

October 2021
210th Edition



Mysuru Chapter e-Magazine

Vision

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

Motto

सत्यं वद। धर्मं चर। इच्छते ते त्पुत्रे, ब्रह्मते ते च वर।

Mission

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Knowledge Series by CS Dr CHANDRATRE on the topic of "Managerial Remuneration" Part VI. Final Part Topics Covered in this edition: Applicability of Section 196 and 197 to Private Companies, SEBI (LODR), 2015 on Managerial Remuneration

From the Desk of Chairman



CS Vijaya Rao
Chairperson
Mysuru Chapter

Dear Professional colleagues,

It is time to meet all of you through the eMagazine, which is a great feeling. Congratulations to all those who have cleared the exam and all the best to those who will be taking the exam in December. Just remember it is just an exam and every one of you will be flying in colours. Just don't lose the focus.

As I am writing this, all of us are celebrating dasara. For Mysureans it is a state festival also called Naada Habba in Kannada. Mysuru Dasara is famous internationally. Each state is celebrating the festival little differently and there are many stories behind the festival. But at the end it is a festival that depicts the victory of good over evil. Though Mysuru prays Chamundeshwari during dasara many part of the country celebrates Rama's win over Ravana. In this auspicious time let us look at Ravana who has impressed Rama with his knowledge and wisdom. Though Ravana had all qualities of being great his ego and pride destroyed him. It is a propitious time to learn some corporate lessons from his life.

Ravana was well educated and well versed in vedas and shastras. Having good education is very important. Ravana's leadership skill was excellent. He was a great politician and ruler. Person with great leadership skill can reach the new height. Even Lord Rama sent Lakshman to learn politics from dying Ravana. Ravana loved his family unconditionally, he always did his job sincerely and always was loyal to his job, this is what Ravana practiced. Another important lesson is dedicate yourself to your goal. As per the story Ravana even pleased god Shiva with his devotion and dedication.

The reason Ravana lost was because of his ego and arrogance. His ego made him abduct Sita and because of that he got killed by Lord Rama. Because of this some part of the country burn the effigy of Ravana symbolizing win of good over evil. So in this dasara let us burn the ego and arrogance and live harmoniously.

So with Ravana's life lessons let us be a great leader and leave behind Distraction, arrogance, selfishness, diffidence, ego, Jealousy, bitterness, sluggishness, pessimism, and skepticism the 10 bad qualities of Ravana, which is what killed him, though he had other great qualities within him.

As the Pandemic is coming under control maybe it is time to start physical meetings and knowledge sharing, let us learn together and grow together. Again, my sincere request to students who could not clear this time please remember it is just an exam, you can definitely clear with dedication and hard work. Just don't lose the focus.

Stay safe

Thanking you,



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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Chapter Activities

1. Career Awareness Programme

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

S. No	Date	College Name	Resource Person	No of Students
1	02.09.2021	SDM PU College	CS Vijaya Rao, Chairperson	75

2. Students Study Circle Meeting

Mysuru Chapter organized 1 online Students study circle meeting during the month of September 2021. The details are as follows.

S. No	Date	College Name	Resource Person	No of Students
1	25.09.2021	Practical Aspects of the Indian Capital Market	CS Ashok Kumar S., PCS, Erode	20

3. Debate Competition - Chapter Level

As a part of All India Debate Competition 2021 for the CS Students, organized the Chapter level debate competition on 4th September 2021 through online mode. Ms. Rachana K P., & Ms. Preethi A L., Executive level students selected to represent Mysuru Chapter in the Regional Level Competition in SIRC. CS Vijaya Rao, Chairperson & CS Phani Datta D N., Secretary were acted as judges for the event.

4. Teachers Conference for UG/PG Lectures

Chapter organized Teachers Conference through online on 06th September, 2021 in the theme “Empowering Educators”. CS Vijaya Rao, Chairperson welcomed the gathering and introduced the Chief Guest. Prof. Sainath Malligemadu, Principal, MMK & SDM College was the Chief Guest of the program and delivered the inaugural address. In his address, he explained the importance of the conference & appreciated the ICSI institute for organizing the teacher’s conference. CS Phani Datta D N., Secretary of the Chapter proposed the vote of thanks.

The first session was on the topic “Effective Methods of Digital Teaching” handled by CS Dr. Shobha Shridhar, Practicing Company Secretary from Bengaluru. In her address, she explained about the various methods & ideas for conducting the online classes to make it more interesting. The second session was on the topic “Career as a Company Secretary” handled by CS Keerthana Gopal, Practicing Company Secretary, Mysuru. She explained the scope & role of Company Secretary and the course details. Around 50 faculties from various UG/PG colleges participated in the session. Certificates (e-certificates) has been issued to the participants. The participants informed that the program was very useful and got more ideas about CS Course and profession.

5. Teachers Conference for 11TH & 12TH Standard Lecturers

Chapter organized Teachers Conference through online on 07th September 2021 in the theme “Empowering Educators”. CS Vijaya Rao, Chairperson of ICSI-Mysuru Chapter welcomed the gathering and introduced the Chief Guest. Dr. Rekha Bhat, Associate Professor, Amrita Vishwa Vidyapeetham, Mysuru Campus was the Chief Guest of the program and delivered the inaugural address. In her address, she explained on the key issues faced by the faculties & students in the online classes. CS Parvati K R., Past Chairperson proposed the vote of thanks.

The first session was handled by Ms. Felciya S., Training & Quality Head, Kidvento Education & Research Pvt. Ltd., and Bengaluru in the topic “Effective Methods of Digital Teaching”. In her session, she explained the new technologies introduced by the various online platforms for making the online classes more effective. The second session was in the topic “Career as a Company Secretary” handled by CS Vijaya Rao, Chairperson of the chapter. She explained the scope & role of Company Secretary and the course details. Faculties from various schools of Mysuru participated in the session. Certificates (e-certificates) has been issued to the participants. The participants informed that the program was very useful and got more ideas about CS Course and profession.

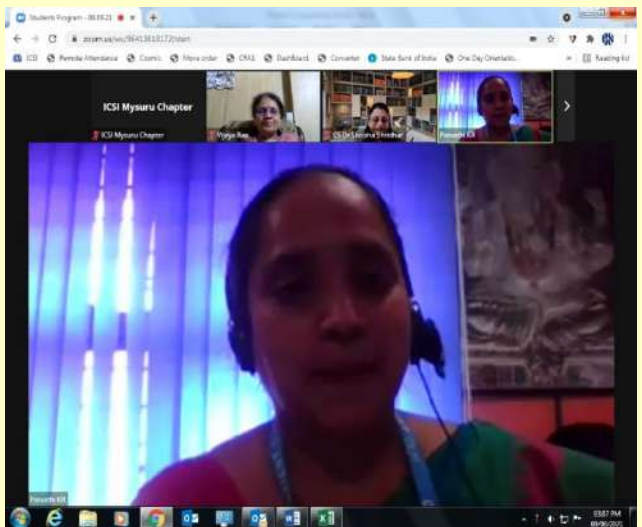
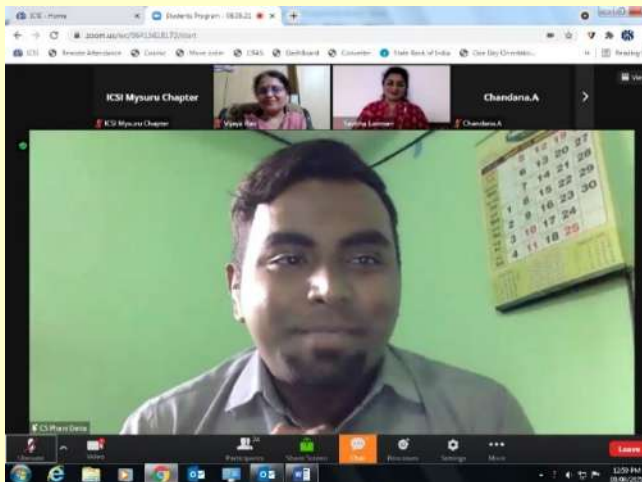
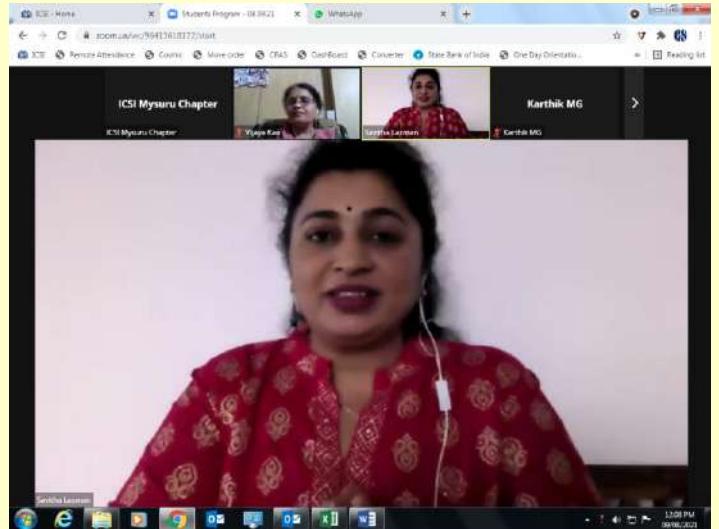
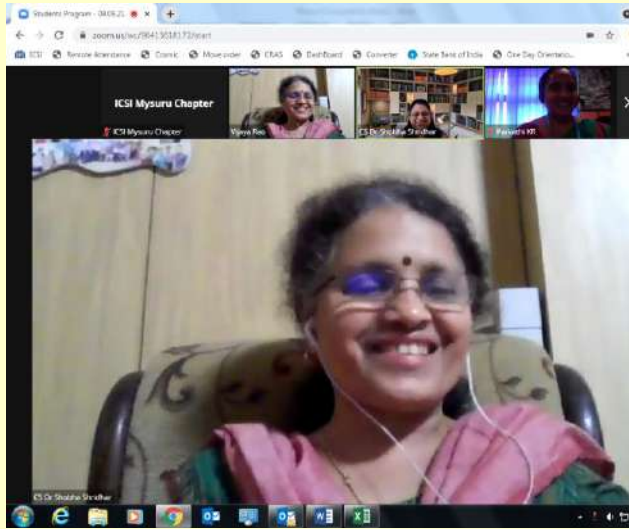
6. One Day Program for Students on “Transforming Education”

