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214th Edition



SIRC-Mysuru Chapter
e-Magazine

Vision

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

Motto

सत्यं वद। धर्मं चर। *Speak the truth, abide by the law.*

Mission

"To develop high calibre professionals facilitating good corporate governance"

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From the Desk of Chairman

CS A HARSHA
Chairperson
Mysuru Chapter

Dear Professional colleagues,

With all respect and gratitude to the divine energies of Parmatma above, I feel greatly honoured to be chosen as the Chairperson of this esteemed institution of ICSI, Mysuru Chapter, and I am grateful to all my fellow colleagues who have instilled their trust in me. I ensure that all my endeavors will be dedicated to the same progressive goal as that of this Institution. It is well known that though the captain decides on the course of action, it is with the support of the entire team that can bring victory. I call upon each of you to lend your hands to be able to etch your names in the pages of glory of this great institution and take it to the next level. It doesn't take luck or fate to decide the path to success, rather it is pure dedication and devotion that can change the course of failure towards great success. So let us all pledge together to take ICSI to greater heights in the next few years and open up bigger opportunities not just for us but for the new generation too.

In these testing times when the third wave of the pandemic has made things look difficult, let us try our best and keep our spirits high for the betterment of not just the members, students and the institution, but the entire community as a whole. I once again extend my heartfelt gratitude to the members for believing in me and handing over this responsibility to me. The milestones set by our previous chairpersons shall be inspirational in building new ones with the same passion and reverence.

Before concluding, I would like to share a few glimpses of the activities conducted at ICSI Mysuru after taking up my duties as the Chairperson. We celebrated our Republic Day on January 26, 2022, with the same enthusiasm and ever, even though most of the members couldn't attend it due to Covid infection and other health issues. With joint efforts and support from the secretary Mr. Padmanabhan, we celebrated our country's 73rd Republic Day with 11 of us (6 members, 2 students and the press reporter of e-magazine) battling all odds to reach the campus as a mark of respect for our nation. The Student's Study Circle was the next program conducted on February 4, 2022, on the topic "Ethics and Compliance", attended by 35 students who enjoyed it and made it successful. The next was a program on "Union Budget Analysis" jointly held along with MCCI, organized on February 5, 2022, with 75 participants contributing to the success story of this event.

It has been my honour and privilege to share with you my thoughts on taking things higher. Looking forward to your support in creating a better tomorrow for all of us. Also, novel ideas and suggestions are welcome in making a conducive environment for the growth and benefit of our Institution.

"Talent wins games, but teamwork and intelligence wins championships." -Michael Jordan

Thanking you



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

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Chapter Activities

1. Signing of MOU with University of Mysore

17th January 2022, chapter witnessed one of its historical moments. Memorandum of Understanding (MoU) for the Academic Connect has been signed between The Institute of Company Secretaries of India and University of Mysore (UoM) at Vijnana Bhawan, University Campus. CS Vijaya Rao, Chairperson of Mysuru Chapter delivered the welcome address. CS Balasubramanian N., Chairman-SIRC delivered the special address through virtual mode.

After signing the MoU, Prof. G Hemantha Kumar -Vice Chancellor, UoM addressed the gathering through his informative and insightful speech. He said that UoM is the 2nd oldest University in the South India and 6th oldest in India which has Completed 105 years and now jumping into 106 years. UoM has signed more than 150 MoUs in and outside Country for research and other purpose. This MOU is very important for UoM too as most of their MOU's always stress about Science / Pharmacy etc., and generally benefit will be for science student and teachers. This is the one will help commerce students. And Professor Hemanth Kumar recalled Inaugurating 2 days programme during February 2021 with ICSI Mysuru Chapter wherein he had announced having MoU with ICSI. VC stressed the importance that, thought UoM gives degree in commerce to their students and many times these degrees will not take students totally to their profession. Taking students to the profession needs support of professional body like ICSI. Students will get more professionalism which in turn supports them to have more employment opportunity. Most of the students comes from village background and it takes them long time to know about these types of professional institutions.

To give more career awareness and training, UoM started recently Career Hub-A platform to get the students to trained for their employment with Companies or others and this MoU will be attached to the training part of it. Through this MoU, Exchange of Faculty, Utilization of Library from ICSI Students and many more such programmes can be carried out. He further said that 240 Colleges have been affiliated with UoM and we can work in many areas. Professor Hemanth Kumar wished let this MOU flourish and help the UoM and at the same time UoM also shall support ICSI.

CS Phani Datta D N., Secretary of Mysuru Chapter proposed the vote of thanks. CS Harsha A., Vice Chairperson of Mysuru Chapter, Prof. R Shivappa, Registrar, University of Mysore Dr. Chethan H K., Special Officer to V C & Prof. N K Lokanath, Director, PME Board were also present during the occasion. Sri. DVNS Sharma, Regional Director-SIRC, Shri. A.K. Srivastava - Joint Secretary, Student Services-ICSI, CS Parvati KR, CS Veerash MJ, CS Pavithra P Managing Committee Members of ICSI Mysuru Chapter participated through virtual mode.

2. Republic Day Celebrations

On 26th January, 2022 the Chapter celebrated the 73rd Republic Day at Chapter Premises. CS Harsha A., Chairperson of Mysuru Chapter hoisted the national flag & addressed the gathering. CS Padmanabha V., Secretary, CS Veerash Mysore Jagadish, Member and members and students of the Chapter were also present during the occasion.





Over a Cup of Coffee With...

Abridged and Edited



CS Chandra B.
Practicing Company Secretary



CS Pracheta M
Practicing Company Secretary

Concept & Compilation:



CS Dr Shobha Sridhar
Practicing Company Secretary

CS Chandra B: Thank you for considering me for an interview in your magazine. I have always enjoyed reading your magazine, which is uploaded in the chapter website. Your efforts are very laudable and very useful to the profession of Company Secretaries. You deserve a hearty Congratulations. I wish you and your team all the very best to continue the magazine forever.

CS. Pracheta M: *Going back to the memory lane, can you recollect and share what /Who inspired you to join CS course?*

CS Chandra B: I belong to you a very small village near Trichy and studied in a woman's college in the Trichy town. Incidentally, I am proud to say that I graduated in the same year from the same college, Seethalakshmi Ramswamy College for Women as our present Finance Minister Ms. Nirmala Seetharaman.

I enrolled myself for my ICWAI course in the local chapter- evening classes during my B. Com. course itself and finished my Intermediate along with my B. Com. Had to join some employment, given the limited resources of my father as a Railway booking clerk with 4 daughters pursuing education. Joined the Railways as a clerk at 19 years of age and got a job as a Class II Assistant audit officer with the Comptroller & Auditor General of India immediately thereafter, by writing competitive exams one after the other.

