



SIRC MYSURU CHAPTER

eMagazine



May, 2024
241st Edition

Vision

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

Motto

सत्यं वद। धर्मं चर। इच्छते तेनान्ते। शब्देनैव तेनैव।

Mission

"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI



<https://www.facebook.com/ICSI>



https://twitter.com/ICSI_CS



<https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/>



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)

Editorial Team

Chief Editor:

CS Vijaya Rao

Honorary Member (Chairman):

CS Padmanabha V

Members:

CS Phani Datta D N

CS Parvati K R

CS Keerthana Gopal

CS Mathruka B M

Support Team:

CS Pavithra P

Mr. Komal Kumar M

Ms. Aparna U

Ms. Arpitha

Inside this Issue

01

From Chairman's Desk -03

Chapter Activities -04

Toastmasters -05

02 Articles

Good Governance, a Foundation for Vikasit
Bharat -07

Voluntary Striking Off Companies under the
Companies Act, 2013 -12

03 Column

Food for Thought -16

Students Corner -18

Verdict Vistas -20

Brainy Bits -25

Regulatory Update - 27

Join 7000+ members' strong "CSMysore" eParivaar
<http://www.groups.google.com/group/csmysore>

Now it's easy to receive the e-Magazine directly into your personal
mail id.

Click: <http://goo.gl/PV90lr>

and fill-in simple info and start receiving the eMagazine from the
subsequent month. You may send this link to your friends too!

Please write your comments and feedback to us:
enewsletter.icsimysore@gmail.com

Disclaimer

Views and other contents expressed or provided by the
contributors are their own and the Chapter does not
accept any responsibility. The Chapter is not in any way
responsible for the result of any action taken on the basis
of the contents published in this newsletter. All rights are
reserved.



From the Desk of Chairman

Dear Professional Colleagues!

I am happy to interact with you all again through this eMagazine.

During the month of April 2024 our Chapter has conducted 4 Career Awareness Programs in and around Mysuru and successful in creating awareness about our Company Secretary course and we have addressed nearly 500 Degree and Post Graduate students.

The Study circle meeting for members and students was conducted on Saturday the 20th April, 2024 on an interesting topic "Buy back in Private companies" a senior member and our Past Chairperson of Mysuru Chapter, CS K Sarina Chouta Harish, Company Secretary and General Manager Legal of N. Ranga Rao & Sons Private Limited, Mysuru handled the session.

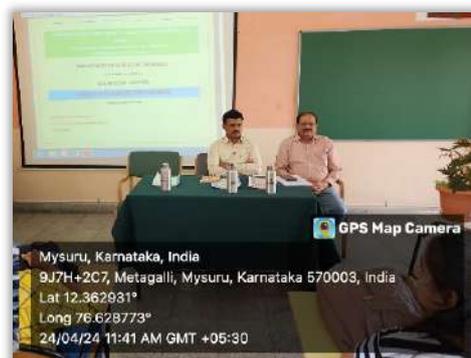
The Chapter is Organising its flagship Members Program Manthan 2024! on Friday & Saturday, 21st & 22nd June, 2024 at Hotel Le Ruchi The Prince, Mysuru. The invitation of the same has been circulated to all the members and students, we are again inviting all members and students to attend this unique 2days workshop on Critical issues under the Companies Act, 2013, Limited Liability Partnership Act, 2008 and related coverage under the Securities laws, FEMA and other allied laws for the Companies, LLP's including Startups, small companies and MSME's, and get benefitted by the same.

The May month is very crucial for the CS students, who are preparing for their forthcoming exams in the month of June 2024. I convey my best wishes to all the students who are appearing for exams in June attempt to come out successful in their exams.

Thank You.

Career Awareness Program

Sl. No.	Date	College Name	Speakers	No. of Students Attended	Place
1	02.04.2024	Amritha Vishwa Vidyapetham	CS Abhishek Bharadwaj, Secretary of the Chapter	150	Mysuru
2	04.04.2024	Govt. First Grade College	CS Prachetha, PCS	90	Mysuru
3	23.04.2024	Sri K. Puttaswamy First Grade College	CS Abhishek Bharadwaj, Secretary of the Chapter	180	Mysuru
4	24.04.2024	SBRR Mahajana First Grade College	CS C Krishna Gowda Vice Chairman of the Chapter	50	Mysuru
5.	30.04.2024	Vasavi Seva Samithi Mysuru South	CS Phani Datta, Past Chairman of the Chapter	100	Mysuru



Study Circle Meeting

Chapter conducted a study circle meeting on April 20th 2024 on the topic Buy Back in Private Companies. K Sarina Chouta Harish, Company Secretary and General Manager Legal at N. Ranga Rao & Sons Private Limited was the speaker and it was attended by students and members of the chapter.



ICSI Mysuru RoyalPro Toastmasters Club

The club had regular weekly meetings with varied themes. 129th meeting which was held on 26th of April was a special meeting with Speech Marathon. 6 people gave their speech on different pathways. In the orbit of learning it is important to watch how others communicate. From that perspective we had invited speakers from other clubs as well. While organizing such mammoth task TM Parvati – VP Education lead the whole program flawlessly. This was one great example

of how we can improve our communication and leadership skill by joining Toastmasters. If you are interested in joining our Toastmasters club and reaping its benefits, please do get in touch with the club President: TM Harsha A [99868-32814] or Vice President Membership: TM Krishne Gowda [98453-27588] (only through WhatsApp please). We would love to have you as part of our family!

Achievements from our Toastmasters



02

Articles



Good Governance, a Foundation for Vikasit Bharat

CS Hema Gaitonde

B.Com. FCS, L.L.B. F.C.M.A.
Practising Company Secretary
Email id: hemagaitonde.cs@gmail.com



“Ethics and good governance need to be emphasised and practiced throughout and growth has to be holistic. Achieving this vision of a developed nation requires a collective effort of all Indians in the right direction with total dedication and determination; it has to be a shared vision.”

Under the leadership of our Hon'ble Prime Minister, the Government of India has introduced the vision of Viksit Bharat@2047, envisioning India as a superpower by the 100th year of its independence. While India aspires to be a superpower with inclusive growth, emphasising on economic prosperity, advance technology and good governance, the governance professional can play a pivotal role in achieving this goal.

Vikasit Bharat

Viksit Bharat@2047 vision also means being Atmanirbhar Bharat - a self-reliant developed country with economic prosperity, world- class infrastructure, latest technology across various sectors. Empowering women and the youth, fostering innovation, social advancement, promoting sustainable development are the crucial elements of this vision of becoming a developed nation.

There are many targets along the path, including achieving a USD 5 trillion economy, reducing carbon footprints, improving the connectivity within India down to the last mile. Government is taking all possible measures in ensuring education and latest medical facilities for all, regardless of their geographical location and socio-economic status. We dream of a future where there will be job and entrepreneurial opportunities and improved standard of living for all. Viksit Bharat will only be possible when there is inclusive growth for all citizens of India. The business enterprises and entrepreneurs are looking

forward to an environment conducive to business expansion with simpler regulations and taxes.

As India aims to be a superpower, it will have to overcome the challenges along the path including economic and social disparities, inadequate transportation network and infrastructure, access to clean water, sanitation and healthcare facilities, corruption, climate change. The government has already started many initiatives to address these challenges, and we are witnessing positive outcomes. India is increasingly being perceived as a rapidly growing economy and its efforts to improve bilateral relations with other nations have borne fruit. With support from the private sector, civil society, professionals and the citizens, India has the potential to realise its ambitions and emerge as the world's third-largest economy in next few years.

Significant progress has been made across various sectors such as manufacturing, infrastructure, green technology, space, education, healthcare, women empowerment, sports, tourism and supply chain ecosystem. While this development is underway, we also need to focus on the environmental and governance aspects. Progress of the nation should not come at the cost of degrading the environment. When each one of us becomes conscious of the impact that our lifestyles are having on the climate and environment, only then can we think of a Viksit Bharat. Ethics and good governance need to be emphasised and practiced throughout and growth

has to be holistic. Achieving this vision of a developed nation requires a collective effort of all Indians in the right direction with total dedication and determination; it has to be a shared vision.

In the following paragraphs, we will explore more about the governance framework which will help the sustainable growth of the country and the role that the governance professionals can play in this mission.

Governance Framework, a Foundation for Growth

A robust governance framework serves as a foundation pillar for fostering sustainable growth and development within the nation. This has to be at national level, state level, local as well as organisational level. Transparency, accountability, and ethics are the pillars of good governance which have to be considered while formulating and implementing the various laws and policies.

Governance at National, State and Local Level in India

Part IV of the Constitution of India contains The Directive Principles of State Policy. These principles are fundamental in the governance of our country and it is the duty of the State to apply these principles in making the laws. "State" here means "the government and Parliament of India and the government and the Legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India."

As per the Directive Principles of State Policy, the State by good governance has to ensure the following.

Article 38(1) A social order for the promotion of welfare of all the people

Article 38(2) Minimization of inequalities in income and elimination of inequalities in status facilities and opportunities

Article 39(a) The right to adequate means of livelihood to all men and women

Article 39(c) The operation of economic system to prevent concentration of wealth in few hands

Article 39(d) Equal pay for equal work for men and women

Article 39(f) Protection against abuse of health and strength of workers and the tender age of children

Article 39A Operation of the legal system to promote justice.

