



# SIRC-Mysuru Chapter e-Magazine

November 2021  
211<sup>th</sup> Edition

### Vision

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

### Motto

सत्यं वद। धर्मं चर। इच्छते ते त्वात्. खिंते ते त्वात्।

### Mission

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## From the Desk of Chairman



**CS Vijaya Rao**  
Chairperson  
Mysuru Chapter

### Dear Professional colleagues,

Time to meet all of you through this eMagazine is a great feeling.

In this editorial I would like to discuss about learning. When does learning ends??? Is it something ends after graduation? Or ends after completing a professional course? Or does it ever end? As you all agree with me learning never ends. It is a lifelong process. Young to the old we learn from everyone. As Brian Tracy said, "Continuous learning is the minimum requirement for success in any field." There are many topic we think "I know it all" But when we get deep in to it or when we hear someone else talking about the same topic we discover how many things which we never thought of. Our Institute has recognized the importance of continuous learning and through the chapter level or Institute level organizes many learning sessions. It is up to us to take the advantage of it and keep learning and growing professionally. Not only the topic specific to our field we need to keep learning other general topics which is important for our daily life. Many of us think we are too busy to attend all these seminars or webinars but as CS N K Jain who is with us in this edition on "Over a Cup of Coffee" rightly said to the question on work life balance, I quote, "*When the president of America - the supposedly busiest person and most powerful person on earth - can go holidays with his family and friends- play golf- have coffee with commoners, I think it is a complete misnomer why we as professionals cannot have time for ourselves and our families and friends.*" I agree with him one hundred percent.

To help in a small way to contribute to this journey, chapter has been organizing many webinars, seminars, study circles etc. for the benefit of our members and students. Let us all attend those and make use of the opportunity and let us all keep learning for our own growth. What are all the activities we did in the month of October is presented in the chapter activities. If you are looking for a particular topic, please let us know we will try to organize a session by calling experts on the topic.

Stay safe

Thanking you,



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**भारतीय कम्पनी सचिव संस्थान**

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# Chapter Activities

## 1. Career Awareness Programme

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

S. No	Date	College Name	Resource Person	No of Students
1	01.10.2021	AMB Composite PU College	CS Vijaya Rao, Chairperson	1

## 2. Students Study Circle Meeting

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

S. No	Date	College Name	Resource Person	No of Students
1	04.10.2021	Capital Gains	CA (CS) Ujwal Jindal	40

## 3. Foundation Day Celebrations

Chapter organized a Walkathon on the eve of 53rd Foundation Day of ICSI on the theme Fit India Fit ICSI. The walkathon has been started from Chapter premises and covered around 3 kms distance. Around 15 members & students were participated in the event. CS Vijaya Rao, Chairperson welcomed the gathering and flag off the walkathon. Refreshments had been arranged for the participants. The Chapter building also decorated with blue color jhallar lights.

## 4. Orientation Program for Executive Students

On 22nd October 2021 Chapter organized the One day orientation program for the Executive level students. The session was inaugurated by the Chairperson CS Vijaya Rao. Various topics have been covered (About the institute, online services, training, exams, syllabus etc.,) in the session which will be helpful for the Executive students. 32 students participated in the program.



## Foundation Day- Walkathon



## One day orientation Programme





# Over a Cup of Coffee With...

Abridged and Edited



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## Concept & Compilation:



**CS Pracheta M**

Practicing Company Secretary



**CS Dr Shobha Sridhar**

Practicing Company Secretary

CS. Naresh Kumar Jain is a fellow member of the ICSI and honorary member of the Institute of Certified Public Secretaries-Kenya; Past Chairman of NIRC, past Council member and former Secretary and CEO of the ICSI; Faculty for various seminars/workshops/conferences; presently, a corporate advisor.

*CS Pracheta: What made you to join CS? Who inspired you to take CS?*

**CS N K Jain:** I passed out Law in 1974 from Delhi University. And started working in law field. I had a colleague who was a CS, he was my inspiration. I joined CS in 1977, passed CS inter in 1978 and final in 1980 and became a member in 1981. Almost 40 years I am a member of this prestigious institute.

*CS Pracheta: Can you briefly share your journey as a CS.? You are from a science background. Did this help you in your CS? Does subject background make any difference in pursuit of CS?*

**CS N K Jain:** I joined a company in Mumbai in secretarial department. I began as CS of a small investment company and tried to understand the nuances of the profession. Then I moved to DCM- a listed company in Delhi- then moved to a listed tyre company in Mumbai as a CS and worked in that group for 20 years in different capacities and finally as Director legal. I also served as a Secretary of ICSI from July 2003 to December 2012. After the tenure, I am engaging myself as a corporate adviser. I have had a very exciting and enjoyable journey as a company secretary.

Coming to the second part of your question, I wanted to be a doctor- I failed in that pursuit because of reservation. So, I joined law course at Delhi University and there I discovered that this is the field which excites me and brings out the best in me. I did pretty well in law and was in merit list. The science stream gave me analytical abilities. Lucky that I did not go into the medical profession- I got a flair for the CS and I am here.

*CS Shobha: You have been part of the ICSI Executive team for a very long time. What are your thoughts on the growth of profession? What does the Executive team at ICSI expects from its members?*

**CS N K Jain:** The CS profession has had a very exciting journey in last over 50 years - from the time CS was considered as a secretary to MD or a director to the present day where CS is a principal officer or chief compliance officer and mandated as KMP. This reflects the enormous confidence and trust of the industry, government and regulators. Being

involved in the drafting of companies bill 2005-2012 and I am aware how the regulators have thought us to be the rightful professional for inclusion in the definition of KMP. With this rising expectation, there is a huge challenge. Are we coming up to meet this rising - constant up scaling expectation? Our profession has grown from the scratch - the contributions of our predecessors have been tremendous. Today we are no less than any other profession or professional.

Expectations from members is far more substantial. One of the natural expectations from a company secretary is compliance management and now it is part of governance structure. Many big companies have collapsed due to non-compliance and I would put a high value to compliance.

The second part of expectation is Governance and every stake holder talks of governance. For sustainability of a company, good governance is the core issue and for good governance, Company secretary is the core professional. The CS must ensure he sets up a proper governance structure in the company and keep pace with changes and adopts the best practices regularly.

The third expectation is that a CS should be a problem solver - everyone wants a solution. If there is a problem, there is a solution and finding the solution is in your hands. Be a part of the team which is a part of solution and not be a part of team looking for a problem.

Expectations from the point of Eternal stakeholders - government, regulators, Industry etc -Look at CS as a professional who helps them in achieving the vision and mission of public policy. Effective implementation of public policy for government has been entrusted to the professionals by following laws of the land, rules, and regulations.

Role of a CS as an Independent director should be taken seriously as CS is best suited to be independent directors and if you sit on board, you should deliver and for this, we require to do lot of homework. This will bring laurels and credibility to the profession.

Think big - that is the need of the hour. Don't get entangled into small petty things. Covid is practically behind us and what is ahead of us is a series of reforms, massive investments, green field projects, mergers, amalgamations, series of IPOs and in the next 5-10 years you will see so much of economic activity- Professional who is needed for this economic activity is CS who must think big.

