



Mysuru Chapter
e-Magazine

February 2021
202nd Edition



Vision

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

Motto

सत्यं वद। धर्मं चर। इत्येकं तेन जगत्। अविद्येत् इयं तेन विद्य।

Mission

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From the Desk of Chairman

CS Vijaya Rao
Chairperson
Mysuru Chapter

Dear Professional colleagues,

With immense pleasure and humility, it is a great feeling to take charge as a chairperson of Mysuru Chapter of this prestigious institution. My humble gratitude to all the members of Mysuru Chapter.

We had a very challenging 2020. We all realized the importance of family, friends, and physical workplace. We understood the value of working together. With all the constraints and problems, we were able to publish all the editions in the year 2020. And the icing on the cake was the grand release of our 200th edition under the able leadership of Chairperson CS Parvati K. R. Many thanks to her and all the contributors, readers and participants for our successful virtual celebration. I sincerely appreciate and acknowledge the efforts of all the authors who contribute even during the difficult times.

Joining hands with our beloved, vibrant President CS Nagendra D Rao we can take the ICSI to the new height. **“Coming together is a beginning. Keeping together is progress. Working together is success.” Henry Ford.** Now with all the new norms and many learnings, let us work together to succeed.

At the dawn of 2021, MCA is notifying many amendments, making CSR a more stringent compliance, introducing MCA21 - Version 3, e- scrutiny, e-adjudication e-consultation and Compliance Management. This is increasing our roles and responsibilities to many folds. With this platform and by hosting seminars and webinars we promise you that we will facilitate to enhance your knowledge and keep you up to date.

With this in mind, we have started two study circle meetings every month for students, one will be led by the students and one will be by a member. This will help them to have better confidence and bonding with their cohorts and will have professional guidance. Also planning one study circle meeting every month for the members. And we have lined up the whole year with many more learning sessions. We will update you on those programs. To begin with we have organized a two-day seminar on March 6th and 7th.

Also, for our readers across the nation, please share your knowledge through articles so we all can benefit.

Like Helen Keller said, “Alone we can do so little, together we do so much”.

“Let us Work Together, Let us Grow Together”.

Thank you all!

“NEW COMMITTEE MEMBERS

CS Vijaya Rao- Chairperson

CS Harsha A - Vice Chairperson

CS Phanidatta D N - Secretary

CS Padmanabh V- Treasurer

Other Committee Members

CS Parvati K R - Member

CS Veerash Mysore - Member”



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

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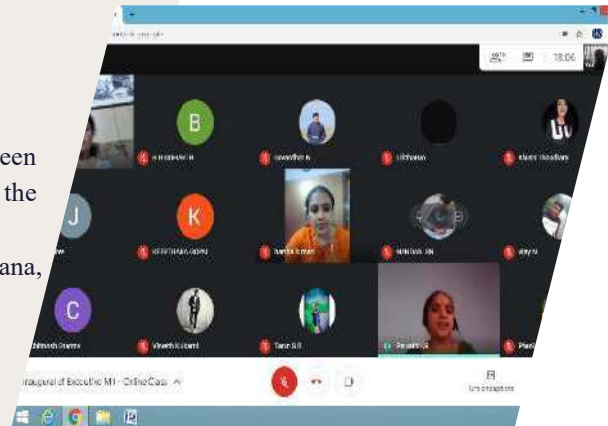
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Inauguration of Executive Online Class

The inauguration of Executive Module I Online classes for the June 2021 session exams has been arranged on 01st January, 2021 through online mode. Chairperson CS Parvati K R, welcomed the students and explained the importance of the course & class for the students. CS Vijaya Rao, Vice Chairperson, CS Phani Datta D N, Treasurer, CS Keerthana Gopal, Faculty & CS Kanchana, Faculty addressed the students. CS Harsha A, Secretary proposed the vote of thanks.



Republic Day Celebrations

Chapter celebrated the Republic Day on 26th January 2021 at Chapter Premises. Mr. Shankare Gowda, Superintendent of Police (Rtd.) was the Chief Guest & hoisted the National Flag. In his address he explained the importance of following the rules made by the government and laid emphasis on role of youth in stopping corruption in the country. Managing Committee Members, Students & Members of the Chapter were participated in the event.



Felicitation of Foundation & CSEET Students

A felicitation program has been organized for the December 2020 session CS Foundation passed students & the Students cleared CSEET through Chapter coaching class on 26th January 2021. CS Vijaya Rao, Chairperson welcomed the gathering. Mr. Shankare Gowda, Superintendent of Police (Rtd.) was the Chief Guest for the program. CS Phani Datta D N, Secretary proposed the vote of thanks. CS Harsha A, Vice Chairperson, CS Parvati K R, Past Chairperson & CS Veerash M J., Past Chairperson were present during the occasion. Around 50 students participated in the program.



