company in business profits in view of Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

In some cases, a company may supply goods manufactured by it or render services as CSR activities. In such cases, the expenditure incurred should be recognised when the control on the goods manufactured by it is transferred or the allowable services are rendered by the employees. The goods manufactured by the company should be valued in accordance with the principles prescribed in Accounting Standard (AS) 2, Valuation of Inventories. The services rendered should be measured at cost. Indirect taxes (like excise duty, service tax, VAT or other applicable taxes) on the goods and services so contributed will also form part of the CSR expenditure.

Where a company receives a grant from others for carrying out CSR activities, the CSR expenditure should be measured net of the grant.

Recognition of Income Earned from CSR Projects/Programmes or During the Course of Conduct of CSR Activities

Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, requires that "the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company". The term 'surplus' ordinarily means excess of income over expenditure pertaining to an entity or an activity. Thus, in respect of a CSR project or programme or activity, it needs to be determined whether any surplus is arising therefrom. A question would arise as to whether such surplus should be recognised in the statement of profit and loss of the company. It may be noted that paragraph 5 of Accounting Standard (AS) 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies, *inter alia*, requires that all items of income which are recognised in a period should be included in the determination of net profit or loss for the period unless an Accounting Standard requires or permits otherwise. As to whether the surplus from CSR activities can be considered as 'income', the Framework for Preparation and Presentation of Financial Statements issued by the ICAI, defines 'income' as "increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decrease of liabilities that result in increase in equity, other than those relating to contributions from equity participants". Since the surplus arising from CSR activities is not arising from a transaction with the owners, it would be considered as 'income' for accounting purposes. In view of the aforesaid requirement any surplus arising out of CSR project or programme or activities shall be recognised in the statement of profit and loss and since this surplus cannot be a part of business profits of the company, the same should immediately be recognised as liability for CSR

expenditure in the balance sheet and recognised as a charge to the statement of profit and loss. Accordingly, such surplus would not form part of the minimum 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

PRESENTATION AND DISCLOSURE IN FINANCIAL STATEMENTS

Item 5 (A)(k) of the General Instructions for Preparation of Statement of Profit and Loss under Schedule III to the Companies Act, 2013, requires that in case of companies covered under Section 135, the amount of expenditure incurred on 'Corporate Social Responsibility Activities' shall be disclosed by way of a note to the statement of profit and loss.

CONCLUSION

Indian companies have myriad contradictions and tradition in their ways of doing business. The CSR framework reaffirms the view that businesses are an integral part of society and can play a pivotal role in financial inclusion of people. Companies can play critical and active role in the sustenance and improvement of healthy, ecosystems, social inclusiveness, equity and such other goals of a democratic country. Though, Indian corporate are busy in putting robust CSR policies and compliance framework in place with an ultimate objective of equitable, inclusive and sustainable growth across of all levels of societies, the success of CSR will depend on ability to innovate and adapt in new environment. The legal framework will certainly help companies in their journey to CSR. The framework puts onus on members of Board of Directors for increased transparency and governance.

Issues enumerated here are very granule in nature. A holistic CSR approach duly integrated with business objective can eliminate these issues easily. The best process for companies to overcome such types of issues would be:-

- (i) Analyse existing governance framework and identify the gaps in light of business objectives and company's philosophy.
- (ii) Chalk out best course of action available in building the CSR framework.
- (iii) Let CSR committee take notice of any issue in CSR governance framework.
- (iv) Analyze and form standard set of practice rule. Adopt these set of practice consistently.
- (v) Advise Board of Directors to take a notice of these issues, apprise Board of Directors periodically specially in case of departure from standard set of practice rules.
- (vi) Take advisory by Board of Directors.
- (vii) Minute out the figures and facts for future reference and record.
- (viii) Disclose adequately in CSR report.
- (ix) Make continuous improvements in existing CSR framework.

After all "Always do right. This will gratify some people and astonish the rest". Said "Mark Twain".

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RESEARCH CORNER



- CRITICAL ANALYSIS OF INDIAN BALANCE OF PAYMENTS
- AUDIT COMMITTEES CHARACTERISTICS QUALITY AND EARNINGS QUALITY IN SELECT COMPANIES IN INDIA
- ICSI – CCGRT JOINTLY WITH HYDERABAD CHAPTER OF ICSI EMBARKING UPON THE VOYAGE OF RESEARCH
- ICSI - CCGRT ANNOUNCES UNIQUE ALL INDIA RESEARCH PAPER COMPETITION ON FOREIGN CONTRIBUTION REGULATION LAWS
- ICSI - CCGRT RESULTS OF UNIQUE ALL INDIA OPINION WRITING COMPETITION

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BY
ICSI Mamta Binani
PRESIDENT, ICSI
MONTHLY WEBCAST TALK SERIES FOR ICSI STUDENTS



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Critical Analysis of Indian Balance of Payments



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ABSTRACT

The current account as well as the capital account plays an important role in determination of Indian Balance of payments position. The services and transfers play an important role in a part of invisibles along with the merchandise trade, where as foreign investment, loans, banking capital, rupee debt services, and other capital play an important role as a capital account. The main objectives of this paper are to examine the various components of Indian Balance of Payments to know the most favourable response towards the invisibles, know the difference from the component of capital account to another component of capital account along with suitable suggestions to strengthen the Indian Balance of Payments position. The data collected from the RBI Handbook statistics of 2014, and the paired samples statistics, paired samples correlation and paired samples test applied to derive the results. The study found that the higher amount of a net balance of invisibles were acquired through the services followed by the transfers and also there was a significant difference between the invisibles to the incomes and services and the more amount contributed as a net balance to the capital account was the banking capital followed by the loans, foreign investment, rupee debt services and other capital and loans. The study also witnessed that the following variables banking capital to rupee debt services, other capital and banking capital, rupee debt services to loans were negatively correlated. Finally it is suggested that the concern authority should take necessary steps to increase the favourable balance of Indian capital account as well as the Indian current account by increasing of the exports and reduce the imports and enhances the inflows rather than outflows in a capital account.

Keywords: Current Account, Capital Account, invisibles foreign investment, banking capital, loans, rupee debt services.

Introduction: A statement which represents a systematic record of all the external transactions that take place between the residents of a reporting country and that of rest of the world during a given period of time. The economic transactions refer to the goods, services, gifts, assets and financial claims. The resident implies the individuals and business firms and it is useful to know the external balance and disequilibrium in balance of payments. The balance of payments accounting is in the nature of double entry accounting principle, useful to know the arithmetical equality and it is also useful to examine the position of the health of an external account. As per this it shows as merchandise trade, trade in services, balance on current account and long term capital balance. The balance of payments on debit side comprises the import of goods and services, transfer of payments to foreigners, lending to foreign countries, investments by residents in foreign countries. On the credit side, it records the transaction of receive a payment from a foreign country. It considers the export of goods and services, unrequited receipts in the form of gifts etc., borrowing from abroad, investments made by foreigners in the country and the official sale of reserve assets including gold. The components of balance of payment comprises the merchandise trade also known as the balance of trade or visible trade, where exports exceed the imports indicates the favourable balance and where imports exceed the exports are the unfavourable balance. The trade in services also called "invisible" comprises receipt of interest and dividend and payment of interest and dividend. Where the payment of interest and dividend is more than receipt of interest and dividend it indicates the favourable balance of invisible trade, otherwise, it is an unfavourable balance of invisible trade. The trade in services includes the transportation, travel, license fee, private services, miscellaneous Govt. services and the investment income. It

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also covers the unilateral transfers representing receipt of the free gifts and remittances. The long term capital refers to only involve financial or other claims on foreigners. Private short term capital is equivalent to the current account comprises of the goods account, services account and the unilateral transfers account. The total of private short term capital equals to the sum of balance on current account along with the net balance on long term capital. The official reserve assets implies where the payments exceeds the receipts to foreign countries, it is comprised of the gold, foreign exchange reserves, special drawing rights and the provisions of the international monetary fund.

Review of Literature: Townsend (1980) opined that exact consumption of loan specification can be generated with large volume of transactions, Kareken and Wallace (1981) exhibits that there is either a non negativity constraint or non positivity for gross and net reserve position.

Objectives of the Study : The study carried with the following objectives.

1. To examine various components of Indian Balance of payments.
2. To know the most favourable response towards the invisibles as per the Indian Balance of payments.
3. To test whether there is any significant difference between one components of capital account to another component of capital amount.
4. To offer suitable suggestions to strengthen the Indian Balance of payments position.

Methodology of the Study : The data is collected from the secondary sources. The values of foreign investment, loans, banking capital, rupee debt services, other capital, banking capital extracted from Reserve Bank of India Handbook statistics 2014. In the same way values of services, transfers and incomes are obtained from the same Reserve Bank of India 2014. The SPSS 16.0 version was used to infer the results. The techniques of regression, paired samples test, paired samples regression and paired samples statistics are applied to infer the results.

Input Table 1: Information Regarding Invisibles through Different Independent Variables from the Year 2009-10 to 2014-15.

Year	Invisibles	Services	Transfers	Income
2009-10	3802.66	1711.94	2470.65	-379.93
2010-11	3608.17	2005.60	2420.63	-818.06
2011-12	5361.57	3078.81	3051.05	-768.29
2012-13	107493	64915	64034	-21456
2013-14	115212	72965	65276	-23029
2014-15	116242	75683	65542	-24983

Source: RBI Hand Book:2014.

Table-1 : This table narrates the information of various independent variables i.e., services, transfers and income and the dependent variable was the share of invisibles in Indian Balance of payments. These amounts represent the net balance (credited amount – debit amount of Indian current account). The aggregation of net balances of services, transfers and incomes were equivalent to invisibles

of the balance of payments. The proportion from income shows negative, the remaining sources show the positive values.

Table 2: Variables entered and Removed

Model	Variables Entered	Variables Removed	Method
1	Incomes, Transfers, Services ^a	.	Enter

a. All requested variables entered.

Table-2 : Table two narrates the variables entered as independent variables like incomes, transfers and services and the dependent variable was the invisibles.

Table 3: Test of Variation in Visible through the Various Independent Variables

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	1.000 ^a	1.000	1.000	0.14106

a. Predictors: (Constant), Incomes, Transfers, Services

b. Dependent variable: Invisible

Source: SPSS:Field Study

Table-3 : This table describes the test of variation in net balance of visible through the various independent variables. There was a 100 percent variation in invisibles was happened through the incomes, transfers and services.

Table 4: Test of difference between Visibles and the Independent Variables

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1.778E10	3	5.926E9	2.978E11	0.000 ^a
	Residual	0.040	2	0.020		
	Total	1.778E10	5			

a. Predictors: (Constant), Incomes, Transfers, Services

b. Dependent Variable: Invisibles

Source: SPSS: Field Study

Table-4: This table discusses whether there is any significant difference between net balance of visible products to net balance of independent variables incomes, transfers and services.

Null Hypothesis (H_0) : There is no significant difference between the net balance of amount of visible to the net balances of various independent variables (incomes, transfers and services).

Alternative Hypothesis (H_a) : There is significant difference between the net balance of amount of visible to the net balances of various independent variables like incomes, transfers and services.

Analysis : The sum of squares of the residual value was much lesser than that of sum of squares of the regression value and valued of F value was 2.978E11 at df was 5 and the level of significance was 0.000, hence, it can be concluded that there was a

significant difference between the net balance of invisibles to the net balance of independent variables (incomes, transfers and services).

Table 5: Test of Favorable Balance towards the Invisible through different Independent Variables

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	0.151	0.088		1.717	.228
	Services	1.000	0.000	0.636	1.961E4	.000
	Transfers	1.000	0.000	0.572	4.141E4	.000
	Incomes	0.999	0.000	0.207	6.322E3	.000

Dependent Variable: Invisibles

Source: SPSS:Field Study

Table-5 : This table shows which of the given variables are more favourable towards the net balance of invisibles. The table tells us that the most favoured response was the services towards the net balance of invisibles, followed by the transfers and incomes. Hence, it can be concluded that the higher amount of net balance of invisibles was acquired from the services, followed by the transfers and incomes.

Table 6: Information Regarding Various Variables of Indian Balance of Payments

Year	Capital Account	Foreign Investment	Loans	Banking Capitals	Rupee Debt Service	Other Capitals
2009-10	2440.48	2399.51	579.53	98.42	-4.51	-632.46
2010-11	4711.67	1934.82	1327.14	2020.20	-3.10	-567.39
2011-12	3190.29	1887.38	897.48	709.98	-3.81	-300.73
2012-13	89300	46711	31124	16570	-58	-5047
2013-14	48787	26386	7765	25449	-52	-10761
2014-15	87107	73561	3435	11618	-81	-1426

Table-6 : This table projects the information regarding accumulation of net balance of capital account through the various variables like foreign investment, loans, banking capitals and rupee debt services and other capitals.

Table 7: Paired Samples Statistics of Various Variables of Indian Balance of Payments

		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	Foreign Investment	2.5480E4	6	29688.56681	12120.30665
	Loans	7.5214E3	6	11868.23883	4845.18821
Pair 2	Banking Capital	9.4109E3	6	10299.46983	4204.74095
	Rupee Debt Services	-33.7367	6	34.18915	13.95766
Pair 3	Other Capital	-3.1224E3	6	4138.10988	1689.37628
	Banking Capital	9.4109E3	6	10299.46983	4204.74095
Pair 4	Rupee Debt Services	-33.7367	6	34.18915	13.95766
	Loans	7.5214E3	6	11868.23883	4845.18821
Pair 5	Foreign Investment	2.5480E4	6	29688.56681	12120.30665
	Banking Capital	9.4109E3	6	10299.46983	4204.74095

Source: SPSS:Field Study

Table-7 : This table interprets the information of mean, standard deviation of net balances of various independent variables as a pair. The above table tells us that the higher amount of net balance was formed through the banking capital, followed by the loans, foreign investment, rupee debt service and other capitals. It also tells us that the loans contributed more amount towards capital account than the foreign investment, banking capital contributed more than that of the other capital and rupee debt services, likewise amount of loans contributed more than the rupee debt services etc.

Table 8: Paired Samples Correlations Various Variables of Indian Balance of Payments

		N	Correlation	Sig.
Pair 1	Foreign Investment & Loans	6	.435	.388
Pair 2	Banking Capital & Rupee Debt Services	6	-.755	.082
Pair 3	Other Capital & Banking Capital	6	-.935	.006
Pair 4	Rupee Debt Services & Loans	6	-.481	.335
Pair 5	Foreign Investment & Banking Capital	6	.567	.241

Source: SPSS:Field Study

Table-8 : This table implies the relationship between the two variables with in a group. There was a positive correlation between the foreign investments and loans, and negatively correlated regarding banking capital and rupee debt services, other capital and banking capital, rupee debt services and loans and also the table witnessed that there was a positive relationship between variables of the foreign investment and banking capital.

Table 9: Paired Samples Test Various Variables of Indian Balance of Payments

		Paired Differences					t	df	Sig. (2-tailed)
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
					Lower	Upper			
Pair 1	Foreign Investment - Loans	1.79586E4	26746.76483	10919.32102	-10110.41493	46027.60159	1.645	5	.161
Pair 2	Banking Capital - Rupee Debt Services	9.44467E3	10325.31909	4215.29387	-1391.08784	20280.42784	2.241	5	.075
Pair 3	Other Capital - Banking Capital	-1.25334E4	14243.20813	5814.76537	-27480.69357	2413.96690	-2.155	5	.084
Pair 4	Rupee Debt Services - Loans	-7.55510E3	11884.70505	4851.91052	-20027.32805	4917.13805	-1.557	5	.180
Pair 5	Foreign Investment - Banking Capital	1.60690E4	25312.84881	10333.92725	-10495.18735	42633.22402	1.555	5	.181

Source: SPSS:Field Study

Table-9 :

Null Hypothesis (H₀) : There is no significant difference between net balance of foreign investment to net balance of loans.

Alternative Hypothesis (H_a) : There is significant difference between net balance of foreign investment to net balance of loans.

Analysis : The value of t was 1.645 at df 5, at significance level was the 0.161, Hence, it can be concluded that the proposed null hypothesis was accepted and alternative hypothesis was rejected and confirmed that there was no significant difference between an amount of foreign investment to loans.

Hypothesis-2:

Null Hypothesis (H₀) : There is no significant difference between the net balance of banking capital to rupee debt services.

Alternative Hypothesis (H_a) : There is significant difference between the net balance of banking capital to rupee debt services.

Analysis : The calculated value of t was 2.241 at df 5, and the level of significance was the 0.75 and confirmed that the proposed null hypothesis was accepted and alternative hypothesis was rejected and that there was significant difference between the net balance of banking capital to rupee debt services.

Hypothesis-3:

Null Hypothesis (H₀) : There is no significant difference between the net balance of capital acquired through the bank to the capital acquired through the other resources.

Alternative Hypothesis (H_a) : There is significant difference between the net balance of capital acquired through the bank to the capital acquired through the other resources.

Analysis : The value of t was -2.155 at df was 5, and the level of

significance was the 0.84, hence, it can be concluded that there was no significant difference between the net balance of capital acquired through the bank to the capital acquired through other resources.

Hypothesis-4:

Null Hypothesis (H₀) : There is no significant difference between the net balance of rupee of debt services to the net balance of loans amount.

Alternative Hypothesis (H_a) : There is significant difference between the net balance of rupee of debt services to the net balance of loans amount.

Analysis: The value of t was -1.557 at degree of freedom was 5, and the level of significance was 0.180, and hence it came to know that the proposed null hypothesis was accepted and the alternative hypothesis was rejected and concluded that there was no significant difference between net balance of capital acquired through the rupee of debt services to the loans.

Hypothesis-5:

Null Hypothesis (H₀) : There is no significant difference between the net balance of foreign investment to net balance of banking capital.

Alternative Hypothesis (H_a) : There is significant difference between the net balance of foreign investment to the net balance of banking capital.

Analysis : The value of t was 1.555 at degree of freedom was 5, and the level of significance was the 0.181, hence it can be concluded that the proposed null hypothesis was rejected and the alternative hypothesis was accepted and confirmed that there was no significant difference between the net balance of foreign investment to the net balance of banking capital.

Findings of the Study :

1. The higher amount of a net balance of invisibles was acquired through the services followed by the transfers.
2. The study found that there was significant difference between total net balance of invisibles to the net balance of incomes, transfers and services.
3. The study identified that the more amount contributed to the capital account through the banking capital followed by the loans, foreign investment, rupee debt services, other capital and loans.
4. The study also observed that contributed loan amount exceeds the foreign investment; banking capital exceeds the rupee debt services and other capital.
5. The study also observed that the negative relationship existed between banking capital to rupee debt services, other capital and banking capital, rupee debt services to loans.
6. The study also observed that there was a positive relationship between foreign investments to banking capital and from the foreign investments to amount of loans.
7. The study also observed that there was no significant difference between the net balances of various pairs, namely foreign investment to loans, banking capital to rupee debt services, other capital to banking capital rupee debt services to loans and from foreign investment to banking capital.

Suggestions :

1. The study examined the income component and shows a negative net balance. Hence the concerned authority should take necessary measures to enhance the performance of

balance of incomes to have a more favourable balance in a capital account.

2. The proportion of foreign investment was lesser than the other components, banking capital, loans etc. Hence, it is suggested to increase the inflow of foreign investment to ameliorate the net balance in a capital account.

Conclusion : Finally it can be concluded that the major portion of current account acquired through the service, followed by the transfers, likewise the more amount was acquired through the banking capital from the capital account, but India should concentrate on exploration of new natural resources. Hence, it is a great opportunity to increase our favourable balance of the current account and capital account.

References:

1. Townsend, Robert H., "Models of Money with Specially Separated Agents" Models of Monetary Economics ed. by John H. Kareken and Neil Wallace (Federal Reserve Bank of Minneapolis 1980)
2. Kareken, John and Nell Wallace, "On the Indeterminacy of Equilibrium Exchange Rates," Quarterly Journal of Economics, Vol. 96 (May 1981) pp. 207—222.
3. William, A. Allen, BIS Working Papers No 3- July 1980, Exchange rates and Balance of Payments Adjustment-General Principles and some recent experiences.

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Audit Committees Characteristics Quality and Earnings Quality in Select Companies in India



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ABSTRACT

The study focuses on the relationship between audit committee and earnings quality, so as to improve the quality of earnings by understanding and managing the audit committee characteristics. The concept of management of earnings quality and its relationship with audit committee characteristics by testing the hypothesis are presented in the context of select Indian companies.

It is found in the study that in most of the equity based listed companies at BSE under study, have complied with the legal formalities like appointment of independent directors, number of meetings, size of the audit committee, legal qualifications and financial qualifications of the directors, as they were required for the listing at a stock exchange in India. Further, the analysis and tests stated that though the audit committee quality characteristics have relationship with earnings quality, except numbers of audit committee meetings, others have shown no impact on later.

INTRODUCTION

According to Lev¹ the quality of earnings may be determined by the contribution of earnings to the prediction of investors' returns: the higher the predictive contribution of earnings and other financial variables, the higher their quality. Earnings quality evaluation is essential for the financial statement user to judge the certainty of current income and the prospects of the future, as the assessment of the sustainability and accuracy of historical earnings as well as the achievability of future projections is the primary objective of a quality of earnings report. Thus, the earnings quality is the ability of reported earnings to reflect the true earnings of the company, as well as the usefulness of reported earnings to

predict future earnings.

Earnings quality is a measure of the stability, persistence, and lack of variability in reported earnings. The evaluation of earnings is made difficult by the tendency of the companies to highlight a variety of earnings figures like revenues, operating earnings, net income, and pro forma earnings and the different companies calculate these figures differently. In this context, an attempt is needed here to examine the perception of people towards the concept of earnings quality and presented the same in brief here under:

Dechow et.al (2010)² defined earnings quality as "Higher quality earnings provide more information about the features of a firm's financial performance that is relevant to a specific decision made by a specific decision-maker". Penman and Zhang³ stated that the earnings quality depends on accounting methods and judgments, as well as on the interaction between the real activity and accounting policies of the company. Whereas, Kamp (2002)⁴ explain that due earnings quality means more than just meeting the requirements of the accounting standards and he disagreed with the assumption that if accounting standards are met, financial statements provide a fair view of earnings and financial position.

In short, earnings quality is one of the most important characteristics of financial reporting systems and improves capital market efficiency, hence, investors and other users may show interest in high-quality financial accounting information. This strive standard setters to develop and adopt the accounting standards that improve earnings quality. The objective

² Dechow, P., W. Ge, and C. Schrand. (2010), "Understanding earnings quality: A review of the proxies, their determinants and their consequences", *Journal of Accounting and Economics* 50, 344-401.

³ Penman, H., S. & Zhang, X.,J. (2002), "Accounting conservatism, the quality of earnings and stock returns", *The Accounting Review*, 77 (2), 237-264.

⁴ Kamp, B. (2002), "Earnings Quality Assessment by a Sell-Side Financial Analyst", *Issues in Accounting Education*, 17 (4).

¹ Lev, B., (1989), "On the usefulness of earnings and earnings research: Lessons and directions from two decades of empirical research", *Journal of Accounting Research* 27, 153-192.

measurement of earnings quality is the dependent of some factors include, the special characteristics of the business model of the firm, the characteristics of financial reporting system that firms implement, the expertise and the incentives of auditors, and the goals and the incentives of managers when make reporting choices. Here, the Audit Committees, because of their role and characteristics, play an important role in ensuring Earnings Quality of the firm.

As earning is the life-sustaining fuel of the firm, and an investor's decision to invest in a firm would be influenced by an Audit Committee and its strength, and its opinion on the earnings quality of the firm, it is important to explore the relationship between Audit Committee Quality and Earnings Quality, and many researchers have conducted researches to understand and measure the same. An effort is made here to present a brief account of prior studies conducted on this relationship.

LITERATURE REVIEW

Gore, Pope, and Singh (2001)⁵ reported a positive association between non-audit fees and earnings management for firms that do not appoint the larger audit firms. **Klein (2002)**⁶ found a negative relation between audit committee independence and abnormal accruals, and concluded that the Audit Committee comprised of members independent of the Chief Executive Officers of the firm are more effective in monitoring the corporate financial accounting and earnings management process. **Xie et al. (2003)**⁷ expressed that companies with a larger proportion of independent directors were less likely to engage in earnings management than those whose boards had a majority of executive directors.

Bedard et al (2004)⁸ concluded that the share option schemes for non-executive directors compromise their independence and such option schemes are positively associated with aggressive earnings management. **Kinney, Palmrose, and Scholz (2004)**⁹ did not find any evidence of a positive association between audit firm fees for non-audit services and restatements. **Park and Shin (2004)**¹⁰ found that independent outside directors *per se* do not reduce discretionary accruals, but that outside directors from financial intermediaries and active institutional shareholders do reduce earnings management, and also found that officers of financial intermediaries on the board, and the tenure of outside directors restrain earnings management.

Karamanou and Vafeas (2005)¹¹ found that firms with more effective Audit Committees make or update an earnings forecast and that, while their forecast is not likely to be precise, it tends to be more accurate and receives a more favorable market response than companies with ineffective Audit Committees. **Peasenell et al**

(2005)¹² reported an absence of evidence to support the assertion that the presence of an Audit Committee directly affects the extent of income-increasing adjustments to meet or exceed a threshold. **Yang and Krishnan (2005)**¹³ found that quarterly earnings management is lower for firms with more financial experts on the Audit Committee, and a positive relationship was also documented between Audit Committee members having share ownership and earnings management.

Abdul Rahman and Ali (2006)¹⁴ revealed that the earnings management is positively related to the size of the board of directors but finds an insignificant relationship between either board independence or Audit Committee independence and earnings management. **Benkel, et al. (2006)**¹⁵ found that boards and audit committees with higher independence are associated with reduced levels of earnings management. **Braiotta and Zhou (2006)**¹⁶ indicated that firms with audit committee alignment have larger total assets, have higher leverage, and also found that the firms experiencing audit committee alignment are associated with less earnings management, and less increase in earnings management. **Jerry, June and Joon (2006)**¹⁷ found a negative association between the size of Audit Committees and the occurrence of earnings restatement,

Ahmad (2007)¹⁸ found that earnings management is negatively related to both board and Audit Committee independence, but that this is not true for board activity. **Jaggi and Leung (2007)**¹⁹ showed that Audit Committees, overall, have a significant role in constraining earnings management. **Saleh, Iskandar and Rahmat (2007)**²⁰ revealed that a fully independent audit committee reduced earnings management practices, and that the Audit Committee with more knowledgeable members held more audit committee meetings and recorded fewer earnings management practices.

Baxter and Cotter (2009)²¹ concluded that formation of an audit committee reduces intentional earnings management but not accrual estimation errors. **Ghosh et al. (2010)**²² revealed that board size and audit committee size, activity, and tenure are associated with earnings management. **Vafeas (2010)**²³ suggested that measures of audit committee and board structure are related to earnings quality.

- 5 Gore, P., Pope, P., and Singh, A. (2001), "Non-audit services, auditor independence, and earnings management", working paper, Lancaster University, United Kingdom.
- 6 Klein, A., (2002), "Audit committee, board of director characteristics, and earnings management", *Journal of Accounting and Economics* 23(3), 375-400.
- 7 Xie, B., Davidson, W., and DaDalt, P. (2003), "Earnings Management and Corporate Governance: The Roles of the Board and the Audit Committee", *Journal of Corporate Finance*, Vol. 9, No. 3: pp. 295-317.
- 8 Bedard, J., Chtourou, S.M. and Courteau, L. (2004), "The Effect of Audit Committee Expertise, Independence, and Activity on Aggressive Earnings Management", *Auditing: A Journal of Practice & Theory*, Vol. 23 No.2, pp. 13-35.
- 9 Kinney, W.R., Palmrose, Z.V., and Scholz, S.W. (2004), "Auditor independence, non-Audit Services, and restatements: Was the U.S. Government right?", *Journal of Accounting Research*, 42(3): 561-588.
- 10 Park, Y.W., and Shin, H.H. (2004), "Board Composition and Earnings Management in Canada", *Journal of Corporate Finance*, Vol. 10, No. 3, pp.4 31-457.
- 11 Karamanou, I. and N. Vafeas (2005), "The association between corporate boards, audit committees, and management earnings forecasts: An empirical analysis.", *Journal of Accounting research* 43(3): 453-486.

- 12 Peasenell, K.V., Pope, P.F. and Young, S. (2005), "Board Monitoring and Earnings Management: Do Outside Directors Influence Abnormal Accruals", *Journal of Business Finance & Accounting* Vol. 32, Issue 7/8 p1311-1346 (2005).
- 13 Yang J.S. and Krishnan J. (2005), "Audit committees and quarterly earnings management", *International Journal of Auditing* 9: 201-219.
- 14 Abdul Rahman, R., and Ali, F.H.M. (2006), "Board, Audit Committee, Culture And Earnings Management: Malaysian Evidence", *Managerial Auditing Journal*, Vol.21, No.7: pp.783-804.
- 15 Benkel, M., Mather, P., and Ramsay, A. (2006), "The Assassination Between Corporate Governance and Earnings Management: The Role of Independent", *Corporate Ownership and Control*, 3.
- 16 Braiotta Jr, Jian Zhou, (2006), "An exploratory study of the effects of the Sarbanes-Oxley Act, the SEC and United States stock exchange(s) rules on audit committee alignment", *Managerial Auditing Journal*, Vol. 21 Iss: 2, pp.166 – 190.
- 17 Jerry W. Lin, June F. Li, Joon S. Yang, (2006), "The effect of audit committee performance on earnings quality", *Managerial Auditing Journal*, Vol. 21 Iss: 9, pp.921 – 933.
- 18 Ahmed Ebrahim, (2007), "Earnings management and board activity: an additional evidence", *Review of Accounting and Finance*, Vol. 6 Iss: 1, pp.42 – 58.
- 19 Jaggi, B., Leung, S., (2007), "Impact of family dominance on monitoring of earnings management by audit committees: Evidence from Hong Kong", *Journal of International Accounting, Auditing and Taxation*, 16(1), 27-50.
- 20 Saleh, Takiah Mohd Iskandar, Mohd Mohid Rahmat, (2007), "Audit committee characteristics and earnings management: evidence from Malaysia", *Asian Review of Accounting*, Vol. 15 Iss: 2, pp.147 – 163.
- 21 Baxter, P. and J. Cotter (2009), "Audit committees and earnings quality", *Accounting & finance* 49(2): 267-290.
- 22 Ghosh, A., A. Marra, et al. (2010), "Corporate Boards, Audit Committees, and Earnings Management: PreIreland PostSOX Evidence.", *Journal of Business Finance & Accounting* 37(9):10: 1145-1176.
- 23 Vafeas, N. (2010), "Audit committees, boards, and the quality of reported earnings", *contemporary accounting research* 22(4): 1093-1122.

Siagian and Tresnaningsih (2011)²⁴ found that both discretionary accruals and earnings response co-efficient improved significantly when firms acquire independent Directors and Audit Committee is chaired by an independent Director. **Thiruvadi, and Huang (2011)**²⁵ found consistent evidence to show that the presence of a female director on the audit committee constrains earnings management by increasing negative, income-decreasing, discretionary accruals.

The above review of literature may reveal that the studies were conducted by taking up one issue at a time and in a different environment. No study is provided on the analysis of effectiveness of select audit committee qualities on earnings quality in Indian context, hence, the present study is taken up to fill up the gap, with the following **research methodology** expressed in terms of objectives, sample design, tools and limitations, whereas, hypotheses and models adopted for the study are presented under the test of hypothesis:

RESEARCH METHODOLOGY

Objective: Examination of the relationship between Audit committee quality and earnings quality and measuring the effect of Audit committee characteristics quality on earnings quality.

Sample Design: From 15916 companies listed at Bombay Stock Exchange as on 8.11.2012, 3879 companies are considered based on equity and listing, out of which 133 companies are selected randomly and information relating to financial year 2002-03 to 2011-12 are considered for this study. This research uses the formula given by **Bill Godden**²⁶ to justify the size of sample.

In this study, as public limited companies having a paid-up capital of at least Rs. 5 crore, shall constitute a Committee of the Board known as Audit Committee (As required by section 292A of the Companies Act. 1956), the only listed companies which have Audit Committees are considered.

Data Collection and Analytical Tools: The data, related to the select characteristics and terms used in the models for analysis are collected from the annual reports of the select companies and notes and statements given in them. The period of the study is recent 10 years, i.e. from 2002-03 to 2011-12.

The study uses Pearson Correlation Coefficient, Regression analysis to establish the relationship between the variables. t-test and ANOVA are used to test the effect of the independent variable on the dependent variable and to test the stated hypotheses. Statistical Software-SPSS is used for the purpose of processing data to arrive at relevant measures of analysis.

Limitations: i) As the study is limited to 133 equity based companies listed at Bombay Stock Exchange (BSE) and selected on the basis of Bill Godden principle, the results may not represent of the entire industry or the economy; ii) The study is based on secondary data only and confined to analyze the same for establishing the relationship to understand the impact of select factors on audit committee quality; iii) The study used

the models developed by the various authors, academicians, and researchers, after modifying them according to the need of the study, thus, sometimes the process of modifications may not truly represent the desired phenomenon; iv) There may be various characteristics that determine the audit committee quality, but the study considered only a few audit committee quality characteristics, such as, independency, size, accounting and legal qualifications of members and number of audit committee meetings, as the relationship between audit committee characteristics and earnings quality has been established by the following findings of the various researchers:

i) **Klein**²⁷ stated that the earnings quality is higher when the majority of audit committee are independent and/or financial literate, the same is supported by **Carcello et al**²⁸ that audit committees are more effective in limiting earnings manipulation when the financial literate directors, whether in accounting or non-accounting, are independent, and further, **Hooghiemstra et al.**²⁹ added that the independence of an audit committee limits the occurrence of earnings manipulation. **Lin & Hwang**³⁰ contributed that independence of the audit committee members and the relevant financial expertise of audit committees are strongly and positively associated with earnings quality. This shows that audit committees having members who are independent, and possessing accounting expertise are strongly positively associated with earnings quality.

ii) The frequency of the meetings of the audit committee has a direct association with higher earnings quality, and empirical evidence has shown that meeting frequency is associated with lower levels of earnings manipulation³¹.

AUDIT COMMITTEE QUALITY AND EARNINGS QUALITY

The works of many researchers and particularly recommendations by **Blue Ribbon Committee**³² indicate that audit committees ought to ensure the improvement of quality of financial reporting practices inclusive of earnings quality, because they are important components of the corporate governance mechanism. A modest attempt has been made to study the relationship between audit committee quality and earnings quality by testing the following null hypothesis:

TEST OF HYPOTHESIS

H₀₁ : There is no relationship between audit committee quality and earnings quality.

24 Siagian, Elok Tresnaningsih, (2011), "The impact of independent directors and independent audit committees on earnings quality reported by Indonesian firms", Asian Review of Accounting, Vol. 19 Iss: 3, pp.192 – 207.

25 Thiruvadi, Hua-Wei Huang, (2011), "Audit committee gender differences and earnings management", Gender in Management: An International Journal, Vol. 26 Iss: 7, pp.483–498.

26 Bill Godden, January (2004), <http://www.williamgodden.com/samplesizeformula.pdf>

27 Klein, A. (2002), "Audit Committee, Board of Director Characteristics, and Earnings Management", Journal of Accounting and Economics, 33(3), 375-400.

28 Carcello, J.V., Klein, A. & Neal, T.L. (2006), "Audit Committee Financial Expertise, Competing Corporate Governance Mechanisms, and Earnings Management", The Accounting Review 75 (4): 453-467.

29 Hooghiemstra, R., Lammerink, A. & Marra, T. (2008), "Resultaatmanipulatie en de auditcommissie", Maandblad voor Accountancy en Bedrijfseconomie 82: 370-380.

30 Lin, J. W., & Hwang, M. 1- (2010), "Audit Quality, Corporate Governance, and Earnings Management: A Meta- Analysis", International Journal of Auditing, 14(1), 57-77.

31 Xie, B., Davidson, W.N. & DaDalt, P.J. (2003), "Earnings management and corporate governance: the role of the board and the audit committee", Journal of Corporate Finance 9 (3): 295–316.

Vafeas, N. (2005), "Audit Committees, Boards, and the quality of reported earnings", Contemporary Accounting Research 22 (4): 1093–1122.

Hooghiemstra, R., Lammerink, A. & Marra, T. (2008), "Resultaatmanipulatie en de auditcommissie", Maand blad voor Accountancy en Bedrijfseconomie 82: 370-380.

32 Blue Ribbon Committee (BRC). (1999), "Report and recommendations of the Blue Ribbon Committee on improving the effectiveness of corporate audit committees", Business Lawyer, 54, 1067-1095.

For the purpose of testing the above hypothesis two major elements are identified as, earnings quality and audit committee characteristics quality. Where, the earnings quality is expressed in terms of Discretionary Accruals (DA) and the select audit committee characteristics are independency of audit committees; board of directors with legal and accounting knowledge experience; number of audit committee meetings and audit committee size.

The model, used to measure the Earnings Quality (EQ) and Audit Committee Quality (ACQ) and to test the above stated hypothesis, is presented with an appropriate notation here under:

$$EQJ = \alpha + \beta_1 ACIND + \beta_2 ACLEGEX + \beta_3 ACACCEX + \beta_4 ACMEET + \beta_5 ACSIZE + \beta_6 LNTA + \beta_7 LEV + \beta_8 LNOC + \varepsilon_{it}$$

Where,

EQJ (EQJones) is cross-sectional earnings quality from modified *Jones*³³ model.

ACIND is proportion of independent directors on audit committee.

ACLEGEX is proportion of directors on audit committee with legal qualifications.

ACACCEX is proportion of directors on audit committee with accounting qualifications.

ACMEET is number of audit committee meetings for the year.

ACSIZE is number of audit committee members.

LNTA is natural log of total assets.

LEV is total debt divided by total assets.

LNOC is natural log of operating cycle, measured as 360/(Sales/Average Account Receivables).

ε is Error term in year t for firm i .

α is a constant

β is the slope (also called the regression coefficient)

The Earnings Quality (EQ) in terms of discretionary accruals is estimated by *Jones* by using the following model:

$$DA_{it} (EQ) = TA_{it} / A_{it-1} - NDA_{it}$$

Where,

DA -Discretionary accruals in year t for firm i ;

TA - Total accruals in year t for firm i (measured by operating profit after tax – cash flow from operations)

A - Total assets in year $t - 1$ for firm i ;

NDA - Non-discretionary accruals in year t for firm i from equation.

Where, NDA_{it} is computed as,

$$NDA_{it} = a [1/A_{it-1}] + b [\Delta REV_{it} - \Delta REC_{it} / A_{it-1}] + b [PPE_{2i} / A_{it-1}]$$

Where,

NDA - Non-discretionary accruals in year t for firm i ;

A -Total assets in year $t - 1$ for firm i ;

ΔREV - Revenues in year t less revenues in year $t - 1$ for firm i ;

ΔREC - Net receivables in year t less net receivables in year $t-1$ for firm i ;

PPE - Gross property, plant and equipment in year t for firm i .

The Earnings Quality (EQ) in terms of discretionary accruals is estimated by *Jones*³⁵ by using the following model:

$$DA_{it} (EQ) = TA_{it} / A_{it-1} - NDA_{it}$$

Where,

TA - Operating Profit After Tax – Cash flow from operations.

$$NDA_{it} = a [1/A_{it-1}] + b [\Delta REV_{it} - \Delta REC_{it} / A_{it-1}] + b [PPE_{2i} / A_{it-1}]$$

The above modified EQ jones model is applied to the data of select companies listed at BSE and the data is processed with the help of SPSS. The computed measures of mean, standard deviation of audit committee quality characteristics of the select companies are presented in table -1.

Table-1: Mean and Standard Deviation of Audit Committee Quality characteristics and Earnings Quality

Descriptive Statistics				
No	Variables	N	Mean	Std. Deviation
1	EQ	1330	0.635	0.772
2	ACIND	1330	0.795	0.202
3	ACLEGEX	1330	0.286	0.059
4	ACACCEX	1330	0.601	0.076
5	ACMEET	1330	4.55	1.43
6	ACSIZE	1330	3.73	0.956
7	LNTA	1330	3.33	0.977
8	LEV	1330	0.340	0.500
9	LNOC	1330	1.88	0.931
10	Valid N	1330		

Source: Data extracted from Annual reports

A careful examination of the above table may lead to the following conclusions:

- The earnings quality (EQ) in terms of the mean value of discretionary accrual (0.635 million) and standard deviation (0.772 million) of the select companies revealed that all companies having an Audit Committee quality reflected a

33 Jones, J. (1991), "Earnings management during import relief investigations", Journal of Accounting Research, vol. 29, no. 2, pp. 193-228.

