Mysuru Chapter

e-Magazine

July 2021
207th Edition

Vision
"To be a global leader in promoting good corporate governance"

Motto
सत्यं वद। धर्मं चर। speak the truth. abide by the law.

Mission
"To develop high calibre professionals facilitating good corporate governance"

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II Columns

Knowledge Series by CS Dr CHANDRATRE on the topic of "Managerial Remuneration" Part III.
Topics Covered in this edition: Sitting fees,Remuneration to MD and WTD when a Company has loss or inadequate profits.

From the Desk of Chairman

CS Vijaya Rao
Chairperson
Mysuru Chapter

Dear Professional colleagues,

Hope all of you are safe and healthy!

Happy Student month to all our dear students!! ICSI is celebrating July as student month. Though we are all students in this world special wish to those who are pursuing Company Secretary course.

When we think of our best years, invariably we tend to say it was those student years when we were like free birds. No responsibility, sky is the limit on what we wanted to achieve. Whether it is primary, high school, college or doing any professional course, 'Student life is the Golden Life".

But do all good things come without any hard work? Of course not. As Beverly Sills said "There are no shortcuts to any place worth going" Along with getting academic qualifications we need to acquire different skills along the way. Be it public speaking, soft skill, writing skill and many more. Without all the added skills having only academic skill will not take us too far. Because of this reason our Institute has declared July as the student month so students can enrich themselves with acquiring nonacademic skills which will help them in the future. In this regard we at Mysuru Chapter is organizing many competitions, webinars, trainings specially for students. We have completed some and many more are scheduled throughout the month. So, I urge all the students to participate and take benefit of this opportunity. This will give you not only the skills you want to acquire but will also build network among your cohorts, which will go a long way to professional life while enjoying the activities. Looking forward to seeing all the students in all the upcoming events and participation in all chapter activities throughout the year beyond student month celebrations.

With the pandemic still going on we have to be careful. Though lockdown is over, and everything is open we still have to follow the COVID norms strictly. Mysuru Chapter had organized a vaccination drive for our members, students and their family. Many of you have made use of that drive. Stay safe, stay healthy.

Thanking you,

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

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Chapter Activities

1. CAREER AWARENESS PROGRAM

Chapter organized 3 online Career Awareness Program during the month of June 2021. The details are as follows.

S No.	Date	College Name	Speaker	No of Students
1	03.06.2021	Nisarga College of Management, Kollegal	CS Vijaya Rao, Chairperson-Mysuru Chapter	70
2	12.06.2021	Amrita Institute for Arts & Sciences	CS Keerthana Gopal, PCS, Mysuru	80
3	22.06.2021	GSSS Institute of Engineering & Technology – MBA	CS Keerthana Gopal, PCS, Mysuru	95

2. STUDENTS STUDY CIRCLE MEETING

Chapter organized 2 online Student's study circle meeting during the month of June 2021. The details are as follows.

S No	Date	Topic	Speaker	No of Students
1	09.06.2021	Substantial Acquisition of Shares & Takeovers	CS Malathesha Kalal G	25
2	24.06.2021	Classification and Tax Incidence on Companies	CA Apurva G	20

3. WEBINAR

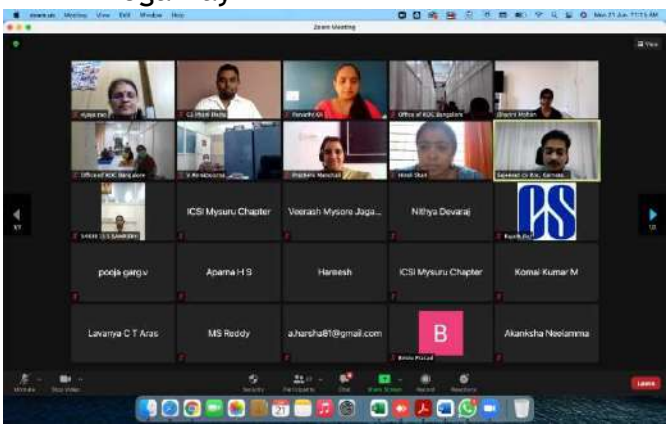
Chapter organized 2 webinars for Members & Students during the month of June 2021. The details are as follows.

S No	Date	Topic	Speaker	No of Students
1	04.06.2021	Financial Statements – A CS Perspective	CS A Sekar, PCS, Mumbai	52
2	15.06.2021	PCS Day Celebrations - Recent Changes in the Stamp Law Associated to shares and other securities	CS Thirupal Gorige, PCS, Bengaluru	95

4. OTHER PROGRAMS

S No	Date	Topic	Speaker	No of Students
1	21.06.2021	Yoga Day Celebrations in association with RoC, Karnataka	Ms. Dharini Mohan	70
2	22.06.2021	Covid 19 – Vaccination Drive for Members, Students & their families	Asha Kirana Hospital	21
3	25.06.2021	Special Lecture on GST at GSSS Institute of Engineering & Technology – MBA	CA Kumarpal Jain	75

Yoga Day



Vaccination Drive

Over a Cup of Coffee With…

CS Pavan Kumar Vijay FCS,M.com,LLB
Founder Corporate Professionals

Concept & Compilation:

CS Pracheta M
Practicing Company Secretary

CS Dr Shobha Sridhar
Practicing Company Secretary

***CS Pracheta**: Today's guest has to his credit of being the youngest President of the Institute of Company Secretaries. Please welcome Shri. CS. Pavan Kumar Vijay Sir. It's an honour to have you Sir.*

Sir, we have read your book 'Always the road less travelled'; it is inspiring. You hail from a small village in Uttar Pradesh and now you are one of the topmost Company Secretaries in India. Can you please tell us about the inspiration behind joining CS and how this journey as a CS has been?

CS Pavan Kumar Vijay: I always wanted to be a doctor, however, due to paucity of funds I joined commerce instead of science. There was not much guidance and I was pursuing M.Com, where these professional courses came to my knowledge. I wanted to join CWA since there were some exemptions and wanted to choose an easy career path. However, when I encountered CS, I joined the course. Though the fees were around Rs.450, I could not arrange it myself and took the help of my elder brother and joined the course. Then while working, I joined Law and pursued both these courses along with my employment.

There was nobody who could guide me into a proper career path. In India, people do not have proper career awareness. When I would visit students during MSOP trainings, I had noticed that many do not join the course out of choice. This had been my focal point. While, as a Chairman of Vision plan Committee, to ensure that the people join this course out of choice. So, our course is now designed in this manner that CS emerges as a specialist in a new niche area.

My case is also there; there was no career plan as such. But I got to know that CS and Law go together and should be pursued together. Meanwhile, I also attempted the UPSC exam and once my Main exam and CS exam clashed. At this point, I decided to pursue CS as I was surer of passing this than the Civil services. And later, I have realized the importance of this course.

***CS. Dr. Shobha**: I can tell that it is the loss of Civil services and the gain of CS Sir. Can you please share the journey of yours as CS. Coming from the rural background, I am sure this must have been quiet challenging It's been a journey of 3 decades; you have been part of various committees and independently also you are working on corporate laws reforms.*

CS Pavan Kumar Vijay: I am dividing my journey in 2 parts viz., one is my professional journey and another one as the President of the Institute.

Journey towards the Presidential position:

I had to complete 3 months of training and I approached Sri. D.C.Jain and he said that he did not have vacancy at that point of time. I told him that I wish to get trained under him only and requested him to inform when he has the vacancy. I then got a chance to get trained under him, where I noticed that he was the President of the Institute, and everybody would come and meet him. That is when I thought I should also become President of the Institute. Without any preparation and any knowledge about the elections, about the preferential voting systems etc., I contested the election in 1991. I did well in the elections, as I lost only with 1.5 votes. Being a first comer, this was commendable. This gave me lot of learning. This is when I realized that defeat is an opportunity to learn and should not be disheartened by the defeat. I learnt about the preferential voting system and other tricks of the election. I contested elections again in 1994 after learning from past defeat, with full preparation. I got the highest votes; so, I was selected as the Vice Chairman in the first year of elections which was in the year of 1995. In the months of October to December 1995, I drafted a Vision plan for 1996. I had prepared about detailed program sheet for the year of my Chairmanship. The topics to be covered, the events to be held etc., were planned in the previous year itself. I then served as the Chairman of the NIRC in the year 1996. People say that it was during this time, we have changed the face of the NIRC.; we released newsletter and it was well appreciated. I then contested elections in 1998; then in 2001. I had done lot of work as a Council member between 1998 to 2001; I was the head of the Computer Committee and for the first time we introduced the results through internet. I won in the year 2001 with huge margin. I got elected as the President in the year 2003.

Professional journey:

After the training, I religiously did 15 days' training at the RoC and 15 days' training at the Stock exchanges as I did not want to take any shortcuts. I would like to emphasize that the relationship which I established at that time has helped me throughout my career and even now I have good rapport with the regulators. During the training at the RoC, I noticed that lot of dividend was lying as unpaid and I thought that this could be a professional opportunity to connect with the dividend holders and making them aware of their unpaid dividend and help them to get the dividend. This is when I met Mr. Babulal Bagdi, the promoter of BLB Limited. Initially, I got a job at Gwalior Strips and then I joined another Company called BLB Limited. It was a family business and I introduced corporate culture and the opportunities I got there, made me realize that we Company Secretaries can do so much in an organization. I joined the Company as General manager and due to my contribution, I was elevated as Managing Director of the Company. At this juncture, I wanted to quit. I quit the Company when I was elected as the President of the ICSI. I was a 24/7 President, as I used to go to ICSI office by 10.00 a.m. and stay late nights and leave after locking the building. So, I was sure that I cannot work in the Company. After my Presidentship tenure got over, I registered the Corporate Professionals and my entrepreneurial journey resumed.

One thing which I want to share with all is that never be afraid of anything. You have seen that I am from small town, the challenge is not the small town but the challenge was that we were from Hindi medium; the challenge was that we lacked exposure; the challenge was that there was an inferiority complex due to lack of money and other resources; challenge was not being able to communicate in English; challenge was to work and put double efforts to understand the subjects which are mostly in English. I was never scared. I went to Agra without any money but was never deterred. I started taking tuitions for earning some money. So, I was always confident that I will achieve something.

