

October 2020  
198<sup>th</sup> Edition



# Mysuru Chapter e-Magazine

## Vision

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

## Motto

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# *Inside* this Issue

## I Articles

Anti-Takeover Missiles	06
An Overview of Prepackaged Insolvency	11
Practical Management Insights-Some Anecdotes	13
Modelling the Future -21 <sup>st</sup> Century Thought Centre	17
Brief Overview of the New Labour Codes	21

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## II Columns

From Chairman's Desk	03
Chapter Activities	05
Students Corner	24
Food for Thought	27
Brainy Bits	28
Delhi Diaries	29
Tech News	31



## From the Desk of Chairman

**CS Parvathi K R**  
*Chairperson*  
*Mysuru Chapter*

**Dear Professional colleagues,**

Greetings from the Mysuru Chapter of ICSI.

On behalf of Mysore Chapter of ICSI, I wish you all a happy and prosperous Navarathri and Vijayadashami.

The September month was exciting, memorable for us. We had a teacher's conference under the theme "Empowering Educators" which was well received by the Teachers from various colleges. Also, we had many programmes for our members as well as students.

You will find details of various activities conducted during the month in other part of this eMagazine.

Dec 2020 edition will be 200th Edition of our E-Magazine, I take this opportunity to request you to send the Articles for this special edition.

We sincerely thank you for your active participation and look forward to continued support." Feel free to share inputs, feedback, and suggestions to continue this journey of growing together!



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Company Secretaries of India**

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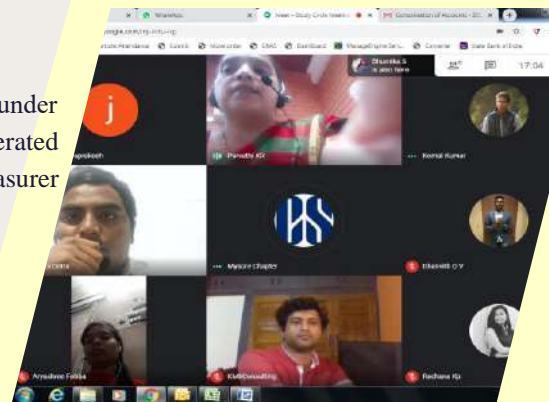
## Career Awareness Program

Chapter organized two Career Awareness Programs during the month through online mode. The details are as follows

S. No	Date	College Name	Speaker	No of Participants
1	05.09.2020	Field Marshal K M Cariappa College, Kodagu	CS Phani Datta D N N. Dhanabal	75
2	28.09.2020	Amrita School of Arts & Sciences, Mysuru	CS Vijaya Rao N. Dhanabal	130

## Students Study Circle Meeting

Chapter organized a Study Circle Meeting for students on 09.09.2020 in the topic “Meetings under Companies Act 2013” through online. CS Ajay Madaiah B B., Practicing Company Secretary moderated the session. CS Parvati K R., Chairperson welcomed the gathering. CS Phani Datta D N. Treasurer explained the importance of Study Circle Meeting. Around 10 students from Executive & Foundation stage participated in the session and discussed.



## Teachers Conference on Empowering Educators

Chapter organized on the occasion of Teachers Day, Chapter organized the Teachers conference in the theme Empowering Educators on 9th September, 2020 through online. CS Parvati K R., Chairperson of the Chapter welcomed the Chief Guest, Speakers, participants and explained the initiative taken by the Institute for organizing this teachers conference. Dr. Suresha K V., Principal, JSS College for Women was the Chief Guest for the session. In his inaugural address he explained the importance of online education in the current scenario. The session covered the following topics. “Teachers Teach Us” by CS Dattatri H M., Director-Nulurn Edutech, “Governance Professional – Expectations & Emergence” by CS Phani Datta D N., Treasurer of the Chapter & “Impacting Role of a Teacher – Education, Learning and Corporate Governance” by Dr. P V S Jagan Mohan Rao, Past President-The ICSI. CS Harsha A., Secretary of the Chapter delivered the vote of thanks. CS Vijaya Rao, Vice Chairperson of the Chapter moderated the session. Around 60 lecturers from Commerce, Management & Law stream from various Colleges in Karnataka participated.



# Anti-Takeover Missiles



**CS S. RAVISHANKAR**

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In what is touted as the first hostile takeover of a company in the country, Indian conglomerate Larson & Toubro has successfully completed its takeover of IT company Mindtree. As per L&T, initially, Cafe Coffee Day founder VG Siddhartha who was facing pressures of liquidity approached them offering to sell his stake in the company in March 2019. Interestingly, Siddhartha was the single-largest non-promotor shareholder having 20.32 per cent stake in Mindtree. L&T offered him Rs 980 per share, which approximately amounted to Rs 3,269 crores. This offer was vehemently opposed by the management of Mindtree which set stage for a hostile acquisition.

In March 2019, Chairman of L&T AM Naik in his address to the media had explained how the acquisition of Mindtree a value addition was. The Indian conglomerate already has a listed IT company - L&T Infotech which focuses on BFSI vertical whereas, Mindtree largely focuses on clients from hospitality and retail sector. So, a takeover would mean an expansion of L&T's information technology business.

Many of the Corporate Lawyers say that transfer of shares in a company can be restricted by way of adding necessary covenants in the Articles of the company which are in essence the company's charter documents. "In the ordinary course, this restriction is exercised by the board to ensure the best interest of the company. In the case of public companies, however, this is a tenuous issue and several noted judgments have opined that any restriction on the free transferability of shares in a public company is not maintainable.

## Definition of Takeover

Broadly speaking, takeover refers to acquisition of company by another company. Takeover is an acquisition of shares carrying voting- rights in a company with a view to gain control over the management of the company. It takes place when an individual or a group of individuals or a company acquires control over the assets of a company either by acquiring majority of its shares or by obtaining control of the management of the business and affairs of the company. When an acquirer makes a bid for a target company, if the takeover goes through, the acquirer becomes responsible for all of the target company's operations, holdings, and debt. When the target is a publicly traded company, the acquiring company will make an offer for all of the target's outstanding shares.

## Advantages of Takeover

### International Growth & Restructuring

Businesses can make their services or products available globally by acquiring businesses in various locations internationally. For instance, Belgium brewing company, InBev took over Budweiser for \$52 billion in 2008 in order to expand its presence in the U.S. market and create one of the largest consumer beverage companies in the world.

## Expansion

Sometimes companies will take over other companies that are in trouble, for example, Reliance Industries-Future Group deal has saved lenders from a \$2.2 billion debt. Future Group lenders have been saved from a \$2.2 billion hit on their exposure to the conglomerate after the company announced its sale of all its businesses to Reliance Industries (RIL) for ₹24,713 crore. Lenders led by Axis Bank have a total exposure of ₹16,000 crore to the conglomerate. Analysts believe that there is most likely no haircut to lenders who have lent for business operations.

## Types of Takeover

### Legal Context

#### Friendly or Negotiated Takeover

Friendly takeover means takeover of one company by change in its management & control through negotiations between the existing promoters and prospective investor in a friendly manner. Thus it is also called Negotiated Takeover. This kind of takeover is resorted to further some common objectives of both the parties. Generally, friendly takeover takes place as per the provisions of the Companies Act & SEBI guidelines.