Career Awareness Program

Chapter organized one career awareness program during the month. The details are as follows.

| S No. | Date | College Name | Speaker | No. of Participants |
|-------|------------|----------------------------|--|---------------------|
| 1 | 22.01.2021 | Kendriya Vidyalaya, Mysuru | CS Vijaya Rao, Chairperson N. Dhanabal, Chapter In-charge | 50 |



Online Student Study Circle Meeting

On 30.01.2021 an online student's study circle meeting has been organized by the Chapter on the topic "Directors". Mr. Karthik Bharadwaj, Qualified CS was the moderator for the meeting. CS Vijaya Rao, Chairperson welcomed the students & introduced the speaker. CS Phani Datta D N, Secretary proposed the vote of thanks. Around 25 students from Executive & Professional level participated in the meeting.



Cost Reduction and Cost Control - A Financial Discipline



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The outbreak of pandemic Covid-19 has made every organization to seriously think about effectively managing their costs by reducing the same and deploying cost control measures. The major economies of the World have also started shifting their focus on to India with a view to have a backup manufacturing base in India as well - i.e. "China plus One". All these global developments have led to a greater need for the Corporates to focus on Cost Reduction and Cost Control measures in order to be globally competitive.

In current competitive business environment that has impacted primarily every organization, the implementation of cost reduction and cost control measures have become imperative with a view to not only be price competitive and maximize profits but also for their respective survival. Every organization that wants to survive, maintain its consumers and grow must seek to improve on its product. Therefore, to not to exceed the budget and not to run at loss, while maintaining the quality of their products, organization needs to control and reduce their cost to the lowest minimum.

Cost Reduction - a Planned Process

Cost reduction is a planned approach to cut the costs. Cost reduction involves a process of analysing various cost elements of an existing product or services by studying the processes and the costs incurred on them by an organization, identifying the areas where the cost reduction programmes can be implemented and then working towards reducing the same to achieve the desired targets.

Cost Control - Monitoring against Budget

Cost control is a process of establishing a standard and regulating the costs within the defined budget. It includes budgetary controls, standard and material costing.

Cost Reduction and Cost Control Measures

The Corporates need to realign their cost structures, redefine their product costing and consequently pricing of their products or services in order to be competitive and generate the desirable profits. The cost reduction and control measures can be implemented by focusing on the undermentioned areas, indicative list of which is as under:

- Closely focus and conduct regular reviews of the business cash flows to ascertain the impact of decline in sales on inflow and corresponding expenditure commitments and accordingly adjust the spends & manage the costs.
- Review and redefine the business processes and timelines:
 - Combine the business processes by eliminating the duplicate and redundant functional activities carried on by different departments.
 - Evaluate the existing manual processes and need for automation,

- Reduce the number of Management Reports and retain only the key reports thereby reduce the time, efforts and costs involved therein;
- Realign the organization structure with focus on improved inter departmental co-ordination, eliminate the redundant functions and encourage multitasking in the organization without compromising on quality and timelines of deliverables
- Review costings of Products (and Services) and identify the ways to reduce costs including materials, labor, overheads and wastages;
- Review the Overheads with key focus on reducing major spends like Personnel, Advertising and Marketing(A&M), Travelling and Entertainment(T&E), Rent etc
- Enforce Business Costs Control measures by redefining the budgets and closely monitoring the same
- Defer the spends, specially capital expenditures (Capex) upon review of Business and Capex plans and the projected cash flows
- Review the cash flow projections to ensure that the debt raised to fund the Capex and interest thereon will be repaid out of the possibly reduced cash flows in view of lower sales due to pandemic impacted market

Participation in Cost Reduction and Cost Control Programs

The implementation of cost management initiatives requires serious and wholehearted support right from the top management to operational managers who need to implement the cost reduction and controls within their respective functional areas and then buy in of those measures by the users of the organization. The cross functional co-ordination and operational synergies are important for effective implementation of these programs.

Conclusion

The organization that has been facing unprecedented declining top lines, consequent fall in profitability or even getting into a loss making situation and are struggling to adjust their cost models need to gear up fast by implementing the effective cost management measures that will vary for each organization. Thus, cost reduction and cost control are key for ensuring financial discipline and that is the need of the hour in view of pandemic effected global economies that are making serious efforts for their respective revival. These cost reduction and control measures also gain significance from India's perspective in order to make the Indian organizations more cost effective, price competitive and profitable so as to enable them to compete at global level and also to make India an undisputed price competitive alternative to China.



Secretarial Audit – Risk & Governance Management Tool Part II



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Continued from 201st edition

- Other Laws Audit Provisions -

Forms Part of Board Report & Secretarial Audit Report (Form MR-3)

Labour Law Audit Report forms part of Clause (f) of Section 134 (5) of the Companies, Act, 2013 and SECRETARIAL AUDIT REPORT (in Form MR-3) pursuant to section 204(1) of the Companies Act, 2013 and Rule 9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014.

- Section 134(5)(f):

“the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.”

All Applicable laws includes, Compliance under Labour Laws.

- Under Clause (vi) of Form MR-3:

I/we have examined the books, papers, minute books, forms and returns filed and other records

maintained by (“The Company”) for the financial year ended on __, _____

according to the provisions of:

(vi)..... (Mention the other laws as may be applicable specifically to the company)

And also this statement is required to give under Form MR-3

I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

Therefore, Compliance Audit under Labour Law is much needed to ensure proper Compliance check. As it forms part of Mandatory reports and disclosure under the provisions of Companies Act 2013.