Article 40 Village Panchayats be organized as units of self-government.

Article 41 The right to work, to education and to public assistance in cases of unemployment, old age, sickness and disabilities

Article 42 Just and humane conditions of work and maternity relief

Article 43 Living wages for workers to ensure decent standard of life and adequate leisure.

Article 43A Participation of the workers in the management of the industries

Article 45 Free and compulsory education for all children below 14 years of age

Article 47 Higher level of nutrition and public health

Some of the principles which form the basis of good governance for the government are listed below:

1. The fair conduct of the elections
2. A proper representation of and participation of different sections of the population
3. Timely delivery of public services and response to public grievances within a reasonable framework,
4. Efficient use of the available resources along with independent audits and control
5. Giving priority to public good over individual interest
6. Combating corruption in all forms
7. Encouraging competence by capacity building and skill development.
8. Being open to change and experimentation.
9. Sound financial management with proper risk assessment.
10. Respecting human rights, cultural diversity
11. Emphasis on sustainability with a future outlook

While upholding the principles of good governance, leveraging modern technology to enhance the transparency accountability and accessibility in the governmental process has become necessary. Digitisation has emerged as a powerful tool for realising these objectives. Digitising the government services and processes help streamline administrative tasks and ensure greater accessibility for the citizens. Digitisation ensures that government services are made available to the citizens electronically.

Governance at Organisational Level

The governance systems in businesses determine the framework of rules, policies, practices by which the business enterprises are directed and controlled. Effective governance systems ensure that businesses operate in the best interest of the stakeholders. The roles and responsibilities of the Board of directors and the management need to be clearly defined. A business entity with a good governance framework emphasises on ethical conduct, transparency, accountability and disclosure. This enhances its reputation, increase the trust of the investors, lenders, employees and the government, resulting in an increase in the value for all the stakeholders and long-term growth of business. Businesses with good governance practices will therefore play an important role in national economic growth.

Viksit Bharat and Role of Governance Professionals

Governance professionals have a tremendous potential in shaping India's trajectory towards Viksit Bharat. By providing regulatory compliance assistance, encouraging ethical conduct, attracting investment, promoting innovation, helping businesses in improving their productivity, they can contribute towards business growth, GDP growth and sustainable development of the nation. They can enhance India's global position in Corporate Governance and Ease of Doing Business.

1. Providing Regulatory Compliance Assistance

Governance professionals can offer guidance and support to the businesses in navigating complex regulatory requirements. This includes holding training programs, workshops and providing reading material for businesses to understand their obligations under the law. They can foster a culture of legal adherence.

2. Ease of Doing Business

Governance professionals with their knowledge and expertise can play an important role in bringing about an improvement in the ease of doing business. Streamlining regulatory processes will reduce compliance costs for the businesses. Good corporate governance practices help in identifying and mitigating various risks and building business resilience. This will create a favorable business environment, increase trust and reputation for the company and the country, stimulate economic growth, attract investment.

3. Facilitating Access to Finance

Professionals can assist to get finance for the businesses by connecting with the banks or Financial Institutions,

venture capitalist or any other funding. By facilitating access to finance, they can fuel entrepreneurship and stimulate development.

4. By Becoming a Part of the Legislative Government Mechanism

The professionals can positively influence the policies being formulated and draw the roadmap of the progress. By collaborating with the regulatory authorities, they can identify areas for improvement and implement reforms to reduce the time required for obtaining licenses, approvals and permits.

5. Supporting the Government in Setting up a Favorable Business Environment in the Country:

Governance professionals can participate in policy formulations and implementation of various legislations. They can give feedback based on their practical experiences when the drafts of the legislation are put out for public comments.

6. Improved Investor Confidence

Strengthening the corporate governance practices will instill confidence amongst the domestic and international investors, attracting more capital inflow and fostering economic growth.

7. Creating Awareness

Governance professionals can play an important role in creating awareness about the various laws applicable to corporates, business units and individuals. This will increase the overall compliance level of law in the nation.

Government has undertaken several initiatives aimed at supporting and empowering various sections of the citizens of India. The professionals can create awareness amongst the people about the various schemes, so that they can benefit.

8. Supporting Start-ups

With number of new entrepreneurs starting new ventures in India, the governance professionals can guide them setting up their businesses and make sustainable choices.

9. Alignment with Global Standards

Conforming to the international best practices in corporate governance and business regulations will enhance India's credibility globally. Collaboration with international partners, participation in global supply chains and compliances with cross border trade agreements becomes easier.

10. Encouraging CSR Initiatives by Corporates

Governance professionals can advise on integration of social and environmental consideration into business decision-making processes. This will create value for the companies, societies and communities.

11. Promoting Digitisation and Automation

They can advocate for adoption of digital technologies, electronic document management systems and automated reporting tools. This will reduce the administrative burden of the businesses and improve efficiency and productivity. Automation and digitization may also help in detecting frauds in the business.

Fostering the Young Governance Professionals

While fostering the young governance professionals by upskilling, mentoring, and giving them exposure to practical aspects of business, they should be made aware about the rich heritage, culture and traditions of India, so that they can globally represent our country confidently. Imbibing ethical values in our younger generation is necessary. A strong governance framework, knowledgeable professionals for strengthening the framework and for ensuring compliance with the legislations are a pre-requisite for development of the nation. Young professionals with a fresh perspective and innovative ideas can contribute in many ways in strengthening the governance framework of a country at different levels and across different sectors. A global mindset needs to be encouraged (Vasudhaiva Kutumbakam) for peace and harmony. Leadership development programs are required for nurturing the next generation leaders who will can act as change makers by influencing people to bring positive changes in the society. Professionals need to actively participate in the corporate volunteering programs. This will benefit the communities, and they will gain valuable skills and experience and contribute to societal welfare. Self-discipline, perseverance and resilience in the ventures that they take up is essential, for achieving their ambitions.

The concept of good governance is not new for India and has its roots in ancient Indian scriptures since the Vedic Era. We can revisit our ancient scriptures and history to learn the lessons of good governance.

The Ancient Indian Scriptures and History, a Source of Good Governance Practices

The Bhagwad Gita depicts the theory of Karma. Do your duty without any expectations. In Ramayana, before going

to exile, Lord Rama advises Bharata on all facets of governance. He emphasises how important administrative decisions should neither be taken unilaterally nor in consultation with too many people. There should be a core group of right people with right intentions to advise. From quality of ministers to the importance of strategy sessions, Lord Rama expounds on all the subtleties of statecraft in a lucid manner. Moderate taxes should be levied on the people, lest they revolt. Soldiers should be treated fairly, and a ruler should pay their legitimate wages on time. Delays in payment of wages and other allowances can lead to dangerous consequences. Ram Rajya was an efficiently governed welfare state with a strong and responsive leader.

In Mahabharata, Bheeshma advises Yudhishtir on good administration (intricacies of Raj-dharma), including governance, jurisprudence, personal behaviour of the king, and policymaking. Kautilya's Arthashastra is an ancient Indian treatise on economics and the policy of state administration.

Chatrapati Shivaji Maharaj established an efficient administrative system during his rule. He was a born leader with a vision. He was well known for his secular, tolerant approach and efficient administration (state, revenue, military, provincial).

Drawing examples from our history, we can build governance models to effectively address contemporary challenges. While training our young professionals, a revisit to our history is required.

As India aspires to be the third largest economy with a GDP of \$ 5 trillion, prioritising youth development and their empowerment is paramount for the nation's sustainable progress. When this potential is tapped, we can foster innovation and contribute to the overall development of the country in various fields. While India progresses and gains recognition globally, if every citizen contributes in his/ her own way to the mission, nothing can stop us in being Viksit Bharat @2047.

References:

1. <https://viksitbharatsankalp.gov.in/about>
2. Dr Sultan Singh , History of Good governance at local level in India, An overview
3. spjmr-1134-may-ebn-2019-f.pdf
4. Youth of India 2022-4TH ISSUE Government of India publication
5. Youth_in_India_2022.pdf (mospi.gov.in)

6. Dr. Meenakshi Khangarot, Good Governance in ancient India-an Analysis, , IJAPRR International Peer Reviewed Refereed Journal, Vol. IV, Issue VIII, p.n. 15-21, Aug, 2017
https://www.ijaprr.com/download/issue/Volume_IV/Issue_VIII/158_Volume_IV_Issue_VIII_15-21_Dr_Meenakshi.pdf
7. Stijn Claessens and Burcin Yurtoglu, Corporate Governance and Development-An update , Global

- Corporate Governance Forum Focus 10, International Finance Corporation, <https://www.ifc.org/content/dam/ifc/doc/mgrt/focus10-cg-development.pdf>
8. Council of Europe, 12 principles of Good Governance
 9. <https://www.coe.int/en/web/good-governance/12-principles>

RIDDLE

ME

THIS

"Corporate Riddle"

1. I am an instrument for integrating social, environmental, and human development concerns in the entire value chain of corporate business.
2. I was a part of voluntary guidelines on Social Environmental and Economic Responsibilities of Business, 2011
3. Companies with 500 crore or more have to invest in me.