- similar earning quality.
- ii) The independence of audit committee (ACIND) represented by the mean value of proportion of independent directors on audit committee (80%) and a standard deviation (20%), revealed that the audit committees of the firms under study have adhered to the requirement of Clause 49 of Listing Agreement (SEBI) 2005, which stipulates "all listed companies should have an Audit Committee, consisting of minimum three directors as members, of which two-third shall be independent"
 - iii) The average of proportion of directors on audit committee with legal qualifications (ACLEGEX) value is (29%), while standard deviation equal to (6%). The Clause 49 of Listing Agreement (SEBI) 2005, stipulates that "the company secretary of the firm must also be the Secretary of the Audit Committee", which brings into the Audit Committee the necessary legal input that is required by the standard formula for Earnings Quality demands that the legal qualification of the Audit Committee members be taken as a variable in the computation of Earnings Quality. Hence, it may be concluded that the most of the companies in India have at least one audit committee member with legal knowledge and there is variation from a company to company in this regard.
 - iv) The mean value of proportion of directors on audit committee with accounting qualification (ACACCEX) is 60% and standard deviation is 8%, revealing that there is a low dispersal from the mean, which may explain that the majority of the Audit Committees of the firms under study have the required number of members with financial and accounting qualification, as specified by the Companies (Amendment) Act (2000) and Clause 49 of Listing Agreement (SEBI) 2005 which states that *"a minimum of three members, all being none xecutive directors, with the majority of them being independent directors, with at least one director having financial and accounting knowledge."*
 - v) The mean value of audit committee meetings is around 5 times and Standard Deviation is 1.4 times. The low Standard Deviation reveal that the Audit Committees meet regularly as stipulated by Section 292A of Companies Act 1956, and Clause 49 of Listing Agreement (SEBI) 2005, which lay down that "the Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings."
 - vi) The mean value of audit committee size is 3.7 members and Standard Deviation is 0.95 members, showing that the dispersion from the mean is low and that the most of the Audit Committees of the firms under study adhered to the size of the Committee stipulated by clause 49 of Listing Agreement (SEBI) 2005, and Section 292A of the Companies Act 1956, both of which require that "the audit committee shall consist of not less than three directors /members".
 - vii) The average value of Total Assets is 3.3 million and the Standard Deviation is 0.97 million. The low Standard Deviation shows that there is no significant variation in the average value of Total Assets of the firms having Audit Committees which are under study.
 - viii) The average value of debts divided by total assets (LEV) is 0.34 million, and the standard deviation is at a noticeably high 0.5 million, showing a considerable dispersion from the mean, which could reveal that Audit Committees may not have a significant impact on the debts of a firm.
 - ix) The mean of Operating Cycle (OC), measured by $360 / (\text{Sales} / \text{Average Account Receivables})$, is 1.8 million, with a standard deviation of 0.93 million. The mid-level Standard Deviation shows that the firms with Audit Committees under study have a considerable dispersion in their Operating Cycle.

From the above findings, it may be **concluded** that most of the equity based listed companies at BSE under study, have complied with the legal formalities like appointment of independent directors, number of meetings, size of the audit committee, legal qualifications and financial qualifications of the directors, as they were required for the listing at a stock exchange in India. While insignificant difference in the average assets, significant difference in the debts of the select companies and a wide dispersion of Operating Cycle may conclude that the market conditions, requirements, operation process, nature of the business etc., may vary from an industry to industry, thus, a noticeable variation is seen in the leverage and operating cycle of the select companies.

After understanding the nature of earnings quality and audit committee quality characteristics, an attempt is made to explain the relationship matrix between them and the measures of the same are presented in table-2.

Table-2: Correlation between Audit Committee Quality and Earnings Quality

No			EQjones	ACIND	ACLEGEX	ACACCEX	ACMEET	ACSIZE	LNTA	LEV	LNOC
1	EQjones	Pearson Correlation	1	-0.018	0.013	0.010	-0.071*	-0.032	-0.022	0.324**	-0.050
		Sig. (2-tailed)		0.504	0.644	0.702	0.010	0.249	0.420	0.000	0.066
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330
2	ACIND	Pearson Correlation	-0.018	1	0.170**	0.026	0.056*	-0.214**	0.174**	-0.039	0.047
		Sig. (2-tailed)	0.504		0.000	0.345	0.041	0.000	0.000	0.158	0.089
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330
3	ACLEGEX	Pearson Correlation	0.013	0.170**	1	0.450**	-0.087**	-0.776**	-0.261**	0.032	0.128**
		Sig. (2-tailed)	0.644	0.000		0.000	0.001	0.000	0.000	0.249	0.000
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330

4	ACACCEX	Pearson Correlation	0.010	0.026	0.450**	1	-0.086**	-0.402**	-0.226**	0.018	0.092**
		Sig. (2-tailed)	0.702	0.345	0.000		0.002	0.000	0.000	0.512	0.001
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330
5	ACMEET	Pearson Correlation	-0.071*	0.056*	-0.087**	-0.086**	1	0.129**	0.414**	-0.047	-0.096**
		Sig. (2-tailed)	0.010	0.041	0.001	0.002		0.000	0.000	0.087	0.000
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330
6	ACSIZE	Pearson Correlation	-0.032	-0.214**	-0.776**	-0.402**	0.129**	1	0.280**	-0.047	-0.139**
		Sig. (2-tailed)	0.249	0.000	0.000	0.000	0.000		0.000	0.089	0.000
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330
7	LNTA	Pearson Correlation	-0.022	0.174**	-0.261**	-0.226**	0.414**	0.280**	1	-0.10**	-0.232**
		Sig. (2-tailed)	0.420	0.000	0.000	0.000	0.000	0.000		0.000	0.000
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330
8	LEV	Pearson Correlation	0.324**	-0.039	0.032	0.018	-0.047	-0.047	-0.109**	1	0.195**
		Sig. (2-tailed)	0.000	0.158	0.249	0.512	0.087	0.089	0.000		0.000
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330
9	LNOC	Pearson Correlation	-0.050	0.047	0.128**	0.092**	-0.096**	-0.139**	-0.232**	0.195**	1
		Sig. (2-tailed)	0.066	0.089	0.000	0.001	0.000	0.000	0.000	0.000	
		N	1330	1330	1330	1330	1330	1330	1330	1330	1330
*. Correlation is significant at the 0.05 level (2-tailed).											
**. Correlation is significant at the 0.01 level (2-tailed).											

Source: Data extracted from Annual reports

The above table-2 reveals the following relationship between audit committee quality characteristics and Earnings Quality (EQ):

- It may be inferred from table-2 that Earnings Quality has positive relationship with ACLEGEX, ACACCEX, LEV, whereas, the relationship is negative with ACIND, ACMEET, ACSIZE, LNTA, LNOC, out of which the positive relationship with LEV and negative relationship with ACMEET are significant. This may reveal that the companies constitute the audit committees, for the requirement of the statutes stated earlier, and barring the frequency of meeting, all other audit committee quality characteristics are in significantly either positively or negatively related with earnings quality. Hence, it may be concluded that a little positive relationship between some of the audit committee quality characteristics and earnings quality, may state that audit committees role in determining the earnings quality may not be undermined.
- An audit committee characteristic, independent directors (ACIND) is positively and significantly correlated with Audit committee with legal qualification (ACLEGEX) and audit committee meeting (ACMEET) and total assets (TA), implying that with an increase in the ACLEGEX and ACMEET and TA of the firms, ACIND also increases. This shows that with an increase of independent directors in the Audit Committee, there is an increase in the legal qualification of members of the Audit Committee and also the number of meetings of the Audit Committee increases or vice versa.

Interdependency of audit committee members (ACIND) and size of the audit committee (ACSIZE) are negatively and significantly correlated. This implies that ACIND increases as ACSIZE decreases, showing that with an increase in the number of members of the Audit Committee, the ratio of independent members in the Audit Committee decreases. Here, it may be concluded that the independent audit committee members may ensure the more number of audit committee meetings and possess the legal knowledge, whereas decreases the audit committee size.

- Audit committee with legal qualification (ACLEGEX) is positively and significantly correlated with Audit committee with accounting qualification (ACACCEX) and operating cycle (OC), implying that ACLEGEX increases with an increase in ACACCEX and OC of the company. This indicates that with an increase in the number of members of audit committee with legal qualification, the accounting qualification of the members of the Audit Committee increases, as does the operating cycle of the company. Audit committee with legal qualification (ACLEGEX) is negatively and significantly correlated with audit committee meetings (ACMEET), and audit committee members (ACSIZE) and total assets (TA), showing that with an increase the ACLEGEX of the Audit Committee, there is a decrease in ACMEET and ACSIZE and TA. This implies that there is a direct inverse correlation between the legal qualification of the Audit Committee members and the size of the Audit Committee, number of meetings called by the Audit Committee and the total assets of the firms under study.

- iv) Audit committee with accounting qualification (ACACEX) has significant negative relationship with number of audit committee meetings (ACMEET), number of audit committee members (ACSIZE) and total assets (TA), showing that when there was an increase in the ratio of members with accounting qualification, there was a decrease in the size of the audit committees, the total assets of the firm, and number of Audit Committee meetings. Whereas, Audit committee with accounting qualification (ACACEX) and operating cycle (OC) are positively and significantly correlated, indicating that with an increase in the members with accounting qualification, there is an increase in its operating cycle. In other words, the above analysis may infer that a decrease in the accounting qualification of the Audit Committee resulted in an increase in its size, number of meetings and total assets. Similarly, accounting qualifications of Audit Committee enhanced the quality of operating cycle.
- v) Number of audit committee meetings (ACMEET) is positively and significantly correlated with audit committee size (ACSIZE) and total assets (TA). This infers that the meetings of audit committee increases with an increase in the number of members and the total assets of the company. Whereas, audit committee meeting (ACMEET) is significantly and negatively related with operating cycle (OC). This indicates that the operating cycle of the company increases when the number of meetings of the audit committee decreases and vice versa.
- vi) Audit committee members, size (ACSIZE) and total assets (TA) are positively and significantly correlated. This implies that the number of members of the audit committee is higher when the size of the company in terms of total assets of company is high, whereas, ACSIZE and operating cycle (OC) are negatively and statistically correlated, showing that when the size of the Audit Committee is large, the operating cycle of the company decreases, and vice versa.
- vii) Total Assets (TA) is negatively and significantly correlated with LEVERAGE and operating cycle (OC). This infers that with an increase in LEV and OC, the TA decreases, and that a decrease in LEV and OC of the company, the TA increases, showing that there is an adverse total debts and operating cycle of the firms on their total assets.
- viii) Debts by total assets (LEV) and operating cycle (OC) are positively and significantly correlated. This implies that debts of companies (LEV) increases with an increase in the operating cycle (OC) of the companies, showing that the operating cycle of the companies increases as the debt increases.

From the above finding of the study, it may be concluded that the reason for the nature of above relationships may be traced to statutory requirement required either by company law or Securities Exchange Board of India (SEBI). Further, it may be noticed that with an increase in the leverage, the efficiency increased, which is reflected in the reduction of operating cycles. Though the norm for the audit committee meetings stipulated a minimum of four meetings in a financial year, it is noticed that the bigger size committees have often met than the smaller committees. This is due to systematization of the organizations as they grow in size and adhere to the SEBI guidelines.

After knowing the mean, variability of the characteristics of established relationships, an attempt is made here to test the hypothesis by using ANOVA and t-test to know the significance of such relationships. The results of the data collected and processed through SPSS, is presented in the following table-3:

Table-3: ANOVA Table for Audit Committee Quality and Earnings Quality

Model	Sum of Squares(SS)	DF (V)	Mean Square (MS)	F	Sig.
Regression	98.253	8	12.282	23.320	0.000
Residual	695.704	1321	0.527		
Total	793.956	1329			

Source: Data extracted from Annual reports

The F-ratio for the regression model which is less than 0.05 at 5% level of significant for df 8 and 1321. Hence, the null hypothesis is rejected i.e., there is a relationship between audit committee quality characteristics and earnings quality. Hence, the audit committee characteristics assume a greater role in improving the earnings quality.

After testing the established relationship, t-test is used to know the impact of each audit committee quality characteristics, assuming as independent, on earnings quality. The results of the data obtained by using SPSS are shown in the following table-4.

Table-4: Coefficients table for audit committee Quality and earnings quality

Model	Unstandardized Coefficients		t	Sig
	B	Std. Error		
(Constant)	0.924	0.329	2.805	0.005
ACIND	-0.025	0.104	-0.236	0.813
ACLEGEX	-0.212	0.547	-0.388	0.698
ACACEX	0.060	0.294	0.203	0.839
ACMEET	-0.039	0.015	-2.555	0.011
ACSIZE	-0.034	0.034	-1.014	0.311
LNTA	0.022	0.024	0.880	0.379
LEV	0.534	0.041	13.106	0.000
LNOC	-0.102	0.022	-4.522	0.000
Dependent Variable: EQ				

Source: Data extracted from Annual reports

It may be understood from the above table that, except CONSTANT, ACMEET, LEV and LNOC, p-values of all the other variables are greater than critical P-value (0.05), hence, CONSTANT, ACMEET, LEV and LNOC are statistically significant and null hypothesis is rejected, which means ACMEET, LEV and LNOC have impact on earnings quality. In other words, though the audit committee quality characteristics have relationship with earnings quality, except ACMEET, others have shown no impact on later.



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Embarking Upon the Voyage of Research



Particulars	Series I	Series II
Name of the series	Research Review Symposium on Indian Company Law	Research Review of Literature on Indian Company Law
Duration	3 days	3 days
Dates	19 to 21 May 2016	26 to 28 May 2016
Credit Hours	As per the guidelines	As per the guidelines

THE TRAJECTORY

In its endeavor to provide impetus to research activities and taking it to the pinnacle, CCGRT is organizing the aforesaid workshop to explore into various Sections and Critical Aspects of Companies Act, 2013 and to emerge with a literature that will be incredible and an exemplar in Indian Company Law. Further, to make the seminar a learning oriented so that it leave the participants with food for thought, the proposed colloquy will be conducted in two series and each series will consist of three days.

Objectives of the Workshop

- Discussion on the Indian Company Law.

- Review the existing literature of Company Law.
- Analyze research material and find out gaps, discrepancies and interpretation issues.
- Impact study of the Company Amendment Bill, 2016.

Scope of the study during Workshop- Chapters 1 to 10 of Indian Companies Act, 2013

- Chapter 1- Preliminary
- Chapter 2 – Incorporation of Company and Matters Incidental Thereto
- Chapter 3- Prospectus and Allotment of Securities
- Chapter 4- Share Capital and Debentures

Chapter 5- Acceptance of Deposits by Companies
 Chapter 6- Registration of Charges
 Chapter 7- Management and Administration
 Chapter 8- Declaration and Payment of Dividend
 Chapter 9- Accounts of Companies
 Chapter 10- Audit and Auditors

The Beginning of Voyage- Analysis of the Research Material

As any journey or voyage commences with the interaction among co-passengers, similarly, in this voyage of research, the first step involves interaction among the participants, instructions / guidance by the panel members / mentors and handing over of the research material. Once participants receive the research material they have to begin with its in-depth analysis. Since analysis plays a pivotal role in ascertaining various dimensions to a concept, keeping this in view, the participants are expected to invest their best endeavors in doing an analytical study of various key concepts / chapters of the Company Law.

Sailing Deep into the Ocean- Debate & Discussion

Once the participants will be conversant with the theory behind formation of the Research Group, its goals and process to be adhered as a participant, the next move goes by the adage, "Two Heads are Better than One". Yes, we are talking about brainstorming, as in today's dynamic Legal, Business & Economic environment, decision taken by one expert may prove detrimental to the interest of the organization and stakeholders. So, in view of the immense value brainstorming holds, this session will unite various groups (after formation of groups during the workshop), who will engage into a detailed discussion on the assigned Chapters/ Sections of the Companies Act, 2013. As various people have different perceptions and it consumes paramount time to reach the point of reconciliation. Keeping this in view, substantial time will be allocated for the mentioned session, so that all participants with the combination of 3Ds, 'Dedication, Determination & Discipline' give their optimum output. This session aims to throw light on significant issues of Companies Act, 2013, Participants need to present the debatable issues, controversial issues and also unsolved mysteries of the sections and the chapters allocated to them.

Reaching the Shores- Presentation of Revised Research Material

In this stage, the participants will put forward the revised research material based upon their study and analysis, as well as the valuable inputs received from their peers. This marks the conclusion of the voyage, where after a marathon study on corporate law, participants will emerge with their valuable thoughts

/ opinions which will go a long way in cultivating a research atmosphere.

Suggestions & Instructions to the Delegates

- 1) Participants should carry their own laptops, books and other reading materials.
- 2) During the workshop participants may refer both primary and secondary data to complete the assigned tasks.
- 3) Participants should note that NO BACKGROUND MATERIAL will be provided by ICSI-CCGRT and research material provided, if any, to the participants will be on return basis, i.e. participants must return the research material at the end of the program.
- 4) The decision of the Panelist / Judges / Mentors will be final and binding upon the participants regarding the judgment / comments / feedback provided after reviewing the group task.
- 5) The Credit Hours to the Participants has to be accorded based on their presence on the number of days subject to maximum credit hours as prescribed by ICSI.

Participation Fee: Covers, Workshop Kit; Breakfast; Lunch; Dinner; Tea & Coffee.

Delegate Fee (inclusive of Service Tax of 14.5%)		
Non-Residential	Early Bird (on or before 12 May 2016)	After Early Bird (on or after 13 May 2016)
6 days fee	11500	12500
Per day (*)	2500	3000
Residential	Early Bird (on or before 12 May 2016)	After Early Bird (on or after 13 May 2016)
6 days fee	16500	17500
Per day	3500	4000

(*)PCH hours may be allotted proportionately.

For Registration - Fees may be paid to ICSI - Hyderabad Chapter

Mode of Payment: The fee may be paid by way of cash or DD/ cheque drawn in favour of 'Hyderabad Chapter of Company Secretaries'

Online Payment: Online Transfer A/C No. ICICI: 000801203504; IFSC Code: ICIC0000008 (payment made through online to be informed by email to hyderabad@icsi.edu alongwith particulars.

Venue: NI-MSME, Yusufguda, Hyderabad

LIMITED PARTICIPANTS ONLY

CS Ashish Doshi
 Council Member & Chairman
 ICSI-CCGRT Mgmt.Committee

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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)**

PCH- 4

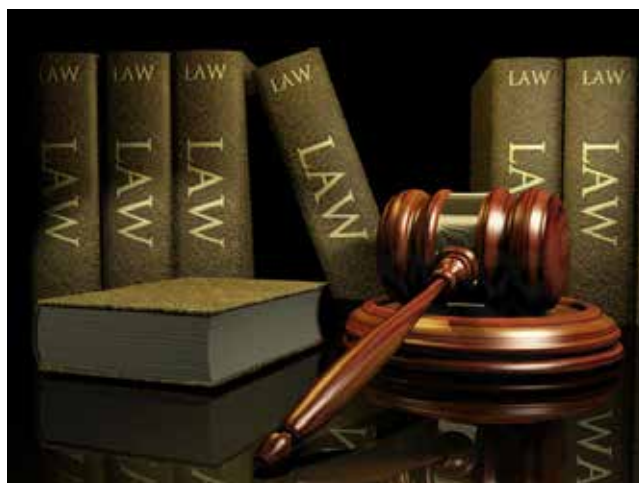
ICSI - CCGRT

ANNOUNCES

Unique

All India Research Paper Competition

On Foreign Contribution Regulation Laws



ICSI-CCGRT is pleased to announce unique “All India Research Paper Competition on Foreign Contribution Regulation Act (FCRA)” with an objective of creating proclivity towards research among its Members, both in employment and practice.

The purpose of research is to identify specific questions and try to find out a comprehensive and definitive answer. Since research in all disciplines and subjects, must begin with a clearly defined goal, this study is also designed keeping those objectives in mind.

GENESIS OF FCRA

In July 2005, the Foreign Contributions Management (FCMC) Bill 2005 was proposed by the Government to replace the existing Foreign Contribution (Regulation) Act, 1976 (FCRA 1976). After several recommendations at the standing committee, Rajya Sabha levels, on 27 August 2010, the Parliament passed the Foreign Contribution (Regulation) Bill, 2010 while it received presidential assent on September 26, 2011. The Foreign Contribution (Regulation) Act, 2010 (FCRA 2010) and the Foreign Contribution Regulations Rules, 2011 (FCR Rules 2011) are effective from 1 May 2011.

The FCRA 2010 seeks to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest.

Taking the journey of research ahead, the institute aims to focus upon Foreign Contribution Regulation Act (FCRA), which regulates the foreign contribution (money donation) and foreign hospitality (e.g. free airplane tickets and hotel lodging during videsh-yaatra) given to various NGOs, institutes, judges, journalists, public servants etc. It is a crucial Act, as it assist in checking the following:

- a) That foreigners are not affecting India's electoral politics, public servants, judges, journalists, NGOs etc. for wrong purposes;
- b) Organizations eligible for accepting foreign contributions, i.e. Organizations working for definite cultural, social, economic, educational or religious programs;
- c) People who cannot accept foreign contribution etc.

Further, recent amendments to the Foreign Contribution Regulation Rules (FCRA) have empowered the government to obtain details instantly pertaining to the accounts of non-governmental

organizations whenever they receive foreign contributions or utilize the money. As per Ministry of Home Affairs, all FCRA designated bank accounts and utilization accounts will have to be brought on the online platform of Public Finance Management Services (PFMS) of the Ministry of Finance. In light of the paramount significance this Act holds, it is imperative to possess an in-depth knowledge on the Act and authoring research papers may go a long way in creating a robust knowledge base on FCRA.

Objectives:

- To analyze the Foreign Contribution Regulation Act
- To know the cases of violations under FCRA.
- To find out the gap / Lacunae under FCRA.
- To focus on the practical difficulties in administration of the FCRA
- To explore the implications of the amendments of the Foreign Contribution Regulation Rules (FCRA)
- To identify the common and differentiating provisions, regulations with all foreign exchange laws along with amendments (FEMA, Prevention of Money Laundering Act etc.)
- To comprehend the legal implications of equating "Economic Security" for NGOs under the FCRA with the definition provided in Section 2 of the Unlawful Activities Prevention Act (UAPA).
- To ascertain the scope of opportunities for Practicing Company Secretaries in employment and
- To study the liabilities of Company Secretaries both in employment and practice.

Themes on which Research Papers are invited

- FCRA- A step to curb influx of foreign money having illegal purposes.
- Fostering Compliance with inflow / outflow of foreign exchange.
- Impact of RBI notifications
- Observing the monetary movements of NGOs receiving money from abroad.
- Probable impacts of the amendments of the Foreign Contribution Regulation Rules (FCRA)
- Takeaways from countries having regulations similar to FCRA.
- Case laws dealing with infringement of FCRA with special emphasis upon NGOs.
- Grey Areas / Drawbacks of FCRA
- Cases of violations of FCRA pertaining to Utilization of Funds.
- Ensuring Corporate Governance in subsidiaries of Foreign Companies remitting funds for CSR in India.

Research Paper / Manuscript Guidelines

- Original papers are invited from Company Secretaries in employment & practice, Academicians, Research Scholars and other Professionals.
- The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/fax

number along with the title of the paper on the front page.

- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.
- The text should be typed double-spaced only on one side of A4 size paper in MS Word, Times New Roman, 12 font size with one-inch margins all around.
- The author/s' name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
- All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- The following should also accompany the manuscripts on separate sheets: (i) An abstract of approximately 150 words with a maximum of five key words, and (ii) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI and other membership on editorial boards and companies, etc.
- The research papers should reach the Competition Committee on or before 16th June, 2016 by 12 noon (IST).

Participants should email their research papers on the following email id: ccgrt@icsi.edu

Further Information for Authors / Participants

- The decision of the Reviewing Committee will be final and binding on the participants.
- The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI. Further, the authors whose papers will be selected will receive an Appreciation Letter from the institute and Program Credit Hours (PCH).
- ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The authors are not entitled for any remuneration or compensation or royalty except honorarium paid by ICSI. The participants / authors shall submit the Declaration Form to the institute at the time of submission of paper.
- The papers will be scrutinized by an Expert Committee.

For any query / assistance, kindly contact at: ccgrt@icsi.edu / +91-22-41021515/1501

4 PCH will be awarded to the authors, whose research papers will be selected.

CS Ahalada Rao V
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ICSI-Research Committee

CS Ashish Garg
Chairman
ICSI -PCS Committee

CS Ashish Doshi
Chairman, ICSI-CCGRT
Management Committee



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ICSI - CCGRT

**Results of
Unique**

All India Opinion Writing Competition



CASE FOR OPINION

1. A Ltd is a listed company. B Ltd is A's wholly-owned subsidiary. It is proposed to transfer a manufacturing unit of A Ltd to B Ltd. A Ltd proposes to pass a special resolution under section 180 of the Companies Act 2013 ('the Act') for this purpose.

The transfer of the unit will take place on a slump sale basis at a value fixed by the Board of directors of A Ltd and agreed to by B Ltd, on the basis of the valuation done by two chartered accountants.

2. Two of the directors of A Ltd are on the Board of B Ltd and, besides, two employees of A Ltd are on the B's Board. None of directors of B Ltd holds any shares in B Ltd.
3. A Ltd has asked you to advise with regard to the following queries:
 - a. Is B Ltd a related party vis-a-vis A Ltd under the Companies Act and Clause 49 of the listing agreement?
 - b. Does the abovementioned transaction of transfer of a unit amount to a Related Party Transaction (RPT) under section 188 of the Act and Clause 49 of the Listing agreement?
 - c. Does it require approval of the Board of A Ltd and its shareholders?
 - d. Can the transaction be exempted under the third proviso to section 188(1) being in the ordinary course of business and at arm's length?
 - e. Will this transaction require any disclosure under the listing agreement?
 - f. Will the directors of A Ltd who are also directors of B Ltd be entitled to participate in the Board meeting of A Ltd and vote on the resolution?
 - g. Will this transaction require to be entered in the register maintained under section 189 of the Act?
 - h. What other requirements under the Act and the listing agreement will be

required to be complied with?

Replies

Reply by CS Aniket Kulshreshtha

OPINION

FACTS OF THE CASE

- 1 A Limited is a company limited by shares incorporated under the provisions of the Companies Act, 1956 (hereinafter referred to as "1956 Act") and having its registered office at 6th Floor, ABC Complex, New Delhi. The equity shares of A Limited are listed on BSE Limited and National Stock Exchange of India Limited.
- 2 B Limited is a company limited by shares incorporated under the provisions of the Companies Act, 1956 (hereinafter referred to as "1956 Act") and having its registered office at 6th Floor, ABC Complex, New Delhi. B Limited is a wholly-owned subsidiary of A Limited. Two of the Directors of A Limited are on the Board of B Limited. Further, two employees of A Limited are on the Board of B Limited. None of the Directors of B Limited holds any shares in B Limited.
- 3 A Limited proposes to transfer a manufacturing unit to B Limited and proposes to pass a special resolution under Section 180 of the Companies Act 2013 ('the Act') for this purpose. The transfer of the unit will take place on a slump sale basis at a value fixed by the Board of directors of A Ltd and agreed to by B Ltd, on the basis of the valuation done by two chartered accountants.

On the basis of the above facts, A Limited has desired our Opinion on the following:-

- a. Is B Ltd a related party vis-a-vis A Limited under the Companies

Act, 2013 and Clause 49 of the listing agreement?

- b. Does the above-mentioned transaction of transfer of a unit amount to a Related Party Transaction (RPT) under Section 188 of the Act and Clause 49 of the Listing agreement?
 - c. Does it require approval of the Board of A Ltd and its shareholders?
 - d. Can the transaction be exempted under the third proviso to section 188(1) being in the ordinary course of business and at arm's length?
 - e. Will this transaction require any disclosure under the listing agreement?
 - f. Will the directors of A Ltd who are also directors of B Ltd be entitled to participate in the Board meeting of A Ltd and vote on the resolution?
 - g. Will this transaction require to be entered in the register maintained under section 189 of the Act?
 - h. What other requirements under the Act and the listing agreement will be required to be complied with?
4. Before answering the above mentioned queries, it is pertinent to analyze some of the relevant applicable provisions of the Companies Act, 2013 (the Act), rules made thereunder and other applicable laws.
- i. **Related Party:** An entity shall be considered as related to the Company if:
 - (i) such entity is a related party as defined under Section 2(76) of the Companies Act, 2013; or
 - (ii) such entity is a related party under the applicable accounting standard(s).

As per Section 2(76) of the Companies Act, 2013, Related Party means:-

- a. a Director or his relative;
- b. a Key Managerial Personnel or his relative;
- c. a firm, in which a Director, Manager or his relative is a partner;
- d. a private company in which a Director or Manager is a member or Director;
- e. a public company in which a Director or Manager is a Director or holds along with his relatives, more than two per cent of its paid-up share capital;
- f. any body corporate whose Board of Directors, Managing Director or Manager is accustomed to act in accordance with the advice, directions or instructions of a Director, or Manager;
- g. any person on whose advice, directions or instructions a Director or Manager is accustomed to act; Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or, instructions given in a professional capacity;
- h. any company which is — (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary.
- i. A Director or Key managerial personnel of the holding company or his relative.
- j. such other person as may be prescribed under the Companies Act, 2013 or any other, statutory provisions for the time being in force.

Related Parties under the applicable Accounting Standards:-Parties are considered to be related if at any

time during the reporting period, one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions. They include the following:-

- a) Enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);
- b) associates and joint ventures of the reporting enterprise and the investing party or venture in respect of which the reporting enterprise is an associate or a joint venture;
- c) Individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;
- d) Key management personnel and relatives of such personnel; and
- e) Enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.

Clause 10 of the aforesaid Accounting Standards, defines certain terms which are also pertinent for ascertaining related party relationships and the same are as follows :

Related party: Parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.

Related Party Transaction: A transfer of resources or obligations between related parties regardless of whether or not a price is charged.

Control: (a) **ownership, directly or indirectly, of more than one half of the voting power of an enterprise**, or (b) control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise, or (c) a substantial interest in voting power and the power to direct, by statute or agreement, the financial and/or operating policies of the enterprise.

Significant Influence: Participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies.

An Associate: An enterprise in which an investing reporting party has significant influence and which is neither a subsidiary nor a joint venture of that party.

A Joint Venture: A contractual arrangement whereby two or more parties undertake an economic activity which is subject to joint control.

Joint Control: The contractually agreed sharing of power to govern the financial and operating policies

of an economic activity so as to obtain benefits from it.

Further, as per provisions of the Listing Agreement, Related Party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

Explanation: A "transaction" with a related party shall be construed to include single transaction or a group of transactions in a contract.

Reply to point no. 3(a):

From the above-mentioned statutory provisions, it is clear that B Limited is a related party vis-à-vis A Limited, as per provisions of the Companies Act, 2013, Accounting Standards and Listing Agreement.

Section 188 of the Companies Act, 2013 envisages that except with the consent of the Board of Directors given by a resolution at a meeting of the Board, no company shall enter into any contract or arrangement with a related party with respect to:-

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company.

As per provisions of the Listing Agreement, Related Party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

Further, as per provisions of the Companies (Amendment) Act, 2015 and proviso to Clause 49 (VII)(E) of the Listing Agreement, the requirement of obtaining prior approval of shareholders, *inter-alia*, shall not be applicable to transactions entered into between the Holding company and its wholly-owned subsidiary whose accounts are consolidated with accounts of Holding Company and placed before the shareholders at the general meeting for approval.

However, Section 180(1) of the Companies Act, 2013 *inter-alia* prescribes that the Board of Directors of the Company shall exercise the following powers **only with the consent of the company by a special resolution:-**

- (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings. Further, in terms of Section 110 of the Companies Act, 2013 read with Rule 22 of the Companies (Management and Administration) Rules, 2014, the approval of shareholders in respect of sale of the whole or substantially the whole of the undertaking of the company shall be transacted only by means of voting through a postal ballot.

Reply to point no. 3(b):

In view of the above provisions, the transfer of manufacturing unit by A Limited tantamount to transfer of resources, services or obligations in terms of Listing Agreement, since the manufacturing

unit is being transferred along with all its assets and liabilities to B Limited, a Related Party vis-à-vis A Limited. Further, it also amounts to disposing of property of A Limited. Accordingly, transfer of manufacturing unit amounts to a Related Party transaction under Section 188 of the Act and Clause 49 of the Listing Agreement.

Reply to point no. 3(c):

Being a Related Party transaction, prior approval of Board of Directors of A Limited is required to be obtained by way of Resolution passed at a meeting of the Board. In terms of the provisions of the Companies (Amendment) Act, 2015 and proviso to Clause 49 (VII)(E) of the Listing Agreement, approval of shareholders under Section 188 is not required to be obtained for Related Party transaction provided that the accounts of B Limited are consolidated in the accounts of A Limited and placed before the shareholders at the general meeting of A Limited for approval.

However, approval of shareholders under Section 180 of the Companies Act, 2013 is required to be obtained by A Limited through Postal Ballot.

Reply to point no. 3(d):

The third proviso to Section 188 of the Companies Act, 2013 prescribes that nothing in sub-section (1) of Section 188 of the Act shall be applicable to any transactions entered into by the Company in its ordinary course of business other than transactions which are not on an arm's length basis.

In common parlance, ordinary course of business covers the usual transactions, customs and practices of a certain business and of a certain firm. It may normally be interpreted as principle business activities of repetitive nature, carried out by the Company in furtherance of the 'Main Objects' clause of its Memorandum of Association and by virtue of which, the Company earns regular income. The transfer of manufacturing unit to B Limited is a strategic decision by A Limited and not a principle business activity of the Company. A Limited neither earns regular business income by such an activity nor is it a repetitive business activity for the company.

In context of the above, we can refer to certain excerpts from the following landmark judgements:-

- 1 Division Bench of Orissa High Court in the case of **Dilip Kumar Swain v. Executive Engineer, Cuttack Municipal Corporation 1997 I OLR 202** has defined "Ordinary course of business" as activity in the usual course of routine of business. It is used to detect current routine of business.
- 2 Division Bench of Karnataka High Court in the case of **BNP Paribas v. United Breweries Ltd – MANU/KA/3008/2013** had defined the words "in the ordinary course of business as under:-

"Companies in the ordinary course of business have to carry out transactions involving disposition of properties as an incident of their business activities. These transactions are not to be foreclosed, or to hold otherwise would bring the business to a grinding halt. The law would not permit such a consequence by disabling a company from attending to its business in the ordinary course merely because a petition for winding-up is instituted. Transaction should be a bona fide one entered into and completed in the ordinary course of trade. It should be for the purpose of preserving the business as a going concern. It should ensure that the interest of creditors, in particular, unsecured creditors will not be prejudiced."

Based on the above-mentioned statutory provisions and judgements, it can be inferred that any decision in the routine of business, which is intended to preserve the continuity of the business as a going concern and which is not prejudicial to the interest of the stakeholders may be treated as carried out in the Ordinary Course of Business.

The facts of the given case clearly state that transfer of manufacturing unit from A Limited to B Limited will take place on slump sale basis at a

value fixed by Board of Directors of A Limited and agreed to by B Limited, on the basis of valuation done by two Chartered Accountants. As such, there is reason to believe that the decision of Board of Directors of A Limited is targeted towards better management of Company's business, which in turn will enhance the overall wealth of shareholders. Further, the objective of the said decision, as informed by the Management, is aimed at streamlining the Company's operations and develop it as a separate Profit Centre. In view of the above, the said transaction can be treated as being carried out in the Ordinary Course of the Company's business.

Further, explanation (b) to Section 188(1) prescribes that the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest. Section 297 of the erstwhile Companies Act, 1956 also prescribed that approval of Board of Directors is not required in case the sale / purchase of goods or materials or services is made for cash at prevailing market prices.

In the case of **IndusInd Bank v. Additional Commissioner of Income Tax MANU/1U/0262/2012**, "arm's length transaction" was described as 'the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.'

In the given case, the transfer of undertaking is taking place on slump sale basis from Holding company (A Limited) to its wholly owned subsidiary (B Limited) on the basis of valuation done by Chartered Accountants. Since no mechanism has been employed to arrive at the fair market price for transfer of unit, it cannot be established beyond doubt that the said transfer of unit is a transaction on arm's length basis.

Accordingly, the said transaction cannot be exempted under third proviso to Section 188(1) of the Companies Act, 2013 since the same cannot be treated as on arm's length basis.

Reply to point no. 3(e):

A Limited is required to make the following disclosures in terms of the Listing Agreement :-a) Clause 32 of the Listing Agreement prescribe that the Company will make disclosures in compliance with the Accounting Standard on "Related Party Disclosures" in its Annual Report. Accordingly, the Company shall ensure that adequate disclosures on such Related Party transactions is made in the financial statements of the Company. b) Clause 49 (VIII) (A) of the Listing Agreement stipulates that details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance. c) Considering that the transaction in question is a materially significant related party transactions that may have potential conflict with the interests of company at large, the Company should ensure disclosure regarding the same in the Corporate Governance Report for the next financial year. d) Further, the Company is also required to make disclosures in compliance with the Accounting Standards on "Related Party Disclosures". e) Details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance.

Reply to point no. 3(f):

Section 2 (49) of the Companies Act, 2013 defines the term "interested director" as a Director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, Director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.

Further, Section 184(2) of the Companies Act, 2013 prescribes that every Director of a Company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into —

- (a) with a body corporate in which such Director or such Director in association with any other Director, holds more than two percent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contractor arrangement is discussed and shall not participate in such meeting.

The entire crux of the above provisions is that Directors who are interested in two bodies corporate in personal capacity shall not be allowed to use the fiduciary relation as a Director, for deriving personal gains.

We are given to understand that the Board of Directors of B Limited comprises of two Directors and two employees of A Limited. Further, none of the Directors of B Limited hold any shares in B Limited. As such, all Directors of B Limited hold their directorship as a nominee of the holding Company, i.e. A Limited and not in their personal interest. Hence, there is no apparent conflict of interest between the transactions entered by A Limited with its wholly-owned subsidiary, i.e. B Limited, which is being done at a valuation done by Chartered Accountants.

In view of the provisions of the Companies Act, 2013, the Directors of A Limited who are also Directors of B Limited shall be entitled to participate in the Board Meeting of A Limited and vote on the resolution for approving transfer of manufacturing unit from A Limited to B Limited.

Reply to point no. 3(g):

Section 189 of the Companies Act, 2013 *inter-alia* prescribes that every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

The transaction in consideration clearly falls within the purview of Section 188 of the Companies Act, 2013 and therefore the entry thereof is to be done in the Register maintained under Section 189 of the Act.

Reply to point no. 3(h):

Section 180(1) of the Companies Act, 2013 *inter-alia* prescribes that the Board of Directors of the Company shall exercise the following powers **only with the consent of the company by a special resolution:-**

- (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

The Explanation to Section 180 (1) *inter-alia* prescribes that for the purposes of this clause:-

- (i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent of the total income of the company during the previous financial year;
- (ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent or more of the value of the undertaking as per the audited balance sheet of the preceding financial year.

It can be suitably inferred from the facts of the case that transfer of manufacturing unit from A Limited to B Limited amounts to disposing of the whole or substantially the whole of the undertaking of the company, thereby requiring approval of the Board of Directors and shareholders of A Limited.

In terms of Section 110 of the Companies Act, 2013 read with Rule 22 of the Companies (Management and Administration) Rules, 2014, the approval of shareholders in respect of sale of the whole or substantially the whole of the undertaking of the company shall be transacted only by means of voting through a postal ballot. Accordingly, it is opined that A Limited is required pass a Special Resolution under Section 180 of the Companies Act, 2013 for sale of manufacturing unit from A Limited to B Limited, by means of voting through a postal ballot. A Limited is additionally required to abide by the provisions of Section 110 of the Companies Act, 2013 and Rule 20 & 22 of the Companies (Management and Administration Rules) 2014, as amended from time to time, with regard to electronic voting and procedure to be followed for conducting business through postal ballot. For summarizing the above discussion, the point-wise replies to the queries of A Limited can be summarized as under:-

Reply to point no. 3(a):-

B Limited is a related party *vis-à-vis* A Limited, as per provisions of the Companies Act, 2013, Accounting Standards and Listing Agreement.

Reply to point no. 3(b):

Transfer of manufacturing unit from A Limited to B Limited amounts to a Related Party transaction under Section 188 of the Companies Act, 2013 and Clause 49 of the Listing Agreement.

Reply to point no. 3(c):

Prior approval of Board of Directors of A Limited is required to be obtained by way of Resolution passed at a meeting of the Board. Further, approval of shareholders is required to be obtained by passing Special Resolution through Postal Ballot under Section 180 of the Companies Act, 2013.

Reply to point no. 3(d):-

No, transfer of manufacturing unit from A Limited to B Limited cannot be exempted under third proviso to Section 188(1) of the Companies Act, 2013 and Rules made thereunder.

Reply to point no. 3(e):

Yes. Disclosures under Listing Agreement specifically listed in the discussion above.

Reply to point no. 3(f):

The Directors of A Limited who are also Directors of B Limited shall be entitled to participate in the Board Meeting of A Limited and vote on the resolution for approving transfer of manufacturing unit from A Limited to B Limited.

Reply to point no. 3(g):

Yes, the transaction is required to be entered in the register maintained under Section 189 of the Act.

Reply to point no. 3(h):

The Company is required to comply with the provisions of Section 110 read with Rule 20 & 22 of the Companies (Management and Administration Rules) 2014, as amended from time to time, with regard to electronic voting and procedure to be followed for seeking approval of shareholders through postal ballot.

I opine accordingly.