Case Study Related to Laws Applicability W.R.T. Secretarial Audit

Overview of the Enterprise:

- Name of the company : ABC LIMITED
- Industry type : Steel

- Status : Public Listed Company at NSE & BSE
- Business: Manufacturing & Trading
- Registered office: Mumbai (ROC-Mumbai)
- Plants: Various states (for eg. Andhra Pradesh)
- No. of employees 15000

Applicable Laws on this entity:

| | | | |
|--|---|--|---|
| Companies Act, 2013 | Income Tax Act, 1961 | The Goods and Services Tax, 2017 | FEMA, 1999 |
| SEBI Listing Regulations | Listing agreements with stock exchanges | Environmental Laws | Economic laws |
| Central Excise Act, 1944 | Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 | Secretarial Standards as issued by ICSI | The Competition Act, 2002 |
| Mines Act, 1952 | Mines and Mineral (Regulation and Development) Act, 1957 | Explosives Act, 1884 | Indian Boilers Act, 1923 |
| The National Tariff Policy | The Electricity Act, 2003 | The Labour Welfare Fund Act | The Child Labour (Regulation and Abolition), Act 1970 |
| The Consumer Protection Act, 1886 | The Indian Evidence Act, 1872 | The Industrial Health & Safety Act, 1972 | The Water (Prevention & Control of Pollution) Act, 1974 and rules there-under |
| The Air (Prevention & Control of Pollution) Act, | The Hazardous Waste (Management, Handling | ISO Certifications | The State Labour Welfare Fund Act |

| | | | |
|---|--------------------------------------|--|--|
| 1981 and rules there under | Transboundary Movements) Rules, 2008 | | |
| <p>Labour Laws:</p> <ul style="list-style-type: none"> ✓ The Factories Act, 1948 ✓ The Payment of Wages Act, 1936 ✓ The Minimum Wages Act, 1948 ✓ The Employees Provident Fund And Misc. Provisions Act, 1952 ✓ The Employees State Insurance Act, 1948 ✓ The Payment of Bonus Act, 1965 ✓ The Indian Contract Act, 1872 ✓ The Negotiable Instrument Act, 1881 ✓ The Maternity Benefits Act 1961 ✓ The Payment of Gratuity Act, 1972 ✓ The Industrial Disputes Act, 1947 ✓ The Child Labour (Regulation and Abolition) Act, 1970 ✓ The Transfer of Property Act, 1882 | | | |

List of general documents required to be checked

- Statutory registers and documents making necessary entries therein;
- Closure of the Register of members;
- Forms, returns, documents and resolutions required to be filed with the Ministry of Corporate Affairs, Government of India;
- Service of documents by the Company on its Members, Auditors and the Registrar of Companies;
- Notice/Agenda of Board Meetings and Committee Meetings of directors and the shareholders.
- Minutes of proceedings of General Meetings, Board Meetings and its Committee meetings;
- Approvals of Members, Board of Directors, Committee(s) of Board of Directors and the Government authorities, wherever required;
- necessary disclosures from all the Directors, confirmation towards their eligibility to become the Directors of a Company, qualification to become an independent directors of the company, nomination of directors in various committee(s) are within the limits prescribed under the Companies Act, 2013 vis-à-vis SEBI (LODR) Regulations, 2015,
- compliance under the Code of Business Conduct and Ethics and Insider Trading Regulations, 2015 from the all Directors as well as from Management personnel;
- Payment of remuneration to Directors including Whole-time Directors;
- Appointment and remuneration of Auditors;
- Transfers and transmissions of the Company's shares and debentures, and issue and dispatch of duplicate certificates of shares;

- Borrowings and registration, modification and satisfaction of charges wherever applicable;
- Financial Statements comprising the Balance Sheet
- Boards' report and annexure
- Contracts, common seal, registered office and publication of name of the Company

Role of Company Secretaries - Kingpin of Corporate Governance

Company Secretaries, Members of ICSI, are Kingpin of Corporate Governance. Under section 203 of the Companies Act, 2013, Company Secretary has been defined as KMP's i.e. Key Managerial Personnel, means person who is in - charge of maintaining the high standard of Corporate Governance by abiding laws and regulations in timely complied manner. In other countries, Company Secretary is called as Corporate Secretary as he is responsible to take care of all the compliances with statutory and regulatory requirements.

Compliance Check requirements and due diligence in the matters related to CORPORATE Laws in the Corporate Sectors needs a close watch and proper guidance and laws / regulations should be followed by the Company Secretaries / Company Secretaries in Practice. All the records and disclosures should be made properly and kept in the custody of Properly Authorized Officer of the Company, generally Company Secretaries are Authorized for the same.

The major task of the Company Secretary is to Advise the Board of Directors / Promoters of the Company on good governance practices and compliance of Corporate Governance norms as prescribed under various Corporate, Securities and Other Business Laws and regulations and guidelines made thereunder.