***CS. Pracheta**: That's a wonderful journey you shared. You have been a tech savvy throughout your career. Also, you are called as Crusader of innovation. How can we professionals make best use of technology and how can we be innovative in our profession?*

CS Pavan Kumar Vijay: Since my association with the Council in 1998, I have been emphasizing about the use of Information technology and all my solutions were revolving around IT. Many people thought I am crazy about IT. Even in our Company BLB, we introduced online system in 1993 itself. My inclination has always been about efficient use of IT. Mr. Narang stated publicly that we used to find Pavan crazy due to his obsession towards IT, but now we realize that he is right. I am always an original thinker and I think ahead of time. In 2001 itself, I designed a website which was similar to today's vakil No.1 etc. But that time, we did not have funding etc.; in 2006, we conceptualized a complete compliance model; in 2007, we launched takeovercode.in and so on. We now have around 8 to 10 websites, good IT etc.

My message is, in our profession, there are 2 types of services- one is routine and the other one is Advisory. Most of our work is procedural. My advice is anything which is routine and repetitive, we have to create a SOP and convert the same into Technology. instead of doing the same thing again and again, it is better to develop a software. So, by this we save our time, which is the major raw material in our profession. This saved time can be utilized for other purposes like branding, marketing, or other work; and thus, save time.

***CS. Dr. Shobha**: It is said that 'Don't limit your challenges; challenge your limits'. What was the biggest challenge you have had to face till now? How did you face it? What according to you is necessary to overcome difficult situations?*

CS Pavan Kumar Vijay: My biggest challenge is I think ahead of the time. The problem with people who think ahead of time is that they cannot cope with the team. When anything is to be done, a team which can understand the thought process is very important. So, I feel comfortable to work with youngsters and harness more from them. When I started, I had around 5 trainees, and they are my partners now.

If you want to grow and make your pie bigger, teach everything you know to your team. I am surprised to see that people fear in sharing the knowledge. I would say, tell them whatever you know; then you can think bigger. Earlier, professionals were restricted only to filing form; but now, we are into Governance, ESG, GERC, Securities laws, Mergers and Acquisitions etc. So, you share everything to the team, and you start looking for other bigger areas. We challenge our limits by not expanding our horizon. I see most of our professional friends are still stuck with the filing of the forms. We have to move to advisory services.

Our Company's services are mostly into advisory and consultancy; hardly 5% of our services is with respect to procedural compliances. So, when I can do it as a Company Secretary, why not you? This is because we think innovatively; we think how we can present better; we think what else schemes we can bring in etc. We are doing webinars now; this is also an

innovation; we think how we can reach out to other professionals. Innovation is very important; it is not a science. We have published books; we have introduced apps; everything is part of innovation. Sky is the limit, never limit your growth.

***CS. Pracheta**: You gave us glimpse of how you started the Corporate Professionals. How has this journey of 2 decades been?*

CS Pavan Kumar Vijay: I started the office in January 2004. I did not have any work; I just had one trainee. I started communicating to people, meeting them, telling them about my new venture. Slowly, we started getting work, the first work which I got was Delisting. Delisting, at that point, was a new concept. I want to reiterate again that, 'Never be afraid'. Take up any new assignment with confidence. This is not a rocket science after all; read and get ready to execute. I keep telling my team that 'Consultancy is one business, where the client teaches you and pays you also for the same.' We got a client who had many cases and he said he will start paying on retainership basis instead of assignment basis. We slowly got business through various references. Our team also started growing bigger and we have moved to bigger premises. We have learnt that good service always brings you good business. Today, we have 7 to 8 branches. We have separate teams for M&A, Capital markets, ESOPs, Insider trading, Litigation, Valuation; we also have Merchant banking services. We provide complete services to clients under Corporate laws, FEMA and taxation through associates. Our team is now 125+ strong.

***CS. Dr. Shobha**: You are an eloquent speaker and a prolific writer. You have delivered lectures (450 plus) on number of platforms and authored many articles and books on variety of subjects. How did this habit begin? Can the art of public speaking be developed or is it inborn?*

CS Pavan Kumar Vijay: I am from a Hindi medium background. I always had a challenge in public speaking. When I was the Vice-chairman of the NIRC, I was supposed to speak on behalf of the Chairman, as he could not join. First time I addressed the students, I was shivering inside; I knew I have the content to speak but I was scared to speak. This I took up as a challenge and wanted to overcome this problem with a solution. Whenever there is a problem, don't ignore but try to find a solution. So, the solution which I found for my problem was, I used to prepare a Presentation, so that I can speak less. At that point of time, nobody was giving presentation in the Institute and started this system. Even when I was the President, I always gave my speeches through presentation. In Agra convention, I was to speak for about 4 to 5 times, including Open House. I gave presentation even in the open house. Generally, the open house is fiery, but I added all my plans, actions etc in my ppt. There was not a single question came, everyone was satisfied.

It can be learnt over a period of time; but it is important to identify the problem and work towards the solution.

***CS. Pracheta**: You are part of numerous activities of the institute, heading various boards, committees, and the like. We know that you have a big social circle also. How are you able to manage the time for all these activities and your thoughts on work life balance?*

CS. Pavan Kumar Vijay: One needs to be meticulous with the work. Every night before sleeping, I make the plan for the next day. Generally, if anything is written, it can be executed. Always, keep a pen and paper or a mobile phone or anything, where any new idea can be noted. Second, as soon as you reach office, delegate the work. Generally, we keep doing our work and delegate only in the evening. Instead, work which can be delegated, or which concerns others,

discuss it; delegate it; first thing in the morning; then you start with the work which only concerns to you. Third is, the mindset; if you keep thinking that you don't have time, then there is no time. Henry Ford said, 'Whether you think You can or think you can't, you are right!'. So, what we think, we become; it is psychological, scientific, and spiritual. If we think we are small, then we are small. Fourth, be happy and keep the welfare of others in mind. Develop a passion and you will be able to do it!

CS. Dr. Shobha: *There has been a surge in our usage of social media. In fact, we are getting addicted to it. What are your views on the usage of social media? Should we set limits to the usage? What is your message to the students and the younger professionals?*

CS. Pavan Kumar Vijay: social media cannot be avoided; they rule the world. The advantages of social media cannot be ruled out. Yes, limiting the usage is important. Remember the purpose of using the media; don't get distracted with other notifications which pop up. We think time can be managed; but it is important to think that time is limited and how best I should use the social media; it cannot be avoided completely.

My message to the students is that they should understand that this course is not only a procedural form filling paper. If one focuses on procedural form filing work, then can expect only peanuts and if the focus is widened then, one can do wonders. Choice is yours; new opportunities are coming up; it is upon us to pick up the opportunities.

CS. Dr. Shobha: *Thank you so much Sir for sharing your wonderful journey. It has been an enriching experience for us. The message you gave us- Do not fear, there is always something waiting for you and sky is the limit- will go a long way in succeeding in our endeavors.*

CS. Pracheta: *Friends, I would like to conclude this interview with a quote from Pavan Sir's book,*

मंजिल उन्हीको मिलती है जिनके सपनो में जान होती है
पंख से कुछ नहीं होता हौसलों से उड़ान होती है
Thank you all! Stay healthy; stay safe and Dream Big!!!

For Complete interview please click below link

https://bit.ly/interviewwithPavanKumarVijay

"A unique opportunity to CS Students
Dear Students,
We hope you are going through the interviews with the stalwarts of the profession. You too may have few questions in mind to ask these eminent Company Secretaries. Here is a unique opportunity for you to ask your questions directly to them!!!
You have to send us the takeaways from the interview published in this month's magazine (please go through the excerpts published as well as the video link) and send your responses to enewsletter.icsimysore@gmail.com. The student who gives us the 'best takeaway/s', will get an opportunity to ask a question to our guest in the next series of the interview."

The Law relating to Remuneration of Directors under the Companies Act 2013 as amended up to 18 March 2021

CS Dr Chandratre
Practicing company secretary
Email id: krchandratre@gmail.com

The Law relating to Remuneration of Directors under the Companies Act 2013 as amended up to 18 March 2021 is analyzed and commented by renowned Senior Scholar CS Dr Chandratre for our readers. He gives an in-depth coverage on the topic in great detail. For the convenience of digital reading, the commentary is divided into six parts. Let's have this knowledge feast over six editions and this is the third edition. Below is the index to have quick reference. For previous editions please click on the link given in each individual box for that topic.

Edition	Topic Covered	Brief Content
205 - Part I	Managerial Remuneration- Introduction	a. Introduction b. Definition of Remuneration c. Over-all limits on remuneration d. Sub-limits of remuneration For this topic, click: http://bit.ly/Edition205
206 - Part II	Remuneration to certain category of Directors	a. Remuneration payable to Non-Executive Directors b. Remuneration to Non-executive Directors when Company has loss or inadequate. c. Fixed periodical payments to Non-Executive Directors d. Remuneration to Independent Directors in case of loss e. Consequence of default of loans For this topic, click: http://bit.ly/206thEDITION
207 - Part III	Remuneration to MD and WTD	a. Sitting fees b. Remuneration to MD, WTD and Manager when a Company has loss or inadequate profits c. Conditions to be complied with
208 - Part IV	Remuneration to MD and WTD continued	a. Remuneration to MD, WTD and Manager- From two companies b. Recovery of excess remuneration c. Remuneration to Professional MD/WTD/Manager d. Remuneration for professional service
209 - Part V	Meaning of Professional and profession	a. Remuneration for professional service continued- Meaning of 'profession' and 'professional'. b. Supportive judgements
210 - Part VI	Applicability to Private Companies	a. Applicability of Section 196 and 197 to Private Companies b. SEBI (LODR), 2015 on Managerial Remuneration

1. SITTING FEES

Subsections (2) and (5) of section 197 read as follows;

"(2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).

(5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fee for different classes of companies and fees in respect of independent director such as may be prescribed."

Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes the sitting fees as follows:

"4. Sitting fees. —A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof:

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors."

The provision in subsection (5) indicates that sittings fees is a species of 'remuneration', under the Act, though it is not to be considered for the purposes of the overall ceiling of 11% under section 197. In other words, sitting fees is not excluded from the concept of remuneration, but it is excluded for the purpose of the ceiling. Sub-section (5) provides that a director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.

