



SIRC MYSURU CHAPTER

# e-Magazine



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#### *Vision*

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

#### *Motto*

सत्यं वद। धर्मं चर। इफदरु केड लरुके. डोवेडे डुडु केड लरु.

#### *Mission*

"To develop high calibre professionals facilitating good corporate governance"

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**CS A HARSHA**  
CHAIRPERSON  
MYSURU CHAPTER

# *Dear Professional Colleagues*

We have come to the conclusion of the year 2022. Every beginning has an end but what is more important is the teaching we had from them. Hope you all had a wonderful year. This was an amazing year for me with God's grace and the support of Members and Students. My heart is enlightening with the feeling of gratitude. Lots and lots of learning, challenges, fun and sometimes pressure too but the conclusion is still remaining there are few more surprises in the coming days.

I take this opportunity to thank each and every one of you who have supported me, believed in me, and encouraged me in this journey. I would also like to thank others too as they helped me recognize my potential which I was unaware of. I believe that whatever happens "Happens for sake of Good". Am grateful to the almighty and ICSI for providing me this opportunity to serve the Members and Students of Mysore Chapter.

With regard to the programme been conducted by the Chapter, we had a Monthly Students' programme on 23rd of November on the Topic " Capital Gains ", an interactive session conducted by CA Raghuvver CS. Students gave a positive feedback on this Session. I had the opportunity to take session on "Stress Management" which was a great learning and experience for me. It was a fun filled session where we all forgot the "Stress".

I wish you all a very happy New Year 2023 and may this year be filled with lots and lots of love, happiness, fun, excitement and good health. May all your dreams come true. May you all excel and succeed in life.

"Think big .Trust yourself and make it happen "



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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# Chapter Activities

## Career Awareness Program



Chapter organized four Career Awareness Program during the month. The detail are as follows.

SI No	Date	College Name	Resource Person	No. of Students
1	02.11.2022	MMK & SDM College	CS Harsha A	100
2	05.11.2022	Maharani PU College	N. Dhanabal	100
3	10.11.2022	GSSS First Grade College	CS Harsha A N. Dhanabal	150
4	16.11.2022	JSS PU College	N. Dhanabal	180



## Half Day Programme for Students

On 23rd November, 2022 Chapter organized a half day program for the students at Chapter Premises. The first session was handled by CA Raghuveera CS on the topic "Capital Gains". The second session was on the topic "Stress Management" handled by CS Harsha A., Chairperson. Around 40 students from Mysuru Chapter & GSSS First Grade College were participated in the event.



# Alternate Dispute Resolution Methods in Emerging Scenario – Role of Professionals

## PART-2

### Procedure of Dispute Resolution through ADR Methods

ADR mechanism is a structured process and comprised of the following important stages:

#### 1. Introduction

The ADR specialist introduces the parties, establishes rapport with them, explains the dispute resolution process, and establishes neutrality and confidentiality. He explains the ground rules and eventually generates momentum towards settlement.

#### 2. Joint Session

The ADR specialist gathers information about the factual background and interests of the parties, establishes interaction between them and creates a conducive environment for an amicable settlement.

#### 3. Separate Session

The ADR specialist meets parties separately and encourages them to explain their grievances, assures confidentiality of information provided by them and gathers more relevant information, persuades parties to share confidential information and help them create options for an amicable settlement.

#### 4. Providing clarifications

The ADR specialists provides answers and clarifications on the queries of the disputants and seek their consent on the terms of their settlement.

#### 5. Preparing Agreement

The ADR specialists drafts and finalizes the terms of settlement and reduces the same into a clear, complete, concise mutual settlement.

### Adjudication versus Resolution of Disputes

A commercial disputes is a problem to be resolved rather than a war to be won by all means and at all cost. A practical example given by Richard Hill about dispute over an orange between two sisters having equally legitimate claim over it. In case the dispute is decided as per judicial paradigm, both will give half of the orange. On the other hand, for resolving the dispute over claims of both the sisters, their needs have to be understood - First sister wants to use the rind of orange to make

“

-A professional is a member of a professional body like ICSI, ICAI etc, who regulates the professionals as per the code of conduct. As such, professional member of the body possesses multi-disciplinary knowledge, problem-solving skills, training, and soft skills”

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perfume, while the other wants to use the pulp to make juice. In this example, mediation process yields a solution that is fair and satisfies the needs of both the sisters – a win-win situation for both the sisters.