Practicing Company Secretaries are specializing in solving the complexities of Corporate Laws and Company Secretarial Practices promptly and correctly the responsibility for developing and implementing processes to promote and sustain good corporate governance has fallen largely within the remit of the company secretary.

Conclusion:

Secretarial Audit is a thorough check of the company's policies, compliances and procedures with the goal of preventing prosecutions or lawsuits. A Company Secretary in Practice by virtue of his knowledge and expertise in Laws is competent enough to render services in ensuring the compliance of various Laws. Objective of Audit is to protect the interests of Management, stakeholders, investor, employees and promote Corporate Governance, reduce disputes / prosecutions, timely filing of return and maintenance of Statutory and regulatory Records.

The Corporate Laws becomes more tough and strict against Non - Compliances with respect to any matter. The dynamics of the boardroom are changing and chairmen and directors are realizing that they need specialist skills and technical knowledge in this area and they are looking to company secretaries to provide this expertise.

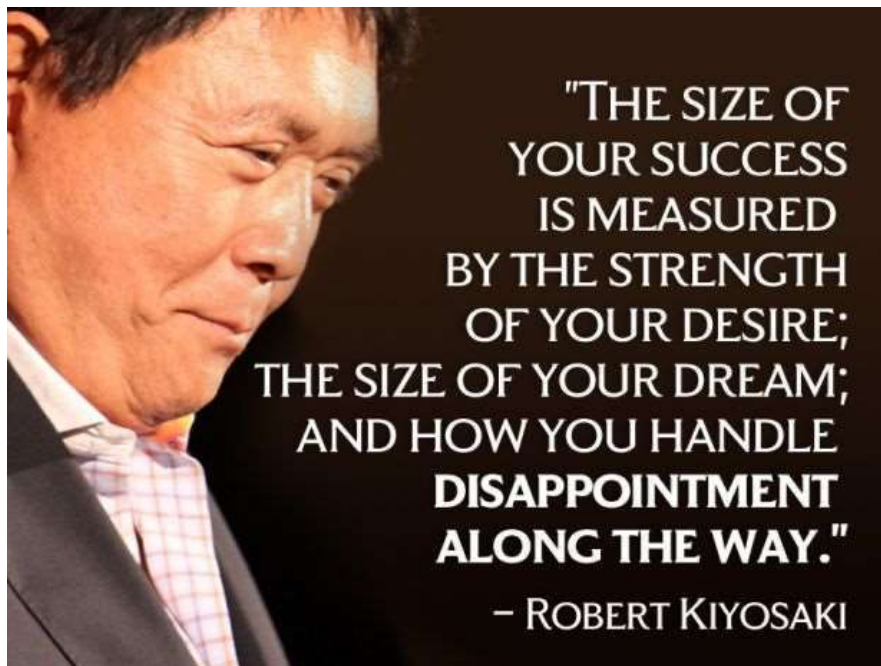
The company secretary manages and informs directors about all matters regarding the development, changes, implementing of company legislation, regulations and best practice in the jurisdiction where the company is registered.

As the importance of effective corporate governance continues to be critical in today's environment, there has been increased focus on the Secretarial Audit mechanism.

The biggest problem is companies feel that Secretarial Audit Report is closure of the audit process which is untrue. The report serves as the guidelines for making changes for the right reasons, not just a box-ticking exercise.

Following the financial crisis episodes in the past and a prominent number of scams or corporate governance failures, many companies have increased their attention to compliance management. While financial and regulatory risks have thus been the focus of attention, the consequences of reputational risks are also becoming increasingly clear to the companies. The Board should guide in formulating companywide compliance management strategies by which risks are monitored and controlled.

Secretarial audit should be suitably positioned, resourced and be backed by a holistic framework within the organisation to enable it to fulfil its role effectively and deliver robust assurance which feeds up through the management and governance frameworks.



Social Media Posts – Section 66A of Information Technology



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The penetration of social media in our daily lives has changed and influenced every section of the society, irrespective of the age group of the individuals. The recent case in Bangalore where riots erupted due to a social media post, followed by arrests by the Police, gives rise to questions like “am I within the legal ambit for the social media posts? How far is my Fundamental Right for Freedom of Speech and Expression protected?”

From a legal perspective, the social media is covered under the provisions of the Information Technology Act, 2000 (“IT Act”). The sudden surge in the usage of social media has called for restraints and regulations, that paved the way for introducing Section 66A of the Information Technology Act, 2000 (“IT Act”). In this article, we discuss about the legalities of Section 66A of the IT Act and matters connected therewith.

Section 66A of the Information Technology Act, 2000

Section 66A was added as an amendment to the IT Act in 2008 during the regime of the UPA Government in India. The (ab)use of the said section called for a judicial review by the Supreme Court in the case of Shreya Singhal Vs Union of India, eventually leading to striking down Section 66A of the IT Act as “unconstitutional”.

This is an exceptionally rare instance where the judiciary struck down a law passed by the Parliament and therefore, is a matter of interest to lawyers in particular and the public in general.

Let us take a look at the grounds leading to the strike off of the said section in the year 2015.

