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Recommendations of the FSLRC: Redesigning the Institutional Framework for Financial Sector Regulation

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Recommendations of the FSLRC: Redesigning the Institutional Framework for Financial Sector Regulation
P-398

Dr. C. K. G. Nair

One of the important objectives of market regulation is behaviour modification of the players in the system. Given the large number of players, huge number of transactions and the high speed and frequency of activities in a deep and active market 'order' or discipline in the markets cannot be achieved by means of the traditional approach of controls and administrative dictates. Instilling market discipline needs a statutorily sound institutionalised approach which works as if in a game where the umpires and the players perform their roles according to the rules of the game. Opportunistic behaviour will be constrained by these institutions – which include the laws, rules, regulations and the financial regulators and other agencies involved. This is at the core of the philosophy of regulation enshrined by the FSLRC in its recommendations which tries to host financial market regulation to a new trajectory.

Ethics and Compliance through Reward System
P-402

Dr. Joffy George Chalakkal

Currently we live in a society driven by some form of bonus to perform a task outside our normal duties. Obviously this is not always the case but, more often than not this is the reality today. How do we get anyone to do the right thing without providing some type of incentive? All pay based systems provide some form of reward for extra performance by an employee. People should not be rewarded for doing their jobs – this is the most common objection to the idea of considering compliance and ethics in evaluations and rewards. The view is that people are supposed to do the right thing; if anyone is not ethical they should just be fired. From this perspective it is not appropriate to reward people for what they are already supposed to do. On the one hand companies have incentive systems which already reward people for doing their jobs. But the strongest answer is that the incentives we are discussing are not just rewards for avoiding trouble. Rather, the recognition is for outstanding performance and leadership in the area of compliance and ethics.

Violation of the Orders of the Company Law Board - Principles Governing the Exercise of Jurisdiction to Punish for Contempt
P-408

K. P. C. Rao

In the case of *N. Venkata Swamy Naidu* v. *Sri Surya Teja Constructions* the issue as to initiation of contempt proceeding for the violation of the CLB Order came up before the Andhra Pradesh High Court. The Court has examined the following issues: Whether the CLB is a Court under the Contempt of Courts Act, 1971? Whether the CLB is a Subordinate Court? Can the High Court exercise its jurisdiction under Section 10 of the Contempt of Courts Act even in the absence of a reference to it by the CLB? Would the existence of an alternative remedy bar exercise of jurisdiction by the High Court under the Contempt of Courts Act, 1971? Limitations for taking action for contempt. The Court also laid down the Principles governing exercise of jurisdiction to punish contempt and concluded that even adjudication and execution by the CLB may be rendered difficult or ineffective without the power to commit for contempt of court. All these issues are discussed in this article in detail.

Investor Confidence – Imperatives for Good Governance
P-415

Dr V. R. Narasimhan

China and India are the two contemporary economies that are excellent examples of how Financial Markets fuel economic growth. The economic growth in these two countries is attributable to the resources that financial markets funneled into these economies. Though China is known for its lack of / weak rule of law, it has become the world's number one destination for foreign direct investment. Investors appear to be willing to take risk and place their funds in the hands of entrepreneurs or economies if they are productive, protective and care for their reputation – perhaps the best description of corporate governance in practical terms. Confederation of Indian Industry conducted a survey on the role of institutional investors in driving corporate governance and results of this survey confirm the perception that need of the hour is to make Corporate Governance effective to sustain investor confidence. Adi Godrej Committee also opined that "the lacuna in Indian corporate governance is arguably not what is missing in the letter of the law, but what is missing in the internalization and implementation of it." This article examines the methods to improve corporate governance standards in India.

Relief against Oppression & Mismanagement: An Analysis
P-419

D. K. Prahlada Rao

The *inter se* relationship between the Board and the body of shareholders is not adversarial. Both the Board and the body of shareholders have to act in unison in the successful management of a company. However situations may arise when the Board may exercise its powers to the detriment of shareholders, particularly the minority . To meet such situations the Companies Act provides for protection of minority interest and against mis-management of the affairs of a company. The aggrieved shareholders have a right to petition to the CLB for redressal of their grievances. The petition can be a combined petition under section 397/398 and it can be a representative petition. Such petitions are dealt with in a summary manner by CLB. A good deal of decided cases seek to clarify what amounts to "oppression" and when a case may be made out against mis-management of affairs of a company. Public interest is also dealt with.

Towards Meaningful Restructuring and Speedy Winding Up
P-425

G. M. Ramamurthy

Increasing trend of NPAs calls for restructuring of corporate debts, which should be carried out in a timely and cost effective manner. CDR mechanism, SICA and SARFAESI have contributed to some extent in restructuring debts. CDR Schemes should aim at making a corporate financially viable and not managing the books of the lenders temporarily. Co-operation of the borrowers is equally essential. If restructuring is not possible, steps should be taken for speedy winding up of the corporate entity. Adherence to strict timelines for winding up is required for early liquidation of assets and distribution of the proceeds to the persons entitled thereto.

Law relating to Spot Delivery Contracts

P-429

Payel Jain

"Spot delivery contract" is a contract which provides for actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day. All transactions in securities other than on spot delivery basis or unless settled through a stock exchange are illegal. This puts a question mark on the legality of exit rights given to private equity players in India. The private equity funds allegedly utilize their put option rights to cause the promoter of the investee company to buy back their stake in future at an agreed return. But how far these rights are enforceable is a matter of debate. The difference of opinion of the courts and the regulatory authorities on the issue has further deepened the gap, leaving the corporates to ponder on the possible outcomes of such deals.

Legal World (LW 37 - 48)

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- **LW.31.04.2013** A winding up petition cannot be converted into one for recovery of money without the essential conditions of Section 433 of the Act being satisfied.[Del]
- **LW.32.04.2013** When the prospectus deposited with DSE has to be presumed to be meant for the public at large which was signed by the Petitioners, the order taking cognizance of the offence of misstatement therein against the directors cannot be faulted.[Del]
- **LW.33.04.2013** When the AoA does not provide for affirmative vote, it cannot be allowed on the basis of JVA.[Del]
- **LW.34.04.2013** When the final order on the winding up petition was not passed, company court has no jurisdiction to order the auction sale of the property of the company.[Raj]
- **LW.35.04.2013** DDA cannot claim unearned increase at 2004 rates when the application was made to it in 1985, which it did not dispose of.[Del]
- **LW.36.04.2013** Company court has no jurisdiction to incorporate a new clause in the sanctioned scheme. [Del]
- **LW.37.04.2013** When the duty paid in a provisional assessment becomes refundable, the defence of unjust enrichment cannot be set up to negate such refund claim. [CESTAT]
- **LW.38.04.2013** When the testing services rendered by the overseas service provider did not involve human agency, payment made to such service provider is not a payment towards fee for technical services.[ITAT]
- **LW.39.04.2013** Termination without holding proper enquiry proceedings is bad.[P&H]
- **LW.40.04.2013** Result of criminal proceedings have no effect on domestic enquiry proceedings.[Mad]

From the Government (GN 67 - 84)

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- The Companies (Acceptance of Deposits Amendment) Rules, 2013.
- Companies Directors Identification Number (Amendment) Rules, 2013
- Clarification under Section 372A (3) of the Companies Act, 1956
- Relaxation of additional fees and extension of last date in filing of Various forms with the Ministry of Corporate Affairs-reg.
- Debenture Redemption Reserve (DRR)–Clarificatlon
- SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2013
- SEBI KYC (Know Your Client) Registration Agency (Amendment) Regulations, 2013
- Usage of electronic payment modes for making cash payments to the investors
- Corporate bonds and Government securities as collateral
- Arbitration Mechanism through Stock Exchanges - Introduction of Automatic Process and Common Pool of arbitrators
- Product Labeling in Mutual Funds
- Sharing of information regarding issuer companies between Debenture Trustees and Credit Rating Agencies
- Notification under regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007
- Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement
- Guidelines for Enabling Partial Two-Way Fungibility of Indian Depository Receipts (IDRs)
- Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements)(Amendment) Regulations, 2013
- Prudential norms on Advances to Infrastructure Sector
- Standardization and Enhancement of Security Features in Cheque Forms/ Migrating to CTS 2010 standards
- Maintenance of Collateral by Foreign Institutional Investors (FIIs) for transactions in the cash and F & O segments
- Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives
- "Write-off" of unrealized export bills – Export of Goods and Services – Simplification of procedure
- Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2013
- Permission to standalone PDs for membership in SEBI approved Stock Exchanges for trading in corporate bonds
- Foreign investment in India by SEBI registered FIIs in Government securities and corporate debt

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"The truth of the matter is that you always know the right thing to do. The hard part is doing it."

-Norman Schwarkopf

Dear Professional Colleagues,

Corporate Governance, with which we are all inextricably linked, is as much perceived to be about doing the right thing as much as it is perceived to be a credo or a belief or a system or a structure or a clause in an agreement. The difficulty of doing the right thing has always engaged the discerning minds but the inescapable conclusion is that the emerging paradigm calls for a cultural, qualitative and behavioral transformation of one and all in the corporate landscape.

It is in this context, I am pleased to inform that the 2nd CSIA International Conference is being hosted by ICSI on 5th and 6th April, 2013 at The Ashok, New Delhi on the theme, 'Corporate Governance for Sustaining Prosperity and Posterity'. May I add that this is the second conference of CSIA, a global forum of Company Secretaries from eighteen countries of which ICSI is one of the founding members. This Conference is expected to bring together our fraternity on a single platform to deliberate on global issues concerning Corporate Governance. I take this opportunity to extend my invitation to you to attend and participate in this Conference which is designed to lead to the development of fresh insights on Corporate Governance and its accompanying processes.

I am pleased to record that ICSI marched ahead in its plans towards *better student servicing as the significant majority of new student registrations and examination enrolments have been reportedly through the revamped online payment mechanism aptly titled ICSI Direct. This month also witnessed the commencement of direct delivery of study materials to students through a credible agency determined after a thorough scrutiny of available options. The challenge of connecting realtime with the vast multitude of our students demands creative and innovative responses involving adaptive technology. E-learning, rolled out in 2007 eventually saw traction in last few years; sequentially led to increased acceptance of e-training modules developed by the Institute; study materials got placed on the web; and the Foundation examination were held in last December on OMR format and all these and much more could, over time, set us up for a possible conduct of our examinations online.*

The Council, at its last Meeting has after considerable thought and reflection authorised the study of the structure of ICSI and the Company Secretaries Act, 1980 governing us so as to make them contemporary and relevant to the times we live in. Hopefully, this would pave the path for improved governance processes, enhanced internal control mechanisms leading to better accountability towards our stakeholders.

I had the opportunity to address the students, academia and other distinguished invitees at the Vivekananda Institute of Human Excellence and it was indeed an enriching experience to participate in the hallowed environs in Hyderabad. Similar indeed was the experience at the Seminar on Salient Features of Companies Bill organised by Standing Conference on Public Enterprises (SCOPE) in New Delhi. Also my visits to Vadodara, Nadiad and Hyderabad during the month and meetings with our members were equally rewarding and distinctly insightful.

In sum, "To know that we know what we know, and that we do not know what we do not know, that is true knowledge".-Confucius.

With kind regards,

Yours sincerely,

New Delhi

March 25, 2013

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Recommendations of the FSLRC:

Redesigning the Institutional Framework for Financial Sector Regulation

The FSLRC has recommended a non-sectoral and principle based law through the enactment of the Indian Financial Code. This Code would replace a large number of laws enacted in piecemeal in response to specific events in the past and create authorities with commensurate accountability to proactively meet the needs of ever evolving market.

INTRODUCTION

The Financial Sector Legislative Reforms Commission [FSLRC][1], Chaired by Justice B N Srikrishna, submitted its report to the Government of India on the 22nd March, 2013, a day before its 2 year term would have ended.The Report consists of two volumes: Volume-I, outlining the analysis and recommendations and Volume-II, the draft law which converts the recommendations into legal provisions. The draft law, which proposes repeal of a large number of existing financial sector legislations, is a single framework of law that would replace the full body of the Acts that would be repealed, and a large number of amendments to another set of legislations. The proposed new single codification of financial sector laws is titled the Indian Financial Code [IFC]. Both the volumes are available in public domain at finmin.nic.in. The recommendations contained in the proposal are path-breaking in terms of its approach and process of financial sector regulation.

India's existing system of financial regulation is sectoral. We have separate laws for regulation of banking, insurance, securities, commodity derivatives and pensions [though the Bill on PFRDA is still to be enacted]. There are separate regulatory authorities to

* Views expressed in the article are personal.
1 For details about the FSLRC - composition, terms of reference etc pl. see *www.fslrc.org.in.*

administer the provisions under these enactments: RBI for banking, SEBI for securities, IRDA for insurance, FMC for commodity futures, PFRDA for pensions. We approached financial market regulation in bits and pieces mainly in response to periodic developments of products and organisational forms. Such an episodic approach did not foster a well-articulated philosophy of regulation, which would define the institutional structure and its behaviour in terms of the incentives that the structure would generate. In the process it created under-regulated, over-regulated and grey areas and cocktails of regulatory approaches. What the FSLRC has done is to draw a big-picture institutional architecture where the financial agencies, including the regulatory agencies, are just a small sub-set of the canvass. Broadly, institutions include the laws, both primary and subordinate, the norms and the principles underpinning the laws, the financial agencies and the processes they would follow based on rule of law and a vision on the Indian financial sector supporting an aspirational India in an increasingly integrated world.

This sweeping changes in institutional architecture proposed in the FSLRC world is founded on five critical pillars:

1. Reinstatement of the rule of law as the mode of financial governance.
2. Principle-based approach to law and rule making.
3. Focus on consumer protection.
4. Mitigating systemic risk.
5. Redefining the role of financial agencies in a non-sectoral way.

Regulatory Governance

Statutorily independent regulatory authorities [IRAs] are a relatively new breed of animal, evolved over only a few decades. They are different from the extended arms of the executive such as the field agencies for providing particular services like say passport, vehicle registration or driving licences. The IRAs are like mini- States that they are empowered with legislative, judicial and administrative responsibilities, even blurring the doctrine of separation of powers enshrined in democratic constitutions.

Creation of such powerful IRAs is, however, a deliberate decision of the Parliament. These agencies have to address complex tasks of market failures emanating from information asymmetry, market adventures and market mishaps. They have to protect the millions of financial consumers, minimise the failure of financial firms, resolve them smoothly when some of them actually fail and prevent large-scale failure of firms that would lead to crises in the system as a whole. In effect, they have to safeguard the financial system. According to Section 77 of the IFC, "financial system" means the aggregation of all financial service providers in India, along with –

(a) the financial markets in which they operate;
(b) their financial products and financial services; and

Statutorily independent regulatory authorities [IRAs] are a relatively new breed of animal, evolved over only a few decades. They are different from the extended arms of the executive such as the field agencies for providing particular services like say passport, vehicle registration or driving licences. The IRAs are like mini- States that they are empowered with legislative, judicial and administrative responsibilities, even blurring the doctrine of separation of powers enshrined in democratic constitutions.

(c) the financial contracts entered into by them.

Many of the actions of the IRAs at times involve cross-border coordination and hence a proper understanding of and net-working with the systems in other jurisdictions. To cap it all, the IRAs have to act fast as speed of action is the essence of maintaining trust and confidence.

Given these high-order functions, IRAs need to be tasked with clear objectives, and specified powers by the statutes. Given such vast powers as well as the potential agency problem inherent in delegation their accountability also need to be clearly stated. Given that they are not accountable to the public through elections like the Parliament they suffer from 'democratic deficit' which needs to be bridged through appropriate contracting enforcing them to follow due legal processes in their actions. This include that while making regulations they mandatorily consult with the public, do a cost-benefit analysis of proposed regulations, have internal checks and balances, external audit, a judicial appeal process and reporting to the public and Parliament. So the essence of regulatory governance is to provide independence to the IRAs for performing statutorily defined tasks, the process of exercising their powers and the system of accountability. This does not vary considerably from one IRA to another IRA or between other financial agencies and hence a uniform system of regulatory governance with a few specific variations provided in the IFC.

Principle-cum-rule based approach

Change is a constant feature of modern life. In financial markets speed of change is often dramatic, particularly when there is an iota of trust deficit. Given this, financial sector laws are incomplete laws which have to adapt to fast paced changes. Like the Indian

Contract Act, 1872, which provides templates for the varying types of contracts, the primary laws in the financial sector need to be based on principles. The primary laws cannot envision all the possible developments in the financial sector nor can they be changed by the Parliament as frequently or as fast as the changes happen in the financial world. Hence the primary law outlined in the draft IFC is primarily a principle-based law.

But at the same time enormous degree of powers given to the IRAs cannot be based on some very generic principles, assuming a cosmic world seen from 40000 feet above the ground. The ground level reality is chaotic, which many a times need a rule-based approach to the regulations. However, given their powers and agency problems, the IRAs could interpret the principles to their convenience, if they are vaguely stated. Hence the principles have to be well-articulated and well-explained to provide sufficient clarity and a framework or template for regulation making by the IRAs. The draft IFC is therefore both legally rigid and functionally flexible to provide the right degree of freedom to the regulators. This degree of freedom will get more defined as experience grows and the administrative law evolves over time.

Consumer at the core of financial regulation

The theory of market assumes consumer as the king. While this dictum is considered far from reality, in financial markets, with their high information asymmetry, it is perhaps the farthest. Ironically, however, financial markets leave the consumers to their own wits with just a warning- caveat emptor, consumer beware! The FSLRC world would change this rather unsustainable position. The entire focus of financial regulation would hereafter devolve around the consumer, both directly and indirectly. Directly by consumer protection as the primary task of the IRAs and they making regulations to prevent consumers being exploited. They need to provide different degree of protection to the differently types of consumers. It states all consumers need some degree of protection while the small or retail consumers need a higher degree of protection. While the former are given some basic rights the latter are given these basic plus an additional list of rights. Indirectly, in their pursuit to minimise failure of firms through micro-prudential regulations, the IRAs are again helping the consumers, that they are not facing the shocks of failure of their finance companies frequently and when they do fail the Resolution Corporation comes to the help of the consumers.

Consumer protection is also addressed through a specialised redress mechanism, the Financial Redress Agency [FRA] as a single window mechanism. This is to avoid consumers of financial products running from pillar to post in redressing their grievances as the present system draw turf boundaries leaving grey areas on consumer complaints. A regular system of feed-back from the FRA to the IRA based on grievance data analysis would also help the latter from systemic prevention of large scale complaints on a product, service or service provider.

As per Section 75 of the draft IFC "financial service" means –

(a) buying, selling, or subscribing to a financial product or agreeing to do so;
(b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
(c) effecting contracts of insurance;
(d) managing, or offering or agreeing to manage, assets consisting of financial products belonging to another person;
(e) rendering or agreeing to render advice on, for consideration, or soliciting for the purposes of –
    (i) buying, selling, or subscribing to, a financial product;
    (ii) availing a financial service; or
    (iii) exercising any right associated with a financial product or financial service;
(f) establishing or operating an investment scheme;
(g) maintaining or transferring records of ownership of a financial product;
(h) underwriting the issuance or subscription of a financial product;
(i) providing information about a person's financial standing or creditworthiness;
(j) selling, providing, or issuing stored value or payment instruments or providing payment services;
(k) making arrangements for the carrying on of any of the financial services in clauses (a) to (j);
(l) rendering or agreeing to render advice on, or soliciting for the purposes of –
    (i) buying, selling, or subscribing to, a financial product;
    (ii) availing any of the financial services in clauses (a) to (j); or
    (iii) exercising any right associated with a financial product or any of the financial services in clauses (a) to (j);
(m) any service carried out by an Infrastructure Institution; and
(n) any other service that may be prescribed under section 150(2).

'Financial service provider', defined under section 76 of the IFC "means a person engaged in the business of providing a financial service". The description, "engaged in the business" will keep personal and occasional bilateral transactions, class room or public lectures and similar activities outside the purview of regulation, while 'financial advice as a business' will come under the purview.

Mitigating systemic risk for greater stability

Though one of the major objectives of financial regulation is to prevent or mitigate failure of financial firms, in reality regulations cannot achieve a zero failure market. Failure of financial entities is part of the creative destruction of the market process even in regulated markets. Failure happens due to the failure of the management in foreseeing risks, due to the failure of their internal control mechanisms, due to sheer adventurism and due to exogenous factors, including regulatory actions. When failure happens on a large scale or when the affected entity is a conglomerate or a systemically important financial institution [SIFI] we have a larger problem than a firm failure. We are in condition of a "financial system crisis" which is "a state of the financial system where there is a large-scale disruption to the provision of financial services due to an impairment of all or parts of the financial system that has the potential to have serious negative consequences for India".

Addressing a systemic crisis need a pan-IRA approach as SIFIs straddle between IRAs and some of the crisis symptoms could be coming from even non-financial conglomerates with or without having financial sector business. The sheer size of the treasury operations of some of the non-financial sector conglomerates is enough to trigger a system crisis and the IRAs have no supervisory/regulatory powers over them. We cannot have solution for systemic crisis from the vacuum: we need regular data flow and analysis of potential bubbles and problem spots and adequate powers to address that. This analysis is one of the major roles of the Financial Stability and Development Council [FSDC] and during a crisis it supports the government armed with this information. Since the executive committee FSDC is a collegiums of the IRAs and other select financial agencies, chaired by the Chairperson of the RBI any decision on a pan-agency decision becomes easy and instantly institutionalised.

Financial agencies and a non-sectoral law

'Financial agencies' are defined in the IFC. They are defined in the primary law itself in order to avoid any potential ambiguity. There are seven of them as of now; any change in this number in future has to be through an amendment to the IFC. The organisational matrix of the financial agencies emanates from the pillars of the institutional edifice explained in the preceding sections of this article.

It is often stated that creating structures is easy but creating culture is difficult. An elaborate legal process coupled with clear tasks, powers and accountability would provide that desired regulatory culture to evolve as the agencies are not conflicted in their objectives or they can invoke powers from the vacuum. At the same time they have the statutory independence to perform their assigned tasks. Hence the organisational structure consisting of 2 IRAs and 5 other financial agencies is as follows:

The RBI, as the monetary authority and regulator of banking and payments system and an Unified Regulatory Authority [UFA] as the regulator of all other financial service providers. The monetary policy function will be performed by a Monetary Policy Committee [MPC], which is chaired by the Chairperson of the RBI. In addition, the RBI has the traditional functions as issuer of legal tender, lender of last resort, banker to government, custodian of foreign exchange, specified functions on capital controls etc. Both the RBI and the UFA will perform certain developmental functions as well.

This is a deliberate 360 degree approach to regulating all entities as one of the premises of the FSLRC is that all financial service providers must be on the radar of a financial regulator to avoid the pitfalls of unregulated and under regulated entities parading the financial horizon at great cost to the consumers and putting the system at risk. At the same time the FSLRC acknowledges the need for promoting innovations and accordingly provides for a system of proportional regulation [proportional to the degree of risk to the system or to the retail consumers].

Out of the 5 other financial agencies, three perform very specific functions. A Resolution Corporation operates the deposit insurance and manages the smooth resolution of failing firms; a Financial Redress Agency [FRA] dealing with redressal of all financial consumer grievances; a Public Debt Management Agency [PDMA] that would run a cost-efficient office for managing the borrowing programme and for managing the cash flow of the central government.

The sixth agency is a pan-regulatory Council, the FSDC, which will act as a coordinator between the financial agencies, resolve inter-agency disputes and perform specified functions on systemic risk, financial development, data management etc. FSDC is neither a regulator nor it would act in an area assigned to any of the other agency. Rather in its own functioning it would assign the operational role to other agencies based on matching the primary task of the agencies and the task that would be assigned.

The last one is a judicial agency, the Financial Sector Appellate Tribunal [FSAT] which would hear appeals on the orders or regulations by the RBI for its regulatory functions [monetary policy function is not appealable], UFA, FRA, and specified orders of the Resolution Corporation and the FSDC.

A special feature built in by the FSLRC in its draft code is the non-sectoral approach to regulation of financial markets as well as the simplicity of amending the IFC to make changes in the organisational mandate. For example if banking regulation is to be transferred to the UFA in future, it needs only deleting this provision from the RBI and adding the provision to the UFA. Because micro-prudential regulation and consumer protection laws are not sector specific and can be done by any agency as the law empowers.

Full design, not individual pillars

Any meaningful analysis of the full institutional edifice drawn up by the FSLRC to address the complex world of financial regulation and other specified functions has to capture all these pillars and their interplay. Evaluating this structure looking at individual pillars may not provide the right answers. It may, on the other hand, lead to a repetition of the story of the blind men and the elephant. Given the complexities involved in migrating to the new institutional framework, the FSLRC has also suggested a path which would smoothen the transition process. CS

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Ethics and Compliance through Reward System

In the context of increasing incidents of corporate frauds, the need for creating and implementing ethics programmes with a view to reduce the recurrence of such happenings is being debated widely. How to improve the compliances is what has been discussed here.

In the early stages of the twenty-first century corporate accounting scandals were the hot topic, it almost seemed that a new controversy surfaced every day. One result of all this was the passage of various Acts as compliance measure. The law sought to address many of the ethical and accounting practices that led to the scandals. A second reaction to the scandal has been a move by companies to create an ethical culture in their business. This drive has resulted in various programs and training courses, all targeted at emphasizing the importance of ethics. All these initiatives appear to be well intentioned, and there have been some positive results, but there is a lot of room for improvement. An examination of problems with both the law and corporate programs will reveal some potential improvements that could lead to greater results and benefit the entire value chain. Most of the compliance legislations sets the highest level and general requirements and imposes the possibility of substantial penalties for not complying with them.

In addition to discussing personal examples of ethical decisions, managers must also provide employees with training that includes real life examples that the employees may face in their jobs. Associates need many opportunities to practice making ethical decisions which can be accomplished through computer based training modules, role plays, and even educational games. Utilizing multiple methods not only accommodates various learning styles but the repetition of practice helps to cement the desired behaviors. As a part of the training, businesses need to provide clear definitions of ethical terms, employees must understand exactly what terms like "integrity" and "diversity" means to their company. They need to know what behaviors are viewed as ethical and which ones may be considered marginal. This can vary from person to person so it is extremely important that the business leaders spell it out as concretely as possible. The less that is left to interpretation, the more employees will be comfortable with the ethics policy and the more likely they are to comply.

By providing company relevant definitions business leaders would address one of the areas where they face some of their biggest ethics related challenges, the deficiencies in the law. Businesses can also attempt to assure that there is no retaliation against whistle blowers, but until the government's actions back this up employees will be reluctant to disclose ethics violations, particularly when there is little or no possibility of remaining anonymous. Other problems with the law, vague requirements and insufficient financial support for regulatory agencies, are even more difficult for a company to address head on, instead they will have to pursue solutions through legislative and regulatory bodies. To some this would seem counterproductive, but when the amount of money businesses have spent on compliance efforts is considered, it becomes apparent that it would be in their best interest to seek a final clarification of legal expectations.

Learning from recent lapses of others, many organizations are making genuine efforts to create effective cultures of ethics. Business confidence has dropped to new lows and large numbers of compliance, legal, finance and risk executives are expecting fraud activity to remain steady or on the increase in future.

In this environment, it's no surprise that the subject of "ethics" is frequently in conversations and on the minds of finance executives. And, many organizations are indeed making genuine efforts to develop cultures of ethics. Unfortunately, almost as many of those attempts are failing, compared with those that are succeeding. To make matters worse, many of those failed efforts are viewed by their creators as rousing successes, and so their inherent weaknesses will never be revealed, let alone reengineered for success. To learn from the missteps of others in developing a culture of ethics, it's helpful to be aware of the predecessors' most frequent errors and oversights.

Many companies believe that simply writing an ethics code is a magical thing. Once written and heralded by senior management, all things ethical will be fine. Just like other organizational policies and procedures, the existence of an ethics code has no bearing on how well employees are trained in its components; how well it is applied to a firm's day-to-day operations; and how well things are handled if a violation is found. Ethics need to exist in the fabric of the organization and not just in an employee manual or attestation statement assuring that employees have read and presumably understand the policies. To complicate this matter, the majority of ethics codes are actually fairly useless documents. An overwhelming majority of them are just poorly disguised codes of conduct, risk-management documents or overly elaborate statements.

A code of conduct can be a tremendously helpful document - but it shouldn't be confused with an ethics code. The former should tell folks what the rules of conduct are, while the latter should also help employees know what to do when there isn't a rule for something.

A code of conduct can be a tremendously helpful document - but it shouldn't be confused with an ethics code. The former should tell folks what the rules of conduct are, while the latter should also help employees know what to do when there isn't a rule for something. Still other documents sometimes labeled as ethics codes are actually risk-management documents designed to do nothing more than protect the company from an inappropriate employee behavior. The purpose of an ethics code is to help employees solve problems on the job; risk management documents simply aren't designed to help them let alone inspire them to make a wide range of ethically-informed decisions.

Organizations had better have great compliance programs, which are typically under the watch of the top financial executive. But, while ethics and compliance programs may be intertwined, they are different and distinct entities. Compliance programs provide oversight and assure that the rules are being followed as well as assuring that the proper steps are being taken if a slip-up is discovered. Ethics programs properly created and implemented are there to reduce the chances that those problems will occur in the first place.

Though it is an imperfect distinction, consider the compliance program as safeguarding a company's rules while an ethics program promulgates and safeguards the company's values. Part of the benefit is that ethics programs help prevent problems from happening in the first place. When they do happen, though, ethic programs also help mitigate those problems more efficiently. Research consistently shows that more ethical and legal problems are discovered by chance observation than through formal compliance and audit programs. This alone is enough to suggest that formal oversight programs are insufficient. A well-conceived compliance program may help employees know both why and how to look for questionable behavior and what to do when they see it. However, without a culture of ethics in place that persistently and conspicuously models and reinforces that value, the chances of it happening are low.

Organizations need to solicit input from all employee levels on the clarity, breadth and utility of their ethics programs. If employees

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aren't part of the process, and if their perspective isn't even considered, how likely are they to jump at the opportunity to join into that culture - no matter how virtuous and glorious it sounds? The overall goal here is to have policies and procedures that are created and accepted, even evangelized hopefully by representatives of every corner of the organization. Their input and feedback will be required for that to occur. However, inviting input does not reduce the need for ethics to come from the top down. "Tone at the top" continues to be one of the best indicators of an effective culture of ethics. In addition, the entire organization needs to develop a culture in which appropriate actions are persistently noticed, reinforced and rewarded.

Corporate Social Responsibility (CSR) programs are wonderful when executed well, and are, at times, a healthy reflection of a genuine culture of organizational ethics. However, peeling back the veneer of many CSR programs often shows that no matter how genuinely beneficial such programs are to the community or world at-large, they have no direct relationship to the ethics and values of the sponsoring corporation. CSR programs are often created and managed by departments whose purview is clearly intended to stay within its strict departmental confines; there is no direct or ongoing involvement with the rest of the organization. Additionally, CSR initiatives are frequently staffed with or driven by corporate public relations departments, begging the question of how much of these services are public relations-driven as opposed to being a natural extension of the company's ethical stance. Most importantly: Good deeds, no matter how laudable, do not substitute for proper behavior on the job, day in and day out.

Ethics departments and ethics officers are wonderful things and well worth considering for organizations large enough to support either or both. However, many organizations believe that ethics can somehow reside in a department or in an officer rather than in a culture nurtured throughout the company. Thus considering an ethics department or officer is great. But if the ethics message doesn't get out to absolutely every employee, and if the officer or department doesn't have a powerful hand in deciding how ethics are to be codified, trained, embedded and acculturated into the fabric of the organization, they either haven't been allowed to really do their job or they haven't fulfilled one of the implicit mandates of their essential role. A marginalized ethics department is essentially the same as not having one.

The business world is littered with great intentions regarding ethics. Simply listening to spokespersons describing their great strides could quickly quell any concerns about the state of corporate ethics. The reality, however, is that many companies are doing little, if anything, differently. Or, if they are truly considering embarking on a credible effort to create a culture of ethics, inevitable questions are asked and re-asked about the actual return on investment for developing the necessary infrastructure. Some of the metrics are, in fact, tough. Unless a business is a monopoly, customers will always have choices, and it's likely they'll choose a company they feel they can trust more rather than less. So, what is it worth to keep those customers?

Financial executives wield significant formal and informal power over their organizations. In turn, it is a prescribed duty that they use that power to promote positive priorities, choices and actions on the part of everyone in the organization, and not just from a financial perspective. Besides, there is a fiduciary duty for finance executives to uphold appropriate ethical and legal behavior of all types, whether they fall under his or her formal purview or not. No one is likely to come out explicitly against ethics in any way, shape or form. But executives may be uniquely positioned to see where individuals or their organization as a whole, have made decisions that reduce or maybe even fully prevent the development of a culture of ethics.

Ethics in Corporate World have taken a setback in recent years.

There are more than a dozen of examples of highly-publicized cases where there was a failure of the company to maintain an ethical environment. Whether large or small, profit or non-profit, companies have a responsibility to act ethically. Each business is different and, as such, businesses must tailor their program to address the compliance issues specific to their industry or market. Businesses today are faced with a daunting task of developing, implementing, and enforcing a compliance program. This is a difficult area because what works at one industry will not be an effective approach at a different type of industry. So, where does one begin to direct the course to take which will result in a lengthy document laden with endless requirements which must be met by each employee; from the top to the bottom. Without the full cooperation of everyone in the company this document is pages full of empty declarations. The new task at the forefront of a modern business in this decade will be the development of a system which everyone associated with the company will buy into the new vision. In order to achieve such a goal one will benefit from investigating some previous businesses history of developing a compliance program. Now, we will take a look at some of the companies which have been a party to some of the major scandals.

Enron was formed in 1985 by Kenneth Lay after merging Houston Natural Gas and InterNorth. More than a few years later, Jeffrey Skilling developed a staff of executives that, through the use of accounting loopholes, special purpose entities, and poor financial reporting, were able to hide billions in debt from failed deals and projects. Enron's stock price, which hit a high of US $90 per share in 2000, caused shareholders to lose nearly $11 billion when it plummeted to less than $1 by November 2001. With this in mind we should dig further to see if the company in fact had a set of business compliance and ethical standards for the business. Enron did have a 64 page code of ethics which was distributed to each employee. The opening statement of the booklet states the following "As officers and employees of Enron Corp., its subsidiaries, and its affiliated companies, are responsible for conducting the business affairs of the companies in accordance with all applicable laws and in a moral and honest manner". A company needs to have more than a document which is not followed by the leaders of a company. The actions of the Enron executives painted a picture of what can happen when ethics are neglected. If the leaders had followed the ethical and compliance guidelines of their own company code of ethics, there would not have been a scandal. Their code of ethics is no more than a pamphlet of empty statements.

The name 'Toyota' is equated with quality. Toyota is very devoted to uphold a high level of ethics and compliance to standards. For Toyota, compliance does not mean simply observing laws; it means respecting societal norms and corporate ethics, complying with the expectations of diverse stakeholders, and engaging in fair corporate activities. Here are some of the guiding principles at Toyota:

- Respect the culture and customs of every nation and contribute to economic and social development through corporate activities in the communities.
- Dedicate ourselves to providing clean and safe products and to enhancing the quality of life everywhere through all our activities.
- Create and develop advanced technologies and provide outstanding products and services that fulfill the needs of customers worldwide.
- Foster a corporate culture that enhances individual creativity and teamwork value, while honoring mutual trust and respect between labour and management.
- Pursue growth in harmony with the global community through innovative management.

To quote Akio Toyoda, President of Toyota Motor Corporation "My objective is not simply to achieve growth in terms of expanding Toyota's size: My aim is to maintain sustainable growth by ensuring that all Toyota employees are committed to paying the utmost attention to each and every vehicle that is produced as we endeavor to deliver safe and high-quality cars at affordable prices to people the world over."

Further to quote Warren Buffet, the great investor "…I want employees to ask themselves whether they are willing to have any contemplated act appear the next day on the front page of their local paper – to be read by their spouses, children and friends – with the reporting done by an informed and critical reporter." With this in mind most of us would act in a manner which would avoid having ourselves or family exposed to the headlines due to our involvement in unethical conduct in the line of business. The code of ethics of Berkshire Hathaway is a mere 5 pages in length. The difference between this document and that of other major

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companies comes down to leadership. It is extremely important for a company to be lead by a strong leader committed to excellence. The bottom line is important in order to keep the doors open. It is not necessary to conduct business operations in a manner which is against the law. On the positive side most companies do abide by the rules and regulations set forth in the company handbook. Likewise the business needs to place an emphasis on how business is conducted on a daily basis.

A conflict of interest exists when a person's private interest interferes in any way with the interests of the Company. Covered Parties are prohibited from taking for themselves opportunities that are discovered through the use of corporate property, information or position without the consent of the Board of Directors of the Company. No Covered Party may use corporate property, information or position for improper personal gain and no employee may compete with the Company directly or indirectly. Covered Parties owe a duty to the Company to advance its legitimate interests whenever possible. Covered Parties shall behave honestly and ethically at all times and with all people. They shall act in good faith, with due care, and shall engage only in fair and open competition, by treating ethically competitors, suppliers, customers, and colleagues.

Covered Parties who have access to confidential information are not permitted to use or share that information for stock trading purposes or for any other purpose except the conduct of the Company's business. Covered Parties must maintain the confidentiality of confidential information entrusted to them, except when disclosure is authorized by an appropriate legal officer of the Company or required by laws or regulations.

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Timely and Truthful Public Disclosure in reports and documents filed with or submitted to the Regulatory Authorities by the Company, and in other public communications made by the Company, the Covered Parties involved in the preparation of such reports and documents shall make disclosures that are full, fair, accurate, timely and understandable. Where applicable, these Covered Parties shall provide thorough and accurate financial and accounting data for inclusion in such disclosures.

The CEO and each senior financial officer shall promptly bring to the attention of the Audit Committee any information he or she may have concerning (a) significant deficiencies in the design or operation of internal control over financial reporting which could adversely affect the Company's ability to record, process, summarize and report financial data or (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's financial reporting, disclosures or internal control over financial reporting. It is important to realize the value and importance of implementing a voluntary corporate compliance program.

There are several objections for not using incentives and there are also a number of reasons for implementing an incentives approach. Currently we live in a society driven by some form of bonus to perform a task outside their normal duties. Obviously this is not always the case but, more often than not this is the reality today. So, how do we get anyone to do the right thing without providing some type of incentive? All pay based systems provide some form of reward for extra performance by an employee. You will find objections to this methodology of incentives and rewards. Next, we will look at some of the objections for an incentives based approach. People should not be rewarded for doing their jobs. This is a very common objection to the idea of considering compliance and ethics in evaluations and rewards. The view is that people are supposed to do the right thing; if anyone is not ethical they should just be fired. From this perspective it is not appropriate to reward people for what they are already supposed to do. On the one hand companies have incentive systems which already reward people for doing their jobs. But the strongest answer is that the incentives we are discussing are not just rewards for avoiding trouble. Rather, the recognition is for outstanding performance and leadership in the area of compliance and ethics.

It is impossible to evaluate employee's virtue or ethics. This is too subjective, unlike sales or production. With sales or production you can evaluate based on counting numbers. So, when it comes to evaluating performance of something that cannot be measured you need to base it on less objective factors requiring judgment. In reality even assessments based on sales may be subject to re-evaluation based on factors outside of the sales forces control such as natural disasters and demographic shifts. Production numbers may appear objective, but be subject to closer analysis based on issues of quality and cost. Thus, even superficially "objective measures" may not be easy when it comes to assessing employees' performance.

A number of current evaluations are based on judgmental elements:

a. Leadership
b. Innovation
c. Developing subordinates
d. Embracing change
e. Encouraging teamwork
f. Communicating effectively
g. Team commitment
h. Treating co-workers with respect and dignity
i. Taking accountability for professional growth

This makes you question why the resistance to adding measuring performance in relation to the code of conduct. Just because this is a difficult task does not mean this is not a viable addition to the measure of performance. A measurement such as this may save the demise of future organizations. No economy can continue to allow the level of corruption which is a direct result of poor ethical behavior.

The ultimate goal for all parties is to prevent misconduct and lead employees to act ethically and legally. To this point the late management expert, Peter Drucker, offers a succinct answer: "Changing habits and behavior requires changing recognitions and rewards. People in organizations, we have known for a century, tend to act in response to being recognized and rewarded – everything else is preaching. The moment they realize that the organization rewards for the right behavior they will accept it."
The concept is directly related to human nature. Individuals normally are more receptive when they receive some form of reward. All one needs to do is look at the bonuses CEO's receive today for meeting financial goals.

Will the culture change dramatically by rewarding good behavior? Again, normally people tend to recognize what is getting rewarded at the company. It is easy for an employee to recognize what type of person is receiving the promotion and what type is regularly passed over for promotions. It is important to realize that if employees with questionable ethics are rewarded and promoted the tone at the top and throughout the different levels of the organization will normally lead to similar behavior at each level of the company. On the positive side if those which adhere to compliance and ethics are selected as leaders and are seen by other employees as being rewarded and recognized, this will become the tone of the company from the top to the bottom.

An increasing number of companies are incorporating ethics into their training. With all of the recent setbacks of some very prominent businesses it appears employees and CEO's understand what ethics are about, business can improve with sound ethical practices. Equally important the community will take note of the ethical nature of a business and so will customers. A very important aspect in achieving a successful ethics and compliance program is to involve the employees. Equally important will be to use some recognition letters for employees which have continually maintained high ethical standards. CS

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Violation of the Orders of the Company Law Board -

Principles Governing the Exercise of Jurisdiction to Punish for Contempt

Non-compliance with the directions given by courts is punishable for contempt. Whether Company Law Board is a Court and contravention of its orders amount to contempt of court and the circumstances under which a court can entertain an application for contempt are the questions which are examined in this article.

BACKGROUND

Contempt of court is a court order which, in the context of a court trial or hearing, declares a person or entity to have disobeyed or been disrespectful of the court's authority. Often referred to simply as "contempt", such as a person "held in contempt", it is the judge's strongest power to impose sanctions for acts which disrupt the court's normal process.

A finding of contempt of court may result from a failure to obey a lawful order of a court, showing disrespect for the judge, disruption of the proceedings through poor behaviour, or publication of material likely to jeopardize a fair trial. A judge may impose sanctions such as a fine or jail for someone found guilty of contempt of court. Judges in common law systems usually have more extensive power to declare someone in contempt than judges in civil law systems.

In civil cases involving disputes between private citizens, the behaviour resulting in the ruling is often directed at one of the parties involved rather than at the court directly. A person found in contempt of court is called a "contemnor." To prove contempt, the prosecutor or complainant must prove the four elements of contempt:

a) Existence of a lawful order
b) The contemnor's knowledge of the order
c) The contemnor's ability to comply
d) The contemnor's failure to comply

The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizens, namely, the right to personal liberty and the right to freedom of expression. The basic principle in a democracy is that the people are supreme. It follows that all authorities - whether judges, legislators, Ministers, bureaucrats - are servants of the people. Once this concept of popular sovereignty is kept firmly in mind, it becomes obvious that the people are the masters and all authorities (including the courts) are their servants. Surely, the master has the right to criticise the servant if the servant does not act or behave properly.

CONTEMPT- LEGAL & CONSTITUTIONAL FRAMEWORK

Article 19(1)(a) of the Constitution of India gives the right of freedom of speech and expression to all citizens. Articles 129 and 215 of the Constitution of India empowers the Supreme Court and High Court respectively to punish people for their respective contempt. Section 10 of The Contempt of Courts Act of 1971 defines the power of the High Court to punish contempts of its subordinate courts. Power to punish for contempt of court under Articles 129 and 215 is not subject to Article 19(1)(a).

Contempt of court is a concept which is a legacy of Anglo-Saxon jurisprudence. Continental jurisprudence is unaware of it. Unlike the Continental legal system the Anglo-Saxon legal system has adopted the adversary system of adjudication which we too have accepted and adopted. In these days of repeated executive onslaughts on the judiciary and the judicial system, it is absolutely necessary that the court should be armed with the power to commit a person for contempt of court or otherwise, a court will be helpless in the face of defiance of its orders by the executive, and with no other means of enforcing its orders.

One of the much misunderstood and controversial jurisdiction and powers of the courts is the power to punish for contempt of court. The expression 'contempt of court' is an archaic expression whose use is both unfortunate and misleading. To modern liberal minds accustomed to think in terms of freedom of speech and expression, it gives the impression that courts are concerned about upholding the dignity of judges and protecting them from affront and insult. Nothing can be farther from the truth. In a proceeding for contempt of court, the court is only concerned with the actions of people who seek to sully, obstruct, or prevent the due administration of justice. The court is concerned with protecting the right of the public that the administration of justice shall not be impeded. In a democracy founded on the rule of law, public policy demands that nothing should be allowed to be done to undermine the system of fearless administration of justice by courts of law or to shake public confidence in it. No democratic institution can flourish in an atmosphere of fear and suspicion.

The Contempt of Courts (Amendment) Act, 2006 introduced new Section 13(b) which states: "The courts may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*."[1] Thus,truth is now a defence in contempt of court proceedings if it is in the public interest and is *bona fide*.

Broadly, civil contempt consists of disobedience of the orders of the court while criminal contempt consists of all other kinds of contempt such as scandalizing or lowering the authority of any

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court, prejudicing or interfering with the course of a judicial proceeding, and interfering or obstructing the administration of justice or tending to do so. This is how civil contempt and criminal contempt are defined by Section 2 of the Contempt of Courts Act, 1971.

CIVIL CONTEMPT

The Contempt of Courts Act of 1971 defines contempt of court. Civil contempt is a willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court [section 2(b)]. All practicing lawyers know how necessary it is that the court should have the power to commit for contempt to meet similar situations which arise daily in court. This branch of contempt is known as civil contempt and there cannot be much controversy over the necessity of a court having power to commit for civil contempt.

CRIMINAL CONTEMPT

Criminal contempt has been defined vide Section 2(c) as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

(i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or

(ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or

(iii) Interferes or tends to interfere with, or obstructs or tends to

[1] The Contempt of Courts (Amendment) Act, 2006

obstruct the Administration of justice in any other manner.

Company Law Board (CLB)

The Central Government in terms of Section 10(E) of the Companies Act, 1956 constituted an independent Company Law Board (CLB) vide Notification No. 364 dated the 31st May, 1991. The CLB is a quasi-judicial body, exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government. The Board has powers to regulate its own procedures. The Company Law Board has framed "Company Law Board Regulations 1991" prescribing the procedure for filing the applications/petitions before it. The Central Government has also prescribed the fees for making applications/petitions before the Company Law Board, under the "Company Law Board, (Fees on Applications and Petitions) Rules 1991".

The Board has its Principal Bench at New Delhi, and four Regional Benches located at New Delhi, Mumbai, Kolkata and Chennai.

From 1st April 2008 onwards Matters falling under sections 247, 250, 269, 388B of the Companies Act, 1956 are being dealt with by the Principal Bench. Matters falling under sections 17, 18, 19, 58AA, 79/80A, 111/111A, 113/113A, 117, 117C, 118, 141, 144, 163, 167, 186, 196, 219, 235, 237(b), 247, 250, 269, 388B, 284, 304, 397/398, 408, 409, 614 and 621A of the Companies Act, 1956 and section 45QA of the Reserve Bank of India Act, 1934 are being dealt with by Regional Benches, namely New Delhi Bench, Kolkata Bench, Mumbai Bench and Chennai Bench consisting of one or more member(s).

Matters pending before the Principal Bench and Additional Principal Bench as on 1st April 2008 shall continue to be disposed off in the name of Principal Bench and Additional Principal Bench respectively. In case a company fails to comply with the directions contained in the Orders so passed by the Company Law Board, application under section 634A of the Companies Act, 1956 for enforcing the orders are entertained.

In terms of Section 10F of the Companies Act, any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order.

Once the much awaited National Company Law Tribunal and National Company Law Appellate Tribunal are established and made functional almost all powers exercised by the High Courts under the Companies Act, 1956, the powers exercised by the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and powers now being exercised by the Company Law Board will get transferred to the NCLT and NCLAT except the judicial review powers exercised by courts under Article 226 and 227 of Constitution of India.

VIOLATION OF CLB ORDER & CONTEMPT PROCEEDINGS

In the case of *N. VenkataSwamy Naidu* v. *M/S. Sri Surya Teja Constructions* 2008 Cr.L.J.227 the issue as to initiation of contempt proceeding against the violation of the CLB Order came up before the Andhra Pradesh High Court. The Court has examined the following issues:

1) Whether the CLB is a Court under the Contempt of Courts Act, 1971?
2) Whether the CLB is a Subordinate Court?
3) Can the High Court exercise its jurisdiction under Section 10 of the Contempt of Courts Act even in the absence of a reference to it by the CLB?
4) Would the existence of an alternative remedy bar exercise of jurisdiction by the High Court under the Contempt of Courts Act, 1971?
5) Limitations for taking action for contempt.
6) Principles governing exercise of jurisdiction to punish for contempt.

Brief facts of the case were that the petitioner filed the instant contempt case alleging that respondent Nos. 1, 2 and 4 to 9 wilfully disobeyed and grossly violated the CLB's orders. It was the petitioner's case that he filed a company petition under section 397/398, wherein he sought for various interim reliefs including an order to prevent the sale of dispossession of the company's land and to prevent injury being caused to persons who were allotted flats in the project; that when the said petition under consideration, the respondents demolished the superstructure of the building necessitating his filing an application requesting the CLB to interfere and grant necessary order with regard to the existing structure; that the CLB granted *status quo* vide its order dated 18.7.2005 but despite that, the respondents continued to demolish the building and when those violations were brought to CLB's notice on 20.7.2005, it appointed an Advocate Commissioner who after visiting/inspecting the dispute site, submitted his report dated

31.7.2005 confirming that one structure was completely and the other was partially demolished; that, consequently, the CLB, vide its order dated 4.10.2005 held, *inter alia*, that the respondents had demolished the entire disputed structures in utter violation of its order. The CLB further held that the High Court, being the CLB's appellate authority, CLB must be deemed to be a subordinate court within the ambit of the Act and, therefore, the High Court could exercise powers of dealing with contempt of the CLB. The CLB, therefore, granted liberty to the petitioner to move the High Court by invoking its jurisdiction under section 10 of the Contempt of Courts Act so as to prosecute the respondents for having willfully disobeyed CLB's order dated 18.7.2005.

The respondent's case was that the contempt case was liable to be dismissed *inter alia*, on the grounds that since the CLB had merely left it open to the petitioner to approach the High Court and had not made a reference itself, the High Court would not take cognizance of contempt, and that the contempt case as filed was even otherwise barred by limitation.

Issues and Decision

Whether the CLB is a Court under the Contempt of Courts Act, 1971?

The Contempt of Courts Act does not define what a Court under the Act is. To fall within ambit of the word 'Court'for the purposes of section 10, the following conditions are to be satisfied:

(i) the authority must be enjoined to adjudicate upon the disputes between the parties;
(ii) the authority's source of power must emanate from the statute and must not be based nearly on agreements between the parties;
(iii) the authority should have the power to ascertain disputed question of facts and laws on consideration of the legal arguments both oral and written and the evidence adduced by the contesting parties;
(iv) the authority should have the power to enforce attendance of witnesses, production of documents to decide disputes in a judicial manner and the end–result or product of the exercise are such power by the authority must result in a binding decision between the contesting parties concluding the *lis* between them; and
(v) the decisions of such authority disposing the whole matter, both on questions of facts and law, must be definitive and must have finality and authoritativeness.

Since all the said tests were satisfied, the Company Law Board rightly held in its order dated 4.10.2005, that it was a court within the meaning of section 10.

Whether the CLB is a Subordinate Court?