Who are we?

If you know the answer then what are you waiting for..? Send us your answer to the below mentioned email id along with your full name, The first person to provide the right answer will be published in the next edition.

Email id: enewsletter.icsimysore@gmail.com

Last Month's Corporate Riddle

1. I am a group of people who are decision-makers
2. Any public company having more than 10 crores as its paid-up capital needs us.
3. We oversee transactions with related parties and inter corporate loans and investment.

Who are we?

Answer: Audit Committee

Answered by

Ms. Rachana Kini
 CS Professional Student



Voluntary Striking Off Companies under the Companies Act, 2013

CS Pulkit Jain

ACS, B.com
Practising Company Secretary
Email id: acs.pulkitjain@gmail.com



“The company shall not file an application for Striking off unless it has filed overdue financial statements under section 137 and overdue annual returns under section 92, up to the end of the financial year in which the company ceased to carry its business operations.”

Section 248(2), 249, 251 read with ‘The Companies (Removal of Name of Companies from the Registrar of Companies) Rules, 2016’

"Striking off" typically refers to the process by which a company's name is removed from the official register maintained by the relevant government authority, effectively dissolving the company. This can occur for various reasons, such as failure to comply with regulatory requirements, non-payment of fees, or voluntary dissolution by the company itself. Once a company is struck off, it ceases to legally exist as a corporate entity.

Grounds for Company to go for Voluntary Strike Off:

A company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in Form STK-2 to the Registrar, Centre for Processing Accelerated Corporate Exit for removing the name of the company from the register of companies on any of the following grounds:

1. The Company has failed to start its business operations within one year of its incorporation;
2. The company is inoperative or does not carry out any of its business operations for two preceding financial years and has not filed an application within such period for getting the status of a dormant company under Section 455 of the Act;
3. The subscription money is not received by the Company and a declaration pertaining to the same

has not been filed in form INC – 20A within 180 days of incorporation;

4. The Company is not carrying on any business or operations as revealed after the physical verification carried out under section 12(9).

The company shall not file an application for Striking off unless it has filed overdue financial statements under section 137 and overdue annual returns under section 92, up to the end of the financial year in which the company ceased to carry its business operations

Steps for Striking Off

1. Convene a Meeting of the Board of Directors.
2. Issue at least 7 days notice for Convening the Board meeting and passed the proposal for Striking Off and authorised someone for calling General Meeting.
3. Convene General Meetings of the Shareholders
4. Issue 21 days clear notices in writing calling for the General Meeting of the Company proposing the resolutions for striking off with suitable explanatory statement.
5. File Form MGT-14
6. File Form MGT-14 with the ROC within 30 days of passing the Special Resolution in General Meeting, along with the requisite documents and fees as specified in the Companies (Registration offices and fees) Rules, 2014.
7. Fill Form STK-2

8. File Form STK-2 with the Registrar, Centre for Processing Accelerated Corporate Exit along with the requisite documents and fee of Rs. 10,000/-.
9. Registrar will take Following Action after Receiving the Application

After receiving the application, the Registrar, examined the application and if satisfied published a notice in Form STK 6 on

- placed on the official website of the MCA;
- published in the Official Gazette;
- published in 2 Newspapers English and Local Language in in the State in which the registered office of the company is situated.

Company shall also Place the Application on its Website, if any, till the Disposal of the Application.

Any person objecting to the proposed removal or striking off of name of the companies from the register of companies may send his or her objection to the office address mentioned here above within thirty days from the date of publication of Form STK-6.

If Registrar find that it is necessary to call for further information or finds such application or any document annexed therewith is defective or incomplete in any respect, he shall inform to the applicant to remove the defects and re-submit the complete Form within 15 days from the date of such information.

After the expire of 30 days from the date of publication of Form STK-6, The Registrar issue a notice in Form STK-7 for striking off the name of the company from the register of companies and its dissolution to be published in the Official Gazette and the same shall also be placed on the official website of the MCA.

Documents Required to be Attached with Form MGT-14

- a) Copy of Notice along with Explanatory Statement
- b) Certified True Copy of Board resolution
- c) Certified True Copy of Special Resolution

Documents Required to be Attached with Form STK-2

- a) Indemnity bond duly notarised by every director in Form STK 3
- b) A statement of accounts in Form STK-8 containing assets and liabilities of the company made up to a day, not more than 30 days before the date of application and certified by a Chartered Accountant.

- c) An affidavit in Form STK 4 by every director of the company;
- d) Bank Account Closure Certificate
- e) ITR acknowledgment
- f) Self-Attested ID proof of all Director duly certified by Professional CS/CA/CMA or gazetted Officer
- g) Copy of PAN/TAN/GST Surrender documents of Company
- h) No objection certificate (NOC) from appropriate Regulatory Authority in case company is regulated under any other law for the time being in force.
- i) Copy of Board resolution and Special Resolution

Restrictions for Filing of Striking Off Application.

As per Section 249 of the Companies Act, 2013, Companies shall not make an application of strike-off under section 248(2) if, at any point over the previous three months, the Company:

- Has changed its name or
- Has shifted its registered office from one state to another; or
- Has made a disposal for value of property or rights held by it, immediately before cessation of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business; or
- Has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement; or
- Has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- Is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Fraudulent Application for Removal of Name.

As per Section 251 of Companies Act, 2013, Where it is found that an application by a company under section 248 (2) has been made with purpose of avoiding the company's liabilities or with the intent to deceive creditors or defraud others, the individuals responsible for managing the company shall, even if the company has been declared dissolved—

[a] be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(b) be punishable for fraud in the manner as provided in section 447.

Without prejudice to the provisions contained in section 248(1), the Registrar may also recommend prosecution of the persons responsible for the filing of an application under section 248(2).

Exam Tit Bits

Veto Power

Does the Company Law in India authorize anyone with Veto power?

Veto in Latin means “I forbid” which gives the power to unilaterally stop an official action especially in the enactment of legislation. We have all read about Veto power that the United Nations has given to certain member nations. Is Veto power allowed in the democratic set up of Company Law?

Is Veto Power similar to Casting Vote of the Chairman? No, Veto power is different from Casting Vote. Casting Vote is applicable only in case of a tie between votes in favor and against. The Chairman’s vote becomes the deciding factor in the passing of that resolution.

We all know that as per the provisions of Company Law, there are instances where the Board can take decisions on their own, by virtue of law. However, in some other instances, the consent of shareholders is mandatory. Shareholders’ consent is obtained by passing ordinary or special resolutions as the case may be. However, Veto Power ensures that the minority shareholders’ rights are protected. It is a legal arrangement that does not allow the investors to unilaterally take decisions on behalf of the majority shareholders.

Though the Companies Act 2013 does not talk about Veto power it can be included in the shareholders agreement. This can protect the interest of the shareholders who hold less than 50% interest or minority shareholders’ interest. Also, it can be included through entrenchment of Articles of Association. Again, to implement this option, one needs to pay attention to the provisions of differential voting rights



Written By
Aparna U

CS Executive Student
aparnaukumar14@gmail.com

03

Columns



HELP YOURSELF

FOOD FOR THOUGHT

PROBATION

PROBATION

PROBATION

INDELECTECTNL

RNERUSVENTS

ROBE NTERS HEP PROHE SKTOBALLS

ROBOOR T OR DEANS

FOOD ADEUORT



Aparna U

CS Executive Student

aparnaukumar14@gmail.com

Atomic Habits

By James Clear

Disclaimer: This article does not endorse any book and is not sponsored by any author or publication. Content shared here is for knowledge and learning purposes only.

Have you ever wanted to start a habit, like doing Yoga or cycling or writing or reading books and so on, but never started? What stopped you from forming a new habit? Was time the only constraint or are there other factors? It could also be that you started with a new habit but failed to continue. Or have you found it difficult to break a bad habit? If you answered yes to any of these questions, this book is for you.

Understand the science of habits and you will be able to form good habits and break bad ones, ultimately improving the quality of your life. The famous quote by Mike Murdock-"The secret of your future is hidden in your daily routine" encourages one to craft one's day well for the purpose of doing well in life.

James Clear is one of the most celebrated authors who explains the science of habits and habit-formation. This book of his, 'Atomic Habits,' has sold over two million copies.

The author helps us understand how tiny (atomic) changes can become extremely significant. He highlights that habits are the compound interest of self-improvement. He articulates this in a super-realistic way, therefore making it very easy for one to put into action what one learns from the book.

As the purpose of this column is not to give you a book review but to only recommend a book by presenting only a small glimpse of it here, let us see one or two techniques mentioned in the book on building habits. They are simple, realistic and very practical and therefore very effective.