(-----)

Company Secretary

Date :

Place :

Date: 22nd October, 2015

A Ltd Querist

Reply by CS Kavita Praful Ganatra

OPINION

1. Based on the representation made by the querist, the facts of the case are as under :
 - i. The querist is a listed company. B Ltd is a wholly owned subsidiary. It is proposed to transfer a manufacturing unit of A Ltd to B Ltd. A Ltd proposes to pass a special resolution under section 180 of the Companies Act, 2013 (**'the Act' or 'the Companies Act'**) for this purpose. The transfer of unit will take place on a slump at a value fixed by the Board of directors of A Ltd and agreed to by B Ltd, on the basis of valuation done by two chartered accountants.
 - ii. Two of the Directors of A Ltd are on the Board of B Ltd and, besides, two employees of A Ltd are on B's Board. None of directors of B Ltd holds any shares in B Ltd.
2. The Querist has sought our opinion on the following queries, specifically with respect to Section 188, Section 180 of the Act and the Listing Agreement :
 - a. Is B Ltd a related party *vis-à-vis* A Ltd under the Companies Act and Clause 49 of the Listing Agreement?
 - b. Does the above mentioned transaction of transfer of a unit amount to a Related Party Transaction (RPT) under section 188 of the Act and Clause 49 of the Listing Agreement?
 - c. Does it require approval of the Board of A Ltd and its shareholders?
 - d. Can the transaction be exempted under third proviso to Section 188(1) being in ordinary course of business and at arm's length?
 - e. Will this transaction require any disclosure under the Listing Agreement?
 - f. Will the directors of A Ltd who are also directors of B Ltd be entitled to participate in the Board Meeting of A Ltd and vote on the resolution?
 - g. Will this transaction require to be entered in the register maintained under section 189 of the Act?
 - h. What other requirements under the Act and the Listing Agreement will be required to be complied with?
3. We have perused the queries raised by the Querist and express our opinion as under:
4. **Query a: Is B Ltd a related party *vis-à-vis* A Ltd under the Companies Act and Clause 49 of the Listing Agreement?**
 - i. With respect to the aforesaid query attention may be kindly drawn to Section 2(76) of the Act which came into effect from 12th September, 2013 vide notification issued by Ministry of Corporate Affairs (MCA). Sec 2(76) deals with definition of related party and reads as under: "2(76) -"related party", with reference to a company, means—
 - (i) a director or his relative;
 - (ii) a key managerial personnel or his relative;
 - (iii) a firm, in which a director, manager or his relative is a partner;
 - (iv) a private company in which a director or manager is a member or director;
 - (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
 - (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
 - (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- (viii) any company which is—
 (A) a holding, subsidiary or an associate company of such company; or, (B) a subsidiary of a holding company to which it is also a subsidiary;
 (ix) such other person as may be prescribed.”
- ii. On perusal of Section 2(76) of the Act, it can be noted that a related party in relation to a, company includes its holding, subsidiary or an associate company and also a subsidiary of, a holding company to which it is also a subsidiary. Since in the given case B Ltd is a, wholly owned subsidiary of A Ltd, it would fall under clause (viii) of Section 2(76) of the, Act. Therefore, for the Querist, B Ltd will be a Related Party under the Companies Act.,
- iii. Further, with respect to definition of related party under the Listing Agreement we may, draw your kind attention to point B of sub-clause (VII) of Clause 49 of the Listing, Agreement which reads as under:., “For the purpose of Clause 49 (VII) an entity shall be considered as related to the, company, if: ,
- Such entity is a related party under Section 2(76) of the Companies Act, 2013 or ,
 - Such entity is a related party under the applicable accounting standards.”,
 - From the above definition of related party under the Listing Agreement, it can be seen that, the Listing Agreement specifies two categories precisely for any entity to qualify as a, related party for the purpose of compliance with the provisions with respect to related party, transactions under the Listing Agreement. Therefore, if any an entity is falling under any of, the aforesaid categories; it will be a related party for the purposes of Listing Agreement. ,
 - The first category clearly states that if an entity is a related party under the Companies Act, it will also be a related party under the Listing Agreement. In addition to the Companies, Act, the second category covers the definition of related party under the applicable, accounting standards also.,
 - But, since B Ltd is a related party under Section 2(76) of the Companies Act it would fall, under the first category of the definition given under the Listing Agreement and therefore, the need for determining whether it is a related party under the relevant accounting standards will not be required. Therefore, B Ltd will be a related party for A Ltd (Querist) under the Companies Act as well as Listing Agreement.
5. **Query b: Does the above mentioned transaction of transfer of a unit amount to a, Related Party Transaction (RPT) under section 188 of the Act and Clause 49 of the, Listing Agreement?.,**
- With respect to your query raised in point (b), a transaction would qualify as a related, party transaction under the Companies Act if the following three conditions are satisfied:.,
 - The transaction is entered into by a Company as defined under Section 2(20) of the Act;.,
 - The transaction entered into is with a related party as defined under Section 2(76) of the Act; ,
 - The transaction to be entered into is with respect to any of the seven categories specified in Section 188(1) of the Act.,
 - Further, Section 2(20) which deals with definition of a Company reads as under:., “company” means a company incorporated under this Act or under any previous, company law.”,
 - Since, in the given case, the transaction is entered into by a Company i.e A Ltd (Querist), with a related party i.e B Ltd as opined in our response to query (1), the aforesaid two, conditions are satisfied.,
 - With respect to third condition mentioned in point (c), we would

- like to draw your, attention to the provisions of Section 188 of the Companies Act which deals with Related, party transactions and inter alia reads as under:., “Section 188. Related party transactions
- Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—
 - sale, purchase or supply of any goods or materials;
 - selling or otherwise disposing of, or buying, property of any kind;
 - leasing of property of any kind;
 - availing or rendering of any services;
 - appointment of any agent for purchase or sale of goods, materials, services or property;
 - such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
 - underwriting the subscription of any securities or derivatives thereof, of the company”
 - On a reading of the foregoing provision, it can be noted that the section covers a transaction relating to selling or otherwise disposing of, or buying, property of any kind. In the given case the transaction to be entered into by A Ltd is for transfer of its manufacturing unit to B Ltd which would amount to sale of a property of the Company.
 - Since the transaction is to be entered into is by a Company with a related party with respect to transaction mentioned in Section 188(1) of the Companies Act, in our view, the transaction will qualify as a related party transaction under section 188 of the Companies Act.
 - Further, under the Listing Agreement, a related party transaction is defined under point A. of sub-clause VII of Clause 49 of the Listing Agreement as follows: “A related party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.
Explanation: A “transaction” with a related party under Listing Agreement, shall be construed to include single transaction or a group of transactions in a contract.”
 - On perusal of the above definition, a related party transaction would mean: a) A transaction with related party; b) With respect to transfer resources, services or obligations whether or not a price is charged.
 - It may be noted that said definition focuses on transfer of resources, services or obligations whether or not a price is charged. Therefore, even if the consideration involved in the proposed transaction with related party is justifiable or fair in based on the valuation done by a registered valuer, it would require compliance with respect to related party transactions of the Listing Agreement so long as it amounts to transfer resources, services or obligations.
 - Since, under the Listing the agreement the word resources is not defined, it should be construed in a broader sense. In absence of clarification under the Listing Agreement we refer to the general dictionary meaning of the word resources i.e something that one uses to achieve an objective; which means which could be utilized for obtaining some outcome or for that matter could be utilized in some productive way.
 - In the present case, the Querist proposes to transfer, its manufacturing unit to its wholly owned subsidiary i.e B Ltd which could be utilized in the business operations to achieve some output and accordingly to generate income.
 - Therefore, in our opinion, since the proposed transaction is with a related party involving transfer of resources, it would be a related party transaction under the Listing Agreement.

6. **Query c: Does it require approval of the Board of A Ltd and its shareholders?**

- i. With respect to Board and Shareholders' Approval for the aforesaid related party transaction, we would like to draw your attention to the relevant extract of Section 188(1) which reads as under:

"Section 188. Related party transactions

- (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

- a.
- b.
- c.
- d.
- e.
- f.
- g.

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a ordinary¹ resolution:

Provided further that no member of the company shall vote on such ordinary¹ resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis."

- ii. Section 188(1) of the Act clearly states that the company shall not enter into any transaction with the related party except with the consent of the Board given by a resolution at a meeting of the Board. However, an exemption would be available under Section 188 of the Act from Board and Shareholders' approval, if any, only in case where the transaction purported to be entered into is at arm's length basis and in ordinary course of business. In the present case, the proposed transaction with respect to transfer of manufacturing unit to its wholly owned subsidiary on slump sale basis cannot be a day to day business of any Company. Therefore, in our view, the proposed transaction, not being an ordinary business would require approval of Board of Directors at the Board meeting as required under Section 188(1) of the Companies Act.
- iii. Further, with respect to shareholders approval under the Companies Act, the approval of the shareholders would be required when the amount of the transaction exceeds the threshold given under the Companies (Meetings of Board and Its Powers) Rules, 2014. However, based on the aforesaid MCA Notification an exemption is granted to transactions between a holding company and wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval by inserting fourth proviso to Section 188(1) of the Act. In view of the above, approval of the shareholders will not be required under section 188 (1) of the Companies Act.
- iv. Here, it would be pertinent to note that the transaction being sale of a manufacturing unit your attention may be kindly drawn to the provisions of Section 180(1)(a) of the Act which inter alia reads as under:

"180.Restrictions on powers of Board

- (1) The Board of Directors of a company shall exercise the following

powers only with the consent of the company by a special resolution, namely:—

- (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings. Explanation.—For the purposes of this clause,—
 - (i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;
 - (ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year."
- v. From the above provisions it can be noted that the approval of the shareholders would be required by way of special resolution in general meeting if the proposed sale of manufacturing unit amounts to sale of whole or substantially the whole of the undertaking of the Querist. Further, approval of the shareholders would be required by postal ballot in case the number of members exceeds two hundred.
- vi. Under the Listing Agreement, Annexure X which specifies the list of information to be placed before the Board of Directors includes "*sale of material nature, of investments, subsidiaries, assets which is not in normal course of business.*" Here, what amounts to be a *material* is not specified under the given list, thus it would depend upon company to company as to what would amount to material based on the turnover of the Company.
- vii. Therefore, Board's approval would be required in case the transaction involves sale of investments, subsidiaries or assets of material nature not in normal course of business.
- viii. Further, approval shareholders of shareholders under the Listing Agreement would be required if the proposed related party transaction is material.
- ix. In this respect an Explanation (C) to sub-clause (VII) of Clause 49 which reads as under:
- "Provided that a transaction with a related party shall be considered as material if the transaction/ transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the Company as per the last audited financial statements of the Company."
- x. However, we would also like to draw your kind attention to proviso to point E. of sub-clause VII of Clause 49 of the Listing Agreement which grants exemption from approval of Audit Committee and shareholders with respect to transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. Therefore, the transaction to be entered into by the Querist would be exempt from shareholders approval under the Listing Agreement.
- xi. Hence, in our view approval of Board would be required under Section 188(1) of the Act and shareholders approval would be required under Section 180(1)(a) of the Act which shall be obtained by Postal Ballot in case the number of members of the Querist exceeds two hundred.

7. **Query d: Can the transaction be exempted under third proviso to**

¹ Vide the Companies (Amendment) Act, 2015 dated 25th May, 2015

Section 188(1) being in ordinary course of business and at arm's length?

- i. Under Section 188 (1) of the Companies Act, a given related party transaction is exempt from the Board and Shareholders' approval, if any, only when both the following cumulative conditions are satisfied: The transaction are -
 - a) On Arm's Length Basis and
 - b) In ordinary course of business
- ii. Further, the expression arms length transaction is explained under the Companies Act as under:
"the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest."
- iii. In this respect, the valuation of the transaction proposed to entered into by the Querist is done by two chartered accountants. Since the value of the unit proposed to be transferred on slump sale basis, as fixed by the Board of the Querist and agreed to by B Ltd, is on the basis of valuation done by two chartered accountants it can be deemed to be at arm's length basis.
- iv. Since the proposed transaction involves transfer of manufacturing unit of the Querist to its wholly owned subsidiary, B Ltd, on slump sale basis; therefore, in our view, it cannot be said to be in ordinary course of business. As sale/transfer of manufacturing unit to its wholly owned subsidiary per se cannot be an ordinary course if business for the Company.
- v. Therefore, the aforesaid transaction cannot be exempted under the third proviso to Section 188(1) of the Companies Act since one of the cumulative conditions is not satisfied.

8. **Query e: Will this transaction require any disclosure under the Listing Agreement?**

- i. The proposed transaction will require the following disclosure under the Listing Agreement:
 - a) The transaction being a related party transaction will require disclosure under the Compliance Report on Corporate Governance Report to be submitted quarterly to Stock Exchange(s) within 15 days of the end of the relevant quarter as per point A. of sub-clause VIII of Clause 49 and sub-clause X of Clause 49 of the Listing Agreement.
 - b) It shall also require disclosure under the Corporate Governance Section of the Annual Report as provided in point 7. of Annexure XII with respect to suggested list of Items to be included in the Report on Corporate Governance in the Annual Report of Companies which reads as under:
"7. Disclosures:
(i) Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large."
c) The Company shall disclose any event or transaction which occurred during or before the quarter that is material to an understanding of the results for the quarter. The company shall also disclose material events or transactions that take place subsequent to the end of the quarter under point k) of sub-clause IV of Clause 41 of the Listing Agreement.
d) The proposed transfer of manufacturing unit will be required to be disclosed in the financial results to be submitted to the Stock Exchange(s) on quarterly basis within 45 days from the end of relevant quarter and in financial results for the entire financial year within 60 days from the end of the financial year under the heading

extraordinary items, as per point h) of sub-clause (IV) of Clause 41 of the Listing Agreement, since the said transaction of transfer of manufacturing unit is not in ordinary course of business.

- e) The transaction shall require disclosure under Clause 36(7) of the Listing Agreement which deals with information having bearing on the operation/performance of the company as well as price sensitive information which includes acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.
- ### 9. **Query f: Will the directors of A Ltd who are also directors of B Ltd be entitled to participate in the Board Meeting of A Ltd and vote on the resolution?**

- i. In relation to the aforementioned query, we would like to draw you attention to the provisions of section Section 184(2) of the Companies Act which inter alia reads as under:
"184. Disclosure of interest by director
(2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—
(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest² at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting."
- ii. Form the above it is apparent that any Director who is concerned or interested in any contract or arrangement entered or proposed to be entered into with a body corporate in which such director individually or with any other director(s) holds more than two per cent shareholding in that body corporate shall not participate in such Board meeting and therefore will not be able to vote at such meeting.
- iii. Your attention may also be drawn to sub-rule (2) of Rule 15 of the Companies (Meetings of Board and Powers) Rules, 2014 which states that Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the relevant resolution.
- iv. We would also like to draw your kind attention to the definition of interested director under section 2(49) of the Act which reads as under:
"interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, entered into or to be entered into by or on behalf of a company."
- v. The aforementioned provision defines the term interested director which includes both direct and indirect interest Section 184(2) of the 2013 Act refers only to direct interest of a director. Although section 184(2) uses the term direct and indirect interest, it is applicable only to transactions in which a director is interested as referred to in two clauses to section 184(2) of the 2013 Act.³

² Form MBP-1

³ Commentary under section 184 of the Companies Act, 2013 from Ramaiya (pg 3276)

- vi. In the present case, two directors of the Querist are also on the Board of B Ltd, which leads to common directorship with respect to the aforesaid to two directors in A Ltd and B Ltd. But, only common directorship doesn't give rise disclosure of interest under section 184(2) of the Act since there is no shareholding. Where the concern or interest of a director of a company arises by a reason of being only a director or a member of another body corporate then section 184(2) of the 2013 Act is not attracted⁴.
- vii. Further, it was also held that contracts or arrangement hit by section is the one in which director has personal interest conflicting with his duties towards the company and does not cover any case where there is no personal interest involved.⁵
- viii. Since the Directors on the Board of the Querist who are also on the Board of B Ltd do not hold any shares in B Ltd, they will not be considered as interested under section 184(2) and also Rule 15 of the Companies (Meetings of the Board and Powers) Rules, 2014 and therefore, will be able to participate in the Board meeting and accordingly vote thereat.
10. **Query g: Will this transaction require to be entered in the register maintained under section 189 of the Act?**
- i. Section 189 of the Companies Act which speaks of Register⁶ of contracts or arrangements in which directors are interested requires the Company to give the particulars with respect to contracts or arrangements to which Section 184(2) or Section 188 of the Act applies.
- ii. As discussed in response to query (f) above, Section 184(2) of the Act does not apply to the transaction to be entered into with B Ltd. Further, with respect to applicability of Section 188 of the Act, as seen in response to query (b), it is evident that the proposed transaction is a Related Party Transaction. Here, it is pertinent to note that the exemption available is only in respect of Section 188(1) of the Act.
- iii. Therefore, since the proposed transaction attracts Section 188 of the Companies Act, it would accordingly require the entry in Register maintained under Section 189 of the Companies Act.
11. **Query h: What other requirements under the Act and the Listing Agreement will be required to be complied with?**
- i. With reference to query to (h), the following compliances/requirements of the Act will be required under the Companies Act:
- a) Section 188(2) of the Companies Act – Related party transactions
“Every contract or arrangement entered into under sub-section (1) shall be referred to in the Boards’ report to the shareholders alongwith the justification for entering into such contract or arrangement.”
- b) Section 108 of the Companies Act – Voting by electronic means
Every Company having its equity shares listed on a recognized Stock Exchange Company or a company having not less than one thousand members, shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means.” Further, the notice at which such facility is provided shall be advertised atleast in one vernacular language newspaper and atleast one English language newspaper in accordance with Rule 20 of the Companies (Management and Administration) Rules, 2014.
- c) Section 177 (4) of the Companies Act – Audit Committee “(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—
- (iv) approval or any subsequent modification of transactions of the company with related parties;
- (v).....
- (vi) valuation of undertakings or assets of the company, wherever it is necessary.”
- d) Section 117 of the Companies Act – Resolutions and agreements to be filed⁷
The Company shall file the resolution passed under Section 180(1)(c) of the Act, with the Registrar of Companies (ROC) within 30 days of passing such resolution in general meeting.
- e) Section 134(3) of the Companies Act – Financial statement, Board's report, etc.
“There shall be attached to statements laid before a company in general meeting, a report of its Board of Directors, which shall include –
- (a).....
- (b).....
- (c).....
- (d).....
- (f).....
- (g).....
- (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form⁸.”
- f) Placement of Notice* and results (Scrutinizers Report) on the website of the Company.
- ii. The compliances required under the Listing Agreement are as under:
- a) Submission of results of General Meeting/Postal Ballot under Clause 35A of the Listing Agreement.
- b) Submission of newspaper cuttings of Notice* published in newspaper to Stock Exchange(s) under Clause 31 of the Listing Agreement.
- c) Submission of Notice* to the Stock Exchange(s) at the same time they are sent to the shareholders under Clause 31 of the Listing Agreement
- d) The Agenda of the Board Meeting to be convened pursuant to Section 188(1) of the Act shall contain certain disclosures as per Rule 15(1) the Companies (Meetings of the Board and Powers) Rules, 2014.
- e) Framing policy on dealing with related party transaction and on materiality of Related Party Transaction.

We hope the above will meet your requirement.

Should you require any information/clarification, please call on us to do the needful.

Disclaimer:

The conclusions reached and views expressed in the note above are matters of opinion. Our opinion is based on our understanding of the Law & Regulations prevailing as of the date of this matter reported to us and assumes no responsibility whatsoever in giving our views, if assurance that authorities or regulators may not take position contrary to our views. Legislation, its judicial interpretation and the policies of the regulatory authorities are also subject to change from time to time and these may have a bearing on the advice that we have given. Accordingly any change of amendment in the law or relevant regulations would necessitate a review of our comments & recommendations contained in this matter. We have no responsibility if the applicable authority (s) takes otherwise views.

Thanking you, Yours faithfully,

⁴ Commentary under section 184 of the Companies Act, 2013 from Ramaiya (pg 3277)

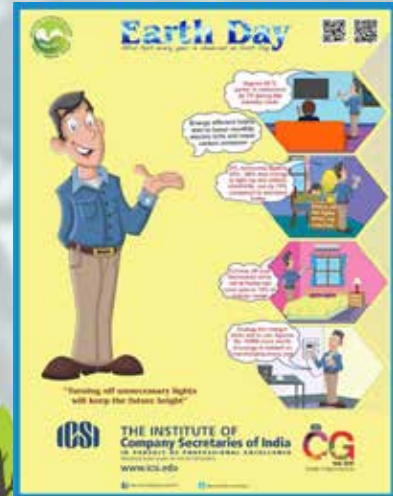
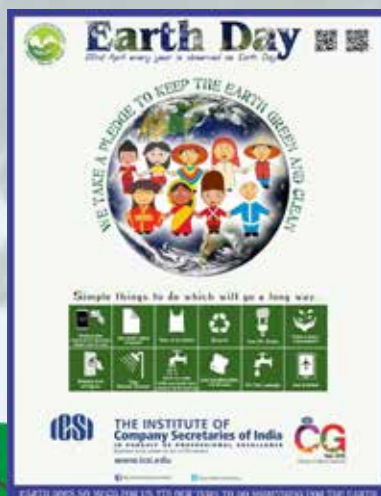
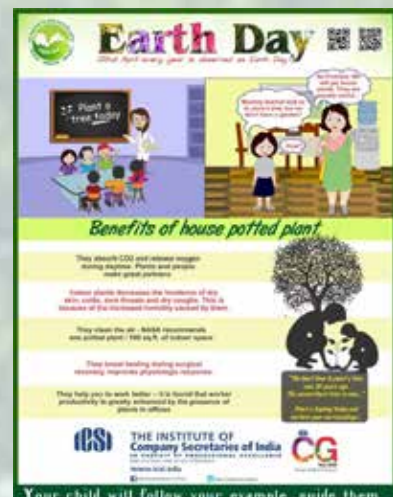
⁵ In the case of Public Prosecutor v. Khaitan, (1957) 27 Comp Cas 77

⁶ MBP-4

⁷ Form MGT-14 within 30 days

⁸ Form AOC 2

* Notice shall mean Postal Ballot notice where the number of members exceeds two hundred.



3

LEGAL WORLD



- SHRI GOPAL PAPER MILLS CO. LTD v. COMMISSIONER OF INCOME TAX [SC]
- THE CHIEF CONTROLLING REVENUE AUTHORITY & ANR v. RELIANCE INDUSTRIES LIMITED & ANR [BOM-FB]
- MESSER HOLDINGS LTD v. SHYAM MADANMOHAN RUIA & ORS [SC]
- SVELIFE FOUNDATION & ANR v. UNION OF INDIA & ANR [SC]
- RAMESH RAJAGOPAL v. DEVI POLYMERS PVT. LTD [SC]
- EVEREADY INDUSTRIES INDIA LTD v. STATE OF KARNATAKA [SC]
- COMMISSIONER OF CENTRAL EXCISE, INDORE V. GRASIM INDUSTRIES LTD [SC]
- TAMIL NADU CONSUMER PRODUCTS DISTRIBUTORS ASSOCIATION V. BRITANNIA INDUSTRIES LTD & ORS [CCI]
- DEPARTMENT OF SPORTS v. ATHLETICS FEDERATION OF INDIA [CCI]



“
Stones have to
be chiselled, wood has to
be carved, iron has to
be forged and present has to
nurture the future...
”



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| 9 Secretarial Audit, Compliance Management and Due Diligence | 10 Corporate Restructuring, Valuation and Insolvency | 11 Information Technology and Systems Audit | 12 Financial, Treasury and Forex Management | 13 Ethics, Governance and Sustainability | 14 Advanced Tax Laws and Practice | 15 Drafting, Appearances and Pleadings | |

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Landmark Judgement

CS: LMJ: 7/05/2016

SHRI GOPAL PAPER MILLS CO. LTD v. COMMISSIONER OF INCOME TAX [SC]

Civil Appeal No. 1669 of 1966.

K.S.Hegde, J.C.Shah & A.N.Grover, JJ. [Decided on 21/04/1970]

Equivalent citations: 1970 AIR 1750; 1971 SCR (1) 323; 1970 SCC (2) 80

Companies Act, 1956 – capitalisation of profits – issue of bonus shares – date of the resolution declaring bonus – actual allotment taking a date thereafter – when does the shares are said to have been allotted – SC held that it is the date of the resolution.

Brief facts:

Though this case relate to income tax on dividends distributed by way of bonus shares, the crucial and interesting question which arose, to decide the correctness or otherwise of the taxation, was When does the bonus shares become the property of the shareholders? Is it on the date of the resolution of the General Meeting of the company or on any later date? We are concerned with this aspect of law laid down by the Supreme Court of India.

The appellant company-assessee-at a general meeting on 30/12/1954 passed a resolution to the effect that a portion of the accumulated undivided profits be capitalised and distributed amongst the holders of the ordinary shares in the company as bonus shares. The said resolution also authorised and directed the directors of the company to issue allot and distribute the new shares, credited as fully paid up amongst the persons whose names are registered as such in the books of the company on 01/01/1955. The shareholders were entitled to get dividends on those shares only as from 1st January 1955.

For the assessment year 1956-57 the relevant accounting period ending on 31/12/1954, the Income-tax Officer determined the total income of the company and in computing the Corporation tax due in respect of the income reduced the rebate to which the appellant company was entitled on two counts (i) Rs.50,07,500 was not included in the paid up capital as on 31/12/1954 and (ii) the said bonus shares were not issued to the shareholders in the accounting year ended 31/12/1954.

As a result of proceedings before authorities under the Act, the above two

issues were referred to the High Court, which answered both the questions in favour of the department. Assessee appealed to the Supreme Court.

Decision: Appeal allowed.

Reason:

The first question that arises for decision is as to when the bonus shares became the property of the shareholders? Is it on the date of the resolution of the General Meeting of the company namely 30/12/1954 or on any later date?

It may be remembered that for the allotment of the bonus shares, there was no question of calling for applications. Under the Articles of Association of the Company it was not open to the ordinary shareholders to refuse to accept those shares when allotted. The company had full powers to convert its accumulated undivided profits into bonus shares. The resolution passed at the General Meeting specifically says that those accumulated undivided profits of the company standing to the credit of the general reserve as on June 30, 1954 "be capitalised and distributed amongst the holders of the ordinary shares in the Company on the footing that they had become entitled thereto as capital and that the said capital be applied on 'behalf of such Ordinary shareholders in payment in full for 5,00,750 Ordinary shares of Rs. 10/- each, in the Company and that such 5,00,750 New Ordinary shares of Rs. 10/- each, credited as fully paid up shall rank in all respects *pari passu* with the existing Ordinary shares. . . ."

From this part of the resolution it is clear that the ordinary shareholders became owners of the bonus shares to which they were entitled under the resolution as from the date of the resolution. The expression "be capitalised and distributed" in the resolution means "is hereby capitalised and distributed". In fact the whole tenor of the resolution shows that the distribution of the bonus shares became effective as from 30th December, 1954. If the ordinary shareholders became the owners of the bonus share on January 1, 1955 or on some later date, the statement in the resolution "save and except that the holders thereof will not participate in any dividend in respect of any period ending on or before 31st December, 1954" becomes meaningless.

The word "allotment" has not been defined in the Companies Act. The meaning, of the word "allot" or "allotment" will have to be gathered from the context in which those words are used. This Court considered the meaning of the word "allotment" in *Sri Gopal Jalan & Co. v. Calcutta Stock Exchange Association Ltd* [1964] 3 SCR 698. Therein it referred to a large number of English decisions which have considered the meaning of that word. In that decision this Court referred to the observations of Chitty J. in *Re Florence Land and Public Works Company* (1885) 2 L.R. 29, Ch. D. 421.

"To my mind there is no magic whatever in the term 'allotment' as used in these circumstances. It is said that the allotment is an appropriation of a specific number of shares. It is an appropriation, not of specific shares, but of a certain number of shares".

In *Gopal Jalan's case* (supra) Sarkar J. (as he then was) quoted with approval the following passage, from *Farwell L.J. in Mosley v. Koffyfontain Mines Ltd.* (1911) L.R. Ch. 73, 84.

"As regards the construction of these particular articles, it is plain that the words 'creation', 'issue' and 'allotment' are used with the three different meanings familiar to business people as well as to lawyers. There are three steps with regard to new capital; first, it is created; till it is created the capital does not exist at all. When it is created it may remain unissued for years, as indeed it, was here; the market did not allow of a favourable opportunity of placing it. When it is issued it may be issued on such terms as appear for the moment expedient. Next comes allotment. To take the words of Stirling J. in *Spitzel v. Chinese Corporation*, 80 L.T. 347, 35 1, he says: 'What is an allotment

of shares? Broadly speaking, it is an appropriation by the directors or the managing body of the company of shares to a particular person".

After examining the various decisions, Sarkar J. observed:

"It is beyond doubt from the authorities to which we have earlier referred, and there are many more which could be cited to show the same position, that in Company law 'allotment' means the appropriation out of the previously unappropriated capital of a company of a certain number of shares to a person. Till such allotment the shares do not exist as such. It is on allotment in this sense that the shares come into existence."

The word "distribute" found in cl. (b) of the resolution in the context means to record the distribution of the shares in the books of the company. If the resolution passed at the General Meeting of the company on December 30, 1954 is read as a whole, there is no doubt that on that day a portion of the accumulated undivided profits were converted into capital; that capital was divided into bonus shares and allotted to the ordinary shareholders on the basis of their shareholdings. The shares so allotted 'became the property of the shareholders as from that date subject to the qualification that they are entitled to get, dividends on those shares only as from 1st January 1955. Under cls. (b) and (c) of the resolution, certain directions were given to the Directors in the matter of implementation of that resolution.

Hence there was no justification in reducing the rebate firstly under sub-cl. (a) of cl. (1) of the second proviso to Section D of Part II of the Finance Act, 1956 (i.e. on the ground that bonus shares were not part of the paid up capital in the accounting year ended 31/12/1954) and secondly under sub-cl. (b) of cl. (1) of the second proviso to Section D of Part II of the Finance Act, 1956 (i.e. on the ground that bonus shares were not issued in the accounting year ended 31/12/1954). For the reasons mentioned above, we allow this appeal and answer the questions referred to the High Court in favour of the assessee.

LW: 26:05:2016

THE CHIEF CONTROLLING REVENUE AUTHORITY & ANR v. RELIANCE INDUSTRIES LIMITED & ANR [BOM-FB]

Civil Reference No.1 of 2007 in Writ Petition No. 1293 of 2007 in Reference Application No.8 of 2005

S. C. Dharmadhikari, K. R. Shriram & B.P.Colabawalla, JJ.
[Decided on 31/03/2016]

Merger of companies and payment of stamp duty – Transferor company obtains sanction order from Bombay High Court – Transferee company obtains sanction order from Gujarat High Court – Transferee company paid Rs.10 crore as stamp duty in Gujarat – Seeks remission of the same from the Government of Maharashtra against the stamp duty payable in Maharashtra – whether tenable – Held, No.

Brief facts:

Reliance Petroleum Limited, Jamnagar Gujarat ("RPL/respondent no.2") amalgamated with Reliance Industries Limited ("RIL/respondent no.1").

The transferee company RIL filed the petition in the Bombay High Court, which was sanctioned on 7.6.2002. Similarly the transferor company RPL filed the petition in the Gujarat High Court, which was sanctioned on 13.9.2002.

RIL submitted the above two orders sanctioning the scheme of amalgamation for adjudication of stamp duty in the office of Superintendent of Stamp, Mumbai (the applicant no.2). Respondent no.1 requested the applicant no.2 to adjudicate the stamp duty, if any, payable on the order dated 7.6.2002 passed by the Bombay High Court. RIL had paid stamp duty of Rs.10 crores in the State of Gujarat on the order dated 13.9.2002 passed by the Gujarat High Court and requested for the remission/deduction/ setoff this sum in the stamp duty payable in the State of Maharashtra. The applicant no.2 rejected the submissions of respondent no.1 and direct respondent no.1 to pay the entire amount of Rs.25 crores as stamp duty.

Against this, various appeals were preferred by RIL and ultimately the issues were referred to the High Court for determination.

Decision: Reference answered in favour of revenue.

Reason:

In view of the above, we answer the questions raised by the present reference as under:-

- (i) Whether a scheme sanctioned between the two companies under Sections 391 and 394 of the Companies Act is one and the same document chargeable to stamp duty regardless of the fact that order sanctioning the scheme may have been passed by two different High Courts by virtue of the fact that the Registered Office of the two companies are situated in different States?

Ans. A scheme settled by two companies is not a document chargeable to stamp duty. An order passed by the Court sanctioning such a Scheme under Section 394 of the said Act, which effects transfer is a document chargeable to stamp duty. In case if the Registered Offices of the two Companies are situated in two different States, requiring such Orders, sanctioning the Scheme to be passed under Section 394 of the Companies Act by two different High Courts, then in that event, the order of this High Court which sanctions the Scheme passed under Section 394 of the Companies Act will be the instrument chargeable to stamp duty.

- (ii) Whether the instrument in respect of amalgamation or compromise or scheme between the two Companies is such a scheme, compromise or arrangement and the orders sanctioning the same are incidental as the computation of stamp duty and valuation is solely based on the scheme and scheme alone?

Ans. The orders of the court, sanctioning a Scheme of amalgamation are not just incidental orders even in accordance with the Scheme of the Companies Act laid down by Section 391 read with, Section 394. Only after the orders are passed by the Court, sanctioning the Scheme of Amalgamation, such a scheme becomes operational and effective. Computation of stamp duty and valuation does not make Scheme of Amalgamation alone chargeable to stamp duty. The order is the instrument.

- (iii) Whether in a scheme, compromise or arrangement sanctioned under Sections 391 and 394 of the Companies Act where Registered Offices of the two Companies are situated in two different States, the Company in State of Maharashtra is entitled for rebate under Section 19 in respect of the stamp duty paid on the said scheme in another State?

Ans. The answer to this question will be in the negative for the reasons set out in detail herein above.

- (iv) Whether for the purposes of Section 19 of the Act, the scheme/ compromise/arrangement between the two Companies must be construed as document executed outside the state on which the stamp

duty is legally levied, demanded and paid in another State?

Ans. Basically, a scheme/compromise/arrangement between the two companies is never a document chargeable to stamp duty, whether such a document is executed in the State or outside the State of Maharashtra. Moreover, in view of our conclusions above, Section 19 of the Act in any event, has no application whatsoever.

LW: 27:05:2016

MESSER HOLDINGS LTD v. SHYAM MADANMOHAN RUIA & ORS [SC]

SLP(C) Nos. 33429-33434 of 2010 with SLP(C) Nos. 23088-23090 of 2012

J. Chelameswar & Abhay Manohar Sapre, JJ. [Decided on 19/04/2016]

Companies entering into shareholders/share purchase agreements – later on indulging in vicious litigation for over 18 years – Supreme Court imposes heavy exemplary cost on the litigating parties.

Brief facts:

Facts are complicated and voluminous. The crux of the issue was that one Messer Griesham GmbH, a German Company (hereinafter referred to as "MGG") had entered into a Share Purchase and Cooperation Agreement (hereinafter referred to as AGREEMENT-1) with the shareholders of an Indian company called Goyal Gases Ltd. (hereinafter referred to as "GGL") on 12.5.1995. This agreement contained a non-compete clause by which both parties agreed not to enter into a competing business.

Thereafter, with respect to a company known as Bombay Oxygen Corporation Limited (hereinafter referred to as the 'BOCL') MCG had entered into a Share Purchase Agreement dated 23/06/1997 (hereinafter referred to as AGREEMENT-II) with RUIAS, where MGG agreed (i) to purchase 45001 shares of BOCL from RUIAS, and(ii) also to acquire another 30000 shares of BOCL from the open market which would make MGG the majority shareholder of BOCL (creating a controlling interest).

GGL protested (in writing) against the attempt of MGG to independently acquire shares of BOCL saying that it would amount to breach of Clause 9 of the AGREEMENT-I. Some correspondence took place between both the Companies in this regard. Eventually, both the Companies entered into AGREEMENT-III on 8.11.1997 where under it was agreed that out of 75001 shares of BOCL to be acquired by MGG under AGREEMENT-II, 50000 shares will be acquired in the name of GGL and only 25001 will be acquired in the name of MGG.

RUIAS came to know of the AGREEMENT-III. By their letter dated 5.5.1998 they informed MGG that they were not agreeable for the proposal of MGG and GGL jointly purchasing the shares of the BOCL.

In this background all the three parties i.e. MGG, GGL and Ruias instituted various suits and applications against each other and have been fighting for the past 18 years. Several interlocutory orders passed in these proceedings were challenged before the Supreme Court.

Decision: Appeal disposed of by imposing an exemplary cost.

Reason:

The net effect of all the litigation is this. For the last 18 years, the litigation is going on. Considerable judicial time of this country is spent on this litigation. The conduct of none of the parties to this litigation is wholesome. The instant SLPs arise out of various interlocutory proceedings. Arguments were advanced on either side for a period of about 18 working days as if this Court were a Court of Original Jurisdiction trying the various above-mentioned suits. The fact remains that in none of the suits even issues have been framed so far. The learned counsel appearing for the parties very vehemently urged that there should be a finality to the litigation and therefore this Court should examine every question of fact and law thrown up by the enormous litigation. We believe that it is only the parties who are to be blamed for the state of affairs. This case, in our view, is a classic example of the abuse of the judicial process by unscrupulous litigants with money power, all in the name of legal rights by resorting to half-truths, misleading representations and suppression of facts. Each and every party is guilty of one or the other of the above-mentioned misconducts. It can be demonstrated (by a more elaborate explanation but we believe the facts narrated so far would be sufficient to indicate) but we do not wish to waste any more time in these matters.

This case should also serve as proof of the abuse of the discretionary Jurisdiction of this Court under Article 136 by the rich and powerful in the name of a 'fight for justice' at each and every interlocutory step of a suit. Enormous amount of judicial time of this Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases.

This Court in *Ramrameshwari Devi & Others v. Nirmala Devi & Others*, (2011) 8 SCC 249 observed at para 54;

"While imposing costs we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter-affidavit, miscellaneous charges towards typing, photocopying, court fee, etc."

We therefore, deem it appropriate to impose exemplary costs quantified at Rupees Twenty Five Lakhs only to be paid by each of the three parties i.e. GGL, MGG and RUIAS. The said amount is to be paid to National Legal Services Authority as compensation for the loss of judicial time of this country and the same may be utilized by the National Legal Services Authority to fund poor litigants to pursue their claims before this Court in deserving cases.



**GENERAL
Laws**

LW: 28:05:2016

SAVELIFE FOUNDATION & ANR v. UNION OF INDIA & ANR [SC]

Writ Petition (C) No. 235 of 2012

V. Gopala Gowda & Arun Mishra, JJ. [Decided on 30/03/2016]

Right to live – victims of road accident – Good Samaritan law – SC approves the guidelines and makes it law

Brief facts:

The petition has been filed under Article 32 of the Constitution of India in public interest for the development of supportive legal framework to protect Samaritans i.e. bystanders and passers-by who render the help to the victims of road accidents. These individuals can play a significant role in order to save lives of the victims by either immediately rushing them to the hospital or providing immediate lifesaving first aid.

Accident cases require fastest care and rescue which could be provided by those closest to the scene of the accident. Bystanders' clear support is essential to enhance the chances of survival of victim in the 'Golden Hour' i.e. the first hour of the injury. As per the WHO India Recommendations, 50% of the victims die in the first 15 minutes due to serious cardiovascular or nervous system injuries and the rest can be saved through by providing basic life support during the 'Golden Hour'. Right to life is enshrined under Article 21 which includes right to safety of persons while travelling on the road and the immediate medical assistance as a necessary corollary is required to be provided and also adequate legal protection and prevention from harassment to good Samaritans.

The people have the notion that touching the body could lend them liable for police interrogation. Passer-by plays safe and chose to wait for the police to arrive whereas injured gradually bleeds to death. People are reluctant to come forward for help despite, desperate attempts to get help from passer-by, by and large they turn blind eyes to the person in distress. Sometimes those who help are rebuked due to ignorance by the others on touching the scene. In the case of a convoy even when there are several vehicles in the convoy, people wait for the ambulance to arrive and also for the concerned police help. There are several desisting factors which are required to be taken care of such as fear of legal consequences if once action is ineffective or harmful to victim, fear of involvement in subsequent prolonged investigation and visit to the police station. There is need to evolve the system by promptly providing effective care system with certain ethical and legal principles. It is absolutely necessary that Good Samaritans feel empowered to act without fear of adverse consequence. There is need to provide certain incentives to Good Samaritans. There is also dire need to enact a Good Samaritan Law in the country since there is a felt need of legislation for affording protection to Good Samaritans.

The Ministry of Road Transport and Highways has issued a notification containing guidelines on 12.5.2015 for protection of good Samaritans and a further Notification has been issued on 21.1.2016 framing standard operating procedures. It has been mentioned in the affidavit filed by Ministry of Road Transport and Highways, Government of India that in the absence of any statutory backing, it is felt that it will be difficult to enforce these guidelines issued on 12.5.2015 and standard operating procedures as notified on 21.1.2016.