***CS Pracheta:** You have been a part of Board Leadership Program of Global Corporate Governance forum and also have been a faculty of few programmes by this forum. What are 3 essential qualities of a good Board leader.*

**CS N K Jain:** There are many qualities that make a good leader - I have not just 3 but about 5-6 qualities required for a good leader.

1. Needs to be inspirational. I want people to be inspired and work because they are motivated. He must have command, credibility and must be hardcore optimist.
2. You must be able to take timely and quick decisions. Your risk appetite must be high. I would respect a person who has taken a risk and failed as compared to a person who has not taken a risk at all and succeeded. Don't become irrational. But risk has to be based on logic and reasons.
3. Leader must have the vision and foresightedness as to what is the roadmap for 10 years ahead. He must have the ability to be future -ready and prepare his enterprise to meet and beat competition.



4. A leader must have the ability to adapt to changes - so many changes keep happening around us; he should be prepared to adapt to the changes - not only himself but his organization too. Change management should be his forte.
5. A leader must be a great listener. A good leader listens to everybody and respects dissent. It is important to have a good feedback system.
6. A leader must be a hard core learner.

**CS Shobha:** *How do you define Success?*

**CS N K Jain:** Success is a state of mind and not an abstract. If I am striving to do something and I achieve it, I will call it a success - which is a very limited view according to me. There is always a feeling that there is more to achieve - such feeling brings progress. Sense of achieving success is very subjective.

**CS Pracheta:** *What is your mantra to overcome the professional challenges?*

**CS N K Jain:** I have very strong views on this - I mention this very fascinating quote which I read in a book- “progress happens when you move from zone of comfort to zone of discomfort” If you don’t feel shy to face challenge- you will move to new area. Otherwise you remain where you are without making any progress. Don’t be like a frog in the well. Diversity as a professional will increase when you move from comfort to discomfort - that is the challenge, you will learn something new and grow as a professional. When you make an issue as a non-issue by resolving it, that’s the mantra for overcoming challenges.

**CS Shobha:** *We are eager to know your other interests.*

**CS N K Jain:** On the professional front, I love teaching and training. I do a number of board leadership training programmes. I can see the change in the attitude of the directors who at the beginning of the training session will have “I know all” feeling and by end of the session - they have sensed that there are many things yet to learn- they reach out to you. These training programs are exciting and fulfilling. On the personal front - I love travelling with family and friends - go around the world, travel in India, I love nature and want to invest on my health. I love spending time with my grandchildren.

**CS Pracheta:** *Your thoughts on work life balance- especially for the youngsters stepping into the profession.*

**CS N K Jain:** It is a real dilemma. When the president of America -supposedly busiest and most powerful person on earth - can go on holiday with his family and friends- play golf- have coffee with commoners, I think it is a complete misnomer why we as professionals cannot have time for ourselves and our families and friends. I am not ready to take this argument. Don’t burn yourself. To work hard and keep a healthy mind, you need a healthy body and good heart, and this can happen when you spend time with your loved ones. You have to find time. Out of 24 hrs you can dedicate 4 hrs to yourself. Regulate your time. Work life balance is extremely important. I remember a speaker from Pondicherry mentioned when asked about arriving at solutions by “brainstorming” issues said - that is the difference - you should “brain still” the issue - still the brain. Storming the mind will distort. With a cool mind think about it. I would say work-life balance is not only possible but very essential.

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

**CS N K Jain:** Before I speak of the core values - I will tell you I have weaknesses which have hindered my growth- I am very shy by nature- don't like to be in the limelight, weak at liaison and poor in building new relationship. I am very straight forward- I tell what I want to without bothering whether the other person likes it or not. My core values which I try to follow - I always maintain high standards of ethics and integrity. Sometimes people laugh at it but it pays you in the long run. It brings credibility in individual which people notice about it. I want to be honest to myself -irrespective of whether other person likes it or not. I am good in imbibing changes. Instead of running away from change, I would deal with the change with firm hands. I am a hard core optimist. Pessimism is not in my life. I am a very good learner - I can learn from anyone - be it a small child, junior, peer, senior; anybody could be a teacher to me. They are adding value to you- why not. I try to remain humble, polite and try to maintain empathy for others.

*Success is a state of mind and excellence is not an accident. All your dreams can come true through hard work, perseverance, determination, commitment, passion, practice focus, sacrifice, hunger for knowledge. Willingness to always learn, and most of all, love of what you are doing.*

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



**"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!!!**

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# The Curious case of “Messi”



**CS Anandteerth Hipparagi**

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## Judgment in Joined Cases C-449/18 P EUIPO v/s Messi Cuccittini and C-474/18 P J.M.-E.V. e hijos v/s Messi Cuccittini

In August 2011, the footballer Lionel Andrés Messi Cuccittini filed an application with the European Union Intellectual Property Office (EUIPO) for registration of the figurative sign “MESSI” as an EU trademark, inter alia for sports and gymnastics clothing, footwear and equipment.

In November 2011, Mr Jaime Masferrer Coma filed a notice of opposition to the registration of the mark applied for by Mr Messi Cuccittini, alleging a likelihood of confusion with the EU word marks ‘MASSI’, registered, inter alia, for clothing, footwear, cycling helmets, protective clothing and gloves. It is noteworthy that the same company was successful in another trademark case before the General Court. EUIPO’s decision upholding the application lodged by the Italian cycle manufacturer *Masi* for a declaration of invalidity in respect of the trade mark ‘MASSI’ was annulled.

In 2013, EUIPO upheld the opposition. Mr. Messi Cuccittini lodged an appeal with EUIPO against that decision. In April 2014, EUIPO dismissed the appeal, due, essentially, to a likelihood of confusion between the signs MASSI and MESSI.

Mr Messi Cuccittini then brought an action before the General Court of the European Union for annulment of EUIPO’s decision. (It is important to note that the Brazilian football player Neymar has also been successful in another trademark case before the General Court. (*Moreira v EUIPO - Da Silva Santos Júnior (NEYMAR)*). By its judgment of 26 April 2018, the General Court annulled that decision, considering that the football player’s reputation counteracted the visual and phonetic similarities between the two signs and excluded any likelihood of confusion.

Later, EUIPO and the company J.M.-E.V. e hijos lodged appeals against the judgment of the General Court. The Court of Justice dismissing both appeals observed the following:

- a) The General Court did indeed take into account the perception of the marks MASSI and MESSI by the whole of the relevant public.
- b) Just like the reputation of the earlier mark, the possible reputation of the person who is applying for his name to be registered as a trademark is one of the relevant factors for the purposes of assessing the likelihood of confusion.
- c) The question of the reputation enjoyed by Mr Messi Cuccittini had already been in issue in the proceedings before EUIPO.
- d) The General Court was correct to find that, given that the reputation of the name Messi, as the family name of a football player who is famous throughout the world and as a public figure, constituted a well-known fact.

- e) The matters that were available to EUIPO at the time it adopted its decision and which it should have taken into account in its assessment of the conceptual similarity of the signs MASSI and MESSI.

The Court of Justice dismissed the appeal by the clothing brand MASSI and EUIPO against the annulment, saying the General Court was correct to say Messi's reputation was a relevant factor in establishing a difference between the player's brand and the cycling company.

Source: Court of Justice of the European Union, PRESS RELEASE No 108/20, Luxembourg, 17 September 2020.



