

CORPORATE SECRETARY

Hyderabad Chapter



Chairman's Page

From the Desk of Chairman
ICSI Hyderabad Chapter

Newsletter Committee

CS Rahul Jain
Chairman & Editor

Ex-Officio Members

CS Mahadev Tirunagari

CS Ravi Kumar M.V.

Members

CS Shujath Bin Ali

CS Akshita Surana

CS Manoj K Koyalkar

CS Nihita Nagayanti

CS Namita V.

CS Krishna Chaitanya S.

CS Priyanka Rajora

CS Prashant Jain

Dear Professional Colleague

It hovers in my mind that the acceleration of time is at its best. And to meet this challenge the Ministry of Corporate Affairs had also caught the velocity in notifying the NCLT and NCLAT in a great grandeur form. Hope NCLT will extrapolate the CLB and may be advanced to high niches than what CLB could achieve. This can be witnessed along with the ticking of time stretch.

At the same time even our Institute had caught the momentum in over pouring the new reminiscences of various web telecasts and celebrating Capital Market Week.

And your chapter is the sprint runner and marks its presence in opulent manner. This is going to be rock written with our unique program of "Youth Skill Fest – YuvaKaushal" on the occasion of "World Youth Skills Day" wherein we are trying to mobilize the entire student community in and around Hyderabad for showcasing their Skill Ideas and we are hoping to see a gathering of minimum 10,000 students. This event will be organized on 15 July 2016.

Your Managing Committee has decided to give the members of Hyderabad Chapter an impeccable opportunity of throwing knowledge on new avenues of practice in altogether different segment i.e., Indirect taxation and various Intangibles amidst NCLT and NCLAT. I am thankful for the grand response from

Thanks and Regards
CS Mahadev Tirunagari
Chairman

"What I have given to the Country"
"What I have given to the Institute"

members which was organized on 18 June 2016.

Not only that, your managing committee is continuing the conducive environment wherein the members of Hyderabad Chapter can soak themselves with the Research in Companies Act, 2013 with the balance Chapters and their rules. Last time so many jewels in the form of critical cases have been excavated in series I. The excavation continued in the joint program conducted in collaboration with CCGRT as part of series II of the Research program on 24-26 June 2016

Apart from this we are also planning to conduct a program on Startup and Standup India, wherein the members can know the nuances of this niche area. The opportunity to hear this program is on 8 July 2016.

The residential programme on 11-12 June 2016 was well received by the members with their active participation in various activities

And I take this as a further opportunity to serve the esteemed members of Hyderabad chapter and urge all of you to exercise the best choice of APS Member scheme based on your requirements.

And finally an update for your sea expedition i.e., Cruise Trip to Andaman in the month of December-we have obtained few quotations and are still negotiating for further deep discount and will inform you all shortly.

- as a Citizen
- as a Company Secretary

Disclaimer:

For proper appreciation of issues and legal position, readers are advised to read full text of the judgments cited before placing reliance on them. The focus is on the important 'legal principles' held / explained by Courts of Law which may be of interest to the readers and the same needs to be appreciated in totality of facts of the case. Bold and italics supplied wherever considered necessary. Due to space limitation, entire facts and issues of the cases could not be reproduced. Legal Scan is not responsible in any manner.



CS S.V. Rama Krishna

M.Com, CAIIB, FCS, LL.M

(Ph.D. in Law – NALSAR)

Advocate & Corporate Legal Advisor
svramakrish@gmail.com



ARTICLES

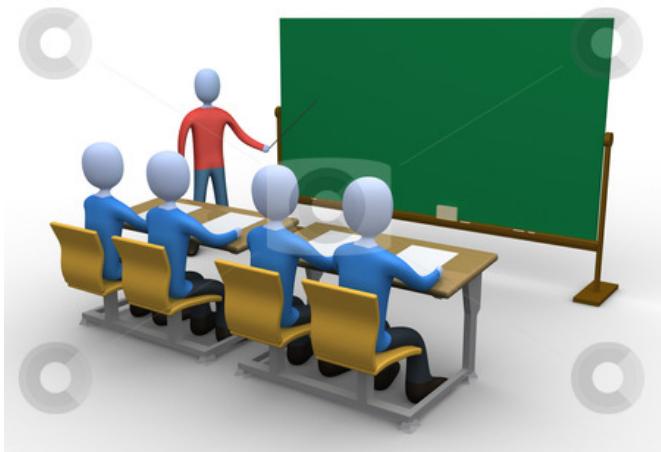
Ref. to statute	Case law – points held
Res judicata & cause of action – CPC - Sec. 11	<p>Citation: <i>Nagabhushanammal (dead) by Legal Representatives vs. C. Chandikeswaralingam (2016) 4 SCC 434</i></p> <p>Issue: principles of <i>res judicata</i> and <i>cause of action</i></p> <p>Points held:</p> <p>The Hon'ble Supreme Court inter alia explained the principles governing "res judicata" and "cause of action" as under:</p> <ul style="list-style-type: none"> i. "Res judicata" literally means a "thing adjudicated" or "an issue that has been definitely settled by judicial decision". The principle operates as a bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies and was decided and has become final, so that the parties are not vexed twice over; vexatious litigation is put an end to and valuable time of the court is saved. (case cited: Sulochana Amma v. Narayanan Nair (1994) 2 SCC 14) (ref. para 15). ii. In order that a defence of res judicata may succeed it is necessary to show that not only the cause of action was the same but also that the plaintiff had an opportunity of getting the relief which he is now seeking in the former proceedings. The test is whether the claim in the subsequent suit or proceedings is in fact founded upon the same cause of action which was the foundation of the former suit or proceedings. (case cited: para 14 of Jaswant Singh v. Custodian of Evacuee Property 4 (1985) 3 SCC 648) (ref. para 16). iii. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the