There is a fundamental difference between adjudication and resolution of disputes. In the adjudicative or determinative processes by courts, judges adjudicate disputes brought before them on merit as per the applicable laws and court procedures. The judicial process is an adversary system, where both the parties put forward their allegations and counter-allegations, which further aggravate their differences and disputes. Judges have wide powers to adjudicate the disputes on merit. In courts, parties to dispute rely on the expertise of their advocates rather than themselves participating in arriving at a just and fair solution of their disputes. On the other hand, ADR methods are non-adjudicatory process whereby the disputants try to settle their dispute with the help of the third independent and neutral person engaged by them with the method or process determined by the parties themselves and the neutral person cannot compel the parties to his terms. The parties have total autonomy to accept the terms of settlement or refuse the same. The parties also have the autonomy to rescind from the process at any time. The best part is that unless the parties mutually agree, the third neutral person cannot thrust his decision on dispute upon the parties.

In ADR methods of conciliation or mediation, the disputants themselves arrive at their solutions under the guidance of their mediator or conciliator. The mediator or consolidator applies his knowledge and skills of consensus building to facilitate resolution of the disputes by the parties themselves. Litigation leads to a win-lose situation and aggravates animosity between the parties. On the other hand, ADR methods are holistic concepts of consensus building through negotiations. ADR methods deal with resolution of actual as well as potential disputes and conflicts between the parties, leading to a win-win situation. At the same time ADR methods preserve the goodwill and business relations between the disputants. In fact, conflict avoidance, management and resolution of disputes are the three closely related sequential approaches, each of which has wide application in trade, commerce and industry. The ADR methods are quite operational through virtual hearing and hybrid model during COVID-19 pandemic, whereas courts proceedings are seriously affected due to lock-down.

LITIGATION	ADR METHODS
Involves legalities, technicalities and court procedure.	No legalities, technicalities and court procedures.
In courts advocates are necessary for adjudication of disputes.	In ADR methods, disputants can themselves handle their dispute resolution.
Independent and neutral judges decide disputes on merit as per the law and procedure.	Neutral and independent ADR specialists help disputants resolve disputes through communication and consensus building.
Uncertainty of time, money and outcome.	Certainty of time, economy and outcome.
Full of tension, ill-will and hatred.	Full of ease, goodwill and harmony.
Jeopardized during lockdown due to COVID-19.	Fully operational by virtual hearing and hybrid model.
The main object of adjudication is disputes between the parties which are presented before the court.	The main objects of ADR are Conflict avoidance; Conflict management; Consensus building; and Conflict resolution to settle all disputes between the parties whether initially present or not.

A professional is a member of a professional body like ICSI, ICAI etc, who regulates the professionals as per the code of conduct. As such, professional member of the body possesses multi-disciplinary knowledge, problem-solving skills, training, and soft skills. The characteristics of professionals include:

- Body of specialized knowledge and skills within a framework of values;
- Observing self-subordination, honesty, uprightness at work place and profession and rendering service to the society;
- Thrust on expertise to excel rather than monetary gains;
- Relationship of trust and beneficence with client;
- Institution to regulate admission and conduct of professionals on legal and ethical standards; and
- Commanding public recognition for the independence, integrity, credibility and authority in professional services.

In view of the above, professionals are in an ideal position to contribute for the ADR methods. They are members of their respective professional bodies, possessing domain expertise and ethical values with a code of conduct. Professional ethics are the values comprising spirit of service and care to their clients with confidentiality. A distinguishing characteristic of a professional is his ability to combine the technical skills with high ethical standards in practice adhering to the 'Code of Conduct' in discharge of their responsibilities.

### **Emerging Scenario**

In the emerging scenario the scope of ADR method is widening. The Government has taken many pro-active steps for ease of business and dispute resolution in India to make India as a hub of international arbitration. At the same time professionals are encouraged to contribute their multi-disciplinary knowledge and expertise in resolving disputes in areas of their specialization.

### **The Arbitration and Conciliation Act, 1996**

The Arbitration (Amendment) Act, 2019 contains detailed provisions for the constitution of the Arbitration Council of India, which will, inter-alia, promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism.

### **The Companies Act, 2013**

The Ministry of Corporate Affairs maintains a 'Mediation and Conciliation Panel' (Panel) under section 442 of the Companies Act, 2013. The corporate law specialists, with prescribed qualification and experience are empanelled to provide mediation and conciliation services between the parties during the pendency of any proceedings before the Central Government or the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT). In this context, an attempt is made to discuss the legal and regulatory framework under section 442 of the Companies act and role of professionals.