## Fast Track Merger (FTM) Under Section 233 of Companies Act, 2013



**Priyanka Hegde, B.com**  
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The introduction of Fast Track Merger vide section 233 of Companies Act 2013, and Rule 25 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as led to a vital change in the M&A regime. FTM provide for a very simplistic and convenient procedure for mergers between small companies and mergers between holding and subsidiary companies with lesser compliance.

Prior to introduction of Fast Track Merger there was a unified merger procedure for all companies which was included approval from the Tribunal (NCLT) and which was difficult for small companies who have fewer resources to meet all the obligations precedent to M&A. Hence, FTM is an encouraging tool for small companies to get expanded. However, as merger between holding and subsidiary companies is not subject to major market risk it is not necessary for such strict scrutiny. Hence, Fast Track Merger provides expletive atmosphere for those who wants to expand their business without any unnecessary delays and complications.

### Definition of Amalgamation:

The amalgamation is defined as the combination of one or more companies into a new entity. It includes:

1. Two or more companies join to form a new company
2. Absorption or blending of one by the other

Amalgamation is the type of corporate restructuring by which two or more companies are combined together to form a new entity or one or more companies are to be absorbed or blended with another as a result the amalgamating company loses its existence and its shareholders become the shareholders of the new company or amalgamated company.

### **Legal framework for Fast Track Merger:**

Section 233 of the Companies Act, 2013 has introduced the concept of Fast Track Mergers. This section stipulated the procedure for the Merger and Amalgamation between small companies and merger and amalgamation between holding and subsidiary companies. It exempted small companies and holding and subsidiary companies from the regular merger procedure as stipulated under section 230-232 of the Companies Act, 2013 along with Rule 25 of the companies (Compromises, Arrangements and Amalgamations) Rules, 2016 lay down the entire legal framework of Fast Track Mergers.

### **Applicability of Fast Track Mergers:**

The scheme of Fast Track Merger can be entered into by the below mentioned entities:

#### **A) Between two or more small companies:**

Two or more small companies may enter merger between themselves. As stipulated in the section 2(85) of the Companies Act 2013, "Small Company" means a company, other than a public company-

- i. Has a paid-up share capital of not more than INR 2 crore or such higher amount as may be prescribed or
- ii. Has a turnover of not more than INR 20 crore or such higher amount as may be prescribed as per the profit and loss account of the immediately preceding financial year.
- iii. Which is not a holding company or a subsidiary company.
- iv. Which is not a company registered under section 8 or
- v. Which is not a company or body corporate governed by any special Act.

#### **B) Between a holding company and its wholly owned subsidiary company:**

Holding companies desiring to merge with its wholly owned subsidiaries are required to make application as may be prescribed for this purpose.

Recent amendment in FTM:

Rule 25 of the companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021

The new amendment inserted section 1(a) to the existing rule 25 wherein:

Fast Track Merger can now be entered into between any of the following class of Companies:

1. Two or more start-up companies or;
2. One or more start-up company with one or more small company.

For the purpose of this rule "Start-up company" means companies as recognized by the Department for promotion of Industry and Internal Trade which fulfills the below mentioned criteria:

- A company incorporated or registered in India with up to 10 years from its date of incorporation.
- With annual turnover not exceeding 100 crores in any of the preceding financial years.
- Is engaged in innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

## **Process of Fast Track Merger:**

There are two types of companies in the merger process.

### **1. Transferor company:**

A transferor company is the one that is amalgamated into the other companies.

### **2. Transferee company:**

A transferee company refers to the company into which a transferor company is amalgamated.

## **The Merger and Amalgamation would involve the following steps:**

**Step 1:** First of all, both the companies need to check their Articles of Association (AOA) to assess if they have authority to enter into a merger. If not, AOA need to be amended accordingly.

### **Step 2:** Convene a Board meeting

Both the transferor and transferee company need to convene a Board meeting and pass resolutions to approve the scheme and to fix the date and time for a shareholders and creditors meeting.

### **Step 3:** Notice of the proposed scheme:

Both the transferor and transferee company need to send a notice to the Registrar of Companies (ROC) and Official Liquidator (OL) of their respective regions inviting suggestions/objections to the scheme if any, within 30 days of issuing notice in Form CAA 9 with following attachments:

- Copy of the scheme
- Shareholding pattern of the transferee pre- and post-merger
- Last 3 years audited financial statements
- Memorandum of Association (MOA) and Articles of Association (AOA)
- Board Resolution
- Valuation Report

### **Step 4:** Declaration of solvency:

Both the transferor and transferee companies are required to file a declaration of solvency with their respective ROCs in Form CAA 11 before the meeting of shareholders and creditors is convened.

### **Step 5:** Convening a meeting of shareholders:

Both the transferor and transferee company must convene a shareholders meeting and notice for which shall be sent 21 days prior to the meeting. The notice shall contain the details of merger and copy of the scheme and copy of the declaration of solvency. If any objections or suggestions have been received from the ROC or Official Liquidator would be discussed and voted in the meeting.

### **Step 6:** Convening a meeting of creditors:

Both the transferor and transferee company must convene a creditors' meeting and notice for which shall be sent 21 days prior to the meeting. The notice shall contain the details of merger and copy of the scheme and copy of the declaration of solvency. The scheme has to be approved by 9/10th of the creditors or class of creditors of the respective companies.

**Step 7: Filing of the scheme:**

Transferee Company needs to file a copy of the scheme with Regional Director with the results of all the meetings. A copy of the scheme along with Form CAA 11 is also required to be formed with the ROC in Form GNL 1 and with the official Liquidator shall be hand-delivered or sent through speed post or registered post.

**Step 8: Approval of scheme by Regional Director:**

If the ROC or the Official Liquidator approves the scheme, then Regional Director shall issue a confirmation and register the same. If the ROC or the Official Liquidator have any objections same can be conveyed to the Regional Director.

If in the opinion of the regional director that the scheme is not in public interest then it may file an application in form CAA 12 before the Tribunal, to consider the scheme under section 232 (regular scheme).



**Step 9: Filing the confirmation order with ROC:**

Both the transferor and transferee companies have to file a copy of the confirmation of the scheme from the regional director to the office of the ROC with Form INC-28 within 30 days of the receipt of the confirmation of the scheme. The ROC shall consider the scheme and issue a confirmation to the companies and such confirmation shall be communicated to the ROC where Transferor Company or companies were situated.

**Benefits of Fast Track Merger:**

No requirement to get approval from the National Company Law Tribunal

1. No requirement of issuing public advertisement
2. Lesser administrative burden
3. Lower merger costs
4. Less time consuming
5. No court convened meeting

**Post-merger effect:**

The registration of the scheme shall have following consequences:

1. The transferor company shall stand dissolved without process of winding-up
2. All the assets and liabilities of the transferor company shall transfer to the transferee company.
3. Any charges created on the properties of the transferor company will be transferred to Transferee Company.

4. If there any legal proceedings pending against Transferor Company shall be continued by or against Transferee Company.
5. Where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.
6. Payment of any social benefits of employees will be the responsibility of Transferee Company.
7. If Transferor Company had paid any fee on its authorized capital prior to its merger with the transferee company shall be set off against the fees payable by the transferee company on its authorized capital enhanced by the merger.