Meanwhile, I completed my Final ICWAI and was looking for opportunities to join the Indian Cost Accounting Service, as Class I Service officer. I came across an advertisement by the UPSC for the position of Assistant Registrars/ Assistant Directors in the Department of Company Affairs (now Ministry of Corporate Affairs) and applied for that post knowing fully well that my knowledge and exposure of Company law was almost Nil. Selection by the UPSC is based only on the ability to face the interview Board and your understanding of your present position /job, rather than your knowledge on any specific subject. The training given at the time of induction prepares a candidate for a role in the Ministry. Once in the Ministry as an Assistant Registrar in RoC Mumbai, there was no option left except to plunge myself into learning the law and practice of the Companies Act and other economic laws. As a part of this process, I pursued my ACS course in order to keep pace with my assistants/colleagues in the office, who were stalwarts in Company law. My family supported me in pursuing the course as has been the case throughout my life. Hence, I would say my joining the ACS course is by sheer accident.

CS. Shobha: *You have been in the office of a Regulator and now you are a renowned PCS. What according to you is required to you to reach such heights? What difference do you find in the profession and professionals - then and now.*

CS Chandra B: Yes, I am proud of having been in a regulatory role in the Company law ministry itself for 17 long years in many offices in many roles including being part of a small group drafting the concept paper on Company law, the first cut draft of Companies Act 2013 as presented to the JJ Irani Committee, while simultaneously assisting the service provider for the MCA 21 e- governance program of the Ministry. After taking a voluntary retirement, I am in practice for about 13 years now.

During these eventful years, I have seen the profession grow by leaps and bounds. When I got into the Indian Company Law service in Mumbai, I could see only a very few professionals even in Mumbai who were involved mainly in incorporating Companies, filing Charge forms on behalf of the banks, giving a search report and certifying the Annual return of Listed Companies. The staff and officers of the Ministry, on the other hand, were fully conversant with the law having Ministry Circulars on their fingertips and even orders of High Courts & Supreme Court are often repeated matters. After about three decades, today I find the profession bubbling with different kinds of assignments. We have huge opportunities, including, Secretarial audit, handling IBC matters, giving of opinions on compliance matters, due diligence reports to the banks, working on matters of compromise and arrangements. I can witness the great progress, the professionals and the profession are experiencing in the last 7 to 8 years than any time in the past.

CS. Pracheta: *You are a great orator and an ardent speaker. How did this journey start and what attributes are required to be a good speaker- especially when we are speaking on professional topics?*

CS Chandra B: I am not an orator but generally speak on my passionate subject of Company law and securities laws, after doing a reasonable search into case laws.

The journey on talking on Company started when we started drafting the concept paper and the 1st cut draft of the Companies Bill. We were asked to make presentations to small group of professionals in Chennai & Delhi in the presence of the Joint Secretaries of the Ministry. During implementation of the e governance, I had to, sort of duty bound, address the professional bodies more frequently joint sessions of all the three Institutes. The professionals were also curious given the fact that MCA was the first to go for a massive e- governance. After getting into practice, was inducted in the expert committee on Company law by the Madras Chamber and had to address the member corporates on changes, especially after the Act came into force.

CS. Shobha: *Do you feel women face additional challenges in their pursuit of professional growth in comparison to men? Did you face any special challenge in your career? What is your advice to women who want to be successful professionals?*

CS Chandra B: I feel I hardly faced any gender-based challenges throughout. Thanks to my parents, we the four daughters of the family were never asked to do any household work till we were forced to live alone/marriage. I had wonderful male colleagues in the Audit team, very respectable gentlemen and the audit travels I had undertaken to Ranipet, Hyderabad, Mumbai, Pune, Nagpur. I had not sought any privilege even as early as 1984 as being the only woman in the team. Of course, God has been extremely kind to me. I believed in not giving any lame excuse- cannot travel outside the city or town etc. After my marriage, though I had household chores to do, my husband who is a Cost Accountant and now retired from a multinational Company is extremely supportive and would share the work equally and even now he does.

I had a very bad tragic loss, loss of my toddler son in 1994, but my friends in the Ministry and supportive family helped me overcome my tragedy. Honestly, I did not have any special challenge. Hard work and integrity had been my guiding factors. At the same time, there may be some women who face several challenges. I would urge every woman to circumvent the circumstances and not to quit the profession if they love it.

I have made it a point, generally to have (barring a few exceptions) only girls as trainees and my two partners are also ladies. So my office is all women club and I believe in giving opportunities to woman to ensure they stand on their own. This is what my parents had imbibed in me, which I would like all young women of today to aspire for.

CS. Pracheta: You have been addressing students and young professionals, motivating, and inspiring them all the way through. What are the qualities you look for in younger professionals?

CS Chandra B: Aptitude for learning and a clear policy of work is worship. I would like them to keep asking questions and go in search of answers by themselves. You have a lot of resources today, Manupatra, Taxmann etc. I would expect every student to make full use of the disclosures made by the Companies in the Stock exchanges and internalize why there's a disclosure and the regulation behind it.

Learning economic laws is not rocket science. Make use of technology and the digital world to the full extent. This will take anyone to incredible heights. Though we may be good in compliance, as a professional body, we are yet to develop the advocacy skills in young professionals. On an average day of hearing in the Tribunal, 10% of the matters are handled by Company secretaries with the rest by the advocates. There's an urgent need for development in that area and Institute may look at tweaking our training process in this aspect as well.

CS. Shobha: You have always been a strong advocate of woman empowerment. You are also donning many roles - as a home maker, busy professional, speaker and many more... How do you manage time for all these activities? Also, please share your tips for work life balance.

CS Chandra B: You will agree that there is no one solution for each one's problems in life. Make basic propositions suitable to each of their situations and follow them to the last letter. I believe woman's freedom does not lie modern clothing or partying etc. The real empowerment lies in economic and emotional independence of woman from other people. Courage to accomplish tasks on one's own is what is needed for each of the youngsters and more for the women. Set clear rules for the family and yourself and abide by it.

CS. Pracheta: In the face of covid-19, we are all facing difficult times now. What are your views to cope up in these turbulent times?

CS Chandra B: For us the professionals, generally dealing with corporates, the pandemic has taught us good lessons in use of technology both from our side and the client's side. We had planned work from home even at the initial stage of the pandemic and had bought necessary infrastructure for the same. We did not face any big trouble in the profession except those lockdowns led to delays in getting orders from the regulator/ Tribunals etc. and Secretarial audit was difficult as generally VPNs did not allow taking notes of the events in the same system etc. People falling sick and giving work to the trainees having less infrastructure poses a problem still. We are managing with a huge support from my team of three women.