It may be pointed out that the heading of Section 442 is "Mediation and Conciliation Panel", but section 442(1) states that the Mediation and Conciliation Panel is "for mediation between the parties". Moreover, both in the Section 442 and Companies (Mediation and Conciliation) Rules, 2016, words mediation and conciliation have been used interchangeably. Apparently, the focus is on "mediation".

### **The salient features of section 442 of the Companies Act, 2013 include:**

- 1) Maintaining a panel of mediator and conciliator with prescribed qualification for mediation between the disputants during the pendency of any proceedings before the Central Government/NCLT/NCLAT.



- 2) Any disputant may during the proceedings before the above authorities may apply in the prescribed form with requisite fees for referring the matter for mediation/conciliation;
- 3) The above authorities may on their own also refer any matter for mediation/conciliation;
- 4) The mediator/conciliator shall adhere to be prescribed fees and procedure and dispose of the matter within three months from the date of reference and forward his recommendation to the above authorities; and
- 5) Any aggrieved by the recommendation of the mediator/conciliator party may file objection to the above authorities.

#### **Companies (Mediation and Conciliation) Rules, 2016:**

The salient features of the Companies (Mediation and Conciliation) Rules, 2016, inter-alia, provide for preparing a panel of mediators and conciliators, their qualifications and disqualifications, withdrawal of appointment, procedure for disposal of matters, time limit for completion of mediation/conciliation proceedings, confidentiality, settlement agreement, expenses for mediation and conciliation and ethics to be followed by mediator or conciliator.

Rule 4 prescribes qualification of empanelment of mediator or conciliator which, inter-alia, include judges, member or registrar of a tribunal, officer of Indian Corporate Law Service advocate, chartered accountant, cost accountant or company secretary, member/President of State Consumer Forum or expert in mediation or conciliation.

Rule 17 provides for the Role of Mediator or Conciliator to facilitate voluntary resolution of the dispute by the parties, communication between parties, assisting them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options to resolve the dispute, fixing responsibility on the parties to take their decisions on terms of settlement without imposing on them any terms of settlement. However, with the consent of both the parties, the mediator/conciliator may impose appropriate terms and conditions on them for early settlement of the dispute.

Professionals play significant role in the functioning of corporate sector by advising and assisting the management. The objective of the Ministry of Corporate Affairs, Government of India is to utilize the services of corporate professionals, having prescribed qualifications and experience for providing mediation and conciliation services between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate.

#### **The Commercial Courts Act, 2015**

Chapter IIIA titled “Pre-Institution Mediation and Settlement” was introduced in 2018 by way of Amendment to the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (‘the Act’) and was made retrospectively applicable from 03.05.2018. Section 12A provides a mandatory reference to mediation in an attempt to resolve differences out of court, before a suit can be instituted.

Section 12A (1) uses the expression ‘...unless the plaintiff exhausts the remedy of pre-institution mediation...’ Simply stated, method of mediation is meant to be a remedy of first instance for resolving all commercial disputes before resorting to adversarial litigation.

#### **The Consumer Protection Act, 1919**

Section 74 to 81 of the Consumer Protection Act provides for establishment of mediation cells by the State Governments and Central Government for settlements of disputes between the parties. Accordingly, Consumer Protection (Mediation) Rules, 2020 and Consumer Protection (Mediation) Regulations, 2020 have been framed for utilizing the services of qualified and experienced persons as mediators.

## **The Real Estate (Regulation & Development) Act, 2016**

Section 32(g) of The Real Estate (Regulation & Development) Act, 2016, provides for measures to facilitate amicable conciliation of disputes between the promoters and the buyers of real estate through disputes settlement forums set up by the consumer or promoter associations.

### **Conclusion**

In the emerging scenario, ADR methods will be of practical importance considering the overburdened traditional justice system due to explosion of litigation. There is a fundamental difference between adjudication of disputes by judiciary and resolution of disputes by mediators and conciliators. In the courts “adjudicative or determinative processes” are based on law, court procedure and practice. Judges, by their training and practice, simply decide and adjudicate disputes coming before their courts as per the applicable law on the basis of the arguments of the advocates of respective parties. On the other hand, professionals, as mediators and conciliators, are in a better position to resolve corporate disputes by consensus by virtue of their expert knowledge of corporate laws, procedure and confidence reposed in them by their clients. In fact, ADR methods are gaining more popularity than arbitration in the US, UK and other western countries. In India also there is need for attitudinal change to accept conciliation and mediation as effective dispute resolution methods.