Chapter organized the one-day program for students on the eve of International Literacy Day on topic “Transforming Education” as per the advice from HQ. The inaugural session & the final session on Updates related to student activities (only for CS students) has been organized directly by the student services department of ICSI HQ. Dr. L Savitha, Educational Consultant handled the first session of the program on the topic Motivational Speech. She explained the students in detail on the importance of self-motivation etc. during the one hour session. CS Vijaya Rao, Chairperson welcomed and introduced the speaker. CS Phani Datta D N., Secretary proposed the vote of thanks. The second session of the day was handled by CS DR. Shobha Shridhar, Practicing Company Secretary, Bengaluru on the topic “Corporate Law - Lifeline of Business”. She explained in detail about the types of companies, features etc. The speaker also clarified the various doubts raised by the students. CS Vijaya Rao Chairperson welcomed the gathering & introduced the speaker. CS Parvati K R., Past Chairperson proposed the vote of thanks. Around 40 students pursuing CS Course & students from various colleges attended the session.

7. Inaugurating of Online Classes for CSEET

The 5th Batch of Online Classes for the CS Executive Entrance Test has been commenced from 15th September 2021. Chairperson CS Vijaya Rao inaugurated the batch by welcoming the students and the faculty. The class has been commenced for the upcoming CSEET exam scheduled in the month of November 2021.

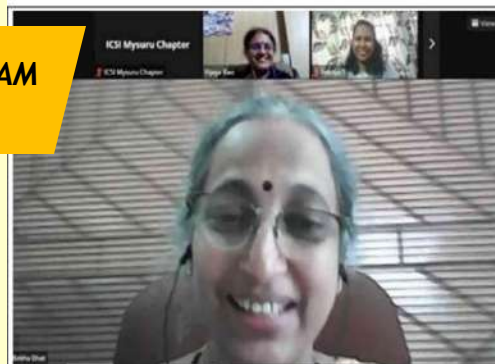
GLIMPSES OF STUDENTS PROGRAM



**THE GLIMPSE OF TEACHERS PROGRAM
DATE: 06-09-2021**



**THE GLIMPSE OF TEACHERS PROGRAM
DATE: 07-09-2021**





Over a Cup of Coffee With... Abridged and Edited



FCS Deepti Mehta
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Concept & Compilation:
CS Pracheta M
Practicing Company Secretary



CS Dr Shobha Sridhar
Practicing Company Secretary

CS Pracheta Hello friends. We welcome you all for another session of interviews with celebrity company secretaries for our e-magazine. Today we have with us CS Dipti Mehta. She is a founding partner of Mehta and Mehta Company Secretaries. She has more than 25 years of experience in various fields of corporate law, secretarial audit, factory audit, sector specific audits, HR audit, in IPR trademark, IPOs, her experience is widespread. She's also part of various committees. She has experience in insolvency recovery matters in Singapore, Dubai and Sharjah. She is also a certificate holder of INSOL (International Foundation course for International Insolvency law, cross border insolvency). We are very honoured to have you ma'am. Thank you so much for taking out time and accepting our invitation. We welcome you for this interview series.

CS Deepti - Thanks. It's an opportunity to always deal with our colleagues and discuss and share ideas. We learn from each other.

CS Pracheta - Ma'am, as I said, you have already celebrated silver jubilee in the profession. So, when you look back, what do you feel about it? How this journey of more than 25 years has been?

CS Deepti - Satisfactory, and I have entered the profession when the CS full form was confusing! Honestly when I passed the exam and I was holding ACS number, no one was giving job. Also, they will ask what will be your family, your plans? Then they will say, you look too young to be a CS and no one was paying salary of even ₹3000. Then I decided that I will never take salary below that, whether I'll sit at home and spending either 1000-1500 in travelling. Literally six months I was at home with ACS number, and I spent good time with my mother because after graduation, I was studying continuously. My mother was working, and I made her to sit and gave full support. That was the best time of my life. I'll say each girl should do this because we are never able to spend time with our parents. So, after graduation, don't take job immediately. Spend time with your parents. Then after job, of course, I kept on adding new things to my firm, always a new area of practice. You name it we have done it. I will never leave, it was always a 'yes I know this, I can do this' that kind of approach. Like I will just add that patent exam. I was in the last batch where the commerce students were allowed. I took three days leave and did it. People do one year course. When I went for exam, everyone was with heavy books, and I would say something was wrong with me! Everyone was reading, I was enjoying. But I passed & now I am a patent attorney. It's a journey, each practice each area of knowledge. I have done arbitration conciliation course

10 years back! Now it is a buzzword. I have done conciliation also, practically after completing the course, with my client. So, I always like venturing into new things. I never see that CS has limited role, we have ourselves predicted our limited role in our mind. As on today, CS has become a a very good profession, with the help of all members and our Institute's. This profession has given me all my dreams on happiness.

CS Pracheta - you started your profession with an employment and now your practice is so big. So, do you think that being in employment for some time is advisable for people who want to venture into practice? Does that really help or it's okay to directly jump into practice? Do you see any difference in both of them?

CS Deepti - You can start directly. Only thing that you get exposure but that otherwise also in CS practice you will get exposure. It's an individual's capacity because as a professional, you will be looking after accounts, administration, client retention, acquisitions, execution, management. So how good you are at multitasking, accordingly you can decide. It's individual prospect, not necessary one should do job.

CS Shobha - Really wonderful ma'am. My next question is relating the challenges itself. We women have the thing to multitask, and we are adept in playing multiple roles, both on personal front as well as in the professional front. But do you feel women face additional challenges in pursuit of professional goals, in comparison to men? Did you face any special challenge in your career and what is your advice to women who want to be successful professionally?

CS Deepti - Yes of course, there is an extra challenge for us women obviously. But I feel that we should not look at that negatively because when we give, we get also. For example, I am taking care of my in-laws, they have taken care of my kids when they were young, so I was able to pursue the profession. Mother is very important role for kids, and it is we ourselves who take that decision to have kids. Then we cannot say it's a burden on us. Same way I took it as a challenge. You should enjoy that role. You yourself like that affection and dominance, it's a stress buster. That gives you a feeling of happiness. Sometimes that role of mother picks up prominence in your life, you are enjoying that respect, confidence, that love, the maximum of your life and when you're older, you will remember, that was the best period of my life. We can't compare that with a man. Let's accept we are different naturally and both are important pillars for the happiness of each other. So, I always say don't complain about your duty. It's on you how you plan it. You can take help of family members When family members help, you have to respect and give back. You have to decide that no one is compelling you to do this. That is a compromise you have to do because you want that. You understand your potential and capacity. Of course, challenges will be there. I have two daughters, managing professional and personal life was challenging initially. I used to work after 10am only. We were the first to introduce compliance to mutual fund industry. That was a very important work, I needed full time concentration. So, I used to start my work at 10pm when all my duties were over, husband and kids are in bed, I'll start my work and work till three o'clock, morning I'll get up at 6:30.

CS Pracheta - Very simply put, they also have challenges, we also have challenges. They have a different set of challenges - we have a different set of challenges. You have expertise in various fields. I was surprised to read your expertise list. How would you keep yourself updated? How do you keep honing your skills in these particular areas?

CS Deepti - Honestly, I keep on working on that, case law updates etc. You'll be surprised, as a thumb rule, I never remember section numbers. I hated that as a student. It is common to forget when we only read; when you actually execute, that fixes in your mind, interpretation will always be with you for life. Whatever I read, I just don't read, I start

implementing. I do work small or little, but I'll do. As I mentioned, I have done conciliation course ten years back, but I have done conciliation so its in my mind. I have actually done patent, I actually visited patent office. When I started trademark practice I visited Trademark Office, I stood in line even though I had a full-fledged office staff working for me. You start working on that knowledge everything gets fixed. Then updating becomes easy because now you know the subject, so you glance at it and you remember. You don't remember recipe of idli. When you are younger you will remember. Now you have done so many times, you don't have to remember.

CS Pracheta - *It's very easy but still practically we should get the opportunity also.*

CS Deepti - Always the eyes, ears, and the mind should be open, you will get it and there should be will in your heart. God always helps you and give you the opportunity. When you Get the opportunity, you should grab it. It's my experience.

CS Shobha - *Where there's a will, there is a way.*

CS Deepti - Yeah, it's 100% correct sentence. It's a passion, your mind- body- heart should work together. Then no one can stop you. The opportunity comes before you, you don't know when it knocks at your door. I have experienced throughout my professional life, whatever work, even if there is a long list, all work has come to me. Develop the Love and passion for that knowledge and work, it will come.

CS Shobha - *It's really amazing, we put it into action right now. So, next question - You have given various lectures in several institutions like ICSI, ICLS, CII, etc. So, will you please share your journey as a speaker, how can we improve the communication skills?*

CS Deepti - See, first of all any lecture, you should have the subject knowledge and the knowledge about the audience. The clarity of what is expected must be there. If same topic you can talk in 10 minutes or 15-20 minutes and the same topic, you can take two days also, that's the command of the subject. We always have ability. God is great, everyone is capable of everything. Only thing is that capability is sleeping. If you have to use it, just say 'come on, I need you' that's the only thing required. Actually, in our firm, what we have been doing from years, every Saturday we have a presentation, and we tell the articles to give the presentation. So when the person leaves our organization, that person can speak in public, in board meeting and give presentation. Since they are confident, they can take the questions also. I feel happy that clients' companies, CAs also said that your people are there with us and they are so polished, they really respect that. In the Saturday webinar, we call outsiders, but presentation will be always by articles because that gives them confidence.