Prayer has been made on the part of the Ministry of Road Transport and Highways of Government of India that the guidelines notified on 12.5.2015 and the standard operating procedure notified on 21.1.2016 may be declared to be enforceable by this Court so that it is binding on all the States and Union Territories until the Union Government enacts a law to this effect.

Decision: Guidelines enforced.

Reason:

After referring to various judgements and elaborately discussing on the power of the judiciary to lay down laws the Supreme Court held as under:

In view of the aforesaid discussion, it is apparent that guidelines and directions can be issued by this Court including a command for compliance of guidelines and standard operating procedure issued by Government of India, Ministry of Road Transport and Highways, till such time as the legislature steps in to substitute them by proper legislation. This Court can issue such directions under Article 32 read with Article 142 to implement and enforce the guidelines which are necessary for protection of rights under Article 21 read with Article 14 of the Constitution of India so as to provide immediate help to the victims of the accident and at the same time to provide protection to Good Samaritans. The guidelines will have the force of law under Article 141. By virtue of Article 144, it is the duty of all authorities – judicial and civil – in the territory of India to act in aid of this Court by implementing them.

We have carefully gone through the notification dated 12.5.2015. However, as per the guidelines contained in para 13, the 'acknowledgement' if so desired by Good Samaritans, has to be issued as may be prescribed in a standard format by the State Government. In our opinion, till such time the format is prescribed, there should be no vacuum hence we direct that acknowledgement be issued on official letter-pad etc. and in the interregnum period, if so desired by Good Samaritan, mentioning the name of Samaritan, address, time, date, place of occurrence and confirming that the injured person was brought by the said Samaritan.

We have also gone through the notification dated 21.1.2016 with respect to the examination of Good Samaritan by the Police as contained in para 2(vii) which we modify and be read in the following manner : "The affidavit of Good Samaritan if filed, shall be treated as complete statement by the Police official while conducting the investigation. In case statement is to be recorded, complete statement shall be recorded in a single examination." Remaining guidelines in the notifications dated 12.5.2015 and 21.1.2016 are approved and it is ordered that guidelines with aforesaid modifications made by us be complied with by the Union Territories and all the functionaries of the State Governments as law laid down by this Court under Article 32 read with Article 142 of the Constitution of India and the same be treated as binding as per the mandate of Article 141.

We also direct that the court should not normally insist on appearance of Good Samaritans as that causes delay, expenses and inconvenience. The concerned court should exercise the power to appoint the Commission for examination of Good Samaritans in accordance with the provisions contained in section 284 of the Code of Criminal Procedure, 1973 *suo motu* or on an application moved for that purpose, unless for the reasons to be recorded personal presence of Good Samaritan in court is considered necessary.

LW: 29:05:2016

RAMESH RAJAGOPAL v. DEVI POLYMERS PVT. LTD [SC]

Criminal Appeal No. 133 of 2016 (Arising out of SLP(Crl) No. 2554 of 2011)

S. A. Bobde & Amitava Roy, JJ. [Decided on 19/04/2016]

Company having 3 different units – consultancy business headed by director – development of separate website for consultancy business of the company – Prosecution of director under IPC and IT Act – whether tenable – Held, No.

Brief facts:

The appellant is a Director in Devi Polymers Private Limited ["DPPL"]. DPPL has three Units – A, B and C. Unit 'C' is being headed by the appellant. It is not disputed that the Unit 'C' primarily renders consultancy services. However, all the three Units are units of one entity i.e. DPPL.

In the course of business, the appellant thought of improving the consultancy services and apparently contacted consultants, who apparently advised the creation of a separate entity known as Devi Consultancy Services and accordingly, in the web page that was created by the consultant, this name occurred. The invoices raised by the consultants were paid from the funds of DPPL, as advised by the appellant. It is significant that no amount has been paid or received by Unit C separately, independently of DDPL.

The relationship being strained between the respondent and the appellant, who are relatives, several proceedings seem to have been initiated in the Company Law Board. However, in the course of disputes and the pending proceedings, the respondent initiated the instant criminal complaint against the appellant. The appellant was prosecuted by the respondent under Sections 409, 468 and 471 of the Indian Penal Code (in short 'the IPC') read with Sections 65 and 66 of the Information Technology Act, 2000 read with Section 120(b) of the IPC.

Decision: Appeal allowed.

Reason:

Having given our anxious consideration to the dispute, we find that none of the aforesaid circumstances can lead to an inference of commission of an offence under the IPC at any rate none of the offence alleged. As far as the website is concerned, though undoubtedly, Devi Consultancy Services (DCS) is mentioned, it is made clear in the website itself that DCS is a part of DPPL which is apparent from a link, in the website itself, where they are shown as DPPL as the main Company and DCS as a sister Company. Similarly, in the website of DPPL, which was moved by the consultant, there is a link which shows that DCS is a sister concern and it is stated that viewers may visit that site. The address of DCS is shown to be the same address as that of DDPL. We are satisfied that there is no attempt whatsoever to project the DCS as a concern or a Company which is independent and separate from DDPL, to which both the parties belong. In any case it is not possible to view the act as an act of forgery.

It might have been possible to attribute some criminal intent to the projection of the Unit-C as DCS in the website, if as a result of such projection, the appellant had received any amounts separate from the DDPL, but a perusal of the complaint shows that this is not so. Not a single rupee has been received by the appellant in his own name or even separately in the name of Unit-C, which he is heading. All amounts have been received by DDPL.

It is not possible to view the contents of the website showing the DCS as a concern which is separate from DDPL in view of the contents of the website described above. Moreover, it is not possible to impute any intent to cause damage or injury or to enter into any express or implied contract or any intent to commit fraud in the making of the said website. The appellant has not committed any act which fits the above description. Admittedly, he has not received a single rupee nor has he entered into any contract in his own name on the basis of the above website.

In the absence of any act in pursuance of the website by which he has deceived any person fraudulently or dishonestly, induced any one to deliver any property to any person, we find that it is not possible to attribute any intention of cheating which is a necessary ingredient for the offence under Section 468.

We find that the allegations that the appellant is guilty of an offence under the aforesaid section are inherently improbable and there is not sufficient ground of proceedings against the accused. The proceedings have been initiated against the appellant as a part of an ongoing dispute between the parties and seem to be due to a private and personal grudge.

As regards the commission of offences under the Information Technology Act, 2000 the allegations are that the appellant had, with fraudulent and dishonest intention on the website of DCS i.e. www.devidcs.com that the former is a sister concern of Devi Polymers. Further, that this amounts to creating false electronic record. In view of the finding above we find that no offence is made out under Section 66 of the I.T. Act, read with Section 43. The appellant was a Director of DDPL and nothing is brought on record to show that he did not have any authority to access the computer system or the computer network of the company. That apart there is nothing on record to show the commission of offence under Section 65 of the I.T. Act, since the allegation is not that any computer source code has been concealed, destroyed or altered. We have already observed that the acts of the appellant did not have any dishonest intention while considering the allegations in respect of the other offences. In the circumstances, no case is made out under Sections 65 and 66 of the I.T. Act, 2000.

We find that the criminal proceedings initiated by the respondent constitute an abuse of process of Court and it is necessary to meet the ends of justice to quash the prosecution against the appellant.



LW: 30:05:2016

EVEREADY INDUSTRIES INDIA LTD v. STATE OF KARNATAKA [SC]

Civil Appeal No. 4231 of 2006

A. K. Sikri & Rohinton Fali Nariman, JJ. [Decided on 13/04/2016]

Karnataka Tax on Entry of Goods Act, 1979 – specific exemption notification and general exemption notification – assessee fails to fulfil the conditions – whether eligible for exemption – Held, No.

Brief facts:

The appellant is a dealer registered under the provisions of the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as the 'KST Act'). Before establishing its manufacturing Unit, the appellant-company had approached the State Government for grant of incentive and exemption under the provisions of the KST Act and also under the provisions of the Karnataka Sales Tax Act, 1957 which was granted to it for a period of six years from the date of commencement of commercial production on the condition that the appellant

should make an investment of a sum of Rs.111 crores, to claim benefit under the notification dated 25.06.1997. Appellant could not satisfy this condition.

Besides this specific exemption notification, there was a general exemption notification dated 31.03.1993. One of the conditions of this notification is that the claimant should have been a new industrial unit. As the appellant could not satisfy the investment condition in the specific notification and the new industrial unit condition in the general notification, no tax exemption was granted to it for the assessment year 1997-1998, 1998-1999 and 1999-2000.

After losing before all the authorities, ultimately appellant approached the Supreme Court.

Decision: Appeal dismissed.

Reason:

As pointed out above, the order dated 25.06.1997 was passed granting exemption to the appellant from payment of entry tax on raw materials and component parts for a period of six years from the date of commencement of commercial products. However, it was subject to the condition that the appellant should make an investment in the sum of Rs.111 crores in order to enable itself to claim the benefit of the aforesaid notification. It is an admitted fact that due to certain reasons, the appellant could not fulfil this condition as it did not invest Rs.111 crores in the project, as envisaged in the notification dated 25.06.1997. Therefore, insofar as exemption notification dated 25.06.1997 which was issued specifically in the case of the appellant, the appellant cannot be held entitled to the benefit thereof as it failed to fulfil the conditions.

The appellant, however, still claims the exemption by virtue of general Notification dated 31.03.1993 issued under the Entry Tax Act. This notification was issued under Section 11A of the Entry Tax Act. Vide this notification, the Government of Karnataka exempted the tax payable under the Entry Tax Act on the entry of raw materials, component parts and inputs and machinery and its parts into a local area for use in the manufacture of an immediate or finished product by the new industrial units. This notification contains a 'Table' which enlists type of industries and location of industries which are entitled to exemption as well as the period of exemption. It is not in dispute that the appellant industry stands covered by one such category of industry the description whereof is given in the notification. It is also located at a place which is stipulated in the said notification. However, the exemption was available to the new Industrial Units. The question arises as to whether the appellant falls within the ambit of "new industrial unit" as defined therein.

Reading of the definition in the notification clearly suggests that "a new industrial unit" is given the same meaning which is assigned in the notification dated 19.06.1991.

What is significant for our purposes is that such a Unit has to be certified to be eligible for exemption under the notification dated 21.06.1991. That is an essential requirement for a Unit to fall within the definition of "A New Industrial Unit" under the notification dated 31.03.1993 as it is assigned the same meaning as contained in the notification dated 21.06.1991. Notification dated 31.03.1993 further makes it clear that this notification is not to apply to a Unit to which notification dated 19.06.1991 does not apply. So much so, the procedure prescribed in the notification dated 19.06.1991 for claiming exemption is also made applicable to the Industrial Units seeking exemption under the notification dated 31.03.1993. In the instant case, the appellant does not fulfil the requirement of the notification dated 31.03.1993 as well.

It is trite that exemption notifications require strict interpretation. In order to get benefit of any exemption notification, assessee has to satisfy that it fulfils all the conditions contained in the notification. This is so held by this Court in *Rajasthan Spinning & Weaving Mills v. Collector of Central Excise*(1995)

4 SCC 473; *Novopan India Ltd. v. CCE & Customs* 1994 Supp.(3) SCC 614 (3) SCC 606 ; *Hansraj Gordhandas v. CCE & Customs*(1969) 2 SCR 253.

LW: 31:05:2016

COMMISSIONER OF CENTRAL EXCISE, INDORE V.
GRASIM INDUSTRIES LTD [SC]

Civil Appeal No. 3159 of 2004

Ranjan Gogoi, Arun Mishra &, Prafulla C. Pant, JJ. [Decided on 30/03/2016]

Central Excise Act, 1944 – section 3 and 4 – transaction value – whether section 3 to be read into section 4 – two contradicting judgements from two coordinate benches – matter placed before a larger bench.

Brief facts:

The respondents-assesseees are manufacturers of dissolved and compressed industrial gases and allied products. These gases are transported and supplied to the customers in tonners, cylinders, carboys, paper cones and HDPE bags, BIBs, pipeline and canisters, which may be more conveniently referred to as Containers. Some container items are provided by the assesseees and in some instances the customers bring their own cylinders/containers. For providing the containers, the assesseees charge the customers certain amounts under different heads. These amounts are not reflected in the sale invoices for the purpose of computation of assessable value. The assesseees treat the said amounts as their income from ancillary or allied ventures.

By order dated 30.7.2009 the following questions have been referred for consideration by a larger Bench in terms of which the matters have been posted before this bench.

1. Whether Section 4 of the Central Excise Act, 1944 (as substituted with effect from 01.07.2000) and the definition of "Transaction Value" in Clause(d) of sub-Section (3) of Section 4 are subject to Section 3 of the Act?
2. Whether Sections 3 and 4 of the Central Excise Act, despite being interlinked, operate in different fields and what is their real scope and ambit?
3. whether the concept of "Transaction Value" makes any material departure from the deemed normal price concept of the erstwhile Section 4(1) (a) of the Act?"

Decision: Referred to larger bench.

Reason:

The issue arising in all these appeals is whether the aforesaid charges are liable to be taken into account for determination of value for the purpose of levy of duty in terms of Section 4 of the Central Excise Act, 1944 (hereinafter referred to as "the Act") as amended with effect from 1.7.2000.

Section 4 (1) (a) [prior to the substitution] was considered by a Three Judges Bench of this Court in *Union of India & Ors. v. Bombay Tyre International Ltd. & Ors* (1984) 1 SCC 467. While considering the interplay between Sections 3 and 4, it was held as follows:

"A contention was raised for some of the assessee, that the measure was to be found by reading Section 3 with Section 4, thus drawing the ingredients of Section 3 into the exercise. We are unable to agree. We are concerned with Section 3(1), and we find nothing there which clothes the provision with a dual character, a charging provision as well as a provision defining the measure of the charge."

In *Commissioner of Central Excise v. Acer Ltd* (2004) 8 SCC 173, the scope and purport of Section 3 of the Act, Section 4 (1) (a) as substituted with effect from 1.7.2000 and Section 4 (3) (d) defining "transaction value" came up for consideration before another Three Judges Bench of this Court. In the said case, the question that arose is whether value of software attached to a computer, which is otherwise exempt from duty, is liable to be included in the assessable value of the computer for the purposes of levy of duty. Paragraph 84 of the judgment in *Commissioner of Central Excise v. Acer Ltd*. (supra) would be relevant and is, therefore, noticed below:

"84. So far as the valuation of goods in terms of "transaction value" thereof, as defined in Section 4(3) (d) of the Act is concerned, suffice it to say that the said provision would be subject to the charging provisions contained in Section 3 of the Act as also sub-section (1) of Section 4. The expressions "by reason of sale" or "in connection with the sale" contained in the definition of "transaction value" refer to such goods which is excisable to excise duty and not the one which is not so excisable. Section 3 of the Act being the charging section, the definition of "transaction value" must be read in the text and context thereof and not *dehors* the same."

From the above, it clearly appears that, though in the backdrop of different factual scenarios, two Coordinate Benches (Three Judges) have taken what would appear to be contrary views with regard to purport and effect and the interconnection between Section 3 and 4 of the Central Excise Act, 1944.

In the above situation, we are of the view that another Coordinate Bench should not venture into the issues raised and even attempt to express any opinion on the merits of either of the views expressed in *Union of India & Ors. v. Bombay Tyre International Ltd. & Ors.* (supra) and *Commissioner of Central Excise v. Acer Ltd.* (supra). Rather, according to us, the questions referred should receive consideration of a Larger Bench for which purpose the connected papers may now be placed before the Hon'ble Chief Justice of India for appropriate directions.



Competition Laws

LW: 32:05:2016

TAMIL NADU CONSUMER PRODUCTS DISTRIBUTORS ASSOCIATION V. BRITANNIA INDUSTRIES LTD & ORS [CCI]

Case No. 106 of 2015

Devender Kumar Sikri, S. L. Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta, M. S. Sahoo & Justice G. P. Mittal,

[Decided on 29/03/2016]

Competition Act – section 4 – abuse of dominance – restrictive conditions in distributorship agreement – whether constitute abuse of dominance – Held, No.

Brief facts:

The main concern of the Informant relates to the conditions imposed by Opposite Parties (OPs) on their distributors and termination of distributorship whenever those conditions are not adhered to. The purported conditions imposed by OPs, taking advantage of their dominant position, are indicated as abuse of dominant position under Section 4 of the Act. The brief details of the allegations are as follows:

- OPs never allow their distributors to deal with any other biscuit manufacturing company even through their sister concerns;
- OPs have orally restricted each and every distributor to operate business with retailers within the area demarcated by them. Further, the area of operation of distributors was reduced from time to time;
- OPs unfairly force their distributors to use gadgets and software introduced by them. This was emphasised to monitor the business of the distributor with retailers in their respective territory;
- OPs have dumped stocks on the distributors beyond their requirement by making automatic dispatches. Further, OPs realize the entire amount against dispatched goods by encashing the blank cheques issued by the distributors;
- OPs offer special rates to firms like Reliance Mart, Big Bazar, etc. As a result, the products of OPs are available to whole sale shops at rates (price) below the cost price of the distributors. Further, OPs transfer/provide slow/less selling stocks for general trading of the distributors;
- OPs require their distributors to maintain infrastructure like godown space, vans, employees, computers, software etc. and also force distributors to extend credit to retailers;
- OPs make their product available at rates below the cost rates of authorised distributors thereby humiliating the distributors before the retailers.
- It has also been submitted that OPs cancel the distributorship of agencies that do not abide by the aforesaid stipulations.

Decision: Case closed.

Reason:

For the purposes of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. The purpose of delineating the market is to ascertain whether OPs enjoy a position of strength required to operate independent of the market forces in the relevant market. Only when such a position is enjoyed by OPs, it is imperative to examine whether the impugned conduct(s) amounts to abuse.

As per the details available on their website, OPs are engaged in manufacture/production of a variety of bakery and dairy products such as biscuits, breads, cakes, rusk, milk, butter and cheese. It is observed that the biscuits segment constitutes the major component of the business of OPs and hence has been considered from the perspective of defining relevant market. The nature of

other products manufactured and supplied by OPs under the categories of dairy products, breads and cakes could be distinguished from biscuits in terms of their characteristics, taste and price. More particularly, these products have lesser shelf-life than that of biscuits. Accordingly, the market for biscuits appears to constitute a separate and distinct relevant product market. As regards the relevant geographic market, it appears that the conditions of competition are homogeneous across India. In the absence of any material on record brought by the Informant to suggest heterogeneity in the conditions of competition across India, the whole of India is considered as the relevant geographic market. Resultantly, the relevant market in the instant case is the 'market for biscuits in India'.

Further, the other bakery and dairy products supplied by OPs viz. cakes, rusk, milk, ghee, cheese, butter, etc. face intense competition from organised and un-organised local players; and the business of OPs in these segments appear to be relatively insignificant. Accordingly, it does not merit making assessment of dominant position in respect of these products and it can reasonably be presumed that the conduct of OPs in relation to these products cannot be considered as contravention of the provisions of the Act.

As regards the relevant market, the Commission notes that Britannia is a prominent biscuit brand in India. However, the biscuits industry in India has always evidenced the presence of other organised and unorganised players. The other organised players in the market include ITC, Parle and Priya Gold. The market for manufacture and sale of biscuits in India has also witnessed recent entries by foreign brands such as 'Unibic' and 'Mc Vities'. These competitors of OPs have comparable size and resources; and also offer different categories/range of biscuits. Presence of such players indicates that the buyers have options to choose in the relevant market. Thus, it is found that market for biscuits, including each of the segments therein, exhibits intense competition and OPs do not possess sufficient market power to act independently of the competitive forces prevailing in the relevant market. Notwithstanding this, the Commission also notes that market-segmentation and offering special rates/discounts on the basis of sale volumes *per se* cannot be regarded as anti-competitive.

In view of the foregoing, no case of contravention of the provisions of Section 4 of the Act is made out against OPs. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.

LW: 33:05:2016

DEPARTMENT OF SPORTS v. ATHLETICS FEDERATION OF INDIA [CCI]

Case No. 01 of 2015

Sudhir Mital, Augustine Peter, U. C. Nahta, M. S. Sahoo & Justice G. P. Mittal, [Decided on 16/03/2016]

Competition Act – section 3 & 4 – abuse of dominance – OP restricting state marathons which are without its permission – whether constitute abuse of dominance – Held, Yes.

Brief facts:

Informant is stated to be aggrieved by the decision taken by AFI in its Annual General Meeting (AGM) held on 11-12 April, 2015 to take action against the state units/ officials/ athletes who encourage unauthorised marathons without taking permission of AFI. The relevant excerpt from the minutes of the said meeting of Opposite Party (OP) is produced below:

Informant has alleged that the above decision of OP is anti-competitive and is not conducive for development of the sport of athletics at the grass-root level. It is averred that such a decision of AFI will have an adverse impact on promotion of sports and protection of the interest of sports persons and will prohibit healthy competition. Accordingly, Informant has requested the Commission to initiate action against AFI under various Sections of the Act.

Decision: Investigation by DG ordered.

Reason: The Commission has perused the available material on record and heard Informant and OP through their representatives.

The assessment of whether an entity is an 'enterprise' or not is to be done based on the activities of the entity under consideration. It is observed that in the instant case, the entity in question i.e. AFI has been engaged in organising various national and international athletic events and generating revenue out of such activities through various means such as royalty, sponsorship, etc. The said activities of AFI can be aptly termed as economic activities and hence, AFI stands covered within the meaning of 'enterprise' in terms of the provisions of Section 2(h) of the Act.

Since the allegations of Informant pertain to the conduct of OP in providing services relating to organisation of athletic events, the relevant product market in the instant case would be the market for "provision of services relating to organisation of athletics/ athletic activities". It is observed that provision of services relating to organisation of athletic events is distinct and cannot be substituted with any other related products/ services. The relevant geographical market in this case may be taken as 'India' because OP organises various national and international athletic events throughout India. Accordingly, the relevant market in the instant case is the market for 'provision of services relating to organisation of athletics/ athletic activities in India'.

The Commission observes that OP being the apex body for managing athletics in India and by virtue of its association with IAAF, AAA and Indian Olympic Association, it is controlling athletic activities in the entire country. Further, OP also conducts national, international athletic meets in the country. Also, it has thirty two affiliated state units and institutional units and it conducts national championships and selects Indian Athletics Teams for various international competitions. Thus, in relation to organisation of athletic activities in India, OP is the supreme authority having control over all such events and activities. Therefore, the Commission is of the view that OP is dominant in the relevant market of 'provision of services relating to organization of athletics/ athletic activities in India'.

It appears that by virtue of its dominance in the relevant market, OP is trying to impose discriminatory conditions like mandatory permission for conducting national and international marathon meets and it is thereby restricting the entry of new entrants into the relevant market. The said conduct of OP *prima facie* appears to be abuse of dominant position by OP in terms of the provisions of Section 4 of the Act.

With regard to contravention of the provisions of Section 3 of the Act in the matter, the Commission observes that the information does not disclose any kind of agreement which can be termed as anti-competitive in terms of any of the provisions of Section 3 of the Act.

Based on the above, the Commission is of the view that there exists a *prima facie* case of contravention of provisions of Section 4 of the Act by OP, and that it is a fit case for investigation by the Director General (the 'DG'). Accordingly, under the provisions of Section 26(1) of the Act, the Commission directs the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from the receipt of this order.

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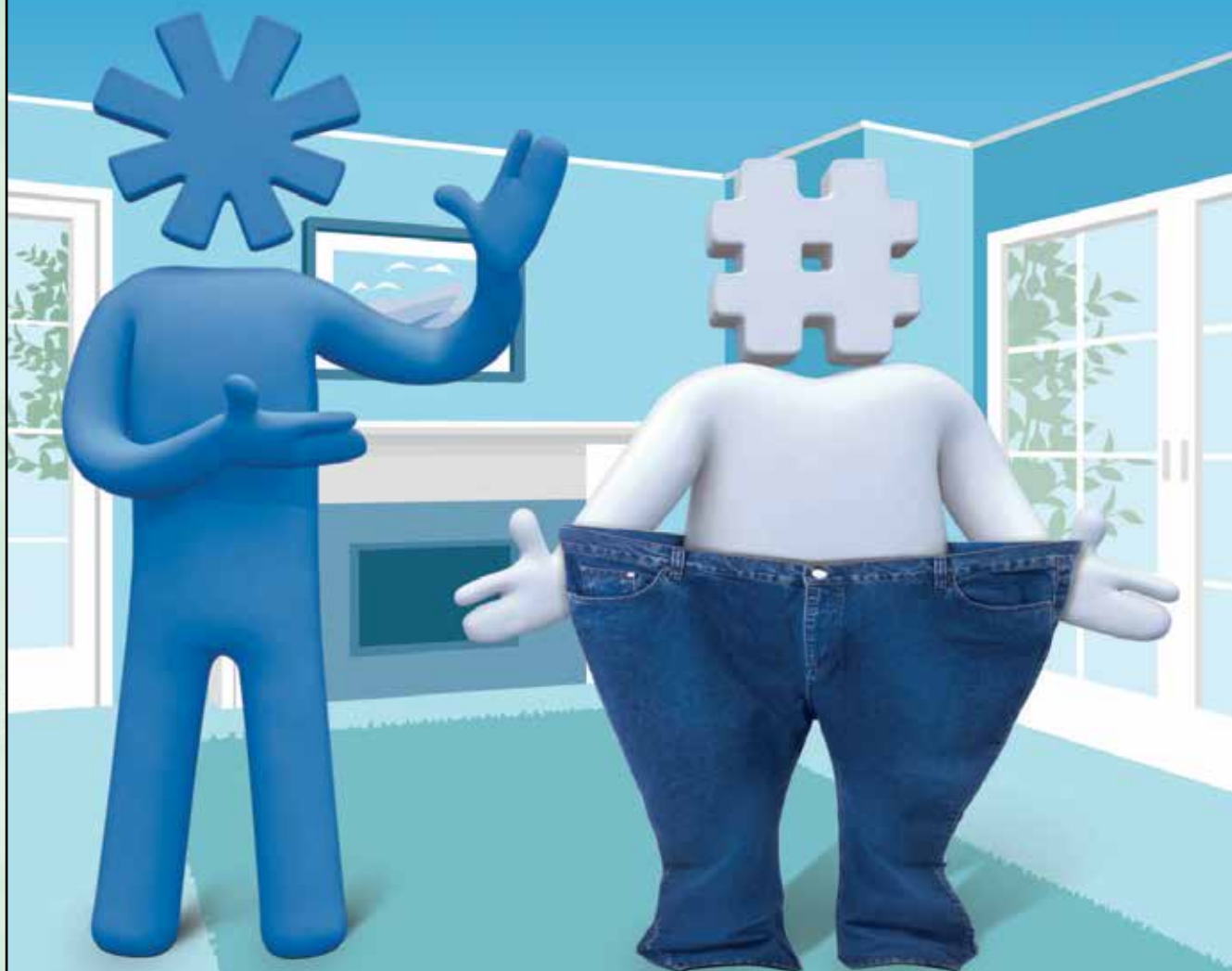
FROM THE GOVERNMENT



- Clarification with regard to Companies (Accounting Standards) Amendment Rules 2016
- Substitution of words in Notification No. GSR 832(E) dated 03.11.2015
- Relaxation of additional fees and extension of last date of filing of various e-Forms under the Companies Act - reg.
- Amendments to Schedule III of the Companies Act, 2013
- Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016
- Disclosure of Proprietary Trading by Commodity Derivatives Broker to Client and “Pro - account” Trading terminal
- Electronic book mechanism for issuance of debt securities on private placement basis

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01 Clarification with regard to Companies (Accounting Standards) Amendment Rules 2016

[Issued by the Ministry of Corporate Affairs vide F. No.01/01/2009-CL-V, General Circular No. 04 /2016, dated 27.04.2016.]

Stakeholders have sought clarifications with regard to the accounting period to which the accounts would need to be prepared using the Accounting Standards, as amended through the Companies (Accounting Standards) Amendment Rules, 2016. The matter has been examined in the Ministry and it is hereby clarified that the amended Accounting Standards should be used for preparation of accounts for accounting periods commencing on or after the date of notification.

This issues with the approval of the competent authority.

Sudhir Kapoor
Deputy Director

02 Substitution of words in Notification No. GSR 832(E) dated 03.11.2015

[Issued by the Ministry of Corporate Affairs vide F. No. J/1612013 -CL-V, dated 26.04.2016. To be published in the Gazette of India, Extra Ordinary Part-II, Section-3, subsection (ii).]

In exercise of the powers conferred by sub-section (I) of section 396 of the Companies Act, 2013 (18 of 2013) (herein after referred to as the said Act), the Central Government notified the jurisdictions of Regional Directors vide notification number G.S.R 832(E) dated 03.11.2015 to discharge the functions under sub-section (1) of section 396 of the said Act.

- In the said notification in serial number (7), in column (2), for the words "States of Karnataka and Andhra Pradesh" the words "States of Karnataka, Andhra Pradesh and Telangana" shall be substituted and shall be deemed to have been substituted with effect from 3rd November, 2015.

Amardeep Singh Bhatia
Joint Secretary

03 Relaxation of additional fees and extension of last date of filing of various e-Forms under the Companies Act - reg.

[Issued by the Ministry of Corporate Affairs vide F No.01/34/2013 CL-V, General Circular No. 03 /2016, dated 12.04.2016.]

This Ministry has launched V2R2 on 28th March, 2016, downtime was given to Infosys from 25th March, 2016 to 27th March,

2016. Since the launch of the system, a number of stakeholders have faced issues and representations have been received from stakeholders to resolve the issues including, for allowing waiver of additional fee till the new system stabilizes.

- In view of the above, it has been decided to relax the additional fee payable on e-forms which are due for filing by companies between 25th March 2016 to 30th April, 2016 as one time waiver of additional fee and it is also clarified to stakeholders that if such due e-forms are filed after 10.05.2016, no such relaxation shall be allowed.
- This issues with the approval of the Competent Authority.

KMS Narayanan
Assistant Director

04 Amendments to Schedule III of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide F. No. 17/62/2015-CL-V, dated 06.04.2016. To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-Sectron (i).]

In exercise of the powers conferred by sub section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments to Schedule III of the said Act with effect from the date of publication of this notification in the Official Gazette, namely:-

- In the Companies Act, 2013 (hereinafter referred to as the principal Act) in Schedule III, for the heading "General instructions for preparation of Balance Sheet and Statements of Profit and Loss of a Company" the following shall be substituted, namely:-

"Division I

Financial Statements for a company whose Financial Statements are required to comply with the Companies (Accounting Standards) Rules, 2006.

General instructions for preparation of balance sheet and statement of profit and loss of a company"

- In the principal Act, in Schedule III, at the end, the following shall be inserted, namely:-

"Division II

Financial Statements for a company whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015.

General instructions for preparation of financial statements of a company required to comply with Ind AS

- Every company to which Indian Accounting Standards apply, shall prepare its financial statements in accordance with this Schedule or with such modification as may be required under certain circumstances.
- Where compliance with the requirements of the Act including Indian Accounting Standards (except the option of presenting assets and liabilities in the order of liquidity as provided by the relevant Ind AS) as applicable to the companies require any change in treatment or disclosure including addition, amendment substitution or deletion in the head or sub-head or any changes inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements under this Schedule shall stand modified accordingly.
- The disclosure requirements specified in this Schedule are in

addition to and not in substitution of the disclosure requirements specified in the Indian Accounting Standards. Additional disclosures specified in the Indian Accounting Standards shall be made in the Notes or by way of additional statement or statements unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act, 2013 shall be made in the Notes in addition to the requirements set out in this Schedule. and

4. (i) Notes shall contain information in addition to that presented in the Financial Statements and shall provide where required-
 - (a) narrative descriptions or disaggregations of items recognised in those statements; and
 - (b) information about items that do not qualify for recognition in those statements.
- (ii) Each item on the face of the Balance Sheet, Statement of Changes in Equity and Statement of Profit and Loss shall be cross-referenced to any related information in the Notes. In preparing the Financial Statements including the Notes, a balance shall be maintained between providing excessive detail that may not assist users of Financial Statements and not providing important information as a result of too much aggregation.
5. Depending upon the turnover of the company the figures appearing in the Financial Statements shall be rounded off as below:

Turnover	Rounding off
(i) less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
(ii) one hundred crore rupees or more	To the nearest, lakhs, millions or crores, or decimals thereof.

7. Once a unit of measurement is used, it should be used uniformly in the Financial Statements.
Financial Statements shall contain the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including Notes except in the case of first Financial Statements laid before the company after incorporation.
Financial Statements shall disclose all 'material' items, i.e., the items if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. Materiality depends on the size or nature of the item or a combination of both, to be judged in the particular circumstances.
8. For the purpose of this Schedule, the terms used herein shall have the same meanings assigned to them in Indian Accounting Standards.
9. Where any Act or Regulation requires specific disclosures to be made in the standalone financial statements of a company, the said disclosures shall be made in addition to those required under this Schedule.

Note: This Schedule sets out the minimum requirements for disclosure on the face of the Financial Statements, i.e., Balance Sheet, Statement of Changes in Equity for the period, the Statement of Profit and Loss for the period (The term, Statement of Profit and Loss' has the same meaning as (Profit and Loss Account) and Cash flow statement shall be prepared, where applicable, in accordance with the requirements of the relevant Indian Accounting Standard.

Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company's financial position or performance or to cater to industry or sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act, 2013 or under the Indian Accounting Standards.

Part-I Balance Sheet.....*

Part-II Statement of Profit & Loss*

Amardeep Singh Bhatia
Joint Secretary

* Not reproduced here for want of space. Readers may log on to mca.gov.in for text of the Notification.

05 Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016

[Issued by the Ministry of Corporate Affairs vide F. No. 1/19/2013-CL-V, dated 04.04.2016. To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-Section (i).]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 398 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, namely:-

1. **Short title and Commencement** (i) These rules may be called the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, in rule 3, for the proviso, the following proviso shall be substituted, namely:-
"Provided that the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file financial statements under this rule."..

Amardeep Singh Bhatia
Joint Secretary

06 Disclosure of Proprietary Trading by Commodity Derivatives Broker to Client and "Pro - account" Trading terminal

[Issued by the Securities and Exchange Board of India, vide CIRCULAR SEBI/HO/CDMRD/DMP/CIR/P/2016/49, dated 25.04.2016]

1. In order to increase the transparency in the dealings between the stock broker and the clients in commodity derivatives market, it has been decided to align the provisions relating to the proprietary trading carried out by the stock brokers of commodity derivatives exchanges in line with the securities market.
2. **Disclosure of proprietary trading by broker to client:** The provisions of the directions issued by SEBI vide its circular no. SEBI/MRD/SE/Cir- 42 /2003 dated November 19, 2003, regarding the disclosure of proprietary trading by stock broker to client, are made applicable to all the commodity derivatives exchanges.
3. **"Pro – account" trading terminals:** All the commodity derivatives exchanges shall ensure compliance with the provisions of the directions issued by SEBI vide its circular no. SEBI/MRD/SE/Cir-32/2003/27/08 dated August 27, 2003 regarding "Pro – account" trading terminals.
4. This circular supersedes the circulars issued by the erstwhile Forward Markets Commission related to "Pro – account" trading terminal from time to time and shall come into force

with effect from three months from the date of this circular.

5. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
6. The Exchanges are advised to:
 - i. to make necessary amendments to the relevant bye-laws, rules and regulations.
 - ii. bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.
 - iii. communicate to SEBI, the status of the implementation of the provisions of this circular in the Monthly Development Reports to SEBI.
7. This circular is available on SEBI website at www.sebi.gov.in.

Vikas Sukhwil
Deputy General Manager

07 Electronic book mechanism for issuance of debt securities on private placement basis

[Issued by the Securities and Exchange Board of India, vide CIRCULAR CIR/IMD/DF1/48/2016, dated 21.04.2016]

1. SEBI (Issue and Listing of Debt Securities) Regulations, 2008, govern public issue of debt securities and listing of debt securities issued through public issue or on private placement basis, on a recognized stock exchange. Regulation 31(2) of SEBI (ILDS) Regulations, 2008 inter alia provides that:-
 "In particular, and without prejudice to the generality of the foregoing power and provisions of these regulations, such orders or circulars may provide for all or any of the following matters, namely: (a) Electronic issuances and other issue procedures including the procedure for price discovery; "
2. Accordingly, in order to streamline procedures for issuance of debt securities on private placement basis and enhance transparency to discover prices, it has been decided to lay down a framework for issuance of debt securities on private placement basis through an electronic book mechanism.
3. To begin with, this electronic book mechanism would be mandatory for all private placements of debt securities in primary market with an issue size of Rs.500 crores and above, inclusive of green shoe option, if any.
4. The following issuers shall have an option to follow either electronic book mechanism or the existing mechanism:-
 - 4.1. issues with a single investor and where coupon rate are fixed. However arrangers acting as underwriters shall not be considered as single investors.
 - 4.2. issues wherein the issue size is less than Rs. 500 crores, inclusive of green shoe option, if any.
 However, for all issues below Rs.500 crore, issuer shall disclose the coupon, yield, amount raised, number of investors and category of investors to the Electronic Book Provider and/ or to the information repository for corporate debt market as notified by SEBI, in the format as specified.
5. Electronic book provider
 - 5.1. The electronic book mechanism shall be provided by recognized stock exchange(s) only after obtaining prior approval from SEBI.
 - 5.2. Such recognized stock exchange(s) referred to in Para 5.1 above shall be referred to as Electronic Book Provider ("EBP").

- 5.3. The following shall be eligibility conditions for a recognised stock exchange to act as EBP:-
 - 5.3.1. EBP shall provide an on-line platform for receiving bids in private placement of debt securities.
 - 5.3.2. EBP shall own website/ URL (hereinafter referred to as bidding portal) on which it proposes to offer its services.
 - 5.3.3. EBP shall have all the necessary infrastructure like adequate office space, equipments, risk management capabilities, manpower and other information technology infrastructure to effectively discharge the activities of EBP.
 - 5.3.4. EBP shall ensure that there is adequate backup, disaster management and recovery plans for the electronic book mechanism so provided by EBP.
 - 5.3.5. The EBP shall ensure safety, secrecy, integrity and retrievability of data.
 - 5.3.6. The electronic book mechanism so provided by EBP would be subject to periodic audit by Certified Information Systems Auditor (CISA) under Annual System Audit prescribed by SEBI.

6. Participants in Electronic book mechanism

- 6.1. Issuer
 - 6.1.1. Issuer shall have the same meaning as assigned under regulation 2(g) of ILDS Regulations, 2008.
- 6.2. Arranger, if any, appointed by the issuer
 - 6.2.1. Merchant Bankers, RBI registered Primary Dealers or any other registered intermediaries as notified by SEBI from time to time, may act as the arranger.
 - 6.2.2. Arranger shall be categorised as a Category 1 Participant who may enter bids on EBP either on proprietary basis or for other participants such as High Net worth Individuals (HNIs), Institutional investors etc.
- 6.3. Sub-arranger, appointed by the arranger
 - 6.3.1. Any broker registered with SEBI may act as a sub-arranger
 - 6.3.2. Sub-arranger shall be categorised as a Category 1 Participant who may enter bids on EBP either on proprietary basis or for other participants such as High Net worth Individuals (HNIs), Institutional investors etc.
- 6.4. Institutional Investors
 - 6.4.1. Institutional Investors shall be as defined in Regulation 106 X (b) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
 - 6.4.2. Institutional investors shall be categorised as Category 2 Participants who may enter bids on proprietary basis or may participate through an arranger/sub-arranger.
 - 6.4.3. Institutional investors shall enter proprietary bids provided that minimum application or bid value is more than the minimum bid size as specified by the issuer.
- 6.5. All the investors apart from the Institutional Investors, shall enter bids only through Category 1 Participants.
7. Roles and responsibilities of participants in electronic book mechanism: The roles and responsibilities of each of the participants of electronic book mechanism shall be as follows:
 - 7.1. The arranger or sub-arranger or EBP shall ensure Know Your Client (KYC) of the participants before allowing them to make bids as follows:
 - 7.1.1. In case the participants are Qualified Institutional Buyers, KYCs shall be ensured by EBP; and
 - 7.1.2. In case of other participants by the arranger or sub-arranger, as the case may be.
 - 7.1.3. Arranger or Sub-Arranger or EBP may undertake KYC of participants by obtaining/utilizing existing KYCs of clients from KRAs registered with SEBI.