CS. Shobha: *You are an ardent reader. How can we inculcate this habit of reading? What are your other interests / hobbies?*

CS Chandra B: My high school in a very small town imbibed the habit of reading in me. We should develop in early stages is what I would suggest. There is a one liner poetry in Tamil - Learn when young. My other interests include Travelling. Now a days I have started cooking different menu for different set of people- my very old in-laws, my daughter, and her friends etc.

CS. Pracheta: *What according to you are the core values that have shaped your outlook towards life and profession?*

CS Chandra B: At the cost of repetition integrity, punctuality, and hard work. These are the values which are imbibed at a young age itself from my parents.

CS. Shobha: *Who is your role model/ from where do you draw the inspiration?*

CS Chandra B: My Mother. She has taught us values, simple living, honesty, integrity, hard work and dedication to the work on hand. Living by example.

Thank you!!!

"A unique opportunity to CS Students

Dear Students,

We hope you are going through the interviews with the stalwarts of the profession. You too may have few questions in mind to ask these eminent Company Secretaries. Here is a unique opportunity for you to ask your questions directly to them!!!

You have to send us the takeaways from the interview published in this month's magazine (please go through the excerpts published as well as the video link) and send your responses to enewsletter.icsimysore@gmail.com. The student who gives us the 'best takeaway/s', will get an opportunity to ask a question to our guest in the next series of the interview."

For Complete interview please click the link: <https://bit.ly/interviewwithcsChandra>



Leveraging SME Exchange for Fueling Economic Growth



CS Dr S K Gupta MD

Practicing Company Secretary

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The Perspective

The Indian Small and Medium Enterprises (SME) sector has constantly acted as the safeguard for the Indian economy by providing it flexibility to prevent global economic shocks and adversities. It has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades.

SMEs not only play crucial role in providing large employment opportunities at comparatively lower capital cost than large industries but also help in industrialization of rural areas. The Indian MSME sector is the backbone of the national economic structure as the Sector consisting of 36 million units and as of today, it provides employment to over 80 million persons. The Sector through more than 6,000 products contributes about 8% to GDP besides 45% to the total manufacturing output and 40% to the exports from the country

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SME Exchange

"SME Exchange" is defined in Chapter XB of the Securities and Exchange Board of India (Issue Of Capital And Disclosure Requirements) Regulations as a trading platform of a recognized stock exchange or a dedicated exchange permitted by SEBI to list the securities issued in accordance with Chapter XA of SEBI (ICDR) Regulations and this excludes the Main Board (which is in turn is defined as a recognized stock exchange having nationwide trading terminals, other than SME exchange).

An SME Exchange is a stock exchange dedicated for trading the shares / securities of SMEs who otherwise find it difficult to get listed on the Main Board. At present, there are only two SME Exchanges in India i.e. BSE SME platform (BSE) and EMERGE Platform (NSE).

SME Exchanges have come a long way since they were launched in 2012. The BSE was the first to launch its BSE-SME platform for small and medium enterprises and start-ups to list directly on the bourses and raise funds. The NSE launched its NSE Emerge almost immediately. The first SME Company to raise funds was BLB Finance in 2012 on the BSE-SME; since then, about 330 companies have raised funds through the BSE-SME platform and over 200 firms on the NSE Emerge.

Prerequisites for SME Listing

- Incorporation The Company shall be incorporated under the Companies Act, 1956 / 2013
- Post Issue Paid up Capital: The post issue paid up capital of the company (face value) shall not be more than Rs. 25 crores.
- Net worth: Positive Net worth.
- Tangible Asset: Net Tangible Assets should be Rs 1.5 Crore.
- Track Record: The company or the partnership/proprietorship/LLP Firm or the firm which have been converted into the company should have combined track record of at least 3 years, or
- In case it has not completed its operation for three years then the company/partnership/proprietorship/LLP should have been funded by Banks or financial institutions or Central or state government or the group company should be listed for at least two years either on the main board or SME board of the Exchange.
- The company or the firm or the firm which have been converted into the company should have combined positive cash accruals (earnings before depreciation and tax) in any of the year out of last three years and its net worth should be positive.

Other Requirements

- It is mandatory for a company to have a website.
- It is mandatory for the company to facilitate trading in demat securities and enter into an agreement with both the depositories.
- There should not be any change in the promoters of the company in preceding one year from the date of filing the application to BSE for listing under SME segment.

Disclosures

A certificate from the applicant company / promoting companies stating that a) "The Company has not been referred to the Board for Industrial and Financial Reconstruction (BIFR)" b) There is no winding up petition against the company, which has been admitted by the court or a liquidator has not been appointed.

The 5 P'S of Listing Process on BSE SME

Planning: The Issuer Company consults and appoints the Merchant Banker/s in an advisory capacity.

Preparation: The Merchant Banker prepares the documentation for filing after conducting due diligence regarding the Company i.e checking the documentation including all the financial documents, material contracts, Government Approvals, Promoter details etc. and planning the IPO structure, share issuances, and financial requirements

Process:

- Submission of DRHP/Draft Prospectus - These documents are prepared by the Merchant Banker and filed with the Exchange as well as with SEBI as per requirements.
- Verification & Site Visit - BSE verifies the documents and processes the same. A visit to the company's site shall be undertaken by the Exchange official. The Promoters are called for an interview with the Listing Advisory Committee.

- Approval - BSE issues an In Principle approval on the recommendation of the Committee, provided all the requirements are compiled by the Issuer Company
- Filing of RHP/Prospectus - Merchant Banker files these documents with the ROC indicating the opening and closing date of the issue
- Once approval is received from the ROC, they intimate the Exchange regarding the opening dates of the issue along with the required documents.

Public Offering: The Initial Public Offer opens and closes as per schedule. After the closure of IPO, the Company submits the documents as per the checklist to the Exchange for finalization of the basis of allotment.

Post Listing: BSE finalizes the basis of allotment and issues the Notice regarding Listing and trading

Migration to the main platform

It is an option for the companies to be at SME platforms or to migrate to the mainboard. The condition to migrate to the mainboard that SMEs have to be on the Emerge platform for two years provides the companies necessary time frame to get accustomed to regulatory compliances and test their company's growth, financial discipline, adherence to corporate governance norms, etc.

To migrate to the mainboard of NSE, SMEs are also required to have paid-up equity capital not less than Rs 10 crores and the capitalization of the equity to be less than Rs 25 crore. Also, the company should have been listed on SEBI's Innovators Growth Platform for at least a year. Among other requirements included a minimum of 200 shareholders, profitability for three years, or have 75 per cent of its capital held by Qualified Institutional Buyers on the date of application for migration, minimum promoters' contribution of 20 per cent locked in for three years, and more.