CS Pracheta - *I was listening to one of your lectures today where you are addressing the professionals who have just qualified. One beautiful thing which I really like when you said was with respect to minutes. You said that is our trademark. That was a beautiful thing because you also mentioned that we feel it is monotonous. It doesn't add any value. But you said that there's nothing which is monotonous and that is a trademark, which we are leaving behind, so I just wanted you to give some advice to our younger professionals.*

CS Deepti - I always say, in life, not a single work is unimportant, not a single work is not of relevance. Each work is important. It's on you how much importance you give to that work. A small work becomes important if you feel it is important. Think and apply your mind and make it important. Again, I'm saying where there is a will there's a way. I always give suggestion to all professionals who are in my office also that money is important but always give that as a

second number. First number to your knowledge application and satisfaction. When you get that, money will come automatically. But money will come and if you are not getting knowledge or satisfaction, you are always unhappy in the life. You are always insecure. When you think that work is important and that is the first preference, what will you do? You will try to make the work very best, you will try to maximize knowledge best, you will always be updated. You will enjoy & since you are happy, everything will be positive, and you will like and do the work in a best way. When that will happen, people are there always observing your work. You will be rewarded. You don't think for that. Make yourself capable so others think that 'yes you deserve'. Make yourself deserving. Don't demand, command it.

CS Shobha - *So whatever you do, put in your best efforts in the best possible way. The outcome will always be excellent. I take this as your tip. You have been a very busy professional, having lots of activities etc. What other hobbies do you have? We are interested to know about it.*

CS Deepti - That's a thing that sometimes I regret also but yes, I like music. So I am learning music, so I sing, travel, dance., and reading yes of course, any stories - short stories, spiritual stories, I read that. I like autobiography. If I take a book, I cannot leave that book without completing.

CS Pracheta - *That was so nice ma'am. you have so many things on your platter, you are a busy professional, you are a speaker, doing so many things. So, what are your tips for time management? How do you manage your time for all these activities?*

CS Deepti - Yes that you should be very conscious, or the compromise will be on your personal time. When my two kids were there, honestly so many things you have to take care, even their socks which colour will be and what will be the book cover etc. Everything I have to take care. So I will purchase the things when it is at most urgent and I keep my regular shop so that I know and as far as possible on the phone I can order and I can collect so that I can save time. Of course, if I go out on holiday that time, I enjoy my purchasing! Secondly TV, actually from childhood my father was very strict, and he told us that the TV is for your entertainment, it should be at your wish. You should command it, it should not command you. So that was fixed in my mind. I was never fussy about TV serial. That doesn't mean I was not watching. Whatever is on, I will watch. You enjoy that so that saves lot of time because one thing to keep in mind is all this keeps your mind diverted. Third thing is I used to do like every woman does that they note down every day what they have to do. Take out time for yourself after everyone sleeps. Take some time for yourself that can be relaxation, also for thinking yourself, for your own development or for your reading or extra or whatever. If you do that, it gives you a lot of time for planning. What happens is that we are continuously with one or the other work but if we give time to ourselves to relax, then we identify our priorities and develop strategies for the same. The key aspect is that you should be alone sometime, to think for yourself what you like, what you want, how you want to achieve, that's time management. During office hours, I was very particular that I'm just attached to the work. I know that what I have to do. For that, write for 5 minutes everything and I keep on picking everything. At 6:00 o'clock it should be over. I should be out. If that way you discipline yourself, you can finish.

CS Shobha *So what according to you are the core values that have shaped your outlook towards life and profession?*

CS Deepti - Firstly, you should be very strong with your ethics. You should be very honest with your work. Be what you are, there is no tension or question in the life. At present, I am just extempore. What is coming to my mind is what I am

talking. I have never thought of anything what I'll talk. When lot of stress and time management is there, you are stressed. Temperament is also high; you get disturbed easily. Again, I'm very meticulous and particular with my profession. I am very honest; I cannot accept that there can be a mistake. Then I'm very honest to the client and go and apologise whether he's suffered or not and that should be the ethics that this is my mistake. I ensure that system is corrected. I go to the roots as to why this happened. And it should be corrected. In the sense that ethics is principal. Then second, I say is hard work. What do you do, enjoy. Another thing is managing the anger & ego. Once an article student told my husband that Madam gets too angry, shouts too much. I was informed & I felt bad. I have written on my table board, A for anger, I had written & everyone cannot read it. I get to remember that I'm not to be angry. And I've made a point thereafter I stopped my anger in office. I will not shout and I said that girl also. She says now that madam even I don't remember. I said that was a lesson you taught me. That was wrong on my part. You are correct so don't feel bad. You should observe your ego. Everyone is intelligent, respect that, God is the best creator, is doing everyday good new creation which each one is a masterpiece. Right.?

CS Pracheta - *So down to earth, so humble. Humility, that's what I can observe in your thought's ma'am. How much do you give importance to your personal fitness?*

CS Deepti - I like the question. Honestly, I'll give this example to all ladies. I was from a family of three people and then I got married to the family of fourteen people. I knew cooking, my mother trained me but from three to fourteen, my goodness and then the job started. But physically I was not getting fit. Every month, I was getting tiredness, feverish & all that. So every month in my job, I used to take one or two days leave. Once, my boss questioned if health for real reason taking leaves. I felt offended. He sensed it; he was a very fit person with lot of activities but never complained about fatigue. He took a promise from me that I will work on my physical fitness at least 10 minutes a day That was my eye opener. From that day I was started my fitness regime and continuing till date. I give this example to everyone. Every busy person can give at least 10 minutes for fitness and it gives super confidence.

CS Shobha - *Really wonderful ma'am. Got lot of takeaways. We take this opportunity to extend our gratitude to you for taking out your time from your busy schedule and sharing your journey and giving us so much of inputs as to how to improve our life. So to sum up the session today,*

"ALL OUR DREAMS CAN COME TRUE IF WE HAVE THE COURAGE TO PURSUE THEM."

So whatever you do, enjoy to the fullest. Do your best in whichever area it is and also make each of the moment memorable. Thank you so much ma'am. Thank you once again.

CS Deepti - Thanks. I thank Mysore chapter for giving me this opportunity. Thank you.

For Complete interview please click below link: <https://bit.ly/csdeeptiinterview>



"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 sixth and the final 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 For this topic, click: http://bit.ly/Edition205	<ul style="list-style-type: none"> a. Introduction b. Definition of Remuneration c. Over-all limits on remuneration d. Sub-limits of remuneration
206 - Part II	Remuneration to certain category of Directors For this topic, click: http://bit.ly/206thEDITION	<ul style="list-style-type: none"> 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
207 - Part III	Remuneration to MD and WTD For this topic, click: https://bit.ly/207thedition	<ul style="list-style-type: none"> 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 For this topic, click: https://bit.ly/EDITION208	<ul style="list-style-type: none"> 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 https://bit.ly/Edition209	<ul style="list-style-type: none"> a. Remuneration for professional service continued- Meaning of 'profession' and 'professional'. b. Supportive judgements
210 - Part VI	Applicability to Private Companies	<ul style="list-style-type: none"> a. Applicability of Section 196 and 197 to Private Companies b. SEBI (LODR), 2015 on Managerial Remuneration

1. APPLICABILITY OF SECTIONS 196, SECTION 197 AND SCHEDULE V TO PRIVATE COMPANIES

Applicability of section 196 to private company

Section 196 of the Act contains provisions concerning 'Appointment of managing director, whole-time director or manager' and Part I of Schedule V to the Act contains conditions which must be fulfilled in connection with the appointment of a managing director, whole-time director or manager. Besides, Part III of Schedule V contains certain procedural requirement which must be complied with in connection with the appointment of a managing director, whole-time director or manager.

By Notification No. 464(E) dated 5 June 2015 issued by MCA under section 462 of the Companies Act, 2013, subsections (4) and (5) of section 196 shall not apply to private companies. Thus, private companies have been exempted from the provisions of subsections (4) and (5) of section 196.

Accordingly, only the provisions of subsections (1), (2) and (3) of section 196 are applicable to private companies and the provisions of subsections (4) and (5) of section 196 are not applicable to such companies. Consequently, none of the provisions of Part I of Schedule V are applicable to the appointment or re-appointment of managing or whole-time director is applicable to private companies.

It may be noted that the Companies Act 1956 contained a provision in its section 316(1) which provided that, no public company and no private company which is a subsidiary of a public company shall, after the commencement of this Act, appoint or employ any person as managing director, if he is either the managing director or the manager of any other company (including a private company which is not a subsidiary of a public company), except as provided in sub-section (2). And subsection (2) provided that, a public company or a private company which is a subsidiary of a public company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company (including a private company which is not a subsidiary of a public company).

The Companies Act 2013 does not have in such provision and, therefore, there is no restriction on a private company appointing as its managing director or whole-time director a person who is already a managing director or whole-time director of one or more private companies.

Applicability of section 197 to private company

Section 197 contains provisions regarding 'Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits'.

Subsection (1) of section 197 provides that the total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

It will be noticed that subsection (1) of section 197 uses the expression 'public company', which means that it applies to only public companies (including private companies which are subsidiaries of public companies vide section 2(71)). Accordingly, subsection (1) and its two provisos do not apply to a private company which is not a subsidiary of a public company.