High Courts, being Superior Courts of Record, enjoy inherent powers of contempt to protect Subordinate Courts even in the absence of any express provision in any Act. Article 227 confers supervisory jurisdiction on the High Court and, in exercise of that power, the High Court may correct judicial orders of subordinate courts. In addition, the High Court has administrative control over subordinate courts. The jurisdiction and power of a Superior Court of Record to punish contempt of subordinate courts is not founded on the Court's administrative power of superintendence, instead the inherent jurisdiction is conceded to Superior Courts of Record on the premise of its judicial power to correct errors of subordinate courts.

The Inherent powers of a Superior Court of Record have remained unaffected even after codification of the Contempt Law. The Contempt of Courts Act, 1971 was enacted to define and limit the powers of courts in punishing contempt of courts and to regulate their procedure in relation thereto. Section 10 relates to the power of the High Court to punish for contempt of subordinate courts. Section 10, like Section 2 of the 1926 Act and Section 3 of the 1952 Act, does not confer any new jurisdiction instead it reiterates and reaffirms the jurisdiction and power of a High Court in respect of its own contempt and of subordinate courts.[2] The phrase "courts subordinate to it", used in Section 10 is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them, under Article 235 of the Constitution of India, does not vest in the High Court.[3] Under Section 10(F) of the Companies Act 1956, any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court, within sixty days from the date of communication of the decision or order of the Company Law Board, on any question of law arising out of such an order.

The Company Law Board is thus judicially subordinate to the High Court and, even if its administrative control is held not to vest in the High Court under Article 235 of the Constitution of India, it would nonetheless be a Court subordinate to the High Court under Section 10 of the Contempt of Courts Act.

2 *Delhi Judicial Service Association, Tis Hazari Court, Delhi* v. *State of Gujarat*; AIR 1991 SC 2176.

3 *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow* v. *Vinay Chandra Misra;* AIR 1981SC 723.

High Courts, being Superior Courts of Record, enjoy inherent powers of contempt to protect Subordinate Courts even in the absence of any express provision in any Act. Article 227 confers supervisory jurisdiction on the High Court and, in exercise of that power, the High Court may correct judicial orders of subordinate courts. In addition, the High Court has administrative control over subordinate courts.

Can the High Court exercise its jurisdiction under Section 10 of the Contempt of Courts Act even in the absence of a reference to it by the CLB?

It is true that the Company Law Board, while holding that the respondents were guilty of gross violation of its restraint order dated 18.07.2005 in demolishing the entire structure in dispute, that the apologies offered were with the hope and object of avoiding punishment for wilful disobedience of the orders of the Bench and were not acceptable, held that the petitioner was at liberty to move the High Court invoking its jurisdiction under Section 10 of the Contempt of Courts Act. Short of making a reference, the Company Law Board has, in no unmistaken terms, held that the respondents had wilfully and deliberately violated its orders and had committed contempt.

Section 2(a) of the Contempt of Courts, Act, 1971 defines "contempt of court" to mean civil contempt or criminal contempt. Section 2(b) defines "Civil Contempt" to mean wilful disobedience to, among others, decrees, orders, or other process of a Court. Section 10 relates to the power of the High Court to punish for contempt of subordinate courts and, thereunder, every High Court shall have and exercise the same jurisdiction, power 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. Under the proviso to Section 10, 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. The "Contempt of Court Rules, 1980" regulate proceedings for contempt of Subordinate Courts and of the High Court under the Contempt of Courts Act, 1971. Under Rule 5, in case of contempt, other than the contempt referred to in Rule 4, the High Court may take cognizance of Contempt and take action (a) *Suo motu* or (b) on a petition made by the Advocate General of the State of Andhra Pradesh or (c) on a petition made by any person and, in case of Criminal Contempt, with the consent in writing of the Advocate General of the State of Andhra Pradesh or (d) on a reference made to it by a Court Subordinate to it in the case of contempt of such Subordinate Court or on a motion made by the Advocate General of the State of Andhra Pradesh in that behalf. The modes prescribed in Rule 5, for the High Court to take cognizance of contempt and take action, are in the alternative. While the subordinate court may make a reference in the case of a contempt of such Court or the Advocate General may make a motion in that behalf, Rule 5 does not bar the High Court from taking cognizance of contempt, or in taking action, either *suo motu* or on a petition made by any person. A case of contempt of court is not strict sense a cause or a matter between parties *inter-se*. It is a matter between the court and the contemnor. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct of the contemnor to the notice of the court, whether a private person or the subordinate court, is only an informant and does not have the status of a litigant[4] in the contempt of court case.[5] Section 10 of the Contempt of Courts Act makes the powers of the High Court, to punish for contempt of a subordinate court, coextensive and congruent with its power to punish for contempt of itself not only in regard to the quantum or prerequisites for punishment, but also in the matter of procedure and practice. If the High Court is *prima facie* satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act *suo motu* and commence the proceedings against the contemnor. However, this mode of taking *suo motu* cognizance of contempt of a subordinate court, should be resorted to sparingly where the contempt concerned is grave and serious in nature.The power of the High Court under Section 10, to punish for contempt of subordinate Courts, is in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself. It is not, and cannot be, in dispute that the High Court can either *suo motu* or on a petition made by any person exercise jurisdiction in respect of contempt of itself. In view of Section 10 of the Contempt of Courts Act, the very same procedure and practice would apply even in respect of contempt of subordinate courts. Accepting the submission of learned Counsel appearing on behalf of respondents 5 and 6, that the High Court can take cognizance of contempt of subordinate Courts only on a reference made to it by the subordinate Court itself or on a motion made by the Advocate General would render Rule 5 of the Contempt of Courts Rules, 1980 *ultravires* Section 10 of the Contempt of Courts Act. It would also fall foul of the inherent power of the High Court under Article 215 of the Constitution of India.

The mode of exercise of jurisdiction, as prescribed under Rule 5, can only be in the alternative and, as a result, the High Court can take action for contempt of subordinate Courts under Section 10 of the Contempt of Courts Act either *suo motu* or on a petition made

4 *Supreme Court Bar Association* v. *Union of India;* (1998)4 SCC 409.

5 *Jaipur Municipal Corpn.* v. *C.L. Mishra;* (2005) 8 SCC 423.

by a party.

Would the existance of an alternative remedy bar exercise of jurisdiction by the High Court under the Contempt of Courts Act, 1971?

Existance of an alternative remedy does not bar exercise of jurisdiction by the High Court, under Article 215 of the Constitution, to punish for contempt of itself, and that of courts subordinate to it. Further, the provisions of the Act, are in addition to and not in derogation of any other law on contempt of courts. Even if Regulations 44 and 47 of the Company Law Board Regulations and Order 39 Rule 2A C.P.C are held to be a law relating to contempt of courts, these provisions would not preclude the High Court, in an appropriate case, from taking action for contempt of the orders of the Company Law Board.

The Company Law Board cannot be equated to an Administrative Tribunal under the Administrative Tribunals Act, 1955 and since the Company Law Board is a court subordinate to it, the High Court, in exercise of its jurisdiction under section 10, can punish for any contempt such as wilful disobedience of the orders of the Company Law Board.

Limitations for taking action for contempt.

Under Section 20 of the Contempt of Courts Act, no Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. The order, violation of which is said to be in contempt, is that of the Company Law Board dated 18.07.2005. While the contempt application was filed before the Company Law Board on 20.07.2005, the Advocate Commissioner, in compliance with the directions of the Company Law Board, visited the site and submitted his report on 31.07.2005. Thereafter, by order dated 04.10.2005, the Company Law Board, while holding that the respondents had wilfully disobeyed its orders, gave liberty to the petitioner to approach the High Court and invoke its jurisdiction under Section 10 of the Contempt of Courts Act. The instant contempt case was filed on 21.11.2005 within two months of the orders of the Company Law Board dated 04.10.2005. Thus the application, in the instant contempt case, was filed within a period of one year even from 18.07.2005, when the order of *status quo* was passed by the Company Law Board, was not in dispute. The contention, however, was that since this High Court had not taken cognizance of contempt till date, and more than two years had elapsed from the date on which the order of the *status quo* was passed, no proceedings for contempt could then be initiated as the contempt case is barred by limitation.

In view of the authoritative pronouncement of the Supreme Court in Pallav Sheth[6] it must be held that if an application to initiate contempt proceedings is filed within one year, from the date on which contempt is committed, it would amount to initiation of contempt proceedings within limitation under Section 20 of the Contempt of Courts Act. The limitation under Section 20 has to be computed with reference to the date of filing of the application for initiation of contempt and, since in the instant case, such an application was filed on 21.11.2005, well within the period of one year from the order of *status quo* dated 18.07.2005, violation of which is said to be in contempt, the contempt case as filed cannot be said to be barred by limitation.

Principles governing exercise of jurisdiction to punish for contempt.

There are certain well recognized principles which govern the exercise of power and jurisdiction to punish for contempt. In its order dated 4.10.2005, the Company Law Board observed that its earlier order dated 18.07.2005, directing maintenance of *status quo,* had been deliberately violated and it was evident from the Advocate Commissioner's report that the subject structure was demolished even after the order of *status quo* was passed by it, and that respondents 1 to 9, in the Contempt Case before the High Court, were respondents in Company application, wherein the order of *status quo* was passed on 18.07.2005, and in Contempt application filed by the petitioner to punish the respondents for wilfully disobeying the orders dated 18.07.2005, is not in dispute. The High Court, in contempt proceedings, was not concerned with the merits of the order of the Company Law Board dated 18.07.2005 directing maintenance of *status quo*. The only question, which arose for consideration, was as to whether the order had been flouted and, if so, whether such violation was willful and deliberate. The conclusion of the Company Law Board, that there had been wilful and deliberate violation of its orders dated 18.07.2005, had, rightly, not been disputed by the respondents. Some of them would contend that they were neither the Directors nor were they associated with the first respondent company when the order of *status quo* was passed. Some others would content that, while they were Directors, they did not participate in the day to day affairs of the company and that, in law, it was only the Managing Director who could be held responsible for the day to day affairs of the company and it was he alone who could be said to have violated the orders of the Company Law Board.

A person, who has willfully and deliberately disobeyed or violated the orders of Court, cannot be heard to say that, while he may well be guilty thereof, he would, nonetheless, not be liable to be punished for contempt as he is merely a director of the company; and that it is only the managing director against whom action can be taken by contempt. Under section 303(2) of the Companies Act, 1956, the company shall, within the period mentioned, send to the Registrar, a return in duplicate in the prescribed form of any change among its directors, managing directors, managers, secretaries, etc, specifying the date of change. Form 32 of the Companies (Central Government's) General Rules and Forms, 1956 is the notice giving particulars of appointment of directors, managing directors, managers, secretaries, etc., and changes among them. Thereunder, the name of the person, the date of change and the particulars of change are specifically provided for.

6 *Pallav Sheth; AIR 2001 SC 2763.*

A certified copy of Form-32, as recorded by the Registrar of Companies on 23.04.2004, would show that respondent No.3, respondent No. 7, respondent No.8 and respondent No.9 had ceased to be the directors of the first respondent company as early as on 29.09.2003 much prior to the *status quo* order passed by the Company Law Board on 18.07.2005. Since the Respondents 3, 7, 8 and 9 were not even the Directors of, and were not associated with, the first respondent company when the order of *status quo* was passed, they could be said to have violated the orders of the Company Law Board, much less willfully and deliberately.The very same Form No.32, would show that the respondent No. 6 was reappointed in the General Meeting as a Director on 29.09.2003. While respondent No. 6, in her counter affidavit, contended that she had resigned from the Company on 10.02.2004 and that her resignation was approved by the Board of Directors, no evidence was placed in support of such a plea.

The application made to the Company Law Board in March, 2006, several months after the *status quo* order dated 18.7.2005 was passed, was of no assistance to respondent No. 6. Her self-serving plea, in the absence of any evidence in support thereof, did not merit acceptance. What was, however, of relevance was that the Advocate Commissioner's report made no mention of her presence at the site of the demolished structure, when he made his visit. Since the degree of proof required, to establish contempt of court, is proof beyond reasonable doubt, giving her the benefit of doubt, respondent No. 6 was also to be held not guilty of contempt.

The Advocate Commissioner's report dated 31.7.2005 specifically refers to the fact that, when he visited the site, demolition was in progress and that respondent No. 5, was present at the site. Respondent No. 5 had neither rebutted the contention of the Advocate Commissioner that he was present at the site, nor had he denied his presence at the site, when the Advocate Commissioner visited and found demolition to be in progress. It was established beyond reasonable doubt that the respondent No. 5 had willfully disobeyed and deliberately violated the order of *status quo* passed by the Company Law Board dated 18.7.2005, and had committed contempt of court. He had not even tendered an apology for his contumacious conduct in having willfully disobeyed the orders of the Company Law Board. Such defiance of the orders of the Company Law Board in continuing demolition of superstructure even till 29.7.2005 more than 10 days after the restraint order or *status quo* dated 18.7.2005, was a contempt of such a nature as to have substantially interfered with the due course of justice for which imposition of sentence of fine alone would not meet the ends of justice. Such flagrant violation of the orders of the Company Law Board must be dealt with sternly. Respondent No. 5 was to be sentenced, under section 12 (1), to undergo simple imprisonment for a term of 2 months and with a fine of Rs. 200/-. The contempt case was to be allowed with costs.

Conclusion

A court of law cannot function freely and fairly if it is to be thwarted in the discharge of its duties by contumacious and willful flouting or disobedience of its orders; or the parties that come before it seeking justice, the advocates that appear before it or the court itself are to be subjected to threat and abuse. Contempt of court is no demon lurking in the background, ready to pounce upon an unwary citizen. Nor is it a sword of Damocles ready to pierce his skull. Contempt of court is an instrument which the people themselves have given the courts by recognizing and vesting such power in the Supreme Court and the High Courts by Articles 129 and 215 respectively, and which the courts keep properly sheathed to be used rarely but only when public interest demands it. Anyone who takes the trouble of examining the applications made to the courts to commit persons for contempt of court will at once realize that more than 99 per cent of such applications arise out of attempts to disobey, obstruct or defy judicial orders made under Article 226 or Article 32 of the Constitution and hardly ever to vindicate the personal honour or integrity of the judge. The protagonists of the demand for the abolition of the law of contempt of court little realize that under the existing procedures the only way a High Court or the Supreme Court may secure compliance with its judgments or orders in writ proceedings under Article 226 or Article 32 of the Constitution is by seeking recourse to proceedings for contempt of court. Even adjudication and execution may be rendered difficult or ineffective without the power to commit for contempt of court. For example, if the records in the custody of a government official are necessary for the disposal of a writ petition and if the official refuses or evades production of those documents in court, the only way to compel him to produce them is to commit him for contempt of court. CS

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Investor Confidence – Imperatives for Good Governance

Investors stay invested in companies that demonstrate performance on a sustained basis. Sustained performance cannot be accidental – corporate governance practice of an organization is one of the essential requirements for assured performance on a sustained basis. Bold discharge of professional obligations can make constructive and positive contribution to improved corporate governance standards in our country.

Financial markets help channelising savings into investment that leads to more economic activity which creates another round of investible surpluses. Thanks to globalization of financial markets, capital freely moves across borders and usually flows to the countries that give better returns. China and India are the two contemporary economies that are excellent examples of how financial Markets fuel economic growth. In 1980, China and India, the two most populous countries on earth, were both very poor. India had a non trivial lead in per capita GDP; per capita GDP was $2.38 per calendar day, nearly one dollar more than in China. In 1980, China was already more than two years into its gradual economic reforms, whereas India did not embark on economic liberalization until 1991. Economic liberalization in both countries was followed by accelerated economic development. By 2000, daily GDP per capita had risen to $7.30 in China and to $4.71 in India, giving China a lead of $2.59. By 2008, China's per capita GDP (measured using the PPP exchange rate and 2005 international dollar) stood at $5,515 per year, or $15.11 per calendar day, and India's per capita GDP at $2,721 per year or $7.45 per day.[1]

This growth is directly attributable to the resources that financial markets funneled into these two gigantic economies. It was not only the domestic financial markets that participated in this but global financial markets in the form of foreign direct investment or foreign institutional investment have brought savings across the globe into these economies. These two economies are still booming although a bit subdued during 2012.

In another interesting study by World Bank Development Research Group titled 'Foreign Direct Investment under Weak Rule of Law", it was observed that "China is known for its lack of rule of law and weak property rights institutions. Nevertheless, China has become the world's number one destination for foreign direct investment, and that, at least to some observers, is puzzling. The rule of law and formal system of property rights are apparently not the most essential aspects in explaining FDI inflows within Chinese regions, and that the Law and Finance literature has overlooked the power of informal institutions, particularly the mechanism of reputation. The model (studied in this project) also implies that a government leader who has a long-term career horizon and cares about his or her reputation may be able to attract more investment".

Investors are willing to take risk and place their funds in the hands of entrepreneurs or economies if they are productive, protective

[1] **Diagnosing Development Bottlenecks:** China and India1; The World Bank Development Research Group Finance and Private Sector Development Team April 2011.

> Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring. The presence of an effective corporate governance system, within an individual company and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy.

and care for their reputation. This specific attribute ie., entrepreneur being productive, protective and care for their reputation is perhaps the best description of the final objective of Corporate Governance from investor perspective.

Corporate governance is one key element in improving economic efficiency and growth as well as enhancing investor confidence. According to OECD principles of Corporate Governance, it involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring. The presence of an effective corporate governance system, within an individual company and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy. As a result, the cost of capital is lower and firms are encouraged to use resources more efficiently, thereby underpinning growth.[2]

Then the question which comes up is what is "Corporate Governance" and how to make it effective. A lot is already written on Corporate Governance. The issue is whether the current regulatory framework on corporate governance serving its purpose? Is it effective enough to sustain investor confidence in the company? Confederation of Indian Industry conducted a survey on this very issue and released a report in September 2012 under the title "Institutional Investors – Driving Force for Good Governance". The following are highlights of the survey:

- 84% of respondents consider that corporate governance is very important.
- Institutional investors consider quality of financial reporting as a very important criteria followed by reputation of the promoter (note – not the whole board).
- 94% of respondents state that they expect companies with good corporate governance to generate 'high shareholder returns'. But 26% of respondents invested in companies only because of good corporate governance. Corporate governance is necessary but not sufficient to generate high returns.
- Institutions may not be regular in exercising their voting rights in the meeting. They "vote by their feet" meaning withdrawing the investment. In fact 72% of the institutional investors are ok to invest in non-voting shares.
- Institutional investors prefer to engage with the companies on issues and try to arrive at consensus. If no consensus is arrived, they would divest.
- Majority of investors (62%) say that the existing framework of regulations in India is ineffective for enforcing rights and obtaining remedies for corporate governance issues. Key issues like sale of business, intra-group mergers and issue of preferential warrants are not addressed by regulations.
- Though 83% of institutional investors indicated that clause 49 is serving its limited purpose, they rated that corporate governance mechanism in India is ineffective.

The results of the CII survey confirms our professional perception that need of the hour is to make Corporate Governance effective to sustain investor confidence and ensure flow of savings into economic activity via the financial markets.

The following matters are to be considered to create an effective governance regime:

What do investors mean when they say effective corporate governance?

China attracts more FDI than India. Does it mean that Chinese corporate governance is better than Indian standards? Answer to this question can be found in a paper titled "Chinese Corporate Governance – history and institutional frame work (2008)" published by Rand Institute for Civil Justice Center, a center for corporate ethics and governance.

The paper says "Despite this rapid growth, corporate governance has been very weak in China." In a survey by the World Economic Forum, China ranked 44 out of 49 studied countries in terms of corporate governance (Liu, 2006). In summary the following are ills in corporate governance in China:

- Concentration of state ownership
- Lack of independence among board of directors
- Insider trading
- False Financial disclosures
- Immature capital markets.

In spite of all these ills, China has been attracting substantially higher FDI than India. India's corporate governance standards are definitely better than China, if one goes by this report. This only leads us to a conclusion that, perhaps, investors flock at

[2] OECD Principles of Corporate Governance.

companies for the returns it gives and corporate governance is only a hygiene factor.

Another question, that, comes up is when one talks about corporate governance, does he/she mean something different from what Corporate Governance is generally understood as?

- Does it hint at investor/stakeholders doubting on whether the company should have performed better? Or
- Whether it is a statement on the credibility of the incumbent management?

It is learnt from senior management of the present "Tech Mahindra" that Satyam had every desirable feature under corporate governance regulatory structure but Satyam did happen. In that light, we may consider that the actual meaning of corporate governance from investor perspective is simply the credibility of the incumbent management than what is conveyed through various legal/regulatory provisions relating to corporate governance.

Need for effective corporate governance culture and practices

MCA appointed committee chaired by Mr. Adi Godrej to formulate a Policy Document on corporate governance released the report on September 18, 2012. The committee is of the view that "Indian corporate governance standards can unarguably be considered as one of the best in the world" but goes on to say that "the committee to advocate some practical suggestions on strengthening the actual performance of Indian corporate governance within the existing legal frame work". It also observes that its recommendations will help transform the corporate from a tick-box exercise to an actual road map. The opening sentence of the report is a good summary in itself: "the lacuna in Indian corporate governance is arguably not what is missing in the letter of the law, but what is missing in the internalization and implementation of it." The concluding part states "The real issues that determine the quality of corporate governance are issues of principle. Only a law or rule may not be an effective measure. This is the right time for corporate India to look inward and improve its own corporate governance, moving it beyond regulatory compliances to better oversight."

The body of the report consists of 17 principles. Each of these principles suggests what is desirable but there is no indication on what if desirable behaviour is not forthcoming. Effectiveness of a law depends on intensity, objectivity and promptness with which it is enforced. Red hot stove burns every hand that touches it – whether intentionally or unintentionally – whether it is an infant or fully grown adult. A cold stove which has potential to be hot, does not harm anyone. Our corporate governance framework is cold stove; it has to generate heat. Unfortunately, the committee report does not throw any light on how to enforce the regulatory framework.

Contribution of Company Secretary Profession to effective corporate governance

Professional Company Secretaries are being perceived by public and regulators as guardians of corporate governance. However, it is doubtful whether they are empowered to discharge their functions as guardians.

Promoter dominated Board structure, lukewarm effectiveness of institution of independent director, dependence on the management for continuity of service; rewards and recognition of the company secretary, helplessness of minority shareholders, apprehension that reporting non-compliance will boomerang on company secretary himself are some of the reasons why company secretary is unable to discharge the responsibility of guardian of corporate governance.

Strong corporate governance culture will evolveif company secretaries decide to join only such companies that have a strong corporate governance culture and practice. Professional Third party corporate governance rating will help Company Secretaries from assessing the corporate governance practices of companies and such rating may also motivate companies to achieve better rating. In its early days, SEBI used to publish 'investor complaint numbers' against companies in all leading newspapers. Corporate world responded by making 'reduction/prevention of complaints' as a KRA for company secretaries. Articulation of rating helps.

A company secretary can assert authority in doing some of the following to improve effectiveness of corporate governance regime.

- Not to record leave of absence of directors unless received in writing and allow legal consequences to follow. This will improve attendance of independent directors.
- Ensure that agenda notes are sent to directors at least seven days before the meeting. If the business departments do not give the notes in time, ruthlessly reject their agenda item from being presented before the board.
- Not allow items important policy matters to be tabled without

Promoter dominated Board structure, lukewarm effectiveness of institution of independent director, dependence on the management for continuity of service; rewards and recognition of the company secretary, helplessness of minority shareholders, apprehension that reporting non-compliance will boomerang on company secretary himself are some of the reasons why company secretary is unable to discharge the responsibility of guardian of corporate governance.

appropriate notice.

- Check with independent directors before the meeting on whether they need any assistance for understanding/appreciating an agenda item; if yes, set up appropriate meetings with business teams.
- Schedule meeting of independent directors with business departments /auditors at some periodicity.
- Check with individual directors on whether they have any item to be included in the Agenda.
- If the managerial remuneration has a structure where promoter director gets disproportionately more remuneration than other full time officers of the same stature, give break up in disclosures to shareholders?

The list is not complete. But if Company Secretaries exercise their professional authority to the extent already available, it can make a difference to the effectiveness of corporate governance.

Improve shareholders' articulation

It is necessary to evolve a mechanism to register, record and display shareholder rejection/non-acceptance of a deviant governance practice; over a period of time, perhaps, companies will work towards not having such remarks against them. If corporates can boldly provide space in the company website for their shareholders to post their comments/views on various governance matters, it will remain as a permanent and transparent record of investors' impression on the company. If more and more adverse remarks are seen in this space, corporates will be led towards corrective action – be it in the longer term.

Use of Information Technology in empowering independent directors

Today all companies use information technology intensively in the day to day management. A variety of Management Information System reports are generated and circulated amongst managers at different levels. Most of these are accessible to internal auditors and statutory auditors. However, all this information is not available to directors who are on the Board. Board is guided by what is stated in the agenda notes circulated. Either by default or design, information made available to the director is restricted. Giving all the details may result in information overload, particularly before the board meeting. Restricting the information for the sake of brevity and manageability may condition the comprehension of the director which may lead to ineffective performance on the board. It has been an established practice to make the information available to the director only in the context of a board meeting. This tradition can be changed by making the information available to the directors on a continuous basis using information technology. Simply speaking, directors may be given access to all the information made available to internal and statutory auditors using secured network arrangements.

Improve regulatory effectiveness by examining returns filed

OECD principles have devoted a chapter on "Ensuring the Basis for an Effective Corporate Governance Framework". The crux of this chapter is that "Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained."[3]

In our country, regulators already have or have access to almost all governance related documented information of companies with them. Various returns/reports/statistics, etc. being filed with MCA, SEBI, Stock Exchange, Income Tax, Service Tax, Reserve Bank of India and industry specific regulatory authorities. The data that is reported with them may be analyzed from governance perspective also and necessary remedial action taken.

Change in Audit orientation

The current audit practice is more that of verification for compliance. In the recent past, Auditing Standards are amended requiring quantification of contingencies, etc. It may be worthwhile if impact of non-compliance with corporate governance is quantified in terms of loss to minority shareholders or unjust benefit to the promoters/management. This will put companies on caution while taking decisions in the face of conflict of interest.

Non-compliance of corporate governance frame be considered as economic offence

With all the talk of corporate governance at every forum, it is hard to believe that management/promoters/institutions responsible for enforcing higher standards of corporate governance are ignorant about it. It may more be complacence but complicity cannot be ruled out. If it is complicity, it could be for their personal benefit at the cost of others. Such violation of corporate governance framework can be considered as economic offence. CS

[3] OECD Principles of Corporate Governance.

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Relief against Oppression & Mismanagement: An Analysis

The Companies Act, 1956 has elaborate provisions to protect the interest of minority shareholders against oppressive acts of the majority as well as acts of mismanagement. The scope of sections 397 and 398 has been explained in the light of various judicial elucidations and interpretations.

INTRODUCTION

Incorporation of a company under the Companies Act,1956 (the Act) results in creation of two agencies for managing the affairs of a company. They are Board of Directors (BOD) and the body of shareholders/members. The devolution of corporate powers as per MOA, AOA and the Act are substantially more in favour of BOD as it is in charge of management of a company. For exercise of corporate powers and authorities, the board has to meet periodically and record its decisions in a suitable manner. While individual directors have no power to exercise (except those which are specifically delegated to them for administrative or business convenience),but as members of the Board, they collectively have all the powers and authorities to exercise. The *inter se* relation between the Board and the body of shareholders, by virtue of pyramidal structure of a company, is not adversarial but the law expect them to function in a harmonious manner complementing each other's functional responsibility.

The most potent instrument in the hands of the shareholders to direct the proper conduct of management of the affairs of a company is the power of voting conferred on the equity holders of shares by section 87 of the Act. As all the holders of equity shares, placed as they are in different locations cannot manage the affairs of a company on a day to-day basis, they have to elect directors to represent them on the Board. This inevitably results in the composition of the Board reflecting voting strength of the shareholders. In the circumstance there has to be close inter-action between the board and the shareholders through periodical election to the Board. While this forms the jurisprudential aspect of company law, deviation from the accepted norms are followed quite often more in breach than in observance, more specifically in the case of closely held companies. Hence the company law provides for protection of minority interest more fully described in sections 397 & 398 of the Act. These powers were earlier exercised by the jurisdictional High courts, but the Companies (Amendment)Act,1988 transferred these powers to CLB effective from 31-5-1991.

SCOPE OF MINORITY PROTECTION

The members of a company are given exclusive right to petition the Company Law Board(CLB) if the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members and to seek appropriate remedial order with a view to bringing to an end the matters complained of. This is the essence of section 397 of the Act. CLB has wide powers in this regard and may even order

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winding up of a company if the facts of the disputes would, otherwise, justify making of such an order and even it would unfairly prejudice the complaining member/s.

A number of complaints have been made to CLB during the last few years and on examination of such issues it has laid down the broad contours and the depth of the legal provision. Additionally we have a number case laws decided by the law courts both in India and abroad. Repeatedly it has been held that there is no standard norms to decide disputes of the type mentioned above. This has to be decided on the facts and circumstances of each case. The Supreme Court, after reviewing the leading authorities has expressed the view that it should be shown as a preliminary issue that there is just and equitable cause for winding up of the company and that the conduct of the majority of shareholders was oppressive to the minority members. The events have to be considered not in isolation, but as part of a consolidated story as observed in *Kalinga Tubes Ltd.* v. *Shanti Prasad Jain* (1964)1 Comp LJ 117.

CONCEPT OF PUBLIC INTEREST

The relief under section 397, *inter alia,* revolves around the conduct of business which, *inter alia,* is prejudicial to public interest. The concept of "Public interest" permeates many of the provisions of the Act and it is imperative to understand the contours of this expression. It is observed that "Public interest" is an elusive abstraction meaning general social welfare or regard for the social good and predication interest of the general public in matters where regard for the social good is most important (see Public Adminstration and the Public Interest by E. Pendleton Herring.) In the words of Justice Felix Frankfurtur of U.S. Supreme Court, the idea of public interest is vague, impalpable but all controlling consideration.

WHAT IS OPPRESSION?

This may be considered as an act exercised in a manner burdensome, harsh and wrongful. This means lack of probity and fair decision in the affairs of a company to the prejudice of some members. This confers wide powers on the court to deal with such a situation in an equitable manner–per Lord Keith in Scotish Co-Operative Whole sale Society Ltd (1958 ALLER 66 in relation to 1948 English Companies Act.) This decision was followed in *Needle Industries (India) Ltd* v. *Needle Industries Newey (India) Holdings Ltd* (1981)51 Comp Cas 743 at 777; AIR 1981 SC 1298. To obtain relief under section 397 a petitioner must show that the oppression arises from the way in which the affairs of the company are being conducted is attributable to an act or omission on the part of the company.

Oppression may take different forms and need not necessarily be for pecuniary benefit. It may be due to desire to obtain power and control or merely vindictive. It may also manifest itself in a denial of rights. There may be oppression where a minority by force or other wrongful act oust the majority so as to prevent lawful exercise of their rights as shareholders (*Rameshwar Prasad* v. *Sindri Iron Foundry (P) Ltd.* AIR 1966 CAL 512(D.B.).

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A thing is said to be in public interest where it can be made to appear to be contributive to the general welfare than to the special privileges of a class, group or individual, as per dictionary of sociology. It is essentially majoritarian ethic measured in terms of result or motive. In common parliance it is taken to mean the interest of the community or Nation as a whole as also the State or Govt which represent it. In the case of a company, the concept of "public interest" takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested, but for the public good.

OPPRESSIVE ACTS

Some illustrative instances of oppressive acts are outlined hereunder.

(a) A resolution prejudicing the interest of the company or its shareholders is generally oppressive. *-A. M. Varkey* v. *J. R.Motishaw,* AIR 1964 Ker 114.

(b) Acts in contravention of law–An isolated act may not necessarily and by itself support the inference that the law was violated with a *mala fide* intention, burdensome, harsh and wrongful. But a series of illegal acts following upon one another justify as a cause or to commit oppression of persons against whom these acts are directed- [Observations of Supreme Court in *Needle Industries (India) Ltd.* v. *Needle Industries Newey (India) Holdings Ltd.* (1981) 51 Comp Cas 743.]

(c) Appointment of a director at an EGM of which no proof was offered by the respondents evidencing issue of notice was held to be void and also an act of oppression.

(d) where one of the directors is residing mostly out of India and the notice of the board meeting was given to the local address knowing that it would not reach him is held to be inadequate. Such conduct would show lack of probity and fair play on the part of the director in charge of the company's affairs. It was held that the meeting and allotment of shares at the meeting could both be declared as null and void - [*Kamal K.Dutt (Dr.)* v. *Ruby General Hospital Ltd.* (2000) 36CLA 214(CLB – Principal Bench)].

(e) In the case of an oppressive act, though it may not itself be continuous, if the circumstances indicate that the effect is continuous, the court will interfere. -Sindri Iron Foundry(P)Ltd (1964) 34 Comp Cas 510.

(f) where shareholders invested in life insurance business and after the business was taken over by the State, the director who had the support of majority or voting power wanted to use the asset (i.e. the amount of compensation received) in some other business it was held to be an act of oppression of minority.

(g) the directors are in a fiduciary positon *vis-a vis* the company and must exercise their power to issue further shares for the benefit of the company. if the power is exercised simply and solely for their personal aggrandisement to the detriment of the company, the court will interfere and prevent the directors from doing so. (Needle Industries case).

(h) Where in exercise of the power of preventing oppressive conduct of affairs, an allotment of shares is set aside, it would amount to automatic rectification of the register of members- *Malleswara Finance & Investment P Ltd* v. *CLB* (1994)81 Comp Cas 66; AIR 1994 Mad 341.

ACTS WHICH ARE NOT OPPRESSIVE

Some illustrative instances of acts which are not oppressive are the following:

(a) Unwise, inefficient or careless conduct of a director in the performance of his duties cannot give rise to a claim for relief under section 397.The complainant must show that he has been constrained to submit to conduct which lacks in probity, conduct which is unfair to him(Needle Indusries case).

(b) Majority carrying on a competing business does not necessarily mean that the minority is being oppressed in relation to the company, unless the majority are diverting corporate opportunities or using company's facilities for the competing business-the Cumana Ltd 1980 BCLC 430.

(c) The complaining director apprehended that his distributorship was likely to be terminated and filed a petition to prevent this happening. The Court upheld the decision of CLB that the matter of distributorship was outside the ambit and scope of section 397/398- *M.L Thukral* v. *Krone Communications Ltd.* (1996)86 Comp Cas 648 (Kant).

(d) Commercial misjudgement will not amount to oppression even though it may have adverse effect on the price of the petitioner's shares - Ruthford (1994) BCC 870,879.

(e) Where remedies of preventive and punitive nature are provided in the statute itself, there is no case for resorting to relief and remedies for prevention of oppression & mismanagement - *Anderson* v. *Hogg* (2000) SLT 634(Scotland).

(f) Short notice is not an act of oppression, unless it is intended to be adopted as a strategy to ride rough shod over the lesser number of shareholders- *Shantadevi Pratap Singh Gaekwad* v. *Sangram Singh Gaekwad* (1996) 1 Comp LJ 72(Guj). However suppressing the notice to some of the members is an act of oppression. *Farhat Sheik* v. *Esumen Matala Chemicals P. Ltd.* (1996) 87 Comp Cas 290 (CLB, New Delhi).

(g) A mere change in ownership of shares is not sufficient to invoke sections 397 and 398-*Gordon Woodroof & Co Ltd. U.K.* v. *Gordon Woodroff Ltd.*(1997) 97 Comp Cas 582(Mad).

(h) Merely because the petitioner who had a substantial shareholding was excluded from management,it cannot be said there was oppression as a shareholder-*Ramanathan Chettiar* v. *A.F.Harwey Ltd.*(1967)37 Comp Cas 212.

MISMANAGEMENT OF THE AFFAIRS OF A COMPANY-SECTION 398

Section 398 provides for relief to the members of a company who allege that the affairs of the company are being conducted in a manner(i) prejudicial to the interests of the company or(ii) a material change has taken place in the management or control of the company by an alteration in its board or manager or in the ownership of the company's shares and by reason of such change it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or the interest of the company. Changes brought about by the creditors, debenture holders or any class of shareholders of the company are outside the purview of this section. Such relief may be secured by a petition to CLB which may make an order as it thinks fit, if it is of the opinion that a material change in the management or control of the company has occurred or likely to happen, with a view to bringing to an end the matters complained or apprehension thereof, as the case may be.

> The powers of the CLB under section 397 is discretionary in nature as the words used are "the Company Law Board may make an order as it thinks fit with a view to bringing to an end the matters complained of".This is different from the wordings of section 398 wherein it is stated that "the Company Law Board with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit".

The aforesaid provision speaks of both positive and negative acts. The positive acts relate to the action taken by the management which results in prejudice being caused to the company and the negative action relates to where no action at all is taken by the management and such non action is likely to cause prejudice to the company. This may arise out of a variety of reasons including serious disputes amongst the board members resulting in a dead lock or stalemate.

The aforesaid provision is a complete code in itself. In exercising its jurisdiction the court can pass an order and lay down the procedure for implementing its order. While making a petition,the party who is charging the management with mis-appropriation or improper conduct should give full particulars of the charges in the pleading to enable the party charged against to understand what he is charged with and to answer those charges. This sets out an important legal principle of natural justice and affording full and complete opportunity of having to defend the charges.

A composite petition under both sections 397 and 398 may be filed provided the relief claimed are not conflicting –*Sorab Dinshaji Dastur* v. *D.P.R. Cassad* [(1963) 33 Comp Cas;AIR 1963 Bom 173]. The court will act under section 398,if there is no charge of oppression but of mis-management of the affairs of the company. However, a petition under section 398 is not admissible where alternate remedy has already been resorted to. Where a petition under section 397/398 has already been filed, a petition under section 408 (powers of Govt to prevent oppression or mismanagement by appointment of its nominees on the board) and section 409 (power of CLB to prevent change in board likely to affect company prejudicially) containing almost the same averment and prayer identical to the petition previously filed is held to be not maintainable- *P.S. Nanavati* v. *Jaipur Metals & Electronics Ltd.*(1990)69 Comp Cas 769(Raj).

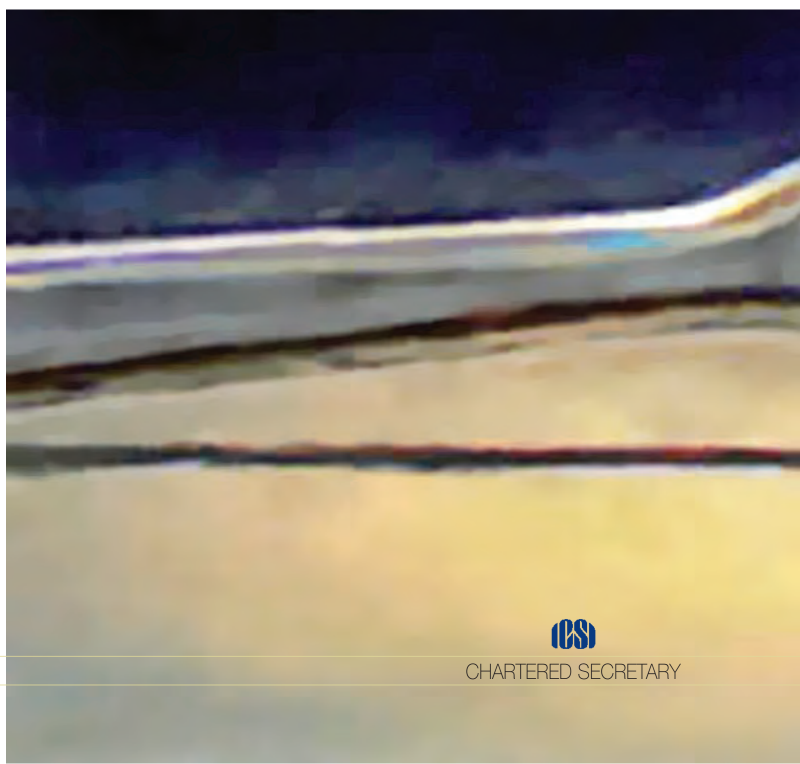
Another aspect of the matter relates to the requirement to the effect that CLB shall give notice of every application made to it under section 397 or 398 to the Central Govt. and take into consideration the representation, if any, made to it, before passing the final order.

Illustrative Acts of Mismanagement

(a) *Conduct of affairs to the company's prejudice:* The facts which establishes this aspect are (i) Uncertainty as to the *de jure* status of the board (ii) Difficulty in having the state of affairs rectified in the usual manner (iii) The company is being run by the board in their own interest, over-riding the interest of majority of shareholders (iv) Involving the company in costly litigation- from these the court will be able to conclude that the affairs of the company are being conducted in the interest of a group and certainly not in the interest of the company. These instances will bring the concerned company within regulatory provision of section 398(b) – [Albert David(1964)68 CWN 163,172.]

(b) *Continuation in office after expiry of the term:* Where the term of office of the Managing Director has expired and he continues in office without a meeting of the board being held for re-appointment. Such continuance in office is considered as mis-management of the affairs of the company. – [*Sishu Ranjan Dutta* v. *Bhola Nath Paper House Ltd* (1983) 53 Comp Cas 883(Cal).]

(c) *Infighting among directors:*Though the business of the company was flourishing there was dead lock in management due to lack of faith between the two factions of the family. In such circumstance the court will intervene and order winding up, appoint special directors to manage the affairs of the company, settle all liabilities and divide the remaining assets between the two factions. Similar is the position for court intervention if there is infighting among the directors – [*Suresh Kumar Singh* v. *Supreme Motors Ltd* (1983)54 Comp Cas 235 (Del).]



(d) *Preventing directors from functioning:* Where a set of properly appointed directors were not permitted to join or function as directors, the court said that complaint of such appointees could be regarded as mismanagement of affairs of the company. – [*Ador Samia Ltd* v. *Indian Engineering Systems Ltd* (1999) 35 CLA 224(CLB- Principal Bench).]

(e) *Absence of records & losses:* Where the directors were not taking interest in the affairs of the company, the management failed to protect the records of the company, there was infighting among the directors and the company incurring losses. The court held that this was a fit case for orders under section 398. –[C*hander Krishna Gupta* v. *PannalalGirdhari Lal P Ltd* (1984) 55 Comp Cas 428 (Bom).]

(f) *Sale of assets at low price & without compliance with the Act:* Where a tea and rubber plantation was sold by the director at a low price to another tea plantation company without complying with the requirement of section 293(1) and without giving adequate notice under section 173 and delivery of the property and acceptance of consideration in instalments took place before general body meeting it was held that all these acts constituted mismanagement of the affairs of the company. The court set aside the sale and the purchaser was asked to give a statement of income from the estate purchased. – [*Malayalam plantations(India) Ltd*, Re(1991)5 CLA 361(Ker).]

(g) *Other grounds:* (i) Collusive sale of asset (ii) Company trading unprofitably (iii) Erosion of company's substratum (iv) Violation of statutory provision and the articles (v) Violation of memorandum(vi) Misfeasance application under section 543 of the Act. - These are some other grounds on which a petition under section 398 can be filed.

Acts not giving rise to mismanagement

Instance of the following types will not attract the provisions of section 398.

(a) Bonafide decision taken consistent with the company's memorandum and articles (b) arrangement with creditors in the company's bonafide interest (c) removal of director (d) removal of M.D. (e) dispute about the property sold to the company.

RIGHT TO PETITION CLB – (SECTION 399)

This right is given exclusively to the members of a company. In the case of a company having share capital, the qualification required is not less than 100 members or not less than one-tenth of the total number of members whichever is less or any member holding not less than one-tenth of the issued share capital of the company, provided they have paid all calls and other sums due on those shares.

The Central Govt. may also authorise any member/s of the company to apply to CLB under section 397/398 if it is of the opinion that circumstances exist which makes it just and equitable to do so, notwithstanding non-fulfilment of requirements of sub-section (1) of section 399 of the Act. However, such members should keep security for such amount as the Govt. may deem reasonable for payment towards costs which CLB may order. Apart from this, the Central Govt. may itself apply to CLB for an order under section 397/398 or cause an application to be made to CLB for such an order – (Section 401.)

The application aforesaid may be made by one or more members obtaining the consent of the rest. The application may be made on their behalf and for the benefit of all of them. The consenting members have to state in their consent letters that they have perused the petition and given their consent in writing on that basis. The following points are worth noting in this connection -

(i) A petition presented by the Company Secretary on behalf of the company which is a shareholder is not maintainable, unless accompanied by an affidavit verifying the petition along with the statement of authorisation by the BOD to present the petition – *[Mohanlal Mittal* v. *UniversaL Wires Ltd* (1983)53 Comp Cas 36(Cal) and followed in *Sankaranarayana (K.N)* v. *Shri Consultants & Services (P) Ltd.*(1994) 80 Comp Cas 558(Mad).]

(ii) A member need not file the petition in respect of his entire shareholding so long as the shares conform to the requirements – [*Killick Nixon Ltd* v. *Bank of India* (1985) 57 Comp Cas 831(DB –Bom).]

(iii) In order to maintain a petition it is not necessary that each individual should have 10% shareholding.It is enough if all the consenting shareholders together hold one-tenth of the share capital. [*Kuttanad Rubber Co Ltd.* v. *K.T. Ittiyavirah* (1997)88 Comp Cas 438; AIR 1994 Ker 131.]

(iv) The applicant must hold the requisite number of shares at the time of filing the petition before CLB.

(v) In the case of a member/petitioner who had agreed to transfer his shares but not acted upon and the petitioners' name is still in the register of members, it was held that the petition was competent – [*A.P. Jain* v. *Faridabad Metal Udyog P Ltd.*(1990) 95 Comp Cas 96.]

(vi) Only the members of an association registered under section 25 of the Act have the right to apply for relief.But the beneficiaries of a Trust have to file a suit under section 92 of the CPC against breach of trust and for relief.

(vii) Persons entitled to the shares but whose names are not entered in the register of members cannot apply.

(viii) The legal heirs of deceased shareholders were held entitled to apply for relief even before they were formally registered as members.

(ix) The requirement of minimum shareholding is applicable at the time of filing the petition, even though some of the signatories ceases to be members of the company subsequently.

(x) Consent given by a duly authorised power of attorney holder for and on behalf of the member has been held to be valid consent.

(xi) A member of a holding company is not competent to proceed against the subsidiary of the holding company – [*Herbertson. Ltd.* v. *Kishore Rajaram Chjabria* (1999) 21SCL 99;(1999)97 Comp Cas 429 (CLB-PB)]

(xii) Writ petition cannot be availed of in a situation in which specific remedy has been provided by the Act. – [*Sri Ramadas Motor Transport Ltd* v. *Taeli Adhinarayana Reddy* AIR 1997 SC 2189, 1997 90 Comp Cas 383 SC]

(xiii) Limitation Act is not applicable to proceedings before CLB – [*Mahendra Singh Mewar* v. *Lake Palace Hotels & Motels P Ltd*(1997) 4 Comp LJ 440 (CLB-N.Delhi).]

(xiv) Proceedings under section 397 cannot be barred or defeated by any provision in the articles or any agreement in respect of winding up or disputes between the company and its shareholders that it should be referred to arbitration. No arbitrator can give relief under section 397/398.

DIFFERENCE BETWEEN SECTIONS 397 AND 398

The powers of the CLB under section 397 is discretionary in nature as the words used are ”the Company Law Board may make an order as it thinks fit with a view to bringing to an end the matters complained of”.This is different from the wordings of section 398 wherein it is stated that “the Company Law Board with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit”. The relief under section 397 is intended to help the members who were oppressed, whereas under section 398 the relief is intended to save the company and is in the interest of the company alone and not in favour of any particular member(s). [*Palghat Export P Ltd* v. *Chandran* (1994) 79 Comp Cas 213 (Ker).]

POWERS OF CLB TO GRANT RELIEF

CLB has very wide powers in dealing with the petitions made to it under section 397/398.Without prejudice to the generality of its

powers, CLB may by order provide for the following reliefs:

(a) The regulation of the conduct of the company’s affairs in future.

(b) The purchase of shares or interest of any member(s) of the company by other members or by the company itself. In the later case there will be consequent reduction of its share capital.

(c) The termination, setting aside or modification of any agreement howsoever arrived at between the company and any of the M.D. or any other director or person, upon such terms and conditions as, in the opinion of CLB, is just and equitable in the circumstances of each case.

(d) The setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of application made under section 397/398 which would, if made or done by or against an individual, be deemed in his insolvency or to be a fraudulent preference.

(e) Any other matter for which in the opinion of CLB, is just and equitable that it should be made.

CONCLUDING REMARKS

While the majority rule is the basic principle of company law it does not forsake the interest of minority shareholders. The law expects and mandates that both the majority and minority shareholders have to work in unison in the successful management of affairs of a company. While the minority should respect majority decisions, the majority group should ride rough shod on the minority. Both the Board and the body of shareholders have been assigned definite roles by law and the new instrument of shareholders’ control through postal ballot and electronic voting have been introduced. But human nature being what it is, the position and authority enjoyed by the majority sometimes turn them upside down and results in the creation of situation of oppression of minority or mismanagement of the affairs of a company. The State cannot be silent spectator in such situation and has to intervene to correct the aberration. CS

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Towards Meaningful Restructuring and Speedy Winding Up

Winding up of companies under the Companies Act,1956 is a complicated and time consuming exercise. Restructuring of a sick company too is similarly a complex process. What could be done to make restructuring meaningful and winding up speedy is the question addressed in this article.

Several factors have contributed to the poor performance of the corporate entities and their ability to sustain their very existence. Prior to the global economic crisis that struck in 2008, Indian Economy was growing at a little over 9%. It slowed down to a nine year low of 6.5% in 2011-12, which witnessed euro zone crisis.

The results for the second quarter of the current financial year declared by the banks indicate growing trend of Non Performing Assets (NPAs), emphasising the need to manage their books in more efficiently. This will become accentuated with the increased provisioning requirement in respect of Corporate Debt Restructuring cases. In March 2012 the NPAs were at 2.9 per cent of the assets. In June they had risen to 3.25 per cent of gross assets of banks. Until the economy improves, there is likelihood of these NPAs increasing.[1]

Meaning of restructuring

Restructuring ordinarily means to bring a unit back to its health so as to enable the unit to operate efficiently and sub-serve the interests of all the stakeholders. Mr. Horst Kohler, Managing Director of the International Monetary Fund speaking at the Annual Meeting of IMF and the World Bank in September 2002, while elaborating the Agreement on Restructuring Sovereign Debt, declared that restructuring was planned to be achieved in "a timely, orderly and less costly manner while promoting assets values and creditor rights"[2]. The emphasis of restructuring was placed on "timeliness" and "cost effectiveness" apart from promoting the values of the stakeholders.

Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)

Concerned with the growing sickness of industrial concerns, Dr. T.Tiwari Committee was constituted. This Committee considered the existing laws and recommended enactment of a special legislation to address the industrial sickness. Based on the recommendations of this Committee, SICA was enacted. The objective of SICA is "to make in the public interest, special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined".

Section 18 of SICA dealt with various measures that could be

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1 *The Hindu dated October 1, 2012.*

2 *Law of Securitisation and enforcement of security interest by Shri S.A. Naik.*

> It is a misconception that SARFAESI is an enactment for recovery of the dues of the banks and financial institutions. This Act covers three areas, namely, (a) asset reconstruction; (b) enforcement of security interest; and (c) establishment of Central Registry. Section 9 of SARFAESI lists measures for asset reconstruction.

adopted in the preparation of a scheme for revival and rehabilitation of sick industrial companies, such as: - (a) financial reconstruction; (b) proper management of the sick industrial company by change in, or takeover of, the management; (c) amalgamation; (d) sale or lease of a part or whole of any industrial undertaking of the sick industrial company; and (e) rationalisation of managerial personnel, supervisory staff and workmen etc.