#### Hostile Takeover

Hostile takeover is a takeover where one company unilaterally pursues the acquisition of shares of another company without the knowledge of that other company. The most dominant purpose which has forced most of the companies to resort to this kind of takeover is increase in market share. The hostile takeover takes place as per the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

#### Bail Out Takeover

Takeover of a financially sick company by a profit earning company to bail out the former is known as bail out takeover. There are several advantages for a profit-making company to takeover a sick company. The price would be very attractive as creditors, mostly banks and financial institutions having a charge on the industrial assets, would like to recover to the extent possible.

### Business Context

In the context of business, takeover is of three types:

#### Horizontal Takeover

A horizontal Takeover involves two companies, operating and competing in the same industry. The motives are as usual several, but the most general goal is to seek advantages in economics of scale by improving the management and administration of the company as well as better take advantage of the unused and available capacity in production. Furthermore, horizontal acquisitions have a negative impact on competition, in the sense of increased potential monopoly revenues for companies, while firms gradually decrease from the market or being bought up. These types of acquisition are relatively common, since a company's growth strategy often include acquiring other companies, operating in the same industry. When a company wants to go abroad and establish its presence in a foreign country

which it has never operated in before, it is generally known that acquiring an already established firm with a brand which is already known in the region with existing product and supply chains is many times a lot easier and more cost efficient than trying to establish one's unknown brand in that region from scratch. After an acquisition, the companies merged together, often adopts a brand name in the beginning, including both the previous companies' names, illustrating that an acquisition has been made but also to ensure a feeling of comfort for the acquired company's already existing customers.

### **Vertical takeover**

A vertical Takeover takes place when a company gains ownership over a company, operating in the same industry as the acquiring company. As we have mentioned before, the reasons and motives for the acquiring company could be several, but usually the acquiring company chooses to implement a vertical acquisition in order to establish control of the whole production chain, thus potentially securing and strengthening its market position. One example of vertical acquisition could be when an airline company gains ownership over a travel agency. By doing so, the airline company prevents the possibility for the travel agency to change airline in the future, as well as improving and developing its marketing strategy, which could be for instance marketing of travel and flights to destinations where the airline has the most available flights

### **Conglomerate takeover**

A conglomerated takeover occurs when a company gains ownership over another company, operating and existing in an entirely different kind of industry. These types of acquisitions are often made in the purpose of diversifying one's risks and are often performed by companies which have their core businesses in a relatively high-risk type on industry. The main goal is to seek a sustainable platform with interests and operations in different types of industries entirely independent of each other, risk diversifying and enabling the possibility of one industry which it has interests in to be profitable, while other industries might have a downturn, since it is normal for some industries to do better when others are doing worse

## **Defence Strategies to Takeover Bids**

All bids that are made between companies are not always welcomed with open arms from the target company's board of directors. In that case the bid is recognized as hostile, also called unconsolidated bid.

This occurs when the acquiring company is trying to acquire the target company directly through its share holders rather than through a mutual agreement with the target company's board of directors Defenses can take the form of fortifying one self, i.e., to make the company less attractive to takeover bids or more difficult to take over and thus discourage any offers being made.

### **Types of Defence**

#### **The "Crown Jewel" Strategy**

Under this strategy the hostile bidder is deprived of the primary intention behind the takeover bid. Vide this novel strategy, the target sells off not only the crown jewel in its possession (assets) but also properties to diminish its worth. Such a radical step may however be, self-destructive and unwise in the company's interest.



## **The “Packman” Defence**

This strategy, although unusual, is called the packman strategy. Under this strategy, the target company attempts to purchase the shares of the raider company. This is usually the scenario if the raider company is smaller than the target company and the target company has a substantial cash flow or liquid asset

## **Targeted Share Repurchase or “Buyback”**

This strategy is really one in which the target management uses up a part of the assets of the company on the one hand to increase its holding and on the other it disposes of some of the assets that make the target company unattractive to the raider. The strategy therefore involves a creative use of buyback of shares to reinforce its control and detract a prospective raider. An example that demonstrates this contention is the distribution of high dividends in a particular year if not followed in the next sends the share prices spiralling down.

## **“Golden Parachutes”**

Golden parachutes refer to the “separation” clauses of an employment contract that compensate managers who lose their jobs under a change-of-management scenario. The provision usually calls for a lump-sum payment or payment over a specified period at full and partial rates of normal compensation. The provisions which would govern a “golden parachute” employment contract in India would be under Section 202 of the Companies Act, 2013 which govern the provisions compensation for loss of office. Thus, a perusal of the said provisions would show that payments as compensation for the loss of office is allowed to be made only to the managing director, a director holding an office of manager or a whole time director. Therefore, “golden parachute” contracts with the entire senior management, as is the practice in the U.S., is of no consequence in India.

## **Anti-takeover amendments or “shark repellents”**

An increasingly used defence mechanism is anti-takeover amendments to the company’s constitution or articles of association, popularly called “shark repellents”. Thus, as with all amendments of the charter/articles of association of a company, the anti-takeover amendments have to be voted on and approved by the shareholders. The practice consists of the companies changing the articles, regulations, bylaws etc. to be less attractive to the corporate bidder.

Anti-takeover amendments generally impose new conditions on the transfer of managerial control of the firm through a merger, tender offer, or by replacement of the Board of Directors. In India every company has the clear power to alter its articles of association by a special resolution as provided under Section 31 of the Companies Act.

## **Refusal to Register Transfer of Shares**

Refusal by the Board of Directors to register a transfer is an important strategy to avert a takeover.

## **Poison Pill Defences**

A controversial but popular defence mechanism against hostile takeover bids is the creation of securities called “poison pills” (DVR Shares). These pills provide their holders with special rights exercisable only after a period of time following

the occurrence of a triggering event such as a tender offer for the control or the accumulation of a specified percentage of target shares. These rights take several forms, but all are difficult and costly to acquire control of the issuer, or the target firm.

### **Legal Issues Concerning Poison Pill Devices**

The legality of poison pills has been questioned in court of law because they alter the relationships among the principals (shareholders) without their approval by vote. In most poison pills, the agents (Board of Directors) adopt rights plans which treat shareholders of the same class unequally in situation involving corporate control.

Takeover of companies whose securities are listed on one or more recognized stock exchanges in India is regulated by the provisions of the Listing Agreements with various stock exchanges and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the Regulations)

The aforesaid transactions are regulated in the following manner:

1. Acquirer is required to make mandatory public offer (Open Offer Obligations); and
2. Acquirer is required to make certain disclosures (Disclosure Obligations).

The advantages of taking over companies through a takeover or mergers are numerous. Companies can boost revenue streams and market share, broaden their product base or increase their international presence through taking over companies. The companies in the best position to buy out another company are those with extra cash and balance sheets that have reached maximum revenue potential and need to make a strategic change in order to grow.

Takeover or merger is a detailed and complex procedure requiring the analytical skills and accounting knowledge of a Chartered Accountant, the legal knowledge and the secretarial expertise of a Company Secretary.

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Harvard Business Review



# An Overview of Pre-Packaged Insolvency



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The ongoing Covid-19 pandemic has hit every facet and aspect of human life as we know of. Apart from social structure, the financial and economic sectors have taken a significant hit. Our economy has also been struck by the pandemic and it has not been kind to our country.