Ref. to statute	Case law – points held
	<p>maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in 'cause of action'. (case cited: Kunjan Nair sivaraman Nair v. Narayanan Nair (2004) 3 SCC 277). (ref. para 17).</p> <p>iv. The Hon'ble Court further referred to Halsbury's Laws of England (4thEdn.,) i.e. "Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action. (ref. para 18).</p> <p>(NOTE: the above two phrases are given here as these two terms are very important for the CS professionals who are going to practice before NCLT shortly.)</p>
Material fact; necessary party; proper party	<p>Citation: <i>Indiabulls Housing Finance Ltd., New Delhi v. Surya Chakra Power Corporation Ltd., Hyderabad 2016 (3) ALD 64 (DB)</i></p> <p>The Hon'ble Division Bench of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, inter alia, explained the following important terms "material fact", "necessary party" and "proper party" :</p> <p>Material fact:</p> <p>Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the Court may not refuse to exercise its discretionary jurisdiction. (cited – ArunimaBaruah v. Union of India, (2007) 6 SCC 120). The suppressed fact must be material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken. (cited – S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, 2004 (5) ALD 84 (SC) = (2004) 7 SCC 166). [Ref. para 28].</p>



Ref. to statute	Case law – points held
	<p>Necessary Party & Proper Party</p> <p>A “necessary party” is one without whom no order can be made effectively and a “proper party” is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding.</p> <p>[Ref. para 31]</p>
Debenture Trustee is a Secured Creditor for the purposes of SARFAESI Act, 2002 – Sec. 2(zd) (iii)	<p>Citation: <i>Deccan Chronicle Holdings Ltd., Secunderabad v. IL&FS Trust Co. Ltd. Mumbai and others 2016(3) ALD 213 (DB)</i></p> <p>Issue: <i>Whether a Debenture Trustee is a Secured Creditor for the purposes of SARFAESI Act, 2002 u/s 2(zd)</i></p> <p>Points held:</p> <p>The Hon'ble Division Bench of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, inter alia, held that as the word “include” is used in Section 2(zd), the meaning of the expression ‘secured creditor’ must be held to have been given an extended meaning. It not only brings within its ambit banks and financial institutions but also a trustee holding securities on behalf of banks and financial institutions, in whose favour security interest is created for due repayment by any borrower of any financial assistance.</p> <p>[ref. para 12]</p>





CLASS ROOM TEACHING

COMMENCING FROM

Monday, 20 June 2016

FOUNDATION PROGRAMME

EXECUTIVE PROGRAMME

PROFESSIONAL PROGRAMME



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament
6-3-609/5, Anandnagar Colony, Khairatabad, Hyderabad 500 004
tel 040-2339 9541, 2339 6494, 40-2332 5458 email hyderabad@icsi.edu

HYDERABAD
CHAPTER

Contact Chapter Office

6-3-609/5
Anandnagar Colony
Khairatabad
Nr. HDFC ATM
Hyderabad-04

Phone:

040-233 99541
040-233 96494

Email :

hyderabad@icsi.edu

website

www.icsi.edu/hyderabad

Coaching Timings

Morning

7:00 AM – 9:00 AM

9:15 AM - 11:15 AM

Evening

4:00 PM – 6:00 PM

6:15 PM – 8:15 PM

Professional Excellence



DKD Prasad

Practising Company Secretary
D Prasad & Co., Company Secretaries
dprasadandco@gmail.com

Knowledge makes a man unfit to be a slave - Frederick Douglass, an African-American social reformer
Man is born free. Unless such odd circumstances pull him down, any person on this earth loves to be independent and never likes to be controlled by some other. Whereas, it is evident from the fact that some heavenly things play crucial role in creating different levels among the people on the earth. Of which, the most import holy thing is Knowledge. The level of knowledge and his ability of spread, differentiate an individual among the group of individuals.

According to Cambridge Dictionary, Knowledge means 'understanding of or information about a subject that you get by experience or study, either known by one person or by people generally'. Oxford English Dictionary defines Knowledge as Facts, information, and skills acquired through experience or education; the theoretical or practical understanding of a subject.

It is clear from the above definitions that knowledge is not a patented gene inherited from ancestors to any individual by birth. It is a theoretical and practical process by which a person can get mastery over that particular subject, work or any art. The level of knowledge varies from individual to individual which depends on the depth of indulgence into the subject matter and the amount of keen hours that he spent to learn it.

The Profession of Company Secretary:

Profession is a formal qualification with prolonged training. With those basic characteristics, we have N number of professions all over the world, which are all interdependent. Among all of them, very few professions are considered to be more tough, precious and rated above mark in the eyes of general public. By its nature, scope and significance, Company Secretary can unbiasedly be placed among such a few professions. Since recognition of Company Secretaries as an independent profession by the Parliament of India (enacted the Company Secretaries Act, 1980), the role, responsibilities and scope of a Company Secretary are tremendously increasing over passage of time. Today, there are so many new avenues and opportunities are feathering the wings of a Company Secretary. The areas of practice of a Company Secretary are widening by touching new fields of law, finance and taxation. His role in a Company is also changed from just 'One Rank below the Board' to a 'Key Managerial Personnel' (Section 203 of the Companies Act, 2013).