The words 'or for any other purpose whatsoever as may be decided by the Board' the fees payable in terms of section 197(5) are no longer only 'sitting fees', meaning fees paid to directors for attending board and committee meetings. A company may pay fees for any other meetings as well, such as when a director is called upon to attend any special meeting or even attending general meetings, if the Board so decides.

Sitting fee and expenses where no meeting is held.

Section 197(5) Companies Act, 2013 provides that a director may receive remuneration by way of fee for each meeting of the board or for a committee thereof attended by him. The usual accepted meaning of the word 'attend' in the aforesaid section of Act is 'to be present at a meeting of the board with a view to participate in its proceedings'. The emphasis in this regard is on 'attending' the meeting and not on the 'actual holding' of the meeting.

If the meeting of the board could not be held for want of quorum or for any other reason not within the control of the director concerned that does not mean that the director did not attend the meeting. In view of the above, sitting fees,

travelling allowances, etc, are payable to a director who was present at the meeting of the Board with a view to participate in its proceedings though no business could be transacted at that meeting for want of quorum[1]

Though the view expressed in the above circular appears to be sound one, going by the literal construction of the language employed in section 197(5), a question may be raised whether it is proper to claim sitting fee if the adjourned meeting was not held. Be that as it may, where the adjourned meeting is held, no further sitting fee can be paid for the adjourned meeting since adjourned meeting is a continuation of the original meeting.

It may be noted that where the articles of a company contain a provision similar to article 61(ii) of Table F, the company can pay or reimburse expenses incurred by a director on travelling, etc "in connection with the business of the company". This is not limited only to the meetings of the board or committees of the board, and such payment or reimbursement will not amount to remuneration within the meaning of section 197.

On the question whether the condition restricting travelling and daily allowance which may be paid to the directors of the company for performing journeys on the business of the company, to the limits laid down in rule 6D of the Income-tax Rules should be imposed, the MCA has clarified that having regard to the various practical difficulties faced by the companies in complying with the aforesaid condition, no such condition need be imposed. It has, however, been advised to ensure that the payment is on the basis of actual expenditure and expenditure should be kept to the minimum[2]

Whether directors participating in board and committee meetings through video/audio conference can be paid sitting fees

While there can be no doubt that directors attending meetings physically can be paid sitting fees, a question arises whether directors participating in board and committee meetings through video/audio conference can be paid sitting fees.

The first and foremost rule of statutory interpretation, which is elementary, is that the words used in the section must be given their plain grammatical meaning[3]. This is the 'literal rule' (called the 'golden rule of interpretation') is the basic and cardinal rule of interpretation of statutes, according to which words that are reasonably capable of only one meaning must be given that meaning whatever may be the result. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.[4]

Under section 173(2), the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio-visual means, as may be prescribed[5] , which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

[1] Circular No. 1 of 1972, dated 2 February, 1972.
[2] Circular No. 5 of 1975, dated 1 February, 1975
[3] Madanlal Fakirchand Dudhediya v Shree Changdeo Sugar Mills Ltd AIR 1962 SUPREME COURT 1543
[4] Kanailal Sur v. Paramnidhi Sadhu Khan, AIR 1957 SC 907; State of Maharashtra v. Nanded Parbhani Z.L.B.M.V. Operator Sangh 2000 AIR SCW 261.
[5] See Rule 3, Companies (Meetings of Board and its Powers) Rules, 2014.

The use of the words 'video conferencing or other audio-visual means' indicates the Legislative intent that a director may attend a meeting either by video conferencing or any other audio-visual means, apart from physical presence. The phrase 'audio visual' means of, pertaining to, involving, or using both sound (hearing) and sight.

The Act does not contain a provision enabling companies to hold telephonic meetings; although it does not prohibit that either. It does not provide that at a meeting of the board the directors must not be held through teleconference. However, by applying the rule Expressio unius est exclusio alterius (Inclusio unius est exclusio alterius)[6] it appears clear that participation of a director in a meeting through audio conference (telephonic conference) is not recognized by law and such attendance is not valid for the purpose of presence as well as quorum at a board/committee meeting. We cannot read the words audio and visual by separating them from each other nor can read the word 'audio' besides 'audio visual', as it is against the principle of statutory interpretation to insert any words in a statute.

As regards the question whether a director participating in a meeting through teleconference can be paid sitting fees for attending the meeting, we have to interpret the relevant provision of section 197. Subsection (5) of section 197 provides that a director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.

The words 'fee for attending meetings of the Board or Committee' are crucial. What it seeks to lay down is that a company may pay its directors a fee for attending meetings of the Board or Committee of the Board. The use of the word 'attending' makes it clear that a fee can be paid when a director attends a meeting. The dictionary meaning of the word 'attend' is, to be present at; to go to and be present at (an event, meeting, etc.). after the introduction of the provision in subsection (2) of section 173, there is only way of a director attending a meeting (apart from physical presence), i.e. videoconference. By participating in a meeting through telephone does not mean 'attend' a meeting. Although a director may be taking the trouble of sparing his time in teleconference, that cannot be the relevant consideration to interpret the provision in section 197(5); the relevant consideration is whether a director can be said to be 'attending' the meeting to be entitled to the sitting fee' the answer obviously is 'no'.

2. Remuneration to Managing Director or Whole-Time Director or Manager when a Company has Loss or Inadequate Profits

As noted at heading 5 above, subsection (3) of section 197 contains a provision that enables a company to pay remuneration in the financial year in which the company has a loss or inadequate profits.

Before the Companies (Amendment) Act 2017, it required, inter alia, previous approval of the Central Government, if a company could not comply with the requirements and conditions stipulated under Part II, Section II of Schedule V.

By the Companies (Amendment) Act 2017, in subsection (3), the words and if it is not able to comply with such provisions, with the previous approval of the Central Government have been omitted, thereby dispensing with the requirement of

[6] A rule of interpretation which is called the full list rule, meaning that the inclusion of one implies the exclusion of others; The express mention of one thing implies the exclusion of another; To express or include one thing implies the exclusion of the other or of the alternative. When a list of specific items is not followed by general words it is to be taken as exhaustive.

approval of the Central Government for payment of remuneration to its managing director/whole-time director/manager for any financial year in which the company has a loss or inadequate profits.

The Companies (Amendment) Act 2020, Section II of Part II of Schedule V, which contains provisions regarding payment of remuneration by a company to its managing director/whole-time director/manager for any financial year in which the company has a loss or inadequate profits.

It should be noted that when in a financial year a company has loss, the company cannot pay remuneration to its non-executive directors. But it can pay remuneration to its executive directors in accordance with Part II, Section II of Schedule V.

Before the amendment, the heading of Section II read as follows:

"Section II — Remuneration payable by companies having no profit or inadequate profit without Central Government approval."

By a Notification issued on 12 September 2018, the words without Central Government approval in the above heading have been omitted, as a result of the amendment to subsection (3) of section 197 as noted earlier dispensing with the approval of the Central Government. Likewise, the words without Central Government approval in the first para of Section II of Part II have been omitted. The heading and contents of Items (A) and (B) of Section II, as amended on 18 March 2021, now read as follows:

Section II — Remuneration payable by companies having no profit or inadequate profit

Where in any financial year during the currency of tenure of a managerial person or other director, a company has no profits or its profits are inadequate, it may, pay remuneration to the managerial person or other director not exceeding the limits under (A) and (B) given below:—

(A):

	(1)	**(2)**	**(3)**
Sl.No.	**Where the effective capital (in rupees) is**	**Limit of yearly remuneration payable shall not exceed (in Rupess) in case of a managerial person**	**Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director**
(i)	Negative or less than 5 crores.	60 lakhs	12 Lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 Lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 Lakhs

(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:‖

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders, is a special resolution.

Explanation. —It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) In case of a managerial person or other director who is functioning in a professional capacity, remuneration as per item (A) may be paid if such managerial person or other director is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialized knowledge in the field in which the company operates:

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid-up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company."

It will be observed that, Item (A) of Section II of Part II specifies the limits up to which a company can pay remuneration, inter alia, to its managing director/whole-time director/manager for any financial year in which the company has a loss or inadequate profits, without obtaining approval of the Central Government.

Before the Companies (Amendment) Act 2017, Item (A) of Section II of Part II contained a proviso according to which the limits specified in item (A) could be doubled if it was approved by the shareholders by a special resolution.

By the Notification issued on 12 September 2018, the words the above limits shall be doubled have been replaced by the words the remuneration in excess of above limits may be paid. The effect of this amendment is that, a company can pay any remuneration in excess of the limits specified in Item (A), if it was approved by the shareholders by a special resolution. If the shareholders give approval to exceed the monetary limit specified in column 2 of the Table, as applicable to the company, the said limit will not apply and the company can pay any remuneration to its managing director/whole-time director/manager.

Thus, under Item (A), a company will have two options:

- First, pay remuneration within the limits specified in the table in item (A), with the approval of shareholders by ordinary resolution;

- Second, pay remuneration in excess of the limits specified in the table in item (A), with the approval of shareholders by special resolution.

In Item (B), the words “remuneration as per item (A) may be paid” were substituted for the words “no approval of Central Government is required” by the Notification of 12 September 2018, with the result that, under the amended Item (B), remuneration may be paid by a company to its managing director/whole-time director/manager within the limit specified under Item (A) or in excess of the limit with shareholders’ approval by a special resolution, if the requirements mentioned therein are fulfilled.