Section 66A of IT Act 2000 read as follows:

“Any person who sends, by means of a computer resource or a communication device(a) any information that is grossly offensive or has menacing character; or(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,

Shall be punishable with imprisonment for a term which may extend to three years and with fine”

Grounds for Contentions of Section 66A

1. The section was ambiguous as it did not describe various terms like abusive, conducive, annoying, menacing etc., The terms could be interpreted in a broad manner and were subject to (ab)use by the executive authorities. The Supreme Court observed that the amendment provided wider powers to the Executive (Police) to decide terms like “abusive, causes, annoyance, etc.,” whereas, these terms should have been defined in the law itself. The decision of the Executive can go wrong and result in bizarre situations, especially because the alleged offence is a cognizable one, attracting a penalty of at least three years of imprisonment.
2. The section was also found to be ambiguous because the words “grossly offensive,” had no guidelines for clarity, which had a potential for increased litigation.
3. The section provided for a differential treatment for social media messages and the live speech / print media messages. It was observed that there was no intelligible differentia for the classification to charge only netizens under Section 66A and hence was arbitrary and discriminatory in nature.
4. Section 66A provided with maximum 3 years of imprisonment, which was contrary to the offence of defamation having 2 years of maximum sentence prescribed under the Indian Penal Code. Also, offence of defamation is non-cognizable offence whereas an offence under Section 66A was cognizable.

Judicial Pronouncements at a Glance

The Amendment of 2008 to the IT Act intended to (a) Add Section 66A, (b) Add Section 69A and (c) Amend Section 79.

The Supreme Court while deciding upon the constitutional validity of the Amendments, took the following view:

1. Section 66A of the IT Act was abrogated in its entirety for infringing Article 19(1)(a) of the Indian Constitution which provides for freedom of Speech and Expression. Section 66A is not protected under Article 19(2), which imposes reasonable restrictions in the interests of public order. It was held that, in the context of information, the tests of liberty of free speech and expression is to be comprehended in the context of (i) discussion of the cause; (ii) advocacy of its factual existence, and (iii) provocation among people. It was held that for matters relating to discussion and advocacy, protection under Article 19(1)(a) of the Indian Constitution is granted (freedom of speech and expression), but it is only when such expressions provoke a certain section of people, Article 19(2) gets initiated (restrictions on freedom of speech and expression).
2. Section 69A and Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 was held intra-vires to the Constitution of India.
3. Section 79 which provides for exemption from liability of intermediary in certain cases was also upheld to be valid.

Ab(use) of Powers / Lack of Information to the Executive??

However, it is pertinent to note that despite the striking off of Section 66A of the IT Act, the Executive (police) have continued to (ab)use and arrest citizens under the said section. There have been instances when Section 66A was invoked instead of alternative sections like (i) Sections 67, 67B, of the IT Act dealing with harassment of woman, (ii) Section 509 of the IPC, which deal with obscenity and insulting the modesty of a woman, (iii) Sections 153 (1) of the Indian Penal Code (IPC) for promoting enmity between groups on the basis of religion and acts prejudicial to the maintenance of harmony; (iv) Section 186 of IPC for obstructing a public servant in the discharge of his duty.

It is heart wrenching to note that the Police officers, who are expected to implement the law, are depriving citizens from their legal rights and remedies thereby. There is a wide gap in the decisions of the Apex Court and the ground level execution of the law. The causes can be attributed to (i) lack of periodical communication to the police with recent Supreme Court Judgements; (ii) Lack of digital media for dissemination of information having wide reach.

The State can as well send out circulars/ notifications to sensitize the public and the Police. Media also has a major role in sensitizing the public.

Can Social Media Posts lead to arrests?

Having mentioned the above, it is also pertinent to mention that social media posts are offences under the following Sections of the IT Act in particular:

- Section 65 - tampering of computer source information
- Section 67 - publishing or transmitting obscene material in electronic form
- Section 67B - publishing or transmitting material depicting children in an obscene or indecent manner

Recent Case in instance which led to arrests for social media posts

A case was registered against Mr. X of a YouTube channel based on a complaint filed, following a video by the rationalist group which allegedly contained derogatory remarks against Hindu deity. A case was filed under Sections 153 [intent to cause riot], 153(A)(1)(a) [causes disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities], 295(p) [defiling a place of worship], 505(1)(b) [likely to cause, fear or alarm to the public], 505(2) [makes, publishes or circulates any statement, rumour or report] of the Indian Penal Code.

Issues to ponder

It is important to check how we receive and process the social media intake. In the name of news and entertainment, anti-social elements are trying to disseminate violence, hatred and manipulation. The digital world has made it challenging for many youngsters to connect with the real world. While the Constitution grants fundamental rights of freedom of speech and expression [Article 19(1)], the Constitution also empowers the Government to impose certain restrictions in the interests of public order [Article 19(2)]. Therefore, it is advised that social media be used with due caution and care.

Having said this, whether striking down of the draconian Section 66A is correct? Was the Court correct in striking it down on Constitutional grounds or should the Court have asked the Legislature to retain the Section with certain amendments to uphold Article 19?