The framework of SICA contemplated three types of cases that would be decided by SICA, namely (a) mandatory reference under section 15 after erosion of given net worth; (b) mandatory reporting to Board for Industrial and Financial Reconstruction (BIFR) after erosion of 50% or more of the unit's net worth; and (c) a voluntary arrangement in terms of section 19A. Section 19A was inserted by Sick Industrial Companies (Special Provisions) Amendment Act, 1993. In the last category there had been only a few applications.

Two bodies were constituted namely, BIFR and Appellate Authority for Financial and Industrial Reconstruction (AAIFR). BIFR has been empowered to receive references for reconstruction and AAIFR functions as the appellate authority which will in appeal consider the orders passed by BIFR. Since inception up to the end of December 1996, BIFR received 2692 references and 22% of cases were on the road to revival.[3]

A committee under the Chairmanship of Prof. (Dr.) Omkar Goswami was set up by the Government to look into the various aspects of industrial sickness and issues relating to corporate restructuring. The Committee submitted its report in July 1993 recommending certain steps to make the SICA effective. The major recommendations include: - (a) the responsibility of industrial and corporate reorganisation must shift from the secured creditors and the State to the defaulting debtor firms for bringing about corporate and industrial restructuring; (b) BIFR should make use of winding up provisions of SICA i.e., section 20(4) more frequently so as to facilitate the sale of unviable units and thereby speeding up the pace of decision making among the affected units; and (c) the definition of sickness needs to be modified to facilitate early detection of sickness. Focus should be on incipient sickness in place of the negative net worth criteria. The Committee also suggested certain procedural changes, namely: - (i) secured creditors of a sick company would have the option of moving high court or recovery tribunals to recover the secured assets of a company. It would not be up to the firm to seek time bound protection from BIFR; (ii) if the company refers to BIFR, the Board would instruct the management/promoter to prepare a reorganisation plan within 90 days that can satisfy secured creditors; (iii) if the secured creditors representing three-fourth of the secured debt were satisfied by the plan, it would become a sanctioned scheme of BIFR. If not alternative plan would have to be prepared within another sixty days; and (iv) if the above is not accepted by creditors representing more than three-fourth of secured debt then BIFR would automatically recommend the company to recovery tribunals or to be would up under section 20(4) of SICA.[4]

Eradi Committee

The Government constituted on 22.10.1999 a committee consisting of experts to examine the existing law relating to winding up proceedings of companies in order to re-model it in line with the latest developments and innovations in the corporate law and governance and to suggest reforms in the procedure at various stages followed in the insolvency proceedings of companies to avoid unnecessary delays in tune with the international practice in this field.[5] One of the terms of reference to the Committee mentioned a self-contained note on winding up of companies having regard to the Sick Industrial Companies (Special Provisions) Act, 1985. The Committee's recommendations included (a) the provisions of Part VII of the Companies Act, 1956 be amended to include the provisions for setting up of a National Tribunal which will have, *inter alia,* the power to consider rehabilitation and revival of companies- mandate presently entrusted to BIFR/AAIFR under SICA; SICA should be repealed and the Companies Act, 1956 be

3 *Industrial sector reforms in Globalization Era by P K Jalan.*

4 *ibid.*

5 *Web page of Press Information Bureau releases.*

amended accordingly. Accepting the recommendations of Eradi Committee, the Government amended the Companies Act, 1956 by the Companies (Second Amendment) Act, 2002. The provisions relating to setting up of National Company Law Tribunal (NCLT) could not happen in view of legal proceedings relating to setting up of NCLT.

Advisory Group headed by Dr. N. L. Mitra

Reserve Bank of India constituted an Advisory Group on bankruptcy laws committee headed by Dr. N.L.Mitra. This Group submitted its report on May 9, 2001. This Group also recommended repeal of SICA and transfer of the existing proceedings pending before the BIFR to Bankruptcy court having jurisdiction.

Repeal of SICA

The Government acting on the various recommendations regarding abolition of SICA got a bill passed by the Parliament, namely Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (1 of 2004). As the constitution of NCLT was challenged in a writ petition before the Madras High Court and the subsequent developments, the repeal Act was not brought into force. Hence the adequacy of the provisions of SICA for speedy rehabilitation of sick industrial undertakings has become an academic issue.

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)

It is a misconception that SARFAESI is an enactment for recovery of the dues of the banks and financial institutions. This Act covers three areas, namely, (a) asset reconstruction; (b) enforcement of security interest; and (c) establishment of Central Registry. Section 9 of SARFAESI lists measures for asset reconstruction. The following measures for the purpose of asset reconstruction have been specified in section 9: - (a) proper management of the business of the borrower, by change in, or takeover of, the management of the business of the borrower; (b) sale or lease of a part or whole of the business of the borrower; (c) enforcement of security interest; (d) settlement of dues by the borrower; and (e) taking possession of secured assets. As the number of secured assets transferred to asset reconstruction companies is not happening as it should, the asset reconstruction taking place under this Act is not very significant. However in many cases the borrowers were able to reduce the debt burden and revive their operations. In this way SARFAESI has contributed to some extent in reconstruction of assets.

Corporate Debt Restructuring System (CDR)

CDR system was evolved based on the experience in countries like the U.K., Thailand, Korea etc. A circular DBOD No. BP. BC.15/21.04.114/2001-02 dated August 23, 2001[6] was issued by the Reserve Bank of India. The objective of CDR framework is to ensure timely and transparent mechanism for restructuring the corporate debts of viable entities facing problems, outside the purview of BIFR, Debts Recovery Tribunals (DRTs) and other legal proceedings, for the benefit of all concerned.

Although a number of cases got restructured under CDR, yet the disturbing feature is that the cases get referred again after a period of time for restructuring under CDR. Many cases where sanctioned schemes were arrived at, they failed due to multiplicity of reasons. The following table gives details of cases referred to CDR for restructuring and number of cases where sanctioned scheme was approved by the CDR lenders in the last three financial years.[7]

References to CDR		FY 10	FY11	FY12
	Number of cases	31	49	87
	Amount in Rs. Crore	20,200	22,600	67,900
Approved by CDR	Number of cases	31	27	50
	Amount in Rs. Crore	17,800	6,600	39,600

The above table indicates that number of references increased by about three times and the amount involved increased by more than three fold. According to the central bank data, CDR cases jumped to a high of 392 as on March 2012 from 225 in March 2009 taking the amount at stake to Rs. 2.07 lakh crore from Rs. 95,815 crore. The current fiscal has seen further spurt in CDR cases with the first quarter alone seeing nearly 30 cases totalling worth over Rs. 40,000 crore.[8]

CDR being a voluntary mechanism, a number of banks (mostly foreign banks) and financial institutions are not signatories to CDR system. The CDR lenders prepared schemes to suit their balance sheets; ignoring the workability of the approved schemes. There had been conflict of interest among the term lenders and working capital lenders. The working capital lenders clamoured to improve the security coverage by demanding *pari passu* charge with the term lenders. The sharing of the recovered amount out of the operations of the borrower tilted towards working capital lenders to the detriment of the term lenders. The borrowers did not have either willingness to fulfil the sanctioned scheme or resources to put their contribution in time. The lenders lack collective will to take tough decisions against the borrowers on account of provisioning norms. CDR has helped only in a limited way towards restructuring of the corporate borrowers.

Expediting Winding Up

The provisions of the Companies Act, 1956 do not assist in speedy recovery of dues from companies in liquidation. Winding up and

6 *For current CDR System please refer to RBI Master Circular RBI/2012-13/39 DBOD No BP.BC 9/21/04.048/2012-13 dated July 02. 2012.*

7 *CAFRAL/IDBI Bank.*

8 *The Hindu dated October 31, 2012.*

> Asset Reconstruction Companies (ARCs) have a major role in reconstruction of the assets of the defaulting borrowers. The banks should be encouraged to transfer the assets to ARCs. ARCs also should adopt fair policy in valuing the assets and encourage the banks by offering subordinated security receipts so that any upside in case of recovery from the borrowers could be shared between the bank and ARC.

Liquidation are long and cumbersome processes. Due to the procedural issues, the value of assets dwindles. The assets become obsolete and cannot be put to productive use. This defeats the possibility of reconstruction of such assets. The lenders also made to contribute towards preservation and protection of assets; enhancing their losses. The Governmental authorities such as: - income-tax authorities, sales tax authorities, Provident Fund trustees, revenue authorities etc., put forth their claims only when the asset is brought to sale. There is unnecessary interference from the liquidator and other persons claiming priority when one of the secured creditors brings the asset for sale. Distribution of monies takes unduly long time.

Eradi Committee and advisory Group headed by Dr.Mitra have recommended measures to overcome the delays. They should be suitably incorporated either in the Companies Act or by bringing forth a new enactment.

Way forward

The Companies Bill, 2012 incorporates the provisions relating to "Revival and Rehabilitation of Sick Companies". It does not translate recommendations of various committees and experts for making SICA effective. The Bill prescribes an application to be filed under section 253 and after determination that the company is a sick company another application under section 254. Conceptually the provisions do not address the timely issue, in the manner contemplated in Dr. Omkar Goswami Committee report. As secured creditors have options for recovery of their dues, it is unlikely that the secured creditors would resort to the provisions of the Companies Bill, 2012 on its becoming an act of Parliament. Suitable changes may be made before introducing a new Bill or taking up for consideration of the existing Bill.

The banks and financial institutions while preparing restructuring scheme for a distressed company either under CDR or under SICA (or the Companies Act) should work out viable schemes and not the schemes which involve minimum sacrifice from them. CDR schemes normally contain a right of recompense clause. In view of it though the lenders may make huge sacrifice at the time of framing a scheme, they may get back the amount sacrificed after the revival of the units. This will avoid repeated restructuring of a distressed borrower and revival of the unit.

The borrowers also need to exhibit their sincerity and honesty. They should realise that they had borrowed public funds and hence they owe a duty to repay. They shall not make personal profits by dubious means.

Asset Reconstruction Companies (ARCs) have a major role in reconstruction of the assets of the defaulting borrowers. The banks should be encouraged to transfer the assets to ARCs. ARCs also should adopt fair policy in valuing the assets and encourage the banks by offering subordinated security receipts so that any upside in case of recovery from the borrowers could be shared between the bank and ARC.

ARCs should resort to change in, or takeover of, the management of the business of the borrower, in case the borrower is not coming forward to settle its dues. As after recovery of all dues of the ARCs the assets revert back to the borrower, the borrower shall also co-operate with the ARCs in identifying a suitable entity to take over the management of the business of the borrower. Recourse to sale of secured assets should be had only after exhausting the change of management.

Many a times the well intended measures in the enactments fail due to administrative reasons. While constituting NCLTs, Government should recruit enough number of qualified personnel (including reserves) and create adequate infrastructure. This will avoid NCLTs feeling overburdened to handle their functions. Ordinarily the exercise to fill up a vacancy starts only after the expiry of the term of the existing incumbent; thereby resulting in vacuum till the new incumbent takes charge. Eradication of this anomaly will help NCLTs functioning without breaks.

NCLT or NCLAT should adhere to the time lines specified in the governing enactment. Though various enactments prescribed time limits for each step, adherence to specific time frame had become a casualty in many cases even if decided *ex-parte*.

The words in the preamble are not sufficient to make the reconstruction timely or winding up expeditious, unless the authorities administering the Acts resolve to translate them into reality. An asset reconstructed results in common benefit to all the stakeholders. It is more valuable than creating a new asset. Bearing these in mind the players should take proactive steps in reconstruction of corporate borrowers. The measures mentioned above are not exhaustive; but fulfilment of them would auger well towards meaningful reconstruction and speedy winding up of corporate entities. CS

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Law relating to Spot Delivery Contracts

It has been a debatable issue over a period of time as to whether spot delivery contracts are the only exception to stock exchanges trading mechanisms and whether "put" and "call" options in a shareholders agreement are violative of SEBI Rules and Regulations. This article provides an insight into the happenings in our country on the issue and their repercussion on the industry at large.

DEFINITION OF SPOT DELIVERY CONTRACT

"Spot Delivery Contract" has been defined under Section 2(i) of the Securities Contracts (Regulation) Act, 1956 ("SCRA") in the following words:.

(i) "spot delivery contract" means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

Section 2(i)(a) was a part of the original enactment. However, after introduction of Depositories Act, 1996, Section 2(i)(b) was inserted so as to cover transactions done through depository mechanism as well.

EFFECT OF SECTIONS 13 AND 18 OF SCRA

It is also necessary here to refer to the provisions of Section 13 of the SCRA. This section makes a transaction in securities, in notified area, illegal, which is other than one between the members of a recognised stock exchange or through such member.

The effect of this provision is that if a transaction in securities has to be validly entered into, such a transaction has to be either

> As a matter of common parlance, it is clear that if a transaction in securities has been executed through the depository system, the same has to satisfy the provisions of section 2(i)(b) – for transfer of securities – and section 2(i)(a) – for payment therefor. In other words, the provisions of sections 2(i) (a) and 2(i) (b) have to be read in conjunction and not in isolation to arrive at a meaningful conclusion.

between the members of a recognized stock exchange or through a member of a recognized stock exchange or with a member of a recognized stock exchange. Section 18 of the SCRA excludes spot delivery contracts from the operation of section 13.

It can be seen from a combined reading of sections 13 and 18 with section 2(i) of the SCRA that there is a blanket ban on carrying on trading outside the stock exchange mechanism. A very specific exception of spot contract has been carved out keeping in mind the specific needs of people. However, in order to take benefit of this exception strict adherence to the conditions specified in the section is required.

NOTIFICATIONS BY THE CENTRAL GOVERNMENT

In June 1969, the Central Government issued a notification under Section 16 of SCRA (1969 Notification) prohibiting all contracts for sale or purchase of securities other than spot delivery contracts or contracts for cash or hand delivery or special delivery.

The 1969 Notification was rescinded on 1 March 2000 and the power to regulate contracts in securities was demarcated between SEBI and the Reserve Bank of India. By Notification No SO 184(E) dated 1 March 2000, SEBI issued directions under Section 16 of SCRA, which had the same effect as the 1969 Notification. The said 2001 Notification stated as under:

"……………………………… the Securities and Exchange Board of India being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby *declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives* as is permissible under the said Act or the Securities and Exchange Board of India, Act, 1992 and the Rules and Regulations made under such Acts and Rules, Regulations and Bye-laws of a recognized Stock Exchange".

VALIDITY OF CONTRACT IN DERIVATIVES

In 1995, Section 20 under the SCRA which provided that options in securities were illegal was deleted.

Section 18A of SCRA inserted vide Securities Laws (Amendment) Act, 1999, w.e.f. 22-2-2000, provided that contract in derivatives shall be legal and valid if they are traded on a recognized stock exchange and settled on the clearing house of recognized stock exchange.

Thus, a combined reading of the provisions of SCRA and SEBI Notification of 2000 indicates that Contracts in securities (including derivatives) continue to be considered void unless they are spot delivery contracts or carried out through the stock exchange mechanism.

JUDICIAL ANALYSIS

Applicability of spot delivery time limit to transfers in depository mode

In the adjudication order in the matter of Indo-Pacific Software and Entertainment Ltd (Date of decision: February 29, 2012), it was contended that section 2(1)(b) is different from Section 2(1)(a) in as much as section 2(i)(b) of the SCR Act deals with transfers made through electronic mode, i.e. through depository and this provision does not stipulate any time limit for the payment for such transaction, as is specified in Section 2(1)(a). It was further contended that section 2(i)(b) has to be read as a standalone provision and it should not be read in conjunction with any other provision and thus, all the transactions done through depository mechanism would fall under the definition of spot contract even if payment in respect thereof has not been received within the next day.

However, the Whole Time Member, SEBI did not agree to the aforesaid contention and ruled that Section 2(1)(b) deals only with transfer of securities and does not specify anything relating to payment of consideration for such securities. A contract in securities market is said to be complete only if delivery/transfer of securities and payment therefor have been executed properly. As a matter of common parlance, it is clear that if a transaction in securities has been executed through the depository system, the same has to satisfy the provisions of section 2(i)(b) – for transfer of securities – and section 2(i)(a) – for payment therefor. In other words, the provisions of sections 2(i) (a) and 2(i) (b) have to be read in conjunction and not in isolation to arrive at a meaningful conclusion.

Spot Delivery Contracts are Permissible and Exempt

The Securities Appellate Tribunal in a recent decision in the case of *Mrs. Bhanuben Jaisukhlal Shah* v. *SEBI* (Appeal No. 271 decided on March 5, 2010), has discussed on the interplay between Section 13 and Section 2(i) of the SCR Act and stated as follows:

"Since all the securities prior to the coming into force of the Depositories Act were held in the physical form, spot delivery contract was defined to mean a contract which provided for the actual delivery of the securities and the payment of price therefor either on the same day as the date of the contract or on the next day. In other words, a spot delivery contract is a contract between two persons buying and selling securities off-market where the delivery and payment is effected either on the same day or on the next day. As already observed, such contracts are permissible being exempt from the provisions of section 13 of the Act."

The above observation clearly shows that contract on spot delivery basis is the only exception and there is no other way of dealing in shares of a listed company otherwise than on the Stock Exchange except on spot delivery basis.

Applicability of SCRA to unlisted public and private companies

The Bombay High Court in *Norman J. Hamilton and Anr*.v.*Umedbhai S. Patel And Ors.*[1] and *Dahiben Umedbhai Patel And Others* v. *Norman James Hamilton And Others*[2], held that the SCRA is not meant to apply to shares of a private limited company.

The Kolkata High Court in *Bhagwati Developers Private Limited* v. *Peerless General Finance and Investment Company*[3] did not disapprove the findings of the Company Law Board that the provisions of the SCRA would be applicable to public limited company even though its shares might not be listed on any recognised stock exchange. In case of sale of shares by Bhagwati to Tuhin and payment therefor, it was held that the transaction did not satisfy the definition of a spot delivery contract since part of the consideration passed on much after the transfer of shares. Moreover, the share transfer forms were all dated November 21, 1994, that is, on the date on which part of the consideration only passed from the Bhagwati to Tuhin. Therefore, the Company Law Board held that the transfer of shares in question was hit by the provisions of Sections 13 and 16 of the Securities Contracts (Regulation) Act, 1956 and, therefore, was illegal, void and a nullity.

SEBI in the case of Bhanuprasad Dipak kumar Trivedi in the matter of IPO investigations of IDFC Limited cited with approval the Bhagwati Developers's case.

Enforceability of put-call options/buy-back clauses in shareholder's agreement under SCRA

Open offer for acquisition of shares of Cairn India Limited

The promoters of Cairn India Limited, Cairn UK Holdings Limited (CHUK) agreed to sell 51 percent of the share capital of Cairn India to Vedanta Resources Plc and its group companies (Acquirers) and entered into a Share Purchase Agreement dated 15th August 2010. The said Share Purchase Deed gave the Acquirers, a right of first refusal along with a put and call arrangement.

The Acquirers issued a Letter of Offer dated 6 April 2011 to acquire 20.01 percent of the shares held by the public in Cairn India. In the said Letter of Offer, the parties disclosed that the SEBI has taken a view in a letter issued to the parties that the right of first refusal and the put and call arrangements are in violation of Notification No SO 184(E) dated 1 March 2000 issued by SEBI since these do not conform to the requirements of a spot delivery contract nor with a contract of derivatives under Section 18A of the SCRA. Based on SEBI's view, the parties agreed that the right of first refusal and the put and call arrangements between the Sellers and the Acquirers will not be exercisable or enforceable.

Jethalal's case

The Division Bench of Bombay High Court in *Jethalal C. Thakkar* v. *R.N. Kapur*[4], made a distinction between a contract where there is a present obligation and the performance is postponed to a later date, and a contract where there is no present obligation at all and the obligation arises by reason of some condition being complied with or some contingency occurring. The Court held that a contract which was contingent in its nature was no contract at all at the time the contract was made and the contract only comes into existence when the contingency happens and time stated in the contract lapses. Such a contract was held to be valid and enforceable.

NiskalpInvestments's case

The Bombay High Court in *Niskalp Investments and Trading Co. Ltd* v. Hinduja TMT Ltd.[5],took a contrary view from the judgment delivered in *Jethalal's* case (*supra*) and held that a put option was unenforceable since it was not a spot delivery contract. In the said case where the investor either had the right to sell his shares at a pre- determined price or opt for an initial public offering in order to exit, the court held that the contract was a contract for future performance and not being a spot delivery contract was invalid under law.

The High Court affirmed the view taken by the Court in *Gill & Co.* v. *Inspat Finance &Anr* in Summary Suit No. 4556 of 1996 wherein the learned Single Judge was considering an identical situation and by considering all earlier judgments including the judgment of the Apex Court in the case of *BOI Finance Ltd.* v. *Custodian*[6] came to the conclusion that the arrangement of buyback was contrary to the

1 1979 49 Comp Cas 1 Bom
2 1985 57 Comp Cas 700 Bom
3 2005 128 Comp Cas 444 Cal.

4 AIR 1986 Bom 74.
5 2008 143 Comp Cas 204 Bom
6 [1997] 10 SCC 488 : 12 SCL 99.

provision of Securities Contracts (Regulation) Act, 1956 and was unenforceable in law. In the BOI case, brokers were found to be entering into ready forward contracts specie of buy back arrangements with various banks and financial institutions.

SEBI's Informal Guidance to Vulcan Engineers

SEBI's view on put/call option arrangements was again substantiated in an interpretative letter dated May 23, 2011 issued to Vulcan Engineering Limited. Vulcan approached SEBI seeking its guidance as to whether a preferential allotment of 14% shares to SIMEST SpA, an Italian financial institution, would make the SIMEST a "person acting in concert" with the largest shareholder of Vulcan, being Terruzzi Fercalx SpA, another Italian company. SIMEST was the beneficiary of a put option whereby it could require Terruzzi to purchase its shares in Vulcan after a predetermined time. The informal guidance was sought for interpretation under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

Interestingly, while the informal guidance itself was sought under the Takeover Regulations and not in respect of SCRA, SEBI examined the legality of the agreement relating to equity participation by SIMEST in terms of provisions of SCRA and observed that:

As this option would be exercised in a future date (June 30, 2015 onwards), the transaction under this arrangement would not qualify as spot delivery contract as defined under section 2(i) of SCRA. Further, the aforesaid put/call option would not qualify as a legal and valid derivative contract in terms of section 18A of SCRA as it is exclusively entered between two parties and is not a contract traded on stock exchanges and settled on the clearing house of the recognized stock exchange.

Therefore, in the light of the aforesaid provisions of SCRA read with SEBI Notification No. S.O. 184(E) dated 1st March 2000, the pre-agreed buyback of Vulcan shares from SIMEST through put/call option is not valid under SCRA. In view of the same, further examination with regard to the guidance sought in the interpretative letter does not arise.

MCX-SX' case

The Bombay High Court in *MCX Stock Exchange Limited* v. *SEBI* (Date of Decision: March 14, 2012), *inter alia,* dealt with the question as to whether buy back agreements were forward contracts which violated the provisions of the SCRA. The order passed by the Whole Time Member of SEBI held that the buy back agreements are forward contracts and are not lawful arrangements under the SCRA.

Based on the facts of the case, the Court observed that in a buy back agreement of the nature involved in the present case, the promissor who makes an offer to buy back shares cannot compel the exercise of the option by the promisee to sell the shares at a future point in time. If the promisee declines to exercise the option, the promissor cannot compel performance. A concluded contract for the sale and purchase of shares comes into existence only when the promisee upon whom an option is conferred, exercises the option to sell the shares. Hence, an option to purchase or repurchase is regarded as being in the nature of a privilege. An agreement for sale and purchase simpliciter, on the other hand, is a reciprocal arrangement imposing obligations and benefits on both parties and is enforceable at the instance of either.

The Court held that the contract for sale or purchase of the securities would fructify only upon the exercise of the option by PNB or, as the case may be, IL&FS in future. If the option were not to be exercised by them, no contract for sale or purchase of securities would come into existence.

In arriving at this conclusion, the Court relied on an earlier decision of the Bombay High Court in *Jethalal's* case (*supra*). Although there was a subsequent decision of the single judge to the contrary in *Niskalp Investments's* case (*supra*), but the same was not considered since it was rendered on summons for judgment in a summary suit and did not advance the discourse.

The SEBI subsequently filed an SLP before the Supreme Court from the judgment of the Bombay High Court, under Article 136 of the Constitution of India. The said SLP was disposed off by the Supreme Court under the consent terms on April 11, 2012. The Supreme Court however, has not made any adverse remarks on such observations of the High Court.

CONCLUSION

The recent stance adopted by SEBI as an apex regulatory body of the capital market regarding enforceability of put options in *Cairn – Vedanta* deal or the informal guidance provided to Vulcan Engineers Limited or in the MCX's case, has rekindled the debate over the issue. It is likely to affect a number of investment transactions in both listed as well as public unlisted companies where the inclusion of put and call options are customary. The Courts differing from SEBI's decision, has added further ambiguity to the issue but has also kept the hopes of private equity investors alive.The scope and extent of enforceability of spot delivery contracts thus remain vague unless the issue is resolved by the higher judiciary or by some express notification. CS

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Corporate Laws

LW.31.04.2013

CAPT. VIJENDER SINGH CHAUHAN v. PARSVNATH DEVELOPERS LTD [DEL]

CO. PET. No. 118 of 2013

S. Muralidhar, J.
[Decided on 15/03/2012]

Companies Act, 1956 - Sections 433 - winding up- employee of the company claimed arrears of salary - company disputed his claim - whether winding up petition is maintainable - Held, No.

Brief facts

The Petitioner, who was working as Senior General Manager-Projects of the Respondent companyseeks its winding up in this petition under Section 433(e) read with Sections 434 and439 of the Companies Act, 1956 ('Act') on the ground of the inability of PDL to pay the debt owing to him.

By a letter dated 28th March 2008, the Petitioner was appointed to the above post with total emoluments of Rs.1,92,333 per month i.e. basic pay Rs.1,28,000 and HRA Rs.64,333 per month besides medical benefits, car with driver, mobile phone and other benefits and perks as applicable to an officer of an equal rank. There was a reduction of the Petitioner's salary from November 2008 to Rs.1,56,247 per month by a letter dated 21st November 2008. According to PDL the Petitioner consented to this re-fixation without any protest at that time.

In September 2012, the Vice President-Projects of PDL asked the Petitioner to resign with immediate effect if a lower salary was not acceptable to him. On 10th October 2012, the Petitioner sent in his resignation letter to PDL by e-mail. By a separate mail of the same date addressed to PDL he claimed the arrears of salary to the extent of Rs.52,77,987.46 by calculating the salary as originally fixed at the time of his appointment. While his resignation was accepted there was no reply by PDL as such to the other letter of the same date claiming arrears of salary.

On 1st December 2012, the Petitioner sent a legal notice under Sections 433 and 434 of the Act. In this notice the Petitioner claimed that he had come to know that PDL was having debts to the tune of Rs.2,000crores and was unable to pay the salary dues of staff and debts to its other creditors. On 8th December 2012, PDL wrote to the Petitioner stating that a sum of Rs.4,45,200 was paid to the Petitioner "as full and final settlement of your claims as former employee of the company". In its reply dated 26th December 2012, PDL took the stand that it had never assured to pay the Petitioner the arrears of salary as claimed by him and disputed the petitioner's claim.

Decision: Petition dismissed.

Reason

In the present case it is not possible to conclude at this stage and in the facts noted hereinbefore that the debt as claimed by the Petitioner is "undisputed". It is also not possible to come to the conclusion at this stagewithout any further examination of evidence that the defence of PDL is not in good faith and without substance. The submission that even at this stage the burden is on PDL to show that its defence is likely to succeed in a point of law and that it has to prima facie prove the facts on which its defence depends, is not acceptable. That stage would arrive after the Petitioner is able to satisfy the Court, even prima facie, that the debt is undisputed and that the Respondent is unable to pay the debt.

It is finally submitted that what is claimed by the Petitioner is not a very substantial sum and that notice should anyway be issued to PDL. A winding up petition cannot be converted into one for recovery of money without the essential conditions of Section 433 of the Act being satisfied.

For the aforementioned reasons, the Court is not satisfied that the Petitioner has made out a prima facie case under Section 433 of the Act for grant of relief. Leaving it open to the Petitioner to avail of any other remedy as may be available to him in accordance with law, the petition and the pending application are dismissed.

LW.32.04.2013

KRISHNA KUMAR & ORS v. REGISTRAR OF COMPANIES [DEL]

Crl. M.C. No. 6260/2006,Crl. M.C.No. 6273/2006 & Crl. M.C.No.6287/2006

G.P.Mittal, J.
[Decided on 15/03/2013]

Sections 62, 63 and 628 of the Companies Act, 1956 read with Section 482 of the Code of Criminal Procedure - Mis-statements

in prospectus - criminal proceedings initiated against the signatories - whether the proceedings to be stayed - Held, No.

Brief facts

Three petitions were disposed of by this common order. The petitioners were signatories to the prospectus. It is urged on behalf of them that the Petitioners being the advocate, chartered accountant or other expert had no business interest in the company. The only contention raised at the time of hearing the present Petitions is that the averments in Para 2 of the complaint that they were signatories to the prospectus are factually incorrect and, therefore, the learned Additional Chief Metropolitan Magistrate(ACMM) was misled into taking cognizance against them. On the other hand, the learned counsel for the Respondent(ROC) urges that although the prospectus deposited with the ROC was not signed by the Petitioners, but the prospectus which was in force and in circulation at the time the public issue was open and which was deposited with the Delhi Stock Exchange was duly signed by all the directors including the three Petitioners and, therefore, at this stage this Court acting under the powers under Section 482 of the Code could not make any inquiry whether the Petitioners authorised the issue of prospectus or not as this matter has to be gone into only during the course of the trial.

Decision: Petition dismissed.

Reason

Section 62 of the Act of 1956 deals with the civil liability for making mis-statements in prospectus whereas Section 63 of the Act of 1956 deals with criminal liability for making mis-statements in prospectus. Section 62 of the Act of 1956 is much wider in application and, in addition to every person who has authorised the issue of prospectus also makes the persons falling in clauses (a) to (c) of sub-Section (1) responsible for civil liability. Whereas Section 63 of the Act of 1956 makes every person who authorised the issue of prospectus to be criminally liable for any mis-statement therein.

The certified copy of the prospectus which has been obtained from Delhi Stock Exchange Association Ltd. shows that the three Petitioners were the directors and signatories of the prospectus. Thus, it cannot be said that the learned ACMM while taking cognizance and issuing the process was misled by the averments made in Para 2 of the complaint or that the averments were false. It has to be borne in mind that at the stage of issuing the process, the Magistrate is not required to record detailed reasons. Moreover, it is very well settled that inherent powers under Section 482 of the Code though very wide have to be invoked sparingly and with circumspection only (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court and (iii) otherwise to secure the ends of justice. In *Satish Mehra* v. *State(NCT of Delhi) & Anr.*, (Criminal Appeal No.1834/2012) decided on 22.11.2012, the Supreme Court held that inherent powers of the High Court to quash an FIR or a criminal complaint can be invoked where the allegations made in the complaint even if admitted do not disclose any offence.

At this stage, the prospectus deposited with the Delhi Stock Exchange Association Ltd. has to be presumed to be meant for the public at large which was signed by the Petitioners. Thus, the order dated 07.06.2002 taking cognizance of the offence under Sections 63 and 628 of the Act of 1956 against the Petitioners cannot be faulted.

The observations made above were necessary for disposal of the instant Petition and shall not be taken as expression of any opinion on merits of the case.

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LW.33.04.2013

WORLD PHONE INDIA PVT LTD & ORS v. WPI GROUP INC., USA[DEL]

CO.A (SB) No. 102 of 2012

S. Muralidhar, J.
[Decided on 15/03/2013]

Companies Act, 1956 - Section 9 - Affirmative vote in JVA - AoA does not contain the said provision - Resolution for rights issue passed without affirmative vote as the said party was not present in the meeting - CLB ordering fresh meeting to have the presence of the party-whether correct - Held, Yes. Further CLB ordering to have his affirmative voting also - whether correct - Held, No.

Brief facts

Appellant No.1, WPIPL, is a private company. The Respondent, WPIGI holds 43.75% of the total paid up equity share capital of WPIPL. While Mr. Vivek Dhir, Appellant No.2, holds 43.75% of the equity shares of WPIPL, Mr. Pankaj Patel held the balance 12.5%. WPIGI is represented by its Chairman, Mr. Aditya Ahluwalia. As per the Joint Venture agreement (JVA) between the parties, WPIGI had an affirmative vote. However, this was not incorporated in the AoA of WPIPL.

As alleged by WPIGI, the shares of Mr. Pankaj Patel had been transferred to Mr. Vivek Dhir and his wife, Ms.MaliniDhir (Appellant Nos.2 and 3 herein). As a result, Appellant Nos.2 and 3 came to hold 56.25% of the paid up equity share capital of Appellant No.1 and the Respondent reduced to minority shareholder.

WPIGI filed Co. Pet. No. 102(ND) of 2010 before the CLB under Sections 397 and 398 alleging various acts of oppression and mismanagement against the appellants. While the petition was pending before the CLB, Appellants sought to convene a board meeting on 31.10.2012 to consider the rights issue. In the said meeting, the issue was approved in the absence of representative from WPIGI resulting in the resolution being passed without the affirmative vote.

The CLB held that, in the present case, since there were only three shareholders and all of them were also Directors, the holding of the Board meeting in the absence of a party who had an affirmative vote was in violation of the JVA and the Board meeting of 31.10. 2012 was held null and void and a direction was issued to hold a fresh Board meeting over the rights issue in compliance with Clause 6.2 of the JVA.Against this order, the Appellants approached the High Court.

Decision: Appeal partly allowed; directions issued to the CLB.

Reason

The first question that arises for consideration is whether the CLB was justified in holding that since there was no bar to the affirmative vote in the AoA of the company, Clause 6.2 of the JVA which provides for the affirmative vote must be given effect to. This, in turn, requires the interpretation of Section 9 of the Act which the CLB has understood as not being applicable to private companies.

While Sections 81 to 89 and 171 to 186 of the Act insofar as they relate to issuance of shares do not apply to private companies, there is no basis for concluding that Section 9 of the Act per se does not apply to private companies.A plain reading of Section 9 makes no such exception.

The legal position is that where the AoA is silent on the existence of an affirmative vote, it will not be possible to hold that a clause in an agreement between the shareholders would be binding without being incorporated in the AoA. The question to be asked is whether the provisions of an agreement, that are not inconsistent with the Act, but are also not part of the AoA, can be said to be applicable. All that Section 9 states is that clauses in the agreement that are 'repugnant' to the Act shall be 'void'. This does not mean that clauses in the agreement which are not repugnant to the Act would be enforceable, notwithstanding that they are not incorporated in the AoA.

The offshoot of the above discussion is that the JVA in the present case cannot be said to bind the company as such. What the company can do has to be ascertained with reference to the AoA. In the present case, although the JVA was entered into in 1999 itself, there was no move made by Mr. Aditya Ahluwalia or WPIGI to have the AoA amended at any point in time to incorporate the affirmative vote provided to WPIGI under Clause 6.2 of the JVA. Nothing prevented WPIGI from doing so. Unless the AoA was actually amended, WPIGI could not insist on exercise of the affirmative vote.

There were two grounds on which the CLB proceeded to interfere with the decision of the Board meeting held on 31st October 2012. One of those grounds was that the decision could not have been taken without the affirmative vote of WPIGI. For the reasons explained above, this Court is unable to sustain the above finding as it is based on an erroneous reading of Section 9 of the Act. Accordingly, this Court sets aside the above finding.

The other ground on which the CLB interfered with the decision at the Board meeting held on 31st October 2012 was that the notices of the Board meeting were issued at a time when the Respondent was not in the country and was stuck in New Jersey, USA, which was admittedly hit by a hurricane. While the notice was properly delivered to the Respondent, its request for adjournment of the meeting could have been easily accommodated by the Appellants. Nevertheless, they went ahead and held the meeting. This has been sought to be remedied by the impugned order of the CLB by directing that a fresh Board meeting be convened. In the facts and circumstances, the CLB was justified in issuing the said direction. What however cannot be sustained in law is the direction that in the fresh Board meeting, effect must be given to Clause 6.2 of the JVA. That portion of the impugned order is, therefore, set aside.

During the pendency of the present appeal, the Board meeting was held with the same result that by majority the resolution to go in for the rights issue was approved. Obviously, for the reasons explained the decision could not be faulted on the ground that the affirmative vote under Clause 6.2 of the JVA was not given effect to.

However, that will not bring the matter to an end. The above Board meeting was held pending the decision of the CLB on the main petition under Section 397 of the Act filed by the Respondent. One of the grounds urged in the said petition concerns the legality of the transfer of 12.5% shares of Mr. Pankaj Patel in favour of Appellant Nos.2 and 3. Therefore, the validity of any of the decisions taken subsequent to the transfer will depend on the outcome of the final decision in the petition under Section 397 of the Act filed by the Respondent.

In the circumstances, it is considered appropriate to direct that the interim order passed by this Court on 12th December 2012 to the effect that the resolution passed in the fresh Board meeting "shall not be given effect" is directed to continue for another period of eight weeks or till such time the CLB passes a final order in the petition filed by the Respondent, which decision, in any event, should not be later than 12 weeks from today. If for some reason, the CLB is unable to pronounce its final order in the petition within twelve weeks then, it will be open to either party to approach this Court for further directions. In that event, the interim order passed by this Court will continue till further orders are passed by this Court.

The appeal is disposed of in the above terms, but in the circumstances, with no order as to costs.

LW.34.04.2013

KARNAV LEATHER LIMITED v. PROVISIONAL LIQUIDATOR [RAJ]

D.B. Civil Special Appeal (Co.) No.102/2007 & D.B. Civil Special Appeal (Co.) No.115/2007

Amitava Roy, Chief Justice &Meena V. Gomber, J.
[Decided on 11/03/2013]

Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 read with Sections 456 &457 of the Companies Act, 1956 - 457(1), 536(2)- BIFR recommending the winding up of the company - final order in the winding up petition not passed - meanwhile the assets and properties were sold under auction on the orders of the Single Judge - whether the auction sale tenable-Held,No.

Brief facts

Following an evaluation of the report of the Board recommending winding up of the appellant-Company and other records, a Provisional Official Liquidator had been appointed and as permitted by the Company Court auction sale of its assets/properties has been completed and proceeds thereof lie in deposit with the Provisional Official Liquidator. A bare perusal of the report dated 11.6.2003 of the Board reveals its considered opinion that the appellant-Company is not likely to be viable in future and that it was just, equitable and in public interest that it ought to be wound up under Section 20(1) of SICA. This opinion had been forwarded to this Court for further necessary action in accordance with law.

The learned Company Judge by order dated 23.1.2004 appointed the Provisional Official Liquidator and as the succeeding facts would thereafter unfold, eventually by order dated 11.5.2007 he was vested with the power under Section 457(1) of the 1956 Act and accorded permission to complete the sale, the process whereof had been in the meantime initiated by the advertisement dated 18.1.2007. The process of sale however was thereby, made subject to the final decision in the Company Petition No.29/2003.

Thereafter, by order dated 20.7.2007, the sale was confirmed in favour of M/s.Chaudhary& Sons (Forgings) Pvt.Ltd., Ghaziabad (UP) and the official liquidator was directed to take follow up steps. Appellant company challenged this auction sale on the ground that the exercise for sale of the assets/properties of the appellant-Company was undertaken and completed before final orders being passed in Company Petition No.29/2003 registered on the recommendation dated 11.6.2003 of the Board forwarded under Section 20(1) of SICA.

Decision: Appeal allowed.

Reason

Admittedly, as on date, the company petition has not yet been finally disposed of and no final order for winding up of the appellant-Company has yet been passed.

It would be patent from sub-section (2) of Section 20 that whereas the High Court, on the basis of the opinion of the Board is to order the winding up of sick industrial company or cause it to be so done in accordance with the provisions of 1956 Act, the Board as envisaged in sub-section (4) may cause to be sold the assets/ properties of the Company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution thereof in accordance with the provisions of Section 529A and other provisions of the said enactment. Noticeably, under Section 22A, the Board is vested with the power to direct, in case it is of such opinion, the sick industrial Company not to dispose of its assets without its (Board's) consent, inter alia during the period beginning from the recording of its opinion for winding it up under sub-section (1) of Section 20 till the commencement of the proceedings relating thereto before the concerned High Court. The Hon'ble Apex Court in *NGEF Ltd* v. *Chandra Developers (P) Ltd & Anr*(2005) 8 SCC 219was seized, amongst others, with the poser as to whether a High Court pending its decision on the issue of winding up of a Company under Section 20(2) of SICA is possessed of the jurisdiction to cause sale of its assets, more particularly, in the face of sub-section (4) of Section 20 of the legislation. In the textual facts of the reported decision, the jurisdictional High Court had permitted sale of a plot of land of the appellant therein during the pendency of the company petition initiated on the receipt of the report of the Board recommending winding up thereof (appellant). In endorsement of the permissibility of such sale reference inter alia was made of Sections 456, 457 and 536(2) of the 1956 Act as well as the inherent powers of the Company Court. On a comparative analysis of the aforementioned provisions of the 1956 Act, the rules thereunder as well as Sections 20 and 22A of SICA, their Lordships held in authoritative terms that a Company declared to be sick in terms of the provision of SICA, continued to be sick unless it was directed to be wound up and having regard to Section 20(4) of the enactment, the Board alone had the jurisdiction as regards sale of its assets, till the order of winding up of a Company is passed. While underlining that SICA was a special statute, and later in point of time, compared to 1956 Act and that sub-section (4) of Section 20 contains a non obstante clause, the Apex Court enunciated that though on receipt of the recommendation of the Board, the High Court could initiate a proceeding for winding up of the sick industrial company, Section 536(2) of the 1956 Act did not ipso facto confer any jurisdiction upon the Company Court to direct sale of its assets. Elaborating this proposition, their Lordships observed that notwithstanding the fact that the procedure outlined in the 1956 Act would apply for the sale of the assets of the sick industrial company, the process with regard thereto can be initiated only after the order of winding it up is passed in the company petition. The Apex Court was of the view that the scheme of SICA suggested that the Board retains control over the assets of the sick industrial company pending decision of the High Court on the issue of winding up thereof and in terms of the relevant provisions it could either prevent or permit any sale of its assets. It was clarified that such power with the Board would remain till a winding up order is passed by the High Court and a stage arrives for the High Court for issuing orders for distribution of the sale proceeds. That the provisions of SICA would prevail over those of the 1956 Act was emphasized upon. Resort to the inherent power of the Company Court to validate any sale of the assets of the sick industrial company pending a decision on the aspect of its winding up, was not approved as well.

Though great emphasis has been laid by the learned counsel for the respondents, amongst others, on Sections 450, 454 and 457 of the 1956 Act contending as well that the reported decision is distinguishable on facts, in the teeth of the unqualifying and resounding conclusions drawn against the permissibility of sale of the assets of the sick industrial company till it is wound up on the order of the Company Court as adumbrated, those, in our comprehension do not have any overriding effect. Having regard to the scope and ambit of the power of the Company Court to order or cause to effect sale of the assets of a sick industrial company pending its decision to wind up the same on the receipt of the recommendation of the Board as contemplated in Section 20(1) of SICA, as conditioned by Section 20(4) thereof and as held in *NGEF Ltd* (*supra*) we are of the unhesitant view that the impugned orders dated 11.5.2007 and 20.7.2007 cannot be sustained in law and on facts.

The impugned orders are thus set aside.

LW.35.04.2013

DELHI DEVELOPMENT AUTHORITY v. M/S AEROSHINE [DEL]

CO.APP. NO.39/2004

Rajiv SahaiEndlaw, J.
[Decided on 27/02/2013]

Companies Act, 1956 - Section 483- Liquidated company transferred its property before the winding up proceedings sometimes in 1985 - landowning agency DDA demanded payment of unearned increase from the transferee at the rates prevailing in 2004 - whether tenable - Held,No.

Brief facts

Appellant DDA had granted the leasehold rights of Plot No.16A Rani Jhansi Road, Motia Khan, New Delhi to one M/s Amar Singh & Co., which had agreed to sell/transfer the same to M/s Globe Associate (P) Ltd, which is the company under winding up. As per the terms and conditions of the perpetual lease deed executed by the appellant DDA to M/s Amar Singh & Co., the same were transferable after obtaining permission of DDA and on payment of "unearned increase".

Upon the company being ordered to be wound up, application under Section 446 of the Companies Act, 1956 was filed seeking specific performance of the said Agreement to Sell and during the pendency of which proceedings, rights of the company in winding up as an agreement purchaser were purchased by the respondent M/s Aeroshine and which was approved by the learned Company Judge in 1983.

The Official Liquidator (OL) filed an application for review of the above order inter alia on the ground that the value of the land in question was much more and even DDA was demanding a sum of Rs.4,58,175.89p towards unearned increase for transferring the property in favour of the respondent M/s Aeroshine.
During the pendency of the said review application, a settlement was arrived at between the respondent M/s Aeroshine and the OL and the respondent M/s Aeroshine agreed to pay certain further monies to the OL and the order dated 14.05.1985 was passed, whereunder it was further agreed that the respondent M/s Aeroshine would be responsible for the payment of unearned increase to the appellant DDA for transfer of the leasehold rights in their favour.

The proceedings before the learned Company Judge were adjourned from time to time to await the consideration by the appellant DDA of the aforesaid application of the respondent M/s Aeroshine and the counsel for the appellant DDA took adjournments for this purpose and owing whereto the recording of the settlement, as agreed on 14.05.1985, was held up.

In 1991 DDA informed that a sum of Rs.70,59,773/- was payable. The respondent M/s Aeroshine took a stand that the amount claimed by the appellant DDA was exorbitant.The learned Company Judge in the impugned order held that unearned increase has to be calculated based on the rates prevailing in the year 1985. DDA appealed to the Division Bench.

Decision: Appeal dismissed.

Reason

We see no reason to take any different view of the matter. It is not the case of the appellant DDA, neither before the learned Company Judge nor in this appeal that the application for transfer of leasehold rights has to be in any prescribed form. Moreover, even if there was any prescribed form, the same is certainly not statutory or sacrosanct. The claim of the appellant DDA for unearned increase is based on a lease condition which prohibits the lessee of the land from transferring the land without obtaining permission of the lessor DDA and entitles the lessor DDA to, as a condition for the grant of such permission, demand unearned increase, being 50% of the difference between the rates prevalent on the date of the grant of the lease and on the date of transfer. The requirement thus stands satisfied as soon as the appellant DDA is informed of the intended transfer. In the present case, the transfer is under the aegis of the Company Judge of this Court. The counsel for the appellant DDA has throughout been involved in the same. The appellant DDA was thus fully conscious that the transfer of the leasehold rights had been approved by this Court and the respondent M/s Aeroshine had taken over the responsibility to pay the unearned increase and for which purpose the appellant DDA had been called to the Court. In our opinion, in these circumstances, it matters not as to whether a well drafted application seeking permission for transfer was filed or not. The dealings as aforesaid were not in the office of the appellant DDA but before the Court in the presence of the counsels who well understood the purport of the proceedings; the counsel for the appellant DDA well understood the role of the DDA in the said transfer. The appellant DDA is thus estopped from arguing that no application was made to it till 2004 or even till now. If such arguments were to be accepted, it would make the pendency of the proceedings in this Court a laughing stock. If the said argument of the appellant DDA were to be accepted, then no application as desired by the appellant DDA having been filed with the DDA till date, the unearned increase should be computed, why at the rates of 2004 but at the rates of current year.

There is another aspect of the matter. The purport of unearned increase is to, in addition to the premium charged by the appellant DDA at the time of granting the lease, entitle the appellant DDA to share 50% of the increase in value of the leasehold rights from the date when the lease was given and till the date of transfer. The transfer of the leasehold rights in the present case, as aforesaid, is under the aegis of this Court. There is no doubt as to the consideration for the said transfer. It is not in dispute that the matter has throughout been pending in this Court on the issue of unearned increase. We are of the opinion that it would be highly unjust and unfair to ask the respondent M/s Aeroshine who though has purchased the leasehold rights at the rates of the year 1983-85, to pay unearned increase to the appellant DDA of the year 2004 or of today.

We therefore see no reason to interfere with the order of the learned Company Judge, insofar as directing unearned increase to be payable at the rates of the year 1985. However, we are of the opinion that the interest at the rate of 9% per annum awarded by the learned Company Judge, on the arrears of unearned increase, is on the lower side. It cannot be lost sight of that owing to the pendency of the litigation, the unearned increase which was payable by the respondent M/s Aeroshine in the year 1985, remained in the pocket of the respondent M/s Aeroshine, till the same was ultimately paid in the year 2005 i.e. over a period of 20 years. Considering all the facts and circumstances and the fact that the appellant DDA itself generally charges interest at the rate of 12% per annum, we are of the opinion that interest of justice would be served if the rate of interest is enhanced from 9% per annum to 12% per annum.

We thus, while dismissing this appeal, direct the respondent M/s Aeroshine to, within four weeks hereof, deposit with the appellant DDA the amount due towards such additional interest for the period from 03.07.1985 to 31.01.2005. On payment of the said amount, the demand earlier made under interim order in this appeal and the documents if any executed pursuant thereto and all of which was subject to the further order in this appeal, shall stand regularized.

LW.36.04.2013

REAL LIFESTYLE BROADCASTING PVT LTD v. TURNER ASIA PACIFIC VENTURES INC& ANR [DEL]

Co. Appl. No. 2076 of 2012 in Co. Pet. No. 20 of 2011

S. Muralidhar, J.
[Decided on 22/02/2013]

Companies Act, 1956 - Sections 392 – Modification of the sanctioned scheme – conditions not mentioned in the sanctioned scheme were sought to be included therein - whether allowable- Held, No.

Brief facts

The background to this application is that Co. Pet. 20 of 2011 was filed jointly by RGB [describing itself as Transferor company] and RLB [describing itself as Transferee company] under Sections 391 to 394 of the Act in the Company Court on 10th January 2011 praying that the Court should sanction the Scheme involving RGB and RLB and their respective shareholders and creditors so as to be binding on RLB and RGB and their shareholders and creditors. RGB was engaged in the business of transmission /telecast and broadcasting through its distribution network. The important control of the distribution network was the Software Encryption Keys of Set Top Box (STB) encryption keys. Before approaching the court for amalgamation, it appears that there were some disputes and difficulties with respect to the transfer of the STBs.

The content made for the channel is first sent to an uplinker or transmitter service which then beams the channel to a satellite from a base station. The satellite, in turn, relays the signal across the country/region. The signal is then received by cable operators/ MSOs by way of Digital Satellite Receivers or Set Top Boxes ("STBs"). The cable operators/MSOs by way of their wired/unwired networks distribute the signal to individual homes. It is stated that when a channel is established and receives high TRP ratings, it is in a position to raise additional revenue through a subscription fee from the viewers. An essential feature for this is the conditional access facility that allows the owner of the channel to control the STBs and decide which STBs to deactivate for non-payment and which STBs to activate/re-activate. Therefore, an integral part of a STB is its software encryption keys ("SEK") which enables the owner of the channel to remotely control the STB even when it is installed in a far-flung area. In other words, the owner can activate/deactivate the frequency of the STB without having physical access to the STB.

However, RGB and RLB jointly filed Co. Pet. No.20 of 2011 seeking sanction of the Scheme, which has been sanctioned. There was no mention anywhere in the petition of any of the difficulties faced by RLB, as is now sought to be made out in great detail in the present application, seeking modification of the scheme or the winding up of RGB.

Decision: Application dismissed.