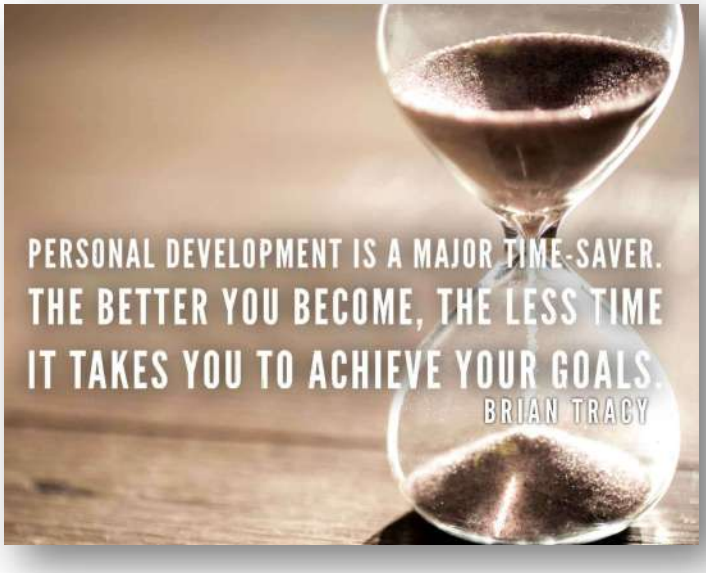
3. Conditions to be Complied with

Payment of remuneration to, inter alia, a managing director/whole-time director/manager under item (A) as well as under item (B) of Section II (whether within the monetary limit or in excess of the limit) will be subject to compliance with the conditions specified in the second proviso below item (B). The condition in clause (ii) of the said proviso has been substituted by the Companies (Amendment) Act 2017, which reads as follows:

"(ii) the company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."

In view of the above condition, if there is any default, and if the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor do not give their prior approval, the company will not be able to pay the remuneration as per Section II of Part II of Schedule V.

In the condition in clause (iii), in item (B), the words "the limits laid down in" have been omitted. This is because, henceforth there will be no limit for payment of remuneration when the shareholders approve the remuneration by special resolution.



Convertible Notes a Boon for Early Stage Start Ups

S. Ravishankar
Practicing Company Secretary
ASR & CO – Company Secretaries
Email ID: ravishankar@asrandco.com

Indian start-ups have attracted billions in private equity and venture capital funds from across the world, but early-stage start-ups and those that haven't yet started raking in revenue struggle to raise funds. Banks do not back companies without collateral and since the business model is unproven, other investors too hesitate.

In the above circumstances, when an early stage start up needs funds what do they usually do? Options include going to friends and family, crowdfunding, one's savings, or, if one is lucky, finding an angel investor.

"Choosing from the options can be tricky. It depends on the company's financial needs. Although bank loans are an option, start-ups, especially in the technology space, avoid them due to the high interest rate and need for collateral. The natural progression for a start-up is to bootstrap, and then look for a professional angel investor and negotiating with investors is all about playing hardball.

Therefore, the early-stage start-ups were left with no option but to issue common stocks (equity shares with voting rights) to the investors for quick turnaround of investments and move on with their ideas & projects.

The issuance of shares of common stock creates three potential problems. First, the founder's risk substantial dilution because it is often difficult for the founders and the investors to agree on a valuation for the start-up and, accordingly, to agree on the percentage ownership the investor will receive. For example, if a start-up is merely two guys and an idea, how much equity should an investor receive for a 10 crore or 1 crore investment? 10%? 25%? Or 50%, the start-up founders will be reduced to a minority as they need funds and have to issue equity and the valuation are difficult, only in a few cases the valuation are high, with new valuation rules kicking in this becomes even more complex and difficult to justify a huge valuation.

Second, there may be tricky tax issues depending upon the timing of the investment, if two co-founders are issued shares of common stock for a nominal purchase price upon incorporation, and incoming investors pay substantially high prices on valuations for their shares of the same common stock at the same time or shortly thereafter, this may raise questions with the income tax authorities and if the excess premium paid by the investors become difficult to justify they may end up paying huge taxes . Third, the issuance of shares of common stock may cause potential problems with respect to stock option grants (ESOP) for future because the valuation of the common stocks is already fixed at a high rate due to investments and the underlying value of the common stock (i.e., the "strike" or "exercise" price) will have to be fixed keeping in mind the new valuation of the common stocks established due to the investments. The goal, of course, regarding option grants is to price the options as low as possible to attract better skills and to retain good employees A high strike price undermines that goal and the very purpose of issuing ESOPs.

Convertible Notes Solve These Problems

Convertible Note was first introduced by Reserve Bank of India (RBI) and considered as a very welcoming option provided to early-stage start-ups to raise funds by way of convertible notes which is prima facie a debt instrument with conversion terms.

Under FEMA and Rule 2(1)(c)(xvii) of Companies (Acceptance of Deposit) Rules, 2014, convertible note is been defined as follows:

" Convertible Note" means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up as may be agreed depending on the valuations.

So, it is a form of short-term debt that converts into common stock (equity), typically in conjunction with a future financing round; in effect, the investor is giving money as loan to a start-up and instead of a return in the form of principal plus interest, the investor receives a percentage of equity in the company.

The primary advantage of issuing convertible notes is that it does not force the issuing company and investors to determine the value of the company upfront as the investment is in the form of convertible notes are considered debts with option to convert into equity at a later date. Early stage startups may not have much revenues or business models to base a valuation on, they may just have an Idea which needs funding to materialize into reality & thereafter a business. The valuation can then be determined during the Series A financing, when there are more data points of which to base a valuation on.

In India as per the latest legislation, convertible notes can only be issued when:

1. The investment amount is more than or equal to INR 25 lakh.
2. The start-up is DPIIT approved (Department for Promotion of Industry and internal trade)

To issue any instrument by a company in India, provisions under Companies Act, 2013 (the Act) shall apply. Under the Act, Convertible note was introduced as exempted deposit under Rule 2(1)(c)(xvii) of Companies (Acceptance of Deposit) Rules. Apart from above provision, there is no other provision in the Act which talks about issuance of convertible note.

Then there is a section 42 (private placement) under the Act where Company can issue share or securities, but if convertible note is issued under section 42, you may have to provide the details of Valuer who performed the valuation and basis for the price [Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014]

Also, exemption from valuation in convertible notes option is given only by RBI under FEMA regulation there is no mention of any such exemption under the Companies Act. Therefore, issuing under section 42 without valuation may be a violation of the provisions.

If you still go ahead and issue the convertible note U/s 42 ignoring the valuation provisions, you will be required to submit a form PAS-3 for allotment of such securities. But, in case of issuance of Convertible Notes, form PAS-3 cannot be filed as there is no specific column in the e form about convertible notes.

In view of the x`above, the best option would be that Convertible Notes are not issued u/s 42 of the Act but under 62 (3) as this makes more sense to raise money through convertible notes as convertible debt and not equity.

Company can issue Convertible Note under the provision of Section 62(3) of the Act by passing Special Resolution and accordingly form MGT-14 should be filed with ROC within a period of 30 days.

Also, the company if raising money from foreign investors by way of convertible note, it must ensure the compliances to be done under FEMA regulations, like filing of form FCGPR etc. on the FIRMS portal.

Convertible Notes as Debt Under IBC

Convertible notes are a hybrid form of venture equity and debt. The investor loans money to the company without arriving at a valuation figure. The promise is that the loan will be converted to common stock (shares) when the company raises its next round of funding from a series A Funding or a mature investor. If a follow-on round doesn't take place, then the money remains a debt for the company.

convertible debentures (CCDs) are a form of convertible notes, where the loan necessarily has to convert into equity after a certain period of time. These have been used regularly in Silicon Valley and Singapore and also in India by many early stages start up investors and financial institutions, but these have been gaining popularity in India only from 2016.

The National Company Law Appellate Tribunal ("NCLAT") has recently ruled that the Limitation Act, 1963 is not applicable to the Insolvency & Bankruptcy Code, 2016 ("IBC"). In effect, the NCLAT has held that debts which were otherwise not recoverable due to being time barred, can now be basis for initiating insolvency proceedings. This is a stark change from the earlier position and paves way for initiation of multiple insolvency proceedings on debts which could earlier not be recovered.

This judgement has also dealt with other interesting issues which are generally applicable to structures involving issuance of convertible and non-convertible debentures, now convertible notes may as well fall within this ambit.

In this case the financial creditor had subscribed to optionally convertible debentures ("OCDs") issued by the corporate debtor. OCDs carried a nil or 1% p.a. interest rate and matured in years 2011, 2012 and 2013.

The order of the NCLT was challenged by the corporate debtor, amongst others, on following grounds:

1. Given that the debentures matured in years 2011, 2012 and 2013, the petition for initiation of corporate insolvency resolution process filed in year 2017 is time barred.
2. The application of the financial creditor before NCLT was not complete as it did not contain document prescribed under Section 7(3)(a) of the IBC;
3. The financial creditor is actually an investor and not a 'Financial Creditor' as defined under the IBC.

Judgement:

On Time – Barred Debt:

The NCLAT held that that in the absence of any provision in IBC, the Limitation Act, 1963 would not be applicable to initiation of Corporate Insolvency Resolution Process. The NCLAT further observed:

"If there is a debt which includes interest and there is default of debt and having continuous course of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted."

This suggests that NCLAT treated the cause of action arising from non-payment of debt which includes interest as a continuing one. Thereby holding that limitation period could not have expired.

On Compliance with Section 7(3)(a) of the IBC:

Let us first understand what Section 7(3)(a) provides:

"(3) The financial creditor shall, along with the application furnish—(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;"

Corporate Debtor further contended that "The Insolvency & Bankruptcy Board of India ("Board") has not specified any other record or evidence of default which may be furnished. Further, as there was no record of default recorded with the information utility, it was contended that the application filed was incomplete."

The NCLAT rejected the argument, holding that a procedural requirement could not frustrate the substantive provision of law. Failure of the Board to frame regulations could not lead to inability of the adjudicating authority from dealing with application for initiation of insolvency resolution process.

The NCLAT also referred to the Rule 41 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 whereby a financial creditor is required to make an application in accordance with prescribed form – 1, and Part V of the said form prescribes the particulars that need to be provided as part of the application.

The NCLAT ruled that in absence any regulation framed by the Board, the evidence of default, records and documents prescribed under Part V of the Form – 1 will be sufficient to determine default of debt under Section 7 of the IBC. Regulation 8 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was also relied upon to substantiate the documents and records the financial creditor could rely upon to prove a claim.

On Meaning of Financial Creditor & financial debt:

A financial creditor is one to whom a financial debt is owed, on issue regarding meaning of financial debt. Financial debt is defined under Section 5(8) of IBC as:

"5 (8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;" (Emphasis supplied)

It was argued by the corporate debtor that considering that the interest rate on the OCDs was 0 or 1%, they were not issued against consideration for the time value of money. In fact, the subscriber to the OCDs was an investor in the company and not a financial creditor. However, the NCLAT held that section 5(8)(c) makes it clear that a debenture comes within the meaning of financial debt. Thus, in the present case, the amounts owed on maturity of debentures would be a financial debt.