**Effect of merger/ amalgamation on ESOP holders:**

In any corporate restructuring scheme such as merger, amalgamation, demerger, acquisition, etc. (“M&A”), the shareholders of a transferor company are required to compensate through a share swap in the ratio that will equate the pre- event and post event value for the shareholder.

**Applicability of stamp duty on merger:**

The Central Government has exempted the stamp duty payment on instrument involving transfer of property between companies limited by shares as defined in the Indian Companies Act, 1913, if:

- i. at least 90 percent of the issued share capital of the transferee company is in the beneficial ownership of the transferor company, or
- ii. the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 percent of the Issued share capital of the other.

An exemption was granted on payment of Stamp Duty in the circular issued in the year 1937, when there is an amalgamation/merger between holding and subsidiary company. Delhi High Court made reference to this circular in the case of Delhi Towers Ltd. Vs. GNCT of Delhi.

On the other hand, stamp duty is payable on such orders, being an instrument liable to duty as a Conveyance Deed as was held in Hindustan Lever Ltd. Vs. State of Maharashtra (2003) 117 Comp Cas SC 758, Emami Biotech Ltd (2012).

Anyway, stamp duty being a state subject, the above would only be applicable in those States where the State Government follows the above stated notification of the Central Government otherwise stamp duty would be applicable irrespective of the relations mentioned in the said notification.

Imposition of Stamp Duty is the discretion of the State Government, hence applicable in only those states that have adopted the said circular.

**Conclusion:**

The intention behind the introduction of Fast Track Merger is appreciable and this scheme is undoubtedly a welcome move taken by the Central Government. Having excluded the intervention of National company Law Tribunal (NCLT) is not only reduces the burden on the tribunal but also encourages faster disposal of such schemes. It helps companies in expansion and diversification of their business in a faster and simpler way with low cost and time.

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2. <https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MDY=&docCategory=NotificationandCirculars&type=open>



# Limited Liability Partnership Amendment Bill 2021



**Bhargavi Medisetty**

*B.Com., L.L.B., FCS*

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## Introduction

LLP is an alternative corporate business Vehicle that gives the benefits of limited liability of a company and the flexibility to make internal structure as that of a partnership thus it carries benefits of company and flexibility of traditional partnership as well. The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. A Limited Liability Partnership (LLP) is a hybrid model of a partnership firm and a company in which some or all partners (depending on the jurisdiction) have limited liabilities. Furthermore only LLP agreement itself provides all the doctrines i.e, MOA & AOA, which is available at public domain for inspection as well and aims at corporate governance.

After the introduction of the LLP Act 2008, since it came into effect in 2009 for the first time it underwent with changes and amendments. Further THE LIMITED LIABILITY PARTNERSHIP (AMENDMENT) BILL, 2021 was introduced in the both houses of Parliament and the Union Cabinet gave its approval on 28th July, 2021 and received the approval of the President on 13th August, 2021 and became Limited Liability Partnership Act, 2021. A total of 30 amendments have been made to the LLP Act 2008.

## Principles underlying for the Amended version of LLP:

The first and foremost principle is all about taking forward the vision of the Government of India is great ease of doing business for law abiding corporates and enable a friendly kind of environment to encourage start-ups.

Taking forward this vision, anything towards minor compliances related default which are technical and procedural in nature which does not involve any element of fraud or intent to deceive, where there is no mala fide intention or injury to the public, should not punish corporate or stake holders with criminal proceedings. So Decriminalisation of offences

are introduced to remove the fear of criminal prosecutions for non- substantive, minor and procedural omissions and commissions in the normal course of their business transactions.

Non compliances which are more appropriately dealt with under other laws, for classic example The Contempt of court Act contains the provisions for non-compliances with the tribunal, took the view that already when other act is dealing with it then there is no need of specific requirement for the tribunal to have a specific rules and this amended to remove this offences from the Act.

However, those defaults which involve the substantive defaults which intent to defraud, The Act is amended to increase the maximum imprisonment term from two year to five years.

By introducing Small LLPs the Government of India encourages business class to incorporate LLP's and to make it popular for Start-ups which encourages the budding entrepreneurs and helps in Conversion of Partnership firms into LLP' wherein the Cost are much less, compliances are less, compare to regular LLPs the defaults in small LLPs was reduced thereof.

Introduction of Special courts and In-house adjudication mechanism framework, with this simple mechanism minor defaults which are procedural in nature they can be easily dealt with whereby the default is objectively determined and can be take care off at the same time the stake holders are at relief on stigma of going to criminal court for facing the procedures. Special courts helps in reduction of cost of litigation and time of litigation and everything can be mitigated.

#### **HIGHLIGHTS OF THE BILL:**

- Decriminalization of certain offences
- Concept of Small LLP introduced in line with small companies
- Special courts for speedy trial of offences

#### **Other Amendments:**

- Resident of India
- Change in the name of LLP
- Increase in punishment in case of fraud
- Prescribing Standards of Accounting & Standard of Auditing
- Compounding of Offences
- Reduction of Additional Fee u/s 69
- Appeal and Revision
- Appointment of Adjudicating Officers
- Appeal to Appellate Tribunal
- Penalties

**COMPARATIVE ANALYSIS OF LLP ACT 2008 AND LLP AMENDMENT ACT 2021.**

<b>Particulars</b>	<b>LLP Act 2008</b>	<b>LLP Amendment Act 2021</b>
SMALL LLP	There is no such concept	SMALL LLP is a new concept introduced with this Amendment
Provisions on offences	24 Penal Provisions 21 Compoundable Offences 03 Non-Compoundable Offences	Amendment Decriminalises 12 Offences
Change of name of LLP	Centre may direct LLP to change name. Rs 10000 - Rs. 5 Lakhs fine for failing to comply	Amendment empowers Centre to allot new name. Removes the provisions levying a fine
Punishment for fraud	Jail upto 2 years Rs 50000- Rs 5 Lakhs fine	Amendment increases maximum imprisonment to 5 years
Non-Compliances of NCLT orders	Jail upto 6 months Fine upto Rs.50000	Amendment removes this offence
Reduction of Additional Fee u/s 69	Section 69 of the LLP Act prescribes that any document or return to be filed with the registrar may be filed with a delay up to 300 days from the due date on payment of additional fees of Rs. 100 per day	This section has been amended with a view to reduce additional filing fees on delayed filing of documents or return.  Further, it is provided that different fee or additional fee may be prescribed for different classes of LLPs or different documents or returns required to be filed under the LLP Act

**Detailed Analysis of the Amendments:**

**Decriminalization of certain offences**

The Act seeks to decriminalize offences that are related to minor compliance issues which will ensure ease of doing business. The Act decriminalises certain provisions and imposes penalties in its place such as:

- (i) Changes in partners of LLP
- (ii) Change of Registered Office

- (iii) Filing of Statement of account and solvency
- (iv) Arrangement between LLP and its creditors or partners
- (v) Reconstruction or amalgamation of an LLP

The Act decriminalizes 12 such offences. These offences will be shifted to In-house Adjudication Mechanism (IAM) instead of being treated as criminal offences.

### Concept of Small LLP introduced in line with small companies

Clause (ta) has been inserted to section 2(1) of the Act introducing the concept of “Small Limited Liability Partnership” in line with the concept of “small companies”.