Habit Stacking is one of the many effective ways of building habits mentioned in the book. It means identifying a current habit and stacking a new habit on top of it thereby ensuring that the new habit is carried out each day. For example, you want to start doing push-ups each day. This is a new habit that you want to build. Stack it with something simple that you already do each day. Like, let's say, closing your laptop for lunch. This is how you build your habit effectively- "As soon as I close my laptop for lunch, I will do ten push-ups." After I _____ (current habit), I will _____ (new habit) each day. More examples would be- "After I brush my teeth, I will meditate for ten minutes everyday." "After I have my evening tea or coffee, I will read ten pages of a book everyday." This is just one technique that we discussed here. There are plenty of such practical, simple and easy practices to help you build, continue and stick on with your habits until they penetrate seamlessly into your daily routine which when done right and enough, will, like compound interest, reward you with unprecedented results.

"How long does it take for a practice to become a habit?" The author suggests that this question should instead be framed as- "How many repetitions does it take for a practice to be a habit?" This being said, we all are not very consistent especially when we are just starting off with a

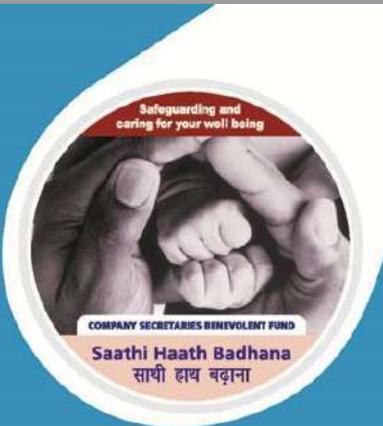
new habit. What makes us discontinue our habits? How to ensure that we stick with our habits each day? The author has a simple yet very effective way to ensure that practices are repeated enough number of times till it is safe to call a habit. It's just this mantra- "Never miss twice." Let's say you decided to eat only healthy food each day but a friend comes over and you miss it and indulge in eating fast food. To quickly rebound to your habit of eating healthy is what you need to do. Don't continue breaking that habit the next day as well. That would result in the start of a new habit- eating unhealthy. Everyone

misses their practice but 'Never Miss Twice' is the mantra to stay in the game.

The book answers many questions as to why and how habits function. The chapters are dedicated to discussing with you how habits shape your identity, the role of your friends and family in shaping your habits, how to stop procrastinating, how to make good habits irresistible and bad ones impossible, how environment matters in habit-building, the truth about talent and many more. What habit do you want to build and master.



**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)



Safeguarding and
caring for your well being
COMPANY SECRETARIES BENEVOLENT FUND
Saathi Haath Badhana
साथी हाथ बढ़ाना

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

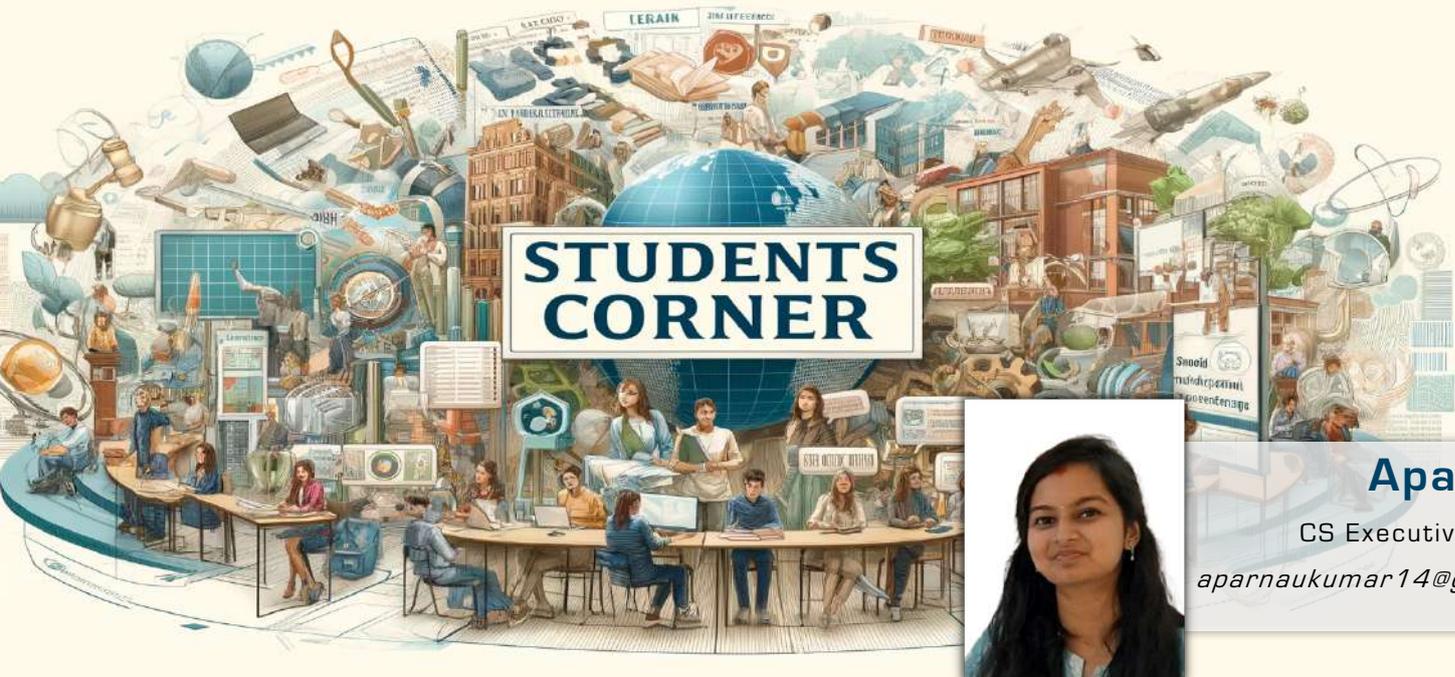
4

Subscription/Contribution to CSBF qualifies for deduction under Section 80C of the Income Tax Act, 1961

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

Decide Now! Decide Wise!

Connect with ICSI | www.icsi.edu | | Online Helpdesk : <http://support.icsi.edu>



Aparna U

CS Executive Student

aparnaukumar14@gmail.com

Report on Study Circle Meeting on Buy-Back in Private Companies

CS K Sarina Chouta Harish, Company Secretary and General Manager Legal of N. Ranga Rao & Sons Private Limited, was the speaker and moderator at the study circle meeting. Her wide experience of Company Secretaryship for over two decades enriched the participants with a lot of valuable takeaways.

The discussion began with the speaker explaining the motive of buy-backs and its advantages. Apart from the common reasons that one is generally aware of, such as, increasing earnings per shares and so on, the speaker brought to light some of the strategic reasons for buybacks. The speaker explained how excess liquidity in a company can indirectly make negotiations less rigid than required. In other words, abundant cash in the system may cause people to overlook some of the negotiation opportunities and may even lead to hasty decisions by the management. Therefore, one of the lesser-known reasons behind buybacks is to manage liquidity and help put the cash available in a company to its best possible use.

The speaker then briefly discussed the provisions, prerequisites and procedure of buybacks. According to Section 68(1) of the Companies Act, 2013 a company may purchase its own shares or other specified securities out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, no buy-back of any kind of shares or other specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

The speaker shared, at one instance, that the RoC was sceptical whether the buyback really was not from the proceeds of an earlier issue of the same kind of shares. A lot of documentary proof had to be submitted in order to satisfy the RoC upon which they finally got an approval to initiate the buyback.

There are different methods of buyback as per Section 68(1) of the Companies Act, 2013:

- from the existing shareholders or security holders on a proportionate basis
- from the open market
- by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity

The procedure for buyback in private companies is as follows, condensed for brevity:

1. As per Section 68(2), the Articles of Association of the company should authorise buyback and if such is not the case then alteration of the articles accordingly is necessary.
2. Convene a Board Meeting to pass a Board Resolution for approval of buyback.
 - The Board is authorised to approve 10% of the total paid-up equity capital and free reserves.

- Shareholders' approval is required in case of buyback up to 25% of the total paid-up capital and free reserves in one financial year.

3. After the buyback, the debt (aggregate of secured and unsecured loans) is not more than twice the paid-up capital and free reserves. (However, the Central Government may, by order, notify a higher ratio for a class or classes of companies.

4. The Board, based on reasonable grounds, must be of the opinion that the company having regard to its state of affairs will not be rendered insolvent within a period of one year from the date of buyback. Also, the audited accounts based on which the buyback calculations are done are not more than six months old from the date of offer document.

5. A declaration of solvency must be filed with the RoC in Form SH-9, verified by an affidavit signed by at least two directors of whom one shall be a Managing Director, if any.

6. A sum equal to the nominal value of the shares that will be bought back shall be transferred to Capital Redemption Reserve and details of such transfer shall be disclosed in the balance sheet.

7. Convene a General Meeting to pass a Special Resolution to authorise the buyback and register the same with the RoC in Form SH-8, along with prescribed fees.

8. The Letter of Offer shall be dispatched to Shareholders immediately after filing with RoC and not later than 21 days from such filing.

9. The offer for buyback shall remain open for a period of not less than 15 days and not exceeding 30 days from date of dispatch of offer letter.

10. Buyback must be completed within one year from the date of Board Resolution or Special Resolution as the case may be. The time gap between two buybacks should be one year from the date of such Resolution.