Benefits of listing on SME Exchange

SMEs face typical concerns prior to listing on NSE Emerge like fear of loss of ownership, oversight by regulators, increased compliances, etc. However, the benefits far outweigh these challenges.

- Easy access to Capital. BSE SME provides an avenue to raise capital through equity infusion for growth-oriented SME's.
- Enhanced Visibility and Prestige. ...
- Encourages Growth of SMEs. ...
- Enables Liquidity for Shareholders. ...
- Equity financing through Venture Capital. ...
- Efficient Risk Distribution. ...
- Employee Incentives.

SME Exchanges in Emerging Markets

In recent years, many emerging market countries have developed or are in the process of developing SME Exchanges to provide financing to SMEs, but few have succeeded. however the analysis suggests approaches that are widespread and/or could be beneficial to consider such as (1) focus on SMEs with a sizeable growth rate, (2) have the SME exchange

legally related to the main board, (3) do not reduce disclosure content to reduce costs, (4) allow private placements, (5) have well-regulated advisors to vet issuers and provide comfort to investors about the quality of the issue, (6) have outreach, public awareness campaign and training for SMEs, (7) consider tax incentives for investors.

Challenges faced by startups while listing on SME Exchanges

- The challenges faced by startups while listing on SME Exchanges may be attributed to the struggles of being a startup itself. A slowdown in the growth of SMEs will almost automatically impact the popularity of an SME listing as a pillar of fund raising. With many roadblocks in their growth, listing alone cannot ensure success. Moreover, the absence of any benefit or incentive because of listing often fails to motivate the start-ups to list.
- Many of these startups often lack the experience and technological capabilities to sail through the whole listing process. These weaknesses are further deepened due to lack of human resources, preparedness, non-compliances, and a general lack of awareness among the young entrepreneurs about the listing process. Limited knowledge of the stock markets and listing procedure is a major deterrent for these start-ups who traditionally have only depended on banks for raising capital.
- Despite measures put in place by the regulator, the outcome is far from satisfactory. Most startups perceive the relaxed listing norms to be no less burdensome than listing on the main board and would rather wait a few more years and get listed on the main board itself. The exemptions available to the companies listed on the SME Exchange may be miniscule and the fear of penalties on account of non-compliances could make these companies less keen on listing.
- Promotional programs by the stock exchanges to increase awareness among these startups could go a long way to overcome many of the challenges discussed above. Secondly, stock exchanges must market the SME platform as a product. This can be done through proper advertisement, both in print as well as through online portals. Currently, there is less media coverage of SME issues as compared to the main board issuances. Scrips of the SME Exchanges usually do not find space on many famous capital markets sites. Providing incentives for listing may also help the growth of these exchanges.
- The best possible way to promote the SME Exchange is not just by creating awareness among the investors or by removing the listing barriers but by creating a knowledge ecosystem for these start-ups. The stock exchanges could indulge into interactive sessions with these companies which could help reduce hurdles and provide a much-needed impetus to the SME growth story.



ABRY – Boon in recent times



CS Amit Kumar Surana
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As we mark the First Birth Anniversary of this amazing Scheme launched & approved by the Central Govt through Ministry of Labour vide Memo No. CAIU/011(16)2020-21/ABRY/1178 & 1179 dated 31.12.2020, we would look into the provisions of the scheme guidelines in this Article.

Aatmanirbhar Bharat Rozgar Yojana (ABRY) Scheme was announced to incentivize creation of new employment and restoration of loss of employment during the COVID pandemic. It is a scheme to boost creation of new jobs in formal sector through support of EPF contributions by the Central Government for new employees. The Scheme proposes to assist employers, registered with EPFO, for giving employment to new employees and re-employing persons who lost their jobs during COVID-19 pandemic. This Scheme provides assistance to the employers of the establishments registered with EPFO to recruit unemployed persons including re employment of those who were rendered unemployed during the Pandemic.

The Central Government will pay both the employees' and employer's share of contribution payable under the EPF & MP Act, 1952 or only the employees' share, depending on the employment strength of the establishment, directly to the Universal Account Number of eligible employee maintained by the EPFO. All eligible employers & new eligible employees would be able to take benefit of this payment.

There will be no deduction from wages of eligible new employee so he/ she will have a higher take home salary ever month. Employers of eligible establishment are not required to pay their share of the EPF of monthly wage of new employees of their establishment. So the employer saves this money. This also incentivizes employers of all eligible establishments to retain all their new employees at higher take home pay. Employer of eligible establishment can however continue to pay the EDLI, ESI admin charges for all employees as well as EPF contribution for employees other than new employees.

The Scheme stands commenced from 1st October 2020 and shall remain open for registration of eligible employers and new employees up to 31st March 2022. The benefit shall be available for a period of twenty-four months from date of registration of new employee.

For the purposes of this Scheme, Universal Account Number (UAN) means Aadhaar validated unique account number allotted by EPFO. Electronic-Challan cum Return (ECR) means the monthly challan-cum-return submitted online by the employers/establishments under provisions of the EPF Scheme. For the purpose of this scheme, new employee means any employee drawing wages Less than Rs 15,000 per month-

(i) who was not working in any establishment and did not have a UAN prior to 01st October 2020 who joins employment in any establishment on or after 01.10.2020 up to 31.03.2022 and who is allotted Aadhaar validated UAN.

(ii) any EPF member, already allotted with UAN, who made exit from employment during the period from 01.03.2020 to 30.09.2020 from any establishment, such date of exit is recorded in UAN and who joins in any establishment on or after 01.10.2020 and up to 31.03.2022

The number of employees for whom the employer has remitted contributions through ECR for the wage month of September 2020 before commencement of this Scheme shall be taken as reference base number for determining the eligibility of an establishment. In case the ECR for the wage month of September 2020 is filed later than its due date but before 15th December 2020 the reference base of employees will be the number of employees shown in the ECR for the wage month of September 2020, or the number of employees as per the last ECR which was filed up to 11.11.2020, whichever is higher. For new establishment getting registered with EPFO between 01.10.2020 to 31.03.2022, the reference base of workers shall be treated as 0 (zero).

Establishments already registered before the commencement of this Scheme shall have to employ, over and above the reference base, minimum 2 (two) new employees (if the reference base of employee is less than or equal to 50) and minimum 5 (five) new employees (if the reference base of employees is more than 50).

Such already registered establishments must continue to employ minimum number of additional new employees with respect to the reference base of employees for availing assistance under this Scheme for any wage month.