Following list exemplifies some of the areas of practice available for a Company Secretary:

Corporate Services	
1.	Key Managerial Personnel
2.	Due Diligence & Secretarial Audit
3.	Compliance Officer
4.	Technical Member of NCLT
5.	Corporate Law Advisor
6.	Arbitration and Conciliation Provider
7.	Official Liquidator
8.	Representation Services
9.	Valuation Services
Financial Services	
10.	Issue and Listing of securities
11.	Compliance and Certification Services
12.	Securities Auditor
13.	Taxation Services
14.	Corporate Restructuring Services
Other Areas	
15.	Registered Trade Mark Agent
16.	Representation before various Tribunals
17.	Foreign Collaborations, Joint Ventures, Capital Market Services

Capturing Opportunities:

Professionalism is a never ending task. Unless and otherwise polishing regularly, it catches some rust and deteriorates gradually to some extent. A mere certificate from a professional institution or body is not suffice for any professional to retain his position in the market in the long run. Adopting new skills, techniques, penetrating into new areas, inventing new means, and continuous experimenting will append value for the profession. In the process of attaining new skills, it applies more value to the profession and as well as creates more opportunities. In fact, Value and Opportunity are go hand in hand.

A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty
– Winston Churchill, Former British Prime Minister

Attaining Professional Excellence:

As it is mentioned earlier, knowledge is not a patented gene inherited by ancestors. It is a continuous process of learning and adapting, by which one can conquers wild mountains, lays down new paths and sets high standards. Excellence in Profession can be achieved by the following 7 perspectives:

1. Quality in Work
2. Effective Communication
3. Honesty and Transparency



4. Coordination
5. Meeting Deadlines
6. Adapting new Techniques
7. Work – Life Balance

Quality in Work:

We are not only the professional that providing such services to the clients. We are one among the many professionals having equal talent, flair and knowledge. In this competitive world, every client has many options before sealing the deal. Here the quality in work plays predominant role in getting a client and to retain reputation in the long run.

For achieving quality in work, focus is very important. Focus on details of work enhances the quality. Even in case of repeated works, focus is more important lest deviation occurs.

Effective Communication:

In this era of communication, one cannot ignore its preciousness. Primarily communication having 3 stages; (i) Source, (ii) Medium, and (iii) object. Effective Communication consists a powerful and tested medium/channel through which the message from source passes to the Object successfully.

In this stage for Professional Excellence, due care in the following 3 factors enhances the quality of communication.

1. **Confident over the message to be communicated:** Unless we are confident over something, we cannot convince any person about our talent or ease of doing that something for getting works. Here, a thorough study, theoretical and practical knowledge of the subject improves the levels of confidence to transact with.
2. **Knowing about targeted Audience:** The level of Knowledge of our Audience is also varies from person to person. To know about their academic background, experience in the relevant field enables to choose right course of channel and medium to express our thoughts with the targeted Audience.
3. **Content and Style:** It is not an exaggeration to say that, unique content and style either in oral or written communication attracts effectively and get attention of the targeted Audience. For an effective content and style it must be crispy and clear. Avoiding too many words, big phrases which causes boring; is required for an effective communication. Minimizing usage of technical words, unless the object is much familiar with them; is also good for best content and style for effective communication.

Honesty and Transparency:

Ethics is the activity of man directed to secure the inner perfection of his own personality – Albert Schweitzer, a French-German theologian

To build a perfect personality it takes years of hard work, honesty and transparency, but, to collapse that personality built up, it takes few minutes. Reputation over a long period of time is more important in achieving professional excellence. Reputation can be build up with Honesty and Transparency in our daily works.

Truth is the foundation of all values. Integrity, honesty and transparency are the basis of trust and trust is the source of effective and enduring relationship between people or the customer. So honesty



and transparency have to be maintained in every stage, process or activity of the professional work.
(source: Values for Excellence in Professional Work – M.S. Srinivasan)

Coordination:

As an Individual we mean something, but, as a Team we are wholesome. This is the basis for coordination. Here, coordination is of two ways, (i) Internal, and (ii) External.

Internal Coordination refers to in-house cooperation among the assistants, associates, and all other fellow employees in an Organization. Conducive work environment amplifies the productivity of an Organization. Whereas, Boss – worker conditions will surely deteriorate the values and diminish the reputation of Organization at some point of time. Equal opportunities, give and take policies, win-win assignments enhance the quality of work.

External Coordination refers to cordial relations with other entities, Professionals either in the same stream or others. Especially, good relations with other professionals in the same line of activity by sharing ideas, knowledge improves quality in the work. It also enhances the scope of profession in the long run.

Meeting Deadlines:

The most important thing for success of any business or profession is none other than 'Meeting Deadlines'. This is only the main factor that creates frustration among the professionals when unable to meet the ends in time. Consequently, creating mental agony, lack of interest in the profession over a period of time for such professionals. But, proper planning and execution enables one to meet deadlines without any frustration.

Adapting new Techniques:

What is new and proliferate today is outdated tomorrow. In this era of agility, we are witnessing new inventions and technologies every day and everywhere. New inventions surprising the beliefs of human beings. New technologies bringing comfortability to the life. This new Inventions and Technologies touching every corner of the world. No profession, work or Art is exceptional to them.

Continuous study, innovation, adapting new techniques from all sources enhances the quality of profession that paves way into excellence.

Work – Life Balance:

We have only one precious life. What we do on this earth is a means to live better and secured life. Life without work is horrible, Work without life is death. Balancing both of them secures harmonious life.