This downfall in economy has impacted almost every major prevalent law of the country and various amendments have been made to such laws to accommodate the current situation. The debt restructuring law of India, i.e., Insolvency and Bankruptcy Code, 2016 ('IBC'), has also been amended in the process to cope with the current situation. The Ministry of Corporate Affairs ('MCA') had set up a committee to look into the possibility of including what are called "pre-packs" under the current insolvency regime to offer faster insolvency resolution under the Insolvency and Bankruptcy Code (IBC), while maintaining business continuity and thereby preserving asset value and jobs. Slow progress in the resolution of distressed companies has been one of the key issues raised by creditors regarding the Corporate Insolvency Resolution Process (CIRP) under the IBC with 738 of 2,170 ongoing insolvency resolution processes having already taken more than 270 days at the end of March. Under the IBC, stakeholders are required to complete the CIRP within 330 days of the initiation of insolvency proceedings.

Pre-pack insolvency means a pre-planning between the creditor and the purchaser prior to the insolvency proceedings where the negotiations on the terms of sale of assets and other requirements are made before applying to the courts/tribunals for insolvency proceeding.

The term "Pre-Pack Sale" has been defined by the Association of Business Recovery Professionals (a trade association of the United Kingdom's insolvency, restructuring, advisory, and turnaround professionals) as "an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an administrator and the administrator effects the sale immediately on or shortly after his appointment".

The practice of pre-pack insolvency was first developed in USA following the enactment of the Bankruptcy Reform Act of 1978. The practice is also prevalent in countries like UK, France, Netherlands and Germany.

The core objective of the Code is reorganization of corporate person while maximizing the value of its assets in a time bound manner and the pre-pack insolvency scheme adheres to and advances this objective of the Code.

Under Section 12 of the IBC, the time period to complete the resolution process has been increased from 270 days to 330 days including litigation and judicial process. Even after the extension, the average time it took to successfully resolve 221 cases by the end of March 2020 was 375 days which is way beyond the stipulated time period provided by the Code.

Highlighting the importance of a swift and time-bound resolution process, the Bankruptcy Law Reforms Committee observed that, “the most important objective in designing a legal framework for dealing with firm failure is the need for speed.” By introducing pre-pack insolvency scheme in the restructuring legislation of India, a speedy and cost-efficient recoveries of businesses can be made possible and it can also prevent cluttering of cases in the tribunals.

The process which is a private restructuring scheme occurs out of court/ tribunal. Here, after negotiations between the corporate debtor and the purchasers, the scheme has to get the sanction of the court/ tribunal. Therefore, even though being an informal mechanism, it still comes within the purview of the courts and tribunals for their ultimate sanctioning which would be in turn binding on the parties. This to ensure that the parties do not misuse the scheme.

Pre-Packs are often done with the involvement of an insolvency practitioner who is subsequently appointed as the administrator/ bankruptcy trustee of such company. The sale takes place on the date of initiation of insolvency proceedings or the appointment of the administrator/ bankruptcy trustee, or soon thereafter, and the sale proceeds are distributed amongst stakeholders in the order of priority.

It avoids lengthy negotiations with the creditors after the commencement of insolvency proceedings, enabling expeditious insolvency resolution with minimal involvement of courts and tribunals. Moreover, pre-packs allow pre-emptive resolution of distress as they can be arranged even before formal defaults have occurred.

A financially distressed company can continue its operations during the period leading to a formal default, and even thereafter, without the resultant reputational risks, business disruptions, or value erosion.

For a corporate debtor, the admission of the CIRP may be disruptive to key components of its business and stakeholders. By formulating and obtaining a binding support in favors of a plan, before initiation of CIRP, initiated through a pre-packaged bankruptcy, the corporate debtor's business faces significantly less uncertainty and disruption as a result of the bankruptcy case. When the filing is made, the corporate debtor has the opportunity to broadcast a strong positive message to its stakeholders, which can indicate that the corporate debtor will be more competitive in the business because it is anticipated that it will have a more manageable capital structure in the immediate future.

Apart from saving of expenses and time, the company can avoid some of the negative publicity that results from a longer drawn-out bankruptcy process involving creditors fighting for their claims.

For Section 29A, pre-packaged insolvency process is debtor-initiated process by a pro-active company in distress willing to negotiate the terms of insolvency with its lenders, before initiation of a formal CIRP. As such, it would be a right available to an entity in distress prior to initiation of formal CIRP. Hence, Section 29A is unlikely to be applicable in a pre-packaged insolvency process. It would be correct to state that if a provision akin to Section 29A is made applicable to the entities willing to go for pre-packaged insolvency, it may tend to defeat the very purpose / objective of such a scheme.

This is a season of Atma-Nirbhar (Self-Reliance). It can be concluded that pre-packs are one of the steps that will reduce the dependency of the financially distressed companies on courts/ tribunals and help them in becoming financially self-reliant by following a self-regulated method rather than conventional court bound proceedings. During such unrepresented times, such pre-packs are necessary to strike a balance between corporates and government.

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# Practical Management Insights – Some Anecdotes



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## Living the Code of Conduct

- I was invited to deliver a lecture on the occasion of annual day of a company. I decide to talk on ethics. I raised a question - is there an ethics policy of the company? many hands went up ( though not all), then I asked have you read it ? fewer hands showed, I then asked - have you understood it , still fewer hands showed. Finally I asked - do you live by it ? only two hands went up. It is good thing for a company to have an ethics policy, but more importantly employees must also live by it
- I was a speaker at one of the seminars at Chennai organized by the Institute of Cost Accountants of India. Sitting on the dais alongside was a senior professional lady from a company based in Noida. As is customary after the presentations by the speakers a memento was offered to all sitting on the dais. When the gift packed memento was handed over to this lady she whispered in my ears “what is the cost of this?” I was surprised , I said ‘Madam why are you bothered ..this is just a token of appreciation for your having come all the way and participated as a speaker at the seminar ” she said ‘ No, Dr. Gupta my company has a gift policy. If whatever is there inside the box exceeds that threshold amount, then sorry I would not be able to accept it “I was startled. Here was a lady who was living the ethics policy of the company in true sense.

## With optimism and strategy, a weakness can, be converted into an opportunity

- A young boy aged around 9 years lost his left arm in a road accident. He became subdued. He started to stay at home only not mixing up with other children of his age because of his handicap. His father took him to a kung fu academy and requested the trainer there to let him visit the club every day and punch the bean bag with the right arm. slowly the trainer started training him into the art of kung fu and then one day he asked the boy to get his father along the next day. His father upset thinking about the cause of his being called by the trainer. Next day father went to the club with his son. Trainer said that there was a tournament of Kung Fu happening in the district

and that he wanted his son to take part in that. Father said please excuse me, but my son does not have one arm, I do not want him to get hurt by other able strong competitors. But the trainer assured him that nothing will happen to him. Reluctantly the father bowed to the request of the trainer and allowed his son to take part in the competition. The boy won two rounds and entered the semifinals. His father came and met up with the trainer pleading with him that enough was enough and that now he would not allow his son to continue in the competition as now the competition will become even tougher. The trainer reassured the father that he stands a good chance of progressing to the finals. The boy won the semifinal bout and also the final. He was awarded a big trophy. Father was feeling very happy and proud. He asked as to how he made the boy win the tournament despite his handicap. The trainer replied I taught him a jab executed with right hand, and the only way for the opponent to stop getting punched was to defend by holding the left arm of the opponent. Since the boy did not have left arm, there was no way of stopping him to be the winner.