Reason

On reading both sets of prayers it is plain that RLB is now contending that if the distribution network cannot be restored to it, and it is not allowed to claim the tax losses of RGB, then the Court should wind up RLB. Therefore, RLB seeks to make the restoration to it of the distribution network central to the Scheme itself.

First, the Court is constrained to note that between the date on which the Scheme was entered into, i.e., 1st July 2010 and the date on which it was accorded sanction by the Court, i.e., 29th March 2011, more than seven months had elapsed. If RLB was already facing difficulties in getting Turner to comply with its obligations under the Scheme, there was absolutely no necessity for it to have sought sanction for the Scheme. On the other hand not only did RLB and RGB jointly present the Scheme to the Court for sanction but they also filed a joint affidavit.

Secondly, this Court does not find any satisfactory explanation by RLB for not filing this application earlier to receiving notice in the contempt petition, and, in particular, earlier to the order dated 24th September 2012 passed by the Court in the contempt petition. If, indeed, as suggested now, there was correspondence exchanged between the parties which cast an obligation on Turner to provide RLB encryption code to ensure transfer of the distribution network from RGB to RLB, there is no reason why RLB did not bring this fact to the attention of the Court when it was seized of the Company Petition No. 20 of 2011. In other words, this was not a developmentsubsequent to the sanctioning of the Scheme, even according to RLB. These were facts, even assuming that they were true, which were in the knowledge of RLB, not only during the pendency of Company Petition No.20 of 2011, but even prior to its filing on 10th January 2011. On the contrary, RLB and RGB filed an affidavit of compliance on 29th March 2011 which was acted upon by the Court when it passed an order on that date sanctioning the Scheme.

The scope of the powers of the Company Court under Section 392 of the Act, as explained by the majority opinion of the Supreme Court in *Reliance Natural Resources Ltd.* v. *Reliance Industries Limited* (2010) 7 SCC 1, does not permit rewriting of the scheme or introducing into it clauses that plainly do not exist. Consequently, this Court fails to appreciate how on the strength of either *J.K. (Bombay) (P) Ltd.* v. *New Kaiser-I-Hind Spg. &Wvg. Co. Ltd.* [1969] 2 SCR 866or RNRL case, RLB can persuade the Court, in exercise of its powers under Section 392 of the Act, to read into the Scheme of binding obligation on Turner to ensure the transfer of the distribution network to RLB by providing the decryption code of the STBs. The pleas of RLB in the present application go far beyond mere modification of the Scheme. The Court is satisfied that accepting the prayer of RLB to restore it the distribution network would be nothing short of ordering specific performance of an agreement that has already worked itself out and would be reading into the Scheme, clauses and obligations which did not exist when the Scheme was accorded sanction.

The alternative prayer that RLB should be directed to be wound up, since its entire substratum has disappeared, will require a detailed examination of several relevant factors, all of which are not before the Court. Nothing precludes RLB from seeking winding up in accordance with law in appropriate proceedings by placing the full facts before the Court which can then be responded to by the OL, the RD and other interested parties including creditors. Given the pleadings in the present application, it is not possible to undertake that exercise at this stage.

Tax Laws

LW.37.04.2013

NAPINO AUTO & ELECTRONICS LTD v. C.C.(ICD), NEW DELHI [CESTAT]

Excise Appeal No. C/570/2008-CU[DB]

Archana Wadhwa&Rakesh Kumar
[Decided on 13/03/2013]

Custom Act, 1962 - Sections 18,& 27 - provisional assessment of duty made after 2006- based o the assessment assessee claimed refund - refund claim rejected on the ground of unjust enrichment - whether correct-Held,No.

Brief facts

The appellant entered into Technical Assistance Agreement with M/s. Shindengen Electric Manufacturing Co. Ltd., Japan for manufacture in India of two models of Capacitor Discharge Ignitors and one model of regulator/Rectifier for Motorcycles. Besides this, the appellant also entered into an Agreement with M/s. Shindengen Electric Manufacturing Co. Ltd., Japan under which the foreign company was to hold 22.6% of paid-up share capital of the appellant company. Since in view of the 2nd Agreement, the Appellant company and their Japanese Supplier M/s. Shindengen Electric Manufacturing Co. Ltd., became related persons, in respect of imports by the appellant company from M/s. Shindengen Electric Manufacturing Co. Ltd., Japan, the appellant company was asked to provisionally pay extra duty deposit of 1% of the duty payable. The imports which are the subject matter of dispute were made during period 2001-2002 to 2003-2004 and as such during this period extra duty deposit made was Rs. 20,34,322/-. The Assistant Commissioner (Special Valuation Branch) vide order-in-original No. 1/SR/2004 dtd. 20.01.2004 accepted the declared invoice value. Accordingly, the appellant company on 20.01.2005 filed a refund claim for the above mentioned amount, as in view of the Assistant Commissioners order dtd. 20.01.2004, same had become refundable. The Refund claim, however, was rejected by the Assistant Commissioner vide order-in-original dtd. 15.11.2007 on the ground of unjust enrichment holding that the appellant have failed to furnish evidence that the incidence of duty whose refund is being claimed by them, had not been passed on to their customers. On appeal being filed before the Commissioner (Appeals), the above order passed by the Assistant Commissioner was upheld vide order-in-appeal No. 29/408. The Commissioner (Appeals) also held that the appellant have failed to demonstrate that the duty whose refund is being claimed had not been recovered from their customers. Against this order of the Commissioner (Appeals), this appeal has been filed.

Decision: Appeal allowed.

Reason

We have considered the submissions from both the sides and perused the record. While the learned Departmental Representative pleads that there is no provisional assessment, learned counsels for the appellant plead that the assessment during the period of dispute i.e. 2001-2002 to 2003-2004 were provisional assessment and that the refund claim, in question, had arisen on account of finalization of the provisional assessment. We find that the fact that the assessments were provisional and the refund claim has arisen on account of order dtd. 20.01.2004 passed by the Assistant Commissioner (Special Valuation Branch) accepting declared assessable value, is clear from the facts narrated in Para 2 of the Assistant Commissioners Order dtd. 15.11.2007.

In view of the above we hold that the assessments during the period of dispute were provisional and the refund claim, in question had arisen when the assessments were finalized by the Assistant Commissioners Order dtd. 20.01.2004.

The question now arises as to whether the principle of unjust enrichment is applicable to this refund claim and if so whether the appellant have discharged the burden of proof cast on them of proving that they have borne the incident duty whose refund is being claimed by them. However, the second question is required to be answered only if the answer to the 1st question is in the affirmative and it is held that the principle of unjust enrichment is applicable to this refund claim.

Though Section 27 of the Customs Act, 1962 was amended w.e.f. 01.08.1998 providing that in case of provisional assessment under Section 18, the limitation period of one year or six months, as the case may be, shall be computed from the date of adjustment of duty of the final assessment, the provisions of Section 18 relating to provisional assessment were not amended and Section 18 continued to provide that if on finalization of provisional assessment, the duty finally assessed is more than the duty provisionally paid, the assessee shall be entitled to refund of the excess duty paid. The provisions of Section 18 regarding Provisional Assessment of Duty were amended only w.e.f. 13.07.2006 specifically making the refund of duty on finalization of Provisional Assessment subject to the principle of unjust enrichment.

A Larger Bench of the Tribunal in the case of *Commissioner of Customs, Kandla* v. *Hindustan Zinc Ltd.*, 2009(235) ELT-629(Tri.-LB), following the judgment of Gujrat High Court in the case of C*ommissioner of Customs* v. *Hindalco Industries Ltd.*, 2008 (232) ELT 36 (Guj.), has held that since Section 18 of the Customs Act was amended w.e.f. 13.07.2006 and such amendment has been held by Gujrat High Court as not a clarificatory amendment, unjust enrichment principle would not be applicable to the refund claim arisen on finalization of Provisional Assessment during period prior to 13.07.2006. Subsequently Gujrat High Court, in the case of *Commissioner of Customs* v. *Hindalco Industries Ltd.*, (262) ELT-106 (Guj.) has once again held that principles of unjust enrichment of Section 27 are not applicable to a custom duty refund claim arising out of finalization of provisional assessment prior to the amendment of Section 18 of Customs Act, 1962 w.e.f. 13.07.2006. Same view has been taken by Delhi High Court in case of *Commissioner of Custom* v. *Indian Oil Corporation* (282) ELT-368(Del.) holding that prior to insertion Of sub section (3),(4) & (5) to Section 18 w.e.f. 13.07.2006, Section 27 and principles of unjust enrichment were not applicable to refund of duty arising on finalization of provisional assessment.

In the present case while the 1% extra duty had been paid during 2001-2002 to 2003-2004, the refund claim of this extra duty deposit had arisen on 20.01.2004 when the Assistant Commissioner passed the order accepting the declared transaction value and the refund claim had been filed within one year on 20.01.2005. Therefore, following the judgment of the Larger Bench, we hold that principles of unjust enrichment are not applicable to this refund claim. Since this is the only ground on which the rejection of the refund claim has been upheld, the impugned order is not sustainable. The same is set aside.

LW.38.04.2013

SIEMENS LTD. v. COMMISSIONER OF INCOME-TAX (APPEALS) [ITAT]

IT Appeal No. 4356 (MUM.) of 2010

B. Ramakotaiah& Amit Shukla
[Decided on 12/02/2013]

Income Tax Act, 1961 - Sections 9 - tests carried out in Berlin through mechanical process without involving human agency - whether payment made to the overseas testing agency is taxable as 'payment towards technical fees" - Held, No.

Brief facts

The assessee was required to make payment to "Pehla Testing Laboratory" (hereinafter referred to as PTL) located at Berlin for carrying out type tests of the circuit breakers manufactured by assessee in order to establish that the design and the product meets the requirement of the International Standards - IEC 62271-100. Pehala Lab is accredited by National Accreditation Board for Testing & Calibration Laboratories (NABL) Germany, which carries out various kinds of tests for circuit breakers and other electronic devices to prove that the designs of the equipment meets the requirements of the international standards. This is a standard service provided by the Laboratory, which is done automatically by machines. For the purpose of the payment for making remittance to PTL, assessee moved an application under section 195 (2) before the Asstt. Director (I.T.). Along with the said application assessee has given a detailed submission and reasons justifying as to why the remittance made to the PTL is not liable to tax in India under the provisions of the Income Tax Act. AO, however, rejected the assessee's contentions and therefore, the assessee appealed to CIT (A), who also upheld the order of the AO. Hence the present appeal before the Tribubal.

Decision: Appeal allowed.

Reason

We have given our anxious consideration to the rival contention, orders passed by the CIT (A) as well as AO and the decisions relied upon by the parties. One of the main issues for our adjudication which also goes to the core of the issue is, whether the payment made to Pehla Testing Laboratories in Germany, for carrying out certain tests on circuit breakers manufactured by assessee for the purpose of certification, so as to meet the international standard, falls within the meaning of fees for technical services and is taxable within the meaning of section 9(1)(vii). Assessee in pursuance of its tender formalities with the Gujarat Energy Transmission Corporation Ltd and Maharashtra State Electricity Transmission Company Ltd. was required to obtain type testing certificate of the circuit breakers manufactured by it. For this purpose it has sent the circuit breakers to be tested in the Laboratory of PTL, wherein the circuit breakers undergo destructive tests in the Laboratories. Once it passes through the test in the Laboratories, certificate is given by the PTL for the quality of the product manufactured by assessee.

The expression "fees for technical services" has been given as consideration for rendering managerial, technical or consultancy services. No other definition as such of the term technical services in the Act has been given. The word "technical" as appearing in Explanation 2 is preceded by the word "managerial" and succeeded by the word "consultancy". It cannot be read in isolation as it takes colour from the word "managerial and consultancy" between which it is sandwiched. The Courts have held that in such a case principle of *noscitur a sociis* gets attracted, which means that the meaning of the word or expression is to be gathered from the surrounding word i.e. from the context. Coupling of the words together shows that they are to be understood in the same sense. The word "managerial and consultancy" is a definite indicative of the involvement of a human element. Managerial services and consultancy services has to be given by human only and not by any means or equipment. Therefore, the word "technical" has to be construed in the same sense involving direct human involvement without that, technical services cannot be held to be made available. Where simply an equipment or sophisticated machine or standard facility is provided albeit developed or manufactured with the usage of technology, such a user cannot be characterized as providing technical services.

This principle has been reiterated several times by various Courts and the Tribunals as have been highlighted by the learned Counsel during the course of hearing. Thus, one has to see whether any kind of human interface or human involvement is there for providing technical services by the PTL in this case.

Now coming to the facts of the present case, whether standard service provided at the Laboratory of PTL for the purpose of testing the equipment is done automatically by the machines or purely by human intervention. Assessee before the AO after drawing his attention to the flyer received from the PTL had categorically pointed out that the standard service provided by the PTL is without any human intervention. This factor has not been disputed by him. Even before the CIT (A), this contention has been deposed again by the assessee which has been noted by him in Para 3.4 and again in his findings in Para 3.7. None of the authorities have either rebutted this contention of assessee, or has given any adverse remark or findings that there was any human intervention in the process. The learned CIT (A) as well as AO have gone merely by the fact that such a type testing services provided by the PTL is highly sophisticated and technical, and it cannot be considered as non technical. Therefore, being highly technical in nature, it amounts to rendering of technical services. From the perusal of the flyer as submitted by the learned Counsel, it is seen that it describes various stages of tests which have to be carried out for testing the circuit breakers in various sophisticated machines. Such tests include switching capacity and short circuit current carrying capacity, dielectric test, temperature rise tests, magnetic tests, climatic tests and other kind of tests. These tests are carried out in a Lab by the automatic machines though under observations of technical experts. Once these tests are done successfully by the machines, a certificate is issued by the authorities of the PTL. The learned CIT (DR) had argued that for observing the process, preparing the report, issuance of certificate and for monitoring of machines, human involvement is definitely there, therefore, it cannot be held that there is no human intervention. In our opinion, this cannot be the criteria for understanding the term "technical services" as contemplated in Explanation 2 to section 9(1)(vii). If any person delivers any technical skills or services or make available any such services through aid of any machine, equipment or any kind of technology, then such a rendering of services can be inferred as "technical services". In such a situation there is a constant human endeavour and the involvement of the human interface. On the contrary, if any technology or machine developed by human and put to operation automatically, wherein it operates without any human interface or intervention, then usage of such technology cannot *per se* be held as rendering of "technical services" by human skills. It is obvious that in such a situation some human involvement could be there but it is not a constant endeavour of the human in the process. Merely because certificates have been provided by the humans after a test is carried out in a Laboratory automatically by the machines, it cannot be held that services have been provided through the human skills. Therefore, the contention raised by the learned CIT (DR) does not appeal much to us.

In our final conclusion we hold that the learned CIT (A) was not correct in holding that the payment made by assessee to Pehla Testing Lab was in any manner in the nature of "fees for technical services" within the ambit of section 9(1)(vii) read with Explanation 2 and accordingly there was no requirement in law to deduct tax at service on such payment. In the result this issue is decided in the favour of the assessee.

Labour & Industrial Laws

LW.39.04.2013

PRESIDENT, MAHA SABHA GURUKUL VIDYAPEETH v. PRESIDING OFFICER & ANR[P&H]

Civil Writ Petition No.2816 of 2013& Civil Writ Petition No.2818 of 2013

Rajiv NarainRaina, J.
[Decided on 28/02/2013]

Industrial Disputes Act, 1947 - Section 25 - F - termination of services without proper inquiry - whether tenable - Held, No.

Brief facts

This common order disposed of CWP No.2816 of 2013 and CWP 2818 of 2013 as similar facts and law points are involved in both these cases. For convenience, the facts are culled out from CWP No.2816 of 2013.In this petition filed under Articles 226/227 of the Constitution of India, the award dated 18.4.2011 (P-1) passed by the Labour Court, Panipat, in reference No.238 of 2002 has been called in question.

The petitioner management dismissed workman on the ground of misconduct without holding proper inquiry. The order of termination dated 10.2.2001 has been held bad on account of non compliance of mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act") inasmuch as the workman was not put to notice of termination, nor retrenchment compensation was paid and one month's pay in lieu of notice remained unpaid. There is also no dispute that the workman had completed 240 days of continuous service in the twelve calendar months preceding the date of termination.

Decision: Petition dismissed.

Reason

The order discloses foundation of misconduct based on complaints received from girl students of negligence in maintaining security. It is not the case of the management that any fact finding or regular inquiry was held into the complaints of misconduct against the workman including that of absence from duty on a single night. The defence of the management is that Ramphal could have been dealt with in terms of the appointment order. Admittedly, Ramphal was a regular direct recruit. He had a right to prove his worth till the end of period of probation under normal circumstances. His work and conduct would have remained under scrutiny upto 30.4.2001.

No show cause notice or explanation call or warning letter or an admonishment either oral or written was issued to Ramphal to improve himself. The complaints, if any, by the girl students were not put to him nor his explanation was sought on those complaints. What those complaints were is hard to find on the present paper book. The defence in the written statement clearly establishes that the foundation of the termination order was based on complaints and negligence in the performance of duties. It is well settled that the form of the order is not conclusive of its true nature and it might merely be a camouflage for an order founded on misconduct.

It was open to the management to have passed an order of termination simpliciter without entering into the field of misconduct attaching stigma. The real motive may be founded on misconduct or dereliction of duty but if it is not spoken of for prospective employers the Court may not insist on sifting the foundation through a sieve, in the case of a probationer to fault the termination. But if the foundation of the order is misconduct then it ought to have been preceded in the case of a probationer with at least a preliminary fact finding inquiry, however brief, if not a full fledged regular inquiry on the alleged complaints. In the circumstances, the least that was expected to support foundation of the order of termination in anticipation of judicial review was to have asked Ramphal-workman for his explanation on those complaints, before taking final decision on retention in service during probation. If his explanation was not found satisfactory, action could have been taken against him by simpliciter discharge on the ground that his work and conduct was not found satisfactory. The present case is, however, not one of discharge simpliciter. I may not be understood to say that in all cases probationers have a right to regular inquiry on grounds of either misconduct or with a view to establish the question of retention in service or discharge. All I wish to say is that probationers have a right to performance assessment though based on subjective satisfaction of the employer but tempered with objective review on relevant considerations from the stand point of a prudent reasonable man.

The termination order appears to this Court to be punitive in nature. The nexus between motive and foundation is well settled by a catena of judgments. See: *Pavanendra Narayan Verma* v. *Sanjay Gandhi P.G.I. of Medical Science and another;* 2002 (1) SCC 520; *Union of India and others* v. *Jaya Kumar Parida;* 1996(1) SCC 441 and *Dipti Prakash Banerjee* v. *SatyendraNath Bose National Centre For Basic Sciences, Calcutta;* (1999) 3 SCC 60.

If the management had passed a simpliciter order that the services during probation were found not satisfactory without attaching stigma publicly, it would yet be open to the management on judicial review of its action to have disclosed the real motive to the Court in response to a *lis* and have got away lightly. But this is not the case here. The order is stigmatic and punitive in its operation and has been passed without offering even minimal right of hearing. It would fall in the penumbra of cases that lie in the category of 'no notice, no hearing' and application of the strict rule of *audi alteram partem*. The man has been condemned unheard.

Be that as it may, the object of termination in these two cases appears to have been to get rid of the workmen on fault theory short of completion of probation period which assured automatic regularization on successful completion. The probation-cum-confirmation Clause 2 above is of a type usually hard to find in appointment letters.

In view of the above, I have little left except to confirm both the impugned awards which grant reinstatement with continuity of service but with 25% back wages payable from the date of demand notice dated 13.8.2001. The writ petitions are consequently dismissed *in limine* as not warranting admission for any further probe.

All said and done, this order will not preclude the respondent workmen from claiming back wages higher than those awarded. In case such challenge is laid, that question would be decided on its own merits without reference to this order except that it upholds reinstatement.

LW.40.04.2013

DEPUTY GENERAL MANAGER, INDIAN BANK, HEAD OFFICE v. PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT& ANR [MAD]

Writ Appeal No.2096 of 2012 M.P.No.1 of 2012

R.K.Agrawal, ACJ & N. Paul Vasanthakumar,J.
[Decided on 12/03/2013]

Industrial Disputes Act, 1947 – Termination of services - workman found guilty of dishonest act - enquiry proceedings proved this fact – workman was compulsorily retired from services with appropriate compensation - appellate authority

and Industrial Tribunal upheld the termination - meanwhile criminal court acquitted the workman - Single Judge set aside the order of the Tribunal and ordered reinstatement with back wages - whether tenable - Held, No.

Brief facts

The second respondent was dismissed from services, by the appellant bank, for involving in an act of dishonesty. The Appellant conducted disciplinary proceedings and passed an order of termination by voluntarily retiring the 2nd respondent. This order was challenged before the Tribunal, which dismissed the challenge and upheld the decision of the Bank.The workman approached the High Court and the Single Judge allowed the appeal by ordering reinstatement. Against this order the appellant bank had appealed to the Division Bench.

While the inquiry proceedings were underway, a criminal case was registered against the workman, in which he confessed to the act he committed. However, he was ultimately acquitted in the criminal proceedings. The Tribunal did not consider this acquittal and went by the findings of the enquiry committee in upholding the termination of the workman. The single judge considered the acquittal in the criminal proceedings and rendered a favourable decision to the workman.

Therefore, the issue involved in this case was whether the result of criminal case would have effect on the proceedings before the Tribunal and whether the Tribunal is obligated to go by the findings of the criminal proceedings.

Decision: Appeal allowed.

Reason

We have perused the punishment order dated 8.7.2004 passed by the appellant Bank; award of the Central Industrial Tribunal-cum-Labour Court dated 25.6.2008; order of the learned single Judge dated 13.3.2012; decisions cited by both sides; and connected records.

In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Thus, the second respondent cannot rely upon the acquittal order passed in his favour by the Criminal Court and pray for setting aside the order of compulsory retirement passed against him.

The learned single Judge set aside the order of compulsory retirement, which was confirmed by the appellate authority as well as the Central Government Industrial Tribunal-cum-Labour Court. The scope of judicial review in disciplinary matters is very limited. If there is some evidence available and based on such evidence the disciplinary authority comes to a conclusion, the Courts are not expected to overturn the said decision on the ground of insufficiency of materials. The grounds on which the Disciplinary Authority's decision can be set aside are, on no evidence or for any violation of procedural safeguards to the Delinquent officer, including the principles of natural justice.

To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

In the case on hand, the Central Government Industrial Tribunal-cum-Labour Court refused to exercise its discretion conferred under Section 11A of the Industrial Disputes Act, 1947, and dismissed the dispute raised, which decision was set aside by the learned single Judge. As we find that there is evidence against the second respondent/writ petitioner to sustain the charges, the order passed by the learned single Judge in setting aside the order of compulsory retirement with direction to reinstate him with full backwages, cannot be sustained.

In the light of the above findings and decisions cited *supra,* we are not persuaded to subscribe the view expressed by the learned single Judge in allowing the writ petition filed by the second respondent/writ petitioner.

Corporate Laws

01 The Companies (Acceptance of Deposits Amendment) Rules, 2013.

[Issued by the Ministry of Corporate Affairs vide F No 11/2 /2012- CL-V-(A) dated 21.03.2013.]

In exercise of the powers conferred by section 58A read with section 642 of the Companies Act, 1956 (1 of 1956), the Central Government in consultation with the Reserve Bank of India, hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules,1975, namely:-

1. (1) These rules may be called the Companies (Acceptance of Deposits Amendment) Rules, 2013.
   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Acceptance of Deposits) Rules, 1975,-
   (i) in rule 2, in clause (b), for sub clause (x), the following sub-clause shall be substituted, namely:-
   "(x) any amount raised by the issue of bonds or debentures secured by the mortgage of any fixed assets referred to in Schedule VI of the Act excluding intangible assets of the company or with an option to convert them into shares in the company:

   Provided that in the case of such bonds or debentures secured by the mortgage of any fixed assets referred to in Schedule VI of the Act excluding intangible assets the amount of such bonds or debentures shall not exceed the market value of such fixed assets";
   (ii) for rule 11A, the following rule shall be substituted, namely:-
   "The Regional Director or Registrar of Companies or any other officer of the Central Government shall be authorised to make complaints under sub-section (2) of section 58AAA ofthe Act.".

Renuka Kumar
Joint Secretary

02 Companies Directors Identification Number (Amendment) Rules, 2013

[Issued by the Ministry of Corporate Affairs vide Notification No. G.S.R. 173(E) dated 15.03.2013. Published in the Gazette of India (Extraordinary) Part -II-Section-3-Sub-section(i) dated 15.03.2013.]

In exercise of the powers conferred by clauses (a) and (b) of sub section (1) of section 642 read with section 266A, 266B, 266D and 266E of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Directors Identification Number) Rules, 2006 namely: -

1. **Short title and commencement.-** (1) These rules may be called the Companies Directors Identification Number (Amendment) Rules, 2013.
   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Directors Identification Number) Rules, 2006, after rule 7, the following rule shall be inserted, namely: -

8. **Cancellation or Deactivation of DIN.-** The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director, upon being satisfied on verification of particulars of proof attached with the application received from any person seeking cancellation or deactivation of DIN, in case -
   (a) the DIN is found to be duplicate;
   (b) the DIN was obtained by wrongful manner or fraudulent means;
   (c) of the death of the concerned individual;
   (d) the concerned individual has been declared as lunatic by the competent Court;
   (e) if the concerned individual has been adjudicated an insolvent;
   then the allotted DIN shall be cancelled or deactivated by the Central Government or Regional Director (NR), Noida or any other officer authorised by the Regional Director (NR):

   Provided that before cancellation or deactivation of DIN under clause (b), an opportunity of being heard shall be given to the concerned individual.

Renuka Kumar
Joint Secretary

Explanation.- For the purposes of clause (b), (i) the term "wrongful manner" means if the DIN obtained without legally established documents .

(ii) the term “fraudulent means” means if the DIN obtained unlawfully to deceive any other person or any authority including the Central Government.

03 Clarification under Section 372 A (3) of the Companies Act, 1956

[Issued by the Ministry of Corporate Affairs vide General Circular No. 06/ /2013 dated 14.03.2013.]

It is observed from the Budget 2013-14 authorizes Union Govt to raise Rs. 50,000 crores (Tax Free Bonds). These bonds carry a lower rate of interest, currently in the range of 6.75% to 7.50% which is tax free under Section 10(15) (iv)(h) of the Income Tax Act, 1961. Such bonds were also provided for in Budget 2012-13, but the response had been poor due to restrictions under Section 372A(3) ofthe Companies Act, 1956.

2. Ministry of Finance had drawn the attention of this Ministry to Section 372A (3) of the Companies Act with a view to effectively implement the announcement made in the Budget . Section 372A (3) of the Act interalia provides that *“No loan to any body corporate shall be made at a rate of interest lower than the prevailing bank rate, being standard rate made public under section 49 of the Reserve Bank of India Act, 1934 (2 of 1934)”*.

3. It is hereby clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the yield on prevailing bank rate, there is no violation of Section 372A(3) of Companies Act, 1956.

4. This circular is effective from the date of issue.

5. This issues with the approval of Hon’ble Corporate Affairs Minister.

J. N. Tikku
Joint Director

04 Relaxation of additional fees and extension of last date in filing of Various forms with the Ministry of Corporate Affairs-reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 07/2013 dated 20.03.2013.]

In continuation of the Ministry’s General Circular No: 03/2013 dated 08-02-2013 on the subject cited, I am directed to inform you that with the approval of competent authority the time limit for filing and relaxation of additional fee on forms has been extended till 31-03-2013, as detailed below:-

2. The scenario arising where the due date was falling before 17/01/2013, however, additional fee increased due to non-filing of documents between 17/01/2013 and 28/02/2013 (both days inclusive). The affirmative step based on the ticket raised by ROC and the additional fee mentioned therein, will be:-
   (1) Change of additional fee applicable against respective SRN in the database;
   (2) Regeneration of challan with revised additional fee;
   (3) Extension of validity period of the challan till 7 days from the date of change;
   (4) Sending an e-mail along with challan to the user requesting him to pay the amount as per the revised challan. (User may also download the challan from FO Portal)

3. The other scenario where all the documents which have expired on or after 17-01-2013 due to non-submission/ re-submission PUCL will be restored back. The validity of tickets raised till 24-3-2013 will be entertained and users will be given the time to file the documents within seven days of intimation to user. In case of failure to file the form within seven days, the form will be marked as NTBR and no further relaxation will be granted.

4. Further it is clarified that fee payable for forms on/till 16-01-2013 will remain payable along with additional fee and relaxation of any additional fee will be considered for forms on or after 17-01-2013.

5. All other terms and conditions of the General Circular No. 03/2013 dated 08.02.2013 will remain the same.

Sanjay Kumar Gupta
Deputy Director

05 Debenture Redemption Reserve (DRR)–Clarification

[Issued by the Ministry of Corporate Affairs vide General Circular No. 04/2013 dated 11.02.2013.]

The requirements with regard to ‘adequacy’ of debenture redemption reserve (DRR) have been clarified by this Ministry vide General Circular No. 9/2002 dated 18/04/2002.

2. The matter with regard to need for review of limits indicated in such Circular has been examined by this

Ministry in consultation with various stakeholders including relevant regulators. Keeping in view such consultations and the need for development of corporate bonds/ debentures, it has been decided to clarify on adequacy of DRR and other related matters as under:-

(i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of Section 4A of the Companies Act, 1956, DRR will be as applicable to NBFCs registered with RBI.

(ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997,'the adequacy' of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

(iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 *and also 25% DRR is required in thc case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.*

(iv) Every company required to create/maintain DRR shall before the 30th day of April of each year, deposit or invest, as the case may be, a sum which shall not be less than fifteen percent of the amount of its debentures maturing during the year ending on the 31st day of March next following in any one or more of the following methods, namely:
   (a) in deposits with any scheduled bank, free from charge or lien;
   (b) in unencumbered securities of the Central Government or of any State Government;
   (c) in unencumbered securities mentioned in clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
   (d) in unencumbered bonds issued by any other company which is notified under clause (f) of section 20 of the Indian Trusts Act, 1882;

(v) The amount deposited or invested, as the case may be, above shall not be utilized for any purpose other than for the repayment of debentures maturing during the year referred to above, provided that the amount remaining deposited or invested, as the case may be, shall not at any time fall below 15 per cent of the amount of debentures maturing during the 3lst day of March of that year

Sanjay Shorey
Joint Director

06 SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2013

[Issued by the Securities and Exchange Board of India vide Notification LAD-NRO/GN/2012-13/36/7368 dated 26.03.2013. Published in the Gazette of India Extraordinary Part -III-Section-4 dated 26.03.2013.]

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2013.

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011–
   (i) in regulation 10,
      (a) in sub-regulation (3),
         (1) after the words "buy-back of shares", the words "by the target company" shall be inserted.
         (2) for the words "on which the voting rights so increase" the words "of the closure of the said buy-back offer", shall be substituted.
      (b) in sub-regulation (4), in the second proviso to clause (c), for the words "on which the voting rights so increase" the words "of closure of the buy-back offer by the target company", shall be substituted.

   (ii) in regulation 13,
      (a) in sub-regulation (2),
         (1) in clause (g) for the words, figures and numbers "special resolution is passed for allotment of shares under sub-section (1A)

of section 81 of the Companies Act, 1956 " the words "the board of directors of the target company authorises such preferential issue.", shall be substituted.

(2) in clause (h) for the words and numbers "such increase in the voting rights beyond the relevant threshold stipulated in regulation 3" the words "closure of the buy-back offer by the target company ", shall be substituted.

(b) after sub-regulation (2), the following new sub-regulation shall be inserted, namely- "(2A) Notwithstanding anything contained in sub-regulation (2), a public announcement referred to in regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of,-
 (i) an agreement and any one or more modes of acquisition referred to in sub-regulation (2) of regulation 13, or
 (ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13,
 shall be made on the date of first such acquisition, provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition."

(iii) in regulation 22, after sub-regulation (2), the following new sub-regulation shall be inserted, namely-
"(2A) Notwithstanding anything contained in sub-regulation (1), an acquirer may acquire shares of the target company through preferential issue or through the stock exchange settlement process, other than through bulk deals or block deals, subject to ,-

 (i) such shares being kept in an escrow account,
 (ii) the acquirer not exercising any voting rights over such shares kept in the escrow account:

Provided that such shares may be transferred to the account of the acquirer, subject to the acquirer complying with requirements specified in sub-regulation (2)."

(iv) in regulation 23, in sub-regulation (1), after clause (c), the following proviso shall be inserted, namely-
"Provided that an acquirer shall not withdraw an open offer pursuant to a public announcement made under clause (g) of sub-regulation (2) of regulation 13, even if the proposed acquisition through the preferential issue is not successful."

(v) in regulation 29, sub-regulation (2), shall be substituted with following, namely-
"Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified."

U. K. Sinha
Chairman

07 Securities and Exchange Board of India KYC (Know Your Client) Registration Agency (Amendment) Regulations, 2013

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2012-13/35/6998 dated 22.03.2013 Published in the Gazette of India Extraordinary Part -III-Section-4 dated 22.03.2013]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to amend the Securities and Exchange Board of India {KYC(Know Your Client) Registration Agency} Regulations, 2011, namely:-

1. These Regulations may be called the Securities and Exchange Board of India {KYC(Know Your Client) Registration Agency} (Amendment) Regulations, 2013.

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India {KYC(Know Your Client) Registration Agency} Regulations, 2011, –
 (i) in regulation 15, in clause (e), the word "original' and the words "both physical and" shall be omitted;
 (ii) in regulation 16, -
  (A) for clause (a), the following shall be substituted, namely,-
  "(a) The intermediary shall perform the initial KYC/

due diligence of the client, upload the KYC information with proper authentication on the system of the KRA, furnish the scanned images of the KYC documents to the KRA, and retain the physical KYC documents:

Provided that in the case of clients of a mutual fund, the Registrar to an Issue and Share Transfer Agent appointed by the mutual fund may perform the initial KYC/due diligence of the client, upload the KYC information with proper authentication on the system of the KRA, and furnish the scanned images of KYC documents to the KRA."

(B) after clause (a), the following new clause shall be inserted, namely-

"(aa) The intermediary or the mutual fund, as the case may be, shall furnish the physical KYC documents or authenticated copies thereof to the KRA, whenever so desired by the KRA."

(C) in clause (b), the words "for sending the physical documents to KRA, wherever necessary" shall be substituted with the words "retaining the physical documents".

U. K. Sinha

Chairman

08 Usage of electronic payment modes for making cash payments to the investors

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/10/2013 dated 21.03.2013.]

Please refer to SEBI circular no. DCC/FITTCIR-3//2001 dated October 15, 2001 and circular no D&CC/FITTC/CIR-04/2001 dated November 13, 2001 on usage of ECS (Electronic Clearing Services) facility and warrants for distribution of dividends or other cash benefits to the investors.

2. Advancements in the field of electronic payment systems in the last decade have made available various other modes of electronic funds transfer viz. National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc. In view of such advancements, it has been decided to modify the framework as under:

   (a) For making cash payments to the investors, companies whose securities are listed on the stock exchanges shall use, either directly or through their RTI & STA, any RBI (Reserve Bank of India) approved electronic mode of payment such as ECS [LECS (Local ECS) / RECS (Regional ECS) / NECS (National ECS)], NEFT, etc.

   (b) Further, in order to enable usage of electronic payment instruments, companies whose securities are listed on the stock exchanges (or their RTI & STA) shall maintain requisite bank details of their investors -
      (i) For investors that hold securities in demat mode, companies or their RTI & STA shall seek relevant bank details from the depositories. To this end, vide circular SEBI/MRD/DEP/Cir-3/06 dated February 21, 2006 and letter MRD/DEP/PP/123624/2008 dated April 23, 2008, depositories have been advised to ensure that correct account particulars of investors are available in the database of depositories.
      (ii) For investors that hold physical share / debenture certificates, companies or their RTI & STA shall take necessary steps to maintain updated bank details of the investors at its end.

   (c) In cases where either the bank details such as MICR (Magnetic Ink Character Recognition), IFSC (Indian Financial System Code), etc. that are required for making electronic payment are not available or the electronic payment instructions have failed or have been rejected by the bank, companies or their RTI & STA may use physical payment instruments for making cash payments to the investors. Companies shall mandatorily print the bank account details of the investors on such payment instruments.

3. Stock exchanges are directed to bring the provisions of this circular to the notice of all the companies whose securities are listed on the stock exchange and also to disseminate the same on their website.

4. All companies whose securities are listed on Stock exchanges and their RTI & STA are directed to comply with the provisions of the circular.

5. Depositories are directed to provide to companies (or to their RTI & STA) updated bank details of their investors.

6. This circular shall supersede circular no. DCC/FITTCIR-3//2001 dated October 15, 2001 and circular no D&CC/FITTC/CIR-04/2001 dated November 13, 2001.

7. This circular is being issued in exercise of 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.

Maninder Cheema
Deputy General Manager

09 Corporate bonds and Government securities as collateral

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DRMNP/9/2013 dated 20.03.2013.]

1. Please refer to SEBI circular Nos. SEBI/DNPD/Cir-32/2007 dated September 11, 2007 and CIR/MRD/DP/15/2010 dated April 28, 2010 permitting FIIs to offer, as collateral, cash and foreign sovereign securities with AAA rating in F&O segment and cash, foreign sovereign securities with AAA rating and government securities in cash segment.

2. The Hon'ble Finance Minister, in his announcement in the Union Budget for the year 2013 -14, has proposed, inter-alia, to permit FIIs to use their investment in corporate bonds and Government securities as collateral to meet their margin requirements towards their transactions on the recognized Stock Exchanges in India.

3. Reserve Bank of India vide RBI/2012-13/439 A.P. (DIR Series) Circular No. 90 dated March 14, 2013 has permitted FIIs to use, in addition to already permitted collaterals, their investments in corporate bonds as collateral in the cash segment and government securities and corporate bonds as collaterals in the F&O segment.

4. In light of the above, henceforth FIIs are permitted to offer the following collaterals - government securities, corporate bonds, cash and foreign sovereign securities with AAA ratings, for their transactions in both cash and F&O segments. In this regard, the stipulations specified by SEBI and RBI with regard to the acceptance of various collaterals shall be adhered to.

5. Further, Clearing Corporations while enabling the framework for acceptance of corporate bonds as collateral for transactions of any entity in the cash and F&O segments, shall ensure that:
   i) The bonds shall have a rating of AA or above (or with similar rating nomenclature) by recognised credit rating agencies.
   ii) The bonds shall be in dematerialized form.
   iii) The bonds shall be treated as part of the non-cash component of the liquid assets of the clearing member and shall not exceed 10% of the total liquid assets of the clearing member.
   iv) The bonds shall have a fixed percentage based or VaR based haircut. A higher haircut may be considered to cover the expected time frame for liquidation. To begin with the haircut shall be a minimum of 10%.

6. The earlier circulars issued by SEBI with regard to acceptance of collaterals stand modified accordingly.

7. The Stock Exchanges/Clearing Corporations are advised to:
   a. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
   b. bring the provisions of this circular to the notice of the member brokers/clearing members of the Exchange/Clearing Corporation and also to disseminate the same on the website.
   c. communicate to SEBI, the status of the implementation of this circular in the Monthly Development Report.

8. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Shashi Kumar
Deputy General Manager

10 Arbitration Mechanism through Stock Exchanges - Introduction of Automatic Process and Common Pool of arbitrators.

[Issued by the Securities and Exchange Board of India vide CIR/MRD/ICC/8 /2013 dated 18.03.2013.]

SEBI has received inputs from investors regarding functioning of the arbitration mechanism at the Stock Exchanges. In light of which, you are advised to carry out the following changes in the arbitration mechanism.

1. List of Arbitrators on the panel of all stock exchanges having nation-wide trading terminals shall be pooled and will be called a 'Common Pool'. This list shall be made publicly available including by way of display on websites of the stock exchanges.

2. 'Common pool' of Arbitrators will consist of Arbitrators listed on the panels of all stock exchanges having nation-wide trading terminals. The pooling of arbitrators will be

done centre-wise. To illustrate, the list of arbitrators on the panel of all stock exchanges for the region covered by the Delhi centre will be pooled. This would enable an applicant from the region to choose any arbitrator from the 'Common Pool' for Delhi.

If the client and member (stock broker, trading member or clearing member) fail to choose the Arbitrator(s) from the Common Pool, the Arbitrator(s) will be chosen by an 'Automatic Process' wherein neither the parties to arbitration (i.e. client or member) nor the concerned Stock Exchanges will be directly involved.

3. The 'Automatic Process' will entail a randomized, computer generated selection of Arbitrator, from the list of Arbitrators in the 'Common Pool'. The selection process shall be in chronological order of the receipt of arbitration reference i.e. only after selecting an arbitrator for the former arbitration reference received, selection for the latter shall be taken up.

4. The 'Automatic Process' will send a system generated, real time alert (sms, email etc.) to all entities involved in the particular case. Further, the communication for the appointment of the Arbitrator will be sent immediately and in any case not later than the next working day from the day of picking of the Arbitrator. This communication will be sent by the stock exchange on which the dispute had taken place, to all concerned entities including clients, arbitrators, members, stock exchanges etc.

5. The selection of Arbitrators by Stock Exchanges as done currently, shall henceforth be replaced by the 'Automatic Process'.

6. In case of any probable conflict of interest in an arbitration reference being assigned to any Arbitrator the Arbitrator will have to upfront decline the arbitration reference. After the said arbitrator declines, the 'automatic process' will pick the name of another Arbitrator. This will continue till the time there is no conflict of interest, by the selected arbitrator. In this regard, the timelines mentioned at clause 5.3 in CIR/MRD/DSA/24/2010 dated August 11, 2010 of 30 days might get extended. However, SEs shall put on record the reasons of such extension.

7. In case of conflict of interest by the arbitrator, the information for the same may reach the stock exchange on which the dispute has taken place within 15 days of receipt of communication from the SE above. The said information may be sent by any method which ensures proof of delivery.

8. Fees of arbitrator shall be dealt in line with existing provisions, by the stock exchange on which the dispute had taken place.

9. The recognised stock exchanges with nation-wide trading terminals are advised to make necessary amendments to relevant bye-laws for the implementation of the above decision immediately.

10. SEBI inspection of stock exchanges shall cover implementation of this circular.

11. The circular is being issued in exercise of powers conferred upon SEBI under Section 11(1) of the Securities and Exchange Board of India Act, 1992.

12. This circular is being issued in partial modification of SEBI Circular No. CIR/MRD/DSA/24/2010 dated August 11, 2010 and will come into effect from 1st April 2013.

13. The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Circulars".

B. K. Gupta
Deputy General Manager

11 Product Labeling in Mutual Funds

[Issued by the Securities and Exchange Board of India vide CIR/IMD/DF/5/2013 dated 18.03.2013.]

1. In order to address the issue of mis-selling, a Committee was set up to examine the system of Product Labeling that would provide investors an easy understanding of the kind of product/scheme they are investing in and its suitability to them. Based on the recommendations of the Committee, it has been decided that all the mutual funds shall 'Label' their schemes on the parameters as mentioned under:

   a. Nature of scheme such as to create wealth or provide regular income in an indicative time horizon (short/ medium/ long term).

   b. A brief about the investment objective (in a single line sentence) followed by kind of product in which investor is investing (Equity/Debt).

   c. Level of risk, depicted by colour code boxes as under:
      - Blue – principal at low risk.
      - Yellow – principal at medium risk.
      - Brown – principal at high risk.

      The colour codes shall also be described in text beside the colour code box.

d. A disclaimer that investors should consult their financial advisers if they are not clear about the suitability of the product.

e. Few samples of product label for different schemes are illustrated at **Annexure I.**

2. Product label shall be disclosed in:

a. Front page of initial offering application forms, Key Information Memorandum (KIM) and Scheme Information Documents (SIDs).

b. Common application form – along with the information about the scheme.

The product label with respect to (a) & (b) above shall be placed in proximity to the caption of the scheme and shall be prominently visible.

c. Scheme advertisements – placed in manner so as to be prominently visible to investors.

3. This circular shall be applicable with effect from July 1, 2013, to all the existing schemes and all schemes to be launched on or thereafter. However, mutual funds may choose to adopt the provisions of this circular before the effective date.

4. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulation, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Parag Basu
General Manager

Annexure I

Few samples of product label for different schemes are illustrated as under:

1. Enumeration of Product label of an Fixed Maturity Plan (FMP)

Product Label

This product is suitable for investors who are seeking*:
● regular fixed income for short term. ● investment in Debt/Money Market Instrument/Govt. Securities. ● low risk. (BLUE)

*Investors should consult their financial advisers if in doubt about whether the product is suitable for them.

Note: Risk may be represented as:

(BLUE) investors understand that their principal will be at low risk	*(YELLOW) investors understand that their principal will be at medium risk*	*(BROWN) investors understand that their principal will be at high risk*

2. Enumeration of Product label of a Hybrid Scheme

Product Label

This product is suitable for investors who are seeking*:
● long term capital appreciation and current income. ● investment in equity and equity related securities as well as fixed income securities (debt and money market securities). ● medium risk. (YELLOW)

* Investors should consult their financial advisers if in doubt about whether the product is suitable for them.

Note: Risk may be represented as:

(BLUE) investors understand that their principal will be at low risk	*(YELLOW) investors understand that their principal will be at medium risk*	*(BROWN) investors understand that their principal will be at high risk*

3. Enumeration of Product label of an Equity Scheme

Product Label

This product is suitable for investors who are seeking*:
● long-term capital growth. ● investment in equity and equity-related securities including equity derivatives of top 200 companies by market capitalisation. ● high risk. (BROWN)

* Investors should consult their financial advisers if in doubt about whether the product is suitable for them.

Note: Risk may be represented as:

(BLUE) investors understand that their principal will be at low risk	*(YELLOW) investors understand that their principal will be at medium risk*	*(BROWN) investors understand that their principal will be at high risk*

12 Sharing of information regarding issuer companies between Debenture Trustees and Credit Rating Agencies

[Issued by the Securities and Exchange Board of India vide CIR/MIRSD/3/2013 dated 15.03.2013.]

1. SEBI (Debenture Trustee) Regulations, 1993 require the Debenture Trustees (DTs) to share information regarding the issuer companies that are their clients, with Credit Rating Agencies (CRAs). The purpose of the Regulations is to enable CRAs to perform their obligations effectively.

2. DTs have also expressed the need to receive relevant information on issuer companies from CRAs.

3. In consultation with DTs and CRAs, it has been decided

that registered DTs and CRAs shall share information with each other as specified in the Annexure. DTs and CRAs may share any other information from time to time in respect of issues/issuer companies which would help them in effective discharge of their duties.

4. Further, the DTs and CRAs shall assign designated email addresses for sending and receiving such information and ensure appropriate action, if any, based on the information received.

5. This circular is issued in exercise of 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. This circular is available on SEBI website (www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".

Ruchi Chojer
General Manager

Annexure

Sharing of information between Debenture Trustees (DTs) and Credit Rating Agencies (CRAs)

A. Information from CRAs to DTs

1. Rating assigned/revised for debt securities along with the rationale for the same.

2. Press release, outstanding ratings etc. in respect of debt securities.

3. Non-cooperation by the issuers with respect to sharing necessary information for monitoring the credit quality of the rated instrument with CRAs.

4. Press release and separate communication to DT on withdrawal of rating post redemption of entire amount due towards debenture-holders.

5. Default of any type committed by the issuer.

B. Information from DTs to CRAs

1. Whether the asset in respect of which security has been created is free from any encumbrance and adequate to ensure asset cover for the debentures or if there is any breach of the terms of creation of the security. This information shall be shared on half yearly basis.

2. Funds transferred to Debenture Redemption Reserve(DRR), depletion of the DRR/invocation of guarantee which could affect the payment of debenture obligations. This information shall be shared annually.

3. Details of redemption of the issue.
4. Any default committed including the default in payment of interest or redemption of debentures or delay in creation of security.

5. Any change or restructuring of the terms of the issue.

6. Periodic reports from lead banks about the progress of the project for which funds have been raised through debentures and certificate from issuer's auditors in respect of utilization of funds.

7. Details of grievances filed by debenture-holders and action taken to resolve them.

8. Non cooperation by the issuer with respect to furnishing required reports/certificates/information.

Information pertaining to points 3 to 8 shall be shared as and when available.

13 Notification under regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/202-13/33/1103 dated 11.03.2013 Published in the Gazette of India Extraordinary Part -III-Section-4 dated 11.03.2013]

In terms of sub-regulation (1) of regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (the Regulations), the Board may require, by notification, any category of associated persons as defined in the Regulations to obtain requisite certification(s).

Accordingly, it is notified that with effect from the date of this notification, the associated persons functioning as compliance officers of intermediaries registered with the Board as stock brokers, or depository participants, or merchant bankers, or underwriters, or bankers to the Issue, or debenture trustees or credit rating agencies, shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as "NISM") by passing the NISM-Series-III A: Securities Intermediaries Compliance (Non-Fund) Certification Examination (hereinafter referred to as "SICCE") as mentioned in the NISM communiqué No. NISM/Certification/Series-III A: SIC/2013/01 dated January 7, 2013.

All such intermediaries shall ensure that associated persons functioning as compliance officers as on the date of this notification obtain certification by passing SICCE within two years from the date of this notification:

Provided that an intermediary, who engages or employs any such associated persons functioning as compliance officer after the date of this notification, shall ensure that such person obtains certification by passing SICCE within one year from the date of his employment.

U. K. Sinha
Chairman

14 Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/07 /2013 dated 05.03.2013.]

1. It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories.
2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:
   a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.
   b) There are no other grounds/reasons for continuation of the trading in TFTS.
3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

Maninder Cheema
Deputy General Manager

Annexure A

Sr. No.	Name of the Company	ISIN
1.	The Cochin Malabar Estates And Industries Limited	INE788M01017
2.	Wellesley Corporation Limited	INE176O01011
3.	Pawansut Holdings Limited	INE260M01017
4.	Comfort Fincap Limited	INE274M01018

15 Guidelines for Enabling Partial Two-Way Fungibility of Indian Depository Receipts (IDRs)

[Issued by the Securities and Exchange Board of India videCIR/CFD/DIL/6/2013 dated 01.03.2013.]

1. Securities and Exchange Board of India ("SEBI"), vide circular No. CIR/CFD/DIL/10/2012 dated August 28, 2012, has prescribed the framework for redemption of IDRs into underlying equity shares. The circular has, inter alia, provided for partial fungibility of IDRs (i.e. redemption/conversion of IDRs into underlying equity shares) in a financial year to the extent of 25% of the IDRs originally issued. The Circular also stated that suitable instructions for modifying the existing legal framework governing IDRs, in order to implement the decision to allow redemption of IDRs into underlying equity shares and re-conversion of equity shares of a foreign issuer (which has already listed their IDRs) into IDRs, will be issued separately.

2. In order to encourage more number of foreign companies to issue IDRs in the Indian market and also to enable the investors to take informed investment decision, it has been decided to provide a detailed roadmap and guidelines for the future IDR issuances as well as for the existing listed IDRs.

3. All the IDRs shall have partial two-way fungibility. The partial two-way fungibility means that the IDRs can be converted into underlying equity shares and the underlying equity shares can be converted into IDRs within the available headroom. The headroom for this purpose shall be the number of IDRs originally issued minus the number of IDRs outstanding, which is further adjusted for IDRs redeemed into underlying equity shares ("Headroom").