The Supreme Court of India has time and again advocated and emphasized the need for resolution of disputes with the help of ADR techniques. In *Afcons Infrastructure Ltd & Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. & Ors* (2010) (8) SCC 24, the Supreme Court stated that “Resort of alternative disputes resolution processes is necessary to speedy and effective relief to the litigants and to reduce the pendency in and burden upon the courts.” The Ex-Justice Sandra Day O’Conor of the US Supreme Court also emphasized that: “The courts should not be the places where resolution of disputes begins. They should be the places where the disputes end, after alternative methods of resolving disputes have been considered and tried.” In fact, many parties prefer ADR because they want to avoid court proceedings, disclosing their confidential information, appearing as witness, uncertainty of time and consequences of any un-favourable judgment.

In the emerging scenario of doing business with ease, ADR methods, particularly mediation and conciliation, have proved their practical utility for providing speedy and effective relief to the pending litigation as well as saving time, cost and continuing business relations. Moreover, professionals with strong business and commercial sense can be successful arbitrators/conciliators/mediators by understanding human nature and behavior. India as a fast developing have to focus on creating a culture and value-system particularly in business and corporate world for resolution of commercial disputes by ADR methods.

# A Non detail story about Banks

## PART I

### A Non detail story about Banks

The article is aimed to provide basic understanding of the banking industry in India; its history; the different types of Bank and understanding about the overall structure of banking sector in India.

#### Banking- meaning

In common parlance it conveys a meaning for Storing/Holding. Banking as a business means storing/holding the money of the client and lending the money to others for an interest.

#### The History

Banking in India has a long history; Banking has a deep rooted connection in the story of Bharat. Historians have found the mention of similar activity in Vedas and Manu Sahinta. Chanakya/Koutilya had mentioned about it in his book Arthashasthra.

The Banking Regulation Act, 1949 (BR Act) provides a definition of Banking (quoted below).

"banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;

Going forward the BR Act also specifies the activities in which Banking Company can engage (Section 6); an inclusive list of activities beyond which a regulated Bank is not permitted to venture into. Similarly any other organisation/institution other than Banks is not allowed to do Banking Business without the licence from RBI.

#### Legal Framework of Banking Industry in India

Reserve Bank of India (RBI) is the central authority of Banking System in India, which controls; monitors; supervises; regulates; issues licences to a Bank and also suspends the licence issued by it, if so required. Licence of a Banking company is suspended when the

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### The Financial Sector

in India includes many players such as Non-Banking Financial Companies (deposit taking/non-deposit taking), Investment Banks, Merchant Banks, Mutual Funds, and Banks etc”

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RBI finds that the Banking Company is managed / operated in a manner detrimental to the interest of its Depositors or the interest of the Public at large. The Reserve Bank of India was established in 1935, under the Reserve Bank Act. It was nationalised in 1949. Though it is an Autonomous Organisation still it functions under the jurisdiction of the Ministry of Finance, Government of India.

The Financial Sector in India includes many players such as Non-Banking Financial Companies (deposit taking/non-deposit taking), Investment Banks, Merchant Banks, Mutual Funds, and

Banks etc. These institutions play the core/major role in the financial sector. Besides that another section of the financial sector is Micro Finance sector. The MFI sector is much diversified. Apart from companies there are trusts, section 25/Section 8 companies and other associations which also form part of MFI sector. In this article we shall restrict to Banks.

### **Type of Banks as per the Legal Status**

Banks in India are either in the form of Company or Co-operative Societies.

#### **Company Form**

Banking Companies are registered under the Companies Act and licenced by RBI under section 22 of The Banking Regulation Act, 1949.

#### **Co-operative Society Form**

Cooperative banks are registered as societies under the Cooperative Societies Act, 1912 Or Multi State-Cooperative Societies Act, 1984. They are licenced and regulated by the Reserve Bank of India under the Banking Regulation Act, 1949 and Banking Laws (Application to Cooperative Societies) Act, 1965.

Cooperative Banks are formed basically to cater the Agricultural Credit need in Rural as well as Urban areas. Cooperative Banks provide banking services both to the members forming the society as well as to the Public.

Co-operative Banks can be segregated in different categories depending on the area of operation and the type of Credit facility provided by them.

There are two type of credit Facilities provided by Co-operative Banks and they operate in Village level, District Level and State Level. Apart from them there are Multi State Co-operative Banks operating in multi-state.

The short-term credit facility means loan tenure up to five years and Long Term Credit Facility mean loans up to twenty years tenure.