Life includes personal, family, and community at large. For creating harmony over all the important aspects in life, there must be a clear understanding about 'goals in life and goals of life'. A perfect and healthy work-life balance increases job satisfaction. Many studies also advocated family support for sound profession or entrepreneurship. Undoubtedly, it is a prime factor for accomplishing excellence in any profession or trade.

Before concluding, we can reiterate the significance of Professional Excellence in our field of work. It can be achieved by continuous efforts, training, with all the perspectives mentioned above. A professional with excellence creates his own opportunities than to wait for them to knock his door. Here, it is perfect to quote sayings of Francis Bacon, an English philosopher, that 'A wise man will make more opportunities than he finds'.



Expressions & Impressions Half-a-day Seminar on "Modern Company Secretary in The Tech World on 6 May 2016 at Chapter Premises.



GOING GREEN



CS Namita Vemulakonda

Practising Company Secretary
namita456@gmail.com

Every year in June, we see a plethora of leaders, politicians and celebrities talking about the importance of the environment and urging people to preserve environment. We even see them planting saplings on the occasion of World Environment Day (5th June)! Is protecting the environment only the responsibility of politicians and celebrities? Moreover, is saving the planet a "one-day affair"? And is that, planet can be saved only by planting trees? Are there no other alternatives?

If we as professionals were to chip in, should we also start planting trees on one day of the year? Or is there something we can really do about this?

"Eco-friendly", "Sustainability" and "recycle" have become the need of the hour today. Our actions should be in such a way that the environment doesn't get adversely impacted and our future generations too enjoy the resources in the same way as we are doing now. This is the concept of sustainability. In order to achieve this, we need to adopt eco-friendly policies so as to not disturb the ecological balance.

Often we hear questions like, "Will my using less paper contribute to saving Earth or bettering the environment?" The answer is simple: Just like each drop counts in making an ocean, each of us should contribute in the mission of Going Green! **EVERY EFFORT COUNTS!!**

WHAT IS MY ROLE?

As CS, we are always engaged in documentation and paper-work. Can we altogether avoid the usage of paper? How can we contribute to better our Mother Earth? Let's explore these concepts.

THINK ABOUT THIS

Every day we print on an average at least 10 sheets of paper. We use another 10 sheets as rough draft. This is a stat for 1 single person. Imagine there are 6 people in a small-sized firm/office (including trainees), then on an average, 60 sheets of paper wasted each day! Let's assume the cost of a paper to be as meagre as Rs. 1. 60 rupees are wasted each day. Multiply it by 300 days (the average working days in a year) and you can yourself imagine how much we could have saved!!

POLLUTER PAYS PRINCIPLE

Since paper is the most important resource that we are associated with and printing is the main activity that we do, let's start with Printing.

We have studied in environmental laws (Public Liability Insurance Act, 1991) about the concept of "Polluter Pays"....how about incorporating the same into our offices?



The person who prints quite unnecessarily will have to pay, maybe double the cost of paper he printed!! The message to be sent across is: **PRINT ONLY IF YOU REALLY NEED TO**

Many a times, we find an article/press note/ circular important for our business and take a print of it. But instead of printing, can't we bookmark the page? Can't we utilise technology in the true sense of the word?

There may be some of us who don't feel comfortable reading online. Yes, prints have to be taken in that case, but how about using both sides of the paper to take prints? **Implement double sided printing by default.**

Online notices of meetings can be sent. Similarly, minutes may be circulated through mails. Moreover, most of our work is done through online filing, which by itself eliminates the use of paper in the office. Of course, regulations are in place but there are a lot more things that we can do. Some of the steps include:

- ❖ Start an initiative to set up a recycling station in the Secretarial wing (for those working in companies) and encourage everyone to recycle their cans, bottles, and paper. This initiative should be a hallmark for other departments to follow suit.
- ❖ Turn off the lights and electronic equipment when they are not in use.
- ❖ Use non-disposable kitchen supplies, such as coffee mugs and glasses, instead of plastic or paper
- ❖ Using LED lamps

Aren't these some simple things? Let's try and integrate some simple routines into our offices that will help lessen the impact on the Earth and it goes without saying, most of these steps will end up saving money too. At the end of it all, a greener workplace can mean a lighter ecological footprint and a more productive place to work. CSR for us should mean CS Responsibility!

Let's do our bit to preserve our Planet.



VOLUNTARY SERVICES EXTENDED BY THE MEMBERS DURING THE MONTH OF MAY, 2016

Sl.No	Name of the Members	Nature of the Support/Services Rendered
1	CS. Thirupal G CS Anshul K Jain CS Amit Gupta	Acted as moderators for the series and coordinated the 3 days of first series on Embarking Upon the Voyage of Research
2	CS L.V.V.Iyer	For his addressed at The Insolvency and Bankruptcy Code 2016, and Companies (Amendment) Bill 2016

SERVICE TAX UPDATES



CS RAO K.K.

ARTICLES

- ❖ Krishi Kalyan cess is applicable with effect from 1.06.2016
- ❖ Sr. Advocates providing legal services stands exempted from service tax, when provided to non business entity or to any business entity upto gross turnover of Rs. 10 lakhs
- ❖ Indirect Tax Dispute Resolution Scheme 2016 has been introduced by the Department for settlement of cases pending before Commissioner (Appeals) as on 1.3.2016 irrespective of the amount involved. The applicant has to apply in prescribed forms giving details of the cases pending and upon receipt of acknowledgement he has to pay the tax involved, interest and 25% of the penalty and upon submission of proof of making payment, assessee will get the case settled and immunity from prosecution on that account. The said scheme is effective from 1.6.2016 and beneficial for those who had not preferred appeals to higher authorities are liable to pay indirect taxes to Government.
- ❖ Firms with a turnover of Rs. 10 lakhs who go in for arbitration proceedings will be liable to pay service tax on reverse charge mechanism and the recipient of service is liable to ischarge service tax liability as clarified by the CBEC.