4. The broad guidelines for fungibility of future IDR issuances and the existing listed IDRs are given below:
   I. Guidelines for fungibility of future IDR issuance
      i. IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of listing of IDRs.
      ii. After completion of one year period from the date of listing of IDRs, the issuer shall, provide two-way fungibility of IDRs.
      iii. IDR fungibility shall be provided on a continuous basis.
      iv. The issuer shall provide said fungibility to IDR holders in any of the following ways:

a. converting IDRs into underlying shares; or
b. converting IDRs into underlying shares and selling the underlying shares in the foreign market where the shares of the issuer are listed and providing the sale proceeds to the IDR holders; or
c. both the above options may be provided to IDR holders.

Provided that the option once exercised and disclosed by the issuer at the time of offering the IDRs to public cannot be changed without the specific approval of SEBI.

v. All the IDRs that have been applied for fungibility by the holder shall be transferred to IDR redemption account at the time of application. The issuer shall take necessary steps to provide underlying shares or sale proceeds as per the choice made under sub-clause (iv) of this clause.
vi. The Issuer may receive requests from the holders of underlying shares and convert these into IDRs subject to the Headroom available with respect to the number of IDRs originally issued subject to the guidelines prescribed by SEBI & Reserve Bank of India ("RBI") from time to time.
vii. In case of option of converting the IDRs into underlying equity shares and providing the sale proceeds to the IDR holders is exercised, the issuer shall disclose the range of fixed/variable costs in percentage terms upfront and ensure that all the costs together shall not exceed 5% of the sale proceeds.
viii. Available Headroom and significant conversion/ reconversion transactions shall be disclosed by the issuer on a continuous basis.
ix. The issuer shall lay down the detailed procedures while taking into consideration the above broad guidelines in addition to other norms specified by SEBI and RBI, from time to time.

II. Guidelines for fungibility of existing listed IDRs

i. After completion of one year period from the date of issue of IDRs, the issuer shall, every year provide redemption/conversion of IDRs into underlying equity shares of the issuer of up to 25% of the IDRs originally issued. The Issuer shall invite expression of interest from IDR holders by giving advertisements in leading English and Hindi national daily newspapers with wide circulation as well as notification to the stock exchanges giving the operating guidelines for redemption/ conversion of IDRs at least one month before the implementation.
ii. The issuer shall exercise the option specified in sub-clause (iii) below provided that the same is disclosed in accordance with sub-clause (xii) of this clause.
iii. The mode of fungibility: The issuer shall provide the said fungibility to IDR holders in any of the following ways:
   a. converting IDRs into underlying shares; or
   b. converting IDRs into underlying shares and selling the underlying shares in the foreign market where the shares of the Issuer are listed and providing the sale proceeds to the IDR holders; or
   c. both the above options may be provided to IDR holders.
iv. The periodicity for IDR fungibility shall be at least once every quarter. The fungibility window shall remain open for the period of at least seven days.

Provided that the option once exercised and disclosed by the issuer to public cannot be changed without the specific approval of SEBI. However, the issuer may decide to exercise the option provided in sub-clause (xiii) below without specific approval from SEBI.

v. Total number of IDRs available for fungibility during one fungibility window shall be fixed before the opening of the window. Re-issuances of IDRs during the fungibility window, if any, shall be considered for computation of Headroom only at the time of next cycle of fungibility. Fungibility window for this purpose shall mean the time period during which IDR holders can apply for conversion of IDRs into underlying equity shares.
vi. In case of requests for conversion in excess of the limit available, the manner of accepting IDRs for conversion/ redemption or shares for re-issuance shall be on proportionate basis.
vii. A reservation of 20% of the IDRs made available for redemption/conversion into underlying equity shares in the fungibility window shall be provided to Retail Investors. Within this reserved window:
   - in case of higher demand for fungibility, the demand shall be satisfied on proportionate basis. Further, the excess unsatisfied demand from the retail investors shall be included in the unreserved portion.
   - in case of lower demand for fungibility from retail investors, the unallocated portion shall be added to the unreserved portion.
viii. All the IDRs applied for fungibility shall be transferred to IDR redemption account at the time of application and in case of unsuccessful bids the balance IDRs shall be transferred back to the account of applicant. The issuer shall take necessary steps to provide underlying shares or cash as per the choice made under sub-clause (iii) above.
ix. The Issuer may receive requests from the holders of underlying shares and convert these into IDRs subject to the Headroom available with respect to the number of IDRs originally issued subject to the

guidelines prescribed by RBI from time to time.

x. In case of option of converting IDRs into underlying shares and providing the sale proceeds to the IDR holders, the issuer shall disclose the range of fixed/ variable costs in percentage terms upfront and all the cost together shall not exceed 5% of the sale proceeds.

xi. Available Headroom and significant conversion/ reconversion transactions shall be disclosed by the issuer on a continuous basis.

xii. Existing issuers shall provide the option of redemption/ conversation within three months of notification of these guidelines.

xiii. The existing issuer of IDR may exercise the option of using the guidelines available for the new issuers as referred above from the anniversary of the date of listing of their IDRs after the issuance of this circular or from any of the subsequent quarters thereafter. For this purpose, the issuer shall disclose the exercising of the said option by giving advertisements in leading English and Hindi national daily newspapers with wide circulation as well as notification to the stock exchanges giving the operating guidelines for redemption/ conversion of IDRs at least one month before exercising the option. The said option, once exercised, cannot be reversed.

xiv. The issuer shall lay down the detailed procedures while taking into consideration the above broad guidelines in addition to other norms specified by SEBI and RBI, from time to time.

5. With issuance of this circular, SEBI circular No: CIR/ CFD/DIL/10/2012 dated August 28, 2012 shall become effective and SEBI circular No: CIR/CFD/DIL/3/2011 dated June 03, 2011 would stand rescinded.
6. This circular is issued in exercise of the powers conferred under Section 11 of the Securities and Exchange Board of India Act, 1992 read with Regulation 100 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
7. This circular is available on SEBI website at www.sebi. gov.in under the category "Legal Framework".

Sunil Kadam
General Manager

16 Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2013

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2012-13/32/4947 dated 27.02.2013 Published in the Gazette of India Extraordinary Part -III-Section-4 dated 27.02.2013]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2013.

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009–

   (i) the regulation 100 shall be substituted with the following, namely –

   "Fungibility.

   100. The Indian Depository Receipts shall be fungible into underlying equity shares of the issuing company in the manner specified by the Board and Reserve Bank of India, from time to time."

U. K. Sinha
Chairman

Banking Laws

17 Prudential norms on Advances to Infrastructure Sector

[Issued by the Reserve Bank of India vide DBOD.BP.BC.No. 83/ /08.12.014 /2012-13 dated 18.03.2013.]

In terms of our circular DBOD.No.BP. BC.125/21.04.048/2008-09 dated April 17, 2009 on 'Prudential Norms on Unsecured Advances' rights, licenses, authorization, etc., charged to the banks as collateral in respect of projects (including infrastructure projects) should not be reckoned as tangible security. However, it was observed that infrastructure projects, especially road/highway projects, are special in nature where asset created by bank finance cannot be pledged/ mortgaged to the bank but certain rights to receive annuities / toll collection from the assets can be hypothecated to the lenders.

2. In view of the above, banks have been allowed, vide our circular DBOD.No.BP.BC.96/08.12.014/2009-10 dated April 23, 2010 on 'Prudential Norms on Advances to Infrastructure Sector' to treat annuities under Build-Operate-Transfer (BOT) model in respect of road/ highway projects and toll collection rights, where there are provisions to compensate the project sponsor if a certain level of traffic is not achieved, as tangible securities. This is subject to the condition that banks' right to receive annuities and toll collection rights is legally enforceable and irrevocable.

3. It has been brought to our notice that most of the projects in India are user-charge based for which the Planning Commission has published Model Concession Agreements (MCAs). These have been adopted by various Ministries and State Governments for their respective public-private partnership (PPP) projects and they provide adequate comfort to the lenders regarding security of their debt. In view of the above features, it has been decided that in case of PPP projects, the debts due to the lenders may be considered as secured to the extent assured by the project authority in terms of the Concession Agreement, subject to the following conditions:
   a) User charges/toll/tariff payments are kept in an escrow account where senior lenders have priority over withdrawals by the concessionaire;
   b) There is sufficient risk mitigation, such as pre-determined increase in user charges or increase in concession period, in case project revenues are lower than anticipated;
   c) The lenders have a right of substitution in case of concessionaire default;
   d) The lenders have a right to trigger termination in case of default in debt service; and
   e) Upon termination, the Project Authority has an obligation of (i) compulsory buy-out and (ii) repayment of debt due in a pre-determined manner.

   In all such cases, banks must satisfy themselves about the legal enforceability of the provisions of the tripartite agreement and factor in their past experience with such contracts.

Sudha Damodar
Chief General Manager

18 Standardization and Enhancement of Security Features in Cheque Forms/Migrating to CTS 2010 standards

[Issued by the Reserve Bank of India vide DPSS.CO.CHD.No. 1622/ 04.07.05 / 2012-13 dated 18.03.2013.]

A reference is invited to our circular DPSS.CO.CHD.No. 955/04.07.05/2012-13 dated December 14, 2012. On a review of the progress made by banks so far in migration to CTS-2010 standard cheques and in consultation with a few banks and Indian Banks Association, it has been decided to put in place the following arrangements for clearing of residual non-CTS-2010 standard cheques beyond the cutoff date of March 31, 2013.

a. All cheques issued by banks (including DDs / POs issued by banks) with effect from the date of this circular shall necessarily conform to CTS-2010 standard.
b. Banks shall not charge their savings bank account customers for issuance of CTS-2010 standard cheques when they are issued for the first time. However, banks may continue to follow their existing policy regarding cheque book issuance for additional issuance of cheques, in adherence to their accepted Fair Practices Code.
c. All residual non-CTS-2010 cheques with customers will continue to be valid and accepted in all clearing houses [including the Cheque Truncation System (CTS) centers] for another four months up to July 31, 2013, subject to a review in June 2013.
d. Cheque issuing banks shall make all efforts to withdraw the non-CTS-2010 Standard cheques in circulation before the extended timeline of July 31, 2013 by creating awareness among customers through SMS alerts, letters, display boards in branches/ATMs, log-on message in internet banking, notification on the web-site etc.
e. A progress report in this regard to be submitted to this department in the format prescribed in the annex, enabling monitoring of the progress made by banks in respect of migration to CTS-2010 standard cheques.
f. In addition, the bank-wise volume of inward clearing instruments processed in the Cheque Processing Centers will be monitored with respect to the CTS-2010 / non-CTS-2010 standard cheques presented on them.
g. No fresh Post Dated Cheques (PDC)/Equated Monthly Installment (EMI) cheques (either in old format or new CTS-2010 format) shall be accepted by lending banks in locations where the facility of ECS/RECS (Debit) is available. Lending banks shall make all efforts to convert existing PDCs in such locations into ECS/RECS (Debit) by obtaining fresh mandates from the borrowers.

2. The above instructions are issued under section 18 of the Payment and Settlement Systems Act 2007 (Act 51 of 2007).

3. Please acknowledge receipt and confirm compliance.

Vijay Chugh
Chief General Manager

19 Maintenance of Collateral by Foreign Institutional Investors (FIIs) for transactions in the cash and F & O segments

[Issued by the Reserve Bank of India vide A.P. (DIR Series) Circular No. 90 dated 14.03.2013.]

Attention of Authorised Dealer Category - I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which FIIs may offer such securities as permitted by the Reserve Bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in sub-Regulation 6 of Regulation 5 of the said Notification and A.P. (DIR Series) Circular No. 4 dated July 28, 2006 and A.P. (DIR Series) Circular No. 47 dated April 12, 2010.

2. On a review, it has been decided in consultation with the Government of India and the Securities and Exchange Board of India (SEBI), to permit FIIs to use, in addition to already permitted collaterals, their investments in corporate bonds as collateral in the cash segment and government securities and corporate bonds as collaterals in the F & O segment. The operational guidelines in this regard will be issued separately by SEBI. With the proposed changes coming into effect, henceforth, FIIs will be eligible to offer government securities/corporate bonds (acquired by FIIs in accordance with provisions of Schedule 5 to Notification No. FEMA 20 dated May 3, 2000), cash and foreign sovereign securities with AAA ratings in both cash and F & O segments.

3. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

4. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager-in Charge

20 Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives

[Issued by the Reserve Bank of India vide FMD.MSRG. No.75/02.05.002/2012-13 dated 13.03.2013.]

Please refer to our circular FMD.MSRG. No.67/02.05.002/2011-12 dated March 9, 2012 on the captioned subject, wherein we had advised, inter alia, that all/selective trades in OTC foreign exchange and interest rate derivatives between the Category-I Authorised Dealer Banks/market makers (banks/PD) and their clients shall be reported on the CCIL platform subject to a mutually agreed upon confidentiality protocol.

2. The CCIL has since completed development of the platform for reporting of client transactions and also put in place a confidentiality protocol in consultation with the market representative bodies as mentioned in the circular referred to above.

3. It has been decided that the reporting arrangement covering OTC foreign exchange derivative trades between ADs and their clients in the following products should be operationalised with effect from April 02, 2013.
   a) FCY-INR Forwards
   b) FCY-FCY Forwards
   c) FCY-INR Options
   d) FCY-FCY Options

4. The salient features of the reporting requirement are as under.
   i) AD category-I banks are required to report all client transactions in OTC FX forwards and FX options executed on and after the commencement of reporting, i.e. April 02, 2013 to CCIL.
   ii) The trades executed with clients shall be reported before 12:00 noon of the following working day.
   iii) The threshold limit for reporting the trades shall be USD 1 million and equivalent thereof in other currencies. The trades with the value equal to or exceeding the threshold limit shall be reported to CCIL.
   iv) To determine eligibility for reporting, the threshold limit shall be applied to the base currency of the trades at the time of origination. Currency matrix provided by CCIL is to be used for base and term

currency. The threshold shall, however, not apply to post-trade events attached to concerned trades.

v) The FEDAI Revaluation rates published on its website every month shall be used for computation of threshold limits and rates shall be valid till the next rates are published by FEDAI.

vi) ADs shall be required to report the trades mentioned in paragraph 2 in respect of the following clients:

a. All categories of Resident Entities (including individuals).

b. All categories of Non-Resident Entities namely NRI, FDI and FII and Non- Resident Exporters/ Importers.

c. A trade done by Non-Resident exporter/importer to hedge its exposure in Rupees directly through the AD located in India.

vii) The reporting shall be on a prospective basis and ADs need not be required to report the details of the outstanding trades, i.e. trades entered into prior to April 02, 2013.

viii) There shall be no matching of such trades in the CCIL platform as the clients are not required to report/confirm the trade details. As such ADs are responsible for ensuring the accuracy in respect of trades reported.

ix) Currently the reporting arrangement will cover transactions involving 14 currencies namely USD, EUR, GBP, JPY, AUD, CAD, CHF, HKD, DKK, NOK, NZD, SGD, SEK and ZAR. The reporting will be extended to other currencies in due course and shall be communicated by CCIL.

x) Members shall ensure completion of documentation and other pre-reporting formalities with CCIL before commencement of reporting client trades.

xi) Detailed operational guidelines in this regard would be made available by CCIL.

Banks may take steps to familiarise their personnel with technical and other aspects of reporting which will be facilitated by CCIL.

G. Mahalingam
Chief General Manager

21 "Write-off" of unrealized export bills – Export of Goods and Services – Simplification of procedure

[Issued by the Reserve Bank of India vide A.P. (DIR Series) Circular No. 88 dated 12.03.2013.]

Attention of Authorized Dealer Category – I (AD Category –I) banks is invited to A.P. (DIR. Series) Circular No. 12, 30, 61, 40, 33 and 03 dated September 09, 2000, April 04, 2001, December 14, 2002, December 05, 2003, February 28, 2007 and July 22, 2010 respectively in terms of which the exporters were given limited powers of write-off and also AD Category – I banks have been permitted to accede to the requests for "write-off" made by the exporters, subject to the conditions, inter alia, that the exporter had to surrender proportionate export incentives, if availed of, in respect of the relative shipments.

2. With a view to further simplifying and liberalizing the procedure and for providing greater flexibility to all exporters as well as the Authorized Dealer banks, the earlier instructions have been reviewed. It has now been decided to effect, subject to the stipulations regarding surrender of incentives prior to"write-off" adduced in the A.P. (DIR Series) Circular No. 03 dated 22 July 2010, the following liberalization in the limits of "write-offs" of unrealized export bills:

a) Self "write-off" by an exporter
(Other than Status Holder Exporter) 5%*

b) Self "write-off" by Status Holder Exporters 10%*

c) 'Write-off" by Authorized Dealer bank -............... 10%*

*of the total export proceeds realized during the previous calendar year.

3. The above limits will be related to total export proceeds realized during the previous calendar year and will be cumulatively available in a year.

4. The above "write-off" will be subject to the following conditions:

(a) The relevant amount has remained outstanding for more than one year;

(b) Satisfactory documentary evidence is furnished in support of the exporter having made all efforts to realize the dues;

(c) The case falls under any of the undernoted categories:

(i) The overseas buyer has been declared insolvent and a certificate from the official liquidator indicating that there is no possibility of recovery of export proceeds has been produced.

(ii) The overseas buyer is not traceable over a reasonably long period of time.

(iii) The goods exported have been auctioned or destroyed by the Port / Customs / Health authorities in the importing country.

(iv) The unrealized amount represents the balance due in a case settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar Organization;

(v) The unrealized amount represents the undrawn balance of an export bill (not exceeding 10% of the invoice value) remaining outstanding and turned out to be unrealizable despite all efforts made by the exporter;

(vi) The cost of resorting to legal action would be disproportionate to the unrealized amount of the export bill or where the exporter even after winning the Court case against the overseas buyer could not execute the Court decree due to reasons beyond his control;

(vii)Bills were drawn for the difference between the letter of credit value and actual export value or between the provisional and the actual freight charges but the amount has remained unrealized consequent on dishonour of the bills by the overseas buyer and there are no prospects of realization.

(d) The exporter has surrendered proportionate export incentives (for the cases not covered under A. P. (DIR. Series) Circular No.03 dated July 22, 2010), if any, availed of in respect of the relative shipments. The AD Category – I banks should obtain documents evidencing surrender of export incentives availed of before permitting the relevant bills to be written off.

(e) In case of self write-off, the exporter should submit to the concerned AD bank, a Chartered Accountant's certificate, indicating the export realization in the preceding calendar year and also the amount of write-off already availed of during the year, if any, the relevant GR / SDF Nos. to be written off, Bill No., invoice value, commodity exported, country of export. The CA certificate may also indicate that the export benefits, if any, availed of by the exporter have been surrendered.

5. However, the following would not qualify for the "write off" facility :

(a) Exports made to countries with externalization problem i.e. where the overseas buyer has deposited the value of export in local currency but the amount has not been allowed to be repatriated by the central banking authorities of the country.

(b) GR / SDF forms which are under investigation by agencies like, Enforcement Directorate, Directorate of Revenue Intelligence, Central Bureau of Investigation, etc. as also the outstanding bills which are subject matter of civil / criminal suit.

6. The respective AD banks may forward a statement in form EBW, in the enclosed format, to the Regional Office of Reserve Bank under whose jurisdiction they are functioning, indicating details of write-offs allowed under this circular.

7. AD banks are advised to put in place a system under which their internal inspectors or auditors (including external auditors appointed by authorised dealers) should carry out random sample check / percentage check of "write-off" outstanding export bills.

8. Cases not covered by the above instructions / beyond the above limits, may be referred to the concerned Regional Office of Reserve Bank of India.

9. Authorized Dealers may bring the contents of the Circular to the notice of their constituents concerned.

10. The directions contained in this Circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rashmi Fauzdar
Chief General Manager

22 Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2013

[Issued by the Reserve Bank of India vide Notification No.FEMA.256/2013-RB dated 06.02.2013.]

In exercise of the powers conferred by clause (d) of sub-section (3) of Section 6, and sub section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No.FEMA.3/2000-RB dated May 3, 2000), namely:-

1. Short title and commencement:

(a) These Regulations may be called the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2013.

(b) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment of the Schedule I

In the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA.3/2000-RB dated May 3, 2000) (hereinafter referred to as 'the principal regulations'), in Schedule I, in paragraph (1), in sub-paragraph (i), the provision after each of the clause (a), (b) and (c) shall be substituted by the following:-

"provided in case the entity is under investigation / adjudications / appeals by the law enforcing agencies, for violation of any of the provision of the regulations under the Act, it shall indicate to the Authorized Dealers (ADs) about pendency of investigations / adjudications / appeals, while availing foreign currency borrowing."

Dr. Sujatha Elizabeth Prasad
Chief General Manager-in Charge

23 Permission to standalone PDs for membership in SEBI approved Stock Exchanges for trading in corporate bonds

[Issued by the Reserve Bank of India vide IDMD.PCD.

No.2310/14.03.05/2012-13 dated 06.02.2013.]

With a view to further developing the debt market in India, it has been decided to permit standalone PDs to become members of SEBI approved stock exchanges for the purpose of undertaking proprietary transactions in corporate bonds. While doing so, standalone PDs should comply with all the regulatory norms laid down by SEBI and all the eligibility criteria/rules of stock exchanges.

K.K. Vohra
Chief General Manager

24 Foreign investment in India by SEBI registered FIIs in Government securities and corporate debt

[Issued by the Reserve Bank of India vide A. P. (DIR Series) Circular No.80 dated 24.01.2013.]

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which SEBI registered Foreign Institutional Investors (FIIs) may purchase, on repatriation basis Government securities and non-convertible debentures (NCDs) / bonds issued by an Indian company subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time. The present limit for FII investments in Government securities is USD 20 billion and for corporate debt is USD 45 billion including sub-limit of USD 25 billion for the bonds of the infrastructure sector.

2. Attention of AD Category-I banks is also invited to A.P.(DIR Series) Circular No.135 dated June 25, 2012 in terms of which FIIs and long terms investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks to be registered with SEBI may invest in Government securities having residual maturity of three years at the time of first purchase upto USD 10 billion within the overall limit of USD 20 billion for FII investment in Government securities subject to terms and conditions, ibid. In respect of infrastructure debt, the condition of lock-in period for the limit of USD 22 billion including USD 10 billion for non resident investment in Infrastructure Debt Funds (IDFs) having lock-in period of 3 years (which is within the overall limit of USD 25 billion for investment in NCDs / bonds in the infrastructure sector) was uniformly reduced to one year.

3 On a review it has now been decided to implement the following changes:

(A) Government Securities

(a) The sub-limit of USD 10 billion for investment by FIIs and the long term investors in dated Government securities stands enhanced by USD 5 billion, i.e., from USD 10 billion to USD 15 billion. Accordingly, the total limit for investment in Government Securities stands enhanced from USD 20 billion to USD 25 billion.

(b) The condition of three year residual maturity of the Government securities at the time of first purchase for the above sub-limit shall no longer be applicable. Thus, residual maturity condition shall not be applicable for the entire sub-limit of USD 15 billion but such investments will not be allowed in short term paper like Treasury Bills, as hitherto.

(c) A summary of revised position for Government Securities is given below:

Instrument	Limit	Investor	Conditions	Remarks
Government securities	USD 10 billion	FIIs	No Conditions	-
Government dated securities	USD 15 billion	FIIs and SWF, Mulltilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks	Investments in short term paper like Treasury Bills not permitted	No rsidual maturity requirement

(B) Corporate Debt

(d) The limit for FII investment in corporate debt in other than infrastructure sector stands enhanced by USD 5 billion, i.e., from USD 20 billion to USD 25 billion However, the enhanced limit of USD 5 billion shall not be available for investment in Certificate of Deposits (CD) and Commercial Papers (CP). Accordingly, the total corporate debt limit stands enhanced from USD 45 billion to USD 50 billion with sub-limit of USD 25 billion each for infrastructure and other than infrastructure sector bonds. In addition, as hitherto, Qualified Foreign Investors (QFIs) shall continue to be eligible to invest in corporate debt securities (without any lock-in or residual maturity clause) and Mutual Fund debt schemes subject to a total overall ceiling of USD 1 billion in terms of A.P.(DIR Series) Circular No.7 dated July 16, 2012. This limit of USD 1 billion shall continue to be over and above the revised limit of USD 50 billion for investment in corporate debt.

(e) The revised limit of USD 25 billion for corporate bonds for other than infrastructure sector shall be available for investment by FIIs and the long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks registered with SEBI.

(f) As a measure of further relaxation, it has also been decided to dispense with the condition of one year lock-in period for the limit of USD 22 billion (comprising the limits of infrastructure bonds of USD 12 billion and USD 10 billion for non –resident investment in IDFs) within the overall limit of USD 25 billion for foreign investment in infrastructure corporate bond. The residual maturity period (at the time of first purchase) requirement for entire limit of USD 22 billion for foreign investment in infrastructure sector has been uniformly kept at 15 months. The 5 years residual maturity requirement for investments by QFIs within the USD 3 billion limit has been modified to 3 years original maturity.

4. A summary of revised position for corporate debt limits is given below:

Instrument	Limit	Investor	Conditions	Remarks
(A) Non-Infrastructure Sector				
(i) Listed NCDs/ bonds, CPs	USD 20 billion	FII s	Investment in CDs not Permitted.	No lock-in period requirement; No residual maturity restriction; No original maturity restriction.
(ii) Listed NCDs/ bonds	USD 5 billion	FIIs, SWFs, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks	Investments in CPs and CDs not permitted	No lock-in period requirement; No residual maturity restriction; No original maturity restriction.
(iii) Security Receipts, Perpetual debt instruments, units of domestic mutual funds; "to be listed corporate bonds"	Within the total limit of USD 25 billion for non-infrastrc ture sector	FIIs	-	No Lock-in period, No residual maturity requirements; No original maturity restriction.
(B) Non-Infrastructure limit for Qualified Foreign Investors (QFIs)				
Listed NCDs, listed bonds, listed units of mutual funds debt schemes, "to be listed corporate bonds"	USD 1 billion	QFIs	-	No lock-in period and no residual maturity requirements; No original maturity restriction.
(C) Infrastructure Sector				
Listed NCDs/ bonds, NCDs/ bonds of NBFC-IFC and unlisted NCDs/ bond in infrastructure sector	USD12 billion (within the total limit of USD 25 billion)	FIIs	Indian companies in infrastructure sector infrastructure as defined in the ECB guidelines and Non Banking Financial Companies (NBFCs) defined as IFCs	No lock-in period requirement; Residual maturity at the time of first purchase fifteen months; No original maturity restriction.
Corporate debt – non - convertible debentures/ bonds, non - convertible debentures/ bonds of NBFCs-IFC, Units of Domestic Mutual fund Debt schemes	USD 3 billion (within the total limit of USD 25 billion)	QFIs	NBFCs defined as IFCs - MF schemes that hold at least 25% of debt or equity or both in mutual funds in infra	No lock in period requirement. Original maturity of 3 years;
IDF – Rupee bonds/units registered as NBFC or Mutual Funds	USD 10 billion (within the total limit of USD 25 billion) Invest ment by NRI not subject to this limit]	FIIs, NRIs, SWFs, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, HNIs registered with Sebi, Sub-account of FII or IDF	Infrastructure as defined in the ECB guidelines IDFs set up as NBFCs may invest in debt securities of PPP infra projects and should have completed one year of commercial operations; IDFs set up as Mutual Funds would invest 90% in debt securities of infra companies/ SPV	No lock-in period requirement ; Residual maturity at the time of first purchase fifteen months; No original maturity restriction.

5. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.

6. Reserve Bank of India has since amended the relevant Regulations and notified vide Notification No. FEMA.255/2013-RB dated January 19, 2013.

7. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Naryan Kar
Chief General Manager

Institute News

Members Admitted

Sl. No.	Name	Membership No.	Region
	FELLOWS*		
1	Dr Ram Jass Yadav	FCS - 7084	WIRC
2	Sh. Rishab Jain	FCS - 7085	SIRC
3	Mrs. Vidya Manishkumar Harkut	FCS - 7086	SIRC
4	Ms. Meenu Maheshwari	FCS - 7087	WIRC
5	Sh. Mayuresh Vinayak Gharpure	FCS - 7088	WIRC
6	Sh Naresh Chandra Nayak	FCS - 7089	EIRC
7	Sh Gopal K Ganatra	FCS - 7090	NIRC
8	Sh. Pramod Prasad Kothari	FCS - 7091	NIRC
9	Ms. Manju Balaram Batham	FCS - 7092	WIRC
10	Ms. Kapila Mahendroo	FCS - 7093	NIRC
11	Sh Rama Krishna P	FCS - 7094	SIRC
12	Sh. Venkata Ravi Kumar Mandavilli	FCS - 7095	SIRC
13	Sh. Pankajkumar Popatlal Savalia	FCS - 7096	WIRC
14	Ms. Meenakshi Gupta	FCS - 7097	NIRC
15	Sh. Chandradip Bharati	FCS - 7098	NIRC
16	Mr. Aniket Dhananjay Devdhar	FCS - 7099	WIRC
17	Sh Gopesh Sahu	FCS - 7100	NIRC
18	Sh. Adalat Srikanth	FCS - 7101	SIRC
19	Sh. Mukesh Sehgal	FCS - 7102	NIRC
20	Sh. Anand Kumat jha	FCS - 7103	EIRC
	ASSOCIATES*		
1	Ms. R Vinitha	ACS - 31999	SIRC
2	Mr. Prasana Aditya P	ACS - 32000	SIRC
3	Ms. Shweta Laddha	ACS - 32001	WIRC
4	Mr. Hari H	ACS - 32002	SIRC
5	Mr. Ashwath M	ACS - 32003	SIRC
6	Mr. Arun Vashista	ACS - 32004	NIRC
7	Ms. Vinita Ashok Taparia	ACS - 32005	WIRC
8	Mr. Anand Vijay	ACS - 32006	EIRC
9	Mr. Suraj	ACS - 32007	NIRC
10	Ms. Anindita Anjan Sengupta	ACS - 32008	WIRC
11	Ms. Shweta Sood	ACS - 32009	NIRC
12	Ms. Sandhya Rani Guntha	ACS - 32010	WIRC
13	Ms. Stuti	ACS - 32011	NIRC
14	Ms. Nishchal Sanwal	ACS - 32012	NIRC
15	Ms. Raashi Singh	ACS - 32013	NIRC
16	Ms. Renu Santosh Agrawal	ACS - 32014	WIRC
17	Mr. Gaurav Kedia	ACS - 32015	EIRC
18	Ms. Meenakshi	ACS - 32016	NIRC
19	Ms. Poonam Murarilal Sureka	ACS - 32017	WIRC
20	Mr. Rakesh Kumar Gupta	ACS - 32018	EIRC
21	Ms. Nisha Gattani	ACS - 32019	SIRC
22	Mr. Saurabh Sabharwal	ACS - 32020	NIRC
23	Mr. Shashank Gupta	ACS - 32021	NIRC
24	Mr. Ashok Kumar Kasera	ACS - 32022	NIRC
25	Ms. Samiksha Khandelwal	ACS - 32023	NIRC
26	Ms. Nidhi Jain	ACS - 32024	NIRC
27	Ms. Kalavathi S	ACS - 32025	SIRC
28	Mr. Saurabh Maheshwari	ACS - 32026	NIRC
29	Ms. Chitra Chandulal Vyas	ACS - 32027	WIRC
30	Ms. Nikita Sandeep Wadke	ACS - 32028	WIRC
31	Ms. Smriti Sunderkant Jha	ACS - 32029	WIRC
32	Mr. Ulhas Balakrishna Shetty	ACS - 32030	WIRC
33	Ms. Jaini Dhimant Desai	ACS - 32031	WIRC
34	Ms. Padmaja Allu	ACS - 32032	NIRC
35	Ms. Isha Bansal	ACS - 32033	NIRC
36	Ms. Sunita Bankira	ACS - 32034	EIRC
37	Mr. Rajababu Sailada	ACS - 32035	SIRC
38	Ms. Srimoyee Bhattacharjee	ACS - 32036	EIRC
39	Mr. Ashwin Savio Trinidad	ACS - 32037	WIRC
40	Ms. Sneha Narayan Shetty	ACS - 32038	WIRC
41	Ms. Tannushree	ACS - 32039	NIRC
42	Ms. Ravleen Kaur Chandhok	ACS - 32040	NIRC
43	Ms. Hemlata Hari Naik	ACS - 32041	WIRC
44	Mr. Harish Venkappa Anchan	ACS - 32042	WIRC
45	Mr. Vaibhav Dadhich	ACS - 32043	NIRC
46	Ms. Anushree Ashis Saha	ACS - 32044	WIRC
47	Mr. Swaroop Mukund Kelkar	ACS - 32045	WIRC
48	Mr. Sonesh Jain	ACS - 32046	EIRC
49	Ms. Swati Mittal	ACS - 32047	NIRC
50	Mr. Anil Giria	ACS - 32048	NIRC
51	Mr. Harshul Malik	ACS - 32049	NIRC
52	Ms. Rachita Manoj Arya	ACS - 32050	WIRC
53	Ms. Aditi Pradeep Inamdar	ACS - 32051	WIRC
54	Mr. Sourabh Gupta	ACS - 32052	NIRC
55	Mr. Muni Shekhar	ACS - 32053	NIRC
56	Mr. Rao Kushalkumar Harishchandra	ACS - 32054	WIRC
57	Mr. Vijay Kumar	ACS - 32055	NIRC
58	Mr. Harvinder Kumar	ACS - 32056	NIRC
59	Ms. Amrita Mohta	ACS - 32057	EIRC
60	Ms. Preeti Sharma	ACS - 32058	EIRC
61	Ms. Anuja Yadav	ACS - 32059	NIRC
62	Mr. Gaurav Srivastava	ACS - 32060	NIRC
63	Mr. Himanshu Jain	ACS - 32061	NIRC
64	Ms. Anjali Gupta	ACS - 32062	NIRC
65	Ms. Gandhali Nitin Bage	ACS - 32063	WIRC
66	Mr. Kanchan Pal Singh	ACS - 32064	NIRC
67	Ms. Vatsala Chauhan	ACS - 32065	NIRC
68	Mr. Yashvi Kumar Sancheti	ACS - 32066	WIRC
69	Mr. Shishir Dudeja	ACS - 32067	NIRC
70	Ms. Veronica A	ACS - 32068	SIRC
71	Mr. Dharmesh Dalpatsing Pardiwala	ACS - 32069	WIRC
72	Ms. Sweety Murarka	ACS - 32070	EIRC
73	Ms. Rashmi Rajkumar Kediya	ACS - 32071	WIRC
74	Ms. Pallavi Sharma	ACS - 32072	NIRC
75	Ms. Parul Agarwal	ACS - 32073	NIRC
76	Mr. Rajeev Ranjan Chaudhary	ACS - 32074	NIRC
77	Mr. Amit Kumar Shrivastava	ACS - 32075	NIRC
78	Mr. Ganesh Kumar Pallikonda	ACS - 32076	SIRC
79	Mr. Anil Kumar Doshi	ACS - 32077	SIRC
80	Ms. Swapna Khopkar	ACS - 32078	WIRC
81	Ms. Renuka Deovrat Marathe	ACS - 32079	WIRC
82	Mr. Amit Kumar Agarwal	ACS - 32080	WIRC
83	Ms. Aswathi P T	ACS - 32081	SIRC
84	Ms. Divya Nangia	ACS - 32082	NIRC
85	Mr. Abdurahiman Irshad P T	ACS - 32083	SIRC
86	Ms. Rhea Rajendra Kharche	ACS - 32084	WIRC
87	Ms. Rashi Gupta	ACS - 32085	NIRC
88	Ms. Girija Rampalli	ACS - 32086	SIRC

* Admitted on 20th February, 28th February, 2013 and 11th March, 2013

89	Ms. Divya Vijay	ACS - 32087	NIRC
90	Mr. Burra Bhargava	ACS - 32088	SIRC
91	Ms. Rajvi Laljibhai Patel	ACS - 32089	WIRC
92	Ms. Madhuri Sharma	ACS - 32090	EIRC
93	Ms. Pratibha Prabhakarrao Dalvi	ACS - 32091	WIRC
94	Ms. Vidya Sharadha N	ACS - 32092	SIRC
95	Mr. T M Hari Kumar	ACS - 32093	SIRC
96	Ms. Richa Hingle	ACS - 32094	NIRC
97	Ms. Vineeta Sharma	ACS - 32095	NIRC
98	Mr. Rajiv Ranjan Raju	ACS - 32096	NIRC
99	Ms. Punita Dinesh Joothawat	ACS - 32097	WIRC
100	Ms. Leena	ACS - 32098	NIRC
101	Mr. Rahul Roy	ACS - 32099	EIRC
102	Ms. Rucha Shamkant Khaire	ACS - 32100	WIRC
103	Ms. Priyanka Dadhich	ACS - 32101	WIRC
104	Ms. Ishwari Prakash Chavan	ACS - 32102	WIRC
105	Ms. Aditi Agrawal	ACS - 32103	WIRC
106	Ms. Bhawana Jain	ACS - 32104	NIRC
107	Ms. Neha Balkrishna Samant	ACS - 32105	WIRC
108	Mr. Samad Iqbal Shariff	ACS - 32106	SIRC
109	Mr. Keyur Nayan Doshi	ACS - 32107	WIRC
110	Mr. K V Karthik Kumar	ACS - 32108	SIRC
111	Mr. Nitesh Latwal	ACS - 32109	NIRC
112	Ms. Pooja Ravindra Khedkar	ACS - 32110	WIRC
113	Ms. Anju Yadav	ACS - 32111	NIRC
114	Mr. Dipankar De	ACS - 32112	EIRC
115	Ms. Hetal Dilip Shah	ACS - 32113	WIRC
116	Ms. Shakshi Mittal	ACS - 32114	NIRC
117	Ms. Nisha Joly Machingal	ACS - 32115	WIRC
118	Ms. Radhika Maheshwari	ACS - 32116	NIRC
119	Ms. Deepali Gajanan More	ACS - 32117	WIRC
120	Mr. Bala Subramanian C	ACS - 32118	SIRC
121	Ms. Khwahish Rawal	ACS - 32119	NIRC
122	Ms. Sangeetha S T	ACS - 32120	SIRC
123	Ms. Preeti Porwal	ACS - 32121	NIRC
124	Mr. Yogesh Sharma	ACS - 32122	NIRC
125	Mr. Varun Madaan	ACS - 32123	NIRC
126	Ms. Barkha Jain	ACS - 32124	EIRC
127	Ms. Anuhya Shailesh Dalvi	ACS - 32125	WIRC
128	Ms. Kanchan Lalit Parab	ACS - 32126	WIRC
129	Ms. Surbhi Jain	ACS - 32127	WIRC
130	Mr. Ravi Vaswani	ACS - 32128	WIRC
131	Ms. Chetan Manohar Nathani	ACS - 32129	WIRC
132	Ms. Mahua Mazumdar	ACS - 32130	NIRC
133	Mr. K P Karthikeyan	ACS - 32131	SIRC
134	Ms. Shanti Bhuttra	ACS - 32132	EIRC
135	Mr. Narendra Purohit	ACS - 32133	EIRC
136	Ms. Priyanka Rudra	ACS - 32134	EIRC
137	Ms. Vandana Singh	ACS - 32135	EIRC
138	Ms. Priyanka Singh	ACS - 32136	EIRC
139	Mr. Bikash Prasad	ACS - 32137	EIRC
140	Ms. Supriya Garg	ACS - 32138	NIRC
141	Mr. Sulabh Saini	ACS - 32139	NIRC
142	Ms. Jyoti Lata	ACS - 32140	NIRC
143	Ms. Garima Arora	ACS - 32141	NIRC
144	Ms. Ashima Sehjpal	ACS - 32142	NIRC
145	Mr. Avdhesh Kumar Pathak	ACS - 32143	NIRC
146	Ms. Ruby Sengar	ACS - 32144	NIRC
147	Mr. Sumeet Sharma	ACS - 32145	NIRC
148	Ms. Garima Agarwal	ACS - 32146	NIRC
149	Ms. Tulika Srivastava	ACS - 32147	NIRC
150	Ms. Shuchi Batra	ACS - 32148	NIRC
151	Mr. Mariappan Kumar	ACS - 32149	NIRC
152	Ms. Pinky Bansal	ACS - 32150	NIRC
153	Ms. Purnima Chopra	ACS - 32151	NIRC
154	Mr. Ranjit Kumar Gupta	ACS - 32152	NIRC
155	Ms. Umeet Kaur Gujral	ACS - 32153	NIRC
156	Ms. Neha Singh	ACS - 32154	NIRC
157	Ms. Megha Maheshwari	ACS - 32155	NIRC
158	Mr. Sachin Kumar Gupta	ACS - 32156	NIRC
159	Ms. Charu Aggarwal	ACS - 32157	NIRC
160	Ms. Pallavi Sachdeva	ACS - 32158	NIRC
161	Mr. Naveen Garg	ACS - 32159	NIRC
162	Mr. Sameer Verma	ACS - 32160	NIRC
163	Mr. Vineet Khatri	ACS - 32161	NIRC
164	Ms. Gunita Prakash	ACS - 32162	NIRC
165	Ms. Arushi Saxena	ACS - 32163	NIRC
166	Ms. Naina Luthra	ACS - 32164	NIRC
167	Ms. Shubhangi Gupta	ACS - 32165	NIRC
168	Mr. Ankush Garg	ACS - 32166	NIRC
169	Mr. Deepak Kakkar	ACS - 32167	NIRC
170	Ms. Sakshi Jain	ACS - 32168	NIRC
171	Ms. Varuna Basist	ACS - 32169	NIRC
172	Ms. S Revathy	ACS - 32170	SIRC
173	Ms. Santhosh Kumari G	ACS - 32171	SIRC
174	Ms. Vandhana K	ACS - 32172	SIRC
175	Ms. Divya V Ravichandran Iyer	ACS - 32173	WIRC
176	Ms. Solanki Priti Surendrakuma	ACS - 32174	WIRC
177	Ms. Neha Narendra Sureka	ACS - 32175	WIRC
178	Mr. Mihen Jyotindra Halani	ACS - 32176	WIRC
179	Ms. Rani Vimal Modi	ACS - 32177	WIRC
180	Mr. Kaushal Dhirendra Doshi	ACS - 32178	WIRC
181	Ms. Khusboo Ashok Kavedia	ACS - 32179	WIRC
182	Ms. Pooja Rajesh Bhimjiyani	ACS - 32180	WIRC
183	Ms. S Sujatha	ACS - 32181	SIRC
184	Mr. Pradeep Kumar Dubey	ACS - 32182	NIRC
185	Mr. Krishna Kumar Singh	ACS - 32183	EIRC
186	Mr. Mahendra Muskara	ACS - 32184	EIRC
187	Mr. Anoop Peedikekkal	ACS - 32185	SIRC
188	Ms. Jinu Mathen	ACS - 32186	SIRC
189	Ms. Rekha N B	ACS - 32187	SIRC
190	Mr. V Venkatarajalu	ACS - 32188	SIRC
191	Mr. Narendra Kumar Sharma	ACS - 32189	NIRC
192	Mr. Vinjamuri Subbarao	ACS - 32190	NIRC
193	Ms. Meenu Bhatia	ACS - 32191	NIRC
194	Mr. Umesh Jayantilal Mistry	ACS - 32192	WIRC
195	Ms. Geetu Aggarwal	ACS - 32193	NIRC
196	Mr. Biswajit Sarkar	ACS - 32194	EIRC
197	Ms. Shreya Shaunak Rege	ACS - 32195	WIRC
198	Ms. Sudeshna Basu	ACS - 32196	EIRC
199	Mr. Akhil Sharma	ACS - 32197	NIRC
200	Mr. Suresh Chandra Pal	ACS - 32198	EIRC
201	Ms. Reena Kumari	ACS - 32199	WIRC
202	Ms. Trupti Ravikant Chavan	ACS - 32200	WIRC
203	Mr. Jithin P G	ACS - 32201	SIRC

Restored*

1	Sh. Prashant Bhatnagar	ACS - 12404	SIRC
2	Ms. Alka Khandelwal	ACS - 29903	WIRC
3	Ms. Isha Khosla	ACS - 28974	NIRC
4	Sh Dhirendra Kumar Asri	ACS - 19821	NIRC
5	Sh. Prasanta Kumar Sahoo	ACS - 16877	NIRC
6	Sh. Mayank U Devashrayee	FCS - 3975	WIRC
7	Sh. B Venugopal Rao	ACS - 18889	SIRC
8	Sh. Sandeep Kumar K.	ACS - 17955	SIRC
9	Mr. Sanket Tarun Bhinde	ACS - 29213	WIRC
10	Ms. Shruti Khanna	ACS - 25044	NIRC
11	Sh. Niranjan Daga	ACS - 12683	WIRC
12	Ms. Richa Jain	ACS - 19168	WIRC
13	Sh. Raveesh Bafna	FCS - 4781	WIRC
14	Ms. Sujata Sharma	ACS - 10091	NIRC
15	Sh. R K Bhutoria	ACS - 5826	WIRC
16	Ms. Neeru Bhalla	ACS - 14181	NIRC

* Restored from 21st February 2013 to 20th March, 2013

17	Sh. Narayanan Prabhakaran	ACS - 13665	SIRC
18	Ms. S H Srividhya	ACS – 28019	SIRC
19	Sh. N Ramanathan	ACS - 2559	SIRC
20	Sh. M K Santhanaraman	ACS - 1886	SIRC
21	Sh. D C Patel	FCS - 2361	WIRC
22	Ms. G. Lalitha	ACS - 12309	SIRC
23	Sh. N K Taneja	ACS - 4864	NIRC
24	Sh. Satyaban Rout	ACS - 27548	EIRC
25	Sh. G Subramanian	ACS - 11943	NIRC
26	Sh. L.V.Veeranjaneyulu Yadlapalli	ACS - 18111	SIRC
27	Sh. Raghuvansh Mani	FCS - 6211	NIRC
28	Ms. Honey Gupta	ACS - 24146	NIRC
29	Ms. N Swapna	ACS - 17211	SIRC
30	Sh. P R Kannan	ACS - 13959	SIRC
31	Sh. Suresh Kumar	ACS - 14390	NIRC
32	Sh. Jitendra Kumar Somani	ACS - 3114	NIRC
33	Sh. Rahul Kuthiala	ACS - 15150	NIRC
34	Sh. Sanjay Kumar Ojha	ACS - 6919	NIRC
35	Ms. Anjali Malhotra	ACS - 14030	NIRC
36	Sh. Shashi Chandra Jha	ACS - 10096	EIRC
37	Sh. Mir Mohamad Shafi	ACS -19317	NIRC
38	Sh. I J S Kanwal	ACS - 8865	NIRC
39	Ms. Shilpa Sharma	ACS - 28626	NIRC
40	Sh. Bhalchandra Kashinat Khare	FCS - 687	WIRC
41	Ms. Karuna Gupta	ACS - 23321	NIRC
42	Sh. Rahul Tibrewal	ACS - 25252	EIRC
43	Ms. Shikha Sharma	ACS - 21854	NIRC
44	Sh. Brahm Prakash Kumar	ACS - 21735	NIRC
45	Mr. Shailesh Suresh Shinde	ACS-28902	WIRC
46	Mr. Abhay Prakash Shringi	ACS - 26550	NIRC
47	Sh. Kanwar Sain	ACS - 18419	NIRC
48	Mrs. Jyoti Udar	ACS-17720	NIRC

Certificate of Practice

Sl. No.	Name	ACS/FCS No.	C P No.	Region
	ISSUED*			
1	Sh. Shrenik Uday Nagaonkar	FCS - 7067	11682	WIRC
2	Sh. L Subba Reddy	FCS - 2957	11683	SIRC
3	Ms. Yashika	ACS - 31005	11684	NIRC
4	Sh. C Radhakrishnan	FCS - 5536	11685	SIRC
5	Ms. Neha Prakash Jagad	ACS - 31900	11686	WIRC
6	Ms. Mittal Kevin Shah	ACS - 31901	11687	WIRC
7	Mrs. Jyoti Sud	ACS - 27162	11688	NIRC
8	Ms. Parul Jain	ACS - 25692	11689	NIRC
9	Mr. Dharmendra Verma	ACS - 31356	11690	NIRC
10	Ms. Rupa Gupta	ACS - 29332	11691	EIRC
11	Mrs. Vaidehi Pranav Deshpande	ACS - 1682	11692	WIRC
12	Mr. Vinay Deepak Bairagra	ACS - 31423	11693	WIRC
13	Ms. Sridevi Madati	FCS - 6476	11694	SIRC
14	Mr. Navin Kumar Agarwal	ACS - 30870	11695	EIRC
15	Mr. Rajesh Kumar	ACS - 31829	11696	SIRC
16	Mr. Lav Mishra	ACS - 31676	11697	WIRC
17	Ms. Shrutika Malhotra	ACS - 31229	11698	NIRC
18	Ms. Gauri Gupta	ACS - 26193	11699	NIRC
19	Mrs. Ankita Sharma	ACS - 27802	11700	NIRC
20	Ms. Mahima Vijay Sharma	ACS - 26992	11701	WIRC
21	Sh. Sunil Sobti	ACS - 13576	11702	NIRC
22	Sh. B Pushparaj	ACS - 9779	11703	SIRC
23	Mrs. Mini Singhania	ACS - 25192	11704	EIRC
24	Ms. Swinky Bathla	ACS - 31683	11705	NIRC
25	Mr. Saket Dubey	ACS - 31831	11706	EIRC
26	Mr. Vishal Nandkumar Salunke	ACS - 31925	11707	WIRC
27	Sh. Balraj Bhagchand Vanwari	ACS - 2762	11708	WIRC
28	Sh. V J Baalachandiran	FCS - 4386	11709	SIRC
29	Mr. Akshay Pachlag	ACS - 30741	11710	SIRC
30	Ms. Loveleena Ahuja	ACS - 25278	11711	NIRC
31	Mr. Manjunath S	ACS - 31880	11712	SIRC
32	Mrs. Vrinda Veerendra Kamat	ACS - 29547	11713	SIRC
33	Ms. Arachana Bansal	ACS - 17865	11714	NIRC
34	Ms. Radhika Raghunandan Agrawal	ACS - 7018	11715	WIRC
35	Ms. Kirandeep Saluja	ACS - 26038	11716	NIRC
36	Ms. Sarvari Rajesh Shah	ACS - 27572	11717	WIRC
37	Ms. Shruti Audumber Kondewar	ACS - 25976	11718	WIRC
38	Ms. Divya Matah	ACS - 31186	11719	NIRC
39	Mr. Challapalli Varun Kumar	ACS - 31280	11720	SIRC
40	Mr. Rahul	ACS - 31972	11721	NIRC
41	Mr. Mohit	ACS - 30192	11722	NIRC
42	Sh. M H V S N S Prasad	ACS - 26727	11723	SIRC
43	Ms. Daijaritta Antony	ACS - 25080	11724	SIRC
44	Sh. Saurav Shhukla	ACS - 17913	11725	SIRC
45	Mr. Deepak Pratap Singh	ACS - 29140	11726	WIRC
46	Mr. Saravana Kumar B V	ACS - 26944	11727	SIRC
47	Ms. Ruchi Sethi	ACS - 31253	11728	NIRC
48	Mr. George Mathew	ACS - 31948	11729	SIRC
49	Ms. Jayashree Mishra	ACS - 31853	11730	EIRC
50	Ms. Jyoti Mahatma	ACS - 31621	11731	EIRC
51	Ms. Madhavi Nalla	ACS - 16866	11732	SIRC
52	Sh. Sunil Ramdas Nayak	ACS - 15139	11733	WIRC
53	Ms. Nitika	ACS - 31447	11734	NIRC
54	Ms. Urvashi Harshil Shah	ACS - 25112	11735	WIRC
55	Ms. Rakhee Santuka	ACS - 27512	11736	EIRC
56	Mrs. Bhagyashree A Walvekar	ACS - 24984	11737	WIRC
57	Sh. Shailendra Kumar Roy	ACS - 25823	11738	NIRC
58	Sh. Saaz Haque	ACS - 9335	11739	EIRC
59	Mr. Amit Kumar	ACS - 31692	11740	EIRC
60	Mr. Ulhas Balakrishna Shetty	ACS - 32030	11741	WIRC
61	Ms. S Akila	ACS - 15861	11742	SIRC
62	Mr. Jitender Kumar	ACS - 30349	11743	NIRC
63	Mr. Rahul Ahuja	ACS - 28123	11744	NIRC
64	Sh. T V Suresh	FCS - 4453	11745	WIRC
65	Sh. M Sivaraman	ACS - 3774	11746	SIRC
66	Mr. Vijay Kumar	ACS - 32055	11747	NIRC
67	Sh. Mukesh Soni	ACS - 29842	11748	EIRC
68	Mr. Taher Noor Sayed	ACS - 28266	11749	EIRC
69	Ms. Mansi Agarwal	ACS - 25041	11750	NIRC
70	Sh. Sridhar S	FCS - 7041	11751	SIRC
71	Ms. Pooja Solanki	ACS - 31224	11752	NIRC
72	Mr. G Ramasankaran	ACS - 31284	11753	SIRC
73	Ms. Saba Rizvi	ACS - 31488	11754	NIRC
74	Mr. Raghavendra Bhat	ACS - 31517	11755	SIRC
75	Ms. Anjana	ACS - 30008	11756	SIRC
76	Sh. Janardhana Reddy Chappidi	ACS - 25282	11757	SIRC
77	Ms. Payal Daga	ACS - 31599	11758	NIRC
78	Ms. Varsha Dangayach	ACS - 31802	11759	NIRC
	CANCELLED*			
1	Ms. Karishma Singh	ACS - 26054	10332	NIRC

* Issued During the Month of February, 2013

* Cancelled During the Month of February, 2013

2	Mr. Shashi Shekhar	ACS - 30145	10918	NIRC
3	Mr. Ganesh S.	ACS - 22343	9603	SIRC
4	Mr. P Nallasenapathi	ACS - 30805	11302	SIRC
5	Mr.. Subodh Ramesh Zare	ACS - 22980	9004	WIRC
6	Ms. Mamta Gupta	ACS - 28794	11486	NIRC
7	Mr. Kapil Bansal	ACS - 30654	11515	NIRC
8	Mr. Atluri Ramesh	ACS - 30844	11321	SIRC
9	Sh. Nirav Kirankumar Shah	ACS - 24347	10654	WIRC
10	Ms. Lakshmi Jyothsna Naraharisetti	ACS - 21900	9688	SIRC
11	Mr. Ankit Misra	ACS - 30650	11514	NIRC
12	Ms. R Vasumathi	ACS - 16602	11269	SIRC
13	Ms. Deevyyaa Goel	ACS - 26598	10187	NIRC
14	Ms. Geeta Goswami	ACS - 24228	8838	NIRC
15	Ms. Shweta Gupta	ACS - 22548	9720	NIRC
16	Ms. Sweta Singh	ACS - 22146	9262	SIRC
17	Ms. Lalita Agarwal	ACS - 30148	11397	EIRC
18	Ms. Alpa Nayan Shah	ACS - 31222	11638	EIRC
19	Ms. Rachna Bhasin	ACS - 23539	8650	NIRC
20	Mr. Neeraj Mudgal	ACS - 22142	8001	NIRC
21	Ms. Kanika Vij	ACS - 30920	11337	NIRC
22	Ms. Jharna C Kapadia	ACS - 21140	11168	WIRC
23	Ms. Amrita Kumari	ACS - 25428	11177	NIRC
24	Ms. Leena Kumawat	ACS - 23204	8750	NIRC
25	Sh. Vinod Kumar	ACS - 27394	10525	NIRC
26	Ms. Megha Gandhi	ACS - 30798	11391	NIRC
27	Sh. Intezar Ahmad Khan	FCS - 2519	3849	NIRC
28	Sh. Radhakrishna Battineni	ACS - 11471	11292	SIRC
29	Ms. Jyoti Kochar	ACS - 30565	11259	NIRC
30	Sh. Ravi M Arabatti	ACS - 7084	9741	WIRC
31	Mr. Ravindra Ashok Mishra	ACS - 29159	11298	WIRC
32	Ms. Anchit Pandey	ACS - 29642	11413	NIRC
33	Sh. Himansu Nayankumar Raval	ACS - 23887	9133	WIRC
34	Mr. Kamendu Rashmikant Joshi	ACS - 22369	9648	WIRC
35	Mr. Manisha Saboo	ACS - 22148	11115	EIRC

Licentiate ICSI

Sl. No.	Name	Licentiate No.	Region
	ADMITTED**		
1	Mr. Shantanu Bansal	6496	NORTH
2	Mr. Sanjeev Kumar S. Hadimani	6497	SOUTH
3	Mr. Shankar Raj M V	6498	SOUTH
4	Mr. Vinit Bohra	6499	NORTH
5	Mr. Ranjan Kumar Prusty	6500	EAST
6	Mr. T.R. Ganesh Babu	6501	SOUTH
7	Mr. Akshay Chandrashekhar Rathi	6502	WEST
8	Mr. Bharath Kumar R.S.	6503	SOUTH
9	Mr. Vipul Garg	6504	NORTH
10	Mr. Parveen Bansal	6505	NORTH
11	Mr. Divyesh Vijay	6506	NORTH
12	Mr. N. Rohit	6507	SOUTH
13	Ms. Kritika Killa	6508	EAST
14	Ms. Ramya Suresh	6509	NORTH
15	Mr. M. Mohit	6510	SOUTH

* Admitted During the Month of February, 2013

Payment of Annual Membership and Certificate of Practice Fee for the Year 2013-14

The annual membership fee and certificate of practice fee for the year 2013-14 **became due for payment w.e.f. 1st April, 2013. The last date for payment of fee is 30th June 2013.**

The membership and Certificate of Practice fee 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/-(*)**

* ***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 and also published elsewhere in this issue.***

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of :

(i) Online (through payment Gateway of the Institute's web-site (www.icsi.in)) by following the steps given below:-
   a) Go to the portal www.icsi.in http://www.icsi.in
   b) Login in to your profile by selecting the option Membership -- > Associate/Fellow
   c) Enter your Membership number in the box provided.
   d) Enter your password in the box provided (Click on Reset if creating for the first time)
   e) After Logging in click on the link ' Annual membership Fee'
   f) Click on Proceed for Payment button for payment through online payment gateway.
   g) Keep the generated acknowledgement for future reference and record.