For new establishment getting registered with EPFO between 01.10.2020 to 30.06.2021, the reference base of employees shall be treated as 0 (zero). If any Such establishment registers voluntarily with less than 20 employees and continues to maintain less than 20 employees during the validity period of this Scheme, such establishment will not be allowed to exit from statutory Schemes under EPF and beneficiaries who received benefit shall not be allowed to make final withdrawals until expiry of a period of 2 (two) years after validity period of this Scheme.

Establishments working as Contractors engaged in providing manpower to one or more principal employers shall Not claim benefit of employers' share under this Scheme, if the same is claimed or received from the principal employer. Any such amount of employer's share claimed under this shall be liable to be refunded to the Central Government.

The Central Government will provide subsidy for 24 (twenty-four) wage months in respect of eligible new employees at the following scale:

(i) For Establishments employing up to and including One Thousand (1000) employees (contributing EPF members with UAN) in wage month September 2020, the employer's and employee's share of contribution as per statutory rate applicable to establishment, subject to maximum of 24% of wages.

These establishments will however continue to get subsidy of employer's share even if the number of contributing EPF members with UAN exceeds 1000 during the scheme period.

(ii) For Establishments employing more than One Thousand (1000) employees (contributing EPF members with UAN) in wage month September 2020, employees' share of contribution as per statutory rate applicable to establishment, subject to maximum of 12% of wages.

If any establishment being a single legal entity is making compliance under various code numbers obtained from EPFO, then for the purpose of counting the number of 50/1000 employees, wherever applicable for eligibility criteria under this scheme, all employees in the establishment shall be included.

Any eligible new employee under this Scheme shall become Ineligible if his/her monthly wage Exceeds Rs 14,999/- at any point of time during this scheme period.

It is clarified that if any new employee is already a registered beneficiary and his/her employer is eligible to or is availing benefits of payment of employer's share by Central Government under PMRPY/PMRPY, no such benefit in respect of such new employee shall be available under this Scheme.

A Certificate/Declaration has to be furnished by the Employer stating that the Scheme Guidelines have been read and that the establishment satisfies all the eligibility conditions for receiving benefit from the Central Government for creating & generating new employment opportunities. Additional Certificate/Declaration has to be provided if the establishment is a Contractor providing manpower giving details of the principal employer stating that employer's share of EPF/EPF contributions of new employees being claimed through the ECR as assistance from the Central Government under this Scheme has neither been claimed nor received nor shall be claimed or received in future from any Principal employer under any contract or work order.

An employer claiming Employees' or employer's share of Provident fund contribution from the Central Government under this scheme shall Not be eligible to claim the same from the employee or the principal employer, as the case may be. Any Duplicate claim would invite appropriate action under the relevant provisions of law.

Job change/mobility of an eligible new employee from one EPFO registered establishment to another EPFO registered establishment will not affect his / her eligibility, provided that the establishment to which such employee moves is also an eligible establishment under this scheme. However, if an eligible new employee who was receiving subsidy benefit by virtue of working in an eligible establishment gets employed in any ineligible establishment for a particular period then he will not be eligible to get benefit for that particular period.

The employer in relation to any eligible establishment shall register the establishment under this Scheme disclosing the reference base of employees through a link in the Employer's login on EPFO Unified Portal. The employer in relation to any eligible establishment shall file one Electronic Challan cum Return (ECR) in respect of all employees for each wage month including new employees.

Any revision/correction/modification in such ECR shall not be allowed for claiming any enhanced benefits at any future date. Wherever employer has filed ECR for wage month of October and November 2020 prior to deployment of facility for registration under this scheme, benefits due under this scheme which is already remitted through ECR can be reimbursed through future adjustments.

The ECR for any wage month for claiming the benefits under this Scheme has to be filed by eligible establishment within 60 days from the close of that wage month. If an ECR is filed for a wage month beyond due date, then the liability of interest due under the provisions of EPF& MP Act, 1952 shall be borne by the employer.

Employers and Establishments shall be responsible for the correctness of all particulars submitted for claiming any benefit under this scheme. Any amount claimed through incorrect or false declaration shall be recoverable, besides other actions under appropriate provisions of law for making any false declaration. If it is found that employer or any person has filed a false information or statement or made a false declaration, the employer or such person shall be treated as defaulter and liable for penal consequences for such contravention as per the provisions of the EPF Scheme or any other appropriate provision of law and further that the benefit paid by the Central Government shall be liable for recovery along with interest and penalty as per the provisions of law.



Cryptocurrency – Blockchain Technology- Union Budget 2022



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“Digital Rupee -

Introduction of a Central Bank Digital Currency we will give a boost a big boost to digital economy, Digital currency will also lead to more efficient and cheaper currency management system it is therefore proposed to introduce digital rupee using blockchain and other technologies to be issued by the Reserve bank of India starting 2022-23.”

- Nirmala Sitharaman, Minister of Finance, Govt. of India

With this speech delivered by the Nirmala Sitharaman Ministry of Finance in the Union budget 2022 there are terms which gained more attention in this context and need to be understood carefully:

- Cryptocurrency
- Bitcoin
- Blockchain Technology
- Blockchain Technology and Governance
- Crypto Bill
- Taxation of Crypto assets

Cryptocurrency:

Cryptocurrency is a medium of exchange, created and stored electronically using encryption techniques to control the creation of monetary units and to verify the transfer of funds.

Since man evolved currency has been a very important part of our lives, initially barter system, later currency went through a few iterations and in 110 BC an official currency was minted in thousand 250 AD gold plated Florence was introduced and this was used across Europe. From 1680 to 1980 paper currency gained widespread popularity and was used across the world, this is how modern currency as we use now came into existence. Modern currency included paper currency and coins, credit cards and digital wallets like Paytm, Gpay etc. All these transactions are controlled by Centralised regulatory authority. However, moving towards Digital wallets there can be some technical issues in completing transactions due to many parties involved in single transaction there is a central point of failure due to limits exceed or accounts gotten hacked so on. This is why the future of currency lies with Cryptocurrency where the transaction between two people in the future one of them has the application and there is a notification asking whether to make sure they are ready to transfer currency if yes processing takes place herewith authenticating the user's identity checking whether they have the required balance to make that transaction and other things. Now after that's done the payment is transferred and the payment is received all of this happens in the matter of minutes and is as simple as that.

It's a peer-to-peer system that can enable anyone anywhere to send and receive payments. ... When you transfer cryptocurrency funds, the transactions are recorded in a public ledger. Cryptocurrency is stored in digital wallets.