NCLT & NCLAT UNDER COMPANIES ACT, 2013

CONTENT OF ARTICLES

INTRODUCTION

NCLT & NCLAT

- A. Background of NCLT.
- B. Mega Tribunal.
- C. Effect of Notification dated 1st June, 2016.
- D. Dissolution of CLB
- E. Benches of NCLT
- F. Section and Provisions of CA-2013 relating to Tribunal in effectiveness.
- G. Powers of NCLT
- H. Administration of NCLT & NCLAT.
- I. Advantage of NCLT & NCLAT
- J. Scope for Practicing Company Secretaries.
- K. Constitution of NCLT & NCLAT
 - NCLT & NCLAT Consists
 - Qualification
 - Selection of Member
 - Terms

A. Background of NCLT.

It has been more than 14 years that we first heard about National Company Law Tribunal [NCLT] & National Company Law Appellate Tribunal [NCLAT]. But now by MCA Notification dated 1st June, 2016 in exercise of the powers conferred by section 408 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the National Company Law Tribunal to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the said Act with effect from the 1st day of June, 2016.

The Companies (Second Amendment) Act, 2002 provides for the setting up of a National Company Law Tribunal and Appellate Tribunal to replace the existing Company Law Board and Board for Industrial and Financial Reconstruction. The setting up of NCLT as a specialized institution for corporate justice is based on the recommendations of the Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies.

Need of Specialized Courts or Tribunals: The genesis of setting up of specialized tribunals can be traced to the Supreme Court judgment in Sampath Kumar case. In that case, while adopting the theory of alternative institutional mechanism for Supreme Court referred to the fact that since independence, the population explosion and the increase in litigation had greatly increased the burden of pendency in high courts. The supreme court also referred to studies conducted



CS Divesh Goyal

Practising Company Secretary
csdiveshgoyal@gmail.com



towards relieving the high courts of their increase load; the recommendations of the Shah committee for setting up independent tribunals as also the suggestion of the administrative reforms commission for setting up of Civil Service tribunals.

B. MEGA TRIBUNAL:-

NCLT can be called as Mega Tribunal. Because NCLT will CONSOLIDATE the corporate jurisdiction of the followings:

- ❖ Company Law Board.
- ❖ The Board for Industrial and Financial Reconstruction
- ❖ The Appellate authority for Industrial and Financial Reconstruction
- ❖ Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High courts

C. Present Scenario: 1st June, 2016

The Ministry of Corporate Affairs has issued notification for constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with effect from today i.e. 1st June, 2016. http://www.mca.gov.in/Ministry/pdf/Notification_02062016_II.pdf

Chairperson	Hon'ble Justice S.J. Mukhopadhyaya, Judge (Retd.), Supreme Court of India
President	Hon'ble Justice M.M.Kumar, Judge (Retd.)

D. Dissolution of CLB:

According to this notification Company Law Board (CLB) stand dissolved w.e.f. 1st June, 2016. Notification of this section 466 makes last Chairman of CLB as Provisional and first Chairman of NCLT.

E. Benches of NCLT:

Initially NCLT will have eleven Benches, as per list given below.

Two New Delhi	Ahmedabad	Allahabad	Bengluru
Chandigarh	Chennai	Guwhati	Hyderabad
Kolkata		Mumbai	



F. SECTIONS AND PROVISIONS OF THE COMPANIES ACT, 2013 RELATING TO TRIBUNAL NOTIFIED W.E.F. 1/6/2016

Sl. No.	Section	Purpose
1.	Sub-section (7) of section 7 [except clause (c) and (d)]	Legal action for false or incorrect information at the time of Incorporation
2.	Second proviso to sub-section (1) section 14	Conversion of Public to Private Limited
3.	Sub-section (2) of section 14	Conversion of Public to Private Limited
4.	Sub-section (3) of section 55	Rollover of existing redeemable preference shares
5.	Proviso to Clause (b) of sub-section (1) of section 61	Changes in voting rights by Consolidation or sub-division of share Capital
6.	Sub-sections (4) to (6) of section 62	Changes in terms of issue of Debentures to facilitate Conversion into equity shares
7.	Sub-sections (9) to (11) of section 71	Action by Debenturetrustee once the secured Assets becomes insufficient
8.	Section 75	Action against Company by defrauding Depositors by non-payment
9.	Section 97	Power to call for AGM in case of failure by the Company
10.	Section 98	Power to call for meetings other than AGM
11.	Section 99	Punishment for failure to comply with Tribunal Direction regarding Meetings
12.	Sub-section (4) of section 119	Order for inspection in case of failure by the Company
13.	Section 130	Re-opening of Accounts by Authorities
14.	Section 131	Voluntary revision of financial statements
15.	Second proviso to sub-section (4) and sub- section (5) of section 140	Removal or change of Auditor before due Date and Suo Moto action by Tribunal for removal
16.	Sub-section (4) of section 169	Removal of Directors - representation and relaxation of provisions in certain cases
17.	Section 213	Investigation into the affairs of the Company
18.	Sub-section (2) of Section 216	Appointment of Inspectors
19.	Section 218	Protection of employees during investigation
20.	Section 221	Freezing of assets of Company on inquiry and investigation
21.	Section 222	Imposition of restrictions upon securities
22.	Sub-sections (5) of section 224	Action against Company or Directors on inspector's report