**Small Limited Liability Partnership means a limited liability partnership:**

- (i) the contribution in which does not exceed Rs. 25 Lakhs (or such higher amount not exceeding Rs. 5 crores as may be prescribed) and
- (ii) the turnover of which, as per the Statement of Accounts & Solvency for the immediately preceding financial year, does not exceed Rs. 40 Lakhs (or such higher amount not exceeding Rs. 50 crores as may be prescribed)
- (iii) The Central Government may also notify certain LLPs as start-up LLPs. Small LLPs would be subject to lesser compliances and lesser penalties in the event of defaults.



**Special courts for speedy trial of offences:** A new section 67A has been inserted to provided that the Central Government may establish or designate special courts for speedy trial of offences under the LLP Act.

### The Special court shall consist of-

- (i) A Session Judge or an Additional Sessions Judge (in case of an offence punishable with imprisonment of 3 years or more); and
- (ii) A Metropolitan Magistrate or a Judicial Magistrate of the First class (in case of any other offences)

### Resident of India

(Section 7(1) Explanation)- Meaning of Resident of India for the purpose of Designated Partner the term resident in India means a person who has stayed in India for a period of not less than One hundred and Twenty days (120) during the financial year. Now a person who is resident in India for just 120 days in a financial year can be appointed as designated partner.

### Change in the name of LLP

The LLP (Amendment) Act empowers the Central Government to direct an LLP to change its name if its name is undesirable or is identical to an existing LLP or a registered trademark, within a period of 3 months from the date of issue of such direction. If the company fails to comply with the direction, the Central Government shall allot a new name

to the company in the prescribed manner and the Registrar of companies shall enter the new name in the register of LLP in place of the old name

### **Increase in punishment in case of fraud**

If an LLP or its partners act with an intention to defraud their creditors or for any other fraudulent purposes, every person who is knowingly party to it is punishable with imprisonment of up to 2 years in addition to fine. The Act is amended to increase the maximum imprisonment term from two year to five years

### **Prescribing Standards of Accounting & Standard of Auditing**

(Section 34A)- This is a New Section inserted after Section 34.

“34A. The Central Government may, in consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013,—

- a) prescribe the standards of accounting; and
- b) prescribe the standards of auditing,

As recommended by the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949, for a class or classes of limited liability partnerships.”

### **Compounding of Offences**

Section 39 of the Act at present provides for compounding of offences by the Central Government on payment of an amount which may extend up to the maximum fine prescribed for the offence. Present Section 39 has been substituted by a new section.

The newly substituted section 39 provides that the Regional Director or any other officer not below the rank of Regional Director (authorised by Central Government) may compound any offence under this Act. The amount imposed shall be within the minimum and maximum fine prescribed for the said offence.

If any offence by an LLP or its partners is compounded, then a similar offence cannot be compounded within a period of 3 years

### **Reduction of Additional Fee u/s 69**

Presently, Section 69 of the LLP Act prescribes that any document or return to be filed with the registrar may be filed with a delay up to 300 days from the due date on payment of additional fees of Rs. 100 per day.

This section has been amended with a view to reduce additional filing fees on delayed filing of documents or return.

Further, it is provided that different fee or additional fee may be prescribed for different classes of LLPs or different documents or returns required to be filed under the LLP Act.

A reduced additional fee will lead to ease of doing business for start-up LLPs and small LLPs and help to reduce compliance pressure on them

### **Appeal and Revision**

This is New Section (Section 67C) - inserted after Section 67B.

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.”

#### **Appointment of Adjudicating Officers**

Section 76A has been inserted to the LLP Act to provide that the Central Government may appoint adjudicating officers (not below the rank of Registrar) for the purpose of awarding penalties in the matters of non-compliance or defaults under the LLP Act. Any person aggrieved by the order of Adjudicating Officer may prefer an appeal to jurisdictional Regional Director

#### **Appeal to Appellate Tribunal**

Under LLP Act, appeals against the orders of the Tribunal lies with the National Company Law Appellate Tribunal (NCLAT). The LLP (Amendment) Act further provides that appeals cannot be made against an order that have been passed with the consent of the parties. Further, appeals must be filed within 60 days (or further extended period of 60 days) of the receipt of the order

#### **Penalties**

##### **Penalties Amended**

Sl.No	Section	Particulars of Penalty Clauses Amended
1	Section 10	Punishment for contravention of sections 7, 8 and 9
2	Section 13	Registered office of limited liability partnership and change therein
3	Section 21	Publication of name and limited liability
4	Section 25	Registration of changes in partners
5	Section 30	Unlimited liability in case of fraud
6	Section 34	Maintenance of books of account, other records and audit, etc
7	Section 35	Annual Return
8	Section 60	Compromise, or arrangement of limited liability partnerships

9	Section 62	Provisions for facilitating reconstruction or amalgamation of limited liability partnerships
10	Section 74	General penalties

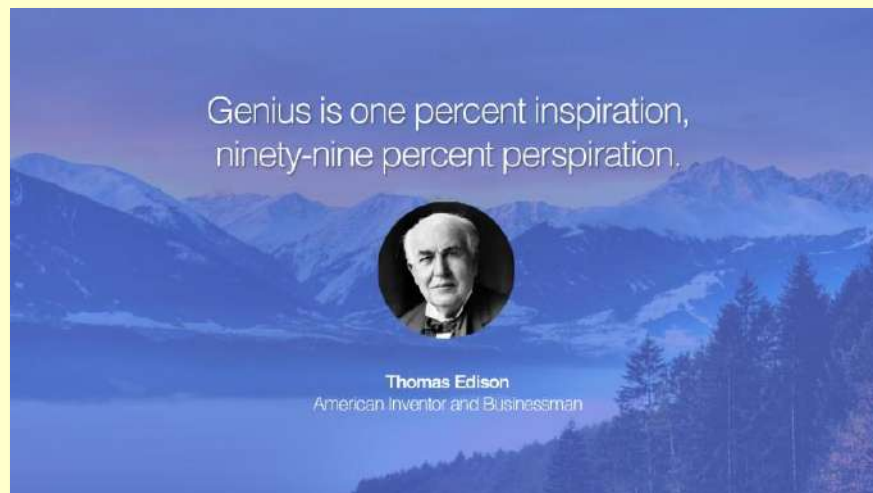
Penalty on non-compliance of any order passed by Tribunal (Section 73) fully omitted.

**General Penalties:** (Section 74)- This Section fully substituted.

If a limited liability partnership or any partner or any designated partner or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the limited liability partnership or any partner or any designated partner or any other person, who is in the default, shall be liable to a penalty of five thousand rupees and in case of a continuing contravention with a further penalty of one hundred rupees for each day after the first during which such contravention continues, subject to a maximum of one lakh rupees.”

**Conclusion:**

Today with the LLPs Structure lot of MSME and unregistered business will fall under this category. Lots of MSME and unregistered business will enjoy the benefit of formal structure with limited liability and legal entity, which provides the accurate data and records of the business. The reduced additional fees will incentivize the smooth record filing and returns of LLP and eventually results in the updated registry for proper regularization.





## FAQs on Different Items to be Transacted in the Board Meetings as Per Companies Act 2013

**Q: Are all companies required to hold Board Meetings every quarter?**

A : As per Section 173 of the CA 2013 and Secretarial Standards 1, all companies whether private limited companies or public companies are required to hold at least four meetings of its Board of Directors in each quarter every year where the gap between two consecutive board meetings is not more than one hundred and twenty days.