#### **The short-term credit facility is provided by**

- I. Primary Agricultural Cooperative Societies (PACCS) at the village level
- II. District Central Cooperative Banks at the District level and
- III. State Cooperative Bank at the State level

**The long term credit facility (loan tenure up to twenty years) is provided by**

- I. Primary Agriculture and Rural Development Banks (PARDBs) at the village level and
- II. State Agriculture and Rural Development Banks in State level.

The State Cooperative Banks (SCBs) and District Central Cooperative Banks (DCCBs) are subject to Dual Authority.

While these SCBs and DCBBs are regulated and supervised by the Reserve Bank of India, the National Bank for Agriculture and Rural Development (NABARD) provides refinance facility and takes care of inspection of these Banks.

Primary Cooperative Banks otherwise known as Urban Cooperative Banks are registered as Cooperative Societies under the Cooperative Societies Acts of the concerned States or the Multi-State Cooperative Societies Act, 1984 function in urban areas. They function as commercial Banks, licensed, controlled and inspected by RBI.

### **Types of the Banks as per Licence**

The Reserve Bank of India has over a period issued several types of Banking Licences.

We can see several type of Banks referred to in The Banking Regulation Act, 1949. Section 5 of the BR Act has interpreted several types of Banks viz. corresponding new bank, Exim Bank, Industrial Reconstruction Bank of India, National Housing Bank, National Bank for Agriculture and Rural Development, regional rural bank, Small Industries Bank, Sponsor Bank etc.

### **Banks of new age**

The new type of Banking Licences issued by RBI in recent days includes Local Area Banks in the year 1996, Small Finance Bank in the year 2014; Payment Banks in 2014; On-tap Licence for Universal Banks in the Private Sector; On-tap Licence for Small Finance Banks.

There were four Local Area Banks(LABs) licenced by RBI out of which One converted in to Small Finance Bank, One was suspended by RBI and other two area still in operation. LABs have restricted operation in few permitted districts spread in one or more States.

Whereas the Local Area Bank Scheme and Payment bank Scheme has closed, the Small Finance Bank Scheme and the Universal Banks in the Private Sector Scheme are “on tap scheme”. This means, the window for getting a banking license under the schemes is open throughout the year.

RBI has issued licences to 11 Small Finance Banks and 6 Payment Banks under the Schemes till now.

There are few Banks which are issued licence under the Universal Scheme.

The Reserve Bank of India is in the process of scrutinizing applications for few more SFBs and Universal Banks. Hopefully soon few new SFB and Universal Banks shall come in to existence.

### **Foreign Banks**

Apart from the Domestic Banks, there are also many Foreign Banks operating in India. As per the RBI data base there are 46 Schedule Foreign Banks operating in India. These Banks are incorporated under the law of foreign countries, having Branch offices in India under license from Reserve Bank of India. They are regulated under The Banking Regulation Act, 1949.

## **Banks from the Past**

There were a large numbers of Banks formed before the Independence of India. Many were formed by political people, farmers, business community during the Independence fight inspired by the Swadeshi movement. Many of them failed. Banks which continued to survive after independence are still in existence.

There are several Banks formed under different acts of parliament and licenced by RBI under the Banking regulation Act. In general the PSU Banks come under this category.

State Bank of India is the largest public sector Bank in India. The British had established three Banks known as Presidency Banks, which were Bank of Calcutta later known as Bank of Bengal, Bank of Bombay and Bank of Madras. The three Banks merged together to form the Imperial Bank of India. Post-independence, the Government of India in 1955, pursuant to the State Bank Act took over The Imperial Bank of India and thereafter it was named as State Bank of India.

There were 20 PSU banks till the recent times when the government started merging the Banks. There were seven associate banks of State Bank of India. In the first phase of merger of PSU banks, the associate banks of SBI were merged with State Bank of India in 2017. In the second phase 10 PSU Banks were merged to form 4 Banks.

Post-merger presently there are 12 PSU Banks of which six are merged mega banks and six are existing PSU Banks.

Similar to SBI, there is another Bank formed by law of parliament viz. Small Industries Development Bank of India (SIDBI). SIDBI is one of the four All India Financial Institutions regulated and supervised by the Reserve Bank of India. SIDBI is the apex regulatory body for overall licensing and regulation of micro, small and medium enterprise finance companies in India. It provides refinance facilities to banks and financial institutions and engages in term lending and working capital finance to industries, and serves as the principal financial institution in the Micro, Small and Medium Enterprises (MSME) sector.

## **Nationalisation of Banks**

Nationalisation simply means that the Banks already in existence were taken over by Government in the best interest of the country.