Thus, subsection (1) of section 197 and its two provisos apply only to public companies as defined in section 2(71) and besides public companies incorporated as public companies, the definition covers only those private companies which are subsidiaries of public companies and it excludes those private companies which are not subsidiaries of public companies.

The crucial question is, however, as to whether the rest of the subsections of section 197 apply to private companies, since those subsections use the word 'company' unlike 'public company' used in subsection (1). In my opinion, none of the rest of the subsections of section 197(1) is applicable to private companies which are not subsidiaries of public companies. My reasons for this conclusion are set out in the paragraphs that follow.

Subsection (1) of section 197 stipulates the overall ceiling applicable to remuneration payable to all directors (executive as well as non-executive) of a public company and the ceiling is 11% of net profits for any financial year. In other words, a public company cannot pay to its directors by way of remuneration in any financial year more than 11% of net profits for that financial year calculated in accordance with the provisions of section 198. Within the 11% ceiling a public year including remuneration to its managing and whole-time directors as specified in the second proviso to subsection (1).

Subsections (2) to (15) of section 197 are nothing but offshoots of subsection (1) which contains the substantive provisions regarding remuneration of directors and all other subsections deal with the same subject-matter as subsection (1) although they are all using the word 'company'. This word must be interpreted in the light of subsection (1) which clearly applies to public companies only.

The word 'company' in other subsections of section 197 takes colour from the substantive provision in subsection (1), because all other subsections are nothing but offshoots of subsection (1) and are extension of subsection (1). The heading of section 197 is 'Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits'. The section begins with the provision regarding overall managerial remuneration subsection (1) contains the substantive provision in connection with remuneration payable to directors of companies.

An analysis of the various subsections of section 197 is set out below:

- As noted above, in as much as subsection (1) explicitly declares its applicability to only public companies, it cannot apply to private companies;
- Both subsections (2) and (3) refer to subsection (1). This clearly indicates that both subsections (2) and (3) are offshoots of subsection (1) and they cannot function independently, although they use the word 'company' and hence they cannot apply to private companies.
- The substantive provision of subsection (4) is a procedural provision and the proviso carves out an exception to subsection (1), (2), (3) and the substantive provision of subsection (4).
- Subsection (5) is an extension of subsection (2) and hence it has to be read along with subsection (2).
- Subsection (6) is just an enabling provision and has not much relevance to determine the applicability to private companies;
- Subsection (7) deals with remuneration of independent directors. Since private companies do not require mandatory appointment of independent director, this subsection cannot apply to private companies.

- Subsection (8) expressly states “for the purposes of this section” and it has relevance to the percentage limit stipulated in subsection (1) which, as noted before, applies only to public company and therefore, subsection (8) cannot apply to private companies.
- Subsections (9) and (10) again refer to the ‘limits prescribed by this section’, which are prescribed by subsection (1). So subsections (9) and (10) cannot apply private companies.
- Subsection (11) is relevant in respect of increase in remuneration ‘In cases where Schedule V is applicable on grounds of no profits or inadequate profits’. Part II of Schedule V is relevant in respect of payment of remuneration when in any financial year a company has loss or inadequate profits due to which it cannot pay remuneration up to the limits stipulated in subsection (1). Accordingly, applicability of subsection (11) is relevant only in the cases of financial year of a company in which it is not possible for it to compute the said limits. This is totally irrelevant in the case of private companies because they are excluded from subsection (1).
- Subsection (12) has been made expressly applicable to listed companies; hence it cannot apply to private companies.
- Subsection (13) has no applicability unless the condition specified in it is applicable.
- Likewise, subsection (14) has no applicability unless the condition specified in it is applicable.
- Subsection (15) is a penal provision and it has applicability only when any provision of the section is contravened.

The words ‘Notwithstanding anything contained in sub-sections (1) and (2)’ only carve out an exception to subsection (1) which contains provision regarding overall remuneration when a company has profits and subsection (3) contains a provision as an exception to subsection (1). Thus, in my opinion, subsection (3) only means that despite that a company is entitled to pay remuneration up to the percentage limits linked to profits it can pay remuneration even though it has a loss/inadequate profit. In other words, the said non-obstante clause seeks to carve out an exception in particular to subsection (1) which prescribes the percentage limits linked with profits while subsection (3) permits payment of remuneration despite that the company has loss or inadequate profit due to which under subsection (1) a company cannot pay remuneration.

Section V of Schedule V reads as follows:

Section V – Remuneration payable to a managerial person in two companies:

Subject to the provisions of Sections I to IV, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

In view of the foregoing discussion, the provisions of Section V also cannot apply to private companies. Thus, none of the provisions of section 197 and Part II, Part III or Part IV of Schedule V in respect of remuneration payable to the managing or whole-time directors is applicable to private companies.

The Unstarred Question No. 7045 raised by a Member in the Lok Sabha and the answer given by the Hon’ble Minister of Corporate Affairs, indicates that the Government also is of the view that the provisions of the Companies Act relating to remuneration of directors are not applicable to private company which is not a subsidiary of a public company. The Question and the Answer are set out below:

“GOVERNMENT OF INDIA MINISTRY OF CORPORATE AFFAIRS

LOK SABHA

UNSTARRED QUESTION NO. 7045

ANSWERED ON FRIDAY, THE 8th MAY, 2015

[VAISAKHA 18, 1937 (SAKA)]

REGULATION OF PRIVATE COMPANIES

QUESTION

7045. SHRI RADHESHYAM BISWAS: Will the Minister of CORPORATE AFFAIRS

be pleased to state:

- a) whether the cases of violation of the Companies Act, 2013 by the private companies on account of payment of salary and other allowances to their employees have come to the notice of the Government in the country during each of the last three years;
- b) if so, the details thereof, company-wise and the reasons therefor along with the action taken/being taken by the Government in such cases so far;
- c) whether the Government has issued/proposes to issue guidelines in this regard and if so, the details thereof; and
- d) the other steps taken/proposed to be taken by the Government in this regard?

ANSWER

THE MINISTER OF CORPORATE AFFAIRS (SHRI ARUN JAITLEY)

(a) to (d) : The relevant provisions of the Companies Act, 2013 came into force w.e.f. 01/04/2014. The salaries of managerial personnel or employees of a private company, except the salaries of board level managerial personnel of a subsidiary of a listed company are not regulated under the Act.”

[Note: In my view, the words ‘listed company’ in the answer should be read as ‘public company’]

In the light of the discussion above, in my opinion, none of the provisions of section 196 and 197 and Schedule V is applicable to the Company.

2. SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

Regulation 17(6) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (‘LODR Regulations’) as it existed prior to the 9th of May 2017 amendment, reads as follows:

“(6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.

(b) The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

(c)The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

(d)Independent directors shall not be entitled to any stock option.”

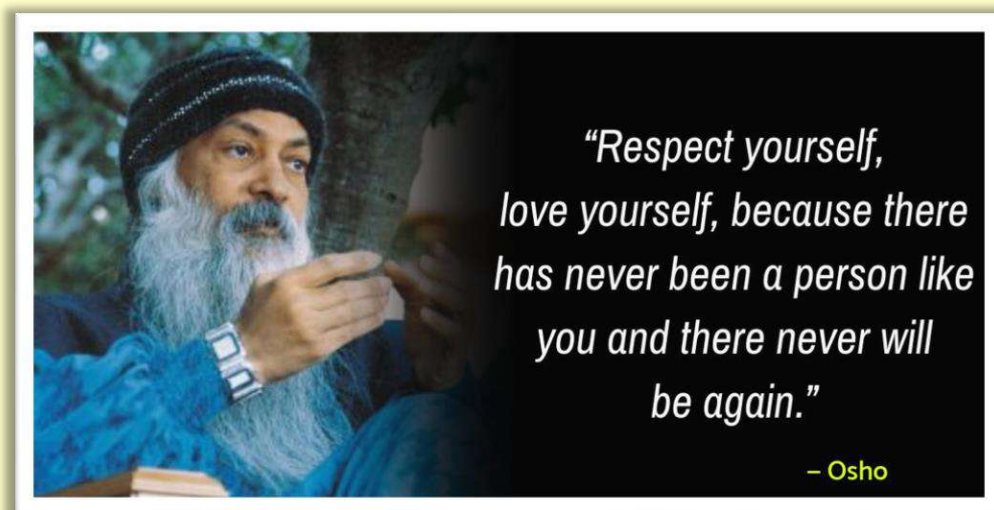
By the amendments notified on 9th May 2017, after clause (c), the following new sub-clause has been inserted:

“(ca) The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.”

The above clause (ca) will be effective from 1st April 2019. This means that it will apply in the case of remuneration payable for the financial year 2019-20. Clause (ca) must be read as part of regulation 17(6) and hence the whole regulation 17(6) must be read together. If so read, it would appear that the word ‘remuneration’ in clause (ca) is to be interpreted having regard to the words ‘all fees or compensation’ in clause (a) of regulation 17(6). This leads to the inference that remuneration for the purposes of clause (ca) would be inclusive of sitting fees paid to the directors for attending board and committee meetings. Clause (ca) requires a fresh approval every year, which can be obtained at any time during the year.

For CA provisions related to the article please click below

<https://bit.ly/197provisions>



Annual Filing One Person Company (OPC)



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Short Summary:

One Person Company is a company that has only one person as its member. Being just one-member company, the OPC has lesser compliance requirement compared to Private Limited Company or Limited Liability Partnership.

In this article author shall discuss about Annual Filing of One Person Company with Registrar of Companies.

There are many form a OPC is required to file with ROC on Annual Basis. Like

SI NO	Form	Time Period
1.	MSME-1	Half Yearly
2.	DPT-3	Yearly
3.	DIR-3 KYC	Yearly

In this editorial author shall discuss about following filing and concepts

- AOC - 4 (Financial Statement)
- MGT-7A (Annual Return)
- Annual General Meeting

I. Annual General Meeting:

There is always dilemma that, whether OPC is required to hold Annual General Meeting or not?