23.	Sections 241, 242 [except clause (b) of sub- section (1), clause (c) & (g) of sub- section (2)], 243, 244, and 245	Action against Prevention and Oppression and Mismanagement
24.	Reference of word 'Tribunal' in sub- section (2) of section 399	Order for production of documents by Registrar
25.	Sections 415 to 433 (both inclusive)	Tribunal and its Chairman, Members etc and provisions relating thereto.
26.	Sub-section (1)(a) and (b) of section 434	Transfer of pending proceedings
27.	Sub-section (2) of section 434	Appeal against Company Law Board Order
28.	Section 441	Compounding of offences
29.	Section 466	Dissolution of CLB and consequential provisions

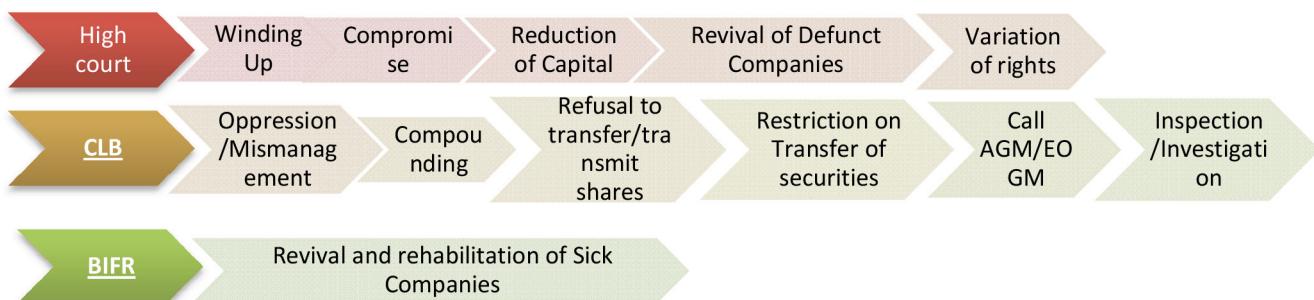
I am not going to discuss much debated thing, whether National Company Law Tribunal ever be constituted. I am going to discuss provisions in this Act; whether they are applicable or going to be applicable or not.

G. POWERS OF NCLT:

The proposed NCLT will have judicial and technical experts who will handle all matters presently being handled by CLB, Company Court and BIFR with much wider jurisdiction in terms of scope of the subjects.

Other powers:

- ❖ Most of the powers of the Company Law Board under the Companies Act, 1956.
- ❖ All the powers of BIFR for revival and rehabilitation of sick industrial companies;
- ❖ Power of High Court in the matters of mergers, demergers, amalgamations, winding up, etc.;
- ❖ Power to order repayment of deposits accepted by Non-Banking Financial Companies as provided in section 45QA of the Reserve Bank of India Act, 1934;
- ❖ Power to wind up companies;
- ❖ Power to Review its own orders.



Compounding of Certain Offences

Section 441. Compounding application for certain offences shall be made before the Tribunal under

Transfer of certain pending proceedings

[Section 434(1)(a)] All matters, proceedings or cases pending before the Board of Company Law Administration immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act.

H. ADMINISTRATION OF NCLT AND NCLAT

Section 415 to Section 433 (both inclusive) has also came into force. These sections deal with administration of NCLT and NCLAT.

415. Acting President and Chairperson of Tribunal or Appellate Tribunal.
416. Resignation of Members.
417. Removal of Members.
418. Staff of Tribunal and Appellate Tribunal.
419. Benches of Tribunal.
420. Orders of Tribunal.
421. Appeal from Orders of Tribunal.
422. Expedited disposal by Tribunal and Appellate Tribunal.
423. Appeal to Supreme Court.
424. Procedure before Tribunal and Appellate Tribunal.
425. Power to punish for contempt.
426. Delegation of powers.
427. President, Members, officers, etc., to be public servants.
428. Protection of action taken in good faith.
429. Power to seek assistance of Chief Metropolitan Magistrate, etc.
430. Civil court not to have jurisdiction.
431. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.
432. Right to legal representation.
433. Limitation.

I. Advantages of NCLT & NCLAT:

- ❖ It shall avoid multiplicity of litigation before various Forums (High Courts, CLB, BIFR, AAIIT). Thus there will be a consolidation of Corporate Jurisdiction.
- ❖ There shall be at least 11 benches of the NCLT, thereby providing justice almost at one's doorstep.



- ❖ This tribunal shall comprise of technical experts who will provide more concrete and precise decision.
- ❖ There will be mixture of judicial and equitable jurisdiction while deciding matters.
- ❖ There shall be reduction in period of winding up from 20-25 years to 2 years.
- ❖ Reduction in pendency of cases, expeditious disposal of cases.

J. SCOPE of Services for PRACTICING COMPANY SECRETARIES under NCLT:

The establishment of NCLT/NCLAT shall offer various opportunities to Practicing Company Secretaries as they have been authorized to appear before the Tribunal/ Appellate Tribunal. Therefore, Practicing Company Secretaries would for the first time be eligible to appear for matters which were hitherto dealt with by the High Court viz. mergers, amalgamations under Section 391-394 and winding up proceedings under the Companies Act, 1956. Areas opened up for company secretaries in practice under NCLT are briefly stated hereunder:

PCS as Member of NCLT: A Practicing Company Secretary can be appointed as a Technical Member of NCLT, provided he has 15 years working experience as secretary in whole-time practice.

Appearance before National Company Law Appellate: Tribunal As stated earlier a Practicing Company Secretary has been authorized to appear before National Company Law Appellate Tribunal.