### **Culture of the organization and managerial performance**

- A senior marketing manager of a company was moving on. The company selected a competent professional to replace him. A small get together was organized to welcome the new employee and to bid farewell to the outgoing manager. When the function got over the new employee went over to the outgoing professional and said - You have successfully been associated with this company for over 10 years, please tell me some tricks of trade so that I can also be successful in this company. The outgoing professional said - all right. He wrote something on three small slips of paper, put them inside three separate envelopes and numbered them 1,2 and 3 and handing them over to the new incumbent and said - anytime you find yourself in a fix open envelope number 1 and you will find a solution to your problem. Anytime you find yourself in a tougher problem, open envelop number 2 and then if you get into real tough problem, then open envelop number 3 and it will suggest you a solution. The new employee was very happy, and he confidently started his innings in the new company. After a few months he was faced with a problem. He opened the envelope number 1, took out the paper and it read - Blame your predecessor. (it is quite natural for the new incumbent to say that the outgoing had messed up everything. He told this to his boss, and he said Fine, carry on. After a few months he once again came across a problem. He could not think of a solution. This time he did not want to rush to open envelop number 2, then only one more will be left. But when he could not find any solution to his problem he opened envelop number 2 and it said - blame the company systems. he told his boss and he got away this time also. After about six months thereafter he once again came across a problem. He tried his best, burnt lot of midnight oil but could not find a solution. With trembling hands he tore open envelop number 3, took out the paper and read it - it said -it's time now for you to prepare these three envelopes. Actual problem was the person had rich experience and was very competent, but he could not adjust himself with the culture of the new company. The performance of a person depends to a large extent on the degree to which he can adjust with the culture of the organization

### **Difference between a Worker and a Manager**

- There was a great worker who worked in a five-star hotel. Once there was a party in the hotel and in every party, potatoes are cooked in some form or another. This person was given a sack of 20 kg of potatoes and was asked to peel them. He finished the task in 20 minutes and told his supervisor that the task was done. The supervisor went

over to the place and found all potatoes nicely peeled and stacked properly. He was very much impressed with the worker and said, you are a very efficient and great worker. After a week or so there was another party in the hotel. He again gave him 20 kg potatoes and told him that these need to be peeled. but mind you this party is for VIPs, so peel only good potatoes. If you peel a bad potato, I will peel you off. The worker started to work. He did not come back even after 3 hours. Supervisor went over to the place where he was working and found that he was sweating and had just finished 4 kg potato peeling. He asked him what happened...? last week you finished the task within 20 minutes. He said sir today you told me to peel only good potatoes. I am not able to decide quickly whether a potato is good or bad. Should I or should I not peel it. He was a great worker; he was not a manager. he was not good at decision making. What distinguishes managers from workers is their decision-making ability.

### **Strategic Pricing and marketing success**

There is a company in Yale, UK, which Manufactures locks. Its product was the best available in the market and cheapest. The Marketing manager was very confident that he will be able to sell 1 million locks in a year as the product was very good and it was the cheapest. There would be no problem selling the same. After 6 months a review was undertaken. To everyone's surprise it was found that only 2 lakh locks had been sold. Achieving target of 1 million by the year end seemed unachievable. A consultant was hired to find out the reasons for poor sales trend. Consultant went to the marketplace and observed consumer behavior. Consumer used to come to the shop and ask for good quality lock. Shopkeeper showed Yale lock and would tell how many they get for 3 pounds. Customer asked is there any better-quality lock. Shopkeeper said yes and pulled out lock of another brand, this is for 4 pounds. Any other better lock...? shopkeeper pulled out lock of yet another brand ..this is for 6 pounds. People (as per natural buying behavior) purchased the 4 pound lock. Consultant suggested that the price of Yale lock be increased only then the lock will start selling in expected quantities.(against the canons of law of demand).The reason given was - people perceive price as an indicator of quality. The lock was not being preferred by the customers because of its low price. The lock had 3 levers. Another 2 levers were added at a cost of 1 pound and the new 5 lever lock was priced at 4.5 pounds. The lock started selling like hot cakes.

### **Who is clever-teacher or student?**

- Three MBA students bunked the class on the day of test. When they came next day the reason, they gave was they had gone out somewhere and the tyre of the car got punctured. Since they were in a far-off place the same could not be mended. Professor said find. All of you appear for the test two days later wherein there will be a compulsory question to answer. They agreed. The Compulsory question was - Which tyre burst during your last journey - options - front left, front right, rear left, rear right

### **Customer Delight**

- Last Deepavali I went to a jeweler's shop and picked up a small item of silver for giving a corporate gift. I paid for the article and it was nicely packed and handed over to me by the shopkeeper. I turned to leave the shop. Suddenly he called - saab ek minute I turned back to see what happened. Then he said chotu lana..next I saw a helper of his bring something gift packed . The shopkeeper gave it to me and said - happy Deepavali Sir. this was customer delight. I never expected this. Once I got into my car I curiously opened the pack. There was a glass bowl worth probably only around 150 rupees. But the way it was given made me a lifelong customer of that jeweler -true customer delight

## You need Spark to succeed

- I was once a member of the interview board. There were three members. The interviews were being conducted for the position of Manager (Finance). One of the candidates answered 8 out of 10 questions. He was happy and confident about his performance. After the candidate walked out we all turned towards each other. One of the board member said - wo spark nahin dikha.. we all tended to agree. The candidate was not selected. Today it is not enough to be having knowledge or academic distinctions. One needs to be enthusiastic, and appear to be a go getter, with fire in the belly for being successful in life.

## Work smarter not harder

- A man was without a job for a long time. Finally, he got a job as woodcutter in a timber yard. He was paid on the basis of number of logs cut. He worked very hard but could cut only 15 logs on first day. He went home and told his wife that he will work still harder the next day and would cut more than 15 logs. She said sure she was confident of his ability. He worked harder than the previous day, but he was surprised when he found out that at the end of the day, he had cut only 13 logs. He went home and asked his wife that even after working harder, why he could cut a smaller number of logs, his wife said don't worry, I am sure you will do better tomorrow. Next day he tried even harder but could cut only 12 logs. His wife was also perplexed as to why in spite of working harder and harder the output was coming down. She said we are illiterate; you please talk to your Seth tomorrow. He will be able to guide you. He asked his Seth the next morning and he asked him a question. When did you last sharpen your saw...? He said on the first day. His Seth said, that is the reason for the reduced daily output. Worker said I wanted to earn more and more money and did not want to waste time sharpening the saw. That was a mistake. Moral is even we professionals have to keep sharpen our ax by reading and keeping ourselves up to date.





# MODELLING THE FUTURE

## 21st Century Thought Centre



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### 1. Managing the Management

'Rudest Management likes the Shrewdest Executors' is the dictum in Management Sciences. The owner needs extra skilled personnel (ESP's) to reap benefits of investments and enrich owners'/shareholders' wealth ensuring legal framework compliances and disciplines. Human endeavor has its own ethos and pathos with innate inhibitions, imbalances and intoxications. These are with respect to leading one's own businesses and establishments. Artificial Intelligence has no reason to believe that exceptional rudimentary can be accomplished which should obviously need to be proxied with Raw Intelligence. Management Gurus does believe in the theory of progress at any cost and not totally believe in factual realism of Murphy's Law viz., what is bound to happen, shall happen. Human Capital does possess some drivers, which are of intangible form such as motivation, encouragement and above all appreciation of positive performances. Dilution of these would only further deteriorate value of businesses despite financial performances. Overall businesses need continuous value drivers to sustain and success.