(ii) Credit card at the Institute's Headquarter at Lodi Road, New Delhi or Regional Offices located at Kolkata, New Delhi, Chennai and Mumbai.

(iii) Cash/ local cheque drawn in favour of `The Institute of Company Secretaries of India', payable at New Delhi at the Institute's Headquarter or Regional/ Chapter Offices located at Kolkata, New Delhi, Chennai, Mumbai and Chandigarh, Jaipur, Bangalore, Hyderabad, Ahmedabad, Pune respectively. Out Station cheques will not be accepted. However, at par cheques will be accepted.

(iv) Demand draft / Pay order drawn in favour of `The Institute of Company Secretaries of India', payable at New Delhi (indicating on the reverse name and membership number).

For queries, if any,

the members may please contact Mr. D.D. Garg, Admn. Officer or Mrs. Vanitha Dhanesh on telephone Nos.011-45341062/64 or Mobile No.9868128682 / through e-mail ids: annualfee@icsi.edu, cp@icsi.edu

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 .... Name ....
(iii) Date of Birth: ....
(iv) Professional Address: ....
....
(v) Phone Nos. (Resi.) .... (Off.) ....
(vi) Mobile No .... Email id ....
(vii Additions to or change in qualifications, if any: ....
1.Submitted for (tick whichever is applicable):
(a) Issue .... (b) Renewal .... (c) Restoration ....
2. (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

3. 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. I hereby undertake that, I shall adhere to the mandatory ceiling of not more than eighty companies in aggregate in a calendar year in terms of the ***Guidelines for Issuing Compliance Certificate and Signing of Annual Return*** issued by the Institute on 27th November, 2007.
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. *
4. I send herewith Bank draft drawn on ... ... Bank ... ... Branch bearing No ... ... for Rs ... ... towards annual certificate of practice fee for the year ending 31st March ... ...
5. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature) Place:

Encl. Date:

* Applicable in case of renewal or restoration of Certificate of Practice

Company Secretaries Benevolent Fund

MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND*

Sl. No.	LM No.	Name	Mem No.	City
	EIRC			
1	9984	SH. SUBRAT KUMAR ACHARYA	FCS - 6013	KOLKATA
	NIRC			
2	9983	MR. RAHUL KWATRA	ACS - 30657	DELHI
3	9986	MS. HONEY GUPTA	ACS - 24146	NEW DELHI
4	9987	MS. HIMADRI	ACS - 26577	DELHI
5	9990	MS. RASHMI GROVER	FCS - 6422	NEW DELHI
6	9992	MS. GARIMA GOEL	ACS - 31434	GHAZIABAD
7	9993	MR. SAMEER VERMA	ACS - 32160	DELHI
8	9995	MS. PALLAVI SACHDEVA	ACS - 32158	NOIDA
	SIRC			
9	9981	MS SRIDEVI SURENDER	ACS - 20212	SECUNDERABAD
10	9989	MRS. SUJANA NANDULA	ACS - 31300	HYDERABAD
11	9994	MR. MARIAPPAN KUMAR	ACS- 32149	CHENNAI
	WIRC			
12	9978	SH. PRASHANT PRABHAKAR PANGE	ACS - 25719	PUNE
13	9982	MS. DRISHTI VESASI	ACS - 29959	AHMEDABAD
14	9985	MR. PARAS JIVARAJBHAI VIRAMGAMA	ACS - 31147	RAJKOT
15	9988	MS. CHETAN MANOHAR NATHANI	ACS - 32129	MIRAJ
16	9991	MS. ARPITA SHANKAR RAJPUROHIT	ACS - 22356	AHMEDABAD

* Enrolled from 21st December 2012 to 20th January, 2013

List of Companies Registered for Imparting Training During the Month of February 2013

Region	Training Period	Stipend (Rs.)
Eastern		
UFM Industries Ltd. Meherpur, Silchar, Assam 788015 *ufmindustries@rediffmail.com*	15 Months Training	Suitable
Northern		
Sopra India Pvt. Ltd. A-67, Sector-64 Noida-201301 (U.P)	15 Months Training	Suitable
Anukampa Homes Pvt. Ltd. 301, Anukampa Mansion-I, M.I. Road, Jaipur-01	15 Months Training	3500/-
Vijay Solvex Ltd. Bhagwati Sadan, Swami Dayanand Marg, Alwar 301001, Rajasthan *vsl@dil.in*	15 Months Training	Suitable
K.G. Bhagat & Co. N-31/B, Jangpura Extension (Law Firm) New Delhi 110014	6 Months Training (Law Firm)	4000/-
Bharat Renewable Energy Ltd. 4/28, First Floor, Vishal Khand, Gomti Nagar Lucknow 226010 Uttar Pradesh	15 Months & 3 Months Practical Training	Suitable
Daphene Investment And Properties Ltd. 2836/37, 1st Floor, Ashok Gali, Rambazar Morigate, Delhi 110006 *daphene.legal@gmail.com*	15 Months Training	Suitable
Balaji Industrial Products Ltd. 48, Industrial Area Jhotwara, Jaipur 302012 Rajasthan *sudhir@dil.in*	15 Months Training	Suitable
Louis Dreyfus Commodities India Pvt. Ltd. 8th Floor, Tower A, Building No.5, Cyber City, Dlf Phase-III, Gurgaon 122002 (Haryana)	15 Months Training	Suitable
GNG Ltd. Plot No. 10, Sector-44 Gurgaon 122002 (Haryana) *corpcomm@gnggroup.com*	15 Months Training	Suitable
CE Info Systems Pvt. Ltd. 68, Okhla Industrial Estate Phase III, New Delhi 110020 *contact@mapmyindia.com*	15 Months Training	Suitable
Kamtech Associates Pvt. Ltd. 65, Gajraj Apartment Sarojini Marg, C-Scheme Jaipur 302022	3 Months Practical Training	Suitable
Punjab State Transmission Corporation Ltd. Pseb Head Office, The Mall, Patiala 147001	15 Months Training	Suitable
Goyal Proteins Ltd. "Shri Ramay" 90-91 B, Talwandi, Kota Rajasthan 324005 *goyalgroup@goyalglobal.com*	15 Months	3500/-
Holostik India Ltd. C-117, Sector 2 Noida 201301 Uttar Pradesh *info@holostik.com*	15 Months & 3 Months Practical Training	Suitable
AAA Paper Marketing Ltd. 26/6, Gr. Floor, East Patel Nagar, New Delhi 110008	15 Months & 3 Months Practical Training	Suitable
Wizard Commodities Pvt. Ltd. 17A/35, IInd Floor West Punjabi Bagh, Rohtak Road, New Delhi	15 Months Training	5000/-
Ventura Airconnect Pvt. Ltd. 2nd Floor, Anand Motors Building 21, Vidhan Sabha Marg Lucknow 226001 *call@venturaairconnect.co.in*	3 Months Practical Training	Suitable
Degremont Ltd. Unitech Business Park, Tower-A, 2nd Floor, South City-1 Gurgaon 122001, Haryana	15 Months & 3 Months Practical Training	Suitable

SSP Catering India Pvt. Ltd. Building10a, 4th Floor, DLF Cyber City Phase-II, Gurgaon 122002	15 Months Training	Suitable
Sarup Industries Ltd. P.O. Ramdaspura Jalandhar - 144003 Punjab	15 Months Training	Suitable

Southern

Hittco Tools Ltd. IEM House, # 42, Nandidurg Road Bangalore – 560046 *info@hittco.com*	15 Months Training	Suitable
I Denizen Smartware Pvt. Ltd. 562/640, B Block, Ground Floor Janardhana Towers,Bilekahalli, Bannerghatta Road, Bangalore 560076 *smtiru@yahoo.com*	3 Months Practical Training	Suitable
NCC Power Projects Ltd. NCC House, Madhapur, Hyderabad 500081	3 Months Practical Training	Suitable

Western

Tulsi Extrusions Ltd. N-99/100, MIDC AREA, Jalgaon *contact@tulsigroup.com*	15 Months & 3 Months Practical Training	3500/-
Darwin Platform Capital Ltd. H-Wing, Unit No. 127 Ansa Industrial Estate Saki Vihar Road, Sakinaka Andheri (East), Mumbai 400072	15 Months Training	Suitable
Man Infraconstruction Ltd. 12th Floor, Krushal Commercial Complex Above Shoppers' Stop G.M. Road, Chembur (W) Mumbai 400089 *office@maninfra.com*	15 Months Training	Suitable
Oriental Containers Ltd. 1076, Dr. E. Moses Road P.B. No. 6584, Worli Mumbai-400018 *oclcont@vsnl.com*	15 Months & 3 Months Practical Training	Suitable
Shemaroo Entertainment Ltd. Shemaroo House, Plot No. 18 Marol Co-Op. Industrial Estate Off Andheri-Kurla Road Andheri(E), Mumbai 400059 *csankitsingh@yahoo.com*	15 Months Training	7000/-
Mahakaleshwar Tollways Pvt. Ltd. 202-A, MSJ House, 17/1 South Tukoganj Behind Indraprasth Tower Indore (MP) 452001 *mtpl.sh27@yahoo.com*	15 Months & 3 Months Practical Training	Suitable
Ideal Edusystem Pvt. Ltd. 401, Ideal House, S.V. Road Near Filmistan Studio Goregaon (W), Mumbai 400062 *info@idealclasses.com*	15 Months & 3 Months Practical Training	4000/-
Virgo Valves & Controls Ltd. 7 B, 3rd Floor Sambhava Chambers Sir P.M. Road, Fort, Mumbai-400001	15 Months & 3 Months Practical Training	Suitable
Flourish Purefoods Pvt. Ltd. 60-61, Nobles, A-Wing 4th Floor, Ashram Road, Ahmedabad 380009, Gujarat *raval@flourishpurefoods.com*	15 Months Training	Suitable
Thyssenkrupp Electrical Steel India Pvt. Ltd. At Post Gonde, Village Wadivarhe Taluka Lgatpuri, District Nashik, Maharashtra 422403	15 Months & 3 Months Practical Training	Suitable
Tak Machinery and Leasing Ltd. 308, Maker Bhavan-III, 21 New Marine Lines Above Balwas Restaurant Mumbai 400020 *namogaveera@rediffmail.com*	15 Months Training	Suitable
De Nora India Ltd. Plot Nos. 184, 185 & 189 Kundaim Industrial Estate Kundaim 403115, Goa	15 Months Training	3500/-
Executive Trading Company Pvt. Ltd. G-1, Ashirwad, Ahmedabad Street, Camac Bunder, Mumbai 400009 *etcpl1@hotmail.com*	15 Months Training	7000/-
Samruddha Jeevan Foods India Ltd. 4, 3rd Floor, Landmark Building Shirole Road, Opposite Fergusson College, Shivaji Nagar, Pune 411004 *cssamj@gmail.com*	15 Months & 3 Months Practical Training	3500/-
Biogenomics Ltd. 1st Floor, Kothari Compound Opp. Tiku-ji-ni-Wadi Thane (W) Maharashtra 400610	15 Months Training	Suitable

Cravatex Ltd. 4th Floor, Sahas, 414/2 Veer Savarkar Marg Prabhadevi Mumbai 400025 *sudhanshu@batragroup.com*	15 Months Training	12000/-
Softel Machines Ltd. Plot No. 69, Sector 1-A Gandhidham 370201 Gujarat *softelgim@yahoo.co.in*	15 Months Training	Suitable
Geecee Ventures Ltd. 209, Arcadia, 195 Nariman Point, Mumbai 400021 *gcvl@gcvl.in*	15 Months Training	5000/-
M.V. Omni Projects (India) Ltd. A-201, 202, Shivalik Yash 132 Ft Ring Road Opposite Shashtrinagar BRTS Bus Stand, Ankur, Naranpura Ahmedabad 380013 *info@mvomni.com*	15 Months & 3 Months Practical Training	Suitable

List of Practising Members Registered for the Purpose of Imparting Training During the Month of February, 2013

CS T. G. JANAKIRAMAN PCSA - 3296
Company Secretary in Practice
No.538,7th Cross, I-Stage
III Block, HBR layout
Bangalore- 560 043

CS BHAVANA P. SHEWAKRAMANI PCSA - 3297
Company Secretary in Practice
R. No.5, Sadguru Apt, Ground Floor
Joshi Baug, kalyan (w)
Thane-421 301

CS S. V.VIMAL PCSA - 3298
Company Secretary in Practice
TC 26/1803(4),Pis Hirady Road Statue
Trivandrum-695 001

CS NAVIN AGARWAL PCSA - 3299
Company Secretary in Practice
183, Nangal Jaisa Bhora
Jhotwara, Jaipur - 302 001

CS SATYKI PRAHARAJ PCSA - 3300
Company Secretary in Practice
Flat T1, Block -1
Kings Court No.- 2
Moovarsam Pet Main Road
Madipakkams
Chennai - 600 091

CS SAGAR R. SHARMA PCSA - 3301
Company Secretary In Practice
207, Hemkoot Complex
Near Gandhigram Rly. Stn.
Ashram Road,
Ahmedabad
Gujarat - 380 009

CS HARSHAD NANDKUMAR EKLAHARE PCSA - 3302
Company Secretary in Practice
Plot No. 17
Emerald Residency
Sakharam Keer Road
Mahim, Mumbai-400 016

CS SANDEEP KUMAR PCSA - 3303
Company Secretary in Practice
C-8/63, Hargovind Enclave
Chattarpur, New Delhi-110 068

CS YASH NIGAM PCSA - 3304
Company Secretary in Practice
D-116, Hari Har Nagar
Lucknow - 226 016

CS SWAROOP SINGH BHATI PCSA - 3305
Company Secretary in Practice
700, Ntm, Near Sharha Darwaja
Ring Road
Surat - 395 002
Gujarat

CS NISID KUMAR SINGH PCSA - 3306
Company Secretary in Practice
38/3, 1st Floor
West Patel Nagar
New Delhi -110 008

CS TEJ KUMAR JAIN PCSA - 3307
Company Secretary in Practice
A-3, Ashok Vihar
Girdhar Marg
Malviya Nagar, Jaipur-302 017

CS SHILPA KESHAV DHULAPKAR PCSA - 3308
Company Secretary in Practice
House No. 327, Dhulapi Corlim
Ilhas, Goa- 403 110

CS VIKASH AGARWAL PCSA - 3309
Company Secretary in Practice
Shri Balaji Stores, New Market
Dimapur, Nagaland - 797 112

CS JITENDRA LEKHWANI PCSA - 3310
Company Secretary In Practice
A-003, Ground Floor,
Akruti Bldg.,Opp. Sailee Hospital
New Link Road, Borivali (W)
Mumbai-400 091

CS PASARAKAYALA GAYATHRI PCSA - 3311
Company Secretary in Practice
3-10-26/25, RTC Colony
Ramanthapur
Hyderabad-500 013

CS PRAKASH VERMA PCSA - 3312
Company Secretary in Practice
9/5465, Street No. 5
Raghubar Pura No.2
Gandhi Nagar
Near Jain Chariatable Hospital
Delhi-110 031

CS ABHIJITH C. PCSA - 3313
Company Secretary in Practice
886, South End, 'F' Road
Jayanagar, 9th Block
Bangalore - 560 069

CS SATISH KUMAR PCSA - 3314
Company Secretary in Practice
586/24, Mission Road
Sonepat- 131 001

CS SMITA MISHRA PCSA - 3315
Company Secretary in Practice
K.P.Road, Malancha
Mahinagar
Kolkata-700 145

CS JASMINE KAUR DHINGRA PCSA - 3316
Company Secretary in Practice
6 CMA 45A
Jawahar Nagar
Jaipur-302 004

CS RAJESH P. PCSA - 3317
Company Secretary in Practice
108, Wz-19A, Opp. Dushera Park
Jwala Heri Market
Paschim Vihar
New Delhi – 110 063

CS NEETI AGGARWAL PCSA - 3318
Company Secretary in Practice
Nimbus-1906
Paramount Symphony
Crossing Republik
Ghaziabad - 201 012

CS LAL MOHAN CHANDRA PCSA - 3319
Company Secretary in Practice
AM-153, Pt. Dindayal Upadhyay Nagar
Suklia, Indore-452 010

CS NAVDEEP KUMAR GROVER PCSA - 3320
Company Secretary in Practice
F-77, Anand Building,
Civil Lines, Bhatinda-151 001

CS DHWANI FATEHPURIA PCSA - 3321
Company Secretary in Practice
1A, Flat No. 4B,4th Floor
Dr. Abani Dutta Road
Howrah-711 101

CS ANKIT BANSAL PCSA - 3322
Company Secretary in Practice
Flat No.70, 1St Floor, Pocket-D
Dilshad Garden, Delhi – 110 095

CS REKHA VIPUL SHAH PCSA - 3323
Company Secretary in Practice
396A, Narayan Peth
Pune-411 030

CS AMEY VIJAY LOTLIKAR PCSA - 3324
Company Secretary in Practice
207/17, Vivekanand Chs
Saraswat Colony
Dombivli(East) - 421 201

CS SURABHI SANGANERIA PCSA - 3325
Company Secretary In Practice
2A, Rajhans, 6, Hastings Park Road
Kolkata-700 027

CS MOHIT NAGAR PCSA – 3326
Company Secretary In Practice
605,Suncity Business Tower
Golf Course Road
Sector-54, Gurgaon
Haryana-122 002

CS GOPIKA C. NEGANDHI PCSA - 3327
Company Secretary in Practice
Giriraj Appartment, 2nd Floor
Flat No. 6, 201, Walkeshwar Road
Mumbai-400 006

CS ANIL KUMAR JAIN PCSA - 3328
Company Secretary in Practice
Ff-7A, Block A,
Mansarovar Complex
Near Habib Ganj Railway Station
Bhopal-462 016

CS REKHA AGARWAL PCSA – 3329
Company Secretary in Practice
AD-173, Saltlake City
Sector-1, Kolkata-700 064

CS PRASHANT B. PATEL PCSA - 3330
Company Secretary In Practice
308, Panorama Complex
Nr. Navjivan Press
Behind Gujarat Vidyapith
Ashram Road, Ahmedabad-380 014

CS MADHWESH K. PCSA - 3331
Company Secretary in Practice
180, 31st Cross, 11th Main
Jayanagar
4th Block
Bangalore-560 011

CS S. VENKATESH PCSA - 3332
Company Secretary In Practice
B-20, Madhura Towers
No. 220, 9th Street
Gandhipuram
Coimbatore-641 012

CS A SENTHIL KUMAR PCSA - 3332
Company Secretary in Practice
B-20, Madhura Towers
No. 220, 9Th Street, Gandhipuram
Coimbatore-641 012

CS SEEMA KHANNA PCSA - 3334
Company Secretary in Practice
45, Neelkamal Appartments
H-3 Block, Vikaspuri
New Delhi - 110 018

CS RAVI JAGANNATH SABNIS PCSA - 3335
Company Secretary in Practice
Flat No. 9, Navshantiban Society
1134/2, F. C. Road
Shivaji Society
Pune- 411 016

CS PRITIKA NAGI PCSA - 3336
Company Secretary in Practice
3041 Ranjeet Nagar, Street No. 12A
Near Shiv Chowk, South Patel Nagar
New Delhi-110 008

CS SITARAM SETHI PCSA - 3337
Company Secretary in Practice
Basement, S-138
Greater Kailash Part-I
New Delhi - 110 048

CS SHWETA GUPTA PCSA - 3338
Company Secretary in Practice
B-4A/17
2nd Floor Rana Pratap Bagh
New Delhi -110 007

CS VISHU KAUSHAL PCSA - 3339
Company Secretary in Practice
14, Vidya Park
Air Force
Central School Road
Ratanada, Jodhpur -342 001

CS SHAILESH DAYAL PCSA - 3340
Company Secretary in Practice
F- 6 & 8, Building No. 102, 1st Floor
Nafed Complex, Ashram
New Delhi -110 014

FAQs on
Company Secretaries Benevolent Fund

Saathi Haath Badhana
साथी हाथ बढ़ाना

Q 01: What is Company Secretaries Benevolent Fund?
Ans: The ICSI established the Company Secretaries Benevolent Fund (CSBF) in the year 1976 which seeks to create security umbrella for dependent family members.

Q 02: What is the nature of Company Secretaries Benevolent Fund?
Ans: Company Secretaries Benevolent Fund is a society registered with the Registrar of Societies, New Delhi under the Societies Registration Act, XXI of 1860.
- The Fund is recognized under Section 12A of the Income Tax Act.
- Contribution to the Fund qualify for the deduction under section 80G of the Income Tax Act, 1961.

Q 03: What are the Objectives of the Company Secretaries Benevolent Fund?
Ans: Benevolence, Financial assistance to the families of the deceased members, Medical Assistance and Assistance for Children Education

Q 04: How to become a life member of the Company Secretaries Benevolent Fund?
Ans: A member can become a life member of the CSBF by making an application in 'Form A' duly filled in and signed along with one time subscription of Rs.7500/-. Form A is available on the website of the Institute i.e. www.icsi.edu . The application can be made online along with the subscription through Institute's web portal www.icsi.in .

Q 05: How to make the subscription of CSBF?
Ans: The one time subscription of CSBF can be made through cheque at par or demand draft payable at New Delhi of Rs.7500/- drawn in favour of 'Company Secretaries Benevolent Fund' or online through Institute's web portal www.icsi.in.

Q 06: Does the subscription or contribution towards the CSBF qualify for deduction under Section 80 G?
Ans: Yes. The subscription and contribution towards the CSBF is exempted under Section 80G of the Income Tax Act, 1961.

Q 07: What are the benefits of becoming a life member of the CSBF?
Ans: The benefits of becoming a life member of the CSBF are :
- Financial Assistance upto Rs.5,00,000/- to the dependants of the deceased members upto the age of 60 years.
- Financial Assistance upto Rs.2,00,000/- to the dependants of the deceased members who are above the age of 60 years.
- Reimbursement of Medical expenses upto Rs.60,000/- for the members and/ or their dependants.
- Financial Assistance for Children's education up to Rs.20,000 per child (maximum for two children) in case of the member leaving behind minor children. (One time Payment).

News From the Regions

Eastern India Regional Council

Union Budget Meet

On 1.3.2013 the EIRC of the ICSI in association with the Bhawanipur Education Society College organised Post Union Budget Meet – 2013. The guest speakers were CS T.B. Chatterjee, Sr. Executive Vice-President & Company Secretary, DIC India Ltd; CA Dilip B. Desai, Practising Chartered Accountant, D.B. Desai & Associates; Prof.(Dr.) Suman K. Mukerjee, Dean & Principal, Bhartiya Vidya Bhavan Institute of Management Science.

Dr. Suman Kr. Mukherjee, started his deliberation by defining various ideologies of a budget, like what is a populist budget or reformist budget, what budgeting means to a free economy, what is the significance of budget, what are planned and unplanned expenditure. He addressed issues like inflation and the effects which the economy bears, what should be the role of the government in promoting social growth and addressing fiscal deficit. He also said that the Central Government, the Reserve Bank of India and all other State Governments should maintain the economy in a balanced manner in order to gain stable growth rate and to move the economy ahead.

CS T.B. Chatterjee, in his address threw light on Indirect Tax from the perspective of this Union Budget. He elaborated various segments of the budget and explained how fiscal deficit affects the economy and what should be the policy framework of the government to balance the aspects of growth and inflation. He discussed various aspects of indirect taxation like customs, excise, service tax and changes made therein in this budget. He also talked about upcoming concepts like GST, its effects and benefits and the necessity of a transparent taxation system in our country.

CA Dilip B. Desai, in his deliberation to the delegates spoke on Direct Tax. He talked about specific provisions of the budget and concepts like new investment allowances, additional depreciation, super rich tax, provisions related to real estate taxation and went into in-depth interpretation of those provisions. He said that a professional needs to have a microscopic understanding of the budget and financial system in order to provide the best in class guidance.

Study Circle Meeting on Managerial Remuneration

On 9.2.2013 the EIRC of The ICSI organised a Study Circle Meeting on Managerial Remuneration at ICSI EIRC premises. The guest speaker was CS Vinod Kothari, Practising Company Secretary.

CS Deepak Kumar Khaitan, Chairman, ICSI-EIRC, in his address said that study circle meetings are great source of knowledge sharing and this kind of formal discussion forum will be highly beneficial to both students and working professionals. He thanked Kothari for making the event convenient.

In his opening statement, Kothari threw light on Section 198, 309 and Schedule XIII of the Companies Act, 1956, as these are the commanding provisions with respect to managerial remuneration. He explained the definition of managerial remuneration, what amounts to managerial remuneration, persons entitled for managerial remuneration. He also discussed the inter relation of the sections and schedules governing the provision of managerial remuneration. Kothari stated in detail that private companies are exempted from the provisions of Sections 198 and 309 of the Companies Act, 1956, and also explained the situations where a company needs the approval of the Government for payment of managerial remuneration. He said that in case of Remuneration Committee fallen below the statutory minimum then the Board shall make the composition of the committee appropriate before taking any decision. He further explained the definition of Managing Director and Manager given in the Companies Act, 1956, and what are the effects of the definition. He said that in the law, the definitions given are by function and not by designation. Through discussion, the participants looked into matters like whether or not a company can appoint two MDs, or can a company appoint MD and Managers simultaneously, what is the difference between Whole Time Director and Director in whole time employment. With regard to the inter relation of sections governing managerial remuneration and schedule XIII, the house came to the conclusion that Schedule XIII is an exception to the provision of sections 198 and 309, and if section 198 is not applicable to a company then Schedule XIII is also not applicable. Kothari explained the inter relation of the sections governing managerial remuneration, and how to integrate those provisions while determining the amount and procedure to pay managerial remuneration. He explained the difference between contract of service and contract for service as the concept is of utmost importance for the interpretation of section 314, which deals with office or place of profit. The house came to the conclusion that section 314 shall be applicable only in case of professional nature service.

Full Day Seminar on Companies Bill, 2012

On 16.2.2013 the ICSI-EIRC organized a full day seminar on Companies Bill, 2012, at The Bengal Club, Kolkata. The guest speakers were Remya Hariharan, Founding Partner, Argus & Partners, CS Vinod Kothari, Practising Company Secretary, CS Ranjan Mukherjee, Associate Vice-President (Legal), Tata Consultancy Services and CA Debasish Mitra, Practising Chartered Accountant.

CS Deepak Kr. Khaitan, Chairman, ICSI-EIRC, in his address welcomed everyone and introduced the theme of the seminar. He gave an overview of the Companies Bill, 2012 and explained the importance of the topics of the seminar as the Bill is going to become Act in due course.

R. Hariharan, after giving a brief overview of the journey of Companies Bill, 2012, introduced her topic, "Compromise, Arrangement and Amalgamation." In her speech, she explained the provision contained in the new Bill regarding compromise and arrangement, and gave an insight into the respective changes made in the Bill in comparison to the provisions of the Companies Act, 1956. She talked on Cross Border amalgamation, merger & amalgamation of small companies and holding-subsidiary companies, deemed approval and the role of SEBI, RBI, Stock Exchanges and Competition Commission of India in it and explained concepts like procedural changes incorporated for scheme of merger, amalgamation and demerger and additional compliance requirement for merger and amalgamation in the Bill.

The speaker of the second technical session was CS Vinod Kothari who in his highly interactive session threw light on specific provisions of the Bill regarding managerial personnel and company management. He discussed various clauses of the Bill regarding eligibilities and duties of a director, requirement of Independent director in the composition of board, small shareholders' director, disqualifications of a director, resignation of a director, powers of the Board and restrictions provided on it by the Bill. He then explained various concepts like board meeting through video conferencing, service of notice, definition of Senior Management, declaration of independence and integration of Listing Agreement, Concept Paper by SEBI and the Bill in order to establish Corporate Governance Framework.

The session on "Directors' Responsibility Statement." Was dealt with by CS Ranjan Mukherjee, the guest speaker of the session. Mukherjee made a presentation on the topic with reference to both the Bill and the existing Act. He talked about the structure of Board's Report, framework of Directors' Responsibility Statement, Internal Risk Processing, Procedural compliance, Finance related compliance, Secretarial Compliance. Mukherjee also explained the concept of Risk Register to ensure effective risk management mechanism.

The session of CA Debasish Mitra was on "Audit provisions in the Companies Bill, 2012." Mitra in his deliberation made a presentation on topics like Secretarial Audit, DRS, Key Managerial Personal, IFRS, One Person Company, Small Company, Dormant Companies etc. He explained the pros and cons of Secretarial Audit as contained in the new Bill, Appointment of Auditors, concept and opportunities for LLP, prohibited areas of audit, removal and resignation of auditors. He also threw light on Auditing Standard compliance, NFRA, significance of Secretarial Standards and various other aspects of the new Bill. He made a point to remind everyone that as the new Bill is soon going to become an Act, and with the effect of that, we have to unlearn everything in order to relearn.

In-house Debate

The EIRC of the ICSI organised an in-house debate on the occasion of the 64th Republic Day, at EIRC premises. The topic was "In the opinion of the house India is on the right track". Participants including members and students participated in the debate. The whole programme was moderated by CA Bharat Baid, CS (Prof) Dilip Shah and CS B.P. Dhanuka were the jury members of the debate. The debate brought forth enthusiastic and passionate speeches from both the teams on the morning of Republic Day. The members, speaking for the motion, gave a bright and prospering context of India Inc. The members spoke on the global presence of India, Leadership of India in the Asiatic region, developments in agricultural and Industrial sector, outspread of the country's rail and road network, superior evolution in the field of Space and Defense Research and many other issues. They focused mainly on the spirit of India on her 64th Republic Day.

The students, opposing the motion, said that, statements made by the members, were mere glorification of the current scenario. The students majorly focused on issues like corruption at all levels of administration, malnutrition and poverty in rural India, infrastructural problems, scarcity of employment, social crime, inflation, delay in policy formulation and implementation, etc.

he debate concluded with deliberation by the moderator. He congratulated the participants as they came out with such resourceful and passionate speeches. He said that, every nation has to handle some problems at some point or the other and every nation decides its own track. He remembered the Fundamental Rights enshrined in the Constitution and said, is order to set the nation on the right track every individual has to perform her duties with dedication and become the driver towards the growth of the country. The Students' team, opposing the motion was selected the winners of the Debate. CS Swati Bajaj and Ravi Sharma were selected the best speakers from Members' and Students' team respectively.

Republic Day Celebration

The EIRC of the ICSI celebrated the 64th Republic Day at its premises. The dignitaries present were, CS Deepak Kr. Khaitan, Chairman, ICSI-EIRC, CS B. P. Dhanuka, Past President, ICSI, CS (Dr) Navrang Saini, RD, MCA, CS Sanjay Sarbadhikari, Past Chairman, ICSI-EIRC, CS Anjan Kr Roy, Regional Council Member, ICSI-EIRC.

CS (Dr) Navrang Saini, Regional Director, MCA, unfurled the tricolour and read out the preamble of the Constitution along with the dignitaries, professionals and students present. He talked about the journey from pre independence India to the present day India with a global footprint in almost every possible field, and also mentioned the role, as individuals how each of our countrymen have to play to continue the legacy.

CS Deepak Kr. Khaitan, in his address said that they, both as individual and professional have to perform their respective duties and responsibilities in order to enlarge the brand India image in the global context. He also said that one should always remember his origin, irrespective of what he does in his life. The programme concluded after vibrant cultural programme with the participation of students of the EIRC.

BHUBANESWAR CHAPTER

Investor Awareness Programme

On 23.02.2013, Bhubaneswar Chapter conducted an Investor Awareness Programme at its office premises. The programme was inaugurated by CS Navrang Saini, Regional Director (Eastern Region). CS Deepak Kumar Khaitan, Chairman, EIRC was the Guest of Honour of the programme. Regional Council Members of the EIRC were also present on the occasion. The programme was conducted under the aegis of IEPF, MCA, Govt. of India. The Registrar of Companies, MCA, Odisha and the Regional Director (E), MCA coordinated the programme. Investors/general public, school/college teachers, housewives, advocates, members of the Institute and students, small traders and businessmen attended the programme. CS J.B. Das, Secretary, the OMC Ltd, Bhubaneswar and Vinod Sharma, AGM, SEBI Office, Bhubaneswar addressed the gathering as the speakers of the programme. The programme was attended by more than 100 investors.

Seminar on New Companies Bill

On 23.02.2013, Bhubaneswar Chapter organized a seminar on New Companies Bill at its premises. CS Deepak Kumar Khaitan, Chairman & CS Anjan Kumar Roy, Past Chairman, EIRC highlighted various features of the Bill. The seminar was attended by around 100 members & students of the Institute.

Visit of Regional Council Members to Bhubaneswar

On 23.02.2013, CS Deepak Kumar Khaitan, Chairman, CS Arun Kumar Khandelia, Vice Chairman, CS Sunita Mohanty, Secretary & Treasurer, CS Ranjeet Kumar Kanodia, CS Anajan Kumar Roy, CS Mukesh Charvedi, past Chairmen, & CS (Dr.) Navrang Saini, Co-opted Member, EIRO visited Bhubaneswar Chapter and had a meeting with the Managing Committee Members of the Chapter to discuss various developmental works of the Chapter. They also reviewed the infrastructure facilities, construction of the 3rd floor of the building, commencement of MSOP at Bhubaneswar. During the meeting it emerged that EIRO will provide all possible support to the Chapter for development of the profession in the State.

Seminar on Union Budget, 2013

On 04.03.2012, Bhubaneswar Chapter organized a Seminar on Union Budget, 2013 at its premises which was attended by around 90 members & students of the Chapter. CA A.K. Sabat, Practising Chartered Accountant, Bhubaneswar was the Chief Guest & Chief Speaker of the programme who highlighted the Union Budget-2013. CS J.B. Das, Secretary, the OMC Ltd, Bhubaneswar also addressed in the programme.

HOOGHLY CHAPTER

Half Day Workshop on Companies Bill, 2012

On 27.1.2013 the Hooghly Chapter of EIRC of the ICSI organized a Half Day Workshop on Companies Bill, 2012 at the Chapter Conference Hall, Rishra. Guest speaker CS Anjan Kumar Roy, Past Chairman of EIRC elaborated the difference between the Companies Act, 1956 and the new Bill. He discussed various provisions related to meetings and directors.

Investor Awareness Programmes

On 27.1.2013 the Hooghly Chapter of EIRC in collaboration with MCA, Govt. of India organized an Investor Awareness Programme at Chapter Conference Hall, Rishra. CS Gautam Dugar, Chairman – Hooghly Chapter, in his address discussed opening of DEMAT account. CS Rakesh Ghorawat, Vice Chairman – Hooghly Chapter, discussed the rights of investors.

Again on 31.1.2013 another Investor Awareness Programme was held at 2, Joy Narayan Santara Lane, Howrah. On 28.2.2013 at Howrah. Ashok Gangwal, Senior Stock Analyst, Shree Bahubali International Limited discussed share trading and CS Gautam Dugar, Chairman, Hooghly Chapter, discussed the rights of investors I both the programmes.

On 27.2.2013 another Investor Awareness Programme was held at Chapter Conference Hall, Rishra. CS Anil Dubey discussed how a new investor should make an informed decision about investment. He further discussed the nomination facility available with shares and other securities.

Half Day Workshop on Sections 295, 297, 299, 301 and 314 of the Companies Act, 1956

On 10.2.2013 the Chapter organized a half day workshop on Sections 295, 297, 299, 301 and 314 of The Companies Act, 1956 at Sarat Sadan, Howrah Maidan. CS Gautam Dugar, Chapter Chairman in his welcome address said that Hooghly Chapter is always instrumental and willing to organize such programmes for the knowledge updation of its members and students. CS Manoj Banthia, Past Chairman, EIRC of the ICSI was the guest speaker who said that when the Companies Bill 2012 is imminent it is more important to understand the intricacies of the sections which are in use today. He deliberated on sections 295, 297, 299, 301 and 314 of the Companies Act, 1956 which are also known as – Related party transactions. CS Jamshed Alam, Chapter Secretary coordinated the programme.

Half Day Workshop on Stay Positive, Stay Motivated

On 17.2.2013 the Chapter organized a half day workshop on Stay Positive, Stay Motivated at the Chapter Conference Hall, Rishra. Rajesh Chura, President, Dalmia Securities Pvt. Ltd. was the guest speaker who explained the benefits of positive thinking through some practical examples. He proved that how we can get optimum result even when we are amidst a difficult situation in life. CS Jamshed Alam, Secretary, Hooghly Chapter coordinated the programme. Around 30 delegates.

Full Day Workshop on Meeting & Role of Directors and Stress Management

On 3.3.2013 a full day workshop on Meeting & Role of Directors and Stress Management was organized by Hooghly Chapter at Sarat Sadan, Howrah Maidan.

In the morning session S M Gupta, Past Chairman, EIRC-ICSI was the guest speaker. He elucidated the role of directors and said that the prime duty of the director of a company is to safeguard the principal of the investor and to update all the relevant developments of market to him.

In the afternoon session, Brahmakumari Shreyashi Di discussed the topic of stress management and how we can overcome the difficult situations in our life.

CS Jamshed Alam, Secretary, Hooghly Chapter coordinated the programme.

More than 200 delegates attended the programme.

5th Foundation Day

On 8.3.2013 the Fifth anniversary of the Foundation Day of the Chapter was celebrated at the Chapter Conference Hall, Rishra. CS Gautam Dugar, Chapter Chairman and CS Rakesh Ghorawat, Vice-Chairman, of the Chapter honoured the students who had secured the top 3 positions among the students who had cleared the CS Main December 2012 exams from the centers of Hooghly Chapter. CS Jamshed Alam, Secretary, Hooghly Chapter coordinated the programme.

Northern India Regional Council

Vaishali Study Group Meeting on Practical Aspect of Cost Audit and Cost Compliance Report

On 9.2.2013 at the Vaishali Study Group Meeting on practical aspect of Cost Audit and Cost Compliance Report, CMA M. K. Kulshrestha was the speaker.

Study Circle Meeting on Domestic Transfer Pricing in Corporate Transactions

On 15.2.2013 at the Study Circle Meeting on Domestic Transfer Pricing in Corporate Transactions, CS Vinod Jain was the speaker.

West Zone Study Group Meeting on Practical Aspects of Mergers and Demergers

On 16.02.2013 at the West Zone Study Group Meeting on Practical Aspects of Mergers and Demergers, CS NPS Chawla was the speaker.

Meeting of Company Secretaries in Practice on Service Tax – An Overview

On 18.02.2013 at the Meeting of Company Secretaries in Practice on Service Tax – An Overview, CS P.K. Mittal was the speaker.

One Day Seminar on Companies Bill, 2012 – An Initiative for Corporate Reforms

On 22.02.2013 at the One Day Seminar on Companies Bill, 2012 – An Initiative for Corporate Reforms, Justice D R Deshmukh, Chairman, Company Law Board was the Chief Guest. The Guest Speakers were: CS Sanjay Grover, CS Preeti Malhotra, CS Pavan Kumar Vijay, CS Lalit Jain, CS UK Chaudhary and CS Nesar Ahmad.

South Zone Study Group Meeting on Secretarial Audit vis a vis Companies Bill 2012

On 22.2.2013 at the South Zone Study Group Meeting on Secretarial Audit vis a vis Companies Bill 2012, CS S Chandrasekaran was the speaker.

North Zone Study Group Meeting on CSR & Corporate Sustainability Reporting

On 24.02.2013 at the North Zone Study Group Meeting on CSR & Corporate Sustainability Reporting, CS S Rajiv Bajaj was the speaker.

President's & Vice-President's Meeting with Chairman, NIRC and all the Chairmen of the Chapters under the jurisdiction of NIRC

On 25 - 26.02.2013 at the President's & Vice-President's Meeting with Chairman, NIRC and all the Chairmen of the Chapters under the jurisdiction of NIRC, CS S.N. Ananthasubramanian, President, Council of the ICSI; CS Harish K Vaid, Vice President, Council of the ICSI; CS M S Sahoo, Secretary to the Council of the ICSI and CS Sutanu Sinha, Chief Executive, the ICSI were the speakers.

Press Conference

On 25.2.2013 the Regional Council organized a Press Conference which was attended by a good number of the members of the ICSI and press reporters.

Talk on Excellence and Leadership in Present Time & Interaction with Newly elected President and Vice-President of the Institute

On 25.2.2013 the Regional Council organized the above talk. Dr. Neerja Pande, Director, Jaypee Business School, Noida; CS S.N. Ananthasubramanian, President, Council of the ICSI & CS Harish K Vaid, Vice-President, Council of the ICSI were the speakers.

Programme on Union Budget 2013-14

On 1.3.2013 NIRC organised a programme on Union Budget 2013-14. Dr. Girish Ahuja, Eminent Tax Expert, Ashok Batra, Chartered Accountant, Sanjiv Kumar Chaudhary, Council Member, ICAI and Dr. Rakesh Gupta, Advocate were the speakers.

One Hundred and Seventy Second MSOP

On 6.2.2013 at the Inauguration of 172nd MSOP CS Subhash C. Agrawal, Director (Finance), Cement Corporation of India Ltd. was the speaker. On 23.2.2013 at the valedictory session, the Chief Guest was Sanjay Kumar, Chief Legal Advisor, DDA & Addl. District

Judge and the Guest of Honour was CS A.K. Rastogi.

Investor Awareness Programmes

On 9.12.2012 the Investor Awareness Program on Investment Opportunities in Capital Market for non-collegiate College students was held at PGDAV College, Delhi. CS J K Bareja and Dr. M M Goyal, Principal, PGDAV college were the speakers. On 11.1.2013 the Investor Awareness Programme on Understanding the Capital Market was held at Swami Shraddhanand College, Alipur, Delhi. CS J K Bareja and Man Mohan of Swami Shraddhanand College were the speakers. On 24.1.2013 at the Investor Awareness Programme on Recent Developments in Capital Market held at Zakir Husain Delhi College, University of Delhi CS J K Bareja, CS R P Tulsian and T R Mehta were the speakers. On 30.1.2013 at the Investor Awareness Programme on Investment Opportunities in Capital Market held at Sri Guru Nanak Dev Khalsa College, University of Delhi, CS J K Bareja, CS Anupam Jha, CS RP Tulsian and TR Mehta were the speakers. On 1.2.2013 at the Investor Awareness Programme on Understanding the Capital Market held at Ramjas College, University of Delhi, CS JK Bareja, CS Anupam Jha, T.R. Mehta, Dhani Ram and Dr. N.D. Vohra of Ramjas College were the speakers. On 12.2.2013 at the Investor Awareness Programme on Capital Market & Mutual Funds held at ARSD College, University of Delhi, Delhi, CS J K Bareja, CS Anupam Jha, V K Arora and S P Madan of ARSD College were the speakers. On 19.2.2013 at the Investor Awareness Programme on Investment Avenues in Capital Market held at SGGS College of Commerce and Investment Opportunities in Capital Market & Role of SEBI held at Satyawati College (Evening), University of Delhi, CS J K Bareja, Harbinder Sokhi, BSE, CS Anupam Jha, T R Mehta and Dr. J B Singh, Principal, SCGS College of Commerce, and CS R P Tulsian were the speakers. On 20.2.2013 at the Investor Awareness Programme on Recent Developments in Capital Market held at Motilal Nehru College, CS J K Bareja and Monika Gupta of Motilal Nehru College were the speakers. On 21.2.2013 at the Investor Awareness Programme on Understanding the Capital Market held at Shri Ram College of Commerce CS J.K. Bareja, CS G.P. Madaan, CS Pawan Bhardwaj, T.R. Mehta, Dr.P.C. Jain, Principal, SRCC & CS (Dr.) R.P. Rustagi were the speakers. On 24.2.2013 at the Investor Awareness Programme on Capital market & Mutual Funds at Rajasthali Apartment, Pitampura, CS J.K. Bareja, CS Anupam Jha & T.R. Mehta were the speakers. On 27.2.2013 at the Investor Awareness Programme on Investor Protection at Amity Law School, Noida CS Rajiv Bajaj, CS Sandeep Ahuja, T.R. Mehta, Maj. Gen. Nilendra Kumar, Director, Amity Law School, CS Monica Suri, Amity Law School were the speakers.

Career Awareness Programmes

NIRC organised nine Career Awareness Programmes during the month of February, 2013 in various schools & colleges located in Delhi and surrounding areas. CS J K Bareja & Himanshu Sharma addressed these Career Awareness Programmes. The students were apprised about the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the Company Secretary ship Course both in employment and in practice.

GHAZAIBAD CHAPTER

Professional Development Programme / One day Seminar

On 17.3.2013 the Ghaziabad Chapter of NIRC of the ICSI organized a Professional Development Programme/One day Seminar on Revival of Sick Industries. The programme was inaugurated by Chief Guest, Harish K. Vaid, Vice President, Council of the ICSI. Vaid addressed the first technical session on Revival of Sick Industries. He elaborated the intricacies involved in takeover of sick industries through Official Liquidator, BIFR, High Court etc. He shared his valuable experience and practical tips to deal with takeover of sick industries. He also urged the students and members to become responsible leaders and strive to be ethical and self regulating. He also highlighted the widening scope of company secretary and building of brand image of the profession. He encouraged the members to contribute to Company Secretaries Benevolent Fund.

The second technical session was addressed by CS Ajay Garg, Immediate Past Chairman of Faridabad Chapter. He made comprehensive presentation on Mergers and Demergers. The sessions were highly interactive and the members and students were appreciated for raising intelligent questions.