□ Legal Provision:

Any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book.

□ Impact of Provision:

- As OPC having only one member, it is not required to hold any General Meeting (EGM/ AGM).
- OPC have to maintain minutes of Annual General Meeting as per (Section 122).
- Due date of AGM of OPC is 27th September.
- OPC just have to take note the resolution to be passed in General Meeting Like:
 - Adoption of Annual Accounts

- Adoption of Directors Report
- Appointment of Auditor. Etc.

II. AOC- 4 (Financial Statement):

- It is required to file within 180 days from the end of Financial Year.
- Due Date of AOC-4 is 27th September 2021.
- If AOC-4 filed after 27 September, there is additional fees of Rs. 100 per day.
- Attachment to AOC-4
 - Financial Statement
 - Abridge Directors Report (As per rule 8A)

III. MGT- 7A (Abridge Annual Return):

- It is required to file within 60 days from the Date of AGM
- AGM can be held maximum Up to 27 September 2021.
- Due Date of MGT-7 is 26th November 2021.
- If MGT-7 filed after 26th November, there is additional fees of Rs. 100 per day.
- Attachment to MGT-7A
 - List of Director
 - List of Shareholder

If Date of AGM is extended by MCA, whether Due Date of AOC-4 of OPC shall be extend or not?

As OPC is not required to hold any AGM. Therefore, one can opine that, even if the date of AGM extended by the MCA, it will not impact the Due Date of AOC-4. Due Date of AOC-4 shall be 27 September.

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Analysis of SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021



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Background

The issue of Employee Stock Option Scheme and Employee Stock Purchase Scheme by listed companies were earlier regulated by SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 (“SEBI ESOS Guidelines”). SEBI has later notified SEBI (Issue of Sweat Equity) Regulations, 2002 (“SEBI Sweat Equity Regulations”) to regulate issuance of Sweat Equity Shares by listed companies.

The SEBI had thereafter constituted a group comprising representatives from industry bodies, corporates, and trustee firms to frame a new set of regulations in relation to share-based employee benefits, with a view to ensure better enforceability, address concerns with respect to composition of employee welfare trusts, disclosures and other issues, and enable secondary market transactions with adequate safeguards. The report of such group was placed before the Primary Market Advisory Committee of the SEBI for deliberations, following which, a “Discussion Paper on 'Review of guidelines governing stock related employee benefit schemes'” was issued by the SEBI in 2013, seeking public comments on the suggested regulatory measures.

Subsequently, SEBI (Share Based Employee Benefits) Regulations (“SEBI SBEB Regulations”), 2014 were notified by SEBI in 2014, which replaced the SEBI ESOS Guidelines.

SEBI has received various representation from stakeholders to further streamline and rationalize the provisions of SEBI SBEB Regulations and SEBI Sweat Equity Regulations and make them more robust, sync with best global practices and ease of doing business. It was also observed that both SEBI SBEB Regulations and SEBI Sweat Equity Regulations regulate employee benefits arising out of issue of equity shares by listed companies and hence the possibility of merging both the regulations may be analyzed. Accordingly, SEBI constituted expert group for recommendation and changes in SEBI SBEB Regulations and SEBI Sweat Equity Regulations which submitted its report in June 2021 which was followed by SEBI discussion paper in July 2021 seeking comments from stakeholders on the recommendation made by the expert group on these Regulations.

Considering the comments received from stakeholders and based on expert group report, SEBI has notified new SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021 (“New SEBI Regulations”) on 13 August 2021 thereby combining both the erstwhile SEBI Regulations for listed companies. The New SEBI Regulations are divided into various chapters. Chapter II and III deals with Employee Stock Options and other share based employee benefits whereas Chapter IV deals with issue of sweat equity shares by listed companies.

Key Features of the New SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021:

1. Definition of “Employee” expanded

Employee (except in relation to issue of Sweat Equity Shares) now includes any employee (permanent or temporary) who is exclusively working for the Company or its Group Company including subsidiary, associate companies or a holding company, in India or outside India. It also includes a director of the Company or its Group Company including subsidiary, associate companies or a holding company, in India or outside India, whether a whole-time director or not, including a non-executive director who is not a promoter or member of the promoter group. Earlier only permanent employees (whether working exclusively or not) for the Company, its subsidiary company or a holding company, in India or outside India were covered. Now employees / directors of Group Company including associate companies are also eligible and further clarity is provided that non-executive directors are also eligible who are not promoter or member of the promoter group.

2. Change in mode of implementation

As per New SEBI Regulations if the scheme is initially implemented through Trust, then company may also change the mode of implementation either through Trust or Directly later if the prevailing circumstances so warrant subject to the condition that a fresh approval of the shareholders by a special resolution is obtained prior to implementing such a change and that such a change is not prejudicial to the interests of the employees. This will give flexibility to companies to change mode of implementation of schemes basis prevailing circumstances.

Appropriation of shares not backed by grant up to second subsequent financial year

Shares acquired from secondary market by Trust which are not backed by grant can now be appropriated up to second subsequent financial year with the approval of compensation / Nomination and Remuneration Committee as against the earlier requirement of subsequent financial year. The time period for appropriation of shares by Trust has been extended by additional 1 year.

3. Variation in terms of scheme without shareholder’s approval

Company can now vary the terms of scheme to meet any regulatory requirement without seeking shareholders’ approval by special resolution. This will give flexibility to company to amend scheme in case of any regulatory requirement without seeking any approval of shareholders.

4. Limit of Shareholding of Trust

Limits up to which Trust can acquire / hold shares from secondary market shall automatically include within their ambit the expanded or reduced capital of the company where such expansion or reduction has taken place on account of corporate action(s) including issue of bonus shares, split, rights issue, buy-back or scheme of arrangement. Apart from expanded capital, now reduced capital is also covered.

5. Utilization of excess Funds / Shares held by Trust in case of Winding Up of the Scheme

In case of winding up of the any scheme implemented through Trust, any excess money / shares related to such scheme can also be transferred to another scheme as recommended by Compensation Committee with the approval of shareholders, apart from repayment of loan by Trust or distribution to employees.

6. Minimum Vesting Period in case of Death or Permanent Incapacity

In the event of Death during employment, all the options, SARs, or any other benefits granted shall vest to his / her legal heir(s) or nominee(s) immediately on the date of death and in case of Permanent Incapacity, all the options, SARs, or any other benefits granted shall vest to him / her immediately on the date of Permanent Incapacity. The minimum vesting period of 1 year will not be applicable in such cases. This amendment has provided much needed clarity regarding vesting in case of Death and Permanent Incapacity.

7. Certificate from Secretarial Auditor

As per the New SEBI regulations, every company which has passed a resolution for the scheme(s) under these regulations, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from the secretarial auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting. Earlier there was no clarity about type of auditor from whom certificate was required to be obtained and company were obtaining the same from statutory auditors. Now New SEBI regulations has clarified the same that such certificate is required to be obtained from Secretarial Auditor.

8. Objective/ Purpose for the Issue of Sweat Equity Shares

The purpose for issue of Sweat Equity Shares is now specifically mentioned in the New SEBI regulations for clarity. Listed Companies can issue Sweat Equity Shares to its employees for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

9. Limits on Issue of Sweat Equity Shares

There were no limits prescribed under the erstwhile SEBI Sweat Equity Regulations on issue of Sweat Equity Shares. Under the New SEBI Regulations, a Listed Company shall not issue sweat equity shares for more than 15% of the existing paid-up equity share capital in a year subject to a maximum limit of 25% of the paid-up equity share capital at any time. This amendment is in line with the provision of Companies Act 2013 applicable to unlisted companies.

A company listed on Innovators Growth Platform can issue up to 15% of the paid-up equity share capital in a financial year subject to overall limit of 50% of the paid-up equity share capital of the company, up to ten years from the date of its incorporation or registration.

10. Lock-in period for Sweat Equity Shares

Erstwhile SEBI Sweat Equity Regulations has prescribed 3-year lock-in period for Sweat Equity Shares. As per the New SEBI Regulations, Sweat Equity Shares shall be locked in for such period of time as specified in relation to a preferential issue under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“SEBI ICDR Regulations”). Further, the provisions of SEBI ICDR Regulations in respect of public issue in terms of lock-in and computation of promoters’ contribution shall apply if a company makes a public issue after it has issued sweat equity shares.