As per the Notification No. GSR 466 E dated 05 June 2015, in case of a Section 8 company, the Board of Directors of the company shall hold at least one meeting within six calendar months.

In case of an OPC, if there is only one director on the Board of Director, the quarterly board meetings are not required to be held. However, if the OPC has more than one director or in case of small or dormant companies, it will suffice the requirement, if they hold at least one meeting in each half of the calendar year and the gap between two meetings should not be less than ninety days.

Further, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such OPC, the resolution by such director is entered in the minute's book.

**Q: Can a Company restrict a director from participating in a meeting through video conferencing if he has not given an intimation of participating in the video conference meetings at the beginning of the year?**

A: No, a company cannot restrict a director from participating in a meeting through video conference if he has not given intimation at the beginning of the year. An intimation given to the company or chairman on receipt of the notice calling the board meeting would suffice the requirement for attending the meeting through video conferencing.

**Q: What are the matters which cannot be considered at a meeting held through video conferencing or other audio visual means?**

A: As per Rule 4 of the Companies (Meetings of the Board and its Powers) Rules, 2014, following matters shall not be considered through video conferencing or other audio visual means:

- (i) Approval of annual financial statements;
- (ii) Approval of boards report;
- (iii) Approval of prospectus;
- (iv) Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board of Directors pursuant to Section 134(1) of the CA, 2013;



(v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

However, as per The Companies (Amendment) Bill, 2016, which is yet to be notified, has proposed participation of Directors on certain items at Board Meetings through video conference or other audio visual means if there is quorum through physical presence of Directors.

**Q: Is the notice calling for the board meeting required to state that the meeting is being convened at a short notice?**

A: Yes, as per Secretarial Standards-1 effective from 1 July 2015, a company is required to state the fact that the board meeting is convened at a short notice in the notice calling the meeting. However, the CA, 2013 is silent in this regard.

**Q: Can a director interested in the contract participate in the board meeting or be counted for quorum as per Section 174 of CA 2013?**

A: As per provisions of Section 188 of the CA 2013, if any director is directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement then such director shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting. However, in case of a private limited company, as per notification No. GSR 464E dated 5th June 2015, an interested director can participate and vote in a board meeting after disclosing his interest in the particular transaction. The interested director, will be included for the purpose of determining the quorum of the meeting.



**Q: Can meetings of the Audit Committee be held through video conference?**

A: Yes, the meetings of Audit Committee can be held through video conference except the meeting where financial statements including consolidated financial statements are considered for approval under Section 134(1) of CA, 2013.

**Q: Is a company required to obtain approval of the Audit Committee for all the transaction entered into with related parties?**

A: Yes, as per Section 177 of CA, 2013 read with Rule 6 and 6A of the Companies (Meetings of Board and its Power) Rules, 2014, a company is required to obtain approval of the Audit Committee for all the transactions entered into with related parties.

Also, the Audit Committee has an option to grant omnibus approval which shall be valid for a period of one financial year.

However, as per the Companies (Amendment) Bill, 2016 which is yet to be notified, proposes to insert following amendments:

Ratification by Audit Committee of transactions involving amount not exceeding INR 1 Crores within 3 months of transaction.

Consequences of non-ratification of the transactions.

Exemption from approval of audit committee to transaction between a holding company and its wholly owned subsidiary.

**Q: Which powers of the board are required to be exercised at a duly convened board meeting?**

A: As per Section 179 of CA, 2013 read with Rule 8 the Companies (Meeting of Board and its Powers) Rules 2014, following powers of the Board can be exercised by means of a resolution passed at a duly convened Board meeting:

- a) To make calls on shareholders in respect of money unpaid;
- b) To authorise buy back of securities;
- c) To issue securities, including debentures, whether in or outside India;
- d) To borrow monies;
- e) To invest the funds of the company;
- f) To grant loans or give guarantee or provide security in respect of loans;
- g) To approve financial statements and the Boards report;
- h) To diversify the business of the company;
- i) To approve amalgamation, merger or reconstruction;
- j) To take over a company or acquire a controlling or substantial stake in another
- k) company;
- l) To make political contributions;
- m) To appoint internal auditors and secretarial auditor;
- n) To appoint or remove KMP;

As per the notification dated 5 June 2015, in case of a Section 8 Company, matters referred to in point no. (d), (e) and (f) may be decided by the Board by circulation instead of at a meeting.

**Q: Can a private company grant loan to its directors?**

A: Sec 185 of the CA 2013 restricts loans to directors including private limited companies. However as per the notification dated 6th Jun 2015, a private company may grant loan to its directors subject to fulfilment of all of the following conditions:

No body corporate has invested in the share capital of the company;

Borrowings from banks/financial institutions/any other body corporate is less than twice the paid up share capital of the company and fifty crores whichever is lower; and

There is no subsisting default in repayment of existing borrowings at the time of the transaction.

**Q. Can loan be given by a holding company to its wholly owned subsidiary company or a guarantee given or security provided by a holding company to any loan made to its wholly owned subsidiary?**

A: Yes, as per the proviso to Section 185(1) loan given by a holding company to its wholly owned subsidiary company or a guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempt from the purview of Section 185 of CA, 2013 provided the same is utilised for the principal business activities by the subsidiary.

**Q: Is a private company exempt from Section 186 of CA, 2013?**

A: A private company is not exempt from the applicability of Section 186 of CA, 2013

**Q: Will salary advances made by the Company for only one or two months (without interest) come within the purview of Loan?**

A: There is a difference between advance and loan. Loan is lending of money with absolute promise to repay whereas advance is to be adjusted against supply of goods and services. Advance given to employees against current month's salary will not be in the nature of loan and the same will not fall within the purview of Section 186.

**Q: Is unanimous consent of the board required for entering into a transaction under Section 186?**

A: Yes, as per Section 186(5) of the CA, 2013, consent of all the directors present at the meeting is required for entering into a transaction.

**Q: When is the approval from the public financial institutions not required for entering into transactions under Section 186?**

A: As per the proviso to Section 186(5) of the CA, 2013, approval of public financial institutions is not required under the below circumstances:

The amount involved in the transaction does not exceed 60% of the paid up share capital, free reserves and securities premium account and 100% of its free reserves and securities premium account, whichever is higher; and There is no default in repayment of loan instalments and interest to public financial institutions.

**Q: Which are the transactions covered under Section 188 of the CA, 2013?**

A : The following transactions are covered under Section 188 of the CA, 2013:

1. Sale, purchase or supply of goods or materials;
2. Sale or disposal of or buying of property of any kind;
3. Leasing of property of any kind;
4. Availing of or rendering any services;
5. Appointment of an agent for purchase or sale of goods,
6. materials, services or property;
7. Related parties appointment to any office or place of profit in the company or its
8. subsidiary or associate company;
9. Underwriting of subscription of any securities or derivatives.