Bitcoin:

Bitcoin is the first decentralized digital currency created in January 2009. Satoshi Nakamoto, the mysterious and pseudonymous person or persons behind the whitepaper Bitcoin. A Peer-to-Peer electronic cash system showed that it could form the basis of an electronic Cryptocurrency. Bitcoin is known as a type of cryptocurrency because it uses cryptography to keep it secure. There are no physical bitcoins, only balances kept on a public ledger that everyone has transparent access to (although each record is encrypted). All Bitcoin transactions are verified by a massive amount of computing power via a process known as "mining." Bitcoin offers the promise of lower transaction fees than traditional online payment mechanisms do, and unlike government-issued currencies, it is operated by a decentralized authority. Bitcoin is very popular and has triggered the launch of hundreds of other cryptocurrencies, collectively referred to as altcoins. Bitcoin is commonly abbreviated as BTC when traded.

Blockchain Technology:

The term Blockchain attained more attention in this context even the Blockchain technology has existed since 1982 and it has numerous applications across multiple industries, perhaps even all industries like documenting timestamps in away that couldn't be altered and in other like Automotive, voting, healthcare etc. Despite all of its applications, blockchains are ultimately lists of records(blocks), like an Excel spreadsheet or SQL database, linked together by cryptography. Each block contains a cryptographic hash of the previous block, a timestamp and transaction data. Thus it become most important technology for the financial sector and Fincare companies even after the introduction of digital wallets exclusively after Bitcoin and cryptocurrency. It is becoming a tool for increasing security, ensuring compliance and creating new possibilities for innovative products. Blockchains themselves as a piece of 'infrastructure' are very secure,

the wallets through which both individual consumers and large organisations such as cryptocurrency exchanges interact with those block chains are frequently no more secure than any other online account, usually accessible through a username and password. From a business perspective, it's helpful to think of blockchain technology as a type of next-generation business process improvement software. Collaborative technology, such as blockchain, promises the ability to improve the business processes that occur between companies, radically lowering the "cost of trust." For this reason, it may offer significantly higher returns for each investment spent than most traditional internal investments.

Blockchain Technology and Governance:

As a Company secretary we are more concerned with Governance, Blockchain Technology has numerous applications within the governance space. The system of rules, practices and processes that forms the heart of corporate governance can be digitally mirrored within a blockchain to automate processes. For all its association with ungovernable, distributed forms of authority, the technology can be used to create frameworks for objectivity, accountability and openness between a company and its clients and within companies themselves. There are potentially thousands more applications for a technology that can store data in an irrevocable, auditable state and perform operations on that data. To help move beyond the uncertainty, firms should consider properly about Evaluating the business use and needs of all stakeholders, Assessing the underlying cryptography, examining how their specific network has been set up, how reports are generated, and the controls that exist over the blockchain, performing ongoing reviews to assess the effects of any systemic changes.

The blockchain technology can bring an array of benefits to companies. However, this will require companies to assure that blockchains have been set up effectively with appropriate reviews and controls for Governance issues as well.

Crypto Bill:

By the Union Budget 2022 it was made clear by the Finance Ministry that impending Crypto Bill will change the way the crypto market regulates currently in India. A cabinet note circulated by the government in December 2021 said that cryptocurrencies would be regulated and not banned. In order to ensure wider adoption and progress of cryptocurrencies, the government believes regulation to be the best option. The law will further make provisions to support innovation in the crypto and blockchain industry.

Furthermore, to ensure secure transactions and prevent criminal activities cryptocurrencies would be regulated. Reserve Bank will be issuing Digital Currency, since In India currency must be issued only by the Central bank in order to refer it as currency even if it is Crypto.

The existing crypto exchanges would be controlled and regulated by Securities and Exchange Board of India (SEBI).

Central Bank Digital Currencies (CBDCs) or the possibility of a digital rupee are also an important part of the regulatory framework. RBI is expected to launch its pilot project for CBDC in the first quarter of the next fiscal year.

Taxation of Crypto Assets:

Budget 2022 levies 30% tax and TDS on cryptocurrency assets, the government has proposed that gain on transfer of any virtual/cryptocurrency asset will be taxed at 30%. No deduction except cost of acquisition will be allowed and no loss in transaction will be allowed to be carried forward.

TDS will be imposed on payments for the transfer of crypto assets at a rate of 1% for transactions over a certain threshold. Furthermore, gifts of crypto assets will be taxed in the recipient's hands. With effect from April 1, 2022, the 115BBH sections on income from virtual digital assets will be introduced. This announcement of a 1% TDS on such transactions will also need the crypto-exchanges and other forms of digital asset marketplaces to comply and will constitute a transaction tracking mechanism.

This amendment will take effect from 1st April 2022 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.



HELP YOURSELF
Food for Thought



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You can Achieve More

-By Shiv Khara

As I began to brainstorm to write for this column this month, I was considering whether I should continue writing articles in the same genre as most of my previous articles- self-help books. My concern was whether the content put forth here has turned monotonous. Yet, I picked up 'You can Achieve More' by Shiv Khara, under the same genre and went ahead with reading it anyway.

My doubt was cleared with a single quote in the initial chapters of this book. The quote goes as follows- "Life is funny. For as long as we are alive, we keep learning how to live life." Learning is endless. What better teacher can one find to

live life well than books under this genre? The learning that we get from each book, through various authors and their varied experiences is inexplicably immense.

If we do not make time to reflect on our ultimate or long-term goals and to check whether we are navigating towards it or not, a lot of effort may go in vain. One definitely needs to keep a check on this often. Books are a great way to do it and especially this book that we are discussing here. For, don't we all need to know we can achieve more?

A lot of times, the day simply runs us. But it should be us running the day. We simply let everything happen to us when we live by default. We should live by design, not by default. This quote is on the cover of this book. It means, one must make conscious choices, decisions and be responsible. To help you reflect, contemplate, plan and act, this book helps a great deal.

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. An enlightening quote from this book goes as follows- "If we are not willing to pay the price for success, then whether we like it or not, we will have to pay the price for failure. A price has to be paid, no matter what."

"People often say that motivation doesn't last. Well, neither does bathing, that's why we recommend it daily." - Zig Ziglar. That is why reading a book just once may not always be enough. Continuity and consistency is the key. Learning is indeed never ending, and every book has something new to teach. The author in the beginning of this book recommends the reader to go slow with this book and take notes. So, I am yet to read the book completely.

If you are here for the first time, this column intends to impart byte 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 new 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.





Regulatory Updates



Compiled by:

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Professional Student
Mysore

Companies Act, 2013

Updates on Notifications

MCA has amended Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, which shall be known as Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund), Third Amendment, Rules, 2021.

In the principal rule,

The following shall substitute Sub-rule (9) of rule 6;

“(9) The shares held in such DEMAT account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant as and when he approaches the Authority or in accordance with sub-rules (10), (11) and (11A).”.

The following sub-rule shall be inserted after sub-rule (11);

“(11A) In case an application for purchase of shares under section 236 is received through the company, the Authority may receive the amount entitled on behalf of the minority shareholders from the company as per procedures provided under sub-section 5 of the said section 236 and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds:

The Authority before receipt of money shall verify the following.