HELP YOURSELF

Food for Thought



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Rich Dad Poor Dad

-by Robert Kiyosaki

"Having two dads offered me the choice of contrasting points of view: one of a rich man and one of a poor man." One dad would say "Love for money is the root of all evil," while the other would say "Lack of money is the root of all evil."

- excerpt from the book.

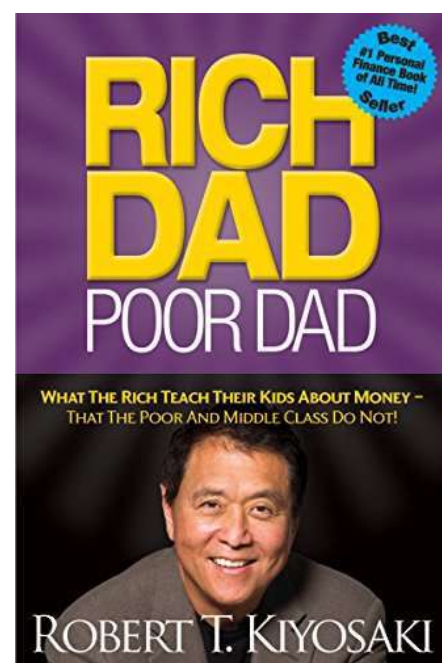
Why does the author say that he had two dads- one rich and one poor? The answer to that is well narrated by the author in the book, so I do not wish to spill it here. This interesting true story teaches the fundamental lessons about money not taught in school or at most homes and by reading which your perspective about money, wealth and growing rich will change immensely. The author shares what he learnt about money at the young age of nine that became a sound foundation for him which helped him build his financial literacy and freedom.

A New York Times bestseller, plus this book is also regarded as the #1 book on personal finance of all time! It establishes that 'highly educated,' 'professionally successful' and 'financial success' are all different. Having one of these does not guarantee the other.

One of the key takeaways from the book is the difference between an asset and a liability from the perspective of an investor explained in the simplest way possible. Learning about this difference, we understand why and how some people turn rich while some others end up in debt traps. The book includes simple diagrams of cash flow statements and balance sheets in a form easy to understand and remember.

How is this book relevant to us? Corporate professionals work in proximity with business owners, management, Board of Directors etc. and this book helps us understand the basics of an investor's mindset or that of any organization wanting to earn profits. So, this book is a great start specially for students or aspiring professionals and also for the experienced who aspire to be one among the Board as a director.

The last few pages of the book highlights the importance and power of giving. As already said, the author always saw two contradicting approaches to money- his poor dad would say "I would give to charity if I had some extra money." But, his rich dad would say "If you want something, you first need to give." Whenever his rich dad was short of money, he



would donate some money for a church or charity and it would come back in multiples, just the same way as a smile, love or friendship. There were times when the author did not get back anything and later he realized he had an intention to receive at those instances. So, giving must not be done just for the sake of receiving. Being generous and giving what you have is a joy in itself.

Tech Corner Technology & Studies



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New Era of Transportation

Hi everyone,

We all know that fuel price is skyrocketing almost on a daily basis. The limited availability of the petroleum in the nature, high price of transportation, and the current taxation are the few reasons for increase in the fuel price. India imports around 83% of the oil it consumes making it one of the biggest oil importers in the world. Due to the high price, India is aiming to reduce that to around 67% by 2022 by adopting the renewable energy

Have you ever wondered what are the alternative sources are for this?



Yes you are absolutely right, electricity, but it has its own advantages and limitations, lets us discuss about that in this article.

Transportation through Electric vehicles is becoming popular now a days due to its cost efficient and ecofriendly usage. There are high chances that in few years there will be more electric vehicles than the petrol, diesel and gas combined, but the challenge for that is the storage of electricity.

Ordinary batteries will store power but after some time due to more charging and discharging cycles the batteries will lose its power to store. If we want to use the electric vehicles by replacing the normal petroleum vehicles, we need to develop more advanced power storage batteries.

A sudden change to the electric vehicles is challenging as we can find the fuel stations easily rather than the charging stations for our vehicles. So, we need to adopt the changes slowly and steadily.

Though we are still relying on the wind and water to produce the electricity, it is not sufficient and effective. Nuclear fusion or fission is unsustainable, as it is highly radioactive, makes it dangerous to build one near the cities where the population is dense.

One alternative and most popular way of producing electricity is using solar panels, but it requires a larger surface area to produce more power, and the cost and maintenance of solar panels is very expensive hence making it inefficient. Even if we try to install the solar panels on the vehicles it does not produce enough power to keep the vehicle running. Solar panels become useless during cloudy/rainy days or at nights as it requires a direct sunlight to produce power.

Still a lot of research and development are required to produce the electricity efficiently without harming the environment, and to bring the usage of power in the field of transportation. Till then we should use more public transportations, choose already available electric vehicles, and make use of cycles, to save a few bucks which is good for the pocket and environment.



BRAINY BITS...



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A registered society is proposed to get converted into Section 8 Company under the Companies Act 2013. The society does not have any shares at present, nor does its constitution have any related clauses.