The ruling of NCLAT holding that debenture comes within the meaning of financial debt, irrespective of the applicable interest rate has opened the doors and is useful for the industry.

Convertible debentures with nil or negligible interest rates were on various occasions used in financing structures for stat ups such that the holder of the instrument would benefit from being in a position of a creditor till such time that the OCDs were converted into equity.

This judgment now confirms that such structures would not imply that the subscriber to the OCDs would get the colour of an equity shareholder prior to its conversion (same would be the position of convertible notes), the current stand of NCLAT seems to have completely changed the position. This ruling effectively allows parties to initiate insolvency proceedings on basis of convertible instruments or debts which could not be recovered due to expiry of limitation period. This could open the flood gates for petitions under the IBC.

Ref :

Mystartup equity

https://techcrunch.com

IBC case laws

Recall Plan and its Procedure

Priyanshi Goyal ACS
Email ID: cspriyanshigarg@gmail.com

Section 28(1) of FSS Act, 2006 stipulates that If a food business operator considers or has reasons to believe that a food which he has processed, manufactured, or distributed is not in compliance with this Act, or the rules or regulations, made thereunder, he shall immediately initiate procedures to withdraw the food in question from the market and consumers indicating reasons for its withdrawal and in form the competent authorities thereof.

Meaning of Recall

Recall can be defined as an action to remove food products from the market at any stage of the food chain, including that possessed by a consumer, which may pose a threat to the public health or food that violate the Act, or the rules or regulations made thereunder.

Recall of food product is in the common interest of the industry, the government and in particular the consumer.

Objectives of the food recall procedure

1. Ensure removal of food under recall from all stages of the food chain in accordance with section 28 of the Act;
2. Ensure dissemination of information to concerned consumers and customers; and
3. Ensure retrieval, destruction or reprocessing of food under recall.

Conducting a recall plan

Step 1: Assemble your recall management team

At the very beginning of the recall, the FBO should initiate the formation of a recall management team and assign the recall duties to each person and should ensure that all members of the recall management team are informed of the decision to conduct a recall and each member knows their responsibilities during the recall.

The team should include people responsible for:

1. Decision making
2. Quality assurance / technical advisory
3. Media communication
4. Complaint investigation
5. Contacting accounts

6. Food Authority Contact
7. Legal Counsel

The management team document should contain the following:

RECALL MANAGEMENT TEAM				
NAME	ALTERNATE PERSON	BUSINESS PHONE	AFTER HOURS PHONE	RESPONSIBILITIES DURING RECALL

Step 2: Inform the authority

Inform the concerned regulatory authority at the earliest opportunity, after an incident is identified that may lead to a recall and should be updated throughout the process. The information should include the following:

- A detailed description of the nature of the problem
- The name, brand, size, lot code(s) affected
- Details of complaints received and any reported illnesses
- The distribution of the product - local or national
- When was the product distributed (specific dates)
- Label(s) of the product(s) which may be recalled
- The total quantity of product manufactured and distributed
- The name of the firm's contact with the authority
- The name and telephone number(s) of firm's after-hours contact

The detailed information is given under Schedule I of FSS (Recall Procedure) Regulations, 2017

Step 3: Identify all products to be recalled

It is the responsibility of FBO to ensure that all products which need to be recalled are identified. In addition to those products directly affected by the problem, the FBO should:

- Determine if any other codes, brands or sizes of the same product are affected
- Determine if any other products are affected

Step 4: Detain and segregate products to be recalled which are in your firm's control

The FBO should ensure that all products to be recalled that are in the firm's control are not distributed and;

- Determine the locations of the recalled product(s) e.g. on-site, at the plant, offsite storage
- Determine the amounts at each location

- Identify and segregate products to prevent the distribution.

Step 5: Prepare and distribute the information of recall;

Informing the Consumer: Depending on the extent of the recall, the company concerned should inform the consumer of the recall at the earliest possible moment.

Information dissemination may take the form of a press release, letter to the concerned parties or paid advertisement in the media. Sufficient telephone hotline service should be made available to deal with enquiries.

Information within the Food Chain: - The FBO shall inform everyone in the food chain from the raw material vendor to the supplier and any other relevant retailer or trade association of the affected food by written communication, phone, e-mail, fax, or a combination of thereof.

The press release, letter or advertisement shall be in the form of 'Food Recall Notice' and shall contain the following information, namely: -

- Name of the Food Business Operator recalling the food;
- Name of the food, brand name, pack size, batch and code number, date of manufacture, used by date or best before date;
- The contamination or violation in the food or reason for such recall;
- "Do not consume message";
- Health warning and action;
- The places or outlets where the food is found;
- The action to be taken by the consumer;
- Contact number for queries.

The FBO must:

- Complete the press release within two hours after being notified of the recall
- Submit a draft of the proposed Press Release, if required, to the concerned Authority for approval
- Arrange for translation of the press release for the concerned region

Step 6: Prepare the distribution list

Keeping accurate distribution records allows limiting the recall to the specific accounts that received the product being recalled. Using the distribution record system, produce a product and lot code specific distribution list which:

- Identifies the accounts that received the recalled products
- Lists the accounts names and addresses, contact names and telephone numbers
- Identifies the type of account e.g., manufacturer, distributor, retailer

Step 7: verify the effectiveness of the recall

- The food business operator should determine whether the recall is progressing effectively and submit periodic status reports to the concerned authority to inform the progress of the recall. FBO shall submit the periodic recall status report once a week or as otherwise specified by the concerned authority.
- To conduct an effective recall, the FBO should maintain the food distribution records which include Name and address of suppliers and distributors, date of purchase of raw material, batch code, lot number and complete traceability from Raw material to finished goods.

Step 8: Control of the recalled product(s)

The product is to be recovered to a central site, or in the case of a widely distributed product, to major recovery sites. The recovered product must be stored in an area that is separated from any other food product. Accurate records are to be kept of the amount of recovered product and the batch codes of the product recovered.

It is the responsibility of the FBO to ensure that recalled products do not re-enter the market.

- Separate and identify the recalled product(s)
- Reconcile quantities and monitor returned product(s)
- Record the recalled product(s) in Recalled Product Records document

Step 9: Decide what to do with the returned product

After recovery, products may be corrected or reprocessed before releasing to the market if it is fit for human consumption. Otherwise, the product is to be destroyed. The action to be taken on the recalled product should be approved by the competent Authority

- Decide on the action to be taken on the recalled product e.g., correction, re-export, destruction
- Find out if the Authority wants to witness/verify that the action has been taken
- Verify that the action has been effective
- Record the action taken for each product in your Recalled Product Records document

Step 10: fix the cause of the recall

As the manufacturing firm that produced the unsafe product, it is your responsibility for ensuring that all reasonable steps are taken to prevent similar recalls in the future.

- Put controls in place or revise existing controls to prevent similar problems in the future

Responsibility of the Food Authority

A. The Food Authority shall guide and supervise the Commissioner of Food Safety of the State or Union Territory in the execution of the Recall Plan and, where necessary, it may assess the relevant reports submitted by the food business operator and give instructions as may be required.
B. The Food Authority may establish a web based facility titled 'Food Recall portal' on its website with a unique identification number assigned to each recall for monitoring and to provide information to the consumers about such recall.

C. The Food Authority may also publicise about the recall when it considers that the public need to be alerted about the health hazard depending upon seriousness of the situation and it shall keep the concerned food business operator(s) aware of the same.

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LLP Reforms: MCA Extends Sections of Companies Law to LLP Law

CS Lalit Rajput
Practicing Company Secretary
Email id: lalitrajput537@gmail.com

CS Rajath Agarwal
Practicing Company Secretary
Email id: csrajatagrawal@gmail.com

LLPs Slated to More Stringent Reforms

Ministry of Corporate Affairs (MCA) vide a message / advisory dated 18th day of February, 2021 has decided to extend certain sections of the Companies Act, 2013 to the LLP Act, 2008. Through this intimation dated 18.02.2021 by MCA, a total number of eight (8) sections with respect to the Register of significant beneficial owners, disqualifications of directors, conduct of inquiries and inspections and non-cognizable offences will soon be applicable to LLPs.

Objective & Purpose

- To improve the compliance mechanism of Limited Liability Partnerships (LLPs)
- To better regulate designated partners (DPIN Holders).

Applicability of these provisions

Provisions are yet to be notified. At present it is only an intimation / proposal by MCA. Notification is expected to be out soon from the Ministry.

Need based Reforms

To fill the gaps in the LLP Act by applying the sections of the Companies Act to LLPs. And as a result, Significant provisions soon to apply on LLPs.

Most Significant Reform

Section 164 of the Companies Act, 2013 which deals with Disqualifications for Appointment of Director.

Application of the provisions of this section triggering disqualification of directors of a company that has not complied with Filings for three (3) years to LLPs.

In a nutshell, Provisions of Section 164 of the Companies Act, which state that a director of a company which has defaulted on Filing Financial statements or annual returns for three consecutive years will be disqualified as director, shall apply to LLPs.

Apart from business entities, several practising professionals also formed LLPs. The intent of the Ministry is clear – to monitor the activities of such LLPs.

Express Power given to Central Govt. under Section 67 of LLP Act, 2008

In view of Section 67 of LLP act, 2008, it can be said that central government has express power to notify in the Official Gazette, direct that any of the provisions of companies act, 2013, shall be applicable to any LLP. Section 67 of the LLP Act, 2008 reproduced below:

Section 67: Application of the provisions of the Companies Act.

(1) The Central Government may, by notification* in the Official Gazette, direct that any of the provisions of the Companies Act, 1956 (1 of 1956) specified in the notification—

a) shall apply to any limited liability partnership; or
b) shall apply to any limited liability partnership with such exception, modification and adaptation, as may be specified, in the notification.