11. The company shall maintain a register of shares or securities to record the details of the buyback including the date of extinguishing the shares or securities.

12. After completion of the buyback the company shall file a return containing particulars of the buyback. Rule 17(14) of Companies (Share Capital and Debentures) Rules, 2014 states that a certificate in Form SH-15 signed by two directors of the company

including the managing director, if any, certifying that the buyback of securities has been made in compliance with the provisions of the Act and the rules made thereunder shall be annexed to the return with the Registrar in Form No. SH-11.

After going through the provisions of buyback, the speaker discussed at length the practical challenges in facilitating buybacks. The speaker noted that in spite of Company Secretaries having their checklist of compliances, everything is not sorted. The nitty-gritty of carrying out buybacks are seen only when one actually carries them out. CS Sarina shared several of her own professional experiences of buybacks. In one such instance she mentioned how she submitted all the relevant documents to the Registrar of Companies but they were rejected in an instant, the reason being that a code as per rules of the CDSL had not been applied to be activated. The code had to be activated 15 days prior to the opening date of the buyback, a new rule that had been introduced very recently back then. The rejection meant that the buyback compliances such as obtaining signatures from directors and so on had to be done again from scratch. This is why the speaker remarked that it takes more than checklists to carry out any kind of corporate move that needs assistance by corporate professionals. The speaker then went on to mention several other challenges that she faced and overcame which were all very valuable to note. Further, many queries of the participants, of both members and students, were answered by the speaker which led to fruitful discussion of the various aspects of buybacks. The speaker wrapped the session up by highlighting how significantly huge the responsibilities bestowed on Company Secretaries are.

**When the whole
world is silent,
even one voice
becomes powerful.**

—MALALA YOUSAFZAI



Verdict Vistas



Adv. P. Chithra Nirmala

M.L., ACS., CAIIB, L Ins.

ADVOCATE

cnmala09@gmail.com

Liability of Personal Guarantors after Approval of Resolution Plan & Rights of Subrogation

In the National Company Law Tribunal,
Principal Bench, New Delhi

Mr.Vikas Aggarwal Vs. Asian Colour Coated Ispat Ltd., & Ors

C.A [AT](INS) No.1104/2020, 1105/2020, 1107/2020 and 1108/2020

Decided on: 01.03.2024

It is a well settled legal position, that the liability of a Personal Guarantor is co-extensive with that of the Principal Debtor. The said proposition of law is in terms of the provisions of Section 128 of the Indian Contract Act, 1872. The said legal position has often been contested by aggrieved Guarantors with varied interpretations of facts and law, however, the Courts and Tribunals have been consistent in holding that the liability of the Guarantor is co-extensive. Further, the Hon'ble Courts have held that, unless there is a contract to the contrary, liability of a Guarantor is not alternative to that of the principal debtor, and hence, there is no requirement for a creditor to exhaust his remedies against the Principal Debtor before initiating process against the Personal Guarantor.

2. At this juncture it would also be wholesome to mention that after the advent of the Insolvency and Bankruptcy

Code, 2016 and the subsequent notification of Section 95 to Sec.100 in Part III of the Code pertaining to Personal Guarantors, a series of Writ Petitions were raised challenging the vires of the said provisions. The Hon'ble Supreme Court vide a common judgment dated 09.11.2023 in Dilip B Jiwrajka Vs. Union of India & Ors, upheld the constitutional validity of the impugned provisions of the Code.

3. It is also seen that simultaneously, various issues relating to the rights of the Financial Creditors in respect of continuing rights against the Personal Guarantors of the Corporate Debtor after the approval of the Resolution Plan and the availability of the Rights of Subrogation to the Personal Guarantors were in depth dealt with by the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in Mr.Vikas Aggarwal Vs. Asian Colour Coated Ispat Ltd., & Ors C.A [AT](INS) No.1104/2020 to 1108/2020.

Facts

4. The Corporate Debtor M/s. Asian Colour Coated Ispat Ltd., was placed under CIR process on 28.07.2018 in CP(IB) No.50(PB) 2018. The admitted debt of the Corporate Debtor was Rs.7801 Crores. In the Insolvency process, a Resolution Plan was approved by the Committee of Creditors (COC) with 79.3% voting, wherein the JSW Steel Coated Products Limited as Successful Resolution Applicant (SRA) had presented the plan for Rs.1550 Crores, which constituted only 19.87% of the admitted debts, leading to a hair cut of 80.13% to the creditors. In the said Resolution Plan, the SRA at the request of the Financial Creditors had incorporated the

concept of “Excluded Rights”, whereby the Financial Creditors retained their rights to proceed against the Personal Guarantors for the balance debts. The said Resolution Plan as recommended by the COC, was approved by the Adjudicating Authority on 19.10.2020.

5. The said approved Resolution Plan provided for assignment of Debts of the Financial Creditors to a Special Purpose Vehicle (SPV) of the SRA named M/s.Hasaud Steels Limited., and accordingly vide an assignment deed dated 27.10.2020, the debts of the Financial Creditors was assigned to the SPV. A No Due Certificate was also issued to the Corporate Debtor by the Financial Creditors on 23.11.2020.

6. The Order of the Adjudicating Authority dated 19.10.2020 was challenged by the Personal Guarantors in independent appeals ie., C.A (AT)(INS) No.1104/2020, 1105/2020, 1107/2020 and 1108/2020.

Appellant Personal Guarantors contentions

7. In the said appeals, the Personal Guarantor Appellants had contended that since the entire debt owed by the Corporate Debtor was assigned to the SPV, such debt stood transferred from the Financial Creditors to the SPV in totality, there could not have been any concept of “Excluded Rights” being part of the Resolution Plan and the approval of the Resolution Plan containing such provisions is illegal and perverse. The Appellant Personal Guarantors also contended that the approval of the Resolution Plan by the Adjudicating Authority was not within the ambit of the Code and anything contravening the provisions of the Code is to be treated as illegal. It was further contended that the portion of Resolution Plan which permitted the Financial Creditors to retain the rights to pursue their legal remedies against the Appellants as the Personal Guarantor to the Corporate Debtor in absence of any debt, which ceased to exist after assignment of the entire debt to the SPV, in the guise of “Excluded Rights” could not have been approved by the Adjudicating Authority. It was further contended that, enforcement of liability of the Personal Guarantors when the debt itself did not exist is against the principles laid in Indian Contract Act, 1872 and the Transfer of Property Act, 1882.

8. A very important contention raised by the Appellants Personal Guarantors was that it is a settled law that once debt is assigned by the Financial Creditors in favour of any other third entity, it does not retain any independent right and subsequent rights to pursue any legal remedies

arising of such debts. Elaborating further, the Appellants submitted that in the present Appeals, since the entire financial debt was transferred to the SPV by the Financial Creditors, the Financial Creditors did not have any right against the Personal Guarantors after the deed of assignment has been signed by the Financial Creditors in favour of the SPV. And due to such assignment, no debt survives both in the books of the Corporate Debtor and the books of the Financial Creditors. Hence, if any party could proceed against the Appellants Personal Guarantors it could be only the SPV and not the Financial Creditors.

9. The said Appeals also raised a very important aspect of Law, that the Impugned Order of the Adjudicating Authority cannot approve a Resolution Plan that extinguishes the statutory rights of subrogation as Guarantors of the Corporate Debtor contravening the provisions of the Indian Contract Act, 1872.

SRA and COC contentions

10. Per contra, the SRA contended that the revised Resolution Plan submitted by him was recommended by the CoC with a voting share of 79.3% and the same was approved by the Adjudicating Authority after taking into consideration of all facts and legal provisions including compliance with the code and therefore, the Impugned Order is perfectly legal and valid. The SRA further contended that the COC exercising its commercial wisdom has taken a decision to approve the Resolution Plan, and the same cannot be challenged. The SRA also referred to the judgment of the Hon’ble Supreme Court’s clear verdict in a number of cases including K. Shashidhar Vs. Indian Overseas Bank [(2019) 12 SCC 150], where similar issue was considered and a clear ratio was given regarding rights of the assignment of debt to the Resolution Applicant and retention of the Financial Creditors with the guarantee, along with extinguishment of right of subrogation of the guarantor.

11. The SRA categorically stated that under the overall scheme of the Resolution Plan and submitted that the unpaid part of the debt of the Corporate Debtor was assigned to the SPV established by him as SRA whereas the personal guarantees furnished by the Appellants continued with the Financial Creditors.

12. The Principal Bench has also recorded the clear and categorical submissions of the COC, which had contended that consciously the Resolution Plan protected the rights of the Financial Creditors to pursue legal remedies against the Personal Guarantors

including the Appellants herein and there is not illegality in the same and such provision of “Excluded Rights” were provided after exercising the commercial wisdom by the CoC. The CoC also referred to the judgment of Hon’ble Supreme Court of India in the matter of Lalit Kumar Jain Vs. Union of India [(2021) SCC Online SC 396], where it was decided that approval of the Resolution Plan of the Corporate Debtor does not operate as to discharge the Personal Guarantors by the Corporate Debtor. In the said Judgment, the Apex Court had also held that the subrogation rights are statutory rights available under normal circumstances to a surety against the principle debtor, however, under the Code, subrogation rights against the corporate Debtor gets extinguished with approval of the Resolution Plan by the Adjudicating Authority.