1. If the acquirer has fulfilled the requirements of section 236; and
2. If the shares are valued as per section 236 and relevant rules; and
3. any other relevant information

After sub-rule (13), the following sub-rule shall be inserted

“(13A) any amount required to be credited by the companies to the Fund as provided under sub-rule (11A) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank and the details thereof shall be furnished to the Authority in Form No. IEPF-7 within thirty days from the date of remittance or within thirty days from the date of commencement of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund), Third Amendment, Rules, 2021, as the case may be.”. G.S.R. 888(E)

In continuation to Ministry's General Circular No.22/2021 dated 29/12/2021, it has been further decided that no additional fees shall be levied upto 15/03/2021 for filing the e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and upto 31/03/2021 for filing of e-forms MGT-7/MGT-7A in respect of the FY ended on 31.03.2021 respectively.

General Circular No. 01/202



CS MINERVA *The Student's Corner*



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Decoding MCA E-form MSME-1 with FAQ's

Ministry of Corporate Affairs (MCA) has made amendments under Schedule III of the Companies Act, 2013 and read with notification S.O. 368(E) dated 22nd January 2019 and introduced Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order 2019 thereby notified filing of E- Form MSME-1 for protecting the interest of companies or businesses classified under the MSME category.

The MSME-1 is a half-yearly return that the specified companies need to file regarding their outstanding payments to the MSME. In this manner, the Registrar of Companies can keep track of the companies that have outstanding dues towards MSMEs and the MSME suppliers who need to receive payments. However, companies have to file this return only when they have payments outstanding for more than 45 days to the MSME supplier. The companies need not file a 'Nil MSME-1 Return' when there are no outstanding amounts with the MSME suppliers.

Under Form MSME -1 The companies are required to make certain disclosures pertaining to the vendors registered under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act, 2006).

Applicability of E form MSME -1 on Companies:

E-form MSME -1 is required to be filed by every type of the Company - Public or Private Company, Micro or Small Companies which satisfies the following two conditions:

Condition 1: Company must have received Goods and/or Services from Micro or Small Enterprise

Condition 2: Payment must have been due/not paid, to such Micro and Small Enterprise for more than 45 days from the date of acceptance / deemed acceptance.

Define Entities under MSMED Act, 2006:

New Definitions - Enterprises- (*effective from 01.07.2020*):

Type (s) of Entity	Criteria
Micro enterprises	where the investment in Plant and Machinery or Equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
Small enterprises	where the investment in Plant and Machinery or Equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees;
Medium enterprises	where the investment in Plant and Machinery or Equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees

FAQ's on MCA E-Form MSME-1

S. No.	Questions	Answers
1	What are the Provisions applicable to MSME-1 Form?	Order 2 and 3 dated 22 January, 2019 issued under Section 405 of the Companies Act, 2013
2	What is the Objective of MSME-1 Form ?	furnishing half yearly return with the registrar in respect of outstanding payments to Micro or Small Enterprises
3	Nil Return (no outstanding amounts) is required to be filed?	No.
4	What is Return Type?	Half Yearly Return (the form was introduced with two types of returns - Initial and Half Yearly Return.)
5	What is the Due Date to file MSME-1 Form?	a) For Half year period April to September - 31st October b) For half year period October to March - 30 th April

6	Who is required to file MSME- 1 Form?	All companies, who get supplies of goods or services from <u>micro and small enterprises</u> and whose payments to micro and small enterprise suppliers exceed forty-five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006.
7	Whose details are required to be reported?	Whose payments exceed 45 days from the <u>date of acceptance or the date of deemed acceptance</u> of the goods or services as per provisions of Section 9 of the Micro Small and Medium enterprises Development Act, 2006 (MSMED Act)
8	If agreement terms for payment is 28 days, and payment is made after 28 days?	it is termed as delayed payment and should be reported under MSME-1 Form.
9	If agreement is made to make payment within 60 days between the parties but as on date of filing return the amount is outstanding for more than 45 days but less than 50 days. Whether reporting is required or not?	In this case, Reporting has to be made as per the rules made thereby and shall be given if the amount is outstanding for more than 45 days.
10	In case, if there is no agreement?	15 days criteria will be applicable when there is no agreement (refer appointed date)
11	If any Supplier is not registered under MSMED Act, 2006 and at the time of Filing return he got status of Micro or Small?	Reporting should be required to be made for that supplier.
12	How many Entries we can made for vendors in a single form?	99 Entries
13	If as on 31.03.2020 No outstanding payment to MSME vendor, but there was delay in payment of some MSME vendor more than 45 days which has been paid on or before 31.03.2020. Whether Company needs to give details of	Companies have to give details of outstanding payment to MSME vendor only on due date i.e. 31.03.2020 Payment has already been made to vendors before 31.03.2020, then company is not required to give details of such transaction in MSME-1.

	such invoices in the form?	
14	If entries are more than 99 then what?	Multiple forms can be filed if entries are more than 99.
15	If Company is under IBC Process - Who is required to file?	Duty of Resolution Professional is to file it (Only Advisable)
16	Exemption to file MSME-1 Form?	Dues to Medium Enterprises are not required to be filed.
17	Is there any additional fee (late fee) for delay filing of MSME Form?	No Fee
18	Is there any statutory filing fee for the filing of MSME Form	No Additional Fee
19	Processing Type of this E-form	The form will be processed in STP mode.
20	What is the Penalty for Non-Filing of Form MSME-1?	Non-compliance will lead to punishment and penalty under the provision of the Companies Act. As per Penalty Provision of Section 405 (4) of the Companies Act, 2013

What we must know:

1. **Medium Enterprises** are **not covered** for filing of MCA E- Form MSME-1.
2. **Specified Companies:** All Companies those purchases goods or avail services from Micro and **(+)** Small enterprises and whose payment cycle, while dealing with MSMEs, exceeds 45 days from the date of acceptance or the date of deemed acceptance.
3. PAN of the Company is Mandatory to be mentioned in the Form.
4. Number of Entries shall be considered as number of Invoices: *It is advisable that if Company received 5 invoices on one particular date then all five invoices should be reported separately.*
5. Appointed Date: Appointed day is the day after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services, by a buyer, from a supplier.
6. **Guidelines for delayed payment of dues to the MSE borrowers**
 - a) **If Agreement is there:** The buyer is to make payment on or before the date agreed on between him and the supplier in writing, i.e. paid with in Agreement date or within 45 days, whichever earlier.
 - b) The agreement between seller and buyer shall not exceed more than 45 days

c) In case of no agreement, before the appointed day (15 days criteria as stated above)

7. Provisions related to late Payment / default in payment

Buyer is liable to pay compound interest with monthly rests to the supplier on the amount from the appointed day or, on the date agreed on, at three times of the Bank Rate notified by Reserve Bank.