- 7.2. Issuer
- 7.2.1. The issuer shall ensure compliance with all requisite laws, rules, regulations, etc. with respect to private placement of debt securities.
- 7.2.2. With respect to disclosure in PPM, the following shall be ensured by the issuer:-
- (a) Disclosures as has been prescribed in acts, rules, regulations, etc. Issuer shall specify minimum issue size which shall be inclusive of green shoe option, if any.
 - (b) Details with respect to green shoe option shall be disclosed along with the reasons for the retention of excess amount, if any.
 - (c) The PPM may not contain the coupon details, however, the PPM may contain upper ceiling limit.
- 7.2.3. The issuer shall enter into an agreement with the EBP containing necessary terms and conditions for usage of the electronic book mechanism, rights, duties, responsibilities, dispute resolution mechanism and liabilities of the issuer, EBP etc.
- 7.3. EBP
- 7.3.1. The EBP shall lay down operational procedure including steps for uploading of the private placement offer letter/ placement memorandum containing details about private placement, list of the eligible participants for bidding through electronic book, respective time lines for each event etc.
- 7.3.2. All the operational procedure laid down by the EBP shall be disclosed to the eligible participants.
- 7.3.3. The EBP shall be responsible for accurate, timely and secured bidding process of the electronic bid by the eligible bidders.
- 7.3.4. Notwithstanding the responsibility of the issuer as laid down below, the EBP shall be responsible for addressing investor grievances arising from bidding process.
- 7.4. Any dispute between issuer and bidders or between EBP or bidders before listing of privately placed debt securities in recognized Stock Exchange(s) shall be settled as per their agreement and post listing as per arbitration bye-laws of exchange.
8. Procedure for electronic book mechanism: The procedure to be followed for electronic book mechanism is as follows:

A. Pre-Bid Procedure

- 8.1. Participants shall be required to enroll with EBP before entering bids. However, enrollment of participants with EBP would not automatically qualify a participant to enter bids, as only eligible participants may participate in the bidding process.
- 8.2. Qualified Institutional Buyer as per Regulation 2 (zd) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and other eligible bidders (as determined by the issuer) may participate in the bidding process.
- Provided that in case the issuer is Non-Banking Financial Companies which are registered with Reserve Bank of India and Housing Finance Companies registered with National Housing Bank, the Qualified Institutional Buyer, eligible bidders (as determined by the issuer) and other participants enrolled with EBP may participate in the bidding process subject to them complying with RBI requirements, if any prescribed in this regard.
- 8.3. The EBP shall provide the details of Qualified Institutional Buyer and other participants enrolled with EBP (if applicable) to the issuer.
- 8.4. All enrolled participants (other than Qualified Institutional Buyers) who wish to participate on any issue either directly or through arranger, as applicable would be required to pre-register before being allowed

to access to the PPM or other information with respect to issue. However, if the number of such pre-registrations of participants (other than Qualified Institutional Buyers) exceed 200 in a year (cumulatively across all the issues of a particular issuer), then the eligible bidders would be determined by draw of lots or first come first served basis undertaken by the EBP in consultation with issuer so as to limit participants to 200 in a year.

- 8.5. Only the eligible participants shall have access to PPM and issue specific information and to the bidding portal provided by EBP. The bidding time window (bidding time, cooling period, renegotiation window etc.) shall be decided by issuer in consultation with the EBP which shall be disclosed to the bidders by EBP in advance.

B. Bidding Procedure

- 8.6. Bidding shall be allowed in the bidding time window specified by the issuer.
- 8.7. Bid shall be made by way of entering bid amount in Rupees (INR) and coupon/ yield in basis points (bps).
- 8.8. Participants shall be allowed to enter multiple bids i.e. single participant may enter more than one bid.
- 8.9. EBP shall provide a facility for generation of acknowledgement number against such bids.

C. Post Bidding Procedure

- 8.10. All bids received within bidding time window shall be provided by EBP to the issuer after bidding process is over.
- 8.11. Issuer shall have the option to accept or reject bids received, if the issuer agrees to the yield so discovered.
- 8.12. Issuer shall provide details of accepted bids to depositories to make allotment.
- 8.13. EBP shall display bid details on the end of the bidding time window.
- 8.14. At the end of the bidding time window, EBP shall on an anonymous basis, disclose the aggregate volume data, including yield, amount including the amount of oversubscription, total bids received, rating(s), category of investor etc. to avoid any speculations.
- 8.15. For issues below Rs.500 crore, issuer shall upload details as mentioned in para 8.14 above with EBP and/or with information repository for corporate debt market as notified by SEBI, in the format as specified.
- 8.16. EBP shall upload the allotment data on its website to be made available to the public.
9. The provisions of this circular shall be applicable with effect from July 01, 2016.
10. Recognized Stock Exchanges are directed to:
- a. comply with the conditions laid down in this circular;
 - b. put in place necessary systems and infrastructure for implementation of this circular;
 - c. make consequential changes, if any, to the bye-laws of the Exchange as may be applicable and necessary;
 - d. communicate to member brokers and create awareness among other participants;
 - e. create awareness among issuers and participants.
11. This Circular is issued in exercise of powers conferred under Section 11(1) read with regulation 31(2) of ILDS Regulations of the Securities and Exchange Board of India Act, 1992.
12. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and under the drop down "Corp Debt Market".

Richa G. Agarwal
Deputy General Manager Investment

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NEWS FROM THE INSTITUTE & REGIONS



- Members Admitted / Restored
- Certificate of Practice Issued/Cancelled
- Company Secretaries Benevolent Fund
- Form-D Application for Issue/Renewal/Restoration of COP
- List of Practising Members/Companies Registered for Imparting Training
- Regional News

ADDING STRUCTURES - STRENGTHENING ICSI



Upcoming ICSI Centre of Excellence, Hyderabad



Construction site of New Building for Guwahati Chapter



Udaipur Chapter Building under construction



Members Admitted

S. No.	Name	Membership No.	Region
FELLOWS*			
1	SH. MANI BOOSHAN GCHVS	FCS - 8528	SIRC
2	SH. RAVI KUMAR G V S	FCS - 8529	SIRC
3	SH. VASANT B PATEL	FCS - 8530	WIRC
4	SH. LAXMIKANT AMBASRAO JAIPURKAR	FCS - 8531	WIRC
5	MS RITU BHOJAK	FCS - 8532	EIRC
6	SH. M GOVINDARAJAN	FCS - 8533	SIRC
7	SH. G ANANTHAKRISHNAN	FCS - 8534	WIRC
8	SH. AMIT GOVIND ATRE	FCS - 8535	WIRC
9	MS. ANKITA PINAKINBHAI PATEL	FCS - 8536	WIRC
10	SH. ANKUR SRIVASTAVA	FCS - 8537	NIRC
11	SH. PRATIK RAMESHBHAI BHANUSHALI	FCS - 8538	WIRC
12	MS. LAKSHMI RATHNAM	FCS - 8539	SIRC
13	SH. VIVEK MISHRA	FCS - 8540	EIRC
14	SH. MANOJ KUMAR PANDEY	FCS - 8541	NIRC
15	SH. SANJAY KUMAR PERIWAL	FCS - 8542	EIRC
16	MS. SHRUTI AGARWAL	FCS - 8543	NIRC
17	MS. SHEETAL KHURANA	FCS - 8544	WIRC
18	MS. RASHMI CHAWLA	FCS - 8545	NIRC
19	SH. ABINOAM PANU RONG	FCS - 8546	EIRC
20	SH. ANAND ARORA	FCS - 8547	SIRC
21	MS. MEENAKSHI NAYYAR	FCS - 8548	NIRC
22	MS. POOJA GARG	FCS - 8549	NIRC
23	MS. SARITA HANUMANT MAGAR	FCS - 8550	WIRC
24	SH. CHETAN TARACHAND MANDLIA	FCS - 8551	WIRC
25	MS REENA BANSAL	FCS - 8552	WIRC
26	MS. SAMIDHA MANOHAR BHAGAT	FCS - 8553	WIRC
27	SH. DASARI VENKATESWARLU	FCS - 8554	SIRC
28	SH. SISIRA KUMAR MISHRA	FCS - 8555	SIRC
29	SH. SHASHI RANJAN KUMAR	FCS - 8556	NIRC
30	SH. ARNAB KHADRABORTY	FCS - 8557	EIRC
31	SH. RAHUL KHADRIYA	FCS - 8558	NIRC
ASSOCIATES*			
1	MS. SWATI RAI	ACS - 44140	NIRC
2	MS. POONAM RAJKUMAR LILA	ACS - 44141	NIRC
3	MR. VIRENDRA KUMAR SAINI	ACS - 44142	NIRC
4	MR. DEEPAK KUMAR	ACS - 44143	NIRC
5	MS. NEETU VARSHNEY	ACS - 44144	NIRC
6	MR. ASHISH SHARMA	ACS - 44145	NIRC
7	MR. MAYANK SAHAL	ACS - 44146	EIRC
8	MR. ASHISH MAHAWAR	ACS - 44147	EIRC
9	MR. KUMUD PRASAD KHONDOPANI	ACS - 44148	EIRC
10	MS. STUTI SAXENA	ACS - 44149	NIRC
11	MR. ADVITIYA VYAS	ACS - 44150	NIRC
12	MR. ROHIT JAIN	ACS - 44151	NIRC
13	MS. SONAL SINGHAL	ACS - 44152	NIRC
14	MS. REKHA THAKUR	ACS - 44153	NIRC
15	MS. RUPALI KUKREJA	ACS - 44154	NIRC
16	MS. MEENAKSHI GUPTA	ACS - 44155	NIRC
17	MS. MEENU SARAF	ACS - 44156	NIRC
18	MS. PARUL CHOUDHARY	ACS - 44157	NIRC
19	MS. LATA KARAMCHANDANI	ACS - 44158	NIRC
20	MS. MONIKA JINDAL	ACS - 44159	NIRC
21	MS. ANITA KUMAWAT	ACS - 44160	NIRC
22	MS. GARIMA VERMA	ACS - 44161	NIRC

23	MS. ANJALI	ACS - 44162	NIRC
24	MS. MONA BANSAL	ACS - 44163	NIRC
25	MS. SANJANA RANI	ACS - 44164	NIRC
26	MS. KIRTI RAJAWAT	ACS - 44165	NIRC
27	MS. MONIKA BHANDARI	ACS - 44166	NIRC
28	MS. SONAL POPLI	ACS - 44167	NIRC
29	MS. BHAVYA SHARMA	ACS - 44168	NIRC
30	MS. NIKHITA SETIA	ACS - 44169	NIRC
31	MS. NISHI SETHI	ACS - 44170	NIRC
32	MS. MAYA BHOJWANI	ACS - 44171	NIRC
33	MS. SHREYA JAIN	ACS - 44172	NIRC
34	MR. SACHIN GOYAL	ACS - 44173	NIRC
35	MS. ASWATHY P KAIMAL	ACS - 44174	SIRC
36	MS. TEJASRI KORLEPARA	ACS - 44175	SIRC
37	MR. HAREESHA GOWDA	ACS - 44176	SIRC
38	MR. PRATIK VIKRAMKUMAR SHAHA	ACS - 44177	SIRC
39	MS. NEHA JAIN	ACS - 44178	NIRC
40	MR. ANAND GAGGAR	ACS - 44179	WIRC
41	MS. KETAKI CHANDRASHEKHAR KARANDIKAR	ACS - 44180	WIRC
42	MS. JANAKI RAJIV SHINKRE	ACS - 44181	WIRC
43	MR. DINESH DEVICHANDJI LOHADE	ACS - 44182	WIRC
44	MS. VISHAKHA GUPTA	ACS - 44183	WIRC
45	MS. MEDHA SARDA	ACS - 44184	WIRC
46	MS. KARUNA RAJESH SAKHARKAR	ACS - 44185	WIRC
47	MS. SHRADDHA PRAKASHKUMAR MEHTA	ACS - 44186	WIRC
48	MR. RITESH SHARMA	ACS - 44187	WIRC
49	MR. JIMIT ARJAN ITALIYA	ACS - 44188	WIRC
50	MR. CHAITANYA CHANDRASHEKHAR KULKARNI	ACS - 44189	WIRC
51	MR. ABHISHEK CHANDRASHEKHAR SHALU	ACS - 44190	WIRC
52	MS. KOMAL TULJASHANKAR RAVAL	ACS - 44191	WIRC
53	MS. MANJIRI KULKARNI	ACS - 44192	WIRC
54	MR. SAGAR SHYAM GABA	ACS - 44193	WIRC
55	MS. MANALI ASHOK JOSHI	ACS - 44194	WIRC
56	MS. POOJA PAPARAO SATYAM	ACS - 44195	WIRC
57	MS. SNEHAL SADANAND TONDWALKAR	ACS - 44196	WIRC
58	MS. PAWAR SHILPA CHANDRAKANT	ACS - 44197	WIRC
59	MS. DUBE ANUJA OMPRAKASH	ACS - 44198	WIRC
60	MS. FORUM BHARAT PANDYA	ACS - 44199	WIRC
61	MR. ZUBIN CHANDULAL SHAH	ACS - 44200	WIRC
62	MS. AYUSHI AGARWAL	ACS - 44201	WIRC
63	MS. ANISHA SHESHNATH PANDEY	ACS - 44202	WIRC
64	MS. SHIKHA ANIL CHANDA	ACS - 44203	WIRC
65	MR. ABHIJIT TANAJI MALUSARE	ACS - 44204	WIRC
66	MS. FORUM MANISH SHAH	ACS - 44205	WIRC
67	MS. SHAILAJA JAGDISH BARHATE	ACS - 44206	WIRC
68	MS. KRATI JAIN	ACS - 44207	NIRC
69	MR. VIJAY MAKHIJA	ACS - 44208	NIRC
70	MR. SURYA PRAKASH MAHESHWARI	ACS - 44209	EIRC
71	MS. VARSHA AGARWAL	ACS - 44210	EIRC
72	MS. NEHA CHHABRA	ACS - 44211	EIRC
73	MS. RAKSHA TEWARI	ACS - 44212	NIRC
74	MR. MOHAK SHARDA	ACS - 44213	NIRC
75	MS. VARSHA BANSAL	ACS - 44214	WIRC
76	MS. RINKU JHA	ACS - 44215	NIRC
77	MS. SRISHTI SHARMA	ACS - 44216	NIRC
78	MS. KANCHAN KAUSHIK	ACS - 44217	NIRC
79	MS. NISHA KUMARI	ACS - 44218	NIRC
80	MS. BABUSHA AGARWAL	ACS - 44219	NIRC
81	MS. SWATI MAHESHWARI	ACS - 44220	NIRC
82	MS. MEGHA AGRAWAL	ACS - 44221	NIRC
83	MS. SIMRAN KAUR	ACS - 44222	NIRC
84	MR. SUMIT DASS	ACS - 44223	NIRC
85	MS. HEENA ARORA	ACS - 44224	NIRC
86	MS. PRAGYA AZAD	ACS - 44225	NIRC
87	MR. KAMALKANT THAKUR	ACS - 44226	NIRC
88	MR. SURENDRA SINGH	ACS - 44227	NIRC
89	MR. AMIT KRISHNAPPA POOJARI	ACS - 44228	WIRC
90	MR. SASHI KANT SINGRODIA	ACS - 44229	EIRC
91	MR. RATISH KUMAR JHA	ACS - 44230	NIRC
92	MS. MADHURI SAIN	ACS - 44231	NIRC
93	MS. DIVYA SARDA	ACS - 44232	NIRC

*Admitted during the period from 20.03.2016 to 19.04.2016.

94	MS. POOJA SHARMA	ACS - 44233	NIRC	165	MR. SURESH MARPU	ACS - 44304	SIRC
95	MS. AKSHITA JINDAL	ACS - 44234	NIRC	166	MR. GAURAV DUTT TRIVEDI	ACS - 44305	SIRC
96	MS. NEHA KHADELWAL	ACS - 44235	NIRC	167	MR. SATISH UPPALAPATI	ACS - 44306	SIRC
97	MS. MAITRI SHAH	ACS - 44236	NIRC	168	MS. SUHASINI SHEENA MATHUR	ACS - 44307	SIRC
98	MS. RICHA KUMARI	ACS - 44237	NIRC	169	MS. RAMYA R KAMATH	ACS - 44308	SIRC
99	MR. MAYUR DILIP VAJAT	ACS - 44238	WIRC	170	MR. ATTALANAND KUMAR	ACS - 44309	SIRC
100	MR. ABHIJIT GANPATI ROKADE	ACS - 44239	WIRC	171	MR. AJAY MURLI PRASAD KURADIA	ACS - 44310	SIRC
101	MS. ANJALI REVANNATH HAJARE	ACS - 44240	WIRC	172	MS. KOMMIREDY JAHNAVI	ACS - 44311	SIRC
102	MS. CHETANA RAJEEV NAIK	ACS - 44241	WIRC	173	MS. SHWETA KUMARI LOYA	ACS - 44312	SIRC
103	MS. PRABHJYOTKAUR JOGINDERSINGH ZALLI	ACS - 44242	WIRC	174	MS. POOJA RAJENDRA SHAH	ACS - 44313	WIRC
104	MS. ZAVERI VIBHA VINODKUMAR	ACS - 44243	WIRC	175	MS. SONI HONEY BHARAT KUMAR	ACS - 44314	WIRC
105	MS. UNNATI JAYESH UPADHYAY	ACS - 44244	WIRC	176	MS. MEENA ANAND DODMANI	ACS - 44315	WIRC
106	MR. ONKAR SINGH	ACS - 44245	NIRC	177	MR. DHANAJI SAMBHAJI SHINDE	ACS - 44316	WIRC
107	MS. NEJAL DEEPAK MAMANIA	ACS - 44246	WIRC	178	MR. ANKIT VINOD KAWA	ACS - 44317	WIRC
108	MS. BHAVIKA SHAILESH KUMAR PAREKH	ACS - 44247	WIRC	179	MS. SHWETA ANAND NAYAK	ACS - 44318	WIRC
109	MR. JAYMIN PIYUSHBHAI MODI	ACS - 44248	WIRC	180	MS. ZALAK KAMLESH UPADHYAY	ACS - 44319	WIRC
110	MS. BHAVISHA ARVIND MEHTA	ACS - 44249	WIRC	181	MS. VAISHALI VINOD GANDHI	ACS - 44320	WIRC
111	MS. JINAL AJAY SHAH	ACS - 44250	WIRC	182	MR. VISHWAS VIJAY KUMAR SHAH	ACS - 44321	WIRC
112	MR. NIRAJ MANHARBHAI VORA	ACS - 44251	WIRC	183	MR. MONIK MAYUR DAMANIA	ACS - 44322	WIRC
113	MS. FATIMA SHABBI BAXAMUSA	ACS - 44252	WIRC	184	MS. RUJULA GOVARDHAN BANDODKAR	ACS - 44323	WIRC
114	MS. HIRAL RAMESHKUMAR AGARWAL	ACS - 44253	WIRC	185	MR. KAMLESH RAVJIBHAI SONDIGALA	ACS - 44324	WIRC
115	MS. NISHI JAYANTILAL JAIN	ACS - 44254	WIRC	186	MR. SHAH MASOOM HIMANSHUBHAI	ACS - 44325	WIRC
116	MS. SHAH ANERI JAGDISHKUMAR	ACS - 44255	WIRC	187	MS. HEMA TANGIRALA	ACS - 44326	SIRC
117	MS. MEHA SINGH SIKARWAR	ACS - 44256	WIRC	188	MR. ATISH AGARWAL	ACS - 44327	EIRC
118	MR. ASHWIN KUMAR AHIR	ACS - 44257	WIRC	189	MR. SHASHIDHAR	ACS - 44328	SIRC
119	MS. CHAURASIA PRIYANKA MUKESH	ACS - 44258	WIRC	190	MS. SMITHA AITHAL	ACS - 44329	SIRC
120	MS. RUCHITA MILAN SHAH	ACS - 44259	WIRC	191	MR. SANJIVA GUPTA	ACS - 44330	NIRC
121	MS. PATHAK ANJALI ASHOK	ACS - 44260	WIRC	192	MS. SUSHMITA YADAV	ACS - 44331	WIRC
122	MS. RIDDHI HEMANT VIKAM	ACS - 44261	WIRC	193	MR. AJIT KUMAR UPADHYAY	ACS - 44332	NIRC
123	MS. PASHMINA PRADIPKUMAR CHEVLI	ACS - 44262	WIRC	194	MS. ASHNOOR KAUR MAKKAR	ACS - 44333	NIRC
124	MR. PRAVINKUMAR BHUDARBHAI CHAUHAN	ACS - 44263	WIRC	195	MR. ANKUSH KUMAR CHOKHANI	ACS - 44334	NIRC
125	MS. NIKITA RAJENDRA SHARMA	ACS - 44264	WIRC	196	MR. VAIBHAV SRIVASTAVA	ACS - 44335	NIRC
126	MS. BARKHA BALKRUSHNAN DESHMUKH	ACS - 44265	WIRC	197	MS. PRANJALI SINGH	ACS - 44336	NIRC
127	MR. BALU VALJIBHAI PARMAR	ACS - 44266	WIRC	198	MS. POOJA CHETRI	ACS - 44337	NIRC
128	MR. BIJAY KUMAR BANERJEE	ACS - 44267	EIRC	199	MS. RAINA GABA	ACS - 44338	NIRC
129	MR. VEERESH P M S	ACS - 44268	SIRC	200	MR. CHUNDI ANKI REDDY	ACS - 44339	SIRC
130	MR. VIKASH JOSHI	ACS - 44269	EIRC	201	MS. POVENA RENNY LUIS	ACS - 44340	WIRC
131	MR. SACHIN KUMAR SRIVASTAVA	ACS - 44270	NIRC	202	MR. GAJENDRA KUMAR	ACS - 44341	NIRC
132	MR. ASHAV DESAI	ACS - 44271	WIRC	203	MR. SUDHIR SAKHARAM PUREKAR	ACS - 44342	WIRC
133	MS. GAURI PRADEEP CHIKHALE	ACS - 44272	WIRC	204	MR. MOHIT SHARMA	ACS - 44343	NIRC
134	MR. VINOTH J	ACS - 44273	SIRC	205	MR. VITENDER KUMAR	ACS - 44344	NIRC
135	MS. RASHMI SINGH	ACS - 44274	NIRC	206	MR. ANAND KHETAN	ACS - 44345	NIRC
136	MS. BAISHAKHI RANA	ACS - 44275	EIRC	207	MS. PRIYANKAL	ACS - 44346	NIRC
137	MR. K BALAJI	ACS - 44276	SIRC	208	MR. AVISHEK GHOSH	ACS - 44347	EIRC
138	MS. ANUSHKA AKASH SHENOY	ACS - 44277	WIRC	209	MS. SHIWANGI BHIMRAJKA	ACS - 44348	EIRC
139	MS. REENA ROY	ACS - 44278	NIRC	210	MS. NEHA GUPTA	ACS - 44349	EIRC
140	MS. SMITA MONDAL	ACS - 44279	EIRC	211	MR. MANISH KUMAR SUROLIA	ACS - 44350	NIRC
141	MR. SANTOSH SONI	ACS - 44280	EIRC	212	MS. SHELLY DHAMIJA	ACS - 44351	NIRC
142	MR. MOHIT KR JAISWAL	ACS - 44281	EIRC	213	MS. ARPITA GUPTA	ACS - 44352	NIRC
143	MS. SHAMITA SINHA MAHAPATRA	ACS - 44282	EIRC	214	MS. SHALU GARG	ACS - 44353	NIRC
144	MS. ASHA KUMARI PATHAK	ACS - 44283	EIRC	215	MS. VIDYA S	ACS - 44354	SIRC
145	MS. SANGAM JAISWAL	ACS - 44284	EIRC	216	MR. JYOTI RANJAN BHUYAN	ACS - 44355	SIRC
146	MS. VANITA KANOI	ACS - 44285	EIRC	217	MR. RAGHAVENDRA REDDY BANA	ACS - 44356	SIRC
147	MR. INDRAJIT PODDAR	ACS - 44286	EIRC	218	MR. MADHUR NIRMAL KABRA	ACS - 44357	WIRC
148	MS. SURUCHI TIWARI	ACS - 44287	NIRC	219	MS. ZEHRA REMOSINWALA	ACS - 44358	WIRC
149	MR. MOHIT KUMAR GOEL	ACS - 44288	NIRC	220	MS. PRAKRITI AJAY JAIN	ACS - 44359	SIRC
150	MR. VAIBHAV SHARMA	ACS - 44289	WIRC	221	MS. SWETA KRISHAN MURARI MURARKA	ACS - 44360	WIRC
151	MS. SAKSHI RAJPUT	ACS - 44290	NIRC	222	MR. VIKRAM R	ACS - 44361	SIRC
152	MR. KHUSHAL KHATTAR	ACS - 44291	NIRC	223	MS. HEENA GARG	ACS - 44362	NIRC
153	MR. MANISH KUMAR TRIPATHI	ACS - 44292	NIRC	224	MS. SUSWETA DAS	ACS - 44363	EIRC
154	MS. NEHA SHARMA	ACS - 44293	NIRC	225	MS. ANCHAL BERIWALA	ACS - 44364	EIRC
155	MS. NEHA KHADELWAL	ACS - 44294	NIRC	226	MR. SIDDHARTHA AGARWAL	ACS - 44365	EIRC
156	MS. ARPANA NASSA	ACS - 44295	NIRC	227	MR. MANTU KUMAR AGARWAL	ACS - 44366	EIRC
157	MR. PRATEEK KUMAR LALAWAT	ACS - 44296	NIRC	228	MR. ANAND LAKHOTIA	ACS - 44367	EIRC
158	MR. PRANAV RASTOGI	ACS - 44297	NIRC	229	MR. JIT ROY CHOUDHURY	ACS - 44368	EIRC
159	MS. ARTI GOYAL	ACS - 44298	NIRC	230	MS. SURBHI KOCHAR	ACS - 44369	EIRC
160	MR. MOHIT ROHIRA	ACS - 44299	NIRC	231	MS. SMITA MANJAL SAHU	ACS - 44370	EIRC
161	MS. NEHA PAMNANI	ACS - 44300	NIRC	232	MR. ROHIT JAIN	ACS - 44371	EIRC
162	MS. RITU AGARWAL	ACS - 44301	NIRC	233	MS. USHA TOSHNIWAL	ACS - 44372	EIRC
163	MR. SARANG A PATEL	ACS - 44302	SIRC	234	MS. SULTANA KHAN	ACS - 44373	EIRC
164	MS. HUMA M TAMATGAR	ACS - 44303	SIRC	235	MR. PRITTHISH SINHA	ACS - 44374	EIRC

236	MR. SHOUVIK DAWN	ACS - 44375	EIRC	307	MS. SHIVANI LAJPAT JAIN	ACS - 44444	WIRC
237	MS. KHUSBOO KUMARI	ACS - 44376	EIRC	308	MS. MANSI PANKAJ NAGDA	ACS - 44445	WIRC
238	MS. PRITI SHAW	ACS - 44377	EIRC	309	MS. SONAL DHANJI KATARIYA	ACS - 44446	WIRC
239	MS. PRITI MISHRA	ACS - 44378	EIRC	310	MS. KINJAL JITENDRA DESAI	ACS - 44447	WIRC
240	MS. MANDIP KAUR MATHAROO	ACS - 44379	EIRC	311	MR. PARITOSH SANJAY JAIN	ACS - 44448	WIRC
241	MS. HARSHPRIYA JAIN	ACS - 44380	EIRC	312	MS. MADHURIMA SANE	ACS - 44449	SIRC
242	MS. AUTRI DEY	ACS - 44381	EIRC	313	MS. PRITI RAJU ROHIRA	ACS - 44450	WIRC
243	MS. SAHELI BANERJEE	ACS - 44382	EIRC	314	MR. JAYAPRAKASH MEHER	ACS - 44451	EIRC
244	MR. SUMIT AGARWAL	ACS - 44383	EIRC	315	MS. KINJAL KANAIYALAL DARJI	ACS - 44452	WIRC
245	MS. PRIYANKA JHA	ACS - 44384	EIRC	316	MS. MONIKA JAIN	ACS - 44453	NIRC
246	MS. NEHA AGARWAL	ACS - 44385	EIRC	317	MS. SUNITA RAJKUMAR NANDWANI	ACS - 44454	WIRC
247	MS. NEHA AGARWAL	ACS - 44386	EIRC	318	MS. KOMAL ISSWANI	ACS - 44455	WIRC
248	MR. SHAILESH KUMAR TIWARY	ACS - 44387	EIRC	319	MR. DEEPAL TULSIRAM BIRHADE	ACS - 44456	WIRC
249	MS. CHHAYA BADAL	ACS - 44388	NIRC	320	MR. HIREN REVASHANKARBHAI GOR	ACS - 44457	WIRC
250	MS. NEHA	ACS - 44389	NIRC	321	MS. ASHNI DHIREN SHAH	ACS - 44458	WIRC
251	MS. RICHA BHADADA	ACS - 44390	SIRC	322	MS. SNEHA SHRIKANTA DAS	ACS - 44459	WIRC
252	MS. SHAZIA NAZ	ACS - 44391	NIRC	323	MS. SREEDEVI RAMCHANDRAN PILLAI	ACS - 44460	WIRC
253	MR. NAVAL	ACS - 44392	NIRC	324	MS. NAVYA BALAJEE K	ACS - 44461	SIRC
254	MR. NAVAL	ACS - 44392	NIRC	325	MR. KARTHIK A	ACS - 44462	SIRC
255	MR. GAURAV KAUSHIK	ACS - 44393	NIRC	326	MR. SAJAY P	ACS - 44463	SIRC
256	MR. MAULIK CHANDNANI	ACS - 44394	NIRC	327	MR. P MUTHUKUMARAN	ACS - 44464	SIRC
257	MR. GAGAN DEEP GUPTA	ACS - 44395	NIRC	328	MS. RITIKA ANAND	ACS - 44465	NIRC
258	MR. NEELESH SINGH GAHARWAR	ACS - 44396	NIRC	329	MS. RITIKA ANAND	ACS - 44465	NIRC
259	MR. RAKESH KUMAR YADAV	ACS - 44397	NIRC	330	MR. ANUBHAV SINGLA	ACS - 44466	NIRC
260	MS. PAYAL CHAUHAN	ACS - 44398	NIRC	331	MS. SUBHI GUPTA	ACS - 44467	NIRC
261	MS. SHILPA	ACS - 44399	NIRC	332	MS. SULEKHA TYAGI	ACS - 44468	NIRC
262	MR. KAMAL GURNANI	ACS - 44400	NIRC	333	MS. SHARANJOT KAUR CHAHAL	ACS - 44469	NIRC
263	MR. NAVNEET KUMAR	ACS - 44401	NIRC	334	MS. ADITI	ACS - 44470	NIRC
264	MR. RAKESH KUMAR CHHOKER	ACS - 44402	NIRC	335	MS. MEENAKSHI KHATHURIA	ACS - 44471	NIRC
265	MS. KHYATI JAIN	ACS - 44403	NIRC	336	MR. S SENTHIL RAJA	ACS - 44472	SIRC
266	MS. ARIBA KHAN	ACS - 44404	NIRC	337	MR. JOSMIN JOSE	ACS - 44473	SIRC
267	MR. ATUL MUDGAL	ACS - 44405	NIRC	338	MS. APARNA MADHUSUDAN	ACS - 44474	SIRC
268	MR. ATUL GUPTA	ACS - 44406	NIRC	339	MS. JYOTHI S NAHAR	ACS - 44475	SIRC
269	MS. DEEPIKA RAJAWAT	ACS - 44407	NIRC	340	MR. BRIJESH DINESH SHAH	ACS - 44476	WIRC
270	MS. RITIKA	ACS - 44408	NIRC	341	MR. DEVANSH BIREN NAGORI	ACS - 44477	WIRC
271	MR. SHARAD VYAS	ACS - 44409	NIRC	342	MS. BIJOTKAR DARSHANA NARAYAN	ACS - 44478	WIRC
272	MS. ACHLA SHARMA	ACS - 44410	NIRC	343	MS. SWETA KUMARI	ACS - 44479	NIRC
273	MS. ANKITA JAIN	ACS - 44411	NIRC	344	MS. KABITA BIHANI	ACS - 44480	EIRC
274	MS. SHRUTI TAPARIA	ACS - 44412	NIRC	345	MS. PUJA TEBRIWAL	ACS - 44481	EIRC
275	MR. ANMOL ANAND	ACS - 44413	NIRC	346	MR. DEVESH DAGA	ACS - 44482	EIRC
276	MR. SHASHANK SHEKHAR DUBEY	ACS - 44414	NIRC	347	MR. VISHAL	ACS - 44483	NIRC
277	MS. LEENA SHARMA	ACS - 44415	NIRC	348	MS. PRAGATI BAJAJ	ACS - 44484	EIRC
278	MS. NAVITA SHARMA	ACS - 44416	NIRC	349	MR. VIVEK DADRIWAL	ACS - 44485	EIRC
279	MS. PRACHI SAXENA	ACS - 44417	WIRC	350	MR. SHASHANK AGARWAL	ACS - 44486	NIRC
280	MS. ASHWINI MANGALAMPALLE	ACS - 44418	SIRC	351	MR. SHASHANK AGARWAL	ACS - 44486	NIRC
281	MR. WALTER VASANTH P J	ACS - 44419	SIRC	352	MS. AMRITA GUPTA	ACS - 44487	NIRC
282	MR. MULLA SYED YASAR ARAFATH	ACS - 44420	SIRC	353	MS. LAKSHIKA SHARMA	ACS - 44488	NIRC
283	MR. PADMAWAR GAURAV	ACS - 44421	SIRC	354	MS. PRAGYA SAXENA	ACS - 44489	NIRC
284	MR. JOSWA JOHNSON T	ACS - 44422	SIRC	355	MS. MAMTA MISHRA	ACS - 44490	NIRC
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286	MS. RUCHIKA BABULAL PORWAL	ACS - 44424	SIRC	357	MR. DEEPANSHU KAPOOR	ACS - 44492	NIRC
287	MS. MEENUMOL ABRAHAM	ACS - 44425	SIRC	358	MS. PRACHI GUPTA	ACS - 44493	NIRC
288	MR. CHETAN SURESH PARMAR	ACS - 44426	WIRC	359	MS. NEHA	ACS - 44494	NIRC
289	MR. YOGENDRA FATESINH PARMAR	ACS - 44427	WIRC	360	MS. PRACHIKA AGARWAL	ACS - 44495	NIRC
290	MR. YOGENDRA FATESINH PARMAR	ACS - 44427	WIRC	361	MS. LAVISHA LAKHMANI	ACS - 44496	NIRC
291	MS. RASHMI MISHRA	ACS - 44428	WIRC	362	MS. SHIVANI GUPTA	ACS - 44497	NIRC
292	MR. SWAPNIL DILIP NAVELE	ACS - 44429	WIRC	363	MS. GARIMA GOYAL	ACS - 44498	NIRC
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294	MS. ALMINA ABUBAKAR SHAIKH	ACS - 44431	WIRC	365	MS. ARUNA VENKATESAN	ACS - 44500	SIRC
295	MS. SAYLI ASHOK MUNJ	ACS - 44432	WIRC	366	MS. S MEENAKSHI	ACS - 44501	SIRC
296	MR. ASHOK LALJI VISHWARKARMA	ACS - 44433	WIRC	367	MR. RAJAPANDIAN S	ACS - 44502	SIRC
297	MS. MONALI YOGESH SOLANKI	ACS - 44434	WIRC	368	MS. PARVATHI A	ACS - 44503	SIRC
298	MS. JINAL RAJESH JAIN	ACS - 44435	WIRC	369	MR. HARDIK M	ACS - 44504	SIRC
299	MS. RINKU RAMESHBHAI ZALAVADIYA	ACS - 44436	WIRC	370	MR. K R TANUJ REDDY	ACS - 44505	WIRC
300	MS. MADHURA VIJAY LIMAYE	ACS - 44437	WIRC	371	MS. VAISHALI PRAKASH SAWANT	ACS - 44506	WIRC
301	MR. JAYMIN RAJENDRAKUMAR RATHOD	ACS - 44438	WIRC	372	MS. JALPA MITHALAL PAREKH	ACS - 44507	WIRC
302	MR. PATEL HARSHAD NARSINHBHAI	ACS - 44439	WIRC	373	MR. TUSHAR DHIRUBHAI DEVERA	ACS - 44508	WIRC
303	MR. SAURABH SHANKARLAL GUPTA	ACS - 44440	WIRC	374	MS. SONAMBEN VIJAYKUMAR ZATKIYA	ACS - 44509	WIRC
304	MS. VISHAKHA PAREYANI	ACS - 44441	WIRC	375	MR. DHEERAJ KUMAR PANNALAL TIWARI	ACS - 44510	WIRC
305	MR. HRUSHIKESH AUDUMBAR TABE	ACS - 44442	WIRC	376	MR. DHEERAJ KUMAR PANNALAL TIWARI	ACS - 44510	WIRC
306	MS. ESHITA PAREYANI	ACS - 44443	WIRC	377	MS. SHIVANI RAJENDRA NAGORI	ACS - 44511	WIRC

378	MS. NIDHI KAILASHKUMAR JAIN	ACS - 44512	WIRC	18	A	15028	JAGDEEP SINGH	NIRC
379	MR. LALITH TUKARAM KOTIAN	ACS - 44513	WIRC	19	A	38777	NANDHINI B	SIRC
380	MS. PRIYA GANESH DIDWANIA	ACS - 44514	WIRC	20	A	34671	SNEHA BANKA	EIRC
381	MS. MANJU SAVARAM CHOUDHARI	ACS - 44515	WIRC	21	A	12313	RISHI VAISH	NIRC
382	MS. SHIVANI PUSHPRAJ JAIN	ACS - 44516	WIRC	22	A	11885	AMIT SAHAI MATHUR	WIRC
383	MS. ANSHU TIWARI	ACS - 44517	WIRC	23	A	16226	ARTI CHABRIA	WIRC
384	MR. ALJAS V A	ACS - 44518	SIRC	24	A	33730	SHIVANI KHANNA	EIRC
385	MR. SAGAR BANSIKUMAR GANDHI	ACS - 44519	WIRC	25	A	36296	SHEETAL SHARMA	NIRC
386	MS. NIRALI MUKESH PATEL	ACS - 44520	WIRC	26	F	5391	RAMNATH HARIPANT SADEKAR	SIRC
387	MS. SAPANA MISHRA	ACS - 44521	EIRC	27	A	31168	GOPAL KUMAR KHETAN	EIRC
388	MS. NEHA SOMANI	ACS - 44522	EIRC	28	F	3592	G T SHENOY	WIRC
389	MR. KUSHAL SHAH	ACS - 44523	EIRC	29	A	17771	VINAY BHUSHAN	WIRC
390	MS. ARCHANA GUPTA	ACS - 44524	NIRC	30	A	14035	MAHESH KUMAR PODDAR	WIRC
391	MS. RACHNA	ACS - 44525	NIRC	31	A	35373	KIRTI M SAWANT	WIRC
392	MS. LEENA GUPTA	ACS - 44526	NIRC	32	A	37659	PRABHA PRAVESH BAJAJ	NIRC
393	MS. SHAIWI PATHAK	ACS - 44527	NIRC	33	A	30275	ANKITA DRUPAD PATEL	WIRC
394	MS. VINTI VERMA	ACS - 44528	NIRC	34	A	20431	RASHIM GUPTA	NIRC
395	MS. SWATI ARORA	ACS - 44529	WIRC	35	A	21478	ASHISH KUMAR JAIN	WIRC
396	MR. BHARAT BAJAJ	ACS - 44530	NIRC	36	A	20505	SHISHIR VERMA	WIRC
397	MR. DEVDUTT PARASHAR	ACS - 44531	NIRC	37	F	6105	A NAGALIA	NIRC
398	MS. GARIMA RANI	ACS - 44532	NIRC	38	A	1977	DINESH MEHROTRA	NIRC
399	MS. ARPITA KARMAKAR	ACS - 44533	NIRC	39	A	19624	TRIPTI KANWAR SEKSARIA	F/EIRC
400	MS. ANAMIKA VERMA	ACS - 44534	NIRC	40	A	32799	ANSHUL MEHTA	F/NIRC
401	MS. SONAM DASWANI	ACS - 44535	NIRC	41	A	12464	Y RAMESH	SIRC
402	MS. NEELAM CHANDWANI	ACS - 44536	NIRC	42	A	5293	SANTOSH BHATTACHERJEE	WIRC
403	MR. AKSHIT KUMAR JANGID	ACS - 44537	NIRC	43	A	15291	MONIKA CHALOTRA	SIRC
404	MS. SAFALI	ACS - 44538	NIRC	44	A	14460	DHIMANT MANKAD	WIRC
405	MR. VENKATESAN K	ACS - 44539	SIRC	45	A	30704	ANUSHREE JAYANT DEHADRAI	WIRC
406	MR. SANJAY AVADHANI	ACS - 44540	SIRC	46	A	16029	ASHEESH GARG	NIRC
407	MR. SASIKANTH BHAT S	ACS - 44541	SIRC	47	A	12238	CHANCHAL BANSAL	NIRC
408	MR. CHETAN SUBHAS KHAPALE	ACS - 44542	SIRC	48	A	26697	HONEY AGARWAL	NIRC
409	MR. MEDARI SREENIVASULU	ACS - 44543	SIRC	49	A	22238	MEGHA GOEL	NIRC
410	MS. HETAL SHAH	ACS - 44544	WIRC	50	F	2942	RAJESHWAR KUMAR SHARMA	NIRC
411	MS. SURABHI DUBEY	ACS - 44545	WIRC	51	A	29838	DHIRAJ KUMAR JHA	NIRC
412	MS. NEHA JAIN	ACS - 44546	NIRC	52	A	30120	MEENU AGGARWAL	NIRC
413	MS. RUCHI MUKUND TRIVEDI	ACS - 44547	WIRC	53	A	25774	RADHA KRISHNAMURTHY IYER	SIRC
414	MR. HARSH SUMAN THAKKAR	ACS - 44548	WIRC	54	A	34043	RUCHI JAIN	WIRC
415	MS. APOORVA KUTHIALA	ACS - 44549	NIRC	55	A	33446	RISHABH BAID	EIRC
416	MR. SHAH BIREN JAYESHKUMAR	ACS - 44550	WIRC	56	A	14526	RAJIV SETHI	NIRC
417	MR. PIYUSH RAMESHBHAI BHADRESHVARA	ACS - 44551	WIRC	57	F	4908	MINAL BATRA	NIRC
418	MS. ROSHANEE SABAT MAGUNI	ACS - 44552	WIRC	58	A	29944	SANGEETA JHARIA	WIRC
419	MS. BHUMIKA JIGNESH JAIN	ACS - 44553	WIRC	59	A	30880	HINA TUTEJA	WIRC
420	MS. NEERALI MAHESH LALKA	ACS - 44554	WIRC	60	A	19941	JYOTI GERA	NIRC
421	MS. RASHI SHANKAR RAMUKA	ACS - 44555	WIRC	61	A	16207	LALIT CHAND SHARMA	EIRC
422	MS. SEFALI SAMPATLAL JAIN	ACS - 44556	WIRC	62	A	12842	P. RAJU IYER	SIRC
423	MR. RIDDHI KAMLESHKUMAR JHAVERI	ACS - 44557	WIRC	63	A	27259	PRIYANKA MISHRA	NIRC
424	MR. P DURAIBABU	ACS - 44558	SIRC	64	A	16870	RUPA RADHAKRISHNAN	NIRC
425	MR. BIKASH JAIN	ACS - 44559	SIRC					
426	MR. VINAY KUMAR SINGHAL	ACS - 44560	NIRC					

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Sl.No.	ACS/FCS No.	Name	Region
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2	A	14821 CS GAGNISH ARORA	NIRC
3	A	24648 CS PRABHJOT KAUR	NIRC
4	A	22083 CS PRADIP KUMAR DAS	NIRC
5	A	35221 CS DEVANSHI DINESH SANGHVI	WIRC
6	A	19076 SAURABH PRAKASH SOHONI	WIRC
7	A	32948 AVINASH KUMAR DUBEY	SIRC
8	A	13921 YANKUSH KUMAR GOVIL	NIRC
9	A	25550 BIJAL AMIT SHAH	WIRC
10	A	11577 ARVIND KUMAR JAIN	NIRC
11	A	16681 GEETA KHANDUJA	NIRC
12	A	22625 PUJA AGRAWAL	WIRC
13	A	13669 AKHILESH KUMAR NAND	SIRC
14	A	33149 RAJESH SHANTARAM SHINDE	WIRC
15	F	3936 A K SAMBHARIA	EIRC
16	A	13610 MUKESH CHANDRA GUPTA	WIRC
17	A	34670 PUJA BIYANI	EIRC

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SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MR. JAISAL MOHATTA	ACS - 35017	WIRC	16090
2	MS. RASHMI JAISWAL	ACS - 33640	EIRC	16091
3	MS. SWETA ABHISHEK	ACS - 35269	SIRC	16092
4	MR. CHIRAG GOVINDBHAI PANCHANI	ACS - 39807	WIRC	16093
5	MS. GAURI DATTATRAY MALI	ACS - 41619	WIRC	16094
6	MS. SAKSHI SHARMA	ACS - 42097	NIRC	16095
7	MS. UMA KUMARI	ACS - 43066	NIRC	16096
8	MR. MOHD AKBAR	ACS - 43323	NIRC	16097
9	MS. ANGEE RAJENDRAKUMAR SHAH	ACS - 43464	WIRC	16098
10	MS. PRITI AGARWAL	ACS - 43480	EIRC	16099
11	MS. MEGHNA SURESH MISTRY	ACS - 43683	WIRC	16100
12	MS. NEHA GYANCHAND JAIN	ACS - 43694	WIRC	16101
13	MS. MEGHAL RANA	ACS - 43818	WIRC	16102
14	MS. SHIKHA NAREDI	ACS - 43824	EIRC	16103
15	MS. POONAM CHHIKARA	FCS - 6362	NIRC	16104
16	SH. S VENKATACHALAM	FCS - 7722	WIRC	16105
17	SH. NAVEEN PERLA	ACS - 17814	SIRC	16106

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**Issued during the month of March, 2016.