Findings

13. The Hon’ble NCLAT considering all the above, identified two major issues and other issues for consideration in the Appeal, which are:

a. Whether recourse to the guarantee, provided by the Appellants, survive after the entire debt of the Corporate Debtor stand assigned in favour of the SPV by the Financial Creditors as per the approved Resolution Plan.

b. Whether the Financial Creditor can proceed against the Personal Guarantors in absence of any debt after extinguishment of such debts upon assignment in terms of the RBI Prudential Framework for Resolution of Stressed Assets dated 07.06.2019 and as stipulated in the approved Resolution Plan.

Other issues

c. Whether the right of subrogation shall stand extinguished after approval of the Resolution Plan under the Code or the same will continue to vest with Personal Guarantors in terms of the Indian Contract Act, 1872.

14. At the outset, the NCLAT remarked that the intent of the legislature behind the provisions of the Code is for resolution of the Corporate Debtor and not of the Personal Guarantors of the Corporate Debtor. The NCLAT categorically ruled that the Financial Creditors have right to proceed against the Personal Guarantor of the Corporate Debtor, and that the Personal Guarantors are bound by the approved Resolution Plan in terms of Sec. 31 of the Code.

15. The NCLAT went on to rule that a Resolution Plan itself can vary and modify the rights of the creditors and

guarantors of the corporate debtor and provide for continuation of personal Guarantees which do not need any confirmation from Personal Guarantor to the Corporate Debtor. The NCLAT, further referring to the reservations made in the Resolution Plan, proceeded to point out that the Resolution Plan specifically provided that nothing in the Resolution Plan shall operate to have the effect of assigning, revoking, cancelling or extinguishing the “Excluded Rights” and the Direct Financial Creditors are free to pursue such remedies and exercise such rights as they have under applicable laws. And in view of the clear and express provisions and stipulations under the Resolution Plan safeguarding the right of the Financial Creditors to pursue legal remedies against the Personal Guarantors, including the Appellants, the Financial Creditors were entitled to proceed. And such reservation of rights are not prohibited by the Code.

16. The Hon’ble NCLAT referring to the rights of Subrogation as provided for in Sec.141 and 142 of the Contract Act, went on to state that the doctrine of subrogation is an absolute right of the guarantor, however, the issue becomes different, if it falls within the domain of the Code in the context of CIRP proceedings. The NCLAT noted that as per notification dated 15.11.2019, the Personal Guarantors became liable under the Code and therefore, the treatment of Personal Guarantors under the Code is to be treated differently vis-à-vis under the contract of guarantees under the Indian Contract Act, 1872.

17. The Hon’ble NCLAT ruled that the objective of the Code is to revive and rehabilitate the Corporate Debtor and therefore the right to subrogation may not survive in such situation. The extinguishment of the Personal Guarantors right of subrogation is clear departure from establish principles of contract guarantee which are covered under Section 140 and 141 of the Indian Contract Act, 1872. The same is in accordance with Sec.238 of the Code which categorically states that the Code takes precedence over any inconsistency contained in any other existing law which includes Indian Contract Act, 1872, therefore, despite provisions of Sec.140 and 141 of the Indian Contract Act, 1872, the Personal Guarantors cannot claim any relief in view of the clear provisions of Sec.238 of the Code. The Hon’ble NCLAT had also referred to the catena of judgments of the Apex Court, where the denial of rights of subrogation has been upheld.

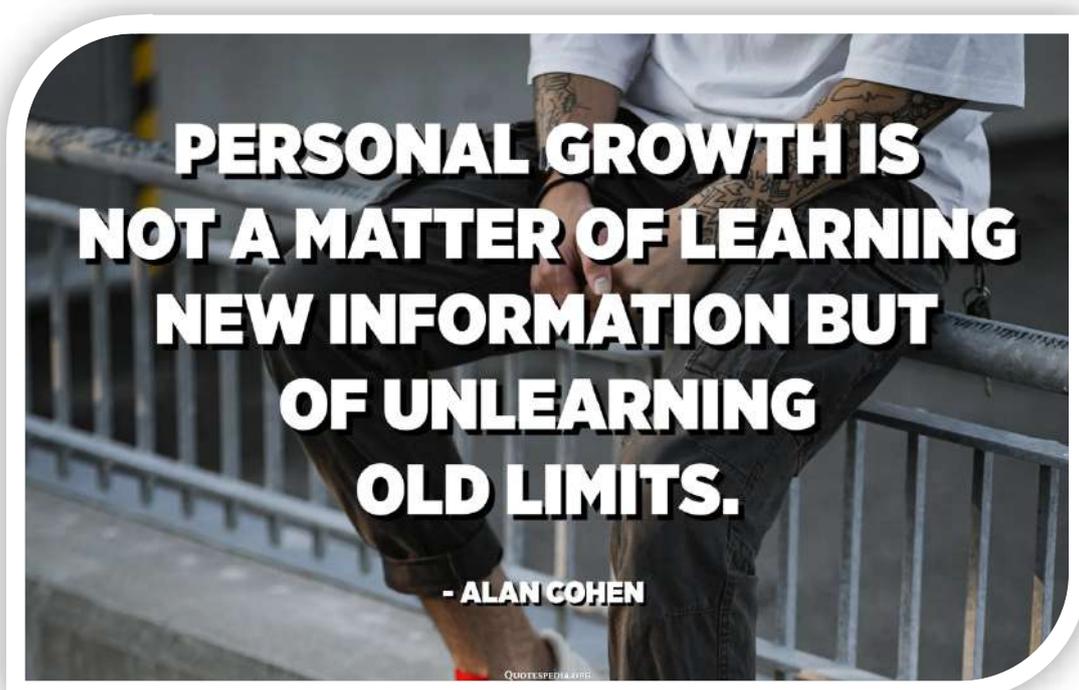
18. The Hon'ble NCLAT, also ruled that in light of the Judgment of the Apex Court in Essar Steels Ltd., Vs. Committee of Creditors (2020) 8 SCC 531, rights of subrogation that may arise against the Corporate Debtor can be extinguished under the Resolution Plan and therefore the arguments of the Appellant on issue of rights of subrogation's are not convincing. If the rights of subrogation are allowed to continue against the Corporate Debtor under the management of the new SRA, the same would have the effect of putting the SRA and the Corporate Debtor in the same position as prior to its insolvency resolution. And further, the extinguishment of Personal Guarantors' right of subrogation is unavoidable and inaccessible fact in insolvency cases and it requires to be respected by all stakeholders and any departure from such principles will have adverse impact on revival of the Corporate Debtors, interest of the Financial Creditors and overall negative impact on the national economy.

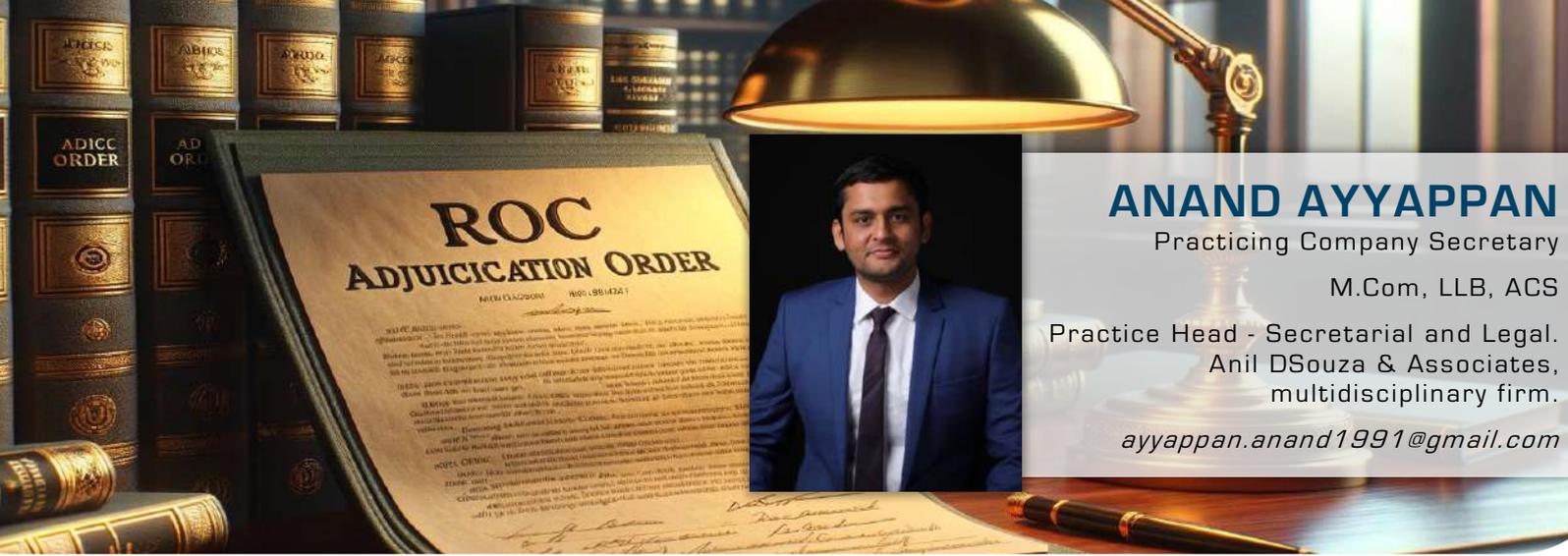
19. And adverting back to the contention of non-existing of debts in the books of the Financial Creditors and regarding treatment in the books of the financial creditors with respect to such continuing rights of the financial creditors against the personal guarantors of the Corporate Debtor after the approval of the Resolution Plan., the Hon'ble NCLAT went on to state that the it is within the prerogative of the Financial Creditors, and in

any case the RBI prudential norms does not discourage or debar the Financial Creditors in pursuing their legal rights to recover their outstanding debts from the Personal Guarantors to the Corporate Debtor. The Hon'ble NCLAT remarked "after all, it cannot be anyone's case to write off public money by such circuitous route or hypothetical legal assumption."