Insolvency Process: Currently, the law does not support effective participation of professionals and experts in the Insolvency process. There is no shortage of quality professionals in India. Disciplines of chartered accountancy, company secretaryship, cost and works accountancy, law etc can act as feeder streams, providing high quality professionals for this new activity. In fact, private professionals can play a meaningful role in all aspects of process.

Insolvency practice can also open up a new field of activity for service professionals while improving the quality of intervention at all levels during rehabilitation/winding up/liquidation proceedings. Law should encourage and recognize the concept of Insolvency Practitioners (Administrators, Liquidators, Turnaround Specialists, Valuers etc). Greater responsibility and authority should be given to Insolvency Practitioners under the supervision of the Tribunal to maximize resource use and application of skills."

- A. **Winding up:** The National Company Law Tribunal has also been empowered to pass an order for winding up of a company. Therefore Practicing Company Secretaries may represent the winding up case before the Tribunal.
- B. **Compromise and Arrangement:** With the establishment of NCLT, a whole new area of practice will open up for Company Secretary in Practice with respect to advising and assisting corporate sector on merger, amalgamation, demerger, reverse merger, compromise and other arrangements right from the conceptual to implementation level. Company Secretaries in practice will be able to render services in preparing schemes, appearing before NCLT/NCLAT for approval of schemes and post merger formalities



C. Sick Companies

- ❖ Since all powers of BIFR have been entrusted to NCLT ,detecting the Sick companies and providing resolution of the queries and for making reference to the Tribunal for revival and rehabilitation of the Company
- ❖ The provisions also mandated preparation of scheme and seeking approval from the Tribunal as may be required. Thus the practicing professionals could play a pivot role in the same area.

CONCLUSION:

In view of vast opportunities emerging with the establishment of National Company Law Tribunal, the Practicing Company Secretaries should standardize their competencies with the global benchmarks to provide value added services in assisting the Tribunal in dispensation of justice and speedier disposal of matters like merger, amalgamation, restructuring, revival and rehabilitation of sick companies and winding up of companies.

K. CONSTITUTION OF NCLT AND NCLAT:

I. NCLT & NCLAT Consist:

- ❖ There are two classes of members to the National Company Law Tribunal; Judicial Members and Technical Members.
- ❖ The Tribunal shall be headed by the President while the Appellate Tribunal by Chairperson.
- ❖ NCLAT not exceeding eleven members for hearing appeals against the orders of the Tribunal

II. Qualification: (President/Member of NCLT)

S. No.	President	Judicial Member	Technical Member
i.	Is/has been Judge of High Court \geq 5 years	Is/has been Judge of High Court (any period)	Has Member of Indian Corporate Law Service /Indian Legal Service \geq 15 years (out of 15 years at least 3 years to be in the pay scale of Joint Secretary to GOI or equivalent post)
ii.		Is/has been District Judge atleast 5 years	Is/has been Practicing Chartered Accountant at least 15 years
iii.		Has been Advocate of court held a judicial office or as member of a tribunal atleast 10 years	Is/has been Practicing Cost Accountant at least 15 years
iv.			Is/has been Practicing COMPANY SECRETARY at least 15 years

¹ in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies



v.			Person with proven ability, integrity and standing having special knowledge and experience ≥ 15 years (in below mentioned specified areas)
vi.			Presiding Officer of Labour Court/ Tribunal/ National Tribunal (under Industrial Disputes Act, 1947) at least 5 years

III. Qualification: (Chairman/Member of NCLAT)

- ❖ National Company Law Appellate Tribunal, constituting of a Chairperson and not exceeding eleven members for hearing appeals against the orders of the Tribunal.

S. No.	Chairman	Judicial Member	Technical Member
i.	Is/has been Judge of Supreme Court	Is/has been Judge of High Court	Person with proven ability, integrity and standing having special
ii.	Is/has been Chief Justice of High Court	Is a Judicial Member of Tribunal for at least 5 years	knowledge and experience ≥ 25 years (in below given specified areas)

IV. Selection of Members

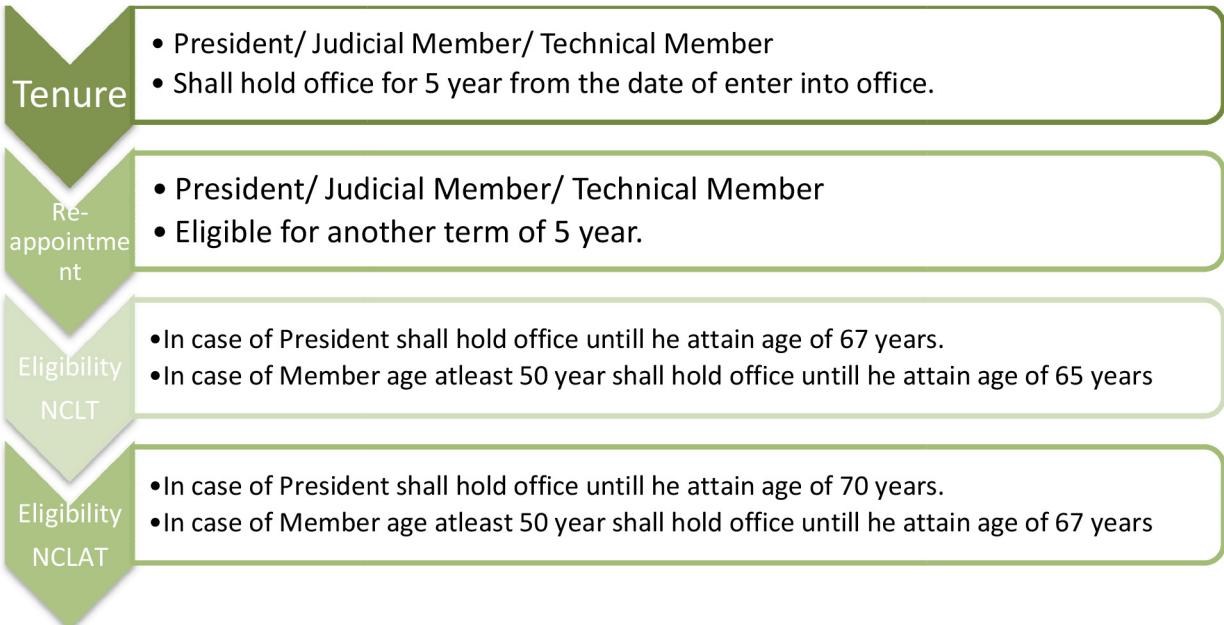
S. No.	President/ Chairman	Judicial Members of the Appellate Tribunal	Members of the Tribunal and the Technical Members of the Appellate Tribunal
i.	Shall be Appointed after consultation with the Chief Justice of India.	Shall be Appointed after consultation with the Chief Justice of India.	shall be appointed on the recommendation of a Selection Committee consisting of

