MCA:2014

April 07, 2014

Dear Shri M.J. Joseph,

Sub.: Rules under section 204 (1) of the Companies Act, 2013

This is further to our letter of even no. dated April 02, 2014 and the discussion I had with you on April 3, 2014 when I explained to you the concept, the coverage and importance of the Secretarial Audit.

2. Secretarial Audit is basically an audit of compliances of applicable laws as is evident from the format of the report notified in the Rules. Its scope extends to compliances under the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, Foreign Exchange (Management) Act, 1999 (to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings), Securities and Exchange Board of India Act, 1992 and rules and regulations made thereunder and all other laws as may be applicable to the company. This gives the necessary comfort to the Government, Regulators, Board and Key Managerial Personnel of companies, the investors and other stakeholders that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of non-compliance with the provisions of the Companies Act and other important corporate laws.

3. Consequent upon the introduction of Secretarial Audit in the Corporate Governance Voluntary Guidelines, 2009 and to build the capacity of our members in this important area, the Institute brought out a Referencer on Secretarial Audit which deals with the need for Compliance Management, Secretarial Audit Process, Scope and Contents of Secretarial Audit, Periodicity of Secretarial Audit, Reporting with Qualifications, Professional Responsibility and Penalty for Incorrect Audit Report, Guidance on checking compliances under the Companies Act, Securities market Laws, Competition Law, Environmental Laws, and FEMA, and Compliance with Secretarial Standards, etc. It also provides specimens of the Secretarial Audit Reports. A copy of the Referencer is attached, which is thoroughly being revised in the light of the Companies Act, 2013 and the Rules made thereunder.

4. As stated in the representation dated April 2, 2014, the legislative intention is evident from the use of the word ‘bigger companies’ in section 204. It requires every listed company, big or small, and every big company needs secretarial audit. It does not envisage any distinction between private companies or public companies. The rules excluding the private companies from the purview of secretarial audit is ultra vires section 204 of the Companies Act, 2013.
There is strong view in the member fraternity that it is also violative of Article 14 of the Constitution as the classification is devoid of any rationale. The exclusion of private companies, irrespective of their size, from secretarial audit gives a message that the matters covered under such audit such as compliance with applicable laws is not important from public interest and governance perspective.

In view of the above, we once again submit that the secretarial audit must be made applicable to those companies which are atleast subject to internal audit.

With regards,

Yours sincerely,

(CS R. Sridharan)

Shri M. J. Joseph
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CC:  a) Shri Naved Masood, IAS, Secretary, Ministry of Corporate Affairs
    b) Ms. Renuka Kumar, IAS, Joint Secretary, Ministry of Corporate Affairs