After promulgation of the BR Act, 1949, Banking Licence was necessary from RBI to open a Bank. However, though The BR Act was framed to regulate and control the Banks, except SBI all Banks were owned by Private people and the private sector was controlling the Banking Industry, which was a vital instrument for the development of Indian Economy.

This became the main reason for Nationalisation of the Banks. In 1969 the Government of India framed the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969 and 14 largest commercial banks were nationalized in July 1969. This was the first phase of Bank's Nationalisation.

In the second phase the Government of India Nationalised another six commercial Banks. Now the total numbers of Nationalised banks were 20 which were reduced to 19 by merger of New India Bank with PNB.

### **Liberalisation in Banking Sector**

In 1990, under the Liberalization of Banking Industry policy of the Government of India, the RBI issued licences to Private Banks. Among them were HDFC Bank, ICICI Bank, UTI Bank or Axis Bank and IndusInd Bank. In later stage many other Private Banks have come in to existence and in future days also many Banks will come.

### **Systemically Important Bank**

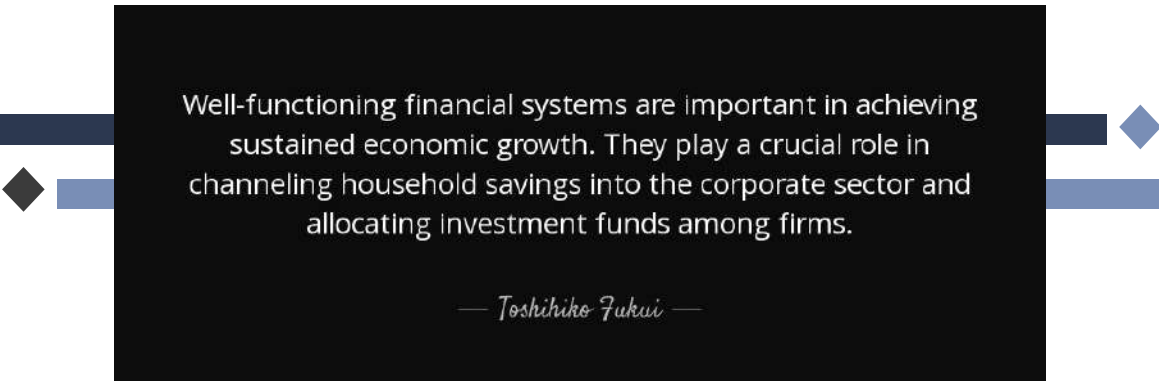
The D-SBI framework requires the RBI to issue a list of Banks which are known as Domestic Systemically Important Bank or “too big to fail. There are three Banks in the list of 2021 namely SBI, ICICI and HDFC Bank. These Banks are very big in size and their existence is important for the stability and growth of the economy. Hence they are subject to more supervision by the RBI.

### **Scheduled Banks**

The Banks which are listed in the Second Schedule of the RBI Act are Scheduled Banks. The intending Bank is required to apply to the Reserve Bank of India for obtaining Schedule Status. These Banks are free to open Branches without previous approval from RBI, in compliance to the prescribed guidelines. Schedule Banks are subjected to stricter regulations and supervision by RBI.

*To be continued....*

I



Well-functioning financial systems are important in achieving sustained economic growth. They play a crucial role in channeling household savings into the corporate sector and allocating investment funds among firms.

— *Toshihiko Fukui* —

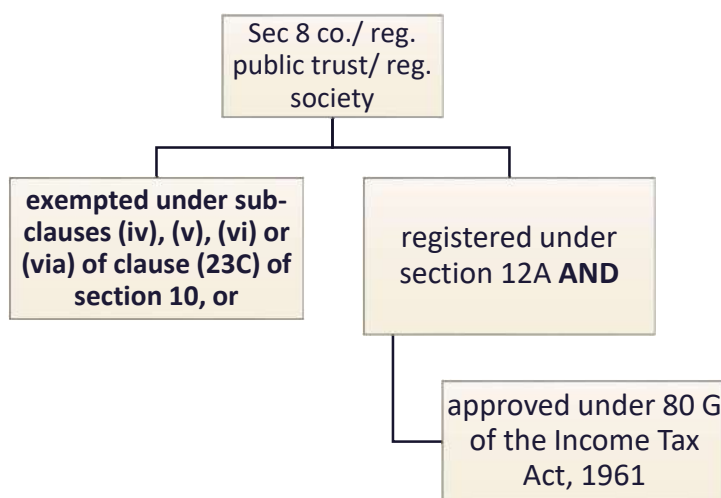
# Constitution of CSR Committee Pursuant to New CSR Rules