**Q: Can Company provide interest free loans?**

A: No, the Company shall not provide any loan without interest. As per Section 186(7) of the CA, 2013, no loan shall be given at a rate lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

**Q: Which are the transactions that would not require approval of the shareholders under Section 188?**

A: As per Section 188(1) of the CA, 2013, following transactions do not require approval of the shareholders under Section 188 of the CA, 2013:

Transactions in ordinary course of business and on arm's length basis;

Transactions between holding company and wholly owned subsidiary company whose accounts are consolidated and laid before shareholders at AGM.

**Q: Can a member of a private company interested in a particular transaction participate and vote at a general meeting?**

A: Yes, an interested member of a private company can participate and vote at general meeting on matters requiring approval for related party transaction pursuant to exemption Notification No. GSR 464(E), dated 05th June, 2015.

**Q: Can a Director who is also a member of a private company participate and vote at a meeting for the transaction related to payment of remuneration to such directors?**

A: Yes, an interested Director who is also a member of a private company can participate and vote at a meeting to approve the transactions related to payment of remuneration to such Director.

**Q: In what circumstances is the prior approval of Board required for entering into specified contracts or arrangements with related parties under Section 188?**

A: As per Section 188 of the CA 2013, Boards approval is required for the contracts or arrangements with related parties specified in Section 188(1) (a) to (g) which are either not in ordinary course of business or not at arm's length basis. Further, in the case the transactions exceed the prescribed threshold; prior approval by ordinary resolution of the company shall be required for entering such contract or arrangement with related party.

**Q: Which are the transactions exempted from being entered in Register of Contracts and Arrangements in which the directors are interested?**

A: The following transactions are exempted from being entered in the Register of Contracts and Arrangements in which the directors are interested:

Sale/purchase/supply of any goods/services, if the value does not exceed five lakh rupees in the aggregate in any year  
Transaction by a banking company for the collection of bills in the ordinary course of its business

**Q- Which are the different type of companies required to adopt vigil mechanism?**

A: Pursuant to Section 177(9) of the CA, 2013 read with Rule 7 of the Companies (meetings of Board and its Power) Rules, 2014, Vigil Mechanism is required to be adopted by the following companies:

- Every listed company;
- Companies which accept deposits from the public;
- Companies which have borrowed money from banks and
- public financial institutions in excess of fifty crore rupees.





## Virtual reality

Hi everyone. Hope all are safe and sound

In this modern world everything is online and digital, the one who is not constantly updating them self's and their business will stay behind. Using digital platforms and e-commerce for improving the business are common now a days as the business opportunities are more in the wide open world. One who is willing to change can achieve everything. As the world market can be accessed with ease whether for both buying or for selling their products.

Virtual reality is being used by many business to increase their customer user experience and to attract the consumers from all over the world as it gives immersive experience to the users before purchasing their product.

Mainly virtual reality was created in a sense of giving immersive experience for gamers after noticing its potential. It has been used in various fields from education to business sectors.

Have you seen the ads of Lens Kart, yes, a specs manufacturing and selling business chain which has consumer base all over the world is using the advance virtual reality feature which allows the users to try on the various specs designs available inside the app without using any other devices and just by using the camera option available in the smartphones. Like Lenskart there are various other brands which are using the virtual reality to increase the customer experience.

In textile business customers can try on the cloths how it looks on them before buying them in real. And in medicine it can be used to train the surgeons about a specific operation methods are a few examples for the use of virtual reality.

The virtual reality can be used in education fields in teaching most complicated topics like physics and chemistry without and doubts as anything can be made into virtual and can be altered to give immersive experience.

Virtual reality can be used in the various fields to name a few:

1. Construction
2. Tourism
3. Real estate
4. Engineering
5. Sports and many more.



One has to be constantly update themselves in the fields of technology as it is the future. Be safe in this digital world as its deceiving.



# HELP YOURSELF

## *Food for Thought*



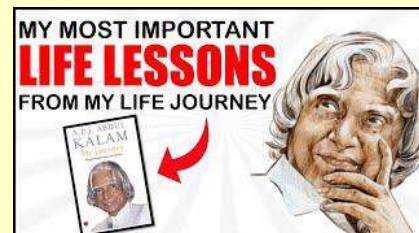
**Aparna U**

Executive Student

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## My Journey

### by Dr. APJ Abdul Kalam



We all know Dr. Kalam as the Missile Man of India and the one who gave this euphoric quote-

'Dreams are not those that we see in our sleep; they should be the ones that never let us sleep.'

The Journey of such a great man we all may not know, and I'd say is a must read for all.

On 'Wings of Fire,' an autobiography of Dr. Kalam along with Arun Tiwari was the first ever article under this column, issued a little over one year ago. 'My Journey' is also an autobiography of Dr. Kalam but it has the lesser known happenings of the magnificent life he lived. It can also be regarded as an easier read when compared to 'Wings of Fire.'

The book starts with the description of Dr. Kalam's father, his beautiful connection with nature, coconut groves and the people of his land. Like in Wings of Fire too, Dr. Kalam mentions about the lessons and teachings learnt from the people of his family and town in great detail which goes to show how great a learner he was which led to all the big achievements he went on to accomplish in his life.

Amongst many other learnings from his father, Dr. Kalam mentions one that stayed with him for many years in his life- "To look for help outside is never the final answer. One must understand the difference between a fear-ridden vision of destiny and the vision that enables us to seek the enemy of fulfillment within ourselves... When troubles come, try to understand the relevance of your sufferings. Adversity always presents opportunities for introspection."

The book is filled with many such insightful learnings that Dr. Kalam got from his family and people of his town that he mentions in great detail and cherishes the memory and knowledge of the same.

This column has always been about good book recommendations. This time, I'd like to name the titles that are Dr. Kalam's favorite, as mentioned in the book that we are talking about today.

Dr. Kalam was an avid reader and has read innumerable books. He mentions three titles to be most dear to him.

First one being Light from Many Lamps, edited by Lillian Eichler Watson. Dr. Kalam mentions that he has read this book numerous times and has helped him whenever he was in the danger of being swept away by his own emotions, this book helped him bring about a balance in his thinking.

The second work that was influential in his thinking was the Thirukural written by Thiruvalluvar more than 2000 years ago. It is a collection of 1330 rhyming Tamil couplets or aphorisms (kural). You would have surely heard a couplet or two if you have Tamil-speaking friends. It is considered as one of the most important pieces of work in Tamil literature.

Dr. Kalam mentions one Thirukural which is dear to him:

Ulluvathellam uyarvullal matratu

Tallinum tellamai nirttut

(Thinking of rising higher. Let it be your only thought. Even if your object be not attained, the thought itself will have raised you.)

The third one and many more titles that Dr. Kalam has mentioned, I'd like you to grab this book and read by yourself. You also get to read about many inspirational insights from the happenings of Dr. Kalam's personal and professional life, about Dr. Vikram Sarabhai and many tales of science and spirituality that you will get to read nowhere else. Hurry up and don't miss this gem!



## Regulatory Updates



Compiled by:

**Mathruka B M**

Professional Student  
Mysore

Companies Act, 2013

Updates on Circulars

MCA had received a representation seeking extension of due date for filing the statement of Account and solvency without paying additional fee by LLP's, considering the same MCA has allowed LLP's to file Form-8 for the financial year 2020-21 without paying additional fee up to 30th December, 2021.

### **General Circular 16/2021**

MCA has decided, considering the various representations received, to relax the additional fee up to 31.12.2021 for filing e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and MGT-7, MGT-7A in respect of the financial year ended 31.03.2021. During such period, only normal fee shall be payable for filing of the aforementioned e-forms.