### 2. Power of Information

'Power' has more than one form of expression in life. Powers, sans, divine power, has a sub-servient role to Knowledge Power or Power of Information (PoI). The power of mind, when used strategically with acute adeptness of retaining and retrieving, without any flaw or haziness, with absolute clarity and conviction, would surpass all other materialistic powers possessed. The 'information' themselves would not provide the 'power' as such, just as the possessors of a rifle does not suggest adeptness in shooting. Power of information is most productive and contributory in nature but for the absence of updation this could only delay processes of achievements. Classical reasoning one could give for non-performance and that can completely tarnish one' own growth and confidence.



### 3. Excellence in Networking



'Excellence is exuberance' in all form and networking not necessarily means computerized networking alone but predominantly humane networking. The human excellence has a greater role-play in the concept of networking and free flow of information can be achieved only through webbing of human intelligence and talents like the web of spiders. Global expansions can make or mar objectives

of business and its accomplishments through this networking of human talents. The possessor of skills can be perfunctory if he/she does not possess skill of networking with the human beings across the globe. The cultural, regional, and geographical divide does play a key role and opts as a kingpin. One could be successful only when one is not abrasive in behaviour to natural misgivings of human element while at performances. Updation plays a vital supportive role in the performance of human talent.

#### 4. Art of Masking

The 'masking' in this context would only indicate and mean the role-play and more effectively to denote promoters' role with a clear undertaking of having an unconditional responsibility. The 'masking' is definitely an 'art', as it is a



breach of natural tendency and swearing- in of un-natural tendency. The global business environment has migrated from value-based systems to accomplishment-based systems. The emerging economy vests with present day society and must exhibit true vibrations of business attitudes. Possessiveness, Inherent Cohesiveness and Harmony are co-terminus, as the society has to co-exist at all corners of the world with these traits. This masking is needed to suppress anger, control inhibitions,

correct 'infatuated' and emotional decisions on business and surpass excellence provided by competitors. Greater persons achieve greater goals set in life only through greater emphasis and conviction on performances at all odds provided however based on 'art of masking' one's own strengths.

#### 5. Cross Play Skills

Cross Play Skills or Cross-over skills does suggest that innate talents of the inhabitant would be utilized so as to re-shape one's own reservoir of knowledge possessed by such innovative persons who can frequently adept themselves with dexterity and thought provoking measures for right dissemination of solutions for the right cause and timings. In fact, this cross-over skill, which indicated here as cross 'play' skills, is the essence of 'timing' a decision. Business knowledge shall always be to sustain timely decisions for right purposes. Institutionalising one's own vision is the best of an individual who believes strongly in collective strength rather than individual



strength. There would be no second opinion on the fact that possession of 'cross-play-skills' (CPS) does contribute to major innovations and virulent outcomes useful to society at large.

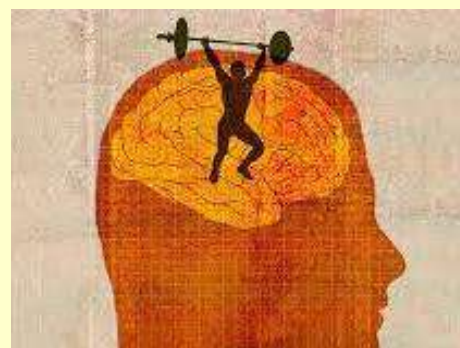
## 6. Knowledge Centric Management



Knowledge is a sustainable source of competitive advantage and that it is essential for corporates to tap and retain such resources in an era of rapid change with growth and rapid uncertainty. The Chief Knowledge Officer (CKO) need to be an entrepreneur, self-starter and should be excited by the business development, driven to maximize returns and make a difference in performance. Five pronged stages for knowledge management would include data, information, knowledge, action, managing business results (acronym: DIKAMBUR). The most effective strategy is to create and nurture 'virtual teams' which can leverage knowledge beyond geographical and organizational boundaries. Knowledge Sharing has always been predominant in certain corporates as a DNA of the Organisation and it is protected carefully for posterity as data centre or "WISDOM BANK".

## 7. Leadership Brains

Leadership brains encompass a clear vision to pathways of accomplishing desired goals already set, much ahead of industry visionaries. Steering enterprises to trespass desired horizons despite competition and challenges would be a 'pillar - decision' reminiscent to leadership qualities. Accomplishments have never been momentary; when achieved, it remains always in the history. The leaders' brains have to steer the dedicated mass with an amply clear outlook as the haziness, if any, possessed by the team. Non observance of this clarity would not only eclipse the pathway but also prolong the duration of achievement. Energizing the leader is as important as energizing the followers and the goal and objectives of the visionary should be abundantly discussed with the masses and should be fully supported by the masses as well.



## 8. 'Always Positive' Mania



Business environment has to co-exist with the societal ingredients and the sudden 'quakes' in the society would definitely have a jerk in the business environment as well. That is why Visionaries who possess the mania of "always positive" have been proved to be more successful amongst all odds which enliven and encompass them at various times during mappings and treading their pathways to definitive success. Progress is not a dormant behavioural pattern when an unpleasant event sprouts but of the tact possessed by the visionary whose perseverance is tested once again for further growth. What makes the difference between the 'always positive' leader vis-a-vis others is, the tremendous confidence attuned with the will power, not merely for the heck of it but due to conviction possessed in the given line of business with absolute clarity and shy lessness.

## 9. Attitudinal Horizon

'Attitudes provide the Altitudes' is a popular saying in business. TEAM not merely means 'together everyone achieves more', it needs to be implemented at every level in the business. A larger organization of service sector plays an ample testimony to this concept of attitudinal horizon which is represented by the concept of "Success Triangle" which is a right admixture of KSA (Knowledge, Skill & Attitude). Mere theoretical knowledge without practice would not only bring undesired results in a quicker manner but also fails. In the present day context, an advanced version of such attitude suggests that a competition can be generated to test the skills possessed by creating the same environment instead of waiting for an opportunity as in the past.



## 10. Presentational Deliverables



A Skill of presentation is the key to success. The information technology plays a vital role in this as the skills of presentation has the key ingredients fine-tuned and tucked in a compact manner, so that the entire globe can perceive the vision of the visionary simultaneously at any parts of the globe. The possession of skills is always tested in the ability to execute and here the presentation skills ultimately decide whether it is worthwhile to go ahead with a proposition or not, for the future. All ideas are always compacted into a readable form and the present generation presentations encompasses from the gamut of merely depicting the financials to wider perspectives of sourcing of finance, joint ventures, valuations, thought processes of the visionary, strategies to be adopted, understandings of international business, law etc., which are all meant to enliven the desired and interested species. The globe has now shrunk through the SOHO concept even suggesting "Work from Home" (or WFH thanks to universal Corona environ). It is quite possible that businesses can be transacted from one corner of the globe to another today, even in an un-limited way thanks to the explosion of information technology and telecommunications. SOHO=Small Office Home Office.

## Conclusion

The 21st Century requires more Modern Management Ideologies & Techniques for accomplishing and surpassing. Life without achievements is like Sea without Waves; it does not thrill anyone. YES; thrills are pre-requisites for Success and for an enchanting Living! Let us all live a Loving, Happy and a Peaceful Life in this Modern World!