18	MS. SMITA JAIN	ACS - 24176	NIRC	16107	94	MS. SWATI BHARAT SHARMA	ACS - 35894	WIRC	16183
19	MS. NEEMA JAIN	ACS - 29370	NIRC	16108	95	MS. NEELIMA TRIVEDI	ACS - 23790	WIRC	16184
20	MS. SHEFALI GOEL	ACS - 40865	NIRC	16109	96	MR. LOKESH DHYANI	ACS - 38725	NIRC	16185
21	MR. OMPRAKASH SARAP	ACS - 41292	SIRC	16110	97	MR. NEERAJ ARORA	ACS - 40574	NIRC	16186
22	MR. JEEWAN BOSE	ACS - 42457	NIRC	16111	98	MS. PRIYANKA	ACS - 41459	NIRC	16187
23	MR. DEVASANI VENKATESWARLU	ACS - 42526	SIRC	16112	99	MR. KUMAR GAURAV	ACS - 42202	NIRC	16188
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25	MR. HEMANG HARSHADBHAI SHAH	ACS - 42892	WIRC	16114					
26	MS. RASHMI AGARWAL	ACS - 42981	EIRC	16115					
27	MR. URJIT RAJEN SAMPAT	ACS - 43584	WIRC	16116					
28	MR. GAURAV VIJAY	ACS - 43706	EIRC	16117					
29	MR. ANSHUL JAIN	ACS - 43863	NIRC	16118					
30	MR. NISHANT SINGH	ACS - 43967	NIRC	16119					
31	SH. MANOJ JOSHI	FCS - 7902	WIRC	16120					
32	MS. MANISHA BARANWAL	ACS - 21188	NIRC	16121					
33	MS. DIVIJA AMEET DAVE	ACS - 35981	WIRC	16122					
34	MS. RACHANA ROHIT GUPTA	ACS - 40438	WIRC	16123					
35	MS. ANKITA V PASHINE	ACS - 41627	WIRC	16124					
36	MR. ASHISH MISHRA	ACS - 41765	NIRC	16125					
37	MS. MAITHRI V	ACS - 42941	SIRC	16126					
38	MR. PARTHASARATHI K	ACS - 43037	SIRC	16127					
39	MS. NANDITHA T	ACS - 43148	SIRC	16128					
40	MS. GEETHA JAIDEEP	ACS - 43216	SIRC	16129					
41	MR. PUNIT SINGH NEGI	ACS - 43830	NIRC	16130					
42	MRS. ALPANA POBI	ACS - 29905	WIRC	16131					
43	MR. RAVINDER KUMAR SHARMA	ACS - 37521	NIRC	16132					
44	MRS. MINI BAFNA	ACS - 38874	NIRC	16133					
45	MR. SAMEER SAGAR	ACS - 44024	NIRC	16134					
46	SH. SANDEEP VASANT WALAWALKAR	ACS - 16646	WIRC	16135					
47	SH. MANDAR UDAY PILGAONKAR	ACS - 23641	WIRC	16136					
48	MRS. DIVYA MEHTA	ACS - 36777	WIRC	16137					
49	MR. SAURABH KUMAR	ACS - 43261	SIRC	16138					
50	SH. CHANDER VEER JAIN	ACS - 8971	NIRC	16139					
51	SH. SAI VISWANATH BHATLAPENUMARTHI	FCS - 8564	SIRC	16140					
52	MS. NIKITA CHOUDHARY	ACS - 25796	EIRC	16141					
53	MR. AMIYA RANJAN NANHAKU	ACS - 29008	EIRC	16142					
54	MS. AVANI MONARCH GANDHI	ACS - 29553	WIRC	16143					
55	MS. SHANU AGRAWAL	ACS - 36257	NIRC	16144					
56	MR. RAHUL CHAWLA	ACS - 38758	NIRC	16145					
57	MR. PRAFFUL GUPTA	ACS - 38889	WIRC	16146					
58	MS. SNEHA SHIVDAYAL SHARMA	ACS - 40648	NIRC	16147					
59	MS. MADHAVI KOTHARI	ACS - 42740	WIRC	16148					
60	MR. TAHER SAIFUDDIN SAPATWALA	FCS - 8029	WIRC	16149					
61	SH. MAHESH KANDOI	ACS - 4506	WIRC	16150					
62	MS. RITIKA AGARWAL	ACS - 32897	SIRC	16151					
63	MR. MANOJ RAY	ACS - 42259	SIRC	16152					
64	MR. ASHWANI KUMAR DHIMAN	ACS - 42913	NIRC	16153					
65	MS. GITIKA ARORA	ACS - 43579	NIRC	16154					
66	MS. HONEY GUPTA	ACS - 43623	WIRC	16155					
67	SH. SATYANARAYAN S MALPANI	FCS - 3478	WIRC	16156					
68	MR. TEJPAL SINGH	ACS - 44079	NIRC	16157					
69	MR. RAMANJANEYULU KOTHAPALLI	ACS - 26529	SIRC	16158					
70	MS. NIYATI ANIMESH MEHTA	ACS - 30507	WIRC	16159					
71	MR. SHINTO STANLY	ACS - 30860	SIRC	16160					
72	MRS. RITIKA SARAOGI	ACS - 35768	EIRC	16161					
73	MR. MANI DEV SADH	ACS - 37200	NIRC	16162					
74	MS. SAKSHI JINDAL	ACS - 38292	NIRC	16163					
75	MR. ANURAG PANDEY	ACS - 41838	NIRC	16164					
76	MS. SHWETA GOYAL	ACS - 44051	NIRC	16165					
77	MR. VITARAG VARDHAMAN DOSHI	ACS - 44055	WIRC	16166					
78	MR. SATISH KUMAR BARAI	ACS - 43042	EIRC	16167					
79	SH. M RAMAMOORTHY	FCS - 4814	SIRC	16168					
80	MS. CHANCHAL BANSAL	ACS - 12238	NIRC	16169					
81	MRS. VRINDA VEERENDRA KAMAT	ACS - 29547	SIRC	16170					
82	MS. EKTA GUPTA	ACS - 29812	EIRC	16171					
83	MS. KHUSHBOO VIVEK JALAN	ACS - 40853	WIRC	16172					
84	MR. ISWAR LOHIA	ACS - 43656	EIRC	16173					
85	MS. MUGDHA KEDAR KARAMBELKAR	ACS - 44028	WIRC	16174					
86	MS. MONIKA JINDAL	ACS - 44159	NIRC	16175					
87	MS. SWATI RAI	ACS - 44140	NIRC	16176					
88	MS. KRUTI SUNIL PATEL	ACS - 40320	WIRC	16177					
89	MS. AJANTA SEN	ACS - 40548	EIRC	16178					
90	MS. NANCY JAIN	ACS - 44135	NIRC	16179					
91	MS. POONAM RAJKUMAR LILA	ACS - 44141	NIRC	16180					
92	SH. KALYAN MUKHOPADHYAY	FCS - 4619	EIRC	16181					
93	MR. AMIT MUNDRA	FCS - 7933	WIRC	16182					

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SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MR RAHUL PARASRAMPURIA	ACS 40999	15351	EIRC
2	MR. SAURABH AGRAWAL	FCS 6054	6350	NIRC
3	MS. HIMANI SOOD	ACS 36218	15158	NIRC
4	MS. BAIPANENI ALEKHYA	ACS 31340	11670	SIRC
5	MR. DEEPESH VIKRAM KUMAR JAIN	ACS 39996	14790	WIRC
6	MR. S P SHETH	ACS 8864	5320	WIRC
7	MS. SMITA CHOWDHURY	ACS 30227	12786	WIRC
8	MR. ANKIT HIRAN	ACS 36410	13652	NIRC
9	MS. SOMYA SINGHAL	ACS 35578	13988	NIRC
10	MR. KALIRAJAN D	ACS 33225	13244	SIRC
11	MR. TAPAN KUMAR BANERJEE	ACS 1242	12532	EIRC
12	MS. ANJU AGARWAL	ACS 29059	13408	EIRC
13	MS. NELU DEVI	ACS 43403	16051	NIRC
14	MR. CHAITANYA PURI	ACS 41389	15482	NIRC
15	MR. ANIL URS	FCS 1905	11780	SIRC
16	MS. PREETI JAIN	ACS 19888	14645	NIRC
17	MR. PRASHANT DATTATRAYA HEGDE	ACS 41797	15710	SIRC
18	MS. K MALLESHWARI	ACS 37210	14686	SIRC
19	MS. SHILPA BANSAL	ACS 34923	13385	NIRC
20	MR. VIKRAM YADAV	ACS 27290	15229	NIRC
21	MRS. DEEPA JINDAL	ACS 28197	10477	NIRC
22	MS. PREETI CHAUHAN	ACS 31448	15375	NIRC
23	MS. AALISHA SRIVASTAVA	ACS 33938	12791	NIRC
24	MS. REECHA YASHAVADAN	ACS 32594	12058	NIRC
25	MR. PRASSAN NAVINKUMAR	ACS 28105	12305	WIRC
26	MR. VIKRAM SINGH KATARIYA	ACS 41457	15467	NIRC
27	MS. PARUL JAIN	ACS 36017	13458	NIRC
28	MR. BHAVESH MADAN GOPAL KHANDLWAL	ACS 35795	13536	WIRC
29	MS. MATRI NITIN PAREKH	ACS 38526	14732	WIRC
30	MR. SIVARAMAN NAGARAJAN	FCS 909	2899	WIRC
31	MS. ASHIMA ARORA	ACS 29515	13624	NIRC
32	MR. SHASHANK KUMAR SHARMA	ACS 33587	13238	NIRC
33	MS. SHRUTHI N	ACS 34721	16057	SIRC
34	MR. BHOLI KUMAR PANDEY	ACS 33168	13255	NIRC
35	MRS. BHAVYAA GUPTA	FCS 7753	14513	NIRC
36	MS. SHWETA BAJLA	ACS 38153	14357	EIRC
37	MS. PRIYA GARG	ACS 37727	14194	NIRC
38	MR. MAHESH T N	ACS 36422	13798	SIRC
39	MS. TANUSHREE PUROHIT	ACS 32306	13481	NIRC
40	MR. HITESH JHAMB	ACS 41091	15823	NIRC
41	MR. DILIP KUMAR NIRANJAN	FCS 6632	13392	NIRC
42	MR. SANTOSH KUMAR SONI	FCS 7778	15374	WIRC
43	MRS. MONIKA KAMDAR SHAH	FCS 7964	7804	WIRC
44	MS. PRATIBHA JOSHI	ACS 38535	14590	WIRC
45	MS. K LAKSHMI PRIYA	ACS 36135	13383	SIRC
46	MS. MANEESHA GOVIND PRIYANI	ACS 41620	15680	WIRC
47	MS. V SANGEETHA MEENAKSHI	ACS 14935	9894	SIRC
48	MR. AJAY KUMAR SHARMA	ACS 40479	15530	NIRC
49	MS. MINAL BATRA	FCS 4908	3048	NIRC
50	MR. PRASHANT KUMAR VERMA	ACS 41278	15410	EIRC

LICENTIATE ICSI**

Sl. No.	L.No.	NAME	Region
1	6831	MR ANIKET JAICHAND GANGWAL	WIRC
2	6832	MR JAINENDRA KUMAR BANSAL	NIRC
3	6833	MR RAMAN SUNIL SHARMA	WIRC
4	6834	MR. SANDEEP B	SIRC
5	6835	MS AMRITA MALANI	SIRC
6	6836	MS GAGANDEEP KAUR	NIRC
7	6837	MR UTKARSH AGRAWAL	NIRC
8	6838	MS. SHEETAL KADEL	SIRC
9	6839	Ms. POOJA ANIL SINGH	WIRC
10	6840	MR. SOMNATH ROY	EIRC
11	6841	Ms. AASTHA NITIN VASAVADA	WIRC

Company Secretaries Benevolent Fund



MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND*

Region	LM No.	Name	Membership No.	City	Region	LM No.	Name	Membership No.	City
EIRC					29	11260	MS. ANCHAL TALWAR	FCS - 8562	FARIDABAD
1	11231	MR. BASUDEV BEHERA	ACS - 34262	PURI	30	11263	MR. VINAY KUMAR SINGHAL	ACS - 44560	MODINAGAR
2	11253	MS. JYOTI AGARWAL	ACS - 37036	KOLKATA	31	11265	MS. ANKITA JAIN	ACS - 33141	NEW DELHI
NIRC					SIRC				
3	11217	SH. JAI PARKASH	ACS - 24498	GURGAON	32	11230	MR. SATISH UPPALAPATI	ACS - 44306	HYDERABAD
4	11218	MR. SUSHIL KUMAR JETHLIA	ACS - 30865	BEAWAR	33	11235	MR. RAJESH KUMAR	ACS - 31829	CHENNAI
5	11219	SH. KRISHNA MURARI JETHLIA	ACS - 24965	AJMER DISTT	34	11242	MR. C CHANDRASEKAR	ACS - 33065	CHENNAI
6	11221	MR. CHIRAG BANGA	ACS - 43426	DELHI	35	11243	MR. R RAJASEKARAN	ACS - 43067	CHENNAI
7	11222	MR. ASTIK MANI TRIPATHI	ACS - 27667	NEW DELHI	36	11249	MR. CHUNDI ANKI REDDY	ACS - 44339	HYDERABAD
8	11223	MRS. NEHA SETH	ACS - 25235	NEW DELHI	37	11251	MR. VIKRAM R	ACS - 44361	HYDERABAD
9	11224	MR. PRAKASH VERMA	ACS - 31801	DELHI	38	11261	MR. HARDIK M	ACS - 44504	CHENNAI
10	11225	MR. SACHIN KUMAR SRIVASTAVA	ACS - 44270	FAIZABAD	39	11264	MR. BIKASH JAIN	ACS - 44559	BANGALORE
11	11227	MR. ABHISHEK MISHRA	ACS - 33200	ALLAHABAD	40	11267	MR. J RAJGANESH	ACS - 39765	SIVAKASI
12	11228	MR. SANJIVA GUPTA	ACS - 44330	MIRZAPUR	WIRC				
13	11232	MR. LOKESH BOTHRA	ACS - 38792	NEW DELHI	41	11213	MR. ANAND GAGGAR	ACS - 44179	INDORE
14	11233	MS. AMITA VERMA	ACS - 26904	FARIDABAD	42	11214	SH. PANKAJ CHANDRAKANT DHAMNE	FCS - 8195	PUNE
15	11234	SH. ANANT KUMAR SINGH	FCS - 7522	DELHI	43	11215	MR. CHINTAN KANAIYALAL PATEL	ACS - 31987	AHMEDABAD
16	11236	SH. VIVEK GUPTA	ACS - 29543	DELHI	44	11216	MR. ANTONY ALAPAT	ACS - 34946	VALSAD DIST
17	11238	MR. SUSHIL KUMAR SHARMA	ACS - 30161	BHIWADI	45	11220	SH. HEMANTKUMAR K VALAND	ACS - 24697	VADODARA
18	11239	MR. DEVESH AGARWAL	ACS - 37082	NEW DELHI	46	11226	MR. AMIT KRISHNAPPA POOJARI	ACS - 44228	MUMBAI
19	11240	MR. RAKESH CHAWLA	ACS - 43349	NEW DELHI	47	11229	MR. VAIBHAV SHARMA	ACS - 44289	BEAWAR
20	11241	MR. SUMIT CHANDHOK	ACS - 30449	NEW DELHI	48	11237	MS. RICH A TEWARI	ACS - 32555	FARRUKHABAD
21	11244	MS. RANI SUROLIA	FCS - 4017	DELHI	49	11245	MR. HARIKRUSHNA ARVINDKUMAR GOHIL	ACS - 29088	SURAT
22	11247	MR. VITENDER KUMAR	ACS - 44344	NEW DELHI	50	11246	MR. SUDHIR SAKHARAM PUREKAR	ACS - 44342	MUMBAI
23	11248	MR. VAIBHAV SRIVASTAVA	ACS - 44335	DELHI	51	11255	SH. PANKAJ GUPTA	ACS - 15649	INDORE
24	11250	MS. SHABNAM KAPOOR	FCS - 4258	DELHI	52	11256	MR. ANKIT KUMAR VAGERIYA	ACS - 27893	GOTA, AHMEDABAD
25	11252	MR. ASHUTOSH TRIPATHI	ACS - 28585	KANPUR	53	11258	MS. ASHWINI HEMANT KULKARNI	ACS - 43507	NASHIK
26	11254	MR. ASHISH SINGHAL	ACS - 32613	GHAZIABAD	54	11262	SH. RAJESH HEGDE	ACS - 23859	THANE DISTT
27	11257	MS. DIVYA SINGH	ACS - 32268	BEAWAR	55	11266	MR. SANJAY CHATURVEDI	ACS - 36562	MUMBAI
28	11259	SH. AMARENDRA KUMAR RAI	ACS - 21745	NOIDA					

*Enrolled during the period from 21/03/2016 to 20/04/2016.

FORM – D
APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION
OF CERTIFICATE OF PRACTICE
See Reg. 10, 13 & 14

To
The Secretary to the Council of
The Institute of Company Secretaries of India
'ICSI HOUSE', 22, Institutional Area, Lodi Road, New Delhi
-110 003
Sir,

I furnish below my particulars :

(i) Membership
Number FCS/ACS:

(ii) Name in full

(in block letters) Surname Middle Name Name

(iii) Date of Birth:

iv) Professional
Address:

(v) Phone Nos. (Resi.) (Off.)

(vi) Mobile No Email id

(vii) Website of the member, if any

(viii) Additions to or change in qualifications, if any

Submitted for (tick whichever is applicable):
(a) Issue (b) Renewal (c)
Restoration

(a) Particulars of Certificate of Practice issued / surrendered/
Cancelled earlier

Sl. No.	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

(b) Unique Code Number
(i) Individual/Proprietorship concern (ii) Partnership firm

3. Area of Practice

Sl. No.	Area of Practice	Please tick (If Applicable)
1	Corporate Law	
2	Financial Service and Consultancy	
3	Securities/Commodities Exchange Market	
4	Finance including Project/Working Capital/Loan Syndication(Specify the areas handling)	
5	Corporate Restructuring (Handling Merger, acquisitions, demerger issues etc). Specify the areas handling as drafting of scheme, appearing before various regulatory bodies for approval of scheme, getting the scheme implemented, legal compliances with various regulatory bodies etc)	
6	Excise/CUSTOMS (Filling of returns, Handling assessment, appearing before the appellate authority)	
7	Sales Tax/VAT Practice (Filling of returns, Handling assessment, appearing before the appellate authority)	

8	Income Tax Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
9	Company Law Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
10	Foreign Exchange Management (Specify the areas being handled i.e. filling of various forms/returns, appearing before RBI etc)		
11	Foreign Collaborations & Joint Ventures		
12	Intellectual Property Rights (Specify the areas being handled)		
13	Depositories		
14	Monopolies/Restrictive Trade Practices/Competition Law		
15	Consumer Protection Laws		
16	Arbitration and Conciliation		
17	Import and Export Policy & Procedure		
18	Environment Laws(Specify the areas)		
19	Labour & Industrial Laws (Specify the areas)		
20	Societies/Trusts/Co-operative Societies & NCTs (Non Co-operative Trust Societies)		
21	Financial Consultancy		
22	Other Economic Laws		
23	SEBI / Securities Appellate Tribunal		
24	Banking and Insurance		
25	Any Other Service (Please specify)		

4. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the ICWAI.

ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.

iii a. I hereby undertake that, I shall adhere to the mandatory ceiling as regards issuing of Secretarial Audit Report (pursuant to Section 204 of the Companies Act, 2013) and certification/ signing of Annual Return (pursuant to Section 92 of the Companies Act, 2013) in terms of the GUIDELINES FOR ISSUING SECRETARIAL AUDIT REPORT, SIGNING AND CERTIFICATION OF ANNUAL RETURN respectively issued by the Institute from time to time.

iii b. Accordingly, I state that I have issued _____ Secretarial

Audit Report and certified _____ Annual Returns during the financial year 2015-16*.

- iv. I state that I have issued / did not issue _____ advertisements during the year 20__ in accordance with the **Guidelines for Advertisement by Company Secretary in Practice** issued by the Institute*.
 - v. I state that I issued _____ Corporate Governance compliance certificates under Clause 49 of the Listing agreement during the year 20__ ... *
 - vi. I state that I have / have not undertaken _____ Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20... - ... *
 - vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the **Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/ Firm of Practising Company Secretaries** issued by the Institute*.
 - viii. I hereby declare that I have complied with KYC norms issued by the Council of the ICSI.
 - ix. I undertake to subject myself to peer review as and when directed by the Peer Review Board.
5. I send herewith Bank draft drawn on _____ Bank _____ Branch bearing No. _____ dated _____ / online payment vide acknowledgement No. _____ dated _____ / Cash payment at ROs/Chapters vide Acknowledgement No. _____ dated _____ for Rs. _____ towards annual certificate of practice fee for the year ending 31st March _____.
 6. I hereby declare that I attended the following professional development programmes held during the financial year _____:

Sr. No.	Name of Programme	Organised by	Place	Date	Duration*	No. of Program Credit Hours Secured**	Details of Certificate for Program Credit Hours ***

* Please specify whether full day/half day/number of hour

** Extra sheet can be attached....

*** The extracts from ICSI portal about the Credit hours with self certification

7. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:

Date :

***Encl.

* Applicable in case renewal or restoration of Certificate of

Practice

** Rs. 1000/- Annual Certificate of Practice Fee (Rs. 500/- if applied during October-March)

- Copy of the relieving letter in case earlier in employment.
- Copy of Form DIR 12 regarding cessation of employment in case working earlier as Company Secretary.
- Copy of letter of cancellation of Certificate of Practice of other professional bodies if applicable.

Attention Members - Online donation to CSBF on a click now

For making donations to CSBF online, please click www.icsi.in/ICSIDonation You may also visit ICSI website www.icsi.edu and click at "For donations to CSBF – click here".

For queries if any, you may write or call-

(Mr. Saurabh Bansal)

Executive, CSBF cell

ICSI House, 22 Institutional Area

Lodi Road, New Delhi – 110003

Phone: 011-45341088, Fax: 011-24626727

Email: saurabh.bansal@icsi.edu

csbf@icsi.edu

Note: Donation to the CSBF qualifies for the deduction under section 80G of the Income Tax Act, 1961. The online receipt serves this purpose as well.

PAYMENT OF ANNUAL LICENTATE SUBSCRIPTION FOR THE YEAR 2016-2017

The annual Licentiate subscription for the year 2016-2017 will become due for payment w.e.f 1st April, 2016. The last date for payment of same is 30th June, 2016. The annual Licentiate subscription payable is Rs.1,000/- per year.

You are requested to remit at the Institute's Headquarters or Regional/ Chapter offices a sum of Rs.1000/- (Rupees One thousand only) by way of Demand Draft payable at New Delhi or cheque at par drawn in favour of "The Institute of Company Secretaries of India" indicating your name and Licentiate number on the reverse of the Demand Draft/ Cheque and the details of remittance may please be intimated at email id licentiate@icsi.edu.

PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2016-2017

The annual membership fee and certificate of practice fee for the year 2016-2017 has become due for payment w.e.f 1st April, 2016. The last date for the payment of fee is 30th June, 2016.

The membership and certificate of practice fee payable is as follows:

1. Annual Associate Membership fee Rs.1125/- (*)
2. Annual Fellow Membership fee Rs.1500/- (*)
3. Annual Certificate of Practice fee Rs.1000/- (**)

* A member who is of the age of sixty years or above and is not in any gainful employment or practice can claim 50% concession in the payment of Associate/Fellow Annual Membership fee and a member who is of the age of seventy years or above and is not in any gainful employment or practice can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration to that effect.

**The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu.

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

- (i) Online (through payment gateway of the Institute's website (www.icsi.edu))
- (ii) Cash/Cheque at par/Demand draft/Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter or Regional/Chapter offices.

For queries, if any, the members may please write to Mr. Jitendra Kumar, Executive Assistant at email id jitendra.kumar@icsi.edu

ATTENTION!

MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March 2016. The CDs are available at the headquarters of the Institute and will be supplied free of cost to the members holding Certificate of Practice on receipt of request.

Request may please be sent to the Directorate of Membership at e-mail id: rajeshwar.singh@icsi.edu



BRAIN - TEASERS!

(Win Prizes)

To win prizes, a person has to send replies to both (i.e. Legal Puzzle & Case Study). Three prizes – a first, a second and a third carrying Rs. 2000, Rs. 1500 and Rs. 1000 respectively will be awarded to the best entries in order of merit. The decision of the Institute will be final and binding and no query/clarification whatsoever will be entertained. The names of the winners will be published in one of the future issues of the Journal. Please send your replies to ak.sil@icsi.edu latest by 25th of May 2016 highlighting **Replies to May 2016 Brain Teasers Column.**

Brain Teasers May 2016

LEGAL PUZZLE

Legends of Law - Chief Justices of India

Clues are based on the Presidents who appointed them

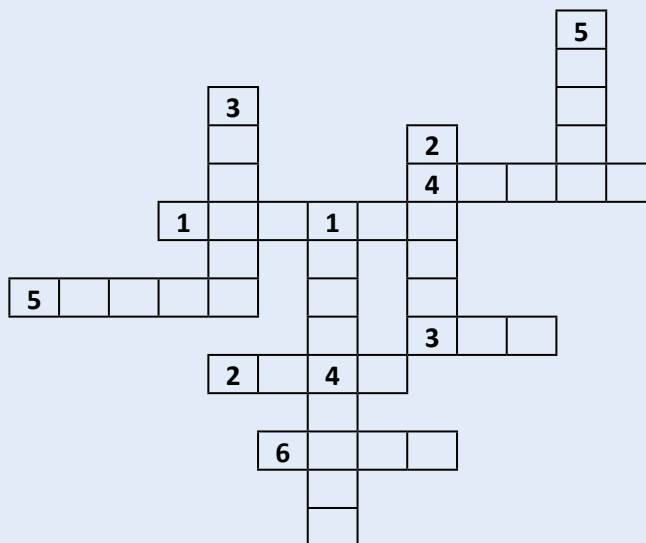
Clues

Across

- 1 P Mukherjee
- 2 VV Giri
- 3 VV Giri
- 4 SS Dayal
- 5 SS Dayal
- 6 ABJ Abdul Kalam

Down

- 1 R Prasad
- 2 S Radhakrishnan
- 3 R Venkataraman
- 4 K R Narayan
- 5 P Mukherjee



CASE STUDY

Landlord A leased a set of flats in a complex to several tenants. The city was hit by an enemy air raid. The tenants started vacating their flats by the dozens. In order to keep them in tenancy, A offered them huge discounts for the period of the war. Which many accepted gladly and didn't disrupt their tenancies. After the war, A wished to revive the original terms & conditions. Will A succeed, and why. Assume other factors wherever required. Which doctrine assisted the landlord to claim original tenancy rates? Explain with other cases. Also enumerate the conditions under which this doctrine can be applied.



List of Practising Members Registered For The Purpose of Imparting Training During The Month of March, 2016

ABHIK JAIN
29, MEHTA BHAWAN, KASHIPURI, PINCODE:311001, BHILWARA

ABHINAV AGARWAL
28/128, 3RD FLOOR, GALI NO. 13, VISHWAS NAGAR, SHAHDRA
PINCODE:110032, DELHI

AJAY KUMAR CHHABRA
H. NO. 343 L-I-G, HOUSING BOARD COLONY, URBAN ESTATE PHASE -1
PINCODE:144022, JALANDHAR

AKSHAY PACHLAG
52/99, 3RD FLOOR, NEAR CBT, PINCODE:580020, HUBLI

AMRITA SOGANI
II FLOOR, 447/7, GHEE MANDI, NAYA BAZAR PINCODE:305001, AJMER

ARCHITA SEHGAL
I-198, BLOCK-25, RANGOLI GARDEN, PINCODE:302034, JAIPUR

ARUN KUMAR JAISWAL
C/O SRI ASHARFI LAL SHAW, 29/2, PURVASA PARK, RANIA NORTH NEAR,
MILLENIUM CLUB, PO BANSDRONI PINCODE:700070, KOLKATA

ASHISH NAYAK
40 SWAMI VIVEKANAND NAGAR, G-2 ARIHANT KALASHREE, NEAR
BENGALI SQUARE PINCODE:, INDORE

BARKHA
HOUSE NO. 75, TYPE -2, VARUN KUNJ, DELHI JAL BOARD, SECTOR 5,
ROHINI PINCODE:110085, DELHI

BHADRESH BIPIN CHANDRA SHAH
21, HASAN ALI BUILDING, 2ND FL, 17 JISOBHOY PADABHAI LANE, BEHIND
VIDEOCON HOUSE, FORT PINCODE:400001, MUMBAI

CHAITALI DHAR
P-785, LAKE TOWN, BLOCK -A, PINCODE:700089, KOLKATA

CHAITHANYA KRISHNA MURTHY GOGINENI
FLAT NO.303, ANAND PLAZA, B/H HOTEL SANDHYA, OPP.COLLECTORATE,
OFFICE, LAKADIKAPOL PINCODE:500004, HYDERABAD

CHANDAN SETH
535/196 C/O SHANKAR VERMA, FATTEPUR SECTOR-B, ALIGANJ
PINCODE:226024, LUCKNOW

CHIRANJEEVI BOMMAKANTI
28, CHANDRAPURI COLONY, KAPRA, PINCODE:500062, HYDERABAD

DAKSH WADHWA
C-7/118-A, KESHAV PURAM, PINCODE:110035, NEW DELHI

DHEERAJ SHARMA

B1/402, RESIDENCY PARK, HDIL, OPPOSITE YAZOO PARK, VIRAR (WEST)
PINCODE:401303, MUMBAI

DHRUVALKUMAR DHIRAJKUMAR BALADHA
PARTH COMPLEX, 2ND FLOOR, OPP. BHARAT DAIRY, NEAR INDIRACIRCLE,
UNIVERSITY ROAD PINCODE:360002, RAJKOT

DOLLY JITENDRA MEHTA
B-5, AJAY APARTMENT, NARAYAN NAGAR ROAD, BHAYANDAR (W)
PINCODE:401101, THANE

FARAAZ SHAMSI
BE-330, GROUND FLOOR, , GALI NO. 3, HARI NAGAR PINCODE:110064,
NEW DELHI

GANAPATI MABLESHWAR GHATTI
NO. 1093, 9TH MAIN, 5TH CROSS, NEAR R E S CONVLENT, PRAKASH
NAGAR, RAJAJINAGAR PINCODE:560021, BANGALORE

GEETA PRAVIN MANJAREKAR
FLATNO4, LIBERTYAPT, BEHIND ROYALENGLISHSCHOOL, VISHALNAGAR,
VASAI PINCODE:401402, PALGHAR

GURPREET SINGH SIAL
B-30, CHANDER GUPT COMPLEX, OFFICE NO. 22, 2ND FLOOR, SUBHASH
CHAWK PINCODE:110092, DELHI

HINA ARORA
FF-7, RAM RAGHU PLAZA, NEAR HANUMAN MANDIR, KHANDARI
PINCODE:282001, AGRA

ISHVINDER KAUR
186, SHARVAN NATH NAGAR, BEHIND CHITRA CINEMA, NEAR HOTEL,
JAHANVI PINCODE:249401, HARIDWAR

ISSAC WILLIAM
KARINGOZHAKKAL, KOTTAMPARAMBAPOST, PINCODE:673008, CALICUT

JIGAR DAHYABHAI CHAUDHARI
19, SWAGAT SOCIETY, SOLA ROAD, OPP. SHAKUNTAL BUNGLOWS,
GHATLODIYA PINCODE:380061, AHMEDABAD

JIGNESH KUMAR D SONI
105, JOLLY PLAZA, BESIDE G P COLLEGE, ATHWAGATE PINCODE:395001,
SURAT

JITENDRA KUMAR PRADEEPBHAI PARMAR
17, MRIDUL TOWER, OPP BATA SHOWROOM, ASHRAM ROAD
PINCODE:380001, AHMEDABAD

JYOTI NADHERIYA
60, MANSAGAR COLONY, SHEOPUR ROAD, BEHIND GULAB VIHAR, PRATAP
NAGAR PINCODE:302033, JAIPUR

JYOTI SHARMA
FLAT NO. 1404, NISHAT CGHS, PLOT NO. 5, SECTOR - 19 B, DWARKA PHASE
- II PINCODE:110075, NEW DELHI

K LOGANATHAN MEKALA
NO.7, R.K. MILLS 'B' COLONY, PEELAMEDU PUDUR, PINCODE:641004,
COIMBATORE

K R JAGANNATHAN
NO. 3/17, NEHRU COLONY, 2ND STREET DARASURAM POST,
KUMBakonam TALUK PINCODE:, THANJAVUR DIST.