LUCKNOW CHAPTER

Seminar on Role of Company Secretary in Power Sector, Corporate Governance and Bhagwad Gita

On 16.3.2013 the Lucknow Chapter Organized a Seminar on Role of Company Secretary in Power Sector, Corporate Governance and Bhagwad Gita. The programme was presided over by Chief Guest Hriday Narain Dixit, Renowned Writer & MLC, Uttar Pradesh; Eminent Guest Shailendra Dubey, General Secretary, All India Power Engineers Federation ;Chief Speaker CS Jaganmohan Rao P.V.S, Past President, the ICSI. The programme was very interactive and the participants present were enlightened by the topics presented by the speakers.

Southern India Regional Council

Career Awareness Programmes

On 6.2.2013 the Career Awareness Programme was held at Muthurangam Government Arts College, DKM College for Women (shift II), Vellore and Department of Corporate Secretaryship, and on 27.2.2013 at Queen Mary's College, Chennai. CS Dr.B. Ravi, Regional Council Member, the ICSI and Dr. V. Balaji, AEO, SIRC were involved in the programmes.

Investor Awareness Programmes

The ICSI–SIRC organized Investor Awareness Programmes at the following educational Institutes. These Investor Awareness Programmes were sponsored by the Ministry of Corporate Affairs, Government of India. On 1.2.2013 the programme was held at Department of MBA, Indian Maritime University, Uthandi; on 6.2.2013 at PG Department of Commerce, Muthurangam Government Arts College, Vellore. The speaker was A.R.Vasudevan, Regional Manager, Central Depository Services India Ltd. Chennai. On 11.2.2013 the programee was held at PG Department of Commerce, Sri Ram College of Arts & Science, Perumalpattu, Thiruvallur. S. Venkatesan, Treasurer, Tamilnadu Investors Association was the speaker. Dr. V. Balaji, AEO, SIRC participated in all these programmes.

Valedictory Session of 14th MSOP

On 15.2.2013 at the Valedictory Session of 14th Management Skills Orientation Programme CS B Sriram, Executive Director, PwC, Chennai was the Chief Guest. CS Dwarakanath C, Chairman, ICSI – SIRC stated that the new Companies Bill offers more scope to the CS. He emphasized that the CS will no longer be the compliance officer of the company, but will be a key managerial personnel, as mentioned in the new Companies Bill. The Chairman also requested the participants to continuously update their knowledge and also help in conducting career awareness programmes in the schools and colleges they studied.

CS Sridharan R, Council Member, The ICSI urged the participants to regularly update their knowledge by reading articles, contributing articles and discussing with fellow professionals. Sridharan concluded by saying that life without ambition has no destination.

CS Dr. B Ravi, Regional Council Member, ICSI–SIRC advised the participants to work on communication skills, professional code and ethics besides being updated.

In his valedictory address, Sriram insisted that the participants should add value to the profession. He observed that there has been a phenomenal change in the functionality of business and hence the CS has to adapt with the changes by being updated and knowledgeable. He termed the modern CS as a custodian of Corporate Governance in an organization.

CS Ramasubramaniam C, Treasurer, ICSI–SIRC advised the participants to involve themselves and be associated with the institute by attending the professional development programmes and contributing articles. All the dignitaries urged the participants to become the members of CSBF.

Study Circle Meeting on Pre-Budget expectation on Indirect Tax

On 15.2.2013 at the Study Circle Meeting on the Pre-Budget expectation on Indirect Tax CS Sriram B, Executive Director, PwC, Chennai while addressing the members explained that there are a few services which are subject to reverse charge. He opined that there may be removal of joint reverse charge mechanism and instead could be made as ‘reverse charge’ for a class of service providers. While talking about the service tax on perquisites extended by the employer to employee as part of employment, he suggested that such arrangement not be brought under the service tax regime. He also stated that steps may be taken in this budget to bring in clarity in relation to taxation with powers under negative list regime, appropriate clarifications/exemption notifications for inter se members transaction in unincorporated joint ventures. He also explained the expectation on GST and customs in the budget.

Interaction of Members with President, Vice President and Secretary to the Council of the ICSI

On 22.2.2013, at the above interaction President to the Council of the ICSI spoke on various initiatives taken by the institute in promoting the profession. The members also actively interacted with the dignitaries on various matters like the proposed new Companies Bill, emerging areas for the CS and the scope of CS in employment and in practice.

Press meet

On 22.2.2013 at the Press Meet CS Dwarkanath C, Chairman, ICSI–SIRC and CS Nagendra Rao D, Secretary, ICSI–SIRC addressed. The futuristic scope of the CS profession, enrolling in the CS course, fee concession, scholarship to the students was explained in detail to the various queries raised by the media people.

One day Seminar on Companies Bill, 2012

On 22.2.2013 the ICSI–SIRC organized a one day seminar on Companies Bill 2012 at Hotel Accord Metropolitan Chennai.

In his address, CS Sahoo M S, Secretary to the Council of the ICSI threw light on the initiatives of the ICSI in promoting the profession. He also requested the members to be updated with various happenings in the industry so as to keep in pace with the opportunities available in the Companies Bill 2012. CS Harish K Vaid, Vice President, Council of the ICSI also spoke on the occasion. In his presidential address, CS Ananthasubamanian S N, President, Council of the ICSI highlighted the new opportunities available to the CS in the Companies Bill, 2012.

The first technical session of the seminar was handled by CS Dr. K S Ravichandran, Company Secretary in Practice, Coimbatore on the Role of Company Secretaries in Corporate Management, Compliances and Governance. The speaker observed that the modern CS should concentrate more on assurance of compliances, installing the corporate governance mechanism, evolving a proper board process, secretarial standards, annual returns and redressing of investors’ grievances. Dr. Ravichandran termed the role of contemporary CS as business advisor and insisted that a CS should know the company’s entire business affairs. The speaker also threw light on the Companies Bill 2012. He concluded by saying that the CS should be conscience keeper.

Aruna Kumaraswamy, Chartered Accountant, Senior Manager –

Assurance Services, SR Batliboi & Associates, Chennai spoke on Changing landscape on the role of auditors in the second technical session. Aruna spoke on the changes in the Companies Bill 2012 pertaining to the auditor's eligibility for appointment, appointment and term, rotation considerations, reporting requirements, prohibited services and penalties. The speaker, while speaking on the Cost Audit informed that, on the lines of the existing Act, the Companies Bill empowers the Central Government to require specified class of companies to maintain cost accounts and get cost audit done.

In the third technical session, P H Arvindh Pandian, Senior Advocate and Additional Advocate General of Tamilnadu, spoke on the 'lass Actions Suits and Special Courts. Pandian observed that, in a world of mass production, mass marketing, economic interdependence, swift worldwide communications and transportation, it is not uncommon for many individuals to be harmed by standardized corporate practices. Individual claims may be typically small, but these small claims yield large illegal profits. Therefore, these individual claims are not trivial from a social point of view. The speaker observed that Class action suits can provide a solution to this economic obstacle by gathering many individual claims together into a single law suit that can support the cost of litigation. Class Actions can also be a way of leveling the playing field for poor or economically less powerful individuals. He dealt elaborately on the Clause 245, which deals with the class action suits. He also threw light on the establishment of special courts, offences handled in the special courts and application of code to proceedings before the special courts. The seminar concluded after the summing up of the proceedings of the day.

Chennai West Study Circle Meeting

The Chennai West Study Circle of ICSI-SIRC organized a budget meeting. It was attended by 75 participants. Chairman, Vice Chairman, Secretary & Treasurer of ICSI-SIRC were present and graced the occasion. Chairman Dwarkanath congratulated the office bearers and core committee members and assured that whatever help is required from SIRO would be provided in future meetings. He said that knowledge sharing is extremely important in the profession of CS and urged the members to continue with it. He spoke briefly about the budget.

Vice Chairman, Dr. Baiju Ramachandran said that he was surprised by the huge turnaround and the professional approach that was displayed throughout the meeting.

Nagendra Rao, Secretary was happy to see such a big crowd, similar to the meetings organized by few Chapters.

Treasurer C. Ramasubramaniam appreciated the Core team for introducing many new concepts in the meetings and also for giving opportunity to young members to display their talent along with the established speakers and wished that this shall continue in future.

BANGALORE CHAPTER

One hour Live Phone in Programme on CS course

A Live Phone-in Programme on CS course, Career as a Company Secretary was telecast on Doordarshan Kannada Channel, DD Chandana. CS Gopalakrishna Hegde, Central Council Member, the ICSI and CS Manjunatha Reddy, Chairman, Bangalore Chapter of ICSI replied the queries of students during the Programme "Morning Live Show - Hello Geleyare" on 19.3.2013 between 8.00 and 9.00 AM. The announcement of the same was published in various newspapers in Bangalore and the same was placed on Bangalore Chapter website. Moreover, it was forwarded to all the CS students and Members in Bangalore via e-mail. Students enquired about CS course from various places of Karnataka, especially from the rural and semi urban places. Information on the role of Company Secretary, admission procedure, fee structure, mode of study, syllabus and employment opportunities was disseminated during the programme. A large number of students were benefited from the programme. Video recording of the live programme was uploaded on the Chapter website for the benefit of the members and students.

Live Programme on CS course - Career as a Company Secretary

On 12.3.2013 a Live Programme on CS course, Career as a Company Secretary was broadcast on All India Radio, FM Rainbow 101.3 MHz. The half hour programme was aired in regional language, Kannada, across Bangalore and its nearby districts. CS Dwarakanath C, Chairman, SIRC of the ICSI replied the queries of the students in an exclusive interview during the Programme "Lunch Box" on 12.3.2013 between 1.00 and 1.30 PM. About the Institute, Role of Company Secretary, Syllabus for each levels, admission procedure, Eligibility, Fee structure, Training requirements, mode of study, Stipend and attractive salary Packages in industry were also discussed during the Live programme. A large number of students were benefited from the programme.

HYDERABAD CHAPTER

Study Circle Meeting

On 16.3.2013 the Chapter organized a Study Circle Meeting on Recent Developments in SEBI Regulations - Impact on Scheme of Arrangements. CS R. Ramarkrishna Gupta, Chapter Chairman in his welcome address emphasized the importance of the SEBI Regulations.

CS A.G. Ravindranath Reddy, Corporate Consultant, AGR & Associates, shared his valuable experience on Schemes of Arrangements under Section 391-394 of the Companies Act, 1956 with special focus on existing scenario of Amalgamations/Mergers and the stringent framework introduced by SEBI, pursuant to the Circular.

CS Manoj Kumar Koyalkar, Practising Company Secretary, AGR and Associates, briefed about the existing Regulatory Framework governing Mergers and Amalgamations.

CS N Archana Sastry, focused on the revised requirements for the Stock Exchanges and Listed Companies, pursuant to issue of SEBI Circular dated 4th February 2013 with special focus on the procedural aspects and analysis of some critical aspects/ ambiguities.

Chetluru Sreenivas, Advocate, High Court of Andhra Pradesh, focused on the Court proceedings related to Mergers and Amalgamations.

The meeting also discussed at length, the ambiguity in SEBI Circular regarding its applicability, Designated Stock Exchange for the purpose of coordinating with SEBI, Postal ballot and e-voting and the empowered role of SEBI on approval of Schemes of Arrangements of Listed Companies after approval of High Court. The session was very informative and well appreciated by the gathering. The meeting received an overwhelming response from Members and Students.

Full day Seminar on Improving Corporate Reputation through Enhanced Reporting

On 18.2.2013 the Chapter organized a Seminar on Improving Corporate Reputation through Enhanced reporting jointly with AR Conclave at Taj Deccan, Hyderabad. Pravin Ujjain, Editor, Report Insights, Shankar Jaganathan, Author Wisdom of Ants and CS R. Ramakrishna Gupta, Chairman, The ICSI, Hyderabad Chapter addressed the gathering. The programme had lively and active participation of members.

MADURAI CHAPTER

Investor Awareness Programmes

During the month of January 2013 the Chapter successfully organized Three Investor Awareness Programmes under the aegis of IEPF of Ministry of Corporate Affairs. On 9.01.2013 the first programme was held at Lady Doak College, Madurai. The special Chief Guest was E.Selvaraj, Regional Director, Ministry of Corporate Affairs, Chennai. In his address he emphasized the need and awareness for investments by the young group especially the students in proper channels and a correct decision to be taken depending on the requirements. The speaker of the programme Kumararavelu, Area Head, M/s, Karvy Broking Ltd. Madurai explained the avenues for the investments.

On 10.1.2013 the next programme was organized at Madurai Kamaraj University, Madurai. The special chief guest was E. Selvaraj, Regional Director, Ministry of Corporate Affairs, Chennai. During his address he advised the audience comprising of scholars from commerce and aspirants of IAS to be careful in taking decision for investments and also advised them to pursue company secretary ship course simultaneously by the M.com and MBA students which will give them the insight to the securities and the market apart from usefulness for employment and practice. Kumararavelu, Area Head – M/s, Karvy Broking ltd, Madurai spoke about opportunities in equity markets.

On 21.1.2013 one more Investor awareness Programme was organized by the Chapter at Thiagarajar School of Management, Madurai. The speaker of the programme was C.Murugesan, Vice President and Zonal Manager, M/s. Religare Securities, Madurai.

Career Awareness Programmes

On 8.1.2013 the Chapter organized a Career Awareness Programme at Madura College, Madurai for 1styear B.com, B.B.A B.Sc. students. On 10.1.2013 the Chapter organized another Career Awareness Programme at Madurai Kamaraj University, Commerce Department. Around 200 students participated in the programme. Again on 29.1.2013 the Chapter organized a Career Awareness programme at Saint Xavier's College, Tirunelveli. Around 300 students from B.Com (CS), B.B.A and B.Sc. participated. Yet again on 20.2.2013 the Chapter organized a Career Awareness programme at Thiagarajar Arts College, Madurai. In all these programmes S.Kumararajan, Chapter Chairman gave a brief introduction about the CS Course, Course Structure, fees, and employment opportunities. P.Rajavel, Chapter Treasurer explained the Practising areas of the profession of CS and avenues for self-employment. Around 200 students from B.Com (CS), B.B.A and B.Sc. participated. T.Raja, Chapter Office In Charge, in all the programmes, clarified the doubts and distributed the course brochures to the participants.

Western India Regional Council

Joint Program on Companies Bill, 2012

On 23.2.2013 ICSI-WIRC jointly with BSE Brokers Forum organised a programme on Companies Bill, 2012 at BSE Convention Hall, Mumbai. Vispi Bhathena, CEO, BSE Brokers' Forum, Shankar Jhadav, Head of Strategy BSE Ltd., Hitesh Buch, Chairman WIRC of the ICSI, Atul Mehta and Umesh Ved, Central Council Members, the ICSI, Ashish Garg, Secretary and Prakash Pandya, PDC Chairman, set the tone for the day with their brief address. This was followed by the enriching introductory remarks by N.L Bhatia, Practising Company Secretary and Former Chairman of WIRC of the ICSI.

The eminent speakers enlightening the gathering were Keyoor Bakshi, Former President ICSI, Vivek Sadhale, Company Secretary and Head Legal and Investor Relations, Persistent Systems Limited, Pune, Jayesh Thakur, Associate Director, PWC, Mumbai, R Balakrishnan, Company Secretary, Pune.

Keyoor Bakshi deliberated on the later part of the Bill. He discussed in detail the various provisions relating to corporate restructuring under the New Bill. He pointed out that provisions relating to Mergers and Amalgamations have been revamped under the Bill to provide flexibility. Now, authority has been granted to Tribunal instead of High Courts. No buyback shall be sanctioned by Tribunal unless it is in accordance with clause 68. In case of mergers or amalgamations, persons holding not less than 10% shareholding or 5% outstanding debt as per latest audited financial statements can only object. Valuation is required to be done by registered valuers and approval of majority representing three-fourths in value, voting in person or by proxy or by postal ballot is necessary. Procedure under Clause 230 is to be strictly followed. It is to be noted that until completion of the scheme, a statement certified by a CA/CS/ Cost Accountant in practice, indicating whether the scheme is being complied with in accordance with the order of the Tribunal or not, shall be filed every year with ROC. The above provisions shall also apply to Mergers and Amalgamations with a foreign company. He also spoke about the fast track mergers and amalgamations provided in the New Bill. Further he discussed the provisions relating to the powers to acquire shares of dissenting shareholders from a Scheme or Contract approved by majority, purchase of minority shareholding. He also opined on the concepts of dormant company, class-action suits and corporate social responsibility and concluded by discussing the squeeze out provisions under the Bill and stating that there are various welcome changes in the Bill, however, larger part of the law is delegated and we shall be able to gauge the dynamism of the new law only once the Rules are notified.

Vivek Sadhale made a detailed presentation on the Salient features of the Companies Bill, 2012 including enhanced disclosures. The Bill has 470 clauses and 7 schedules as against 658 Sections and 15 schedules in the existing Companies Act, 1956. The entire Bill has been divided into 29 chapters. He opined on the genesis of the New Companies Bill and commented on the dynamic nature of the Bill. He mainly dwelled into the investor protection and governance mechanism under the New Companies Bill. He spoke about the provisions related to corporate governance in the Bill and also compared the provisions with the consultative paper on corporate governance by SEBI by which Clause 49 of Listing Agreement is proposed to be amended. The Companies Bill, 2012 will drive the structure and the provisions of Clause 49 ensuring the basis for an effective corporate governance framework, protection and facilitation of the rights of shareholders and disclosure, transparency and accountability to Shareholders. He then discussed the key enabling drivers in the Bill w.r.t. governance viz. mode of appointment of independent directors, their tenure and code of conduct. He further spoke about shareholders Associations/Group of Shareholders activism through class action suits and constitution of National Financial Reporting Authority and SFIO. Towards the end, he threw light on the challenges from a compliance perspective as the definition of related party transactions have been widened and the consolidated financial statements to be prepared of all subsidiaries, associates and joint ventures under the New Bill.

Jayesh Thakur threw light on the provisions with respect to Dividends, Loans & Investments, Accounts of Companies, Audit and Auditors, Regulation relating to foreign companies and their Indian subsidiaries. He commenced by stating that all companies shall now have their financial year ending on 31st March every year, which cannot be altered. Clauses 128 to 138 deal with the accounts of the companies and Clauses 139 to 148 deal with Audit and Auditors. MD and WTD - in charge of finance, CFO or other person have been charged by the Board with the duty to comply with the above provisions. Books of account and other relevant papers and financial statement may be kept in electronic mode. Financial statement (FS) shall be in accordance with the accounting standards and in the form specified in Schedule III, which is a form similar to new Schedule VI notified by MCA on 28th February 2011, except that it contains general instructions for preparation of consolidated FS. Financial statement including consolidated FS shall be signed on behalf of the Board by the Chairperson alone if authorised by Board; or Two directors out of which - one to be MD, and CEO if he is a director; and one director in case of OPC. CFO and CS shall also sign wherever appointed, except in case of OPC. Consolidated FS are mandatory if a company has one or more subsidiaries and should be placed before AGM. Subsidiaries in this case shall include 'associate' and 'joint venture' for consolidation. Consolidated FS and subsidiary accounts shall also be placed on the website of the company. The Bill has introduced a new provision on reopening of accounts. Books of account can be reopened or FS recast, if earlier accounts were prepared fraudulently; or affairs of company were mismanaged during the relevant period. Application is required to be made by Central Government, Income Tax Authorities, SEBI or other statutory authority and an order of competent Court or Tribunal is required. Representations from Central Government, Income Tax Authorities, SEBI or any other statutory authority will also be considered by Court or Tribunal before allowing the same. The revised or recast accounts would be final for all purposes. There is also a provision for Voluntary revision of FS or Board's report in respect of any of the preceding 3 financial years, if the FS or BR is not in compliance with clauses 129 or 134, respectively with the approval of the Tribunal. There is also a provision to constitute National Financial Reporting Authority (NFRA) by the Central Government which shall monitor and enforce the Compliance with accounting standards and Auditing standards. Regarding Audit & Auditors, every company is required at its first AGM to appoint an individual or a firm as an auditor. This auditor shall hold office from the conclusion of that meeting till the conclusion of its 6th AGM and thereafter till the conclusion of every 6th meeting. The appointment of the auditor is to be ratified at every AGM. Individual auditors are to be compulsorily rotated every 5 years and audit firm every 10 years in listed companies & certain other classes of companies, as may be prescribed. Auditors have to comply with Auditing Standards. A company's auditor shall not provide, directly or indirectly, the specified services to the company, its holding and subsidiary company.

R Balakrishnan discussed the provisions relating to One Person Company (OPC). He said that the Companies Bill, 2012 for the first time has introduced the concept of OPC, one more form of business organisation. It is similar to Single Person Company (SPC) which is prevalent in many countries like UK, Australia, Singapore, Pakistan, China and even Middle East countries. As the name suggests, OPC is a company which has only one person as a member with limited liability. Thus, OPC is an alternative for persons who typically operate using the risky concept of a proprietorship. OPC could be incorporated for any lawful purpose. The MoA of OPC should indicate the name of the person who shall, in the event of the subscriber's death, disability or otherwise becomes the member of the company. Any change in the name of such a person indicated in the MoA should be informed to the ROC and any such change is considered as an alteration of the MoA. He pointed out that OPC is not required to hold AGM but all other provisions of the Bill relating to maintenance of books of accounts and audit of accounts etc. will apply to OPC. He further clarified that when rules are framed by the Central Government after the passage of the Bill, more regulations could be expected on OPC. He then discussed the reasons beyond introduction of OPCs. In the existing Companies Act of 1956, it is compulsory for a company to have a minimum of 2 members. The reason for this is clear separation from a sole proprietorship and categorical exclusion of a corporate structure from the Companies Act. People felt this provision to be hypocritical and to outdo this, started forming companies by adding a nominal member/director, allotting them one single share, and retaining the rest of the shares themselves. By doing this, a person could enjoy the status and benefits of a company while operating and functioning like a proprietary concern for all practical purposes. The Companies Bill recognised this and to make things clearer and more logical, an option of OPC has been created. Towards the end, he explained the procedure of formation of OPC and stated that person forming OPC has to nominate at the time of incorporation, a person with his written consent to act as a nominee. This nominated person will be the default and adhoc member in case of the existing sole member's death or disability. This provision seeks to ensure perpetuity and continuity of the life of the OPC. He thus opined that with OPC, unorganized sector of proprietorship in the organized version could be witnessed in the days to come. In conclusion, he shared his experiences on SPCs during the course of his employment and threw light on the provisions relating to SPCs in various countries.

The concluding remarks were made by the Aditya Srinivas, COO, BSE Brokers' Forum. The programme was very well received by the participants and the queries put forth were addressed by the speakers to the satisfaction of the participants.

BHOPAL CHAPTER

Investor Awareness Programme

On 9.3.2013 the Chapter organised an Investor Awareness Programme at Hotel Rajhans, Bhopal. A.K.Chaturvedi, ROC-MP & CG, was the Chief Guest and Surjeet Singh, Leader-BJP was the Guest of Honour of the Programme. Santosh Kumar Agrawal, Director, Bhopal Stock Market Association, was the main speaker of the programme. The Programme was attended by more than 130 participants. The programme was very interactive and the participants derived benefit out of it.

Full day Seminar on New Rules - New Roles

On 9.3.2013 the Chapter organised a full day Seminar on New Rules - New Roles at Hotel Rajhans Regent, ISBT, Bhopal. The Programme was inaugurated by Alok Sanjar, Secretary and Senior Leader, BJP, Guest of Honour, A.K.Chaturvedi, ROC-MP & CG, Chief Guest, Atul Mehta, Central Council Member, the ICSI, Special Guest and Amit Kumar Jain, Member-WIRC. Atul Mehta, took the first session on New Companies Bill and defined the New Roles and Responsibilities of Company Secretary in the New Bill. Post Lunch there was a session on SARFAESI Act by Manoj Sahi, Advocate.

A.K.Chaturvedi interacted with the Members and students of ICSI and offered the six months training in ROC - Gwalior office, which was well appreciated by the members and students present. The programme was attended by more than 125 participants.

PUNE CHAPTER

Seminar on Companies Bill, 2012

On 9.2.2013 the Pune Chapter of ICSI organized a seminar on Companies Bill 2012 at IMA Hall, Pune in association with Pune Chapter of Institute of Cost Accountants of India. Dr. K. R. Chandratre, Past President ICSI & CMA Neeraj Joshi, WIRC member ICAI were the eminent faculties for the seminar. More than 125 members and students of the ICSI attended the programme. The technical session was very informative and appreciated by the gathering at large. Four (4) PCH and 8 PDP respectively were allotted to the members and students who attended the programme.

Workshop on Critical Issues in Corporate Laws

On 22 and 23.2.2013 the Chapter organized a workshop on Critical Issues in Corporate Laws, 2013 at Saj Resorts, Mahabaleshwar. DR K R Chandratre, Past President, the ICSI was the eminent faculty for the seminar. Sixty-two members attended the programme. The seminar was very interactive and the members present exchanged their ideas, views and experiences. Eight (8) PCH were allotted to the members who attended the programme.

Celebration of 40th Foundation Day

On 26.2.2013 the Pune Chapter celebrated its 40th Foundation day at S M Socialist Foundation Hall Ganjave Chowk, Pune.

The programme was inaugurated with the Ganesh Vandana performed by CS Kanchan Limaye, member of the ICSI followed by a drama by the Arts Circle of Pune Chapter. CS Adwait Kulkarni, CS Sunny Warghade, Sachin Vaijapurkar and Ketan Patankar performed in the drama. The formal foundation day programme started with Deep Prajvalan by the dignitaries present for the programme. On behalf of the Chapter, CS Parag Inamdar, Secretary welcomed all the dignitaries and CS Devendra Deshpande, Chairman, Pune Chapter of ICSI honoured the Chief Guest Sanjay Joshi. Chairman Pune Chapter also honoured CS Hitesh Butch Chairman WIRC of ICSI, CS Ragini Chokshi, Vice-Chairperson WIRC of ICSI, CS Vikas Khare, Central Council Member, the ICSI from Pune, CS C S Kelkar, WIRC Member from Pune and CS Prakash Pandya, Member WIRC who were present for the foundation day. CS Pawan Chandak, Past Chairman of the ICSI was honoured for the successful completion of his tenure as Chairman for the year 2012. On the occasion rank holders from Pune for the exams conducted by the Institute of Company Secretaries of India, held in December 2011 and June 2012; winners for the Best Articles in "Sanhita" – a monthly magazine of Pune Chapter and the winners of Sports week event were also honoured. Pune Chapter Administration staff and OTC faculties were also honoured by Chapter Chairman CS Devendra Deshpande. Thereafter the Chief Guest shared his thoughts which were truly inspiring and motivating. The formal foundation day programme concluded by an Orchestra by D Idols and Dinner.

RAIPUR CHAPTER

Seminar on Adversity Creates Opportunities

On 11.2.2013 the Chapter organized a seminar on Adversity Creates Opportunities at MAIC at Raipur. CA Vinod Agrawal from Kolkata was the speaker. Forty-six delegates attended the Seminar.

Seminar on the Companies Bill, 2012 and CS – Corporate Governance *v.* Bhagwat Gita

On 18.2.2013 the Chapter organized a seminar on The Companies Bill, 2012 and CS - Corporate Governance v. Bhagwat Gita at Raipur. Dr.PVS Jagan Mohan Rao, Past President, the ICSI was the speaker. Sixty-five delegates attended the seminar.

Seminar on Union Budget 2013-14

On 3.3.2013 the Chapter organized a seminar on Union Budget 2013-14 and honouring of students passed in December 2012 examination. CA R.B. Doshi and CA Bhishma Ahluwalia were the speakers. One hundred and fifty-three delegates attended the seminar.

VADODARA CHAPTER

Study Circle Meeting on CSR Provisions under the Companies Bill, 2012 and Clause 55 of the Listing Agreement

On 10.2.2013 Vadodara Chapter of WIRC of ICSI organized Study Circle Meeting at its Chapter premises. CS Devesh A Pathak, Practicing Company Secretary, Vadodara, apprised the Members and Students on the theme. More than hundred CS Members and Students including about ten CS Members from Surat Chapter attended the Meeting. Many of the Members and Students actively participated in discussions to have exchange of views and question-answer. The Meeting was quite helpful in knowledge enrichment of the participants on the subject and was appreciated by one and all.

Study Circle Meeting on Provisions relating to Independent Directors and Class Actions under Companies Bill 2012

On 24.2.2013 the Vadodara Chapter of WIRC of the ICSI organized a Study Circle Meeting on Provisions relating to Independent Directors and Class Actions under Companies Bill 2012 at its premises.

CS D S Mahajani, Sr. Manager (Taxation) and Company Secretary, Transpek-Silox Industry Limited, Vadodara, apprised the Members and Students on the theme. More than eighty-five CS Members and Students attended the Meeting. Many of the Members and Students actively participated in discussions to have exchange of views and question-answer. The Meeting was quite helpful in knowledge enrichment of the participants on the subject and was appreciated by one and all.

Press Meet

On 25.2.2013 on the occasion of declaration of results of CS Examinations held in December, 2012, the Chapter organized a Press Meet at its Office. All those students who successfully completed Foundation, Executive and Professional Levels of examination and those who secured positions on All India and Chapter level were invited for the honour and interaction with the media people. A Power Point Presentation about the Institute was made and growing importance of the role of CS in the corporate sector in general and with reference to the Companies Bill, 2012, in particular, was explained by CS Ashwin C Shah, Chapter Chairman. The details of the Results were also explained to the Press. This novel concept of felicitation and interaction with the Press was very much liked and appreciated by the Students, their parents and the media people and is expected to go a long way in building the brand image of the CS in the minds of common people of the society.

ICSI - CCGRT

Programme on SEBI (ICDR) Regulations, 2009

On 23.2.2013 the ICSI - CCGRT conducted a programme on SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 at its premises in CBD Belapur, Navi Mumbai. The speakers were Shailashri Bhaskar, Practising Company Secretary and Former Deputy General Manger of SEBI and Yogesh Chande, a Member of ICSI and a Securities Lawyer.

Shailashri Bhaskar initiated the discussions by explaining the important terms under ICDR Regulations viz. Specified Securities, Convertible Securities, Designated Stock Exchange, Initial/Further Public Offering (IPO/FPO), Key Management Personnel, Networth, Offer Size, Net Offer to the Public, Promoter, Promoter Group, Qualified Institutional Buyer, Anchor Investor, ASBA (Applications Supported by Blocked Amount), Book Building, General Corporate Purpose and Fast Track Issue. There are certain common conditions required to be fulfilled in any IPO, FPO and Rights Issue. The important amongst them are: - the issuer, promoter, any member of the promoter group, director or persons in control are not debarred from accessing the capital market, their names must not appear in RBI Defaulters list (can be verified from CIBIL & watch out investors website), they must not have defaulted in repayment of principal or payment of interest by more than 6 months for any of debt instruments issued by it to the public and there are no partly paid shares. Also they must make an application to recognised stock exchange and name one of them as a designated stock exchange, appoint a merchant banker, enter into agreement with NSDL/CDSL for dematerialisation of shares and have firm arrangement for 75% finance unless the project is financed by 100% equity. If warrants are issued along with the specified securities then it should to be converted within 12 months. Further only one warrant can be attached per specified security and isolated warrants cannot be considered as a specified security; amount specified for general corporate purposes must not be more than 25% of the amount proposed to be raised and the issuer must obtain in-principle approval from the Stock Exchanges. Once the above conditions are complied with, the draft offer document should be filed with SEBI, who has the power to reject the draft offer document if there are reasonable grounds to believe that for the protection of investors' interest, the adequacy and quality of disclosures in such offer documents are not satisfactory or where an investor may not be able to assess the risks associated with the issue. Once rejected the issuer cannot access capital markets for at least 1 year from the date of rejection. In general cases, an observation letter which is valid for a period of 12 months is issued within 30 days. A public announcement of the document that is filed with SEBI is to be made in newspapers and hosted in the website of SEBI, Stock Exchange, Merchant Banker for obtaining comments from prospective investors within a period of 21 days of the advertisement and merchant banker has to file a statement of comments received. Once the offer documents are cleared with SEBI these documents must be filed with ROC within 3 working days before opening of the issue. The issuer can opt for soft or hard underwriting, obtain credit rating, appoint debenture trustee, ensure availability of adequate asset cover and if needed alter the terms of the specified securities before issue of prospectus.

Whilst filing DRHP and final document, certain eligibility requirements have to be fulfilled by the issuer. For instance, having a net tangible assets of at least 3 crores in the last 3 full years of which not more than 50% shall be in monetary assets, a minimum average pre tax operating profit of Rs.15 crores during the 3 most profitable of the last 5 years, networth of Rs. 1 crore in the last 3 full years, aggregate of the proposed issue and issues made during the current financial year not to exceed 5 times the pre-issue networth and no alteration in the name and if altered, the activity suggested by the new name should have contributed to at least 50% of the revenues of the company. If these conditions are not fulfilled then issuer has to opt for compulsory book building with 75% participation/allotment to QIBs (Qualified Institutional Buyers). If it is not allotted to QIBs then the entire money must be refunded within 15 days of closure of the issue. Generally if the market conditions are good, allotment to QIBs is easily possible, otherwise it is advisable to look for other funding options. Apart from above, there are certain additional conditions for IPO viz. allotment shall not be made if the number of prospective allottees is less than 1000, if there are any outstanding convertible securities or any right, which would entitle the holder to receive equity shares then no IPO is permitted; for FPO, issuer must not change the name, present issue plus all the issues made during the current year shall not exceed 5 times the pre issue net worth.

After filing the final offer document, the next important decision is the pricing of the issue. It is a common practice in today's market conditions to go for book building process; the issuer can have differential pricing for retail investors and others but the difference shall not be more than 10%; anchor investors shall not get it lower than other investors and in composite issues there shall be no difference between public and rights issues. The gap between price band i.e. the lower and upper band shall not be more than 20%. The price band shall be announced 5 working days before the opening of the issue and if issue price is Rs.500 per share or more, face value of the shares can be less than Rs.10 per share otherwise it shall be Rs.10 per share.

In IPO, promoters' contribution shall be minimum 20% of the post issue capital and the concept of ineligible securities has high significance here. If shares are issued to promoters out of revaluation reserves or for consideration other than cash and revaluation is involved in the last three years or shares are acquired in the last 12 months at a price less than the issue price then these securities are ineligible securities for the purpose of calculating promoters' contribution. In FPO, promoters' contribution can either be 20% of the post issue capital or 20% of the proposed issue and if more is acquired then pricing would be determined as per preferential allotment regulations. The minimum promoters' contribution shall be locked-in for three years from the date of allotment or commencement of commercial production whichever is later, the rest of the pre-issue paid up capital shall be locked-in for a period of one year and locked-in shares of promoters may be pledged if term loan is taken for one of the objects of the issue and pledge is one of the conditions of the grant of the loan.

Offer to public in an IPO shall be a minimum of 25% of the post issue capital. If IPO is routed through compulsory book building, 75% is reserved for QIBs out of which 5% is for MFs, 15% is for High Networth Individuals (HNIs) and 10% for retail investors. IPOs through voluntary book building requires 50% to be reserved for QIBs out of which 5% is for MFs, 35% for retail investors and 15% for HNIs. The period for subscription shall be minimum 3 working days and maximum 10 working days.

Raising funds from capital market requires discipline and some general obligations are cast on the issuer and the intermediaries. For e.g.:- They shall not pay any incentives in cash or in kind, directly or indirectly to prospective investors for making an application, all publicity material shall contain only factual information and be free from projections and promises, after filing RHP and till allotment all material developments shall be informed by publishing the same, to give information that is published in the offer document during conferences and to get all publicity material vetted by the merchant banker, advertisement regarding subscription shall not be published while the subscription is open, they shall not use celebrities or television scrollers for the issue advertisement, all advertisements to state risk factors with the same prominence as the other details, all investor grievances must be redressed, a compliance officer who shall be a company secretary shall be appointed, merchant banker will carry due diligence, financials in the document shall not be more than 6 months old both at the time of filing the DRHP and at the time of opening the issue, share certificates and refunds must be despatched on time and if any transaction of shares takes place after filing of RHP till the closure of issue, then promoters shall inform stock exchange within 24 hours of such transaction.

Next speaker, Yogesh Chande while speaking on Preferential Allotment stated that in this case, a special resolution will be passed by the shareholders, the allottees must hold all shares in demat form and have a permanent account number. The company must be compliant with the conditions of continuous listing i.e. a minimum 25% of share capital must be held by the public. No member of the promoter group should have sold shares in the last 6 months preceding the relevant date and if sold then no entity from the promoter group is eligible for preferential allotment. The allottees must not have sold shares in the last 6 months preceding the relevant date and if promoters have subscribed to warrants but has not converted it, then the entire promoter group shall be ineligible for allotment of any security on preferential basis for a period of one year from the date of expiry of warrants. Relevant date is calculated as per the securities issued. For issue of equity, relevant date is 30 days before the date of the meeting in which the special resolution is proposed to be passed & for convertible securities it is same as equity or 30 days prior to the date on which the holders of the convertible securities become entitled to apply for shares. The explanatory statement must contain relevant disclosures like the identity of the allottees, the object and price of the issue, whether there will be a change in control, pre and post issue shareholding pattern, whether the promoters intend to subscribe to the issue, etc.

The pricing of securities issued by preferential allotment is based on 26 weeks average of the closing prices or 2 weeks average; whichever is higher. If entity is not listed for a period of twenty six weeks then the average closing price during the period listed is to be considered for the purpose; after completion of twenty six weeks, the price is to be recalculated and the difference amount, if any needs to be collected. The promoters' contribution should be locked-in for a period of 3 years; warrants to be locked-in from the date of their conversion into equity shares and pre-issue shares of the allottees shall be locked-in from relevant date up to 6 months from the date of allotment. Allotment process shall be completed within 15 days of passing of resolution. 100% consideration should be received for issue of all specified securities other than warrants (for warrants, it is 25% on issue and balance at the time of conversion). If eligible securities are issued by a listed entity to QIBs on private placement basis it is termed as QIPs (Qualified Institutional Placement).

Next topic discussed was allotment of securities to QIBs (Qualified Institutional Buyers). The eligible securities available for allotment include equity shares, NCDs (Non Convertible Debentures), warrants and convertible securities other than warrants. Relevant date to be considered for equity shares is the date of board meeting in which the board decides to open the proposed issue and for convertible securities it is either same as equity shares or the date when the holder becomes entitled to apply for equity shares. Shareholder resolution which is valid for 12 months must clearly state that it is a QIB placement. The company must be listed on a recognised stock exchange for a period of one year. Merchant banker must be appointed and he must submit a due diligence report to the stock exchange where the shares of the company are listed. All placement documents shall clearly state that this is not a public issue; it shall be serially numbered and circulated only to select investors; given to the stock exchange and eventually shall be hosted on the website of the stock exchange.

The issue price shall not be less than the average of the high and low of the closing prices for the two weeks prior to the relevant date and a discount of 5% may be allowed if approved by the shareholders. The issue price for convertible securities is based on the relevant date disclosed in the resolution and no allotment of partly paid shares is permitted. A minimum of 10% shall be allotted to mutual funds and if no subscription is received, then it shall be adjusted to other QIBs. If QIBs have rights under a shareholder agreement like veto power, power to appoint directors and other similar rights then they shall be deemed to be promoters and will be ineligible for allotment. The number of allottees is minimum two if the issue size is Rs.250 crores or less and minimum five if the issue size is more than Rs.250 crores. Minimum gap between two QIBs should be 6 months under single or more resolutions. The shares allotted are subject to lock-in and shall not to be transferred for a period of one year from the date of allotment.

The speakers also spoke on due diligence which is an integral part of any IPO/FPO as it ensures financial viability, legal viability, project viability and explore the potential value addition to the issuer.

Both the speakers kept the session very interactive and lively by way of examples and sharing of professional experience which helped the participants in understanding the practical aspects of SEBI (ICDR) Regulations, 2009. Both the speakers reiterated the fact that the term Regulators and Stock Exchange does not mean only Indian Regulators and Stock exchanges but any such institution in the world. The mantra for Company Secretaries is simple, "When in Doubt Comply, When in Doubt Disclose".

Conference on the Growth Outlook for MSMEs in India

On 8.3.2013 the ICSI - CCGRT conducted a Conference on the Growth Outlook for MSMEs in India jointly with Indian Merchants' Chamber (IMC) at its premises. A galore of professionals treated the audience to a feast of thoughts on the subject by sharing their rich experience and knowledge. The dignitaries on the dais from IMC and ICSI inaugurated the conference. They threw light on the fact that MSMEs are an integral part of our economic eco-system and are unique to India as in other developed countries they are hardly visible. They are also backbone of large manufacturing industries like Maruti, Godrej and many others. MSMEs contribute towards 8% of GDP, 45% of manufacturing output and are responsible for 40% of our exports. The huge giants of today's world started as MSMEs; Google, Wipro, Infosys, YouTube to name a few. In order to grow, MSME entrepreneurs need Finance, Skilled Manpower and Infrastructure for growing and surviving and the main reason for their sickness is lack of funds. SME Listing has been launched but it is still not very vibrant.

The First Session on Setting up of MSMEs was chaired by Dr K. Ranganathan, President, Creative Communication and Management Center (CCMC). Prof. R Balakrishnan, former Company Secretary, FOSECO Ltd., Smitesh Desai, Practising Company Secretary, Valsad, S V Rasal, Principal Director, IDEMI, Ministry of MSME, Govt. of India and G M Ambhore, Director, MSME Development Institute, Ministry of MSME, Govt. of India, Mumbai were the other panelists.

Prof. Balakrishnan explained the procedure for setting up a MSME and pointed out that a consultant can provide guidance and organize for their PAN, Factory licences, Tax Registration, Government Schemes registration, etc. He also discussed Selection of Organization structure, Contribution of MSME in industrial production, Challenges faced by MSMEs, SWOT Analysis and Corporate Governance for MSMEs. Smitesh Desai elucidated on the legal aspect of setting up of MSMEs i.e. PAN/ TAN/ Profession Tax/ VAT/Service Tax/Excise/Labour Law registration/other special registration and insisted that liability should be an important consideration while choosing the form of business.

Speaking on the important bodies/institution for MSMEs sector in India, S V Rasal pointed out that out of 26 million MSMEs, 90% are micro enterprises and they provide around 60 million employments and produces over 6000 products.

G M Ambhore highlighted the role of Government in enabling MSME-Friendly Environment/Scheme.

Dr. K. Ranganathan made the concluding remarks for the session and quoted that, "What a mind can conceive and a Heart can believe, is what a person can do".

The Second Session on Financing, Funding & Incentives for MSMEs was chaired by R N Pradeep, Chief Advisor, PDS & Associates Chairman, Credit Rating & Risk Advisory Services Pvt. Ltd & Former CMD, Corporation Bank & Former ED, Central Bank of India. Sushil Manhot, Chairman, SIDBI, Sanjiv Saraff, Senior Vice President, Investment Banking, ICICI Securities Ltd. & Co-Chairman, MSME Committee, IMC, Jayesh Kumar, NSE Ltd., Dr Sudhanshu, Dy. General Manager, Agricultural & Processed Food Products Export Development Authority (APEDA), Navi Mumbai were the other panelists. Speaking on the role of Banks/ Financial institutions in financing MSMEs, Manhot explained the process through which MSMEs can increase the confidence of bankers for funding their projects viz. to provide complete and correct information and show that their project is commercially viable while applying for loan. Saraff illuminated on the different funding options like equity funding, crowd funding, VC funding, Seed funding, Angel funding and many others. Jayesh highlighted the advantages of listing for MSMEs and assured that SME listing platform would be shortly available on NSE. Dr Sudhanshu discussed the role of APEDA in Export Promotion of Agricultural & Processed Food Products.

The Third Session on Sustainable Growth for MSMEs was chaired by Suresh Thakur Desai, FCS. The Panelists included S.P.Jain, Managing Director Net Biz Systems Pvt. Ltd. who elucidated the importance of IT such as automation, connectivity with customers, availability of information and maximum productivity in fuelling growth of MSMEs; CA Suresh Kumar Subrahmanyan, Partner M/s Basu Suresh & Associates & Chairman, Banking and Finance Committee, All India MSME Association who explained the CSTMSE Scheme i.e. Credit Guarantee Fund Trust for Micro and Small Enterprises Scheme set up by SIDBI; Manish Jain, Managing Partner - FinMen Consultancy & Vice Chairman of Banking and Finance Committee of All India MSME Association who discussed the nitty-gritty of credit rating and its value and finally, Dr Avinash K Dalal, National President (Founder), All India MSME Association who gave his suggestions for the growth of MSMEs in future, highlighting that Limited Liability Partnership is a good form of organisation for MSMEs. In conclusion, Suresh Thakur Desai pounded on the conflicts between economy and ecology and insisted on, 'Developing industry for benefit of customers without affecting the resources of future generation'.

The Fourth Session on Challenges and Competitiveness was chaired by Prof. N Swaminathan, Secretary General, Thane Belapur Industries Association. Panelist, Vijay Kumar from Khed Economic Infrastructure Pvt. Ltd, Pune explained the history of SEZ and their importance for MSMEs. Reiterating on 'Think

Tomorrow and the Global Leadership Mindset', Dr. Nitin Parab. CEO and Evangelist Crosslink International introduced the audience with the concept of new age leadership and the qualities of emotional leaders viz. resonance and empathy. Shuvayan Bhowmik, Area Head–Mumbai, SME Rating Agency of India Ltd threw light on the Subsidies & Schemes available to MSMEs. Towards the end, Advocate Bhalchandra S Mahajani clarified different nuances of the negotiable instruments and stated 'India's biggest need is to control equity' otherwise we will earn from one hand and lose it to foreigners from other hand.

Programme on Loan documentation, Recovery of Debts and & SARFAESI Laws

On 2.3.2013 ICSI-CCGRT conducted a programme on Loan Documentation, Recovery of Debts and SARFAESI Laws at its premises in CBD Belapur, Navi Mumbai.

Guest Speaker M V Phadke, Chief General Manger, IDBI Bank Ltd. In his address elucidated the importance of Documentation. The success of banks/ Financial Institutions, he said, depends on safe lending and safe investments. Lending is a risky business and it is very important to mitigate risk associated with it. Banking is a business of managing risks viz. 1) Financial risks (credit risk, market risk etc.) and 2) Non-financial risks (liquidity risk, forex risk, reputational risk etc.). Documentation tries to mitigate credit risk. Hence, it is very important. Once the feasibility study is conducted and loan is sanctioned, sanction letter is issued after which loan documentation follows. It is tri-partite namely principal borrower, lender and guarantor/surety. He highlighted the indispensable mantra for documentation i.e. "Control" and "Command". Any document must be prepared and scrutinised by keeping this mantra in mind.

As far as the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002 (SARFAESI Act, 2002) is concerned, it was enacted to enable realization of financial assets in respect of which security interest is created. The SARFAESI Act provides for the manner for enforcement of security interests by a secured creditor without the intervention of a court or tribunal. If any borrower fails to discharge his liability within 60 days of notice from the secured creditor, the secured creditor is conferred with powers under the SARFAESI Act to take possession of the secured assets of the borrower, including transfer by way of lease, assignment or sale, for realizing the secured assets, takeover of the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured assets, appoint any person to manage the secured assets possession of which is taken by the secured creditor, and require any person, who has acquired any of the secured assets from the borrower and from whom money is due to the borrower, to pay the secured creditor so much of the money as if sufficient to pay the secured debt. The Central Government has also prescribed Security Interest (Enforcement) Rules, 2002 under the SARFAESI Act.

He then discussed the various forms of security and its documentation. 1) Negative lien which evolved out of customary practice in banks. Negative lien agreement contains 3 parts namely Disclosure of Statement of facts, Disclosure for commercial comfort (pending litigations, encumbrances and assurance that there is no third party right created during existence of this lien) and Disclosure for legal comfort (deposit of title deeds, irrevocable POA etc.). This agreement need not be registered. 2) Hypothecation which is defined as a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property. It is different from pledge where possession of property is delivered. The advantage of hypothecation is that the asset remains functional but the disadvantage is that since the possession is with the borrower, he can play with it. Therefore, it needs to be monitored regularly during the tenure of the loan. Due to these reasons, hypothecation is a very weak security for banks and hence they need to be alert. Hypothecation is enforceable under both Recovery of Debts Act and SARFAESI Act. 3) Guarantee which is a collateral security and defined under section 126 of Contract Act. This form of security attempts to pierce corporate veil of companies by catching hold of persons who manage the affairs of the company. This security transfers the risk from borrower to guarantor. Event of default vis-à-vis guarantor is more important than event of default vis-à-vis borrower. Hence, documentation should be more stringent for guarantor. It is very important to have list of legal heirs of guarantors. But the liability of legal heirs is limited to the extent of their inheritance to the personal property of the guarantor. Various forms of guarantees include personal guarantees, bank guarantees, corporate guarantees, government guarantees etc. Guarantees are enforceable under Recovery of Debts Act but not under SARFAESI Act. 4) Comfort letters whose history can be traced back to the World Wars in Germany. It is important to look into the strength of comfort letter i.e. its legal and commercial strength. The lender can decide the way the comfort letter is drafted. Section 22 of SICA is an eclipse on the rights of the banker if the company goes to BIFR. Hence, comfort letters should be drafted accordingly to protect the interest of the banks. SARFAESI Act can be used to take out reference to BIFR and bring the borrower to the negotiation table. Thus, we have moved from debtor-oriented legal regime to creditor-oriented legal regime 5) Mortgage whereby the owner transfers to the lender an interest in immovable property to secure the repayment of debt. It is evidenced by a mortgage deed. There are various types of mortgage namely simple mortgage, English mortgage, usufractuary mortgage, mortgage by deposit of title deeds etc. Any form of mortgage can be enforced under SARFAESI laws without judicial intervention. DRT also gives remedy for recovery irrespective of whether the charge is secured or not.

Phadke shared his rich professional experience which helped in understanding the technicalities of Loan Documentation and SARFAESI Laws. He left the participants craving for more.

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CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)

PCH - 2

PDP - 4

Series Four

International Trade Development and Investor Awareness

DOING BUSINESS WITH CANADA

After the Success of Series 1 "Doing Business with US"
Series 2 "Doing Business with Indonesia"
Series 3 " Doing Business with Zealand"
We are happy to announce Series 4 " Doing Business with Canada"

Day, Date & Timing	Saturday, April 27, 2013 — 09.00a.m. – 02.00 p.m. followed by lunch
Venue	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614
Focus of Coverage	◆ Economic prospects for Trade and Investment ◆ Education and employment opportunities abroad ◆ Travel and Tourism
Speakers being approached include	Nicolas Lepage, Senior Trade Commissioner, Consulate General of Canada Preeti Prabhu, Trade Commissioner (Education), Consulate General of Canada And Prominent professionals from corporate.
Participant Mix	Company Secretaries, Chartered Accountants and other professionals dealing with the subject.
Fees (inclusive of Service Tax@12.36%)	Students ₹ 650/- per delegate Members ₹ 750/- per participant Others ₹ 1500/- per participant to cover the cost of program kit, high tea and other organizational expenses.

Limited seats and hence prior registration is desirable.