# Brief Overview of the New Labour Codes



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India's labour laws have long been found to be archaic and failing to adequately address the concerns of workers and employers alike. In an attempt to remedy this, massive overhauls in the forms of consolidated labour codes had been planned and now passed by the Parliament. In July 2019, the Parliament took the decision to pass the Code on Wages, 2019, which subsumed four laws relating to the payment of wages - Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act and Equal Remuneration Act. In September 2020, the Parliament passed 3 new labour codes to cover other aspects of employment in India:

- (i) The Industrial Relations Code;
- (ii) The Code on Social Security; and
- (iii) Occupational Safety, Health and Working Conditions Code.

## **The Industrial Relations Code (“IRC”)**

The IRC subsumes the Trade Unions Act, 1926, the Industrial Disputes Act, 1947, and the Industrial Employment (Standing Orders) Act, 1946. These laws essentially related to the ability to form unions and strike, resolution of employment-related disputes, and determination of the conditions of employment. The IRC brought about some changes in definition and implementation clauses, some of which are detailed below.

The definition of “workman” under the Industrial Disputes Act has been replaced with “worker”. This includes all those who are engaged in manual, unskilled, skilled, technical, operational, clerical or supervisory work, as well as working journalists and sales promotion employees. Those working in supervisory roles and earning over Rs. 18,000 per month are not covered under this definition. Further, the concept of fixed-term employment has been addressed and defined in the IRC. This refers to employment arrangements for a specific and pre-determined period of time. The IRC mandates that: the conditions of service for fixed-term employees should be the same as for permanent workers; they would be entitled to statutory benefits pro-rata basis the duration for which they have worked; and they would be entitled to gratuity after one year of service. Interestingly, the IRC provides for a “re-skilling fund” to be set up with contributions from the employer and to be credited to the retrenched worker.

With respect to regulation of trade unions, the IRC has set out the concept of a “negotiating union”. In case there is a single trade union, that would be the negotiating union. In case there are multiple unions, it would be the union with at least 51% membership from the workers. In case no union meets this threshold, the employer has to constitute a negotiating council, with representatives from the registered trade unions, which are supported by not less than 20% of total workers of the industrial establishment. “Strikes” are defined to include concerted casual leaves. Further, the notice period for a strike or a lockout is 14 days.

The penalty clauses have also been updated, with the lowest being a fine of Rs. 50,000 and the highest being a fine of Rs. 10,00,000 and/ or imprisonment for up to 6 months.

## **The Social Security Code (“SSC”)**

The SSC replaces the Employee's Compensation Act, 1923, the Employees' State Insurance Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, the Maternity Benefit Act, 1961, the Payment of Gratuity Act, 1972, the Cine-Workers Welfare Fund Act, 1981, the Building and Other Construction Workers' Welfare Cess Act, 1996, and the Unorganised Workers Social Security Act, 2008. These laws relate to employee welfare and benefits during and post-employment. Some of the new changes and provisions are as follows.

The SSC takes into work models which are different from traditional master-servant/ employer-employee relationships. New definitions like “gig worker”, “home-based worker”, and “platform worker” have been introduced to elaborate on work arrangements which fall outside of conventional engagements. The SSC requires the Central Government to set up welfare schemes for unorganised workers, gig workers and platform workers in case of health and maternity benefits, life and disability cover etc. State Governments are required to do the same for other aspects like provident fund and employment injury benefit. These schemes may be funded through contributions from Central/ State Governments as well as aggregators who are working in the areas listed in the Schedule. The aggregators' contribution will be specified by the Government and will fall between 1-2% of the annual turnover.

The recognition of gig workers is an inclusion which has been brought about with the intent of ensuring that workers like cab drivers, delivery executives, and others who work on a less formal arrangement or structure are not excluded from the ambit of workplace welfare and benefits.

## **Occupational Safety, Health and Working Conditions Code (“OSHWCC”)**

The OSHWCC replaces 13 laws which relate to the health and safety of workers in factories, mines, plantations, building and construction, cinema theatres etc. Some of the major laws that it replaces are the Factories Act, 1948, the Mines Act, 1952, the Contract Labour (Regulation and Abolition) Act, 1970, and the Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955. The OSHWCC seeks to consolidate welfare provisions relating to health and safety in one comprehensive code.

In particular, it imposes specific obligations on the employer. For instance, establishments notified by the government would be required to provide free annual health check-ups to all employees. They also need to ensure that work environments are safe and that waste disposal is properly done. Significantly, it also mandates the issuing of an appointment letter to each employee. While some state laws previously had this requirement, there was no national law which required a formal employment contract or appointment letter.

The OSHWCC has updated some definitions. For instance, a factory is defined as any premise where a manufacturing process is carried out and where 20 or more persons are employed if it is carried out using power or 40 or more persons

if without power. Previously, the thresholds were 10 and 20 respectively. Further, contractors and establishments employing 50 or more contract workers would be covered under the OSHWCC (as opposed to 20 in previous drafts).

Contract labour is prohibited in “core activities”, except in specific circumstances. The appropriate government is empowered to decide what constitutes a core activity, although the OSHWCC includes some types of non-core activities where the prohibition would not apply in any case. Regarding work hours, the maximum daily limit has been set at 8 hours. Women are entitled to work in any establishment, but in some situations, employers may be required to implement safety measures as well. The OSHWCC also envisages the creation of a Social Security Fund from the fines imposed for non-compliance.

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## **Commentary on Removal of Directors - Series-25 - Part II** **Provisions: Section 169 of the Companies Act, 2013 ('the Act'):**

(Continued from 197th edition)

### **Part II- Special Notice**

#### **1. Requirement of special notice:**

- a. Special notice in accordance with section 115 of the Act shall be given for (a) removal of a director and (b) for appointing new director in place of the director so removed, at the meeting in which he is removed.
- b. Special notice is not required to be given in case vacancy to be created on account of removal of a director, is not going to be filled in the same meeting, where the resolution for removal is going to be placed.
- c. On receipt of the special notice, the Company shall follow the procedures laid u/s 115 of the Act read with Rule 23 of the Companies (Management and Administration) Rules, 2014.
- d. Further, the members are not bound to disclose the reasons for removal of director in their special notice.
- e. No deposit of Rs.1 lakh along special notice unlike deposit of Rs.1 Lakh as specified under Section 160.
- f. Removal is invalid if no special notice is received.

### **Part III - Principle of Natural Justice and opportunity of being heard**

#### **Steps to be followed u/s 169 of the Act, on receipt of the special notice:**

2. Send a copy of special notice to the director concerned: as the term 'forthwith' is used, the special notice copy shall be sent immediately to the concerned director.
3. Send a copy of the representation to the members: In case the representation from concerned director is received in writing not exceeding reasonable length and requests Board to circulate his representation to all the members.
4. Representation copy can be sent along with the notice of the meeting or if the notice is already served, then representation copy shall be sent separately.
5. If representation received too late, then in its general meeting notice, state the fact of the representation having been made by the concerned director; or
6. In case the representation copy is not sent to the members, the director may request to read out his representation at the meeting. Reading out of representation is not mandatory. Only if the request is received from the concerned director, then representation shall be read out.
7. No requirement of sending as well as reading out of representation: in case if the NCLT is satisfied that, the rights u/s 169(4) are being abused to secure needless publicity for defamatory matter.