KANIKA SHARMA
B-1/247, FF, PASCHIM VIHAR, PINCODE:110063, NEW DELHI

KIRAN KUMAR BODLA
502, VIPANCHI RESIDENCY, LANE BESIDE PARADISE TAKEAWAY, MASAB
TANK PINCODE:500028, HYDERABAD

KOMAL SAURABH DESHMUKH SAMANT
3/5, JAYKAR SMRUTI, AMBA MATA ROAD, OPP. JAIN MANDIR, NEXT TO
A B, GOREGAONKAR SCHOOL, GOREGAON (WEST) PINCODE:400104,
MUMBAI

MANISH PRAJAPATI
DAHI WALI GALI, NEAR MAHADEV MANDIR, PINCODE:321001,
BHARATPUR

MANISH RAJKUMAR VARDANI
PLOT NO. 309, KHAMLA, SINDHI COLONY, PINCODE:440025, NAGPUR

MOHAMMAD ANWAR UL HAQ ABDUL MANNAN
H.NO:6-3-563/25/2,, FLAT NO 201, ?HILL PARK AVENUE, HILL TOP COLONY,
?ERRAMANZIL PINCODE:500004,

MOHAMMAD TAUSIF SHAMIM
32, PILKHANA FIRST LANE, 2ND FLOOR, PINCODE:711101, HOWRAH

MOHIT SURTANI
26/IA, S N ROY ROAD, , PINCODE:700038, KOLKATA

NA VEDPARKASH
SCO 36, , SECTOR-3, PINCODE:134112, PANCHKULA

NEELAM BENIWAL
FLAT NO.6, FIRST FLOOR, SWASTIK VIHAR, PHASE -III, MDC SECTOR 5
PINCODE:134114, PANCHKULA

NEELAM DHARIWAL
14, RC, BARDIA, SURESH NAGAR, DURGAPURA PINCODE:302018, JAIPUR

NIDHI AGARWAL
ASHUTOSH APARTMENTS, 295/2, G T ROAD (N), FLAT -4D, OPP. BABU
DANGA PP, SALKIA PINCODE:711106, HOWRAH

NIDHI MISHRA
E 7/12 LGF, MALVIYA NAGAR, PINCODE:110017, NEW DELHI

NIKITA CHOUDHARY
SP-SHUKHOBRISHTI, BLOCK M/91, 9TH FLOOR, FLAT NO. 901, PLOT NO.
E1/E2, AA-III, NEWTOWN PINCODE:700135, KOLKATA

NITIN KUMAR
H.NO. 1362-63, FIRST FLOOR, SECTOR 22 B PINCODE:160022,
CHANDIGARH

PANKAJ PABAIYA
B-506, PRAKRATI CORPORATE, 18/2, Y.N. ROAD, OPP. BHARAT,
PINCODE:452009, INDORE

PARVINDER KAUR
WZ-63A, 2ND FLOOR, STREET NO.2, RATTAN PARK, NEW RAMESH NAGAR
PINCODE:110015, NEW DELHI

PRATIBHA MOHTA
48/2, 2ND FLOOR, H SIDDHIAH ROAD, J C ROAD GOSS, BEHIND DENA
BANK, PINCODE:560002, BANGALORFE

PRIYA JAIN
H-2697, SECTOR 49, SAINIK COLONY, PINCODE:121001, PRIYA JAIN

RAKHI RAMESH KABRA
ORCHID B-102, EVERSHINE PARK, PRATHMESH COMPLEX, NEAR

VEERA DESAI ROAD
ANDHERI (W) PINCODE:400058, RAKHI RAMESH KABRA

RICHA AGARWAL
604E, DAKHINDHARI ROAD, LAKETOWN, LAHAMATH,, NEAR HP GAS, 4TH
FLOOR PINCODE:700048

RICHA AGARWAL
RIYANSHI CHAUDHARY
ARYA NAGAR, (DR. RAJBIR VALI GALI), PINCODE:201206,

RIYANSHI CHAUDHARY
SHOP NO. 80, SECOND FLOOR, SATKAR SHOPPING CENTRE, MALVIYA
NAGAR PINCODE:302017

ROHIT MEHARCHANDANI
S MAHADEVAN, 308, BHRAT CHAMBERS, BARODA STREET, MASJID EAST
PINCODE:400009, 9835896843

S VIKAS REDDY
PLOT NO.12, H.NO 1-10-72/5/2/A, GROUND FLOOR, CHIKOTI GARDENS,
BEGUMPET, PINCODE:500016

SAGAR SHRIVASTAVA
GAURCOMPLEX, 1ST FLOOR, DR. RAJENDRAPARK CHOWK, STATION ROAD
PINCODE:491001

SALONI JAISWAL
384, SARAYU, GROUND FLOOR, 14TH B CROSS, PAI PAYOUT,
PINCODE:560016

SAMTA KUMARI SIMMY
K-308, AMRAPALI PRINCELY ESTATE, SECTOR 76, PINCODE:201301

SANJAY DADHICHI
404, RAJSHILLA, 4TH FLOOR, 597, JSS ROAD, NR. PRINCESS STREET, CHIRA
BAZAR, MARINE LINES PINCODE:400002,

SANKET JAIN
SATYARAJ, BEHIND HOTEL CHANDA,, INFRONT OF RANI LAXMI BAI PARK,
PINCODE:284002

SANTOSH KRISHNA PARDESHI
31/413 E, SECOND FLOOR, VASANT WADI, KALBADEVI, MARINE LINES
PINCODE:400002

SATYAM OMER
OFFICE NO. 308, FOURTH FLOOR, CHANDRALOK COMPLEX, BIRHANA
ROAD PINCODE:208001,

SHASHANK SHEKHAR
C/O DEEPAK GULATI & ASSOCIATES, CA, 23 HANUMAN ROAD,
CONNAUGHT PLACE PINCODE:110001

SHASHI SHEKHAR
132, FIRST FLOOR, , SOMDUTT CHAMBER II, , BHIKAJI CAMA PLACE,
PINCODE:110066

SOWMYA MACHIMADA SOMAIAH
164/C, GROUND FLOOR, 3RD CROSS , 6TH MAIN, J.P. NAGAR , 3RD
PHASE PINCODE:560078

SUBODH PRASAD
SECTOR NO. 6, BLOCK NO. 1, (M.I.G.), FLAT NO. 17, BAHADUR, HOUSING
BOARD COLONY, BHUTHNATH RD PINCODE:800026

SUJATA ARYA
B-7, ORDINANCE APARTMENT, OPP. MAMTA MODERN SCHOOL, H-BLOCK,
VIKAS PURI PINCODE:110018

SUMEET SOMANI
15, ADA BAZAR, DOSHI BHAWAN, PINCODE:452004,

SWAPNA ABHAYSINGH CHAVAN
FIRST FLOOR, FLAT 101, , GURUSHRADDHA CHS, NR. BANK OF BARODA,
SHIMPOLI ROAD, BORIVALI (W) PINCODE:400092

T KRISHNA VENI
W/ SHRI HANSRAJ PATEL, HOUSE NO.3, WARD NO. 18, DUGGAL,
COMPOUND, SHASTRI NAGAR, DURG DIST. PINCODE:490023

TANU AGARWAL
FLAT NO. A-4, SHALIMAR COURTYARD, NEAR MAHIBULLAPUR RAILWAY
STATION, SITAPUR ROAD PINCODE:226020

UPENDER JAJOO
105, FIRST FLOOR, , BUILDING NO. 12, ADITYA COMPLEX, PREET VIHAR
PINCODE:110092

V PRASANNA
NO. 12, NARAYANASWAMY LAYOUT, ANNAI INDRA NAGAR, NEAR ST.
THOMAS HR SEC SCHOOL PINCODE:641038,

VANDANA GOEL
362, PINK APARTMENTS, SECTOR-18B, DWARKA PINCODE:110078

VARINDER KAUR GHAI
190, SFS, , HAUZ KHAS, PINCODE:110016

VIKRAM KUMAR
AT - MAHAVIR NAGAR, SAICHAK (OPP. ROAD NO. 5), BEUR MORE,
ANISHABAD PINCODE:800002

ZARNA PRABHALADBHAI SOLANKI, 276, MANEK CENTRE, P N MARG,
PINCODE:361001



List of Companies Registered for Imparting Training during the month of March, 2016

AGRO PHOS (INDIA) LIMITED
M-87, TRADE CENTRE 18M, SOUTH TUKOGANJ INDORE

ANI TECHNOLOGIES PRIVATE LIMITED
CHERRY HILLS BUILDING, EMBASSY GOLF LINKS BUSINESS PARK,
KORAMANGALA INNER RING ROAD, DOMLUR BANGALORE - 560071

ANIL BUILDCON INDIA PRIVATE LIMITED
INFORT OF OLD GENERL MANAGER OFFICE SADAK DAFAL,
HALDIBADI CHIRMIRI BILASPUR

ANMOL SHARE BROKING LIMITED 4TH FLOOR, BHAGAVATHY
TOWERS, #52, 33RD CROSS, JAYANAGAR 4TH BLOCK BANGALORE

CHAITANYA INDIA FIN CREDIT PRIVATE LIMITED
NO.98, 3RD FLOOR, SIRSI CIRCLE MYSORE ROAD, CHAMRAJPET
BANGALORE

DARSHAN ORNA LTD.
2018/1, FIRST FLOOR, NR. RUPA SURCHAND NI POLE, M.G. HAVELI
ROAD, MANEK CHOWK, AHMEDABAD-380001 AHMEDABAD

ENERGY EFFICIENCY SERVICES
4TH & 5TH FLOOR A-13, IWAI BUILDING SECTOR-1 NOIDA

GGL HOTEL AND RESORT COMPANY
'VISHWAKARMA' 86C, TOPSIA ROAD (SOUTH) KOLKATA

GLF LIFESTYLE BRANDS PRIVATE LIMITED
51-52 UDYOG VIHAR PHASE-IV GURGAON

GOVIND KRIPA INFRATECH PRIVATE LIMITED
205-206, PRAKASHDEEP NEAR MAYANK CINEMA CHANDPOLE
JAIPUR

I P INTEGRATED SERVICES PRIVATE LIMITED
SF-2, LEVEL 2ND, BESTECH CENTRE POINT, A- BLOCK, SUSHANT
LOK- 1 GURGAON

IL&FS INFRA ASSET MANAGEMENT
THE IL&FS FINANCIAL CENTRE, 7TH FLOOR, PLOT C-22 G-BLOCK,
BANDRA KURLA COMPLEX, BANDRA EAST MUMBAI

INDIAN HEALTH ORGANIZATION PRIVATE LIMITED
64 OHKLA INDUSTRIAL ESTATE, PHASE-3 NEW DELHI

J. P. INFRA (MUMBAI) PVT LTD. 401-402 VIRAJ TOWER WESTERN
EXPRESS HIGHWAY NR WEH METRO STN, ANDHERI EAST MUMBAI

JAI GEARS PVT. LTD.
106 CHOPRA COMPLEX, COMMUNITY CENTRE PREET VIHAR, DELHI

KELTRON COMPONENT COMPLEX LTD KELTRON NAGAR,
KALLIASSERY P O KANNUR

LIGHT MICROFINANCE PRIVATE LIMITED
104A, PINNACLE BUSINESS PARK CORPORATE ROAD, PRAHLAD
NAGAR AHMEDABAD

MAN INFRAPROJECTS LIMITED
102 MAN HOUSE, OPP. PAWAN HANS, VILE PARLE WEST, MUMBAI

MAN TUBINOX LIMITED
102 MAN HOUSE, OPP. PAWAN HANS, S.V. ROAD, VILE PARLE
WEST, MUMBAI

METRO INSTITUTES OF MEDICAL SCIENCES PRIVATE LIMITED
14, RING ROAD LAJPAT NAGAR-IV NEW DELHI

MITSUBISHI ELECTRIC INDIA PRIVATE LIMITED
2ND FLOOR, TOWER A&B DLF CYBER GREENS, DLF CYBER CITY
DLF PHASE-III GURGAON

MONTAGE ENTERPRISES PRIVATE LIMITED
C-20-22, SECTOR-57, NOIDA

NOURISHCO BEVERAGES
BUILDING NO 9A, 3RD FLOOR, CYBER CITY, DLF PHASE-III,
GURGAON

PANCHAVAKTRA POWER
LEVEL - 8, TOWER - B, PARAS TWIN TOWERS, GOLF COURSE ROAD,
SECTOR - 54 GURGAON

PEGMA RESOURCES PRIVATE LIMITED
C-150, RIICO HSG. COMPLEX, AJMER ROAD, BEAWAR

POWERWIND LIMITED
GL BUSINESS CENTRE, OLD GURGAON ROAD, OPPOSITE TO
UDHYOG VIHAR PHASE-I (DUNDAHERA) GURGAON

RAJESH PROJECTS (INDIA) PRIVATE LIMITED
501, RG TRADE TOWER, PLOT NO B-7, NETAJI SUBHASH
PLACE, WAZIRPUR DISTT. CENTRE, PITAMPURA NEW DELHI

RISHNIK CONSULTANTS PRIVATE LIMITED
I-9, LGF, LAJPAT NAGAR PART-III, NEW DELHI

SARVPRIYA SECURITIES PRIVATE LIMITED
1102, TOWER-A, SIGNATURE TOWERS, SOUTH CITY 1, GURGAON

SBL ENERGY LIMITED
KOTWAL BUILDI, YENVERA, RAULGAON, KATOL-441502 KATOL

SERVION T GLOBAL SOLUTIONS LIMITED
4/600 & 4/197, 7TH STREET DR VSI ESTATE PHASE II THIRUVANMIYUR
CHENNAI

SHUBHAM HOUSING DEVELOPMENT FINANCE COMPANY PRIVATE
LIMITED
5A & 6, 3RD FLOOR, JMD REGENT PLAZA, M.G. ROAD GURGAON

SONIKA ENGINEERING AND CONSTRUCTION LIMITED
46 MALVIYA NAGAR RAM LAXMI PARISAR SECOND FLOOR FLAT
NO.F3 BHOPAL

STERLING SEZ AND INFRASTRUCTURE
SANDESARA ESTATE, PADRA ROAD, ATADARA VADODARA

TACHYON LED SOLUTIONS PRIVATE LIMITED
306, RG COMPLEX, SECTOR 8 ROHINI DELHI

THE CHODAVARAM COOPERATIVE SUGARS LIMITED
GOVADA - 531023, VIZAG DIST VISAKHAPATNAM

VAISHNAVI BIO TECH LIMITED
1-5-1015, PLOT NO.80&81, 2 FLOOR, VAISHNAVI BHAVAN,
FATHER BALAIAH NAGAR, MANJEERA COLONY, OLD ALWAL
SECUNDERABAD HYDERABAD

VASUNDHARA MERCHANTS LIMITED
36A, BENTICK STREET, 2ND FLOOR 700069 KOLKATA

WEARIT GLOBAL LIMITED
CRESCENT TOWER 229 A J C BOSE ROAD 6TH FLOOR KOLKATA

WEST COAST FROZEN FOODS PRIVATE LIMITED
1401-D, LOTUS CORPORATE PARK, GRAM PATH, GOREGAON,
EAST MUMBAI

ZENITH LEX & CO.
89-A GROUND FLOOR, TEMPLE VIEW APARTMENTS, SANTHOME
HIGH ROAD, RAJA ANNAMALAIPURAM CHENNAI

ASHOKA REFINERIES LIMITED
SHYAM COMPLEX, RAM SAGAR PARA, RAIPUR, (C. G.) 492001
RAIPUR(71)
ASIATIC OXYGEN LTD. 8, B.B.D. BAG (E) KOLKATA

AUTOMOBILE CORPORATION OF GOA LTD
HONDA GOA

DHABRIYA POLYWOOD LIMITED
B-9D(1), MALVIYA INDUSTRIAL AREA JAIPUR

DR. REDDY'S LABORATORIES LIMITED
8-2-337, ROAD NO.3, BANJARA HILLS, HYDERABAD

IDFC BANK LIMITED
NAMAN CHAMBERS C32 G BLOCK BANDRA KURLA COMPLEX
BANDRA EAST MUMBAI

JINDAL STAINLESS (HISAR) LIMITED
O.P. JINDAL MARG HISAR

K Z LEASING AND FINANCE LIMITED
1ST FLOOR DESHANA CHAMBER, B/H KADWAPATTIDAR WADI,
ASHRAM ROAD AHMEDABAD

MANPASAND BEVERAGES LIMITED
E-62, MANJUSAR GIDC SAVLI ROAD VADODARA

NEW ERA ALKALOIDS AND EXPORTS LIMITED
21-FREEGANJ, RATLAM, MADHYA PRADESH

PANCHMAHAL STEEL LIMITED
LANDMARK, 7TH FLOOR RACE COURSE CIRCLE VADODARA

SONATA SOFTWARE LIMITED
APS TRUST BUILDING N R COLONY BANGALORE

SURYALAKSHMI COTTON MILLS LIMITED
6TH FLOOR, SURYA TOWERS 105, S.P. ROAD, SECUNDERABAD
HYDERABAD

SWISS GLASCOAT EQUIPMENTS LIMITED
H-106, GIDC ESTATE VITTHAL UDYOGNAGAR ANAND



NEWS FROM THE REGIONS

EASTERN INDIA REGIONAL COUNCIL

Programme	Web link
International Corporate Governance Day held on 16.4.2016 at ICSI-EIRC, House, Kolkata.	https://www.icsi.edu/eiro/Archive.aspx
Half Day Workshop held on 16.4.2016 at ICSI-EIRC, House, Kolkata.	
Campus Placement for Students (seeking Management Training) and Members (seeking Job) held on 16.4.2016 at ICSI-EIRC House, Kolkata.	

BHUBANESWAR CHAPTER

Programme	Web link
Full day seminar on "NCLT a great opportunity" held on 3/04/2016	https://www.icsi.edu/bhubaneswar/NewsEvents.aspx
Lecture meet on "Critical aspects of Companies Act, 2013 along with latest developments" held on 05/04/2016,	
Evening talk on "Corporate Governance, Corporate Social Responsibility (CSR)" held on 09/04/2016	
Programme on "Capital Market & Wealth Creation by Equity" held on 09/04/2016	
Mega Programme on ICGD day "Whirlwind Plenary on Evangelizing the International Corporate Governance Day" held on 16/04/2016	
Webcast for student's on 'Precious You' held on 18/04/2016	
Celebration of Mother Earth Day on 22/04/2016	

NORTH EASTERN (GUWAHATI) CHAPTER

Programme	Web link
International Corporate Governance Day celebration held on 16.4.2016	NA

RANCHI CHAPTER

Programme	Web link
Observation of ICGD-Study Circle on 'Corporate Governance' organised on 16.4.2016 to observe International Corporate Governance Day.	www.icsi.edu/portals/21/ICGC-Ranchi.pdf
Webinar for students -webcast titled Precious 'You' addressed by President, The ICsland organised on 18.4.2016	www.icsi.edu/portals/21/Precious You-Apr'16-Ranchi.pdf

NORTHERN INDIA REGIONAL COUNCIL

Programme	Web link
One Day Workshop on "How to be an NCLT Practitioner?" held on 02.04.2016	https://www.icsi.edu/docs/webmodules/NIRO_03052016.pdf
Campus Placement for 232 nd & 233 rd MSOP participants held on 11.04.2016	
Women Empowerment Session on The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 held on 11.04.2016	
Program on Corporate Governance - Business Ethics & Culture Changes held on 15.04.2016	https://www.icsi.edu/docs/webmodules/NIRO_03052016.pdf
Meeting of Company Secretaries in Practice on Threats & Solutions - Cyber Laws held on 18.04.2016	
Study Session on NCLT held on 22.04.2016	
UP State Conference on "CS - Spectrum of Opportunities" held on 23.04.2016	
Seminar on NCLT-Emerging Scope of Judiciary organised by Allahabad Chapter and held on 24.04.2016	
One Day Workshop on Practical aspects of Handling Board Meetings & General Meetings (Covering SS-I & SS-2) held on 30.04.2016	

ALLAHABAD CHAPTER

Programme	Web link
Earth Day celebration on 29/04/2016,	NA
HALF DAY SEMINAR held on On 24.4.2016	NA

CHANDIGARH CHAPTER

Programme	Web link
ICSI through Chandigarh Chapter organised National Seminar on National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) - Convergence of Corporate Jurisdiction on 2.4.2016	NA

FARIDABAD CHAPTER

Programme	Web link
Whirlwind Plenary on Evangelizing the International Corporate Governance Day(ICGD) held on 16.4.2016	NA

GHAZIABAD CHAPTER

Programme	Web link
Whirlwind Plenary on Evangelizing the International Corporate Governance Day(ICGD) held on 16.4.2016	NA

LUCKNOW CHAPTER

Programme	Web link
Whirlwind Plenary on Evangelizing the International Corporate Governance Day(ICGD) held on 16.4.2016	NA

LUDHIANA CHAPTER

Programme	Web link
Study Circle Meeting on "NCLT Rules" held on 9.4.2016	http://www.icsi.edu/Portals/12/SCM-09-04-2016.pdf

SOUTHERN INDIA REGIONAL COUNCIL

Programme	Web link
One Day Seminar on Companies Act, 2013 –Heralding New Era of Corporate Governance jointly organized by The ICSI – SIRC with the University of Madras, Chennai held on 7th April 2016	https://www.icsi.edu/WebModules/SIRC_proceedings_APRIL.pdf

Half Day Seminar on "Corporate Compliance Management for Listed & Unlisted Companies" held on 9th April 2016	https://www.icsi.edu/WebModules/SIRC_proceedings_APRIL.pdf
International Corporate Governance Day 2016 celebrations on 16.04.2016 at ICSI-SIRC House, Chennai	https://www.icsi.edu/WebModules/SIRC_proceedings_APRIL.pdf
Study Circle Meeting on "Latest Changes in Prevention of Money Laundering Act" held on 22nd April 2016	https://www.icsi.edu/WebModules/SIRC_proceedings_APRIL.pdf
National Seminar on Companies Act, 2013: NCLT & NCLAT Convergence of Corporate Jurisdiction held on 30.4.2016.	

BENGALURU CHAPTER

Programme	Web link
Study Circle Meeting on Union Budget 2016	http://bit.ly/1Nc94O7
ICSI IT Legal National Conclave – 19 th March 2016	http://bit.ly/1VtHhM8
Half Day Seminars	http://bit.ly/1W25J5z
Full Day Seminar	http://bit.ly/1NrUxsn
Campus Recruitment for Trainees and Fresher CS	http://bit.ly/1XyW8SH

CALICUT CHAPTER

Spirit of togetherness Programme - As a first step, a friendly cricket tournament involving students and members of the Chapter was organised on 9.4.2016.

HYDERABAD CHAPTER

Programme	Web link
Half-a-Day Seminar on NCLT Parley held on 16.4.2016	NA
PAN India program on 'Whirlwind Plenary on Evangelizing the International Corporate Governance Day [ICGD] held on 16.4.2016	

MADURAI CHAPTER

Programme	Web link
Whirlwind Plenary on Evangelizing the International Corporate Governance Day [ICGD] held on 16.4.2016	NA

MANAGALORE CHAPTER

Programme	Web link
Whirlwind Plenary on Evangelizing the International Corporate Governance Day [ICGD] held on 16.4.2016	Earth Day - http://www.icsi.edu/mysore/ChapterActivities/SeminarPDP.aspx
Seminar on "Ease of doing business-Introduction of NEW FORM INC-29 by MCA for incorporation of Companies under Companies Act 2013 held on 22.4.2016	

SALEM CHAPTER

Programme	Web link
Programme on International Corporate Governance Day :	http://www.icsi.edu/salem/Activities/SeminarPDPs.aspx
Career Fairs	http://www.icsi.edu/salem/Activities/CareerAwarenessProgrammeCareerFair.aspx

THIRUVANANTHAPURAM CHAPTER

Programme	Web link
Companies amendment Bill, 2016 analysis and panel discussion held on 29.04.2016	NA

AHMEDABAD CHAPTER

Programme	Web link
Winding up of Companies Under Companies Act 1956 vis-a-vis Companies Act, 2013 held on 30.4.2016	http://www.icsi.edu/Portals/25/Presentations/Write%20Up%2030.04.2016.pdf
Full Day Seminar on SEBI (LODR) & M & A held on 7.4.2016	http://www.icsi.edu/Portals/25/Presentations/April%20Write%20Up%20(1).pdf
ICSI President's Visit on 11.4.2016 at Ahmedabad Chapter of WIRC of ICSI	http://www.icsi.edu/Portals/25/Presentations/write%20up%20of%20April,%202016.pdf
Programme On "Whirlwind Plenary On Evangelizing The International Corporate Governance Day" held on 16.4.2016	http://www.icsi.edu/Portals/25/Presentations/write%20up%20of%20April,%202016.pdf

BHAYANDER CHAPTER

New address of the Chapter office Bhayander Chapter of WIRC of the ICSI has since been shifted and the new office address is as under: Bhayander Chapter of WIRC of ICSI Office No.4, Building No. 4, Span Excellency Off. 150 Feet Road, Near D Mart Bhayander (W), Thane - 401 101 Phone : 022 2818 3888 Mobile: 07738517888

INDORE CHAPTER

Programme	Web link
04th Three Days E-Governance Program held from 17 to 19.3.2016	https://www.icsi.edu/Portals/29/Activity%20Report%2018April%202016.pdf
05th Three Days E-Governance Program Held from 01 to 03.4.2016	
Half Day Seminar on Corporate Governance- A Way ahead held on 16.4.2016	

PUNE CHAPTER

Programme	Web link
Earth day celebration week from 22.04.2016 to 28.04.2016	http://www.icsi.edu/portals/32/CHARTERED_SECRETARY_20-30_04_2016.pdf
Full day program on insight on companies amendment Bill, 2016 held on 02.4.2016.	http://www.icsi.edu/portals/32/CHARTERED_SECRETARY_DATA_01_10_04_2016.pdf
Discussion meeting on various issues faced while dealing with MCA portal held on 06.4.2016.	Weblink: http://www.icsi.edu/portals/32/Programmes_conducted_between_11th_April_to_20th_April_2016.pdf
Full day program on National Company Law Tribunal held on 16.4.2016.	
Webcast of the President, ICSI titled Precious 'You' for students of the Institute scheduled on 18.4.2016	

RAJKOT CHAPTER

Programme	Web link
Programme On "Whirlwind Plenary On Evangelizing The International Corporate Governance Day" held on 16.4.2016	http://www.icsi.edu/Portals/34/CG%20Day%20report.pdf

SURAT CHAPTER

Programme	Web link
Programme On "Whirlwind Plenary On Evangelizing The International Corporate Governance Day" held on 16.4.2016	http://www.icsi.edu/surat/NewsEvent.aspx

VADODARA CHAPTER

Event Name	Link
Programme on "Whirlwind Plenary on Evangelizing the International Corporate Governance Day" on 16.4.2016 at Vadodara	http://www.icsi.edu/Portals/37/Write-up_16042016.pdf

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MISCELLANEOUS CORNER



- Ethics & Code of Conduct Corner
- Ethics and Sustainability Corner
- CG Corner
- NCLT Corner
- 17th National Conference of Practising Company Secretaries
- PCS Corner

COMPANY SECRETARIES BENEVOLENT FUND



The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

CSBF

- Registered under the Societies Registration Act, 1860
- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription / Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of about 11,000

Eligibility

A member of the Institute of Company Secretaries of India is eligible for the membership of the CSBF.

How to join

- By making an application in Form A (available at www.icsi.edu/csbf) along with one time subscription of ₹ 7,500/-.
- One can submit Form A and also the subscription amount of ₹ 7500 ONLINE through Institute's web portal: www.icsi.edu. Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹ 7500 drawn in favour of 'Company Secretaries Benevolent Fund', at any of the Offices of the Institute/ Regional Offices/Chapters.

Benefits

- ₹ 5,00,000 in the event of death of a member under the age of 60 years
- Upto ₹ 2,00,000 in the event of death of a member above the age of 60 years
- Upto ₹ 40,000 per child (upto two children) for education of minor children of a deceased member in deserving cases
- Upto ₹ 60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

Contact

For further information/clarification, please write at email id csbf@icsi.edu or contact Mr. Saurabh Bansal, Executive on telephone no.011-45341088.

For more details please visit www.icsi.edu/csbf

FREQUENTLY ASKED QUESTIONS ON PROFESSIONAL OR OTHER MISCONDUCT AND ON PART I OF THE FIRST SCHEDULE TO THE COMPANY SECRETARIES ACT, 1980 REGARDING PROFESSIONAL MISCONDUCT IN RELATION TO COMPANY SECRETARIES IN PRACTICE

Q1. What do you mean by the term “*professional or other misconduct*” in relation to Company Secretaries?

Ans. The expression “*professional or other misconduct*” in relation to Company Secretaries as defined under section 22 of the Company Secretaries Act, 1980 shall be deemed to include any act or omission provided in any of the Schedules i.e. First and Second Schedule to the Company Secretaries Act, 1980, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 of the Company Secretaries Act, 1980 to inquire into the conduct of any member of the Institute under any other circumstances.

Q2. How may Schedules are there for *professional and other misconduct* in relation to Company Secretaries?

Ans. There are two Schedules, First and Second Schedule to the Company Secretaries Act, 1980 for professional and other misconduct in relation to Company Secretaries.

First Schedule is divided into four parts and Second Schedule is divided into three parts.

Part I of the First Schedule containing 11 items and Part I of the Second Schedule containing 10 items are applicable to Company Secretaries in Practice. Part II of the First Schedule containing 2 items is applicable to members of the Institute in service. Part III of the First Schedule containing 3 items and Part II of the Second Schedule containing 4 items, are applicable to members of the Institute in general. Part IV of First Schedule and Part III of the Second Schedule deal with other misconduct in relation to members of the Institute generally.

Q3. Who are the authorities to take action on matters of *professional and other misconduct* in relation to Company Secretaries?

Ans. Under Section 21 of the Company Secretaries Act, 1980, the Council has established a Disciplinary Directorate by notification, headed by Director (Discipline), and other employees for making investigations in respect of any information or complaint containing allegations against the member of the Institute received by it. Mrs. Meenakshi Gupta, Joint Secretary, Law, the ICSI presently holds the position of Director (Discipline).

The Council constitutes a Board of Discipline under

Section 21A and a Disciplinary Committee under Section 21B to take actions on Company Secretaries guilty of professional and other misconduct under the First and/or Second Schedule to the Company Secretaries Act, 1980, respectively.

Q4. What mechanism is followed by the Director (Discipline)/Disciplinary Directorate for making investigation in matters of *Professional and Other Misconduct* in relation to Company Secretaries?

Ans. On receipt of a Complaint or information containing allegation of *Professional and Other Misconduct* in relation to Company Secretaries, the Disciplinary Directorate shall follow the procedure as specified under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 read with the Company Secretaries Regulations, 1980, in order to make investigations under the provisions of the Company Secretaries Act, 1980.

Where the Director (Discipline) is of *prima facie* opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

Q5. What are the consequences of *professional or other misconduct* done by any Company Secretary as specified under the First Schedule to the Company Secretaries Act, 1980?

Ans. Where the Board of Discipline is of the opinion that a member is guilty of a *professional or other misconduct* mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh.

Q6. What are the consequences of *professional or other misconduct* specified under the Second Schedule or both the Schedules to the Company Secretaries Act, 1980?

Ans. Where the Disciplinary Committee is of the opinion that a member is guilty of a *professional or other misconduct* mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) Reprimand the member;
- (b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) impose such fine as it may think fit, which may extend to rupees five lakhs.

Q7. Who can prefer an appeal against any order of the Board of Discipline or the Disciplinary Committee?

Ans. According to section 22E of the Company Secretaries Act, 1980, any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties under sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority constituted under section 22A of the Company Secretaries Act, 1980.

However, the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days.

The Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

Q8. What actions can be taken by the Appellate Authority?

Ans. Under section 22E of the Company Secretaries Act, 1980, the Appellate Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and after giving an opportunity of being heard to the parties concerned, pass any order to -

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

(d) pass such other order as the Authority thinks fit.

Q9. Can a Company Secretary in Practice allow any other person to practice in his name as a Company Secretary?

Ans. No. Pursuant to item (1) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot allow any other person to practice in his name as a Company Secretary, unless such person is also a Company Secretary in Practice and is in partnership with or employed by him.

Q10. Can a Company Secretary in Practice share his profits with any person?

Ans. No. Pursuant to item (2) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot pay or allow or agree to pay or allow, any share, commission or brokerage in the fees or profits of his professional work to any person who is not a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or a person having prescribed qualifications under Regulation 168A of the Company Secretaries Regulations, 1982.

Q11. Can a Company Secretary in Practice accept any part of profits of any other person?

Ans. No. Pursuant to item (3) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot accept or agree to accept any part of the profits of professional work of a person who is not a member of the Institute or as prescribed by the Council under Regulation 168A of the Company Secretaries Regulations, 1982.

Q12. Can a Company Secretary in Practice enter into partnership with any person?

Ans. No. Pursuant to item (4) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot enter into partnership with any person other than a Company Secretary in Practice or a member of any other professional body having such qualifications as may be prescribed by the Council under Regulation 168B or a person entitled under Section 4(1) (e) of the Company Secretaries Act, 1980.

Q13. Can a Company Secretary in Practice secure professional work through any means?

Ans. No. Pursuant to item (5) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot secure professional work by unethical means or by means which are not open to a Company Secretary or through the services of a person who is not his employee or partner or as may be prescribed by the Council from time to time.

Q14. Can a Company Secretary in Practice solicit clients or professional work through any means?

Ans. No, a Company Secretary in Practice cannot solicit clients or professional work either directly or indirectly, through circular, advertisement, personal communication/ interview or by any other means.

Q15. Whether Company Secretary in Practice can apply or request or invite or secure professional work from another Company Secretary in Practice?

Ans. Yes, a Company Secretary in Practice can apply or request or invite or secure professional work from another Company Secretary in Practice.

Q16. Can a Company Secretary in Practice respond to tenders or enquiries issued by various users of professional services or organizations?

Ans. Yes, a Company Secretary in Practice is also allowed to secure professional work as a resultant of responding to tenders or enquiries issued by various users of professional services or organizations from time to time.

Q17. Can a Company Secretary in Practice issue an Advertisement?

Ans. Item (7) of part I of the First Schedule to the Company Secretaries Act, 1980 prohibits a Company Secretary in Practice to advertise his professional attainments or services.

However, a Company Secretary in Practice can issue advertisement within the parameters of the 'Guidelines for Advertisement by PCS' issued by the Council of the Institute or any other guidelines issued by the Council from time to time.

Q18. Can a Company Secretary in Practice launch his own website?

Ans. Yes, a Company Secretary in Practice can launch his own website within the parameters of the 'Guidelines for advertisement by PCS' issued by the Council of the Institute or any other guidelines issued by the Council from time to time.

Q19. Can a Company Secretary in Practice uses designation other than 'Company Secretary'.

Ans. Pursuant to Section (7) read with item (7) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot use any designation or expression other than Company Secretary on professional documents, visiting cards, letterheads or sign boards. Use of degree of University established by law in India or recognized by the Central Government or use of a title indicating the membership of the Institute of Company Secretaries of India or any other institution recognized by the Central Government or recognized by the Council is allowed.

Q20. Can a Company Secretary in Practice use designation of "Practising Company Secretary", "Company Secretary in whole-time practice"?

Ans. The use of designation "Practising Company Secretary", "Company Secretary in whole-time practice" are allowed.

Q21. Whether a Company Secretary in Practice can use designations like Company Law Consultant, Income Tax Consultant, Corporate Adviser, Investment Adviser, Management Consultant, etc.

Ans. No, a Company Secretary in Practice cannot use designations like Company Law Consultant, Income Tax Consultant, Corporate Adviser, Investment Adviser, Management Consultant, etc.

Q22. Is there any need to make communication before accepting the position as a Company Secretary in Practice previously held by another Company Secretary in Practice?

Ans. Yes. Pursuant to item (8) of part I of the First Schedule to the Company Secretaries Act, 1980, it is mandatory for a Company Secretary in Practice to make communication in writing before accepting the position as a Company Secretary in Practice previously held by another Company Secretary in Practice.

Q23. Is there any prerequisite of seeking no objection certificate before accepting any assignment?

Ans. No, seeking no objection or consent of the previous incumbent is not a prerequisite of accepting any assignment as per item (8) of part I of the First Schedule to the Company Secretaries Act, 1980.

Q24. What should be the mode of prior communication with the previous incumbent before accepting any assignment?

Ans. Prior communication in writing with the previous incumbent as required under item (8) of part I of the First Schedule to the Company Secretaries Act, 1980 should be sent desirably through a registered post/ speed post or by hand with acknowledgement, in order to have a positive evidence of having a complete and effective communication. Mere posting of letter is not sufficient to comply with the requirements of this item, but acknowledgment by the addressee of the same is essential.

Q25. Can a Company Secretary in Practice charge professional fees based upon findings or result of any assignment?

Ans. No. Pursuant to item (9) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot charge or offer to charge or accept or offer to accept, fees based on percentage of profits, or which are contingent upon the findings or result of such employment, except as permitted under any regulations made under the Company Secretaries Act, 1980.

Q26. Can a Company Secretary in Practice engage himself in any other business or occupation?

Ans. No. Pursuant to item (10) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot engage himself in any business or occupation other than the profession of Company Secretary in Practice unless permitted by the Council so to engage. However, a Company Secretary can be a director of a company unless he is disqualified under the Companies Act, 1956 or the Companies Act, 2013.

Q27. What are the other businesses or occupation engagement to which by a Company Secretary in Practice has been generally permitted by the Council?

Ans. Pursuant to Regulation 168 (1) of the Company Secretaries Regulations, 1982, the Council has passed a resolution generally permitting a Company Secretary in Practice to engage himself in the following other business or occupation:

- (a.) Private tutorship.
- (b.) Authorship of books and articles.
- (c.) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
- (d.) Holding of public elective offices such as M.P., M.L.A., M.L.C.
- (e.) Honorary office-bearership of charitable, educational or other non-commercial organisations.
- (f.) Acting as Justice of Peace, Special Executive Magistrate and the like.
- (g.) Teaching assignment under the Coaching Organisation of the Institute or any other organisation, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable (whether by way of fixed amount or on the basis of any time scale of pay or in any other manner) by the member in practice for such assignment.
- (h.) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
- (i.) Editorship of professional journals.
- (j.) Acting as ISO lead auditor.
- (k.) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.
- (l.) Acting as Recovery Consultant in the Banking Sector.
- (m.) Becoming non-executive director/ promoter/ promoter director/ subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.
- (n.) Becoming non-executive director/ promoter/ promoter director/ subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold

substantial interest in the company.

Q28. What are the other businesses or occupation or engagement to which a Company Secretary in Practice requires specific permission of the Council?

- Ans. Pursuant to the Resolution of the Council under Regulation 168 (1) of the Company Secretaries Regulations, 1982, Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:
- (a) Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.
 - (b) Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
 - (c) Editorship of journals other than professional journals.

However, in cases of permission to be granted specifically, the Council may refuse permission in individual cases.

Q29. Whether specific permission of the Council is required by a Company Secretary in Practice to act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, etc.?

- Ans. No. Pursuant to Regulation 168 (2) of the Company Secretaries Regulations, 1982, no specific permission is required by a Company Secretary in Practice to act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management auditor, management consultant or as a representative on financial matters including taxation and may take up an appointment that may be made by the Central or any State Government, Court of Law, Labour Tribunals, or any other statutory authority.

Q30. Can a Company Secretary in Practice allow any other person to sign on his behalf?

- Ans. No. Pursuant to item (11) of part I of the First Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice cannot allow a person who is not a Company Secretary in Practice or a member who is not his partner, to sign anything on his behalf or on behalf of his firm, which he is required to certify as a Company Secretary or any other statements relating to it.

OBITUARIES

“Chartered Secretary” deeply regrets to record the sad demise of the following Members:

CS M N K Nayar (11.11.1918 – 04.02.2016), a Fellow Member of the Institute from Kottayam.

CS Suresh Kumar Gupta (05.11.1958 – 21.08.2015), a Fellow Member of the Institute from New Delhi.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.
May the departed souls rest in peace.

BUILDING CORPORATE INTEGRITY

(by M.S.Srinivasan)



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and wholeness. However integrity has an individual as well as a collective dimension or in other words there is something like corporate integrity, which can be regarded as one of the primary aims of corporate governance. This article examines the concept of corporate integrity and how to build it in an organisation in a holistic perspective, with a predominant stress on corporate governance.

THE MEANING OF INTEGRITY

In an ethical perspective, integrity means “walking the talk” which means harmony between speech, behaviour and action. In a more psychological perspective, integrity means harmony between thought, feeling, will and action or in other words “say what you do and do what you say.” Integrity is not only individual but also has a collective dimension.

Just like the individual, a collectivity like an organization also has a physical, vital and mental dimension. The physical dimension is the material structures like building or machinery and the rules and regulations which govern the material life of the community. The vital being in man expresses itself in the collective organism through the economic, social and political life of the community, like its power and wealth structures, interpersonal relationship or interactions and its systems of execution. Similarly, the collective mind of the community expresses itself through its information systems, knowledge-generating process, decision-making structures, research and development, mission, vision, values and culture. So for the collectivity, integrity means alignment of its physical, vital and mental dimension around a focal point of integration.

For awakening the moral force in the organisation, this focal point of integration has to be an ideal which transcends the short-term interest of the organisation and embraces the larger

Moral force cannot be confirmed merely by ideas, it can only be forged and tempered in the workshop of action.

- Sri Aurobindo

The modern corporate world as a whole is in the process of acquiring a conscience. Concepts like business ethics and corporate social responsibility are becoming part of the main stream of thought in management theory and practice. One of the terms we hear sometimes in the current ethical debate is “integrity”. It is perhaps a better word than “ethics” because while the word “ethics” conveys a sense of good and bad, right and wrong, do’s and don’ts, the term “integrity” gives a sense of character, integration

community or society or in other words a higher ideal beyond the bottomline goals, which leads to the well-being and progress of the community.

MONITORING INTEGRITY

This brings us to the question how to monitor the integrity of an organisation? This is one of the main functions of the Board of Directors of the Company.

Jack Welch, the well-known former CEO of GEC, says in his best-selling book “*Winning*” that one of the main functions of the board is to “gauge the integrity of the company” and in this integrity watch-dog role, “that boards can make a real contribution.”¹

There are two dimensions to the integrity of a company: professional and moral. Professional integrity means harmony between the governing ideal of the organisation and its strategy and actions or in other words how effectively the vision, mission and values of the company are lived or translated into action, behaviour and results in every activity of the corporate life. One of the main functions of the board is to keep a close watch over this professional integrity of the company. Jack Welch regards this role as an important function of the board which means to “Monitor the mission of the company? Is it real? Do people understand it? Is it being executed? Can it win?”²

A.K. Talwar, a highly respected Indian banker and former Chairman of State Bank of India and later Industrial Development Bank of India, provides some more useful perspectives. According to Talwar, the Board of Directors must review the following factors:

- Variations between budgets and actuals and reasons for the same
- Financial health of the company and its long-term fund requirements
- Marketing strategy, technological improvements carried out, organisational structure etc. and compare them with the latest international standards or developments.
- Long-term plans of the company, like for example, 5-year or 3 year rolling plans, along with the short-term yearly plans
- Market trends, product mix, competitor activities, capital investment, growth areas in the long term plan and detailed budget and cash flow in the yearly plan.³

The moral integrity of company means upholding some basic and universal human values like honesty, truthfulness, transparency, justice, fairness, compassion in all actions, behaviour and transactions of the company with its stakeholders like employees, customers, suppliers, government and the community or society. A performing board must keep a watchful eye on this moral quality of the organisation. Whenever or wherever there is violation or dilution in the moral fiber of the organisation, the board must act firmly to set it right.

1 Jack Welch, *Winning*, Harper Business, New York. 1995, Pg.253-54

2 Ibid

3 A.K.Talwar, *Tributes*, Srehuj& Company Ltd

And finally, sustaining the professional and moral integrity of the organisation requires right kind of leadership. Ensuring the quality of leadership is a crucial responsibility of the boards. This requires much more than choosing or evaluating the CEO or succession planning which are some of the well- recognised function of the board. The board must pay equal attention to ensure that people with right competence and character are in leadership positions in every vital function of the organisations, like for example finance or marketing, and management is taking the right steps to groom the future leaders.

This brings us to the question how to do this task of monitoring the integrity of the company? It cannot be done by sitting in the board room and talking about it. The directors must interact with every member of the executive team. They have to make uninformed visits to the work-places of the company from time to time and talks with the managers and employees.

BUILDING THE BOARD OF WISDOM

So, the ultimate responsibility for monitoring the integrity of the organisation lies in the Board of Directors. And to fulfill such a responsibility requires a Board of wisdom, character and competence.

A human group can only be as good as its members. If a board has to become a source of character, wisdom and competence to management, its members have to possess these qualities. How to create such a board and who can do it? The board is the apex of leadership in a company and therefore it cannot look up to something above itself. Any change or transformation in the board has to come from within itself through self-analysis, self-governance and self-transformation. The board has to form itself into a close-knit team and arrive at commonly accepted standards for choosing its members and defining their roles, responsibilities and tasks. The best boards try to do this by conducting a thorough analysis of the competencies required for high-quality board leadership and matching them with corresponding roles. Here is an example from Continental Airlines.