The Ministry of Corporate Affairs vide its Notification no. GSR 715(E) dated 20th September, 2022 made certain amendments to the existing provisions related to Corporate Social Responsibility (hereinafter ‘CSR’) by introducing Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 (hereinafter ‘CSR amendment rule’). A quick snippet of said amendments is provided below:

- The threshold limit for booking expenditure towards CSR by a company undertaking impact assessment was modified and the new threshold limits are as follows:

New Limits	Old Limits
<ul style="list-style-type: none"> <li>2% of the total CSR expenditure for that financial year.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>Rs. 50 Lakhs</li> </ul> <p>Which ever is higher</p>	<ul style="list-style-type: none"> <li>5% of the total CSR expenditure for that financial year.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>Rs. 50 Lakhs</li> </ul> <p>Which ever is Lower</p>

- Further as per latest amendment, a company may undertake CSR activities either itself or through:



“

-As per latest

amendment, an entity covered under categories specified under sec 10(23C) of Income Tax Act, 1961 may undertake CSR activity on behalf of the Company.”

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As per latest amendment, an entity covered under categories specified under sec 10(23C) of Income Tax Act, 1961 may undertake CSR activity on behalf of the Company. This entity be either established by the company itself or such entity should have an established track record of at least three years in undertaking similar activities.

3. Furthermore as per new amendment, a company which has opened 'unspent CSR account' to transfer unspent CSR amount relating to ongoing project must constitute a CSR committee and comply with provisions of section 135(2) to (6). This amendment can be understood with help of the table prepared below:

Scenarios	Condition u/s 135(1)	CSR amount to be spent u/s 135(5)	Ongoing project (unspent amount)	CSR committee
Case-1	Satisfied	More than ₹50 lakh	No	Yes
Case-2	Satisfied	More than ₹50 lakh	Yes	Yes
Case-3	Satisfied	Less than ₹50 lakh	No	No
Case-4	Satisfied	Less than ₹50 lakh	Yes	Yes
Case-5	Not satisfied	~	~	No

#### Delegation of powers by Parliament:

Under the basic structure of Constitution of India, law making power vests with the Parliament. The Parliament is mainly concerned with the primary legislation i.e., the main Act. Moreover, since the situations are constantly changing it is not practicable to present each and every change before the House and seek its approval. Parliament therefore, delegates some powers to other Authorities (usually Government or other bodies). This is called delegated legislation or subordinate legislation.

#### Delegated legislation to be read with legislation:

Powers are given by an Act to the Government or some other authority for issuing certain notification or making rules for various purposes. These Rules/ notifications must be read in such a way as to make it in accordance with the main object contained in the Act. Section is primary and rule is accessory.<sup>1</sup>

Delegated legislation must be read in the context of primary/ legislative Act and not vice versa. In case of conflict between a substantive provision of an Act and legislation, the former shall prevail<sup>2</sup>.

Thus, it is apparent from above that the rules cannot override the provision of Act and cannot widen or restrict scope of main Act or policy.

<sup>1</sup> Ispat Industries Ltd. v. CC (2006) 12 SCC 379

<sup>2</sup> ITW Signode India v. CCE 2003 (158) ELT 403

### **Analysis of amendment related to constitution of CSR committee:**

Under the CSR provision, pre-condition for constitution of CSR committee is prescribed under section 135(1) of the Companies Act, 2013 (hereinafter 'the Act'). As per said sub-section, a company shall constitute CSR committee with minimum three directors or two directors, as the case maybe, if it satisfies any of the following limit during the immediately preceding financial year:

- Net worth of ₹ 500 crore or more, or
- Turnover of ₹ 1000 crore or more, or
- Net profit of ₹ 5 crore or more

Section 135 (9) of the Act as introduced by the Companies (Amendment) Act, 2020 provides for an exemption from the requirement to constitute a CSR Committee where the amount to be spent by the company under section 135(5) of the Act does not exceed Rs. 50 lakhs in a financial year. In such cases, the functions of CSR Committee as provided under section 135 of the Act shall be discharged by the Board of Directors of such company. Here, the intention of lawmaker is to provide exemption to companies with smaller CSR obligation.

Now, with introduction of second proviso to Rule 3(1) of Companies (Corporate Social Responsibility Policy) Rules, 2014, a company must constitute a CSR committee even though its CSR obligation is not exceeding ₹ 50 lakhs. The said proviso is re-produced below for quick reference:

*“Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.”*

This proviso is in contrast to the exemption granted u/s 135(9) and to the rule of interpretation as discussed above.