Whether the director is party to the application or not, the NCLT may Order the concerned director to pay the cost of company's application before NCLT either full or in part.

8. Notwithstanding right to make representation, concerned director is having right to attend the meeting and right to speak at the meeting.

#### **Part IV - Procedure at General Meeting**

9. **Convene the general meeting:** convene the meeting of the members for the purpose of removal of director.  
On receipt of the special notice, if the general meeting is not convened by the board of directors, then the members may proceed to convene the meeting in line with section 100(4) of the Act.
10. **Place the resolution before the members for their approval:**  
At the meeting, the company shall provide reasonable opportunity of being heard to the director, whose removal is placed.  
After being heard to the representation of the director, who is being removed, the company shall propose the resolution before the members for voting. Voting shall be conducted in accordance with Section 106 to Section 110 of the Act. The resolution shall be effective if the Company has passed the Ordinary Resolution.  
However, in case of removal of an independent director, who is re-appointed for a consecutive second term on passing the special resolution u/s 149(10) of the Act, shall be removed only by passing the special resolution.
11. **Circumstances to treat the resolution as invalid:** In case of any omission to serve a special notice to the concerned director or any denial to make his representation or denial to be heard at the meeting or non-compliance of certain essential requirements as prescribed u/s 169 of the Act would render the resolution passed invalid.
12. **Filling up of Vacancy:**
  - a. Vacancy created on account of removal of director, may be filled by the members. However, if vacancy is filled at the same meeting in which the director is removed, one more special notice shall be received from the members for such appointment. Hence there are two special notices are required, one for removal and another for filling up of vacancy.
  - b. If the vacancy is not filled by the members at the meeting where the resolution for removal of director is placed, such vacancy shall be filled later on by the Board of Directors in accordance with section 161(4) of the Act.
  - c. The removed director shall not be re-appointed by the Board of Directors.
  - d. Tenure of the new director: The director who is appointed in place of removed director, shall hold the office till the date up to which the removed director would have held the office, if he had not been removed.

#### **Part V- Other related matters**

13. **Rights of director so removed:** the director removed u/s 169 of the Act, shall be entitled to receive any compensation or damages receivables from company as per the terms of contract or terms of appointment as director. Such entitlement to receive shall also be applicable for terminating any other position held in the company on account of removal as director.

- 14.** Power to remove director apart from Section 169: In case a Company's AoA contains such other mode, power or procedures for removal of director, the same shall also be valid. However, such mode and procedures shall not adversely affect the provisions of Section 169 of the Act (Section 169(8)(b)).
- 15.** This section deals with removal of director: For removal of Managing Director or Whole-Time Director from their position as Managing Director or Whole-Time Director, Section 169 is not applicable. However, in case Managing Director or Whole-Time Director is removed as the director u/s 169 of the Act, then he shall automatically loose the office of Managing Director or Whole-Time Director.
- 16.** Suite for removal: As the power to remove a director is derived from the Act itself and since it is one of the rights of the shareholders, no courts have any jurisdiction to entertain a suite for removal of directors, as it relates to the internal management of the Company (Khetan Industries Private Limited Vs. Manju Ravindra Prasad Khetan).  
However, in case of applications made to NCLT for prevention of oppression and mismanagement, NCLT is empowered to remove a director (including MD/WTD) (Sec 242(2)(h)).

**17. Miscellaneous:**

- a. Within 30 days from the date of removal of a director, the company shall file the e-form DIR-12 before the Registrar of Companies along with all the relevant attachments as per Rule 11 of Companies (Registration of offices and fees) Rules 2014.
- b. The details relating to the removal of director shall be disclosed under the Directors' Report.
- c. Relevant Statutory register needs to be updated
- d. Major case laws relating to the removal of director:
- i. Life Insurance Corporation of India vs Escorts Ltd. and Ors. <https://indiankanoon.org/doc/730804/>
  - ii. Cyrus Investments Pvt.Ltd. vs Tata Sons Ltd. & Ors.  
<https://nclat.nic.in/Useradmin/upload/13425174335dfa10b733e05.pdf>
- e. Requirement of Explanatory Statement: The obligation to annex an explanatory statement is only on the company when it calls for a meeting to transact special business. When a requisitionist calls for an EGM u/s 100 r/w 169 of the Act, then there is no obligation on the requisitionist to annex an explanatory statement to the notice.





# HELP YOURSELF

## *Food for Thought*



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## The Power of your Subconscious Mind

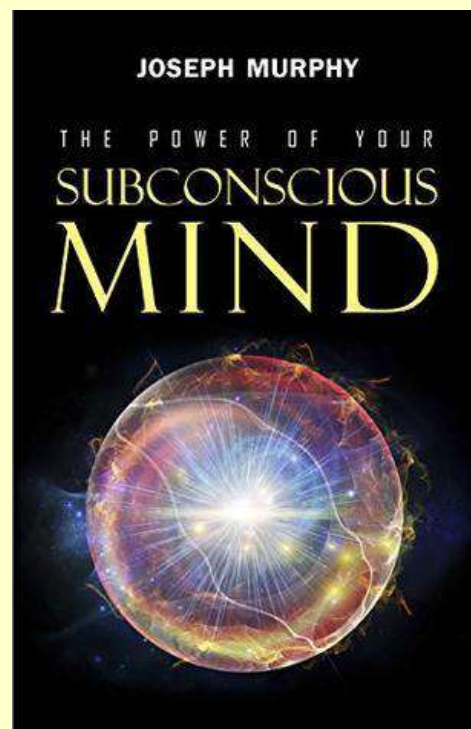
- Dr. Joseph Murphy

You might have often heard elders saying "Shubh shubh bolo" to anyone who makes an unpleasant or undesirable statement. The phrase in Hindi roughly translates to "Say good or auspicious things only." More importantly it implies that one must refrain from saying something negative. This is probably one of the most elemental ways in which we are taught at our households to think and adopt positivity.

Dr. Joseph Murphy is regarded as one of the pioneering voices of affirmative thinking. His book 'The Power of your Subconscious Mind' explains how our subconscious mind influences every single aspect of our life. "As a person thinketh in his subconscious mind, so is he." This book is of great relevance in everyone's lives, more so for us professionals who may have a lot of scattered thoughts in our minds. This book is a gift to help us understand the working of our minds and turn it, as much as possible, in our favor.

The very first chapter of the book talks about the treasure house within all of us followed by the next chapter that explains how our mind works and then how our subconscious mind works. The book also covers various chapters on mental healing; the role of the subconscious mind in achieving success, harmony and removing fear; wonders of sleep and many more aspects of the subconscious mind and its roles backed by scientific researches combined with spiritual wisdom. In the end of each chapter, it includes point wise highlights of the chapter for easy recollection for readers.

The complex ways of working of the mind is explained in the simplest ways in the book. For instance, the book explains that the subconscious mind is like a bed of rich soil that simply accepts seeds that are provided by the conscious mind and as we all know, what we sow, is what we reap. Thus, your subconscious mind does not argue with you. It accepts what your conscious mind decrees. In another instance, the author draws a parallel between a taxi driver given half a dozen directions to reach one place and cluttering your mind with too many thoughts. The taxi driver would be unable to reach anywhere close to the destination, so would your mind when it is cluttered with too many things. To get your subconscious mind working in your favour and for you to get your desired result, you need to have a clear-cut idea in your mind. In another instance, the author explains that making statements like "There is a shortage," "I cannot afford it," and so forth are like signing blank cheques out of fear about the future that attract negative conditions to you. Thus, we learn that one must never sign blank cheques of this or any sort at all.