8. **First Return / Initial Return:** Based on the MCA general circular dated 21.02.2019, the initial return filing of MSME Form 1 must be done within 30 days, starting from the date of said e-form deployment on the MCA 21 portal.

9. Penal Provisions in Brief:

Penalty on	Minimum Fine	Fine can Extend Upto	Imprisonment
Company	Rs. 25,000/-		-
Officer in Default (KMP, Directors)	Rs. 25,000/-	Rs. 300,000/-	Six Months
	Or Fine + Imprisonment Both		

Section 405: Power of Central Government to Direct Companies to Furnish Information or Statistics.

Section 405 (4): If any company fails to comply with an order made under sub-section (1) or subsection (3), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect,

Conclusion:

Ministry of Corporate Affairs (MCA) has introduced E form MSME-1 to strengthen the micro and small enterprises by prescribing a mandatory filing regime twice a year by their large customers and also for protecting the interest of the small companies or businesses i.e. for Micro and Small Companies (medium enterprises excluded) as defined under the provisions of Micro, Small, and Medium Enterprises Development Act, 2006 (MSMED Act, 2006). This will enable speedier recoveries of the dues of the SMEs from large corporate clients.

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Delhi Diaries



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The Dangerous Position of the Government's Creditor - Devas Multimedia Private Ltd. v. Antrix Corporation Ltd.

The development of banking has a curious history. Kings and princes used to borrow from bankers to finance wars and other royal expenditures. But if repayment of that debt became too onerous for the king, then there was a good chance that the king would default on the payment and there would be none to enforce his obligations. Worse, the king might very well decide to imprison the banker altogether.

Centuries later, with the entrenchment of the rule of law, these practices are no longer arbitrary. But it is still a dangerous proposition when the sovereign owes money to someone.

Antrix Corporation, the commercial wing of ISRO, entered into an agreement with Devas Multimedia Ltd. ("Devas") for lease of space segment capacity on its spacecraft to Devas. Devas was to provide multimedia and information services to Devas. However, some years later, Antrix corporation terminated the agreement citing a government policy decision to not provide orbital slots in S Band for commercial use. This was cited as a force majeure event.

This termination led to Devas initiating commercial arbitration and the investors in Devas initiated BIT Arbitrations under India's Bilateral Arbitration Treaties with Mauritius and Germany respectively. The tribunal in the commercial arbitration awarded Devas a sum of USD 562 million with interest at 18% per annum. Similar awards were also made against the Government of India in the respective BIT arbitrations.

At this point, the Central Bureau of Investigation registered an FIR against Devas Multimedia Ltd. for offence of cheating under Section 420 of IPC. Similarly, the Enforcement Directorate also registered a report against Devas Multimedia Ltd.

Antrix Corporation Ltd., with the permission of the government to initiate proceedings under Section 271(c) of the Companies Act, 2013, filed a petition before the National Company Law Tribunal, Bengaluru for winding up of Devas. On the very next day, the NCLT admitted the petition and appointed a liquidator and a few months later ordered the winding up of the company. An appeal against this order of winding up was also dismissed.

The challenge then moved to the Supreme Court where it was considered in *Devas Multimedia Private Ltd. v. Antrix Corporation Ltd.* (Judgment dated 17th January 2022) While the appeal raised several technical grounds, such as limitation and mandatory advertisement not having been made, the important substantive grounds were -

- (a) Incorrect standard of proof on the question of fraud
- (b) Erroneous conclusion on consequences of fraud.
- (c) Findings recorded against shareholders on question of fraud without hearing them.

On the other hand, the government would seek to establish fraud based on the standards laid down in Section 17 of the Indian Contract Act, Section 447 read with Section 7 of the Companies Act, 2013.

The Supreme Court noted that Fraud was not one of the criteria expressly laid down for winding up of a company in Section 433 of the old companies Act, viz. Companies Act, 1956. But such a ground for winding up was indirectly possible via. Inquiries initiated under Section 237(b) and Section 243 of the 1956 Act. Further, it was only a person authorized by the Government who could initiate such winding up. However, it was also necessary to establish that it was just and equitable to wind up the company.

Section 271 of the Companies Act 2013 specifically includes Fraud as one of the grounds for which a company may be wound up. 271(c) of the Companies Act, 2013 provides that a company may be wound up by the tribunal if: -

- (c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

Upon examination of the rival contentions, the Supreme Court declined to reopen the concurrent finding of facts by NCLT and NCLAT. Further, the Supreme Court held that Devas had, under the said agreement, agreed to provide services for which the technology did not exist at the time and Devas did not hold the relevant Intellectual Property to develop and deploy such technology.

Thus, the very formation of the company was held to be for a fraudulent purpose.

But it is relevant also to note that the criminal proceedings against Devas and its directors have not reached a conclusion on cheating and fraud yet. Questions will definitely arise as to whether a finding of fraud could have been returned by the NCLT and NCLAT when the criminal proceedings in respect of the same fraud were pending.

Business is the art of the possible. It is not necessary that a business own the intellectual property or the technology to enter into agreements to provide certain services. However, if the company had misrepresented its technological capability in the agreement, it may be liable for fraud.

There are media reports that another BIT arbitration will be initiated against the government of India where the fairness of this move of winding up of the Company will be tested.





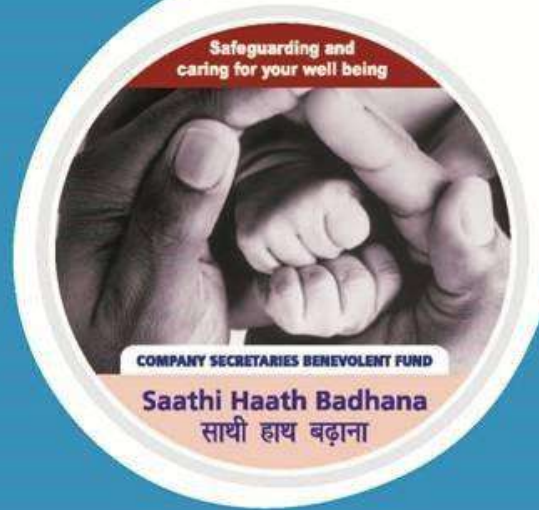
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IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CSBF

**COMPANY SECRETARIES
BENEVOLENT FUND**



What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

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Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

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Advantages of enrolling into CSBF

1

To ensure that your immediate family has some financial support in the event of your unfortunate demise

2

To finance your children's education and other needs

3

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

4

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

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