The board of Continental Airlines thoroughly analyzed the company's business issues to determine what skills and experience it needed. Directors zeroed in on knowledge of the airline and travel industries, an understanding of marketing and consumer behavior, access to key business and political contacts, and experience with industry reconfiguration.

The board then defined the capabilities and qualities expected of all directors, such as independence, business credibility, financial expertise, confidence, and teamwork. To be as representative as possible, it took into account directors' knowledge of geographic markets— particularly their knowledge of key Continental hubs— CEO experience, leadership in the business sectors, and gender and ethnic diversity.⁴

Next, the board assessed all of its directors and mapped their skills, experience, and backgrounds against the new criteria. The gaps became fodder for hyper targeted recruitment profiles. In the end, several board members voluntarily stepped down to make way for new directors who had the capabilities Continental

needed to compete successfully.⁵

In assessing directors, professional knowledge, experience and skill have to be an important factor. Some of the surveys list the following parameters which are useful for assessing the competencies of directors and matching them with appropriate responsibilities and roles.

- Detailed knowledge of company's industry
- Understanding of finance and public-reporting experience
- Understanding of company's key technologies and business practices
- Expertise in global business issues
- Potentially valuable external contacts

However in the West, even in the best boards likes that of Continental Airlines the primary emphasis is on the professional competence of directors. But in the new corporate and world-environment shaped by interdependence and complexity and globalisation, where factors like ethics, values, corporate responsibility and environmental sustainability are gaining increasing prominence, professional competence alone is not enough to provide effective leadership. Here comes the importance of Indian perspectives with its predominant emphasis on wisdom and character. In the future world an effective board must display character and a source of values and wisdom to top management. This Indian idea is now beginning to be recognised by the modern corporate mind. For example, Jack Welch says, "In the final analysis, best directors share four very simple traits: good character, common sense, sound judgement—particularly about people—and courage to speak up."⁶ All these four traits are expressions of character and wisdom. However let us look at the concept of character and wisdom in the light of a deeper perspective. We may define wisdom as insight which reason or professional competence or experience cannot give. In the modern corporate context, we may consider the following qualities as wisdom:

1. Holistic perspective which means the ability to view each thing as part of a larger whole, in relations with other things and with the whole.
2. Holistic decision-making which means the ability to assess the immediate and long term consequences of decision for the people, organisation or the society.
3. Insight into future possibilities, unmet needs and unmanifest potentialities.
4. Sensitivity to higher values like truth, beauty and goodness and the ability to internalize them into one's own self and implement them in the outer life.
5. Ability to judge the character, competence and the hidden potentialities of people.
6. Dynamic intuition into the underlying or hidden patterns behind the changing facts, appearances and events of life.

And character or to be more specific, good character, may be defined as a personality or individuality made of following qualities:

- Harmony of inner being and outer life or in other words between thought, feeling, will, action and behaviour

4 David A. Nadler, Building Better boards, Harvard Business Review, May 2004, Pg. 35

5 Jack Welch, Winning, Harper Business, 1995, Pg. 256

6 Special Report on Woman and works, 'Too Many suits'

- Someone who governs her lower self-made of her physical, sensational and emotional being by her higher nature made of her rational, ethical and aesthetic being.
- Inner strength made of firm will, persistence and courage in living and upholding her values, ideals or principles under all circumstances and against all opposition, difficulties and obstacles.

Such individuals with wisdom or character may be difficult to find in the corporate world. But they need not be necessarily from business. They can be from spirituality, art, civil society, literature, philosophy, science, public administration. In fact two or three individuals in the board from outside the corporate world give a multidisciplinary orientation to the board and brings a multi-angled perspective to decision making.

Interestingly, most of the latest research on teamwork indicates such a cognitive diversity made of multiple view-points and perspectives enhances the collective intelligence of a team or the group. An important part of the diversity is inclusion of woman.

Here again new research has found inclusion of woman in top management enhances the performance of the company. As a report on The Economist states:

"In 2004 Catalyst looked at the performance of Fortune 500 companies and found that the group with the highest representation of women in top management also had a much better return on equity than those with the lowest. Three years later it examined the boards of directors of the same group of companies and again found that those with the most women were, on average, more profitable and more efficient than those with the least. Companies with a 'critical mass' of women directors—at least three—did better than those with smaller numbers."

So in choosing the Board of Directors the qualities of wisdom and character have to be included along with competence in self-assessment on the lines indicated in the example of Continental Airlines, which we have described earlier.

7

PAN INDIA MEGA EVENT "WHIRLWIND PLENARY ON EVANGELIZING THE INTERNATIONAL CORPORATE GOVERNANCE DAY" ON APRIL 16, 2016

The Institute of Company Secretaries of India conceptualized the idea of having a day declared by the United Nations Organization as International Corporate Governance Day which shall be observed by every member. To build consensus on the above concept and discuss the importance of Corporate Governance, PAN India programme on Corporate Governance was organized on April 16, 2016 across 44 locations through Regional and Chapter offices of the institute where representatives from Chambers, Industry Associations and leading corporate professionals participated.

The programme commenced with hoisting flag carrying logo of International Corporate Governance Day. Thereafter balloons and postal stamp of International Corporate Governance day were released by Chief Guest to mark the occasion. Message from CS Mamta Binani, President ICSI on Corporate Governance were run at all the locations to give more insight in Corporate Governance Practice.

Thereafter, Talk show was hosted where representatives from Chambers, Industry Associations and leading corporate professionals shared their views about the importance of International Corporate Governance Code and day to have more transparency and better uniform corporate governance practices across the world.

ETHICS AND SUSTAINABILITY

(Contributed by Brahma Kumaris)

Once, a tailor was at work. He took a piece of cloth and with a pair of shining, costly, scissors; he cut the cloth into various bits. Then he put the pair of scissors at his feet. Then he took a small needle and thread and started to sew the bits of cloth, into a fine shirt. When the spell of sewing was over, he stuck the needle on to his turban.

The tailor's son who was watching it, asked him: "Father, the scissors are costly and look so beautiful. But you throw them down at your feet. This needle is worth almost nothing; you can get a dozen for ten paise. Yet, you place it carefully on your head itself. Is there any reason for this illogical behaviour?" "Yes, my son. The scissors have their function, no doubt; but they only cut the cloth into bits. The needle, on the contrary, unites the bits and enhances the value of the cloth. Therefore, the needle to me is more precious and valuable." exclaimed the tailor.

The value of anything depends on its character and utility, not on its cost-price or appearance. It is said that 'while building a house, every brick counts and while building a character, every thought, word and action counts'. And what counts, related to one's thoughts- words- actions, is exactly the quality of it. If we go by the definition of 'ethics', we understand that one's behavior is governed by one's ethics.

Let us ask ourselves: By pursuing what I am doing, will I be violating any civil or organizational law? Or are my actions fair to all concerned in the short term as well as the long term? Will it make me feel proud? All religions talk about ethics in life. Nobody can be ethical at one place and unethical at another. Just like a drop of poison in a glass of water, turns the whole water into poison, a trace of unethical behavior can ruin the ethical side of an individual. Thus authenticity as a whole needs to be established and practiced.

When a child is born to a family, all family members and relatives gather to celebrate the auspicious day and shower their blessings onto the child. The parents wish to bring up their child in the best possible manner and aim to bestow the best upon him/ her. As the child grows, he is sent to a school for formal education where teachers also wish the same for the child and try to give him the best of knowledge and skills so as to succeed ahead in life in a just manner. Education is thus believed to develop this wisdom of what is good and bad and the sense of judging our actions in each situation accordingly. Thus at every step conscious effort is being made to influence the minds of an individual

such that goodness builds up and prevails in his life. But then, the burning question is- why are we still worried in this age and century, struggling to set things and matter straight? Why are we talking about misconducts happening all around? Why is ethical behavior an urgent need of the society? What is this buzz about ethics all about and even after each one's conscious effort to develop goodness and ethics as a normal practice, where are things going wrong?

In the present scenario, the pressures, uncertainties and upheavals are increasing day by day in magnitude and wearing us out. People and their minds are tired. There is a dire need of some power that can enable the mind to remain stable in all situations. Where would one find such power? Since childhood, we have been trained so well to get things from people or outside world, to fulfill our requirements that the habit or propensity to explore within is under developed. On one hand, man has succeeded in going beyond several light years to explore other planets and stars in the universe. While, on the contrary, man is still struggling to go a step within to explore and experience this real power. In such a situation, when we are unaware of our true self, how can we be fully conscious of our ethics and follow them all the time?

Thus the root of unethical behavior at various levels of society or in any system or organization is mere lack of self awareness which has locked up the key to the imperishable treasures of peace, love, humanity, integrity, respect, contentment and power. As a result of this lack of self awareness, when we are unable to locate this key to all the treasures within, we start looking outside to accumulate enough triggers that can simulate similar responses to these feelings, in order to make one experience them, even though for a short while. This increases our dependency on external factors and we tend to get influenced with materialism. Since the effect of peace, love, contentment, power and other such feelings derived out of materialism is short termed, we are compelled to re-initiate the hunt for the next roller-coaster of emotions and feeling. And soon this dependency takes a toll over us and transforms into addiction of materialism. After that, it doesn't take much time for our human values to get corrupted & material values to become dominant. The first influence of materialism impacts our identity. We as Human Beings are the most intellectual beings on earth. And it is this power of our intellect that allows us to establish new connections and play with them. Our intellect justifies the meaning perceived by our mind and makes us experience the fruits of this connection with things that we own or roles that we play. Hence, losing the sight of our inner

conscience over time, we attach ourselves to the materials we possess or the roles that we play. When we forget the 'being' part of 'human', we get entangled in the 'doing' part to derive a meaning out of our existence. This transforms our consciousness from 'Human Being' to 'Human Doing' as we start shift our identity from our innate ethical self to the quality of our possessions and the quality of our work. Ethical system of the self thus crashes and we are left at the mercy of situations and external environment which enforces the unethical behavior sparked with the feeling of identity crisis (thus individuals start struggling for survival of the fittest), aggravated by attachment, insecurity and fear.

Just as the deficiency of any vitamin in the body is treated by intake of ingredients which are rich in that particular vitamin, the deficiency of ethics in the self can be treated by first creating thoughts aligned with the ethics, followed by words which reflect our true and pure intention, free from the sting of duality and finally practicing ethical actions. The more we practise ethical means to lead life, the more the life rewards us with true inner peace, lightness, contentment, sense of self worth and achievement, encompassing us in the loop of ethical behavior. As a single negativity opens the doors to others building a negative character, initiation of ethical behavior builds-up the ethical character.

It is through knowledge of this truth and little practice, that we can resurface these ethics- originally and intrinsically programmed within the soul. At the outset, one needs a conviction to follow or practice their ethics. Going against the odds does create some friction due to resistance from those who are still in the consciousness of 'Human Doing'. Nevertheless, the strength to flow against the river can be gained when we refine our intellects and use it to make sense of our own actions. Virtues of introvertness and fore-sightedness developed through spirituality help the intellect to be free from the limitations of prejudices of past experiences or influence of negativity, which is considered as 'normal' otherwise. A pure or refined and 'free' intellect is more intuitive; can 'catch' the signals from external environment, exercise better self control and take better decisions. This not only enables us mobilize our inner positivity and strength but also fills the craters on our relationships with others and enhances our working efficiency.

It is established that the future belongs to those organizations which call for good governance. Good governance also implies the one which is sustainable. Sustainability means generating favorable results every time. A sustainable governance or system means the graph of desirable outcome is progressive in nature. Furthermore, it means meeting today's needs without compromising the needs of future generations; as it is said – child is the father of

man. Good Governance and Sustainability are not based on the principle of greater material prosperity for a few, but equitable prosperity for all. It presumes that we are part of an ecosystem which we are obliged to sustain and preserve. It encompasses an element of sacrifice of our seemingly unwanted and unlimited wants and desires and it forces us to question the kind of human being we want to become. However, it is observed that good governance and sustainability often suffer from conflicts between the goals and the means to achieve the goals. For instance, some are dutiful because they want to win laurels, prestige, position or power while others do it because it gives them inner satisfaction. It is needless to mention that the former is like a patient on ventilated life support- as soon as he is put off the ventilator, the very reason of his 'dutiful' behavior ceases to exist. Then the person or even may be a system, when put on next ventilator (which may include another boss, stakeholder, customer or policy), starts 'living' again. This violates the definition of sustainability. While for the latter, the dutiful behavior is based on inner satisfaction and thus the behavior is sustained as long the person in the system or the system exists, giving birth and sustenance to a long-lived sustainable system. Therefore, ethical governance or a system which is ethically standardized does not fluctuate with the fluctuations of the external environment and short termed luring, goals or profits. When ethics like- integrity, responsibility, self worth, respect, transparency, good will, dedication, dutifulness, truthfulness, real power and many more become natural tools used by administration or governance which ensure a fulfilled- contented self and happy and satisfied employees, co-workers, stakeholders and customers. The consequence is that human- ties become stronger, credibility increases, trust and compliance rise. Initially we protect or safeguard and sustain our ethics and consequently the same ethics protect or safeguard and sustain us in the system. Ethics and sustainability thus go hand-in-hand and complement each other.

If we extend this concept of sustainability in all spheres of corporate, societal, political and environmental systems, achieving it would require worldwide collaboration, which is not possible without shared values. Action with regard to such capacity-building is required within every sector and level of society as both formal education at school but also at home, in the community and workplace. Spirituality thus comes into picture to add the missing dimension of self awareness, self control and self transformation. When we understand what we need, it is then looking at others through the spectacles of spiritual wisdom and its experience that we automatically can interpret what others might need in the present times. Through this we can establish a world where virtues like sharing and caring can be prodded whereas evils like distrust, ego, jealousy, corruption, violence, non-compliance to human values etc can disappear.

KFA-A LESSON ON CORPORATE GOVERNANCE IN FAMILY BUSINESS

(by Asish K. Bhattacharyya)



Asish K. Bhattacharyya

Professor and Head, School of Corporate Governance and Public Policy, Indian Institute of Corporate Affairs; and Chairman, Riverside Management Academy Private Limited

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UB Group launched the KFA in the year 2005 as a five star airlines. In the initial years, KFA had set high standard of passenger services. In 2007, KFA acquired Air Deccan, the Low Cost Carrier (LCC), which was incurring significant loss, and later merged the same with KFA. Although, the real objective of the acquisition was to cross the legal hurdles of flying internationally quickly, KFA operated in both the LCC and premium segments. Some experts believe that acquisition of Air Deccan and operating in both the segments at the same time was a bad strategy, which caused the downfall of KFA. KFA never earned profit. It accumulated loss and debt. It went through two debt restructuring. It started defaulting on many counts. In 2012 Directorate General of Civil Aviation (DGCA) suspended the Scheduled Operator's Permit (SOP) resulting in grounding of KFA. KFA's failure is attributed to many reasons, including high fuel cost, competition from LCC and bad business strategy resulting in over investment and high operating costs.

KFA story highlights the governance philosophy of family-controlled business groups in India. Groups often build diversified portfolio of business to reduce the risk of family investment. Diversification strategies and other corporate strategies are decided at the family level, outside the Board of the holding company or a group company. Those are often formulated based on family needs, such as succession plan, and reflect the aspirations of the family. The Board simply approves the strategies placed before it. For example, investment in KFA by the UB group reflects the aspirations of Mr. Mallya. Some observed that the KFA business model reflected his flamboyant personality. Although, it is difficult to collect evidence on whether the diversification and business strategy was discussed in detail in the board of the holding company and KFA, we may not be very wrong to assume that boards never discussed strategies objectively and independent directors did not ask stimulating questions to Mr. Mallya while approving strategies. It is not unusual that independent directors prefer not to challenge charismatic leaders as the charisma of the

leader overwhelms them.

Every business family aims to protect and create family wealth. Therefore, the interests of stakeholders are protected by the presence of the anchor investor, which is the family. But, some time, promoter's exuberance and aspirations expose the company to unwarranted risks, the family focuses on empire building or family feud destroys family wealth. It is utopian to expect independent directors to protect the company from undue risks arising from such exuberance and aspirations, family's empire building initiatives or poor family governance. At best, the Board is used as a sounding board, while the final decision remains with the family.

Business ventures fail for many reasons. It is incorrect to assume that ventures fail only due to mismanagement. Business ventures fail due to change in the external environment, such as economic downturn. In India firms take loan from banks and when a firm goes through financial crisis, it requests bank for debt restructuring. Banks take promoter-director's personal guarantee while approving debt restructuring. Recently, the government has advised public sector banks to invoke the personal guarantee at an early stage of the recovery of debt that has become a non-performing asset (NPA). The promoter has no option but to put at stake his/her personal wealth when the company passes through financial crisis and seeks funding from banks. This is against the very basic principle of 'limited liability', which connotes that the liability of a shareholder in a company is limited to the amount that he/she commits to invest in the company. However, this is the reality. Promoter's personal guarantee provides comfort to lenders that the promoter, in order to protect his/her personal wealth, will not willfully mismanage the company or expose it to unwarranted risks. However, it might stifle the entrepreneurial spirit of the promoter. More importantly, this practice has given credence to the corporate governance philosophy that the family, not the Board, is the highest decision-making body of the company.

In family-managed business groups, the monitoring role of independent directors is secondary and the advisory role is primary. It will remain so even if the law emphasises the monitoring role. Moreover, as happened in case of KFA, independent directors, who have no stake in the company, prefer to resign from poorly governed or crisis-ridden companies, rather than to continue and protect stakeholders' interest. Distinguished people such as heart surgeon Dr Naresh Trehan, tennis great Vijay Amritraj, former chairman of LIC and SEBI G N Bajpai, ex-finance secretary Piyush Mankad, Rediff India founder Diwan Arun Nanda and bankers of repute had served KFA as independent directors and left at different stages when the company faced crisis. Resignation of number of independent directors in a short span signals that crisis is brewing in the company or the company is poorly governed. This information is valuable to stakeholders.

We do not need to have a separate corporate governance model for family business. But we should not expect independent directors to play the same role that they play in a company where there is no concentration of ownership. In a family controlled company independent directors should act as friends, philosophers and guides. Only the most trusted leader, who is an outsider to the family, can help the family to improve family governance and navigate difficult situations in family governance.

DEVELOPMENTS – APRIL 2016

Securities Commission Malaysia Invites Public Feedback on Draft Malaysian Code on Corporate Governance

The Securities Commission Malaysia (SC) has released the proposed draft Malaysian Code on Corporate Governance 2016 (MCCG 2016) for public consultation on 18th April 2016. The comments are due by 8th June 2016.

The first Malaysian Code on Corporate Governance (Code) was introduced in the year 2000. The Code was revised twice in 2007 and 2012 to ensure that its principles and recommendations were aligned with business practices and market development. Recognising the need for regular enhancement to corporate governance practices, the MCCG 2016 adopts a different approach from previous Codes. The new approach aims to encourage progression and emphasises on conduct and outcomes from corporate governance practices.

The MCCG 2016 streams corporate governance practices into two categories -Core and Core+. Companies are expected to disclose their adherence to the Core practices on an 'apply or explain an alternative' basis, which encourages greater thought process in undertaking the practices, and in making disclosures.

While Core+ practices are voluntary, companies are strongly encouraged to adopt them and disclose in the annual report how these practices are being undertaken or implemented.

Source: http://www.sc.com.my/post_archive/sc-invites-public-feedback-on-draft-malaysian-code-on-corporate-governance-2016/

PCAOB of U.S.A proposes new requirements for audits involving other auditors

On April 12, 2016, the Public Company Accounting Oversight Board ("PCAOB") issued for public comment up to July 29, 2016, a proposal to modify its auditing standards pertaining to a lead auditor's responsibilities for planning, supervising and evaluating the work of other auditors (from the same network of firms as the lead auditor or outside the network).

Auditors who contract other accountants or accounting firms to review a company's financial reports would need to increase supervision of the work they delegate under a proposal from the government's audit-industry regulator.

The proposal is intended to strengthen the existing requirements and impose a more uniform approach to the lead auditor's supervision of the work of other auditors, and enhance the ability of the lead auditor to prevent or detect deficiencies in the work of other auditors.

Amendments relating to the supervision of other auditors: The PCAOB's proposal would:

- Revise requirements for determining a firm's eligibility to serve as lead auditor.
- Require the lead auditor to gain an understanding of each other auditor's knowledge of SEC and PCAOB independence and ethics requirements and their experience in applying the requirements.
- Prescribe certain procedures to be performed by the lead auditor with respect to the supervision of other auditor's work
- Require the lead auditor's documentation to contain a specified list of other auditors' working papers reviewed, but not retained by the lead auditor.
- Require the engagement quality reviewer to evaluate the

engagement partner's determination of a firm's eligibility to serve as lead auditor.

Detail news is available at <https://www.pwc.com/us/en/cfodirect/assets/pdf/in-brief/us-2016-16-pcaob-proposal-audits-involving-other-auditors.pdf>

First set of GRI Sustainability Reporting Standards released for public comment

On 19th April 2016, GRI has released the first set of exposure drafts of GRI Sustainability Reporting Standards (GRI Standards) for public comment.

GRI Standards include the same main concepts and all relevant disclosures from G4, in an improved structure, format, and presentation. The content from the GRI G4 Guidelines and Implementation Manual form the basis for the content in GRI Standards. There are three 'universal' standards applicable to all organizations, and approximately 35 'topic-specific' standards based on the Aspects within G4. This first set of exposure drafts includes the three GRI Standards that will be applicable to all organizations:

- The Foundation Standard includes the Reporting Principles and 'in accordance' criteria. This is the entry point for organizations using GRI Standards.
- The General Disclosures Standard covers organizational profile, governance, stakeholder engagement, reporting practice, strategy and analysis.
- The Management Approach Standard includes the disclosure on management approach (DMA) from G4, and may be used with any topic-specific GRI Standard.

The exposure drafts also include three topic-specific GRI Standards: Emissions, Indirect Economic Impacts and Public Policy. GRI Standards are primarily intended to be used together as a set of standards. Organizations preparing sustainability report 'in accordance' with GRI Standards will use all three universal standards and will be able to make their own selection of relevant topic-specific standards, based on those that are material. Organizations can also use individual GRI Standards or their contents to disclose specific sustainability information and are required to include a reference in any published materials.

Detail news is available at <https://www.globalreporting.org/information/news-and-press-center/Pages/Firstset-of-GRI-Sustainability-Reporting-Standards-released-for-public-comment.aspx>

Remember!!

3 May	World Press Freedom Day
15 May	International Day of Families
17 May	World Telecommunication and Information Society Day
21 May	World Day for Cultural Diversity for Dialogue and Development
22 May	International Day for Biological Diversity
29 May	International Day of UN Peacekeepers
31 Ma	World No-Tobacco Day

FEEDBACK & SUGGESTIONS

Readers may give their feedback and suggestions on this page to Ms. Banu Dandona, Joint Director, ICSI (banu.dandona@icsi.edu)

Disclaimer:

The contents under 'Corporate Governance Corner' have been collated from different sources. Readers are advised to cross check from original sources.

NEW POWERS CONFERRED ON NATIONAL COMPANY LAW TRIBUNAL UNDER THE COMPANIES ACT 2013

National Company Law Tribunal would be dealing with the matters that are currently under the purview of Company Law Board, High Court and BIFR. In Addition the Companies Act 2013 confers certain new powers to National Company Law Tribunal which is not provided under Companies Act 1956.

NEW POWERS OF THE NATIONAL COMPANY LAW TRIBUNAL (NCLT)

SECTION	POWER
2(41) Proviso	To allow certain companies or body corporate to have a different financial year.
7(7)	Powers to pass orders like changes in management of the company, changes in MOA and AOA of the company, directing liability of members as unlimited, removing name of the company from the register of companies, ordering winding up of the company etc. for companies incorporated by furnishing of false representation or by suppression of material facts etc.
8(9)	Powers to impose conditions on transfer of remaining assets to other similar companies after winding up of charitable companies.
55(3)	To approve issue of further redeemable preference shares when a company is unable to redeem its existing unredeemed preference shares or to pay dividend thereon.
55(3) proviso	To order forthwith redemption of such preference shares the holder of which have not consented to the issue of further redeemable preference shares.
56(4)	To make an order imposing prohibition on delivery of certificates for the securities issued by a company.
59(3)	To order suspension of voting rights of the holder of securities.
59(4)	To direct a company or depository to set right a contravention of SCRA or SEBI Act or any other law, resulting by transfer of securities and to rectify concerned registers and records held by the company or depository.
61(1) (b) proviso	To approve consolidation or division of share capital resulting in change in voting percentage of shareholders.
125(3)(d)	To sanction utilization of Investor Education and Protection Fund for reimbursement of legal expenses incurred on class action suits by members, debenture holders or depositors.
130(1)	To order that the accounts were prepared in a fraudulent manner or the affairs of the company were mismanaged thereby requiring re-opening of books of accounts of the company.
131(1)	To approve voluntary revision of financial statements or Board's Report.
140(5)	To order a company to change its auditors on being satisfied that the company's auditor(s) has acted fraudulently, either on suo motto or on application of Central Government or by any other person concerned.
218(1)	To approve the proposed action to be taken against any employee during the course of any investigation
221(1)	To order freezing of assets of company in connection with enquiry or investigation into the affairs of the company subject to conditions and restrictions imposed by it.
222(1)	To direct that the transfer, removal or disposal of securities shall not take place for a period not exceeding 3 years.
224(2)	To entertain petition for winding up of company or body corporate in pursuance of inspector's report.
224(5)	To pass orders with regard to disgorgement of asset, property or cash or to hold any person personally liable for any fraud detected in the inspector's report.
226,1st proviso	To pass orders after inspector's intimation of pendency in investigation proceedings
230(6)	To sanction compromise or arrangement agreed to at the meeting of creditors / members ordered by the Tribunal.
230(9)	To dispense with calling of meeting of members/creditors for approving compromise /arrangement
230(12)	To pass orders on an application on grievance in respect of takeover offer of companies other than listed companies.
245	To pass order on Class action suits filed by prescribed number of members or depositors to prevent oppression mad mismanagement by the company.



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

17TH NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES

PCS @ Startup – Accelerate – Outpace

8 PCH for
Members
16 PDP for
Students

Days & Dates: Thursday & Friday, August 12-13, 2016
Venue: Welcome Heritage Glenview Resort, Kasauli, Himachal Pradesh

COVERAGE

1. Startup India – Professional Opportunities for PCS covering
 - Insolvency Laws
 - Goods and Services Tax
 - Arbitration Law
 - Real Estate Act
2. National Company Law Tribunal, Companies (Amendment) Bill, 2016, Competition Law
3. Spiritual Wellbeing / Self Motivation
4. Ease of Doing Business in India – Facilitations and Obstructions

Key Takeaways

- Explore new opportunities in the areas of practice
- Share knowledge amongst the peer group
- Interact with experienced and expert faculty
- Update and sharpen technical and professional skills /
- Build Professional Networking
- Enjoy the scenic beauty of Kasauli and rejuvenate

Speakers

- Eminent speakers and experts with comprehensive exposure to the practical aspects of the topics will address and interact with the participants.

Participants

- Company Secretaries and other Professionals in Secretarial, Legal and Management disciplines would be benefited by participating in the Conference. **All are requested to participate in the National Conference in large numbers and make it a huge success.**

CHAIRMAN, PCS COMMITTEE	PROGRAMME DIRECTOR	PROGRAMME COORDINATOR	PROGRAMME FACILITATOR	CO-PROGRAMME FACILITATOR
CS Ashish Garg Council Member, ICSI	CS Vineet K Chaudhary Council Member, ICSI	CS Manish Gupta Chairman, NIRC of ICSI	CS G S Sarin Chairman, Chandigarh Chapter of ICSI	CS Smriti Sud Chairperson, Shimla Chapter of ICSI

Tentative Programme Schedule	
Day-1: Thursday, August 12, 2016	
11:00 am to 1:00 pm	Delegate Registration
1:00 pm to 2:00 pm	Lunch
2:00 pm to 3:30 pm	Inaugural Session
3:30 pm to 04:00 pm	Tea / Coffee Break
04:00 pm to 05:30 pm	Session 1 Panel Discussion: Start Up India– Professional Opportunities for PCS • Insolvency Laws • Goods and Services Tax • Arbitration Law • Real Estate Act
05:30 pm to 07:00 pm	Session 2 Companies (Amendment) Bill, 2016 National Company Law Tribunal Competition Law
08:00 pm onwards	Cultural Evening & Networking Dinner
Day-2: Friday, August 13, 2016	
9:00 am to 10:00 am	Interactive Session (for Members of ICSI only)
10:00 am to 11:15 am	Session 3 Spiritual Wellbeing / Self Motivation
11:15 am to 11:30 am	Tea / Coffee Break
11:30 am to 1:00 pm	Session 4 Panel Discussion: Ease of Doing Business in India- Facilitations and Obstructions
01:00 pm to 02:00 pm	Networking Lunch
02:00 pm to 03:00 pm	Closing Plenary

Articles for Souvenir-cum-Backgrounder

A Souvenir-cum-Backgrounder containing theme articles and other relevant information will be brought out to mark the occasion. Members who wish to contribute papers for publication in the Souvenir-cum-Backgrounder are requested to send the same on or before July 15, 2016 through email to CS Saurabh Jain, Deputy Director, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi–110003 at saurabh.jain@icsi.edu and devender.kapoor@icsi.edu.

The paper / article should not normally exceed 15 typed pages. Members whose papers/articles are published in the Souvenir-cum-Backgrounder of the Conference shall be entitled to grant of FOUR Programme Credit Hours and an honorarium of Rs. 2,500/-. The decision of the Institute shall be final in all respects. Members are also requested to mention their income tax PAN while submitting the articles, in order to enable us to expedite the payment of honourarium.

DELEGATE REGISTRATION FEE AND REGISTRATION PROCEDURE

Delegate Registration Fees (Incl. of Service Tax)

Delegate Category	Early Bird payment upto July 15, 2016	Early Bird payment upto July 31, 2016	Payment August 01, 2016 Onwards
Members	4000	4500	5000
Non-Members	4500	5000	5500
Accompanying Spouse/Children above 12 years	3000	3500	4000
Students/CSBF Members/ Senior Members (60 years and above)/ Partners of Peer Reviewed Practice Units (<i>Subject to the Presentation of Peer Review Certificate</i>)	3500	4000	4500

Registration fee is inclusive of service tax and covers Lunch (2), Dinner (1), Morning /Evening Tea/ Coffee with Cookies, Conference Kit & Backgrounder.

Accommodation

Accommodation on 'first come first served basis' has been arranged at the conference venue, i.e., Welcome Heritage Glenview Resort, Kasauli, Himachal Pradesh for outstation delegates.

Room Tariff (per delegate)

Room Occupancy basis	Accommodation charges for one night
Single Occupancy	Rs. 6000 (incl. of Taxes)
Double Occupancy / Twin Sharing (Delegates with Spouse or any other delegate)	Rs. 3500 (incl. of Taxes)
Triple Occupancy (Three delegates in one room)	Rs. 3200 (incl. of Taxes)

Alternative Accommodation arrangements

In addition to the accommodation arrangements at Welcome Heritage Glenview Resort, special arrangements have also been made at Kasauli Resorts, Kasauli, Himachal Pradesh for stay of delegates during August 12-13, 2016.

Room Tariff (per delegate)

Room Occupancy basis	Accommodation charges for one night
Single Occupancy	Rs. 5500 (incl. of Taxes)
Double Occupancy / Twin Sharing (Delegates with Spouse or any other delegates)	Rs. 2750 (incl. of Taxes)
Triple Occupancy (Three delegates in one room)	Rs. 2333 (incl. of Taxes)

Important Instructions:

- Standard Check in: 12th August, 2016 (12:00 Noon) / Standard Check out: 13th August, 2016 (12:00 Noon).
- Limited rooms are available.
- Any extra stay will be charged separately, subject to availability of rooms and receipt of reservation charges in advance.
- Delegates with chauffeur driven cars will have to pay extra charges for accommodation and food arrangements for driver during the Conference. These charges have to be paid immediately on arrival.
- Any extra facilities availed by the delegate during the stay have to be paid directly to Hotel.
- The accommodation is to be booked directly by the delegates by visiting the weblink provided by hotel details of which will be made available on the ICSI website.

How to reach Kasauli:

- **By Air** - The most convenient option by air is to reach Chandigarh, 65 km away from Kasauli. The connecting flights to Chandigarh are available from Delhi, Mumbai, Hyderabad, Bengaluru, Srinagar, Kolkata and Indore.
- **By Train** - Kalka is the nearest railhead situated 40 km away. There are rail links available from cities like Amritsar, Delhi, Kolkata and Mumbai upto Kalka.
- **By Road** - Kasauli is well connected to Delhi and Chandigarh by road. Chandigarh is an hour's drive from Kasauli while Delhi can be reached in five and a half hours.

Pickup and drop at Chandigarh / Kalka

Special arrangements are being made for the group pickup and dropping of delegates and their family members from the Chandigarh Airport and railway stations at Chandigarh junction and Kalka. The details about the same will be hosted on the ICSI website.

Delegate Registration Procedure

Delegate Registration only through Online Mode: Delegates are requested to register for the Conference through Online Mode only. Please note that payments are not accepted through demand draft, cheque, cash, electronic transfer, etc. The entire fee is payable in advance and is not refundable once the nomination is accepted. For registration, please follow the link available at www.icsi.edu.

Programme Credit Hours

Members of the Institute attending the National Conference on both days will be entitled to grant of 8 (Eight) Programme Credit Hours. Students attending the National Conference will be entitled to 16 (Sixteen) hours of Professional Development Programme.

Advertisement in Souvenir-cum-Backgrounder

The Souvenir-cum-Backgrounder containing important information, programmes, lists, etc. would be widely circulated to professionals, corporate and regulatory authorities. Advertisement released in the Souvenir would receive wide publicity for Products, Services and Corporate Announcements. Members/Organisations are requested to release advertisements. Advertisement material/requests for stalls/sponsorship requests along with the cheque/demand draft drawn in favour of 'The Institute of Company Secretaries of India' may be sent to Ms. Preeti Kaushik Banerjee, Director, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110003, Tel: 011-45341077 and email: preeti.banerjee@icsi.edu on or before August 05, 2016.

Advertisement Tariff

Color Ad	Rate (In Rs.)	Size	Black & White Ad	Rate (In Rs.)	Size
Back Cover	50,000	18cm x 24 cm	Full Page	15,000	18cm x 24cm
Inside Cover (Front/Back)	40,000	18cm x 24 cm	Half Page	10,000	18cm x 12cm
Special Page	25,000	18cm x 24 cm	Quarter Page	5,000	9cm x 12cm

Stalls

Stalls for display of products Sponsorships Rs. 25,000 per stall (maximum size 6' x 6')

Sponsorships

1.	Principal Sponsor	Rs. 5,00,000 (One)
2.	Gold Sponsor	Rs. 3,00,000 (One)
3.	Silver Sponsor	Rs. 2,00,000 (Two)
4.	Lunch Sponsor	Rs. 2,50,000 (Two)
5.	Dinner Sponsor	Rs. 3,50,000 (One)
6.	High Tea Sponsor	RS. 1,00,000 (Three)
7.	Cultural Programme Sponsor	Rs. 1,00,000 (One)
8.	Sponsorship for Conference Kit	Rs. 1,25,000 (One)

Service Tax Extra, if the sponsorship is from a body corporate / partnership firm, service tax would be deposited by the sponsor under the Reverse Charge Mechanism. Logo of all organizations providing sponsorships of Rs. 1,00,000/- and more will be put on the conference backdrop.

* Co-sponsors may be considered

For clarification or queries please contact the following:

- **Submission of articles for souvenir-cum-backgrounder & programme details**
 - o CS Saurabh Jain, Deputy Director – Tel: 011 – 45341035; email saurabh.jain@icsi.edu
- **Advertisement material/requests for stalls/sponsorship requests**
 - o Ms. Preeti Kaushik Banerjee, Director – Tel: 011 – 45341077; email Preeti.banerjee@icsi.edu
- **Delegate Registration and Accommodation**
 - o Mr. Devender Kapoor, Assistant Director – Tel: 011 -45341029; email: devender.kapoor@icsi.edu

SECRETARIAL STANDARDS BOARD SOLICITS VIEWS/SUGGESTIONS

The Secretarial Standards Board (SSB) of the Institute is formulating/revising the following Secretarial Standards in tune with the Companies Act, 2013 and other applicable laws:

- Secretarial Standard on Dividend
- Secretarial Standard on Board's Report
- Secretarial Standard on Registers and Records

Kindly send us the issues/grey areas faced/ identified in the Companies Act, 2013, Rules and other applicable laws with respect to the aforesaid Standards, Practices being followed by your company in respect of these topics which in your opinion need to be addressed in the Secretarial Standards to remove the legal anomaly/issues/grey areas.

Please send your suggestions to ssb@icsi.edu on or before Monday the 30th May 2016.

ATTENTION MEMBERS

17th National Conference of Practising Company Secretaries August 12-13, 2016 at Kasauli, Himachal Pradesh

The Institute is organising the 17th National Conference of Practising Company Secretaries on August 12-13, 2016 at Kasauli, Himachal Pradesh. The detailed brochure containing theme and sub themes and other information will be uploaded on the website of the Institute shortly.

With a view to commemorate the occasion, the Institute has decided to bring out a publication showcasing the reach and strength of the profession of company secretaries. In this connection, it has been decided to publish the following details in the proposed publication,

The profiles of first 10 ACS, first 10 FCS, first 10 CP holders and first 10 CSBF Members

The profile and journey of company secretaries having 3 or more members in their families

The profile of members who have achieved recognition in a field other than as company secretaries such as Limca Book Award/Padma Awards/ Participation in National Sports Events/the recognition in the area of music/art/cultural activities/Member of Parliament/Member of Legislative Assembly or any other recognition of National Importance

We invite the members to send their profiles/bio data (single space – Font : Verdana 10 point) in the following format latest by July 15, 2016 at devender.kapoor@icsi.edu with the subject “17 PCS – Profiles”.

Sl. No.	FIRST 10 ACS	FIRST 10 FCS	FIRST 10 CP HOLDERS	FIRST 10 CSBF MEMBERS	COMPANY SECRETARIES HAVING 3 OR MORE MEMBERS IN THEIR FAMILIES	PROFILE OF MEMBERS ACHIEVED RECOGNITION IN A FIELD OTHER THAN AS COMPANY SECRETARIES
(I)	(II)	(III)	(IV)	(V)	(VI)	(VII)

We look forward to receiving your profile at the earliest.

Members whose bio data was published in the 16th National Conference of Practising Company Secretaries “Udan” last year, need not to send bio data again unless any other achievement obtained during the year.

Required

Appointment

Company Secretary at Mumbai

Capital Investment Research Services Private Limited, having its registered office at Mumbai requires dynamic, diligent & result oriented Company Secretary.

The Candidate should be a qualified Company Secretary with 2 Years of experience preferably worked in Company or similar industry.

Candidate should be capable of liaising with various Government Authorities.

Should have flair for writing, drafting and vetting of legal documents, agreements, contracts, MOU. Drafting and filing of various returns with different Government Authorities.

Interested candidates fulfilling the above criteria can email their CVs to cs@skparekh.com.



Capital Investment Research Services Private Limited

3rd Floor, Vibgyor Tower, Opp. Trident Hotel
Bandra Kurla Complex, Bandra (East),
Mumbai 400 051 India .T: + 91 22 6731 2900

SPECIAL ISSUES OF

CHARTERED SECRETARY

It is proposed to bring out the special issues of Chartered Secretary on the following topics:

1. NCLT (July 2016 issue)
2. LODR(September, 2016 issue)
3. Competition Law (November 2016 issue) and
4. Social Audit and CSR (December 2016 issue).

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues.

The articles may kindly be forwarded to:

The Director(Publications), the ICSI, 22, Institutional Area, Lodhi Road, New Delhi – 110003.

e-mail: ak.sil@icsi.edu

CONGRATULATION

“Dr. Asim Kumar Chattopadhyay, FCS, on his being awarded Post Doctoral degree “D.Litt.” by Rani Durgavati Vishwavidyalaya, Jabalpur (MP) for his research topic “Inclusive Finance – A Road Map”



(With Effect from 1st April 2012)

BACK COVER (COLOURED)		COVER II/III (COLOURED)	
Non - Appointment		Non - Appointment	
Per Insertion	₹ 75,000	Per Insertion	₹ 50,000
4 Insertions	₹ 2,70,000	4 Insertions	₹ 1,80,000
6 Insertions	₹ 3,96,000	6 Insertions	₹ 2,64,000
12 Insertions	₹ 7,65,000	12 Insertions	₹ 5,10,000

FULL PAGE (COLOURED)		HALF PAGE (COLOURED)	
Non-Appointment	Appointment	Non-Appointment	Appointment
Per Insertion	₹ 40,000	Per Insertion	₹ 20,000
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6 Insertions	₹ 2,11,200	6 Insertions	₹ 1,05,600
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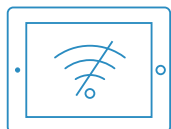
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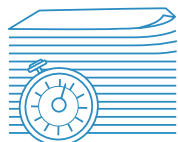
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