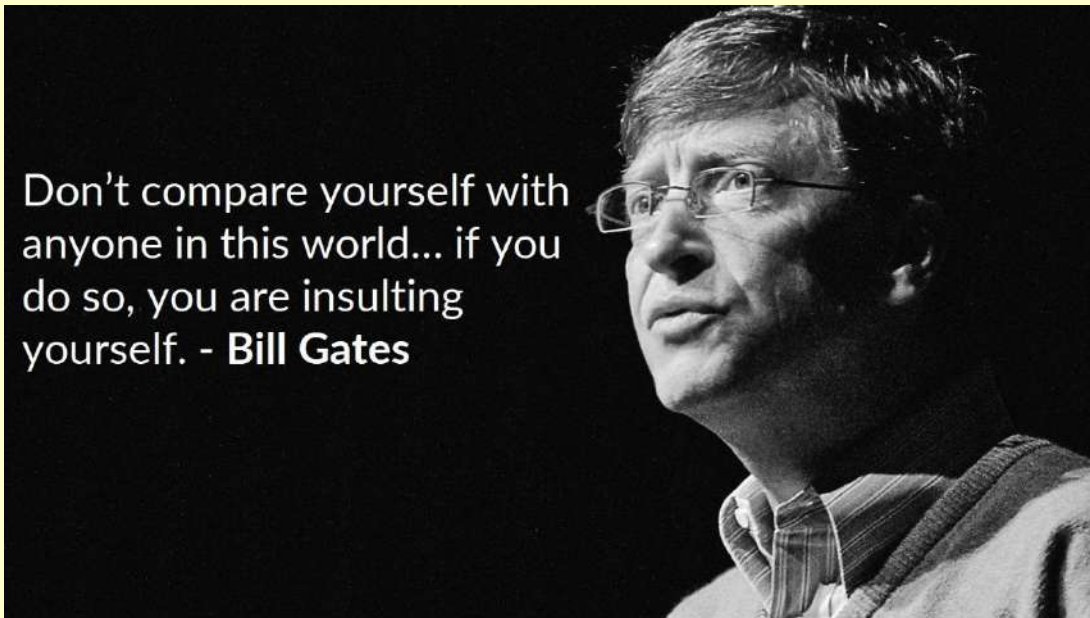
Sweat Equity Shares were not attractive due to the 3 years lock-in under the erstwhile SEBI Sweat Equity Regulations. Under the New SEBI Regulations, the Lock-in period for the Sweat Equity shares shall be 3 years for Promoters/ Promoter Groups and 1 year for other than Promoters / Promoter Group thereby making it more attractive.

11. Pricing for Sweat Equity Shares

As per the New SEBI Regulations, the price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the SEBI ICDR Regulations.

Conclusion

The New SEBI Regulations will remove ambiguity and provide more clarity to the stakeholders for implementing employee stock options, sweat equity and other related benefits. The inclusion of group and associate company employees under the definition of “employee” will help listed companies to extend employee stock option schemes or related benefits to the employees of its group / associate companies. The clarity on non-applicability of minimum vesting period in case of death and permanent incapacity is a welcome step. Similar amendments viz. definition of employees, non-applicability of minimum vesting period on death or permanent incapacity, etc. under the Companies Act 2013 shall be made for the benefit of unlisted companies.



The 'Fur' over on 'NFRA' Consultation Paper



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The last couple of weeks was a fur over amongst professional brethren and circles in news media, social media etc., regarding the powers of a super regulator, namely the National Financial Reporting Authority (NFRA). The intense debate was with regard to the powers of NFRA over its consultation paper with regard to Statutory Audit and Auditing Standards for Micro, Small and Medium Companies (MSMCs). The four key issues raised in the consultation paper was based on an analysis carried out by NFRA based on data in MCA - 21 filings; to understand the regulatory framework of small sized companies whose net worth is below 250 crores. The four questions on which views have been sought are:

- 1) Whether MSMC's should be exempted from mandatory statutory audit under the Companies Act, 2013 and what threshold limits be stated for such an exemption?
- 2) Is there a requirement of separate set of auditing standards for MSMC's as it exists for accounting standards?
- 3) What are changes required in the standard cost of audit estimates computed by NFRA?
- 4) What should be the criteria and thresholds for the current exemption for CARO, ICFR and statutory audit applicability and the need to be standardized and made uniform?

The introduction of the Companies Act, 2013 brought many changes in the facet of company law administration in India. The Act, 2013 consolidated many of the provisions contained in the erstwhile law (namely the Companies Act, 1956) and condensed the same. Rules relating to the CA, 2013 was facilitated in ease of doing business, better corporate governance and easy compliances. Accounting and Auditing Standards were mandatory. As of date, there is a single set of auditing standards issued by ICAI which is applicable for all type of company's viz. private, or public or large, medium or small. As far as accounting standards are concerned there are two sets of accounting standards notified in India, based on IFRS with carve outs and (Ind AS) and traditional Accounting Standards. The Companies (Accounting Standards) Rules, 2021 define "Small and Medium Sized Company" (SMC) and such companies are eligible for some minimal exemptions from Accounting Standards. As per the NFRA analysis, it is found that majority of the companies is very small in size in terms of key financial parameters and payment to auditors by such companies is miniscule and far below the minimum standard audit fees cost estimates. The study by NFRA also points out that in European Union, United Kingdom, Singapore, Australia, United States of America and Japan allows for exemption from the Standards depending on certain thresholds. The companies studied for analysis by the NFRA points out that majority are family-owned enterprises, formed for the purpose of being a limited liability and to secure bank loans, licenses, permits. There is no public interest involved in undertaking or making mandatory the external audit on them. Therefore, there is greater leverage and feasibility for exempting MSMC from audit and accounting standards requirements.

The above brings us major contention of the self-regulator whether the Consultation Paper by NFRA on feasibility of exempting MSMC's is usurping their independence, integrity and excellence. The issues that are raised in various forums and media are:

- 1) Does Section 132 give powers to NFRA on the aforesaid four questions raised by it?
- 2) Does autonomy of a self-regulatory profession is being jeopardized?
- 3) Was there any pre-consultative process before issuance of consultation paper?
- 4) Where the domain of NFRA is leading to?

As regards to the first question, the establishment of NFRA did not find place originally in the Companies Bill, 2008. There was no recommendation by the then Parliamentary Standing Committee on Finance which examined the Companies Bill for establishment of such an authority. Professionals may be well aware that the Parliamentary Standing Committee on Finance which examined the Stock Market Scam (Ketan Parikh) pointed out that there is multiplicity of regulators in India which requires introspection. It is only the Companies Bill, 2012 contained a clause to the effect. Strangely or incidentally or coincidentally, it is a single section and its number which carried all the jaws power to a single authority. (Section 132). The section is vesting in one authority (NFRA) which carries as much as 32 teething powers within it! The sub-section (2) to section 132 gives enormous powers and onerous task to NFRA. It states that notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be. The wordings in the sentences are complex and tricky and whether power of NFRA on adoption also mean non-adoption.

As regards, the second question as above, arising out of power drawn and driven by the Authority, Is the institutional autonomy of a self-regulator is being jeopardized? Hitherto, the self-regulatory profession on accounting and auditing were formulating, prescribing standards on accounting and auditing and its format for adoption by various classes of companies. In the CA, 2013, the role is now only a recommendatory and Central Government to prescribe the same. NFRA under clause (c) to sub-section (2) of section 132 states that oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed. Again, Is this power for improvement in quality of service is for overseeing or overlooking another regulator?

In furtherance, in issuing a consultative paper of its own analysis and findings, it seems that it was an internal study and findings of NFRA and in order to draw feedback from the stakeholders it has invited comments to the four questions. Indirectly with no pre-consultations and now it is seeking consultations with the various stakeholders.

Finally, where the domain of NFRA leads to? Clause (d) to sub-section (2) of section 132 states that it may perform such other functions as may be prescribed. It is to be seen, that is it a beginning? While the analysis and its findings have been floated for comments till 10th November 2021, the larger issues are:

- 1) Is this consultation paper a curtain raiser or a roller coaster?
- 2) Where does the domain of a self-regulator lie?

- 3) To which authority a member subscribes to?
- 4) What shall be lively hoods of Micro, Small and Medium Enterprise Professionals?
- 5) Where do they eke out when MSMC are exempted out?
- 6) Is this consultation paper a way for ease of doing business or release a business according to its standards?
- 7) Is that 'public interest' a leverage for determining MSMC's exemption from scope of audit and accounting standards?
- 8) Is audit fee a determinant or a deterrent?

The NFRA Consultation Paper has raised many eye brows and whether the National Financial Reporting Authority has all the Cinderella of Functions and Umbrella of Powers.

Views presented herein are purely personal and do not reflect the views of the Institute to which he was earlier associated or as a current member of ICSI.



GST Update

COGNIZANCE FOR EXTENSION OF LIMITATION



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Hon'ble Supreme Court has extended the period of limitation on suo-motu basis providing the limitation of time for filing any Suit, Appeal, Application or Proceeding the period from 15th March 2020 till 02nd October 2021 shall stand excluded.

The above said period shall stand excluded while computing the time period prescribed under

- S.23(4) and 29A Arbitration and Conciliation Act, 2015
- Section 12A of Commercial Courts, 2015
- Section 138(b), (c) of Negotiable Instruments Act, 1881
- and any other laws which prescribe

Period of limitation for instituting proceedings, outer limits (court of tribunal to condone the delay) and termination of proceedings

Hon'ble Supreme Court has passed the above Order under Article 142 read with Article 141 of Constitution of India giving direction to deal with the Limitation.

Period of limitation for any Suit, Appeal, Application or Proceeding from the period 15.03.2020 till 02.10.2021 shall stand excluded as below as per the latest SC Order:

Scenario	Position	Application of Limitation
1	Position as on 15.03.2021 Time limit of 'X' days available further	03 rd Oct 2021 + X days
2	Limitation would expire during 15.03.2020 till 02.10.2021	Limitation period of 90 days from 03 rd Oct 2021 shall be applicable
3	Limitation period exceeds 90days on or after 03 rd Oct 2021	Such period in excess of 90days from 03 rd Oct 2021 shall prevail

The above Order is a sigh of relief for the Assesse for the cases where an Appeal under any of the Statute has time limit expiring during the COVID can seek a relief and make the proper compliance till 03rd October 2021

The above, Hon'ble Supreme Court order applies in relation to Quasi-judicial and Judicial matters relating to petitions/ applications/ suits/ appeals/ all other proceedings.

Accordingly, to sum up where any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any Quasi-Judicial Order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per above Hon'ble Supreme Court's order.

Attention is drawn to Circular issued by CBIC Circular No. 157/13/2021-GST dtd: 20th July 2021 for having more clarity in this regard



The Personal Data Protection Bill, 2019 – An Overview



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India does not have a stand-alone personal data protection law to protect personal data and information shared or received in a verbal or written or electronic form. Though, protections are available, they are contained in a mix of statutes, rules and guidelines.