Registration : The Fees may be paid by Cash at CCGRT or drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to Shri Gopal Chalam, Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614
Phone : 022-27577814, 4102 1515 ccgrt@icsi.edu

*Prior registration desirable

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CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)

PDP - 24

PCH - 12

Announces

Three days Workshop

on

Appearing before NCLT & other Quasi Judicial Bodies

Background	One of the important provisions proposed in the Companies Bill, 2012 passed by the Lok Sabha on 18th December 2012 is the constitution of National Company Law Tribunal (NCLT), an independent tribunal and National Company Law Appellate Tribunal (NCLAT), its appellate tribunal to whom several judiciary and quasi-judiciary powers under the companies act would be transferred. In order to equip the young company secretaries with the requisite skills enabling them to appear before NCLT & other quasi judicial bodies, ICSI-CCGRT is organising this three full days workshop on 'Appearing before NCLT & other Quasi Judicial Bodies'
Days & Dates	Friday, May 03, Saturday, May 04, & Sunday, May 05, 2013
Venue	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614

Proposed Coverage	◆ Provision of Companies Act relating to NCLT
	◆ Preparation of Petitions and applications-
	  ◆ Theory
	  ◆ Practical
	◆ Mock preparation and appearances
	◆ Visit to Quasi Judicial Bodies / High Court

Speakers	Eminent speakers with practical exposure to the subject will address the participants
Participant Mix	Primarily meant for young members of the Institute and students interested in a career in this area.
Fees (inclusive of Service Tax@12.36%)	Members of ICSI ₹ 5,000/- per participant Students ₹ 3,000/- per participant Others ₹ 7,500/- per participant to cover the cost of program kit, background material, lunch and other organizational expenses Early bird discount of ₹ 500/- for registration with payment at ICSI-CCGRT by Friday, 19th April, 2013.

* Note: Members attending the program on all days are entitled to 12 PCH
Students attending the program on all days are entitled to 24 PDP

Registration : The Fees may be drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to Dean / Assistant Director, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614
Phone : 022-7577814, 41021515/01/04, email: ccgrt.icsi@gmail.com,ccgrt@icsi.edu

* Limited seats and hence prior registration is desirable

Government of India

Report of the Financial Sector Legislative Reforms Commission*

Executive Summary

Mandate

The Financial Sector Legislative Reforms Commission was constituted by the Government of India, Ministry of Finance, in March, 2011. The setting up of the Commission was the result of a felt need that the legal and institutional structures of the financial sector in India need to be reviewed and recast in tune with the contemporary requirements of the sector.

The institutional framework governing the financial sector has been built up over a century. There are over 60 Acts and multiple rules and regulations that govern the financial sector. Many of the financial sector laws date back several decades, when the financial landscape was very different from that seen today. For example, the Reserve Bank of India (RBI) Act and the Insurance Act are of 1934 and 1938 vintage respectively. Financial economic governance has been modified in a piecemeal fashion from time to time, without substantial changes to the underlying foundations. Over the years, as the economy and the financial system have grown in size and sophistication, an increasing gap has come about between the requirements of the country and the present legal and regulatory arrangements.

Unintended consequences include regulatory gaps, overlaps, inconsistencies and regulatory arbitrage. The fragmented regulatory architecture has led to a loss of scale and scope that could be available from a seamless financial market with all its attendant benefits of minimising the intermediation cost. A number of expert committees have pointed out these discrepancies, and recommended the need for revisiting the financial sector legislations to rectify them. These reports help us understand the economic and financial policy transformation that is required. They have defined the policy framework within which reform of financial law can commence.

The remit of the Commission is to comprehensively review and redraft the legislations governing India's financial system, in order to evolve a common set of principles for governance of financial sector regulatory institutions. This is similar to the tradition of Law Commissions in India, which review legislation and propose modifications.

The main outcome of the Commission's work is a draft 'Indian Financial Code' which is non-sectoral in nature (referred to as the draft Code throughout), which is in Volume II of the report and replaces the bulk of the existing financial law.

Work process of the Commission

The Commission took a comprehensive, first principles approach to the task, rooting its analysis and decisions in a conceptual analysis of financial regulation and review of experience till date. Some elements of the work process that are used in India in Law Commissions were utilised. The Commission embarked upon an intense two year process, which started in April 2011. Three elements were emphasised in the work process. Commission has followed a *consultative approach*, reaching out into knowledge and perspective across all elements of Indian finance. Commission has cultivated a *multi-disciplinary approach*, drawing on the fields of public economics, law, finance, macroeconomics and public administration. Finally, Commission has drawn on the *experiences of emerging markets and developed jurisdictions* in understanding how financial law and agencies have been constructed worldwide.

The drafting of law in a democracy must necessarily give opportunities for all viewpoints to be heard. In addition, the drafting of law in finance involves considerable technical challenges. Over this two year period, more than 120 individuals participated in the process of the Commission in various capacities. This has helped ensure that diverse viewpoints fed into the debates of the Commission, and that the draft Code is characterised by technical soundness in terms of finance, economics, law, and public administration.

The tasks of financial law

The first set of questions that the Commission dealt with was about the purpose of the financial legal framework. Regulation is not an end in itself; it exists in order to address market failures. From this point of view, nine components were envisioned:

1. *Consumer protection* – The Commission found that a mere 'buyer beware' approach is not adequate in finance; regulators must place the burden upon financial firms of doing more in the pursuit of consumer protection. This perspective shapes interventions aimed at prevention (of inducing financial firms towards fair play) and cure (redress of grievances).
2. *Micro-prudential regulation* – When financial firms make promises to consumers, e.g. the repayment of a bank deposit, regulators are required to monitor the failure probability of the financial firm, and undertake interventions that reduce this failure probability.
3. *Resolution* – Micro-prudential regulation will diminish, but not

* Available on (finmin.nic.in)- the Website of the Ministry of Finance, Government of India.

eliminate, the failure of financial firms. A specialised resolution capability is required, which swiftly and efficiently winds down stressed financial firms, and protects the interests of small customers.

4. *Capital controls* – These are restrictions on cross-border activity on the capital account. The Commission has no view on the sequencing and timing of capital account liberalisation. The work of the Commission in this field was focused on placing the formulation and implementation of capital controls on a sound footing in terms of public administration and law.
5. *Systemic risk* – Micro-prudential regulation thinks about the collapse of one financial firm at a time. A very different point of view is required when thinking of the collapse of the entire financial system. Micro-prudential regulation is about the trees, and systemic risk regulation is about the forest. It calls for measurement of systemic risk, and undertaking interventions at the scale of the entire financial system (and not just one sector) that diminish systemic risk.
6. *Development and redistribution* – Financial economic governance in India is charged with the development of market infrastructure and processes, and with redistribution. These objectives have to be achieved through sound principles of public administration and law.
7. *Monetary policy* – Objectives, powers and accountability mechanisms have to be setup for monetary policy.
8. *Public debt management* – A specialised framework on public debt management has to be setup that takes a comprehensive view of the liabilities of Government, and establishes the strategy for low-cost financing in the long run.
9. *Contracts, trading and market abuse* – Certain adaptations to the foundations of commercial law, surrounding contracts and property, are required to enable the financial system. Alongside this, the legal foundations for the securities markets are established.

The overall task of constructing financial law comprises the above nine elements, and of establishing sound foundations of regulatory governance.

This problem statement differs considerably from approach taken by existing laws in India, which are sector-specific. The existing laws deal with sectors such as banking, securities and payments. The Commission analysed this issue at length, and concluded that non-sectoral laws constitute a superior strategy.

As an example, a non-sectoral consumer protection law would lead to harmonisation of the consumer protection across multiple sectors. If this approach were not taken, there is the possibility of a certain sector having more lax standards of consumer protection than another. Profit-seeking financial firms would rush to exploit the profit opportunities, and distort the structure of the financial system.

In similar fashion, a non-sectoral micro-prudential law would ensure that similar reasoning about risk is applied all across the financial system. If micro-prudential regulation is done differently in different sectors, then profit-seeking financial firms will have an incentive to portray activities as belonging to sectors where capital requirements are weaker.

Non-sectoral laws are closely related to the idea of principles-based law. The draft Code is non-sectoral principles-based law. Regulators will issue regulations, that will often be sectoral and often be rules-based. The advantage of this arrangement is that specific details of technology and market process are not embedded in the law. Over the years, changes in technology and institutions would lead to modifications in regulations. Timeless principles would be re-interpreted in the future by courts and the tribunal, which would create case law. The Commission believes that the draft Code will, with no more than minor modifications, represent the essence of financial law for many decades to come. In this respect, the work of the Commission has taken Indian financial law closer to its roots in the common law tradition.

At present, financial law in India is fairly complex. The drafting style used in most current laws is relatively complex and thus unreadable to non-specialists. The Commission has tried to achieve a simple writing style for the draft Code. The unification of many laws into a single draft Code has greatly assisted simplification. A single set of definitions of terms is utilised across all 450 sections of the law. The entire draft Code is internally consistent, and has a simple and logical table of contents. This emphasis on simplicity would reduce the complexity faced by law-makers, bureaucrats, legal professionals and finance practitioners in understanding the law and working within it.

The first task of financial law is to establish a clear strategy for the nine areas listed above. The second task of financial law is to establish financial regulators.

In a liberal democracy, the 'separation of powers' doctrine encourages a separation between the legislative, executive and judicial functions. Financial regulators are unique in the extent to which all three functions are placed in a single agency. This concentration of power needs to go along with strong accountability mechanisms.

There is a strong case for independence of regulators. Independent regulators would yield greater legal certainty. The quest for independence of the regulator requires two planks of work. On one hand, independence needs to be enshrined in the law, by setting out many processes in great detail in the law. On the other hand, alongside independence there is a requirement of accountability mechanisms.

The Commission has adopted five pathways to accountability. First, the processes that the regulator must adhere to have been written down in considerable detail in the draft Code. Second, the regulation-making process (where Parliament has delegated law-making power to regulators) has been established in the draft Code with great care, with elaborate checks and balances. Third, systems of supervision have been established in the draft Code with a great emphasis on the rule of law. Fourth, strong reporting mechanisms have been established in the draft Code so as to achieve accountability. Finally, a mechanism for judicial review has been established for all actions of regulators through a specialised Tribunal.

At present, laws and regulations in India often differentiate between different ownership or corporate structures of financial firms. The Commission has pursued a strategy of ownership-neutrality: the regulatory and supervisory treatment of a financial firm would be the same, regardless of whether it is private India, foreign, public sector and co-operative. This would yield a level playing field. At present, many public sector financial firms (e.g. Life Insurance Corporation of India (LIC), State Bank of India (SBI)) are rooted in a specific law. The Commission recommends that they be converted into companies under the Companies Act, 1956. This would help enable ownership-neutrality in regulation and supervision. This recommendation is not embedded in the draft Code.

A related concern arises with co-operatives which fall within the purview of state Governments. The Commission recommends that State Governments should accept the authority of Parliament (under Article 252 of the Constitution) to legislate on matters relating to the regulation and supervision of co-operative societies carrying on financial services. This recommendation is also not included in the draft Code. The Commission proposes that regulators may impose restrictions on the carrying on of specified financial services by co-operative societies belonging to States which have not accepted the authority of Parliament to legislate on the regulation of co-operative societies carrying on financial services.

The footprint of regulation

As a first step in determining the appropriate form and extent of regulation for the Indian financial sector, the Commission began with an identification of the basic subject matter of regulation - financial products and services. In the view of the Commission, particular forms of dealings in financial products, such as securities, insurance contracts, deposits and credit arrangements, constitute the rendering of financial services. This includes services such as, sale of securities, acceptance of public deposits, operating investment schemes and providing credit facilities. The Commission however recognises that a principles-based approach to defining financial products and financial services comes with the risk of unintentionally casting the net of regulation too wide. Therefore, it was decided that financial regulation should apply to only those persons who are engaged in the business of carrying on financial services.
While proposing a list of financial products and services in the draft Code, the Commission is fully aware of the constant innovation in the field of finance. In order to ensure that the law can keep pace with these changes, the draft Code empowers the Government to expand the list of financial products and services, as required. At the same time, the draft Code also allows the regulators to exclude specific financial services carried out by specific categories of persons from the scope of financial services. Using this power the regulator will be able to specify exemptions, e.g. for hedge funds that do not access funds from more than a particular number of persons or investment firms that only advise their related persons. In doing so, the regulator would of course be bound by the objectives and guided by the principles set out under the draft Code.

Structure of the regulator

Just as the draft Code does not differentiate between different sectors in the financial system, the draft Code establishes a single framework for regulatory governance across all agencies. This is rooted in the fact that the requirements of independence and accountability are the same across the financial system. With small adaptations, this standard framework is used in the draft Code for all agencies created therein.

The draft Code creates a series of obligations for the Government and for regulators. The draft Code covers all functions of regulators, and defines the behaviour that is required from the regulator.

All regulators will have an empowered board. The Commission has drafted a precise selection-cum-search process for the appointment of all members. Four kinds of members are envisioned: the chairperson, executive members including an administrative law member, non-executive members and Government nominees. The role of each of these kinds of members has been defined. The appointment conditions for board members have been defined.

The draft Code establishes certain elements of the functioning of board meetings, so as to ensure adequate oversight of the board over the organisation, and an emphasis on transparency.

A general framework for establishing advisory councils, that will support the board, has been created. This is sometimes invoked in the draft Code in constructing statutory advisory councils. Apart from this, the board will be free to construct additional advisory councils based on its needs.

The Commission envisages that fees charged to the financial system will fund all regulatory agencies. Financial regulation will, therefore, generally impose no burden upon the exchequer. This will assist independence by giving regulators greater autonomy, and help the creation of a specialised workforce.

Functions and powers of the regulator

The actual functioning of the regulator lies in three areas: regulation-making, executive functions and administrative law functions. In each area, the draft Code defines the functioning of regulators with considerable specificity.

At present, in India, there is a confusing situation with regulators utilising many instruments such as regulations, guidelines, circulars, letters, notices and press releases. The draft Code requires all regulators to operate through a small number of well defined instruments only.

The first task of a regulator is that of issuing regulations. If laws are poorly drafted, there is a possibility of excessive delegation by Parliament, where a regulatory agency is given sweeping powers to draft regulations. The Commission has consistently sought to define specific objectives, define specific powers and articulate principles that guide the use of powers. Through this, regulation-making at the regulator would not take place in a vacuum.

A structured process has been defined in the draft Code, through which regulation-making would take place. The regulator would be required to articulate the objective of the regulation, a statement of the problem or market failure that the regulation seeks to address, and analyse the costs and benefits associated with the proposed regulation. A systematic public consultation process is written into the draft Code. This structured regulation-making process would reduce arbitrariness and help improve the quality of regulations.

This structured regulation-making process requires a considerable expenditure of time and effort at the regulator. This is commensurate with the remarkable fact that Parliament has delegated law-making power to a regulator. In an emergency, the regulator can issue regulations without going through the full regulation-making process. However, these regulations would lapse within six months.

Alongside regulations, the draft Code envisages a process through which regulators can issue 'guidelines'. Guidelines clarify the interpretation of regulations but do not, themselves, constitute regulations. Specifically, violation of guidelines alone would not constitute violation of the law.

At present, regulations are not subject to judicial review. The Commission envisages an important process of judicial review of regulations. It would be possible to challenge regulations either on process issues (i.e. the full regulation-making process was not followed) or substantive content (i.e. the regulation does not pursue the objectives, or exceeds the powers, or violates the principles, that are in the Act). The Commission believes that these checks and balances will yield considerable improvements in the quality of regulation-making in India.

Turning to executive functions, the draft Code has specifics about each element of the executive powers. The first stage is the processing of permissions. A systematic process has been laid down through which permissions would be given. The second element is information gathering. Regulators require a substantial scale of regular information flow from financial firms. The Commission envisages a single 'Financial Data Management Centre'. All financial firms will submit regular information filings electronically to this single facility. This would reduce the cost of compliance, and help improve data management within regulators.

Turning to penalties, the draft Code has a systematic approach where certain standard categories are defined, and principles guide the application of penalties. This would help induce greater consistency, and help produce greater deterrence. A critical component of the framework for penalties is the mechanisms for compounding, which are laid on a sound foundation, and consistently applied across the entire financial system.

Once an investigation has taken place, and the supervisory team within a regulator believes there have been violations, the principles of public administration suggest that the actual order should be written by disinterested party. At the level of the board, an 'administrative law member' would have oversight of 'administrative law officers' who would not have any responsibilities within the organisation other than performing quasi-judicial functions. A systematic process would operate within the regulator, where administrative law officers and the administrative law member would be presented with evidence and write orders.

The working of the regulator ultimately results in regulations and orders. These would face judicial review at the Tribunal. The Commission envisages a unified Financial Sector Appellate Tribunal (FSAT) that would hear all appeals in finance. A considerable focus has been placed, in the draft Code, on the functioning of the registry of FSAT, so as to achieve high efficiency.

Consumer protection

The work of the Commission in the field of consumer protection marks a watershed compared with traditional approaches in Indian financial law. It marks a break with the tradition of caveat emptor, and moves towards a position where a significant burden of consumer protection is placed upon financial firms.

The draft Code first establishes certain basic rights for all financial consumers. In addition, the Code defines what is an unsophisticated consumer, and an additional set of protections are defined for these consumers. The basic protections are:

1. Financial service providers must act with professional diligence;
2. Protection against unfair contract terms;
3. Protection against unfair conduct;
4. Protection of personal information;
5. Requirement of fair disclosure;
6. Redress of complaints by financial service providers.

In addition, unsophisticated consumers have three additional protections:

1. The right to receive suitable advice;
2. Protection from conflicts of interest of advisors;

3. Access to the redress agency for redress of grievances.

The regulator has been given an enumerated set of powers through which it must implement these protections. Alongside these objectives and powers, the regulator has been given a set of principles that guide the use of the powers.

This framework of rights – powers – principles will shape the drafting of regulations. Once this has been done, regulators are obliged to undertake supervisory actions to verify that regulations are being complied with. This goes along with enforcement and disciplinary actions.

This regulatory and supervisory strategy will yield considerable gains in consumer protection, when compared with the present Indian practices. At the same time, there will be certain consumers who are aggrieved. The Commission envisages a single unified Financial Redress Agency (FRA) which would serve any aggrieved consumer, across all sectors. This would feature a low-cost process through which the complaint of the consumer against the financial firm would be heard, and remedies awarded.

As with the FSAT considerable effort has been made by the Commission to obtain an FRA that has high operational capabilities and thus imposes low transactions costs upon all participants.

The FRA is important as a mechanism for addressing the unfair treatment of one consumer. The FRA is also envisaged as a valuable measurement system, for the case database of the FRA is a map that shows where the problems of consumer protection lie. Hence, the Commission envisages a systematic process through which the analysis of this data would feed back into improvements in regulation and supervision.

The Commission recognises that competition is a powerful tool for the protection of consumers. The Competition Act enshrines a non-sectoral approach to competition policy. The Commission has envisaged a detailed mechanism for better co-operation between financial regulators and the Competition Commission through which there is greater harmony in the quest for greater competition.

Micro-prudential regulation

The pursuit of consumer protection logically requires micro-prudential regulation: the task of constraining the behaviour of financial firms so as to reduce the probability of failure. When a financial firm makes a promise to a consumer, it should be regulated so as to achieve a certain high probability that this promise is upheld.

The first component of the draft Code is a definition of the class of situations where micro-prudential regulation is required. This is done in a principles-based way, focusing on the ability of consumers to understand firm failure, to co-ordinate between themselves, and the consequences of firm failure for consumers.

Regulators have five powers through which they can pursue the micro-prudential goal: regulation of entry, regulation of risk-taking, regulation of loss absorption, regulation of governance and management, and monitoring/supervision. The draft Code specifies each of these powers in precise legal detail.

Alongside this, it specifies a set of principles that guide the use of these powers. Eleven principles have been identified that must be complied with. For example, principles require proportionality (greater restrictions for greater risk), equal treatment (equal treatment of equal risk), and so on.

It is envisaged that regulators will pursue the micro-prudential objective by writing regulations that utilise the five powers. At the same time, these regulations would have to satisfy the ten principles.

In this framework, there may be broadly three grounds for appeal against regulations. A regulation engages in micro-prudential regulation of an activity where micro-prudential regulation is not required. A regulation utilises powers which are not prescribed in the law. Finally, a regulation violates the principles which the regulator is required to follow.

Resolution

The Indian financial system has traditionally been dominated by public sector firms. When consumers deal with a Public Sector Undertaking (PSU) bank or insurance company, for all practical purposes, they are dealing with the Government, and there is no perceived possibility of failure. Over the last 20 years, however, India has increasingly opened up entry into finance, and a new breed of private financial firms has arisen. These firms can fail, and when this happens, it can be highly disruptive for households who were customers of the failing firm, and for the economy as a whole.

Sound micro-prudential regulation will reduce the probability of firm failure. However, eliminating all failure is neither feasible nor desirable. Failure of financial firms is an integral part of the regenerative processes of the market economies: weak firms should fail and thus free up labour and capital that would then be utilised by better firms. However, it is important to ensure smooth functioning of the economy, and avoid disruptive firm failure.

This requires a specialised 'resolution mechanism'. A 'Resolution Corporation' would watch all financial firms which have made intense promises to households, and intervene when the net worth of the firm is near zero (but not yet negative). It would force the closure or sale of the financial firm, and protect small consumers either by transferring them to a solvent firm or by paying them.

At present, for all practical purposes, at present, an unceremonious failure by a large private financial firm in India is not politically feasible. Lacking a formal resolution corporation, in India, the problems of failing private financial firms are placed upon customers, tax-payers, and the shareholders of public sector financial firms. This is an unfair arrangement.

Establishing a sophisticated resolution corporation is thus essential. Drawing on the best international practice, the draft Code envisages a unified resolution corporation that will deal with an array of financial firms such as banks and insurance companies. It will concern itself with all financial firms which make highly intense promises to consumers, such as banks, insurance companies, defined benefit pension funds, and payment systems. It will also take responsibility for the graceful resolution of systemically important financial firms, even if they have no direct links to consumers.

A key feature of the resolution corporation will be speed of action. It must stop a financial firm while the firm is not yet bankrupt. The international experience has shown that delays in resolution almost always lead to a situation where the net worth is negative, which would generally impose costs upon the tax-payer. The choice that we face is between a swift resolution corporation, which will stop financial firms when they are weak but solvent, and a slow resolution corporation which will make claims upon the tax-payer. Hence, a sophisticated legal apparatus is being designed, for a resolution corporation that will act swiftly to stop weak financial firms while they are still solvent. The resolution corporation will choose between many tools through which the interests of consumers are protected, including sales, assisted sales and mergers.

It is important to make a clear distinction between micro-prudential regulation and resolution. Micro-prudential regulation and supervision is a continuous affair. Occasionally, when a firm approaches failure, resolution would come into action, and it would behave very differently from micro-prudential regulation. The resolution corporation would be analogous to a specialised disaster management agency, which is not involved in everyday matters of governance, but assumes primacy in a special situation. The resolution corporation will have close co-ordination with micro-prudential regulation. For strong firms, the resolution corporation will lie in the background. As the firm approaches default, the resolution corporation will assume primacy.

The resolution corporation will charge fees to all covered entities, who benefit from greater trust of unsophisticated consumers. This fee will vary based on the probability of failure, and on the financial consequences for the resolution corporation of the event of failure. This risk-based premium would help improve the pricing of risk in the economy, and generate incentives for financial firms to be more mindful of risk-taking.

The first three pillars of the work of Commission – consumer protection, micro-prudential regulation and resolution – are tightly interconnected. All three are motivated by the goal of consumer protection. Micro-prudential regulation aims to reduce, but not eliminate, the probability of the failure of financial firms. Resolution comes into the picture when, despite these efforts, financial firms do fail.

Capital controls

India has a fully open current account, but many restrictions on the capital account are in place. A major debate in the field of economic policy concerns the sequencing and timing towards capital account convertibility. The Commission has no view on this question. The focus of the Commission has been on establishing sound principles of public administration and law for capital account restrictions. A large array of the difficulties with the present arrangements would be addressed by emphasising the rule of law and by establishing sound principles of public administration.

In terms of creation of rules, it is envisaged that the Ministry of Finance would make ‘rules’ that control inbound capital flows (and their repatriation) and that RBI would make ‘regulations’ about outbound capital flows (and their repatriation). With RBI, the regulation-making process would be exactly the same as that used in all regulation-making in the Commission framework. With Ministry of Finance, the rule-making process would be substantially similar.

The implementation of all capital controls would vest with the RBI. The draft Code envisages the full operation of the rule of law in this implementation.

Systemic risk

The field of financial regulation was traditionally primarily focused on consumer protection, micro-prudential regulation and resolution. In recent years, a fresh focus on the third field of systemic risk has arisen. Systemic risk is about a collapse in functioning of the financial system, through which the real economy gets adversely affected. In the aftermath of the 2008 crisis, governments and lawmakers worldwide desire regulatory strategies that would avoid systemic crises and reduce the costs to society and to the exchequer of resolving systemic crises.

The problem of systemic risk requires a bird’s eye perspective of the financial system: it requires seeing the woods and not the trees. This is a very different perspective when compared with the engagement of conventional financial regulation, which tends to analyse one consumer, one financial product, one financial market or one financial firm at a time. The essence of the systemic risk perspective to look at the financial system as a whole. This differs from the perspective of any one financial regulatory agency, and particularly divergent from the perspective of any one sectoral regulator which is likely to see that sector and not the overall financial system.

To some extent, systemic crises are the manifestation of failures on the core tasks of financial regulation, i.e. consumer protection, micro-prudential regulation and resolution. If the three pillars of financial regulation would work well, many of the crises of the past, and hypothetical crisis scenarios of the future, would be defused. Systemic risk in India will go down if institutional capacity is built for the problems of consumer protection, micro-prudential regulation and resolution. However, it will not be eliminated.

First, despite the best intentions, errors of constructing the institutional framework, and human errors, will take place. Second, even if all three pillars work perfectly, some systemic crises would not be forestalled. This calls for work in the field of systemic risk, as a fourth pillar of financial regulation.

While there is a clear case for establishing institutional capacity in these areas, it is also important to be specific in the drafting of law. Unless systemic risk regulation is envisioned as a precise set of steps that would be performed by Government agencies, there is the danger that systemic risk law degenerates into vaguely specified sweeping powers with lack of clarity of objectives.

The Commission deeply analysed the problem of reducing the probability of a breakdown of the financial system. This requires understanding the financial system as a whole, as opposed to individual sectors or firms, and undertaking actions which reduce the possibility of a collapse of the financial system. Each financial regulator tends to focus on regulating and supervising some components of the financial system. With sectoral regulation, financial regulators sometimes share the worldview of their regulated entities. What is of essence in the field of systemic risk is avoiding the worldview of any one sector, and understanding the overall financial system. In order to achieve this, Commission envisages a five-part process.

The first step is the construction and analysis of a system-wide database. This effort, which will be located at the Financial Stability and Development Council (Financial Stability and Development Council (FSDC), will analyse the entire financial system and not a subset of it. The discussions at FSDC would communicate the results of this analysis to all regulators, who would co-operate in proposing and implementing solutions.

The second step is the identification of Systemically Important Financial Institutions (SIFIS). The analysis of the unified database, using rules which are agreed upon at FSDC, will be used to make a checklist of SIFIS. These will be subjected to heightened microprudential regulation by their respective supervisors.

The third step is the construction and application of system-wide tools for systemic risk regulation.

The fourth step is inter-regulatory co-ordination. Effective co-ordination across a wide array of policy questions is an essential tool for systemic risk reduction.

Finally, the fifth step is crisis management. The Commission envisages the Ministry of Finance as playing the leadership role in a crisis. Here, FSDC will only play a supporting role.

Four of the five elements of the systemic risk process involve a leadership role at FSDC. The Commission envisages that FSDC would be a new statutory agency, in contrast with its relatively informal existence at present.

Financial inclusion and market development

The development agenda in Indian financial economic policy comprises two elements:

(i) The development of market infrastructure and processes, and (ii) Redistribution and financial inclusion initiatives, where certain sectors, income or occupational categories are the beneficiaries.

The framework proposed by the Commission involves placing the first objective with regulators and the second with the Government. The draft Code envisages regulators undertaking initiatives in the first area. For the second area, the Government would issue notifications in the Gazette, instructing regulators to impose certain requirements upon stated financial firms. The Government would be obliged to make payments to firms to reflect the costs borne by them.

The Commission felt that all initiatives of this nature – in the pursuit of inclusion or of development – should be subject to systematic evaluation after a period of three years. Decision making would be improved by a process of articulation of specific goals, followed by an evaluation of the extent to which these goals were met.

Monetary policy

The framework envisaged by the Commission features a strong combination of independence and accountability for RBI in its conduct of monetary policy.

The first stage lies in defining the objective of monetary policy. The Ministry of Finance would put out a Statement defining a quantitative monitorable 'predominant' target. Additional, subsidiary targets could also be specified, which would be pursued when there are no difficulties in meeting the predominant target.

The draft Code places an array of powers with RBI in the pursuit of this objective. Decisions on the use of these powers would be taken at an executive Monetary Policy Committee (MPC). The MPC would meet regularly, and vote on the exercise of these powers, based on forecasts about the economy and the extent to which the objectives are likely to be met.

The MPC would operate under conditions of high transparency, thus ensuring that the economy at large has a good sense about how the central bank responds to future events.

Alongside this core monetary policy function, RBI would operate a real time gross settlement system, that would be used by banks and clearing houses. It would also operate mechanisms for liquidity assistance through which certain financial firms would be able to obtain credit against collateral.

Public debt management agency

The management of public debt requires a specialised investment banking capability for two reasons:

1. Debt management requires an integrated picture of all onshore and offshore liabilities of the Government. At present, this information is fragmented across RBI and the Ministry of Finance. Unifying this information, and the related debt management functions, will yield better decisions and thus improved debt management.
2. A central bank that sells government bonds faces conflicting objectives. When RBI is given the objective of obtaining low cost financing for the Government, this may give RBI a bias in favour of low interest rates which could interfere with the goal of price stability.

In its entirety, the problem of debt management for the Government includes the tasks of cash management and an overall picture of the contingent liabilities of the Government. These functions are integrated into a single agency through the draft Code.

Contracts, trading and market abuse

The last component of financial law is the set of adaptations of conventional commercial law on questions of contracting and property rights that is required in fields such as securities and insurance. Statutes as well as case laws have shaped the rules regarding creation of financial contracts, transfer of rights, title or interest in such contracts and enforcement of such rights. These developments have largely been sector specific.

The framework of the securities markets requires legal foundations for the issuance and trading of securities. Issuance of securities requires three kinds of restrictions. At the time of the issue, adequate information must be available for an investor to make an informed decision about valuation. Once the trading commences, a continuous flow of information must be available through which the investor can make informed decisions. Finally, a set of rules must be in place through which all holders of a given class of securities obtain the identical payoffs. These three objectives would be achieved through regulations.

Financial markets feature a important role for Infrastructure Institution. The rules made by these organisations shape the design of financial markets to a substantial extent. The draft Code constrains the behaviour of Infrastructure Institutions in three respects:

1. Infrastructure Institutions are required to issue bye-laws and abide by them;
2. The objectives that these bye-laws must pursue are defined in the law;
3. They are required to obtain approval from the regulator for bye-laws.

The information about prices and liquidity that is produced by financial markets has a public goods character. The draft Code has provisions that require dissemination of this information. In addition, the falsification of this information is termed ‘market abuse’. The draft Code defines market abuse and establishes the framework for enforcement against it.

Financial regulatory architecture

We now turn to the financial regulatory architecture, or the division of the overall work of financial regulation across a set of regulatory agencies. Many alternative structures can be envisioned for the financial regulatory architecture. Parliament must evaluate alternative block diagrams through which a suitable group of statutory agencies is handed out the work associated with the laws. These decisions could conceivably change over the years.

At present, Indian law features tight connections between a particular agency (e.g. Securities and Exchange Board of India (SEBI)) and the functions that it performs (e.g. securities regulation). The draft Code does not have such integration. Changes in the work allocation should not require changes to the underlying laws themselves. From the outset, and over coming decades, decisions about the legal framework governing finance would proceed separately from decisions about the financial regulatory architecture. This would yield greater legal certainty, while facilitating rational choices about financial regulatory architecture motivated by considerations in public administration and public economics.

At present, India has a legacy financial regulatory architecture. The present work allocation, between RBI, SEBI, Insurance Regulatory and Development Authority (IRDA), Pension Fund Regulatory and Development Authority (PFRDA) and Forward Markets Commission (FMC), was not designed. It evolved over the years, with a sequence of piecemeal decisions responding to immediate pressures from time to time.

The present arrangement has gaps where no regulator is in charge – such as the diverse kinds of ponzi schemes which periodically surface in India, which are regulated by none of the existing agencies. It also contains overlaps where conflicts between laws has consumed the energy of top economic policy makers.

Over the years, these problems will be exacerbated through technological and financial innovation. Financial firms will harness innovation to place their activities into the gaps, so as to avoid regulation. When there are overlaps, financial firms will undertake forum-shopping, where the most lenient regulator is chosen, and portray their activities as belonging to that favoured jurisdiction.

An approach of multiple sectoral regulators that construct ‘silos’ induces economic inefficiency. At present, many activities that naturally sit together in one financial firm are forcibly spread across multiple financial firms, in order to suit the contours of the Indian financial regulatory architecture. Financial regulatory architecture should be conducive to greater economies of scale and scope in the financial system. In addition, when the true activities a financial firm are split up across many entities, each of which has oversight of a different supervisor, no one supervisor has a full picture of the risks that are present.

When a regulator focuses on one sector, there are certain unique problems of public administration which tend to arise. Assisted by lobbying of financial firms, the regulator tends to share the aspirations of the regulated financial firms. These objectives often conflict with the core economic goals of financial regulation such as consumer protection and swift resolution.

In order to analyse alternative proposals in financial regulatory architecture, Commission established the following principles:

Accountability Accountability is best achieved when an agency has a clear purpose. The traditional Indian notion, that a regulator has powers over a sector but lacks specific objectives and accountability mechanisms, is an unsatisfactory one.

Conflicts of interest In particular, direct conflicts of interest are harmful for accountability and must be avoided.

A complete picture of firms A financial regulatory architecture that enables a comprehensive view of complex multi-product firms, and thus a full understanding of the risks that they take, is desirable.

Avoiding sectoral regulators When a financial regulator works on a sector, there is a possibility of an alignment coming about between the goals of the sector (growth and profitability) and the goals of the regulator. The regulator then tends to advocate policy directions which are conducive for the growth of its sector. Such problems are less likely to arise when a regulatory agency works towards an economic purpose such as consumer protection across all or at least many sectors.

Economies of scale in Government agencies In India, there is a paucity of talent and domain expertise in Government, and constructing a large number of agencies is relatively difficult from a staffing perspective. It is efficient to place functions that require correlated skills into a single agency.

Transition issues It is useful to envision a full transition into a set of small and implementable measures.

The Commission proposes a financial regulatory architecture featuring seven agencies. This proposal features seven agencies and is hence not a 'unified financial regulator' proposal. It features a modest set of changes, which renders it implementable:

1. The existing RBI will continue to exist, though with modified functions.
2. The existing SEBI, FMC, IRDA and PFRDA will be merged into a new unified agency.
3. The existing Securities Appellate Tribunal (SAT) will be subsumed into the FSAT.
4. The existing Deposit Insurance and Credit Guarantee Corporation of India (DICGC) will be subsumed into the Resolution Corporation.
5. A new Financial Redressal Agency (FRA) will be created.
6. A new Debt Management Office will be created.
7. The existing FSDC will continue to exist, though with modified functions and a statutory framework.

The functions of each of these seven proposed agencies are as follows:

Reserve Bank of India It is proposed that RBI will perform three functions: monetary policy, regulation and supervision of banking in enforcing the proposed consumer protection law and the proposed micro-prudential law, and regulation and supervision of payment systems in enforcing these two laws.

Unified Financial Agency The unified financial regulatory agency would implement the consumer protection law and micro-prudential law for all financial firms other than banking and payments. This would yield benefits in terms of economies of scope and scale in the financial system; it would reduce the identification of the regulatory agency with one sector; it would help address the difficulties of finding the appropriate talent in Government agencies.

This proposed unified financial regulatory agency would also take over the work on organised financial trading from RBI in the areas connected with the Bond-Currency-Derivatives Nexus, and from FMC for commodity futures, thus giving a unification of all organised financial trading including equities, government bonds, currencies, commodity futures and corporate bonds.

The unification of regulation and supervision of financial firms such as mutual funds, insurance companies, and a diverse array of firms which are not banks or payment providers, would yield consistent treatment in consumer protection and micro-prudential regulation across all of them.

Financial Sector Appellate Tribunal The present SAT will be subsumed in FSAT, which will hear appeals against RBI for its regulatory functions, the unified financial agency, decisions of the FRA and some elements of the work of the resolution corporation.

Resolution Corporation The present DICGC will be subsumed into the Resolution Corporation which will work across the financial system.

Financial Redressal Agency The FRA is a new agency which will have to be created in implementing this financial regulatory architecture. It will setup a nationwide machinery to become a one stop shop where consumers can carry complaints against all financial firms.

Public Debt Management Agency An independent debt management office is envisioned.

Financial Stability and Development Council Finally, the existing FSDC will become a statutory agency, and have modified functions in the fields of systemic risk and development.

The Commission believes that this proposed financial regulatory architecture is a modest step away from present practice, embeds important improvements, and will serve India well in coming years.

Over a horizon of five to ten years after the proposed laws come into effect, it would advocate a fresh look at these questions, with two possible solutions. One possibility is the construction of a single unified financial regulatory agency, which would combine all the activities of the proposed Unified Financial Authority and also the work on payments and banking. Another possibility is to shift to a two-agency structure, with one Consumer Protection Agency which enforces the proposed consumer protection law across the entire financial system and a second Prudential Regulation Agency which enforces the micro-prudential regulation law across the entire financial system. In either of these paths, RBI would then concentrate on monetary policy.

These changes in the financial regulatory architecture would be relatively conveniently achieved, given the strategy of emphasising separability between laws which define functions, and the agencies that would enforce the laws. Over the years, based on a pragmatic assessment of what works and what does not work, the Government and Parliament can evolve the financial regulatory architecture so as to achieve the best possible enforcement of a stable set of laws.

The outputs of the Commission

The main result of the work of the Commission is the draft 'Indian Financial Code', a single unified and internally consistent draft law that replaces a large part of the existing Indian legal framework governing finance. As has been emphasised earlier, the use of simple English should help ensure that everyone connected with the field would be able to understand the draft Code. This relatively large draft law which is comprised of 450 sections – constitutes Volume II of the report. Volume 1 expresses the arguments that led up to the key decisions embedded in the draft Code.

The Commission vigorously debated the ideas expressed in the draft Code over a period of two years, in twenty four full-day meetings. In any law of 450 sections, there are bound to be certain areas of disagreement. The five areas of disagreement within the Commission, which are expressed in four dissent notes, are as follows:

1. *Authorisation requirements:* Prof.Jayanth Varma expresses concerns about the authorisation requirements for financial service providers.
2. *Capital controls:* Mrs. K. J. Udeshi, Dr. P. J. Nayak and Mr. Y. H. Malegam disagree with allocation of responsibilities on capital controls between the Ministry of Finance and RBI.
3. *The role of the Ministry of Finance:* Dr. P. J. Nayak disagrees with the role envisaged for the Ministry of Finance in draft Code especially the role of the FSDC.
4. *Common-law tradition, principles-based law.* Dr. P. J. Nayak expresses concerns about the strategy of the Commission that has favoured a common law, principles based approach.
5. *Regulation of Non-Banking Financial Company (NBFC)s:* Mr. Y. H. Malegam disagrees with the allocation of regulatory responsibilities for NBFCS.

Conclusion

Financial economic policy is implemented by front-line agencies who are assigned functions by Parliament. The main purpose of financial law is to put these agencies on a sound footing, with the trio of objectives, powers and accountability mechanisms. Commission has focused itself upon this task, of establishing a sound regulatory process.

Most policy debates in the field of finance pertain to the subordinated legislation that is drafted by financial regulatory agencies. The work of Commission does not directly engage with these debates. As an example, Commission does not have a view on the timing and sequencing of capital account liberalisation. Similarly, a large number of the recommendations of the Working Groups which studied individual sectors fall in the domain of modifications to subordinated legislation. The work of Commission is focused on the incentives in public administration that shape the drafting and implementation of subordinated legislation. As a consequence, while the Commission has fully taken cognisance of the policy problems analysed by the expert committees of the last five years, and by its own Working Groups, it does not directly address them. When the proposals of Commission are enacted by Parliament, they will set in motion a modified set of incentives in public administration. Clear objectives in law, and a sound regulation-making process, will improve the quality of subordinated legislation that is issued by regulatory agencies. The emphasis on legal process in the laws drafted by Commission will induce improved working of the supervisory process. A common consumer protection law will greatly benefit the users of financial services. These elements will yield a gradual process of change.

The Commission is mindful that over the coming 25 to 30 years, Indian GDP is likely to become eight times larger than the present level, and is likely to be bigger than the United States GDP as of today. Over these coming years, there will be substantial changes in the financial system. The technological change, and the financial products and processes which will come into play, cannot be envisaged today.

The aspiration of the Commission is to draft a body of law that will stand the test of time. The Commission has hence focused on establishing sound financial regulatory agencies, which will continually reinterpret principles-based laws in the light of contemporary change, and draft subordinated legislation that serves the needs of the Indian economy. This subordinated legislation, coupled with the jurisprudence built up at the FSAT and the Supreme Court, will continually reflect the changing needs of the Indian economy. CS

A Governance Initiative

Information on Corporate Governance

1. The International Integrated Reporting Council (IIRC) - Consultation Draft of the International <IR> Framework

What is Integrated Reporting?

Integrated Reporting brings together material information about an organization's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates. It provides a clear and concise representation of how an organization demonstrates stewardship and how it creates and sustains value. An Integrated Report should be an organization's primary reporting vehicle.

An International Framework

The IIRC is developing an International Integrated Reporting Framework that will facilitate the development of reporting over the coming decades. The core objective of the Framework is to guide organizations on communicating the broad set of information needed by investors and other stakeholders to assess the organization's long-term prospects in a clear, concise, connected and comparable format. This will enable those organizations, their investors and others to make better short and long-term decisions.

IIRC announced its first formal consultation of the International <IR> Framework to be open from April 16, for 90 days, to receive feedback, opinions and thoughts from all stakeholders on the International IR Framework. Version 1.0 of the International <IR> framework is expected to be released by December 2013.

The draft consultation will be available from April 16 to July 15 at:
http://www.theiirc.org/consultationdraft2013

Green Corner

Protect Trees

- Make sure any paper you buy (toilet rolls, tissue papers, writing paper) comes from recycled sources.
- Reuse paper bags or compost receipts and torn-up bank statements.
- Try to use non "glossy" newspapers, as glossy ones are difficult to recycle due to their topped coat of clay.
- Re-use wrapping paper. Wrapping paper is hard to recycle.
- Reuse envelopes and make your own cards.
- Before printing a picture or document, ask yourself, "Do I really need to print this out?"
- Throw paper and cardboard in a bag separately from cans, glass and plastics.

Good Things Around

A Solar-Powered Shed for India's Perishable Food

In India, the government estimates that anywhere from 30 to 40 percent of food spoils long before it finds its way to the table. Considering this business students and engineers from the University of Cincinnati have teamed with other companies to create a small solar-powered refrigerated shed for storing food. The Solar Cool container runs on just eight solar panels and keeps produce at a comfortably cool temperature, even at night, thanks to a battery that charges during the day.

Remember

7 April : World Health Day

22 April : International Mother Earth Day

26 April : World Intellectual Property Day

Moments of Thought

"It is important that we have truly "inclusive" growth - growth that benefits each and every citizen of the country especially those who are at the margins of society and at the base of the socio-economic pyramid."

- Shri Pranab Mukherjee,
At the first Convocation, Indian Institute of Management (IIM), Kashipur (17-03-2013)

ATTENTION MEMBERS

CHANGE OF ADDRESS

Member's attention is drawn to Regulation 3 of the Company Secretaries Regulations, 1982 according to which every member of the Institute is required to communicate to the Institute any change of professional address within one month of such change. The contravention of the same amounts to professional misconduct under clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980.

Members are, therefore, requested to intimate the change in their professional address within the specified period.

A. The members may change their professional and residential address and other details online through Institute's portal www.icsi.in by following the steps given below:-
   i) Login to portal www.icsi.in
   ii) Login to self profile by entering the membership number and password
   iii) Once logged in, the member has to click on the Link `Change of Address'
   iv) A window will be displayed with the option `Professional' or `Residential'
   v) Click on the relevant option i.e. 'Professional' or 'Residential' and change the details and click on `go' button
   vi) A screen will be displayed with the options `Existing details as per records' and `Enter change details'
   vii) Change the details as required and press on `submit' button

B. Members may also send their request for change of address to the Institute's email IDs at member@icsi.edu & aditya.mishra@icsi.edu from their e-mail ID as recorded with the Institute.

C. Members may send the request through electronic mode as described under A, B & C above. Otherwise, members may also send their request through post to the Membership Section of the Institute at ICSI House, 22 Institutional Area, Lodi Road, New Delhi - 110003.

For clarifications if any, members may contact Mr. Aditya Ranjan Mishra, Sr. Assistant at telephone no. 011 45341061 or Mr. Santosh Kumar Jha, Programmer at telephone no. 011 45341062 or write at e-mails ids aditya.mishra@icsi.edu & santosh.jha@icsi.edu.

ATTENTION MEMBERS

UPLOADING OF SCANNED IMAGES OF PHOTOGRAPHS & SIGNATURES ON INSTITUTE'S WEBSITE

The Institute has reoriented its online services to capture the information pertaining to photographs and signatures of members. The members may upload the scanned image of their photograph and signature on the website of the Institute by following the steps given below:

1. Open the Institute's website www.icsi.edu.
2. At Homepage click on login button appearing on top of the website.
3. Click on 'Members' Tab and then click on 'Member Login' button.
4. Use your membership number as Axxxx for ACS and Fxxxx for FCS as your
   user name. For example, if the Associate Membership number of the member is
   2502 then the user name should be written as A2502 and for FCS it should be
   written as F2502.
5. Your password shall be the same as used by you earlier on our portal *www.icsi.in.*
6. In case you have not created your password till date you may create your password by using www.icsi.in and then come back to the new portal www.icsi.edu after 48 hours.
7. Once logged in click on 'Members' tab followed by 'My Account' tab.
8. Click on the last tab 'Manage Image'.
9. Click on the browse button to upload your photograph and signature.
   (The format of the file containing the photograph and signature should be in .jpeg format and the size of the file containing the photograph and signature should be maximum of 150 kb each).

In case the members are facing any problem in doing the same, the members are requested to send their images of photograph and signature from their email id registered with the Institute to email IDs at *santosh.jha@icsi.edu/ ashish.tiwari@icsi.edu* For clarifications if any, members may contact Mr.Santosh Kumar Jha, Programmer at telephone no. 011 45341062 or write at e-mail ids santosh.jha@icsi.edu or Mr. J S N Murthy, Administrative Officer at *jsn.murthy@icsi.edu* 011 45341049.

SPECIAL ISSUE OF CHARTERED SECRETARY ON INDIAN FINANCIAL CODE

Dear Authors,

The Financial Sector Legislative Reforms Commission, Chaired by Justice B. N. Srikrishna submitted its Report on March 22, 2013 to Hon'ble Finance Minister. It has recommended several far reaching reforms, including enactment of the Indian Financial Code. In order to understand the reforms envisaged in the Report and the Code, promote healthy debate on the same, and prepare ourselves to move on the likely path of reforms, the Institute has decided to bring out a special issue of Chartered Secretary on the Report and the Code.

The authors are welcome to contribute incisive articles on the Report and the Code for consideration of the Editorial Advisory Board for the May 2013 issue of the Chartered Secretary which will be published by the end of April, 2013. The articles in around 2500 to 4000 words may be forwarded at e-mail id <ak.sil@icsi.edu> on or before 20th April, 2013 for consideration by the Editorial Board.

Editor

Voluntary obtaining of Secretarial Compliance Certificate

Consequent to the announcements being published regularly in the Chartered Secretary with regard to voluntarily obtaining of Secretarial Compliance Certificate from a Practising Company Secretary, the Institute is pleased to inform that **Continental Data Graphics Technical Services India Pvt. Ltd** has reported obtaining voluntarily Secretarial Compliance Certificate for the financial year 2011-2012. As per the report, the company has a paid-up share capital of Rs. 15,00,00,000.

REMOVAL OF NAME FROM REGISTER OF MEMBERS

The name of **Mr. Nowroze J. N. Vazifdar,** FCS-1030 stands removed from the Register of Members w.e.f. 18th March, 2013 at his request pursuant to section 20(1)(b) of the Company Secretaries Act, 1980 read with Regulation 12 of the Company Secretaries Regulations, 1982.

C S QUIZ

Prize query

Can the Central Government resort to preventive detention of a habitual offender of Foreign Exchange Management Act, 1999 even though the violation of its provisions leads to fine and in default in paying the fine to civil imprisonment only?

Conditions

1] Answers should not exceed one typed page in double space.

2] Last date for receipt of answer is 8th May, 2013.

3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors and their replies will be published in the journal.

4] The envelope should be superscribed **'Prize Query April, 2013 Issue'** and addressed to :

Deputy Director (Publications)
The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110003.

ATTENTION MEMBERS

IDENTITY CARDS FOR MEMBERS

Members who are yet to get the Identity Card issued from the Institute are requested to apply for the same along with their latest two coloured passport size photographs in the format given below (indicating on the reverse the Name and Membership Number) to the Membership Section of the Institute at ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003. For queries, if any, contact on -

Phone No. 011 45341061 **Mobile No. + 91 9868128682**
Email Ids ***member@icsi.edu / acs@icsi.edu***

Request for issue of Member's Identity Card

Please send latest two coloured passport size photographs mentioning your name & membership no. on the reverse of the photograph alongwith the following details:

Membership No. ACS/FCS ....
Name ....
(in block letters) (First Name) (Middle Name) (Surname)
Date of birth ....
Phone: Office: .... Residence: ....
Mobile No. ....
E-mail address ....

Passport size coloured photograph

Signature with date

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01 EIRC – Study Circle Meeting on Managerial Remuneration – A view of the participants.

02 EIRC - Bhubaneswar Chapter – Seminar on Union Budget 2013 – A.K. Sabat (Practising CA) addressing. Others sitting on the dais from Left: J.B. Das, A. Acharya and D. Mohapatra.

03 NIRC –Interaction with newly elected President and the Vice President of the Institute - Sitting from Left: Virender Ganda, O.P. Dani, Dr. S P Narang, S N Ananthasubramanian, M.G. Jindal, Harish K. Vaid, Nesar Ahmad, Ranjeet Pandey and Sutanu Sinha. Standing among others: Dr. G.B. Rao, Sanjay Grover, Sudhir Babu, Shyam Agarwal, NPS Chawla, Manish Gupta, Rajiv Bajaj, Dhananjay Shukla, HS Grover, Paramjeet Singh, N.K. Jain, Yogesh Gupta and Chairmen of NIRC Chapters.

04 NIRC – Gurgaon Chapter – Half-day Seminar on Union Budget – From Left: Hitender Mehta, Rupesh Jain, Parvesh K Kheterpal, Preeti Goel and Dhananjay Shukla.

05 NIRC - Lucknow Chapter – Seminar on Role of Company Secretary in Power Sector and Corporate Governance & Bhagawad Gita – Standing from Left (Front Row) - NK Sinha, Amit Gupta, Rajeev Kumar, Jagan Mohan Rao PVS, Hriday Narain Dixit (MLC), Shailendra Dubey (Secretary General, AIPEF), S.K. Pandey, Lalit. (Back Row) - Anuj Kumar Tiwari, Gufran Ahmad, Ankur Agarwal, Behl and Anupam Srivastava.

06 SIRC – Full Day Seminar on Companies Bill, 2012 – A view of the delegates attending the seminar.

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