Provisions in brief

The Central Government, in Ministry of Corporate Affairs, under section 67(1) of LLP Act, 2008, following provisions will be extending to Limited Liability Partnerships (LLPs):

Sections	Provisions Particulars
Section 90 (1) to (11)	Register of significant beneficial owners in a company
Section 164 (1) & (2)	Disqualifications for Appointment of Director

Section 165 (1), (3) to (6)	Number of Directorships
Section 167 (1) to (3)	Vacation of Office of Director
Section 206 (5)	Power to Call for Information, Inspect Books and Conduct Inquiries
Section 207 (3)	Conduct of Inspection and Inquiry
Section 252 (1) to (3)	Appeal to Tribunal.
Section 439 (1) to (4)	Offences to be Non-cognizable

Now we shall discuss the sections and the impact of the following sections on the LLPs.

1. Section 90 (Sub-Sections 1 to 11, except Sub-Section 12) - Significant Beneficial Ownership

The important points under this provision are as follows:

- Declaration of beneficial interest by SBO as specified in the Rules.
- Maintenance of the register of SBO by the company
- Inspection of such register by the members of the reporting company
- Filing of return of SBO to the concerned RoC by the reporting company
- Identification of the SBO – steps to be taken by reporting company
- Notice by company to persons who are likely to be / have knowledge of/ were SBO and not registered.
- Appropriate provisions of punishment on contravention of the above section.

Impact: The intention of the law is to identify a natural person controlling or exercising beneficial interest on the company. Under an LLP, the ownership and management does not need to be different as they are in companies. The purpose of SBO identification in LLPs should be the same as it was for the companies. It also will be interesting to note the threshold limits to be applied in case of LLP, and the manner in which they will be applied. Section 90(12) has not been made applicable on the LLPs as it relates to punishment under Section 447 of the Companies Act, 2013.

2. Section 164 (Sub-Sections 1 & 2) – Disqualification of Directors

Impact Analysis:

The various grounds for disqualification are linked with certain personal defaults and filing defaults. The same can be made applicable here in the case of LLPs considering the fact that only individuals can become designated partners, and not any persons. Thus, the same will likely cover only designated partners and not partners. The similarities between directors and designated partners are that they both are responsible for the management of affairs of the entity, they both are individuals, they both require a unique DIN / DPIN to function and sign documents and forms, and in the end, they both file a declaration of solvency when it comes to striking off the business.

3. Section 165 (Except Sub-Section 2) – Number of Directorships

Impact Analysis:

Here, the application of this section on LLPs will imply in our opinion that the maximum number of partnerships in various LLPs will be only in the capacity of a designated partner, and not a partner. Thus, in our opinion, this upper cap is on the maximum number of partnerships where an individual is in the capacity of a designated partner.

4. Section 167 (Except Sub-Section 4) - Vacation of office by Director

Impact Analysis:

Here, we in our opinion, the application of the above-mentioned provisions on the LLPs will imply the vacation of designated partners from their partnership, or, the said designated partner may continue to be a partner, but shall not be in the capacity of a designated partner. A time period may be provided to the LLP wherein they can, in case the minimum number of designated partners falls below 2, they can appoint any other individual as designated partner, other than the individual whose office was deemed to be vacated. The MCA may provide means to appoint a new designated partner. However in companies, the promoters have power to appoint a director, whether the same power will be given to the partners as well, remains an area of void as of current date.

5. Section 206 (5) - Power to Call for Information, Inspect Books and Conduct Inquiries

The Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.

Impact Analysis:

Here, we in our opinion, the application of the above-mentioned provisions on the LLPs will allow Central Government with the powers of inspection into the affairs of LLP. Presently powers of investigation already lies with the Central Government under Chapter IX of the LLP Act.

6. Section 207 (3) - Conduct of Inspection and Inquiry

Impact Analysis:

Here, we in our opinion, the application of the above-mentioned provision on the LLPs will allow and give powers to the concerned officer under the provisions mentioned above in relation to the conduct of inspection, examination, summoning and inquiry.

7. Section 252 (1) to (3) - Appeal to Tribunal

Impact Analysis:

Here, we in our opinion, the application of the above-mentioned provision on the LLPs will provide an open a way for restoration of LLPs whose names were struck off from the records/registers of respective ROC's. Presently the provisions related to striking off of LLPs are already governed by Section 75 of the LLP Act read with Rule 37 of the LLP Rules.

8. Section 439 (1) to (4) - Offences to be non-cognizable.

Impact Analysis:

Here, we in our opinion, the application of the above-mentioned provision on the LLPs, NO court will be able to take cognizance of any offence by an LLP or its partners/DPs unless complaint is made by some specified persons, such as Registrar, or any person authorised by Central Government. Section 447 of the Act dealing with fraud is not recognised under the LLP Act.

In Conclusion:

Limited Liability Partnerships ("LLPs") were always seen as form of business where the compliances were less stringent as compared to the companies; and many closely held companies with private business affairs also converted to LLPs to better manage the compliance system. The Company Law Committee Report on Decriminalization of LLP also indicated that the attention of the Ministry has now shifted towards the LLPs.

Disclaimer: The content of this article is intended to provide a general guide to the subject matter. Every effort has been made to keep the information cited in this article error-free. Suggestions and feedback to improve the task are welcome. The article and opinions therein are based on my understanding of the law and provisions prevailing as on date.

The contents of this article are for information purposes only and does not constitute an advice or a legal opinion and are personal views of the author. The opinion may vary according to one's interpretation of the law. It should not be relied upon as the sole basis for any decision which may affect you or your business. The authors can be approached at cslalitrajput@gmail.com and / csrajatagrawal@gmail.com.

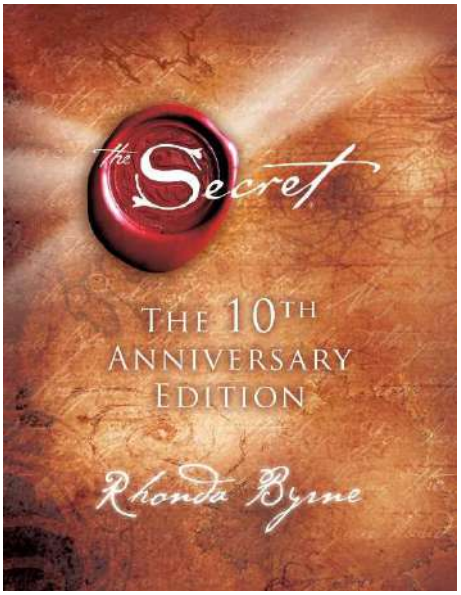
HELP YOURSELF

Food for Thought

Aparna U
Executive Student
Email ID:aparnaukumar14@gmail.com

The Secret

-by Rhonda Byrne



'The law of attraction,' 'affirmative thinking' and 'manifesting.' I'm quite sure you would have come across these phrases, in view of the fact that it is quite popular amongst people, especially on social media platforms. Many great personalities like actors, writers, entrepreneurs and so on, have spoken and practiced these. If that's new to you, here's what it means, verbatim from the book- "Law of attraction says like attracts like- Everything that's coming into your life you are attracting onto your life. And, it's attracted to you by virtue of the things you're holding in your mind. It's what you're thinking. Whatever is going on in your mind you are attracting to you."The book teaches you how you can achieve what you want by having the knowledge of the secret- the law of attraction.

I was new to learning about the law of attraction when I read this book. The only other time I have come to know of anything close is the popular quote by Paulo Coelho in his famous book 'The Alchemist' that goes as follows- "When you want something, all the universe conspires in helping you achieve it."

This book, 'The Secret,' that I'm giving you only a glimpse of here, talks predominantly about the law of attraction. This is not the first or the only book that talks about the law of attraction but it discusses the law in great detail. This was first released in the form of a movie in the year 2006 and later made into a self-help book in the same year. It has been translated into 50 plus languages and has sold 30 million copies worldwide.

When I first read this book, though I found that several teachings make sense, I was still skeptical about some of the things explained in the book. It somehow sounded very daydream-like. I wondered if things can actually be as rosy as the book claims. It all sounded too good to be true and I did not find everything trustworthy. However, this is not my final opinion on the book, I continue to practice and experiment with the concepts in order to truly experience what the book suggests.

Despite not knowing if everything the book claims actually works, I must disclose that it has helped me get over the habit of having unnecessary and recurring negative thoughts in my mind. One very valuable takeaway from the book is- on our path of striving to get what we want, we tend to focus on what we don't want and there lies all the reason and

source for the mishap. Therefore, there is an ardent need for one to master one's thought in order to achieve anything in life.

With some research I was able to find out that I am not the only one who is skeptical about this.

Like for anything else in life, the proponents of this book are plenty, but the critics are also as many. Wikipedia mentions Mark Manson, the author of 'The Subtle Art of Not Giving a F*ck,' as one of the harshest critics. I definitely recommend you to go through 'The Secret' and also go through the thought provoking article by Mark Manson on this book so you know both perspectives after which you may implement what you find right. Hurry up and explore!

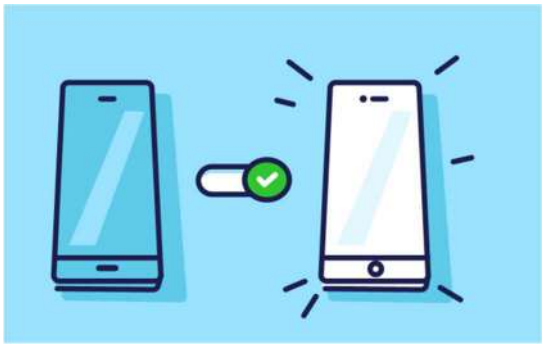
Tech Corner

Technology & Studies

Komal Kumar M
Executive Student
Komalkumarm677@gmail.com

Hi everyone,

Hope all of you are safe and sound.



Have you ever changed a mobile and struggled to get all the data from one Mobile to another or lost your mobile, more importantly lost all those memorable photos and valuable data. Let me guide you to show how you can make all your data safe, and how you can easily switch mobiles without any struggle or losing any data in that process.

The most blatant tool to keep all your data safe is using a cloud storage to store all your data, it does not matter which device you use, how many times you change your mobile devices or fear of losing the data which is in your mobiles. Your data will be safe in cloud servers, later you can use your login credentials and get those data back.

Coming to switching mobiles, there are couple of setting and apps you should know before doing that.