A similar occurrence was observed at the time when Rule 3(2) of CSR Rule was in force. In said sub-rule, a company shall continue to comply with the requirement of CSR provision until it ceases to be covered u/s 135(1) for three consecutive years. This condition under Rule 3(2) was contradictory to condition laid u/s 135(1) which puzzled out the compliance officers. However, this sub-rule was deleted pursuant to enforcement of CSR amendment Rule.

### **Conclusion:**

With recent CSR amendment in force, we are waiting for clarification from MCA in above matter.

### **Disclaimer:**

The views and opinions expressed in this article are my own views and are subject to my understanding of the subject and do not necessarily represent views of any organization(s) to which I belong or had belonged in past. It is further clarified that the views and opinions expressed under this article should not be taken as a legal advice in any manner. One must consult its legal advisor before deciding any course of action.



# Help Yourself

Food for Thought

## You can Achieve More

- Shiv Khera

*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.

*"Excellence is not an act but a habit." -Aristotle*

In the February 2022 issue of this e-magazine I had discussed this very book 'You can Achieve More' and back then I hadn't completed reading it. Even now, I haven't, I'm going slow with the book, reading a little, once in a while. There are some books that you want to quickly read and finish like fiction or storybooks while there are those, usually self-help books, that you need to go slowly with, digest slowly and implement ideas from it gradually. This book is the latter. The author, too in the beginning, recommends the reader to go slow with this book and take notes. Therefore you will see this book discussed in some more issues of this e-magazine, from time to time. Moreover, books are one's best friend and this one feels like one's accountability partner- makes you reflect and contemplate on your actions- past, present and future and helps you to learn ways to enhance them.

If you are here for the first time, this column intends to impart bite sized knowledge from self-help books, biographies, autobiographies and other related genres, relevant specifically to corporate professionals and aspiring professionals. Not every learning that a book enshrines can be fit in here, so writing a summary or a book review is not the aim of this column. The intent is to give you a touch of acquaintance to a book, in every issue of this e-magazine, hoping that it will make you want to grab it and read for yourself. So, help yourself with food for thought.

Shiv Khera is an international bestselling author, whose book "You can Win" has sold close to four million copies in twenty one languages. The author is also a business consultant and a renowned speaker. I found the writing style to be very straightforward and appealing, in a way that one cannot keep from contemplating and reflecting on the days that one has lived and the days left to live.

The book has many exciting short stories of real life examples, from history, from the current generation, from myths and legends, quotes from the Bible, quotes from great personalities and so on, that are followed by the author's take on them and how one must inculcate them into one's life. It seems like the author is strict about his beliefs, principles and ways of living which is quite rare to come across in books. In my opinion, authors present their ideas and are open to let their readers contemplate, adjust and implement. Whereas Shiv Khera firmly states what he states, the point he tries to make is clear and always on point which sounds amazing and can stir a reader's soul up. This is the kind of motivation one would look for.

As always, I share one or two ideas from a book in every article leaving the rest for you, the reader to explore by yourself and so, here's an idea verbatim from the chapter titled- 'Pride in Performance.'

"Once a Danish Sculptor was asked "What is your best statue?" Without a second thought he said "It is yet to come."

*"A perfect picture has never been painted.*

*A perfect symphony has never been composed.*

*Perfection is an illusion in pursuit of which we end up attaining excellence. "*

What a brilliant mind set to have in order to be steadfast on the path to achievement, excellence and to keep complacency at bay!

You come across many inspiring quotes throughout this book. It also has action plans at the end of every chapter prompting the reader to put this book to its best use. So, hurry up! Grab this book and get set to achieve more!

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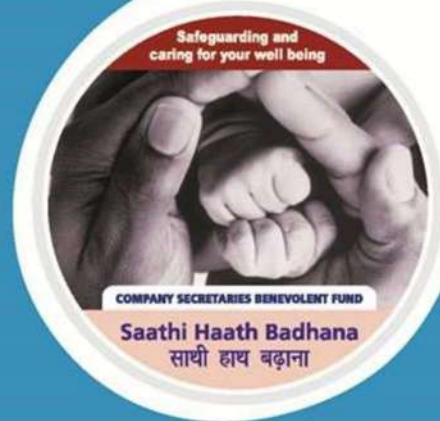
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- 3 To ensure that you have extra resource during serious illness or accident
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