The book also has various practical instructions for you to follow and repeat to your mind in order to make your subconscious mind execute affirmative thinking. The author as well as many readers suggest reading this book multiple times as this can help one to make affirmative thinking habitual.

Many aspiring Company Secretaries or even other professionals often have stage fright or may be struggling with public speaking. This book explains how to use the subconscious mind to remove fear in a chapter dedicated to this topic. It also explains how to deal with and overcome fear of failure which is often a common problem faced by students. A small but immensely powerful takeaway from this chapter - "Do the thing you are afraid to do and the death of fear is certain." What has been brought to you here is even lesser than a size of nutshell put before the immense knowledge that the book treasures. Reading this book can truly help transform you.

## BRAINY BITS...



**CS Madhur N Agrawal**

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XYZ a CBSE school takes catering services from a GST registered entity. The caterer charges GST on their services and issues a bill to the school. The school informs the caterer that services provided to school are exempt from GST. Whether the school is correct or not?

Please send your answers to, [newsletter.icsimysore@gmail.com](mailto:newsletter.icsimysore@gmail.com) along with your name, qualification and designation. Name of the person with most appropriate answer with reasoning, shall be published in the next edition of eMagazine.



## Opinion to Last Month's Brainy Bits

Mr. Suresh is a salaried employee working in a private company. Mr. Suresh already owns a house in his name on which he has also taken home loan. He is taking benefits of the home loan interest and principal repayment while filing his income tax returns. Mr. Suresh has a surplus cash and possibility to leverage his salary for an additional loan, therefore he decides to buy one more home with new home loan. Whether Mr. Suresh will be able to claim any tax benefits on the home loan taken on the second home in the assessment year 2021-22? To what extend?

If Mr. Suresh buys a second home on Home Loan, he can avail of tax deductions on it. While deductions under Section 80C on the principal amount of the loan may not be available in case of his second house, he can enjoy tax benefits on the interest component up to Rs.2,00,000/-.



## V. Padmakumar v. Stressed Assets Stabilization - A case of Flip Flops in the Law

The question of limitation has had a varied history which has been covered *in extenso* in this column in the previous editions. Now that there is some amount of certainty on the applicability of the Limitation Act, we are now looking at ways in which the noose of limitation can be escaped.

One of the common ways in which the calculation of the limitation period within which a debt can be enforced gets extended is by acknowledgement of the debt by the person against whom the claim is being made. The question that the NCLAT considered in *V. Padmakumar v. Stressed Assets Stabilization* was whether the debt being reflect in the annual returns/balance sheet of the Corporate Debtor would amount to an acknowledgement for the purpose of Section 18 of the Limitation Act.

Let us see the wording of Section 18 of the Limitation Act: -

“18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation. —For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

A bare reading of the provision indicates that this provision contemplated deliberate communications made freely of their own volition and not statutory filings mandated by law. As was pointed out to the NCLAT, if each year’s balance sheet amount to a fresh acknowledgment of the debt, no debt would ever be barred by limitation as long as the law was complied with.

However, we cannot lose sight of the series of decisions where the contrary has been held.

The NCLAT in *V. Padmakumar* relied upon its earlier decision in *G. Eswara Rao v. Stressed Assets Stabilization Fund* wherein it was *inter alia* held that “(a)s the filing of Balance Sheet/ Annual Return being mandatory under Section 92(4), failing of which attracts penal action under Section 92(5) & (6), the Balance Sheet / Annual Return of the ‘Corporate Debtor’ Company Appeal (AT) (Insolvency) No.57 of 2020 cannot be treated to be an acknowledgement under Section 18 of the Limitation Act, 1963.” NCLAT further held that “(i)f the argument is accepted that the Balance Sheet / Annual Return of the ‘Corporate Debtor’ amounts to acknowledgement under Section 18 of the Limitation Act, 1963 then in such case, it is to be held that no limitation would be applicable because every year, it is mandatory for the ‘Corporate Debtor’ to file Balance Sheet/ Annual Return, which is not the law.””

It is crucial to note that the decision of NCLAT in *V. Padmakumar* came from a 5-member bench of NCLAT which is unusual. It is also to be borne in mind that one of the Hon’ble members of the bench in *V. Padmakumar* dissented from the majority view, which is also fairly unusual in NCLAT.

The dissenting opinion relied upon the fact that the acknowledgement need not be in any particular form or need not acknowledge the exact manner of payment or time. A simple statement affirming the existence of liability is sufficient. Annual returns do nothing but that.

The story does not end there. On September 25<sup>th</sup>, a three-member bench of the NCLAT, in the matter of *Bishal Jaiswal v. Asset Reconstruction Company (India) Ltd.* referred the matter to the Acting Chairperson to form an appropriate bench for reconsideration.





## Computer Memory - What is it?

As we have hippocampus for storing our memories computers also have some certain space for storing their memory, there are two types of memories storing drives in computers, one is hard disc drives (HDD) and another is Solid state drives (SSD).

But there is a huge difference between HDD and SSD, some differences are as follows

1. HDD uses the mechanical parts, as a result, it is way slower when compared to the SSD, Whereas SSD's uses individual memory storing bits for storing the data, So they are way faster and more durable when compared to the HDD
2. AS though HDD is water resistance when it comes to durability SSDs are way more durable. Because of its mechanical moving parts HDD will get effected or gets crashed when you drop it.
3. HDD uses more power when compared to SSD due to its mechanical moving parts.
4. When it comes to life span, SSD is more ahead than HDD, SSD has a life span of 1.5 million hours whereas HDD have just 0.3million hours

Thinking which one is better?

If you want greater speed and durability you have to consider SSD, but SSD is more expensive. Even for a small storage capacity like 256GB it costs nearly Rs. 3000, But HDD is cheaper when considered the costs of SSD, you can get more storage with less price.

But if you want great speed and more storage capacity you can use both HDD and SSD in a constructed ratio. Installing OS (operating System) on SSD makes loading the programs and booting faster and using HDD for storages will definitely boost the performance of the device.

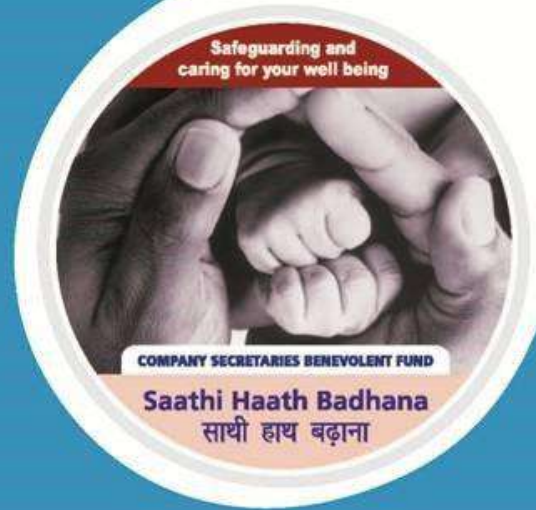




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**CSBF**  
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2

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3

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4

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