1. Turn on backup and sync in your mobile to save all the data in your cloud account.
2. Turn on backup and sync in WhatsApp to back up all the data, if you wish to save the media files

3. To save all the contacts getting lost you can use two methods, one is you can save all your contacts to the Gmail if your using Gmail or you can simply save contacts to cloud, you can save any type of file in cloud. And the second one using any third party apps which can generate a VCF file of all your contacts and then store in some device. Whenever you want those contacts, it will be back in just a simple click.
4. Coming to the storage is photos, as said earlier you can use cloud storage apps which provide those services like Google photos, which will get synced almost instantly, once it gets synced you can delete the photos if you want some more storage without any issues.
5. With these you can change your mobiles without any issues and still access all your data instantly.

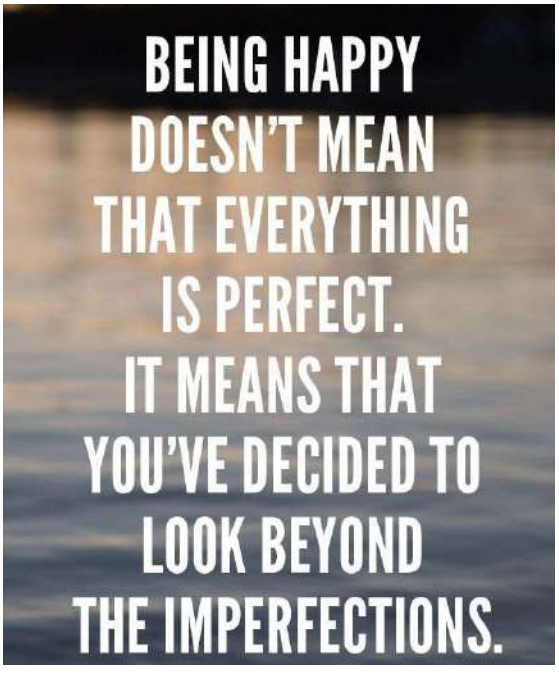
A few Tips to find your stolen/lost mobile.

In Every android device there will be a default program called find my phone, if you login from your Gmail account you can see the list of devices in which you were using that email id, just beside that you can see find my phone, ring my phone options. If you want, you can remotely erase all the data in it by just a click of a button so that your personal data is not leaked. The same trick will work for iPhone users, but your mobiles find my phone option to be turned on for that, if it is turned on then you can find you phone.

If we are using the electronic devices routinely, we need to make sure that we use it effectively and responsibly.

Please do let us know if you want any tech topics to be covered in our next edition, we will try to cover those topics. Please write to ***enewsletter.icsimysore@gmail.com***

Thank you.



N.Sridaran FCS
Email ID: ensridaran@gmail.com

Executive Director and Non – Executive Director under the Companies ACT 2013

There are many classes of Directors in the Companies Act 2013 like independent director, Executive Director, Non-executive Director, etc. A Company may appoint Executive Director and /or Non- Executive Director under the Companies Act, 2013 (hereinafter referred to as "the Act ") depending upon its requirements.

The details of Executive and Non- Executive Director need to be stated while filing the forms with MCA. In the Form Dir 12 for appointment of the director, the category of whether Executive Director and Non- Executive director has to be selected. Further in Form MGT 7 under Composition of Board of Directors, the details of no of directors under Executive and Non – Executive category in the beginning and end of the year as well as their percentage of shareholding at the end of the year need to be provided.

We shall discuss the provisions of Executive Director and Non- Executive Director under the Companies Act, 2013.

Executive Director

According to Rule 2 (1) (k) of the Companies (Specification of definitions details) Rules 2014 "Executive Director "means a whole time Director as defined in Clause (94) of Section 2 of the Act.

As per the provisions of Clause 2 (94) of the Act, a whole time Director refers to a director who is in the whole time employment of the company. Hence to become an executive director two conditions need to be fulfilled.

a) The person must be a director of the company and
b) The person should be in whole time employment of the Company i.e. who devotes whole time of working hours to the company.

Hence, Managing Director of the company falls under Section 2 (1) (k) of the Act and considered as Executive Director of the Company.

In layman terms a person who is a director of the company and at the same time a whole time employee of the company is considered to be an executive director of the company as per Rule 2 (1) K of the aforesaid Companies Rules 2014.

It may be noted that receiving the remuneration is not the criteria for determining the executive director. A person may be a part time director and may receive remuneration. He / She will not be considered as the executive director.

Executive Director and Private Limited Companies

Private Limited Companies are mostly managed by promoters. The Directors are taking remuneration from the Companies. As per Rule 8 of the Companies (appointment and remuneration of managerial personnel) Rules 2014, Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel. But this provision is not applicable to Private Limited Companies. However, the Pvt ltd companies, at their discretion, may appoint Managing Director or Whole time Director.

Normally Pvt Ltd companies do not appoint Executive Director or Whole time Director. But they do appoint Managing Director. If the Director of Pvt Ltd Company devotes whole time for the working of the company and draws remuneration it is advisable to designate him as whole time director.

The following situations can be considered for easy understanding of whole time Director.

1. The Directors will attend to the day-to-day work and receive remuneration form the company and not designated as whole time director. In such case they shall be deemed as whole time director.
2. The Directors do not attend office and get remuneration. In this case they are not whole time directors.
3. The Director is attending the office as whole time employee but does not receive remuneration and in such case they shall be deemed as whole time director.

It may be noted that as per Section 196 of the Act, no Company shall appoint or re-appoint any person as its Executive Director or Whole time Director for a maximum period of 5 years. However, the re-appointment shall not be made earlier than one year before the expiry of his term. According to the provisions of the Act, such reappointment of wholetime director or Managing Director can be subject to the approval of the Board of Directors and/or shareholders of the company.

Non- Executive Director

The Act does not define Non-Executive Director. However, one can derive the meaning of non-executive director from the definition of Executive Director.

A Non- Executive Director is a director who is not in whole time employment of the company and who is neither whole time director nor Managing Director. In other words Non- Executive Director is a member of the Company's Board but he/she does not possess the management responsibilities and may receive remuneration or not.

To conclude, both the Executive Director and Non-Executive Director play different roles on the Board of Directors whereas as Whole time employees the responsibilities of Executive Directors are more compared to the responsibilities of Non- Executive Directors. As Corporate Law Adviser, a PCS must provide guidance to companies in appointment of directors with right designation and also for change in designation of Director, if need be.

BRAINY BITS...

CS Madhur N Agrawal
B.com, LLB, ACS Registered Valuer
Email id: madhurna@gmail.com

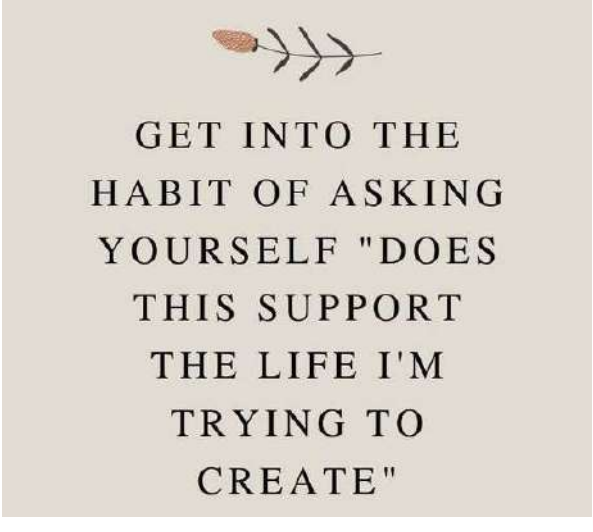
XYZ LLP proposed to lend Rs.1 Crore to PQR LLP. PQR LLP is independent from XYZ LLP and none of their Designated Partners and Partners are interrelated. Is there any restriction under the LLP Act, 2008 or the Companies Act 2013 for the proposed transaction?

Please send your answers to, enewsletter.icsimysore@gmail.com along with your name, qualification, and designation and a passport size picture. Name of the person with most appropriate answer with reasoning, shall be published in the next edition of eMagazine

Opinion to Last Month's Brainy Bits

XYZ LLP are business consultants. They have only few clients to their portfolio, and they are all foreigners. Their turnover from these foreign entities starting April 2021 till June 15, 2021, is ₹55,00,000/-. As per XYZ LLP since no GST is payable on export of services they don't need to get registered for GST. Please guide them if they can claim exemption from GST registration or they have to have register for the GST.

Though GST is not applicable on the export of services and goods, the registration is mandatory if the turnover of the entity exceeds Rs.20 Lakhs (in case of services) and Rs.40 Lakhs (in case of goods).



Regulatory Updates

Compiled by:
Mathruka B M
Professional Student
Mysore

Companies Act, 2013

Updates on Circulars

MCA has given a clarification on passing of ordinary and special resolutions by companies under the Companies Act 2013. In continuation to the circulars No. 14/2020, No.17/2020, No.22/2020, No. 33/2020, No. 39/2020, It has been decided to allow companies to conduct EGMs through VC or OAVM or transact item through postal ballot in accordance with the framework provided in aforesaid circulars up to 31st December 2021. All other requirements provided in the said circulars shall remain unchanged.

General Circular No. 10/2021

In continuation to the Ministry's General Circular No. 06/2021, MCA has decided to grant additional time up to 31st August 2021 to companies/LLPs to file forms under the Companies Act, 2013/LLP Act, 2008 (except forms CHG-1, CHG-4 and CHG-9) which were due for filing during 1st April, 2021 to 31st July, 2021 without any additional fee. This circular shall be without prejudice to any belated filings already made and additional fees paid.

General Circular No. 11/2021

MCA has further relaxed the time for filing forms with respect to creation or modification of charges under the Companies Act, 2013. In continuation to the General Circular No. 07/2021 dated 03.05.2021, it has been decided to substitute the figures "31.05.2021" and "01.06.2021" wherever they appear in the said circular with the figures "31.07.2021" and "01.08.2021" respectively.

General Circular No. 12/2021

Updates on Notifications

MCA has amended the Companies (Incorporation) Rules, 2014, which shall be known as Companies (Incorporation) Fourth Amendment Rules, 2021. In the principal rule, in rule 38A;

i. in the marginal heading, for the words, "and Opening of Bank Account", the words, ", Opening of Bank Account and Shops and Establishment Registration", shall be substituted.
ii. in the opening portion, for the letters "AGILE-PRO", the letters "AGILE-PRO-S" shall be substituted.
iii. (iii) for clauses "(c) and (d)" relating to "Profession Tax Registration and Opening of Bank Account", the following clauses shall be substituted, namely: -

"(d) Profession Tax Registration with effect from the 23rd February, 2020;

(e) Opening Bank Account with effect from the 23rd February, 2020;

(f) Shops and Establishment Registration.".