Questions

1. Is it possible to convert this society into Section 8 limited by shares or limited by guarantee?
2. If yes, how can this be done? If no, why it cannot be done?

Please send your answers to, newsletter.icsimysore@gmail.com along with your name, qualification, and designation. 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

We at ICSI Mysuru Chapter eMagazine are overwhelmed to receive answers on brainy bits, where most of these questions are based on practical situations. Our endeavor is to resolve these typical situations for readers and practitioners. If you have the answers to the questions or you have already gone through similar situations, we request you to answer the question with related procedures as well as your journey to problem solving.

CASE. X, Y and Z three promoters come together to form XYZ Pvt. Ltd. None of the promoters has DIN nor the PAN. The promoters intend to remain subscribers and first shareholders of the company but do not intend to become Directors, instead, they want to appoint third persons as Directors to separate management and ownership.

Question 1: Whether it is possible to form the company in the above scenario without keeping the promoters as Directors?

Answer- Yes, it is possible to form the company in the above scenario without keeping the promoters as Directors.

Question 2: Is it mandatory for the promoters to obtain both DIN or PAN or they still have an alternative?

Answer- Earlier it was mandatory for the promoters to obtain PAN but right now promoters can form a company by using his Passport.



Question 1: Whether it is possible to form the company in the above scenario without keeping the promoters as Directors?

It is possible that Company can be incorporated without making the promoter a Director. However in the given case to become a Promoter or First subscriber/shareholder, one must have PAN.

Question 2: Is it mandatory for the promoters to obtain both DIN or PAN or they still have an alternative?

A promoter must have a PAN or DIN. However, one alternative is having a Passport but the MCA Spice form for incorporation does not allow Passport number verification currently.





Regulatory Updates



Compiled by:

Matruka B M

Professional Student
Mysore

Companies Act, 2013

Updates on Circulars

MCA has amended Companies (Corporate Social Responsibility Policy) Rules, 2014, which shall be known as Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

As per new rule;

“Corporate Social Responsibility (CSR)” means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following;

- Activities undertaken in pursuance of normal course of business of the company (Research and development undertaken to develop new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 shall be excluded)
- any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;
- contribution of any amount directly or indirectly to any political party under section 182 of the Act;
- activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
- activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- activities carried out for fulfilment of any other statutory obligations under any law in force in India;

“Net profit” means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: -

- (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act: Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act;

“Ongoing Project” means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification;

CSR IMPLEMENTATION

The Company can implement the CSR activities by itself or through;

- a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or
- a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- any entity established under an Act of Parliament or a State legislature; or
- a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021:

CSR Expenditure

The administrative overheads of CSR project shall not exceed five percent of total CSR expenditure of the company for the financial year.

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

If a Company spends an amount in excess of requirement provided under sub-section (5) of section 135 , such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years.

CSR Reporting

The Board's Report shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable. **Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021**

MCA has amended Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, which shall be known as Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021

In the Principal Rules, in rule 25, after sub-rule (1) the following sub-rule shall be inserted.

“(1A) A scheme of merger or amalgamation under section 233 of the Act may be entered into between any of the following class of companies, namely:-

- two or more start-up companies; or

- one or more start-up company with one or more small company.

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021

CS MINERVA *The Student's Corner*



Oppression and Mismanagement Case Study

In a case pertaining to oppression and mismanagement, the respondents pleaded that the legal heirs of a deceased member whose name is still on the register of members are not entitled to apply before Tribunal, as only member of the company can complain about oppression and mismanagement. Thus, legal heirs have no locus standi.

The case arises out of a family brawl. The Appellant's husband held shares in M/s. Oswal Agro Mills Ltd. He was also the shareholder in M/s Oswal Greentech Ltd. Before he died, he nominated the shares according to Section 72 of the Companies Act, 2013 ("Act"). By the said nomination rights over the shares vested in the Appellant. Thereafter, Respondent filed a suit for partition. Therein, he claimed rights over the deceased's shareholding. An interim injunction was ordered by the High Court. In this regard, the Appellant continues to be the shareholder.

Thereafter, Respondent filed a company petition. The petition alleged oppression and mismanagement of the company. The Appellant challenged the maintainability of the petition under Sec. 241 and 242 of the Act. The NCLT dismissed the challenge. It held that Respondent No. 1 was entitled to one-fourth share. This order was upheld by NCLAT in appeal. The same is challenged before the Supreme Court.

Appellant's Arguments

It has been submitted that the Appellant is the sole nominee of the shares. Hence, according to Section 72 of the Act all the rights were vested with the Appellant. Moreover, Respondent No.1's application under Section 241 of the Act is not maintainable. It is because the Respondent No.1 held only 0.03% of shares. Whereas, the requisite of Section 241 of the Act is 10%. Furthermore, the NCLT and the NCLAT overlooked the fact that the deceased vested the rights to the nominee. Since the matter of inheritance is pending before the civil court, the NCLT cannot determine the same.