The Personal Data Protection Bill, 2019 ("PDPB") was introduced in Lok Sabha by Shri Ravi Shankar Prasad, the Minister of Electronics and Information Technology, on 11th day of December, 2019. This bill was introduced with an aim to provide for protection of personal data of individuals, and establishes a Data Protection Authority for the same. The Bill provides the data principal with certain rights. These include the right to correct their data, confirm whether the data has been processed, or to restrict its continued disclosure.

The Bill amends the Information Technology Act, 2000 to delete the provisions related to compensation payable by companies for failure to protect personal data (Section 43A).

Applicability of the bill:

The Personal Data Protection Bill, 2019 governs the processing of personal data by:

- a) Government,
- b) Companies incorporated in India, and
- c) Foreign companies dealing with personal data of individuals in India.

The provisions of the bill shall not apply to the processing of anonymized data, other than the anonymized data or other non-personal data to enable better targeting of delivery of services or formulation of evidence-based policies by the Central Government.

Personal Data under the bill:

Personal data is data which pertains to characteristics, traits or attributes of identity, which can be used to identify an individual. The Bill classifies certain categories of personal data as sensitive personal data. This includes financial data, biometric data, caste, religious or political beliefs, or any other category of data as specified. The Bill defines data fiduciary as the entity or individual who decides the means and purpose of processing personal data, and data principal as the individual to whom the data relates.

Grounds for processing Personal Data:

The Bill allows processing of personal data of an individual by an entity only after taking consent of the individual.

However, in certain circumstances, personal data can be processed without consent. These include:

- a) if required by the State for providing service or benefit to the individual,
- b) legal proceedings, or
- c) to respond to a medical emergency.
- d) Data Fiduciary under the bill
- e) A data fiduciary is an entity or individual who decides the means and purpose of processing personal data. Such processing will be subject to certain purpose, collection and storage limitations. Any processing by a data fiduciary can only be done for a specific purpose.
- f) All data fiduciaries must undertake certain transparency and accountability measures such as:
- g) implementing security safeguards (such as data encryption and preventing misuse of data),
- h) instituting grievance redressal mechanisms to address complaints of individuals and
- i) mechanisms for age verification and parental consent when processing sensitive personal data of children.
- j) Consent is required to be taken from the data principal at the commencement of the data processing.
- k) Specific clear and lawful purpose.

Kinds of personal data

The Bill has categorised data under three broad heads- Personal Data, Sensitive Personal Data, and Critical Personal Data.

Personal data	It includes data which pertains to characteristics, traits or attributes of identity, which can be used to identify an individual, collected online or offline.
Sensitive Personal data	It includes financial data, biometric data, caste, religious or political beliefs, or any other category of data specified by the government, in consultation with the Authority and the concerned sectoral regulator.
Critical Personal data	It means such personal data as may be notified by the Central Government to be the critical personal data.

Restriction on transfer of Personal Data outside India

- I. Personal Data can be processed and stored outside India.
- II. Sensitive personal data may be transferred outside India for processing if explicit consent is given by the individual, and subject to certain additional conditions. However, such sensitive personal data should continue to be stored in India. Certain personal data notified as critical personal data by the government can only be processed in India such as:
 - a. the transfer is made pursuant to a contract or intra-group scheme approved by the Authority and it has made provisions for effective protection of the rights of the data principal under this Act, including in relation to further transfer to any other person;

- b. the Central Government, after consultation with the Authority, has allowed the transfer to a country or, such entity or class of entity in a country or, an international organisation on the basis of its findings.

Data Protection Authority under the bill:

At present, there is no dedicated authority responsible for data protection in India. The Bill sets up a national-level Data Protection Authority (DPA) to supervise and regulate data fiduciaries. The DPA can initiate an enquiry based on the complaint and provide for a penalty or compensation. If the data principal or data fiduciary is not satisfied with the decision, they can file an appeal before the Appellate Tribunal. An appeal against any order of the Tribunal will go to the Supreme Court. This Bill sets up a Data Protection Authority which may:

- (i) take steps to protect interests of individuals,
- (ii) prevent misuse of personal data, and
- (iii) ensure compliance with the Act. It will consist of a chairperson and six members, with at least 10 years' expertise in the field of data protection, information technology or public administration.

Grievance Redressal Mechanism under the bill:

Under the Bill, a data principal may raise a complaint of contravention of provisions of this Act which has caused or is likely to cause harm to them. The data fiduciary must resolve such a complaint in an expeditious manner (within 30 days). If the data principal is not satisfied with the manner in which the complaint is resolved, they may file a complaint to the Data Protection Authority (DPA). In order to raise a complaint in such cases, the user would be required to demonstrate the possibility of harm to them.

Exemptions: from the provisions of the bill:

The central government may exempt any of its agencies from the provisions of the Act:

- (i) in the interest of security of state, public order, sovereignty and integrity of India and friendly relations with foreign states, or
- (ii) for preventing incitement to commission of any cognizable offence (where arrest can be made without warrant) relating to the above matters.

Processing of personal data is also exempted from provisions of the Bill for certain other purposes such as:

- a) prevention, investigation, or prosecution of any offence,
- b) personal or domestic purpose, or
- c) Journalistic and research purposes.

However, such processing must be for a specific, clear and lawful purpose.

Offences & Penalties under the Bill:

- a. Processing or transferring personal data in violation of the Bill is punishable with a fine of 4% of the worldwide annual turnover of the fiduciary, subject to a minimum of Rs 15 crore.
- b) Failure to conduct a data audit is punishable with a fine of 2% of the worldwide annual turnover, subject to a minimum of five crore rupees.

- c) Re-identification and processing of de-identified personal data (where identifiers are removed) without consent is a punishable offence with imprisonment of up to three years, or fine, or both.
- d) Offences by State: the head of such department or authority or body shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- e) ii. Offences under this Act shall be cognizable and non-bailable.
- f) A court will take cognizance of an offence only on a complaint by the DPA.

The Bill governs the processing of personal data where such data has been collected, disclosed, shared or otherwise processed within the territory of India. The Personal Data Protection Bill, 2019 is landmark legislation meant to regulate how various companies and organizations use individuals' data inside India. The 2019 draft of the bill proposed the formation of a Data Protection Authority (DPA), which would regulate the use of users' personal data by social media companies and other organizations within the country. It is also expected to set data localization norms for companies that retain user data. The legislation is much awaited, especially as cybercrime rises amid the pandemic.

India does not have a specific legislation dealing with user data breach cases or penal actions relating to the same as yet. Recent cases on data breaches have brought the issue Centre stage, but in the absence of a concrete law, users do not have much recourse.



HELP YOURSELF
Food for Thought



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Inner Engineering

- By Sadhguru

We all have had various teachers or gurus at different stages of our lives. On our chosen path of life, though we must travel all by ourselves, it might take forever to achieve whatever we dream of with absolutely no help. So, it is a blessing to have a guru- one who eliminates darkness. Sadguru, in this book, calls this as GPS- 'Guru Pathfinding System.'

Sadhguru, a spiritual master, needs no introduction. His achievements in yoga and spirituality along with those in business, environmental and international affairs have made him a globally renowned person. We also know him as an excellent speaker and leader at various forums of the world such as the United Nations General Assembly, TED, the

World Economic Forum and many more. Through this book, you will know about his early days and about his journey of becoming such a great personality. Initially filled with stories from his life, how happened to learn yoga and his other extraordinary experiences, the book also has many interesting yogic stories, some humor coupled with life lessons and many simple practices for anyone interested to learn and experience yoga in the right way.

This column aims to bring bytes of information, ideas and glimpses of self-help books or autobiographies or other relevant genres. This book is about the body, spirit and the mind, so this is one of the basic books one should read as this form the foundation for all types of self-development. Nothing in this book promotes a particular ideology, philosophy, or religion. Once we understand how our body is engineered, how it functions, we will know how to live in the best way. (The way out is in!)

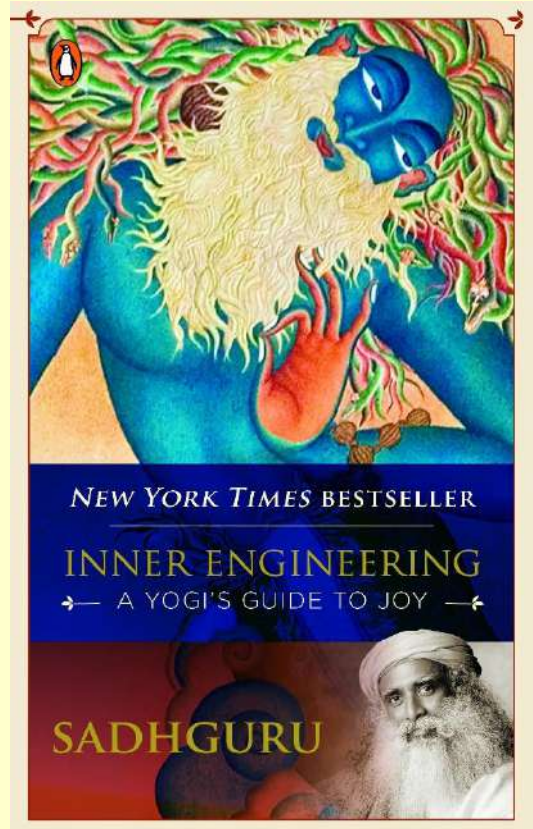
The moment we hear the word 'yoga' we somehow associate it with exercise or workout. Even worse, we have seen or heard of many erroneous or incomplete practices, knowingly or unknowingly being identified as yoga. With its growing popularity, the attempt of making it innovative to be commercially appealing is disastrous and damaging. Therefore, it is very essential for one to learn it from reliable sources and this book is a great start towards the same.