20. And finally the Hon'ble NCLAT went to observe that the Commercial wisdom of the CoC has been given supremacy and no grounds exist for the Adjudicating Authority or Appellate Tribunal to interfere. Hence, considering all the above, the Appellate Tribunal rejected the appeals of the Personal Guarantors and upheld the Order of the Adjudicating Authority sanctioning the Resolution Plan.

Thus the Hon'ble NCLAT, Principal Bench, New Delhi has upheld the rights of the Financial Creditors to proceed against the Personal Guarantors, for the balance debts, thereby ensuring recovery of public money by the Financial Creditors, which is also in terms of the spirit espoused by the Code, since, the Code intends not only to resolve the debts of the Corporate Debtors, but also has to ensure that the same is not against the interests of the Financial Creditors, who basically fund the businesses of the Corporate Debtors., and to keep the economy going, it is incumbent that the interests of all the Stake Holders are protected as far as possible.





ANAND AYYAPPAN

Practicing Company Secretary

M.Com, LLB, ACS

Practice Head - Secretarial and Legal.
Anil DSouza & Associates,
multidisciplinary firm.

ayyappan.anand1991@gmail.com

Order for Violation of Rule 12(A) of the Companies (Appointment and Qualification of Directors) Rules, 2014 issued by the Registrar of Companies, Uttar Pradesh dated 30-04-2024

ROC Uttar Pradesh has imposed penalty on the Director who has failed to comply with the DIR-3 KYC (DIN has been deactivated due to non-filing of DIR-3 KYC).

Rule 12 (A) of the Companies (Appointment and Qualification of Directors) Rules 2014 states that Every Individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules, shall submit e-form DIR-3 KYC to the Central Government on or before 30th September of the immediate next financial year.

In the Present case, Director Mr. Wang Ke of EU EB India Private Limited DIN has been deactivated due to non-filing of DIR-3 KYC. Hence, the adjudication officer has imposed a penalty of INR 25,000 on the Director of the company. The penalty has been imposed under Section 450 of the Companies Act 2013 for failure to make compliance of Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014. However, lesser penalty has been imposed under section 446B of the Companies Act 2013 considering the company being a small company under section 2(85) of the Companies Act 2013.

This adjudication order serves a stern reminder that INR 5000 is not only the fees required to reactivate the DIN of the Director but shall be served with penalty notice by the respective jurisdictional ROC offices for the failure to comply the DIR-3 KYC for the non-compliant Director which can lead to payment of penalty.

Order for Violation of subsection (3) of Section 203 of the Companies Act 2013 issued by the Registrar of Companies, Uttar Pradesh dated 03-05-2024

ROC Madhya Pradesh has issued an adjudication order on Section 203(3) of the Companies act 2013 regarding the appointment of KMP (CFO) as the Director of another company without the permission of Board. Order pronounced on 03.05.2024.

Section 203(3) of the Companies Act 2013 states that A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. First Proviso states that nothing contained in this sub-section shall disentitle key managerial personnel from being a director of any company with the permission of the Board

In the present case, the Company was unaware about the appointment of CFO as the Director in another company. The CFO has not obtained the permission of Board of the existing company. Hence Penalty was levied only on the Ex- CFO INR 50,000 as per Section 205(5) of the Companies Act 2013 even through Ex-CFO pleaded on the ground of ignorance of law stating that he was unaware of such process.

This also gives another reminder that we as company secretaries should be aware of all the legal provisions which are applicable to the Company to put up a robust compliance process in the Company so that we can advise the Board and Senior Management of the Company in the right direction.

Brainy Bits



CS Phani Datta D N

B.com, FCS

Practicing Company Secretary

phanidatta.dn@gmail.com

WORD SEARCH

[Based on NISM Syllabus for Social Audit Certification]

G	F	S	C	E	N	T	Z	A	D	B	L	E	S	T	O	R	S	X
H	O	E	E	F	O	M	E	P	E	D	W	R	E	S	J	I	N	T
E	R	V	A	C	F	O	R	M	E	L	T	R	A	S	R	E	X	V
U	P	E	N	V	R	E	O	Y	A	Z	I	N	D	I	E	S	T	R
T	R	N	N	O	S	I	C	T	E	N	R	A	T	I	V	O	E	M
X	O	T	U	D	I	N	O	T	A	R	Y	E	A	S	T	C	O	R
J	F	I	A	U	X	I	U	A	L	R	A	R	R	Y	Z	I	N	G
A	I	L	L	I	T	U	P	E	W	Q	Y	A	T	C	H	A	D	N
H	T	I	I	F	Y	T	O	F	N	A	R	T	D	L	C	L	X	M
P	E	V	M	E	D	O	N	K	O	P	A	K	A	D	N	I	E	O
F	N	E	P	R	A	Y	Z	E	R	O	D	A	H	A	T	M	R	N
Z	T	D	A	L	Y	U	E	M	M	R	I	K	I	V	A	P	T	T
B	E	R	C	O	S	E	R	P	O	P	Y	H	N	A	S	A	M	Y
H	R	Y	T	E	M	P	O	O	N	R	O	M	D	R	K	C	S	Y
D	P	S	R	I	K	M	P	W	E	I	C	L	R	A	X	T	T	A
U	R	P	E	S	T	E	R	E	T	N	U	I	E	T	E	F	O	R
A	I	R	P	O	N	T	I	R	E	E	A	N	R	V	D	U	P	D
L	S	O	O	R	E	E	N	E	R	S	L	D	Q	E	E	N	Q	P
B	E	L	R	I	C	E	C	E	N	T	U	A	R	Y	O	D	M	L
X	V	D	T	R	A	P	I	N	D	E	R	I	S	U	O	D	X	A
Z	D	E	V	E	L	O	P	M	E	N	T	I	M	P	A	C	T	S
Y	Y	L	R	E	T	R	A	U	Q	D	E	X	P	E	R	T	O	X
P	J	C	T	Q	O	W	L	U	E	Y	R	T	V	S	D	L	A	Z

Compiled by

CS Mathruka B M

Junior Associate,
Novo Juris Legal
mathruka30@gmail.com



Ms. Arpitha

CS Executive Student
hamsaarpi@gmail.com



SEBI Act, 1992

Update on SEBI Circular

SEBI through a circular has inserted new clauses in the SEBI (AIF) Regulations, which has allowed Category I and Category II AIF to create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonized Master List of Infrastructure issued by the Central Government.

Hence, as per this new clauses AIFs may now create encumbrance on their equity holdings in the investee Companies. This step has been taken to aid the borrowing process of investee companies and enhance the ease of doing business environment.

Conditions for creating encumbrance.

Category I and Category II AIFs creating encumbrance are expected to adhere to the below listed conditions

- AIFs creating encumbrance shall explicitly make a disclosure with respect to creation of encumbrance and associated risks in Private Placement Memorandum (PPM)
- Previous encumbrances, if any shall be continued if such encumbrances were created after making an explicit disclosure in Private Placement Memorandum (PPM) of the scheme.
- If there are any encumbrances created without following above procedure, consent of all investors in the AIF scheme shall be obtained latest be October

24, 2024, otherwise such encumbrances shall be removed latest by January 24, 2025.

- The borrowings made through creating encumbrance on equity of the investee companies are utilized only for the purpose of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonized Master List of Infrastructure issued by the Central Government.
- No guarantee in any form shall be extended by Category I and Category II AIF in favor of Investee Company.
- AIFs having more than 50 percent foreign investment or with foreign sponsor/ manager or with persons other than resident Indian citizens as external members in its investment committee which is set up to approve its decisions, shall adhere to RBI directions.
- No encumbrance shall be created on investments in foreign investee Companies.

Conclusion

AIFs may now extend a helping hand to the investee company through creating encumbrance on its equity holding in investee companies, subject to few conditions. This step of the Board plays a considerable role in expanding the scope of AIFs in the Country.

SEBI/HO/AFD/PoD1/CIR/2024/027

An Alternative Investment Fund requires a manager with specific qualifications that aids smooth functioning of the fund. This requirement was approved by the Board in

March of last year, however specific certification was not recognized only a consultation paper was released to substitute experience criteria with certification from a SEBI notified institution.