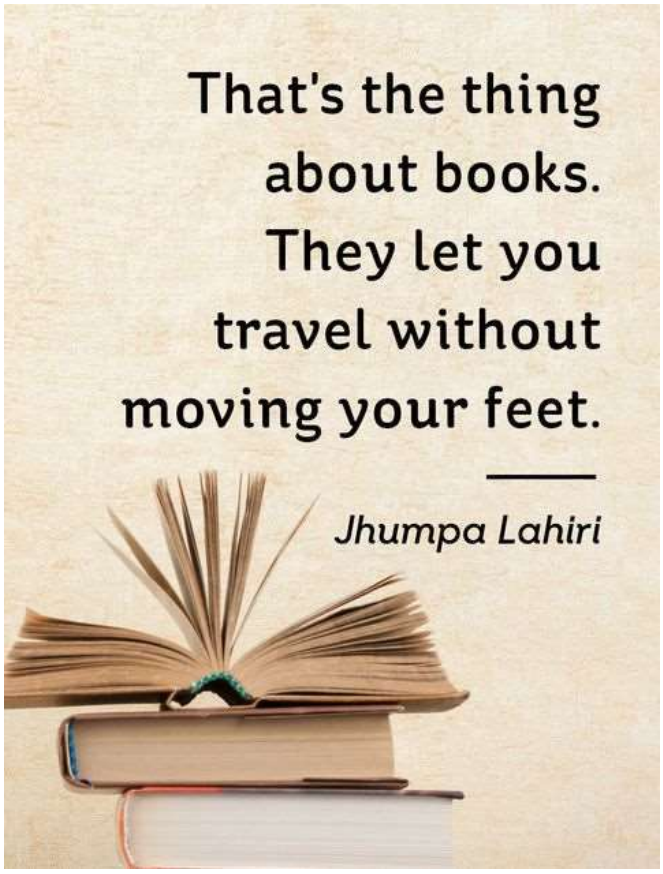
New E-form INC-35 has been introduced.

Companies (Incorporation) Fourth Amendment Rules, 2021

MCA has amended Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, which shall be known as Companies (Creation and Maintenance of databank of Independent Directors) Amendment Rules, 2021. In the principal rule, after sub-rule (7), before explanation, the following sub-rule shall be inserted.

"(8) In case of delay on the part of an individual in applying to the institute under sub-rule (7) for inclusion of his name in the data bank or in case of delay in filing an application for renewal thereof, the institute shall allow such inclusion or renewal, as the case may be, under rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 after charging a further fees of one thousand rupees on account of such delay.".

Companies (Creation and Maintenance of databank of Independent Directors) Amendment Rules, 2021



Delhi Diaries

Vikram Hegde, Advocate
Advocate on Record
Supreme court of India
Co- Founder, VH Law Chambers
vikramhegde87@gmail.com

IBC Provisions Regarding Personal Guarantors – the End of the Era of Insolvent Companies with Rich Promoters? – Lalit Kumar Jain V. Union of India

In the September 2020 edition of this column, we discussed the implications of the notification of IBC provisions pertaining to insolvency of personal guarantors. We also considered whether this would lead to a change in the structuring of finance as availed by companies. The five financial quarters which have been affected by COVID and the resultant lockdown so far have been enough of a bitter experience for most businesses to reconsider the way they structure their borrowings and indeed the way they do business. In such an environment they are likely to be doubly careful about the liability that the promoters are going to take on in their personal capacity especially in light of the insolvency provisions and notification pertaining to personal guarantors having been upheld by the Supreme Court recently in Lalit Kumar Jain v. Union of India.

The petitions in that case were a combination of writ petitions under article 32 of the constitution filed before the Supreme Court of India and petitions filed before various High Courts on the same issue and transferred to the Supreme Court in exercise of power under article 139A of the Constitution. The common issues raised in all these petitions involved a challenge to a notification dated 15.11.2019 bearing No. S.O. 4126(E) by which a number of provisions of the Insolvency and Bankruptcy Code, were brought into force to provide for the insolvency of personal guarantors Section 2(e), Section 78 (except with regard to fresh start process), Sections 79, 94-187 (both inclusive); Section 239(2)(g), (h) & (i); Section 239(2)(m) to (zc); Section 239 (2)(zn) to (zs) and Section 249.. The Petitions also challenged the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 also issued on 15.11.2019.

Grounds raised by the Petitioners

The main ground raised by the petitioners was that the Impugned notification suffered from excessive delegation. The petitioners contented that the Union government did not have power under Section 1(3) of the Code to extend the operation of the provisions mentioned in the notification two personal guarantors of corporate debtors alone. Section 1(3) of the Code permitted the Union government to fix a date for the operation of the Code by way of publication in

the Official Gazette. The set clause also permits the Union government to fixed different dates for different provisions under the Code.

However, the petitioners would argue that while Section 1(3) did indeed give the union government the freedom to fix date for coming into effect of the various provisions as per its discretion, this could not be extended to mean that the Union government also had the freedom to determine as to whom the provisions would be applied and discriminate against one particular class in that manner. To do so would be to exercise legislative power which was impermissible for the union government in exercise of its executive power.

The petitioners would also argue that the notification suffers from non application of mind insofar as it did not bring into effect section 243 of the IBC which would have the effect of repealing the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. As a result, be personal guarantees to corporate debtors would now be subject to two sets of insolvency laws personally. Insolvency action against such personal guarantors could be initiated both under the newly notified provisions of the insolvency and bankruptcy court on the one hand and also under the presidency towns Insolvency Act, 1909 and the provincial Insolvency Act, 1920.

The petitioners also took refuge under the standard twin tests of reasonable classification, that is, they would contend that the singling out of personal guarantors to corporate debtors for coverage under the insolvency and Bankruptcy Code by the impure notification did not have any rational Nexus with the purpose of the legislation. They also contended, that there was no intelligible differentia between the personal guarantors to corporate debtors and other individuals.

A long established principle of contract law is that the liability of a guarantor is coextensive with that of the principal debtor. This principle is embodied in Indian contract law in section 128 of the Indian contract act. On the other hand, it is also settled law that the conclusion of insolvency proceedings against a particular debtor also involves extinction of all the claims against that particular debtor except as admitted in the insolvency resolution process. However, the scheme emphasize by the impugned notification would lead to a peculiar state of affairs where the creditors of a particular debtor would be able to claim twice from the set debtor that is both from the principal debtor and from the guarantor.

Grounds raised by the Union of India

Arguments in opposition to this were led by the attorney general on behalf of the union of India. The attorney general word relates back to the amendment to section 60 of the Insolvency and Bankruptcy Code in 2018 and identified that as the genesis for the impugned notification. Section 60(2) as amended in 2018 applied to the insolvency proceedings of a corporate guarantor or personal guarantor as the case may be of a corporate debtor. It was argued by the attorney general that the 2018 amendment indicated the will of the parliament to separate personal guarantors of corporate debtors from other individuals.

Further, once personal guarantors to corporate debtors had been brought within the ambit of the insolvency and Bankruptcy Code if not for the impure notification the insolvency proceedings of the corporate debtor and the personal guarantors on the other hand would have to be carried on in different fora. It was argued on behalf of the union of India that placing the insolvency proceedings of both the corporate debtor and the personal guarantor before the same forum,

that is the adjudicating authority under the IBC, would enable the forum to have a clear view of the liabilities, assets the extent of the debt and the action to be taken thereon.

On the question of partial notification of the insolvency and Bankruptcy Code, it was argued that the delegation of the power to notify different parts of the code at different points of time and hence indicated a willingness to have the code enforced step by step depending upon the need of the and also adapting to the changing situation.

The solicitor general of India, also appearing for the union of India argued that the impugned notification remedied an anomaly. Prior to the notification, while corporate guarantors of a corporate debtor could be proceeded against under the insolvency and Bankruptcy Code there was no similar provision in respect of personal guarantors.

As for the coextensive nature of the liability of the personal guarantor with the liability of the corporate debtor by virtue of section 128 of the Indian contract act, the Solicitor General of India would argue that the word coextensive was an objective for the word extent and therefore the coextensive nature applied only to the quantum of the debt.

It was argued that a creditor had the right to initiate recovery proceedings against a borrower as well as all surety simultaneously.

Conclusion

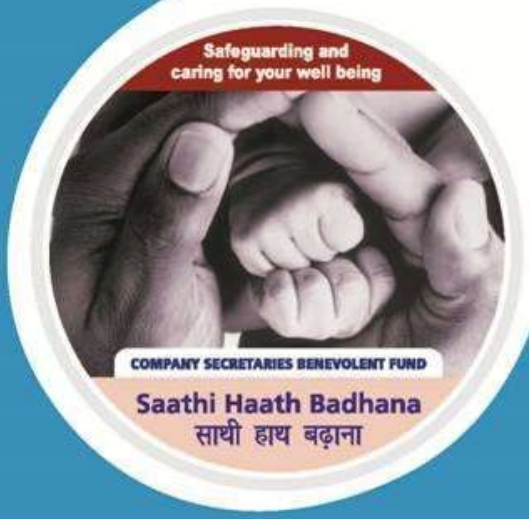
Weighing the above arguments against each other, on the question of delegation of power to notify various provisions separately the court held that what was prohibited was an uncanalised delegation. A staggered implementation was permitted, and the government was permitted to experiment. The Court also agreed that the parliamentary intent was to treat personal guarantors differently.

On the question of double dip, the court held that the sanction of the resolution plan does not discharge the guarantor's liability.

On the said basis the notification bringing into effect insolvency proceedings against personal guarantors was upheld.

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CSBF
COMPANY SECRETARIES BENEVOLENT FUND



What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

Advantages of enrolling into CSBF

1. To ensure that your immediate family has some financial support in the event of your unfortunate demise
2. To finance your children's education and other needs
3. To ensure that you have extra resource during serious illness or accident
4. Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- (to be changed soon) through Institute's web portal (www.icsi.edu) along with Form 'A' available at link https://www.icsi.edu/csbf/home duly filled and signed.

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