Sadhguru has an experimental approach to life and yoga instead of theoretical. This book has many simple practices for us, to try, to experiment and to learn by experience under the heading 'Sadhanas.' The sadhanas guide you to experiment with your way of consuming food, your diet, your habits and even simple but enlightening observations about your body, mind and how you can transform many things about your capacity and lifestyle. If you need an idea as to what the sadhanas mentioned here are like, here's a simple one-

Observe one thing about yourself that signifies life, like your heartbeat or your breath for about eleven minutes each for a few days. This has the ability to lead you towards self-transformation and to change the perspective about yourself.

Or another simple practice is about correcting your posture. Sitting with the spine erect for some time during each day can have a great impact on the way we perceive things and can greatly help in enhancing ourselves. It is not a coincidence why many of the great and successful people we know have a profound way of carrying themselves that marks as the benefits of having the right posture.

The book has many more eye-opening teachings, ideas and sadhanas and is a must read for anyone looking to become a better version of themselves. It would be truly difficult to figure out everything by ourselves and that is why we have gurus to rely on, learn from and probably later, also be the one who leads the way for others.





Hi everyone, Hope everyone is safe and sound,

Have you ever heard of DATA FOOTPRINT". We'll let us understand about it.

In Layman language Data footprint is nothing but footprints which we leave behind us not physically but in the form of data.

Let's understand in deep, whenever we go out, when we buy something by using our debit/credit cards or UPI's, Whenever we take pictures, or whenever we upload anything top our social media websites, we are leaving our data footprints.

We are using our mobiles for everything, from listing songs to working. Using free software's is like a piece of a cake everyone don't want to pay but they want free apps. And we are happily using these apps, without paying. But do you know to develop these software's it required huge investments. If you are not paying for the product then you are the product. These software companies will provide the services for free of cost for us, but those companies' sales all our usage data which they will collect over a period.

The artificial intelligence is becoming so advanced that it traces not just you but other networks surrounded by you and it trances them also, by doing this the AI created a web, it knows who is your neighbors, your parents, your partners, your colleagues, the place your working, your boss to say it traces everything happening around you without your knowledge. By doing tracing it know who is using which social media apps and recommends in different ways install those social media apps and suggest friends in social media as it knows that they are your neighbors, or colleagues or people who you recently met in a conference and what not. It creates a web structure linking to one another and it knows but you and your neighbors more than you know.

Do you know that we are training these software's to do this, yes, but not directly, every time when you login to a website it asks for the permission to use cookies and those are your browsing data, based on that it will show you personalized adds, and in some websites it will ask us to identify traffic signals and cabs or cars, in the hurry to access the website we will click on the right pictures and we will move on but by doing that we are training the AI to recognize the signals, cars and etc.

How many of you noticed in some social media apps, as soon as you upload a group picture it will automatically shows the names of the persons in that picture. And how many of you use Google lens feature that will instantly recognize the place text and can even translate the text in real time. But those all are the work of AI.

In the near future there will be no privacy, companies which will say that our data is safe and they are providing services for free of cost, how can we rely on them. Even their servers will crash, now a days hackers are also getting smart, and



they can bring the whole servers down just by sitting in their own place. We are alone in the big world when it comes to privacy. Knowingly or unknowingly we already sold our privacy in the form of data footprints. Technology advancement is good but it should be used for good reasons. As John Perry Barlow says “relying on the government to protect your privacy is like asking a peeping tom to install your window blinds. We all are alone in this big world when it comes to our privacy. So BE SAFE.



Compiled by:
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Professional Student
Mysore

Companies Act, 2013

In view of the extraordinary disruption caused due to the COVID-19 pandemic, it has been decided by MCA that if cost audit report for the financial year 2020-21 by the cost auditor to the Board of Directors of the companies is submitted by 31st October 2021 then the same would not be viewed as violation of rule 6(5) of Companies (cost records and audit) Rules, 2014. Consequently, the cost audit report for the financial year ended on 31st March 2021 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company.

However, in case a company has got extension of time for holding Annual General Meeting under section 96(1) of the Act then e-form CRA-4 may be filed within the timeline provided under the proviso to rule 6(6) of the companies (Cost Records and Audit) Rules, 2014.

General Circular 15/2021





Delhi Diaries



Vikram Hegde, Advocate

Advocate on Record

Supreme court of India

Co- Founder, VH Law Chambers

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Simple Solutions to Seemingly Complex Problems - Ebix Singapore Ltd. v. Committee of Creditors of Educomp Solutions Ltd.

The maximization of value of a company under Corporate Insolvency Resolution Process is achieved by way of an open bid process. That is to say, a resolution applicant seeking to take control of the Corporate Debtor company makes its resolution plan by way of a bid in a response to the expression of interest issued by the committee of creditors of the respective corporate debtor.

This process being competitive in nature, it would undermine the entire process if the resolution applicant is permitted to modify their bid after it has been accepted by the committee of creditors. However, the long pendency of corporate insolvency resolution processes, which was further aggravated by the COVID pandemic and the resultant closure of the adjudicating authorities and the National Company Law Appellate Tribunal for long periods of time, gave rise to peculiar situations whereby the circumstances under which the bid had been made had substantially changed with the passage of time.

As on 31st May 2021, the pendency of IBC cases before the various NCLT benches, as noted by the standing committee on finance of the ministry of corporate affairs in its 32nd report on the implementation of Insolvency and Bankruptcy Code- Pitfalls and Solutions, was as follows: -

It may be noted that this heavy load with a substantial number of cases being pending for more than 180 days is despite the fact that there was a moratorium on fresh petitions seeking insolvency for a substantial period of time after March 2020.

The Supreme Court of India in *Ebix Singapore Ltd. v. Committee of Creditors of Educomp Solutions Ltd.* considered a number of cases wherein similar issues of modification or withdrawal of the resolution plan arose. While each of the cases before the Supreme Court in this batch of cases had their own trajectory and some issues which were peculiar to every case, the crux of the issue was whether a resolution applicant could be held bound by the resolution plans submitted by them irrespective of other changing circumstances, or irrespective of the lapse of time.

A common clause in every resolution plan pertains to the term for which the said resolution plan is valid, which is typically 6 months. As one of the applicants before the Supreme Court contended, upon the failure of the committee of

creditors to seek and obtain approval of the adjudicating authority under section 31 of the insolvency and Bankruptcy Code, the resolution plan would stand voidable and revocable at the instance of the resolution applicant.

The Court negated this argument on the basis that the validities of the plan was in question only up till negotiation with the committee of creditors and acceptance of the resolution plan by the committee of creditors. After the resolution plan had been submitted for approval of the adjudicating authority would not be taken into consideration.

The Court further held that the parties could not indirectly impose conditions on judicial authorities to accept or reject its plan within a specified time period when such a time period has not been specified under the code or any of the rules or regulations thereunder.

Other contentions, such as the discovery of financial irregularity or allegations against the corporate debtor in the pendency of the resolution plan were rejected by the court on the grounds that even prior to the submission of the resolution plan the interested resolution applicants had been provided access to the data room of the corporate data and were expected to conduct their due diligence. It was not open to them to later claim that there were some irregularities or discrepancies which had been noticed only later and, on that basis, seek to modify the plan.

However, in the case of CIRP of Astonfield Renewable Pvt. Ltd., which was one among the batch of cases pending before the Supreme Court, the Court as a onetime measure permitted the resolution applicant Kundan Care to submit a modified resolution plan in light of the fact that two of the major creditors who together constituted 98% off the committee of creditors agreed to the same.

The world of commerce within which the insolvency proceedings squarely sit do not brook the kind of delays that are usually seen in the legal system. The aggravation of such delay due to the pandemic has only complicated and highlighted this expectation mismatch between the commercial players and the judicial system. If substantive solutions are not found to the problem of delays before the National Company Law Tribunals, there can be no doubt that such problems will arise in the future once again. However, with the filling of many vacancies in the national company law tribunals and with the reopening of the tribunals for full-fledged hearings, there is scope for optimism that the delays and pendency will be more manageable.





**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)



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

Motto
सत्यं वद। धर्मं चर। इष्टकर्मैः प्रियैः प्रोद्यतेः स्युः फेदः लोकः।

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



**Last Date
for Submission
extended to:
18th October,
2021**

In recognition of the contribution made by firms of Company Secretaries in Practice in promoting good corporate governance, the ICSI introduces the **ICSI BEST PCS FIRM AWARD**

The Award aims to encourage high standards of professional excellence by rewarding exemplary role models to motivate and inspire young professionals.

ELIGIBILITY CRITERIA

Any PCS Firm with a minimum of three partners shall be eligible to participate.

AWARD CATEGORY

One award to the Best PCS Firm.

For further details, visit <https://www.icsi.edu/icsiexcellenceawards/>

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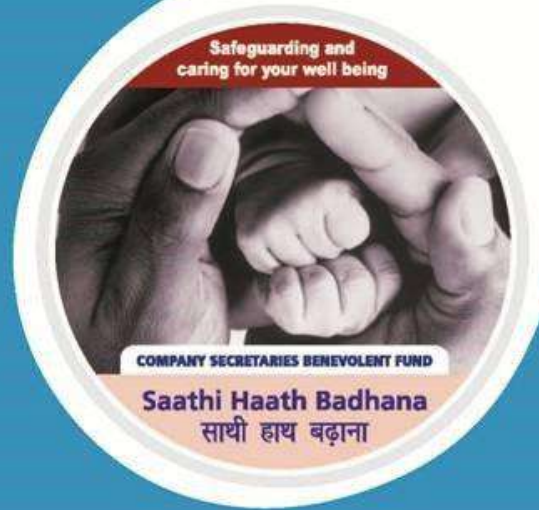
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**THE INSTITUTE OF
Company Secretaries of India**

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

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