### **General Circular 17/2021**

In continuation to the Ministry's General Circular number 15/2021, considering the disruption caused by the pandemic and representation received, MCA has decided to Substitute the word and figures "31st October, 2021" with "30th November, 2021" in the said General Circular. Now the Cost Audit Report by the cost auditor can be submitted to the Board till 30th November 2021.

**General Circular 18/2021**



## Delhi Diaries



**Vikram Hegde**, Advocate

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# Civil Remedies for Corporate Problems - ZEE Entertainment V. INVESCO Developments

The world of corporate law has long been segregated into its own set of tribunals, appellate tribunals and authorities and has hence been kept outside the purview of the regular civil courts. However, it is not unheard of for a dispute rooted in the Companies Act to find its way to the regular Civil Courts, especially when the power of the Civil Court is exercised by a High Court which has the power to entertain Original Suits. Only the High Courts of Delhi, Bombay, Calcutta and Madras are empowered to hear suits (above a certain value) directly. In all other places, a suit first has to be filed in the Jurisdictional Civil Court and can be considered by the High Court only on appeal.

One such interesting instance is the case of Zee Entertainment v. Invesco Developments decided by the Bombay High Court on 26th of October 2021. The Plaintiff is a well known media conglomerate and the main Defendant, holds 17.8% shares in the Plaintiff Company. In comparison, the so called promoters of Zee hold only about 4% of the equity shares in the company. The dispute arose in this background.



Section 100 of the Companies Act provides for when and how an Extraordinary General Meeting of the company may be called:-

“Calling of Extraordinary General Meeting.

100. (1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

(2) The Board shall, at the requisition made by,—

(a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company within the period specified in sub-section (4).

(3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

(4) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

(5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

\*(6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.”

The Defendants, who had the requisite Share Capital to requisition an EGM under Section 100 (2), did so by way of a notice on September 11, 2021. The Board of the Company was required to call the EGM within 21 days from that date. However, Zee moved the Court seeking declarations that the notice is illegal and invalid as they claimed that it was in violation of several statutes and also that it would cause the Company to violate several laws. In response, the Defendant investor claimed that it was not for the Board to claim that any such requisition notice was illegal or invalid.

The Court noted that whatever be the course of action available to the Board or not, the statute itself provided for the course of action to be adopted by the requisitioning investor themselves, by way of sub section (4) of Section 100, i.e., the shareholders who had requisitioned the meeting were at liberty to call and hold the meeting themselves. Having observed this provision, the Court very curtly observed, “I have ventured this at the forefront as it seems to me too trivial a matter to warrant further attention.”

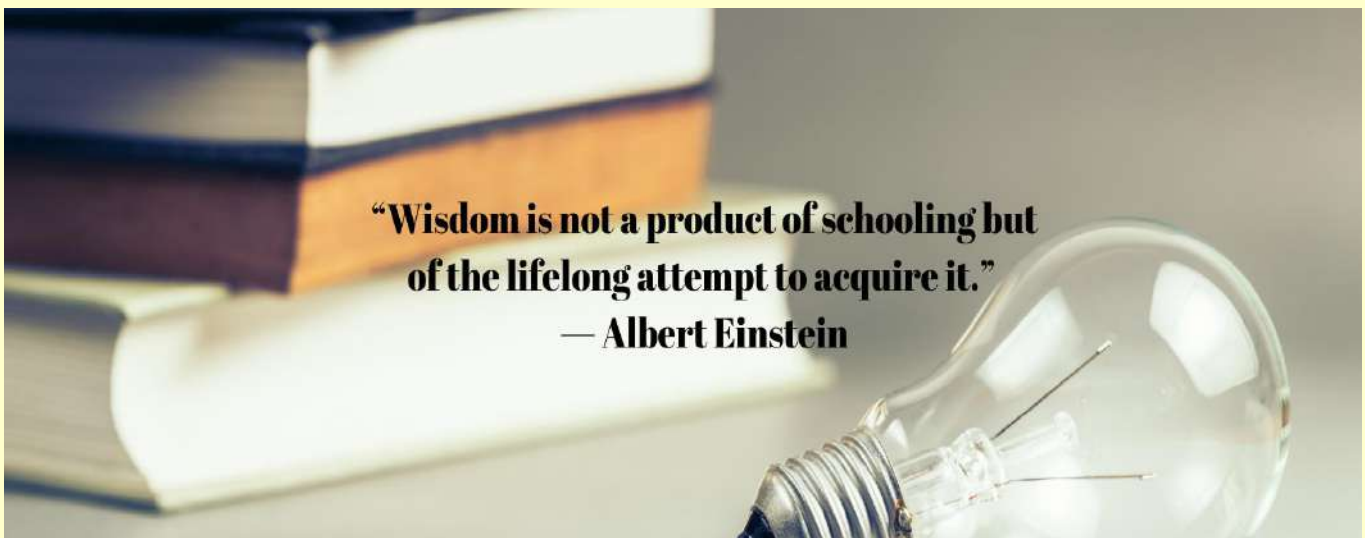
But since the stakes were not trivial at all, the legal issues raised also went beyond the simplistic reliance upon the bare text of the provision.

The Court also posed a question to itself - Whether the Board has the power to declare a requisition invalid is a different matter. But does the Court have the power to do so?

The Defendant claimed Section 430 of the Companies Act reserved issues arising out of the Companies Act to the National Company Law Tribunal and hence this Court did not have jurisdiction. Zee pointed out that the dedicated tribunal for Company issues i.e., the National Company Law Tribunal did not have the power to issue a declaration as sought by them, it cannot be that no court has jurisdiction, hence the Civil Court should exercise jurisdiction.

Though a slew of decisions from Courts across the world were cited before the Bombay High Court, what really turned the mind of the Court was the simple fact that - Section 430 of the Companies Act says that “No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine”. But Section 100 of the Companies Act is not one of the issues the NCLT or NCLAT is authorized to adjudicate upon. Hence the jurisdiction of the Civil Court is not barred, and neither is the jurisdiction of the High Court on its original side, which acts as a Civil Court.

The issue of law might seem trivial, but since the stakes are not trivial, it is almost certain that the issue will be litigated all the way to the Supreme Court. We may not have heard the last word on the matter.

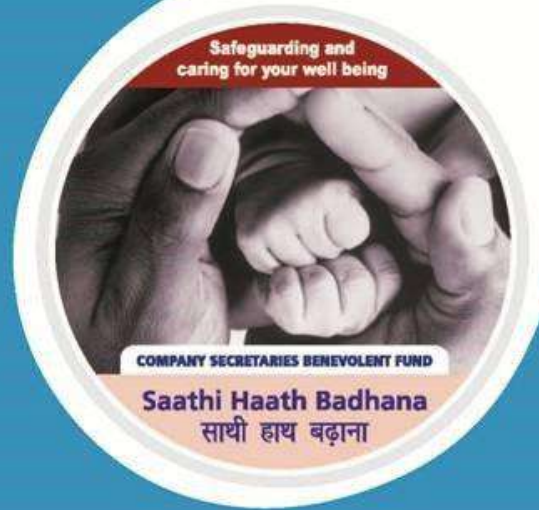




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