Respondent No. 1's Arguments

It has been argued that the application is maintainable. The nomination made the nominee merely the holder of shares for the legal representative's benefits. As such the nominee did not have rights over the same. In this regard, the legal representative can maintain an application under Section 241 of the Act. Further, it has been argued that a waiver requirement was placed in the company petition. Lastly, the pendency of civil suit has no effect on the maintainability of the company petition. Reliance was placed on certain case laws.

Court's View

The Court observed that Section 72 (1) of the Act, "vest" in the nominee the right over the securities. Furthermore, Section 72(3) is a non-obstinate clause. It overrides the operation of all other laws as against Section 72 (1). Including testamentary or non-testamentary laws. Hence, it is prima facie apparent that the vesting is absolute. Furthermore, Rule 19(2) of the Companies (Share Capital and Debentures) Rules, 2014 indicates the same



**Delhi
Diaries**



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Manish Kumar v. Union of India - The more things change, the more they remain the same

In August 2019, this column examined the decision in *Pioneer Urban Land and Infrastructure Ltd. and another v. Union of India* which upheld the status of a homebuyer in a real estate project as a financial creditor. However, thereafter in 2020 another amendment was brought about in the insolvency and Bankruptcy Code by which *inter alia* the threshold for initiation of petitions under Section 7 of the insolvency and Bankruptcy Code was increased in respect of petitions filed by home buyers in real estate projects. as a result of the amendment home buyers could initiate proceedings under the insolvency and Bankruptcy Code only if the

petition was filed by 100 or more home buyers together or if there were 10% of all the home buyers in a project who had banded together to file the said petition.

In *Manish Kumar v. Union of India*, the Supreme Court was called upon to consider and adjudicate upon the validity of these amendments both with regard to their constitutional validity and also on the principle that an amendment of a legislation cannot run contrary to the stated purpose of the legislation.

Some of the primary contentions of the petitioners were: -

1. The amendment makes hostile discrimination against a category of creditors, i.e., allottees *vis-à-vis* other financial creditors and is thus violative of Article 14 of the Constitution.
2. It is a well settled principle of constitutional law that if a law is to be considered not violative of article 14 of the constitution that is if a law is to be considered to a hearing to the principle of equality then the reasonable classification that can be made under the law should conform to two principles that is intelligible differentia and rational nexus it was contended by the petitioners in this case that there was no rational nexus to the classification that had been brought about in the course of the amendments that had been challenged in the petitions and stated objective of the legislation.
3. It was contended that the increase in the threshold restriction was also arbitrary.
4. There was no apprehension of the opportunity to homebuyers being misused inasmuch as The Supreme Court in pioneer had already consider the pros and cons of holding home buyers to be financial creditors and had a lead any such fears. Despite this that legislature had gone ahead and placed an additional threshold for one set of financial creditors to be crossed before they could initiate CIRP of a corporate debtor.
5. Empirically seen, the cases of home buyers approaching the NCLT seeking to initiate insolvency proceedings against real estate developers was in cases where there had been inordinate delays of more than 5 years.
6. The petitioners also challenged the retrospective application of the amendment and taking it further also contended that a substantive right could not be taken away by way of a procedural requirement.

As against this, the Union of India contended as follows:-


1. The IPC is a legislation with economic goals and the amendments had been brought about in furtherance of such economic goals.
2. The amendments were made pursuant to the recommendations of an expert committee and were guided by experience.
3. The differential treatment to various groups of creditors was not arbitrary but pragmatic.
4. The right to file an application under Section 7 of the code is a statutory right and it is always open to the legislature to regulate or condition that right.

On behalf of the builders/developers, it was contended:-

1. The object of the amendment is not to shield errant real estate developers but to ensure that the code is not taken advantage of for other purposes.
2. the proviso introduced by way of the amendment made the code workable and ensured that it could not be misused.

The court considered at length, the entire scheme of the insolvency and Bankruptcy Code and also examined in detail the precedents which had set out the purpose of the Code. Upon weighing the aforementioned contentions in light of established precedent, the Court agreed with the arguments of the Union of India on most aspects and upheld the amendments.





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ICSI-MYSURU CHAPTER

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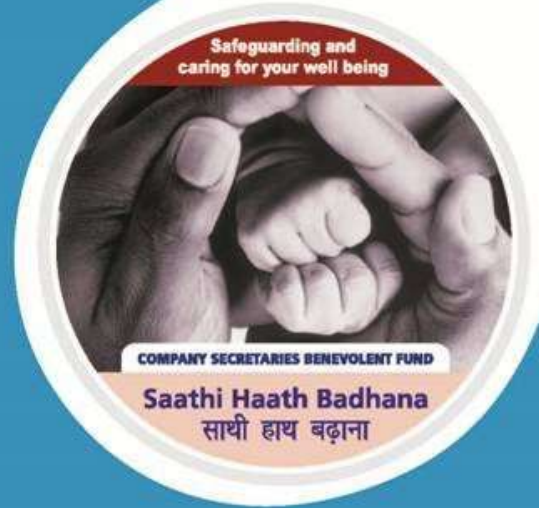
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IN PURSUIT OF PROFESSIONAL EXCELLENCE
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