The Securities Exchange Board of India (SEBI) has issued a notification dated 10th may, 2024. According to the said notification, the key investment team of the Manager of an AIF shall have at least one associated person who has obtained certification from the National Institute of Securities Market (NISM) by passing the NISM Series-XIX-C: Alternative Investment Fund Managers Certification Examination.

This requirement shall be considered as an eligibility criterion to all the applications for registration of AIFs and launch of schemes by AIFs filed after May 10, 2024.

This requirement shall be complied with on or before May 09, 2025 by following:

- Existing schemes of AIFs
- Schemes of AIFs whose application for launch of scheme pending with SEBI as on May 10, 2024

Conclusion

This has opened a new avenue for fresher's, as the Board has waived the requirement of five years' experience for the position. Irrespective of experience now everyone in the above said position is required to clear the examination. In a way Alternative Investment Fund is also required to conduct proper due-diligence of the candidate.

SEBI/HO/AFD-1/AFD-1-PoD/P/CIR/2024/42

CENTRAL GOODS AND SERVICES TAX ACT, 2017/ INTEGRATED GOODS AND SERVICES ACT, 2017

No Notification on CGST/IGST issued for the period 12-04-2024 to 13-05-2024.

No Circular issued for the period 12-04-2024 to 13-05-2024 for both CGST & IGST

No Notification on GST (rate) issued for the period 12-04-2024 to 13-05-2024 for both CGST & IGST

INCOME TAX ACT, 1961 AND INCOME TAX RULE, 1962

Circular No. 06/2024 dated 23-04-2024, issued for Partial Modification of Circular no. 3 of 2023 dated 28.03.2023 regarding consequences of PAN becoming inoperative as per Rule 114AAA of the Income Tax Rules, 1962

Circular No. 07/2024 dated 25-04-2024, issued for extension of due date for filing of Form No. 10A/10AB under Income Tax Act, 1961; It is also clarified that if any existing trust, institution or fund who had failed to file Form No. 10A for A Y 2022-23 within the due date as extended by the CBDT circular no. 6/2023 dated 24.05.2023 and subsequently, applied for provisional registration as a new trust, institution or fund and has received Form No. 10AC, it can avail the option to surrender the said Form No. 10AC and apply for registration for A Y 2022-23 as an existing trust, institution or fund in Form No. 10A within the extended time provided in paragraph 3(i) i.e. 30.06.2024

Notification in Customs released for the period 12-04-2024 to 13-05-2024 are for the changes in tariff under No. 24/2024 - CUSTOMS and No. 25/2024 - CUSTOMS; and non-tariff notifications such as exchange rate notifications, fixation of tariff on some of the commodities under Notification no. 29/2024-CUSTOMS(N.T.) dated 15-04-2024; No. 30/2024-CUSTOMS(N.T.) dated 18-04-2024; No. 31/2024-CUSTOMS(N.T.) dated 26-04-2024; No. 32/2024-CUSTOMS(N.T.) dated 30-04-2024; No. 33/2024-CUSTOMS(N.T.) dated 30-04-2024; and No. 34/2024-CUSTOMS(N.T.) dated 02-05-2024

Circular No. 04/2024 dated 07-05-2024 issued in Customs for Amendments to the All-Industry Rates of Duty Drawback effective from 03.05.2024

CUSTOM INSTRUCTIONS

Instruction No.09/2024-Customs dated 22-04-2024

Extension period for 3 months to Ortho-phosphoric Acid which is used for manufacturing of Fertilizers from applicability of BIS standard IS 798:2020 implemented through QCO dated 13.05.2022

Instruction No.10/2024-Customs dated 01-05-2024

Acceptance of Electronic Certificate of Origin (e-CoO) issued by the issuing Authority of Korea under India-Korea Comprehensive Economic Partnership Agreement

after implementation of India-Korea Electronic Origin Data Exchange System (EODES)

Instruction No.11/2024-Customs dated 01-05-2024
Verification of authenticity and genuineness of Certificate of Origin (CoO) issued by UAE Authority.

Instruction No.12/2024-Customs dated 01-05-2024
Instruction on review of requirement of G-Card holders at a Customs Station and conduct of G-Card examination in terms of Regulation 13 of CBLR, 2018



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)

MYSURU CHAPTER

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

Motto
सत्यं वद। धर्मं चर।
इमानं धर्मं एतान्ते अक्षयं हेतु किंच ज्ञतः

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

Invites you to
A Unique 2 Days Workshop
On Critical Issues in Corporate Laws

Manthan 2024

Day & Date
Friday & Saturday,
21st & 22nd June, 2024

Timings
10.00 am to 6.00 pm

Venue
Hotel Le Ruchi The Prince
Mysuru – Hunsur
Main Road, Mysuru – 570017

Note: 1. The workshop is intended to address the critical issues under the Companies Act, 2013, Limited Liability Partnership Act, 2008 and related coverage under the securities laws, FEMA and other allied laws for the Companies, LLP's including Start-ups, small companies and MSME's.
2. This Workshop is intended to be an interactive discussion on the pre-selected queries, and would involve comprehensive, intense discussion on the issues and counter-issues, based on principles of interpretation & judicial precedents.
3. Registration restricted to 135 members on 'FIRST COME FIRST SERVE' basis.
4. Participants may send their queries to mysuru@icsi.edu on or before 15.05.2024. Selection of queries for discussion shall be made in consultation with panellists, considering the larger interest of participants.

For more details, contact
ICSI-Mysuru Chapter
Metagalli, Mysuru – 570016
Tel.: 0821-2516065/ 7795296969
Email: mysuru@icsi.edu
Link for Registration:
<https://forms.gle/4XW2n95SoBwKTBmF9>

CPE-8 (Structured)

Registration Fees (Including GST)

Particulars	Amount in (Rs.)
Member	4750/-
Student	2500/-

Inclusions: 2 Lunch, Tea / Coffee & Conference Kit

Mode of Payment
Account No.: 110015601635
Account Name: Mysuru Chapter of ICSI
Branch Name: Canara Bank, Metagalli
Branch
IFSC Code: CNRB0011711

SCAN QR FOR PAYMENT



CS Padmanabha V
Chairman
ICSI Mysuru Chapter

CS Abhishek Bharadwaj A B
Secretary
ICSI Mysuru Chapter

Connect with ICSI | www.icsi.edu |  | Online helpdesk : <http://support.icsi.edu>



Details of Accommodation

The Participants may book accommodation at the venue **Hotel Le Ruchi** as per their requirement by making payment directly in the Bank account of the Hotel, as per the details provided below:

- Single Sharing Basis – Rs. 2800 + 12% GST (Per night)
- Double Sharing Basis – Rs. 3,600 + 12% GST (Per night)
- Triple Sharing Basis – Rs. 4,600 + 12% GST (Per night)

(Incl. of Complimentary Breakfast)

The details of the accommodation including sharing, check-in and check-out dates and other details to be registered on the link: <https://forms.gle/4XW2n95SoBwKTBmF9> for allocation of the rooms. However, the payment for the accommodation has to be made to the Hotel directly. The payment for the hotel can be made to the following account / using the QR:

Name: Hotel Le Ruchi The Prince
Bank: KOTAK MAHINDRA
A/c No: 0612573299
IFC CODE: KKBK0000425
Seraswathipuram, Mysore



Hotel Le Ruchi Contact - Front Office - +91-7022919522 / +91-8214013022
Registration for accommodation through the link is mandatory for the allocation of the Room. If the registration is not made, the room allocation shall not be confirmed even though the payment is made.

Avenue for Sponsorship

The purpose of the event being churning and spreading of knowledge, your kind gesture as a sponsor would go a long way in realising this objective. The program being the flagship program of the Mysuru Chapter from last 4 years with good recognition having overwhelming response every year and participants being company secretaries from all over India, we can also assure the widespread branding and publicity. We have planned the following avenues to ensure proper mileage to our sponsors:

Gold Sponsorship: Rs. 1,50,000/-

- Name and Logo carried as title sponsor along with program title in all the banners, correspondences, participants' kits and materials;
- Allow one stall at the program venue;
- Display of 2 banners in the program hall;
- Announcements and acknowledgments throughout the program.

Kit Sponsorship: Rs. 50,000/-

- Display of Name and Logo and all the Participants' kits;
- Allow one stall at the program venue;
- Display of 1 banner at the Venue;
- Announcements and Acknowledgements

Staff Category: Rs. 25,000/-

- Allow one stall at the program venue;
- Display of 1 banner at the Venue;
- Announcements and Acknowledgements

Silver / Food Sponsorship: Rs. 1,00,000/-

- Name and Logo carried as title sponsor along with program title in all the banners, correspondences, participants' kits and materials;
- Allow one stall at the program venue;
- Display of 2 banners in program hall & serving area
- Announcements and acknowledgements

Banner Category: Rs. 7,500/-

- Display of 1 banner at the Venue
- Announcements and Acknowledgements

Please Note: For Individual Sponsors, the 18% GST is included in the sponsorship amount. For Corporate Sponsors, the GST is payable on RCM basis