V. Selection Committee Consisting:

S. No.	Position	Selection Committee Consisting
i.	Chairperson	❖ Chief Justice of India or his nominee
ii.	Member	❖ A senior Judge of the Supreme Court or a Chief Justice of High Court
iii.	Member	❖ A senior Judge of the Supreme Court or a Chief Justice of High Court
iv.	Member	❖ Secretary in the Ministry of Corporate Affairs
v.	Member	❖ Secretary in the Department of Financial Services in the Ministry of Finance

² in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.





Expressions & Impressions One Day Seminar Jointly with FTAPCCI on The Insolvency and Bankruptcy Code 2016, and Companies (Amendment) Bill 2016 on 28.05.2016



RBI relaxes NBFC registration norms



CS Dheeraj Kumar Sharma

Deputy Manager- Financial Services Group
Vinod Kothari Consultants Private Limited
dheeraj@vinodkothari.com

Introduction

RBI in its First Bi-monthly Monetary Policy Statement - 2016-17, acknowledged that in order to make the process of registration of new NBFCs smoother and hassle free, it should opt for reforms to simplify and rationalise the process of registering new NBFCs. It was decided to launch new application forms which would be simpler and the number of documents required to be submitted will be reduced to a minimum.

RBI's Walk the Talk

RBI through its Press Release: 2015-2016/2935 has delivered on its promise of rationalizing and simplifying the procedure of registration for the NBFCs. From what was supposed to be a lengthy and bulky task, RBI has now eased up substantially the entire procedure for the registration of NBFCs. This update bit will cover the changes in the registration procedure.

Changes: The Breakdown of Complex Procedure

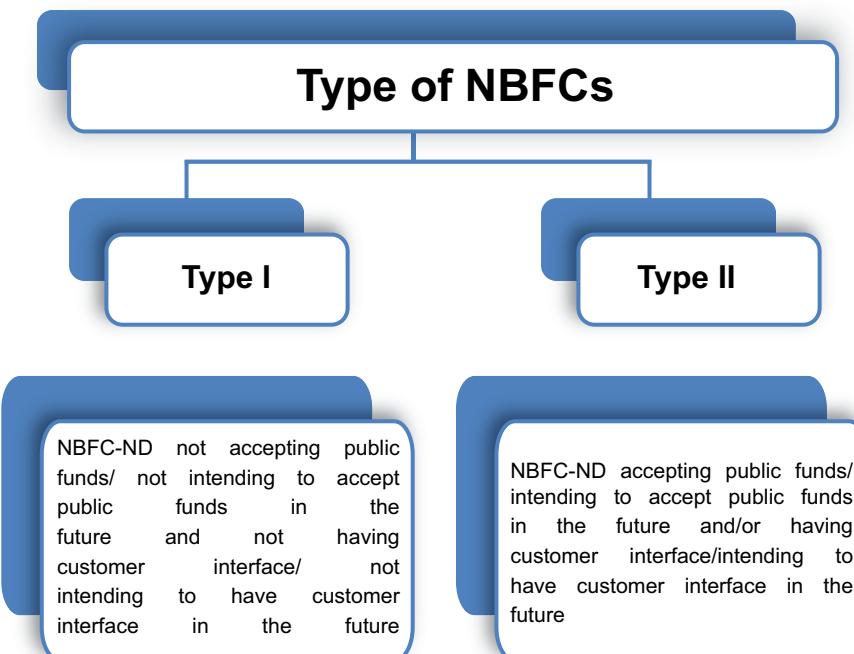
Vide its Press Release, RBI has brought in radical reforms in the registration process which are as follows:

1. **Type of NBFCs:** RBI has notified two different classes of NBFCs.
2. **Common application form :** Registering various types of NBFCs used to be done by filing their respective application forms. However, the new provisions have given a single form applicable for registration of major kinds of NBFCs including NBFC-IDF, Factor and MFI. The application is unlike the previous version in MCQ format but the questions have been modified to be more realistic and practical.

1. https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=37253

2. Format of common application form: <https://rbidocs.rbi.org.in/rdocs/Forms/PDFs/NBFC17062016.pdf>





- ❖ “**Public funds**” shall include funds raised either directly or indirectly through public deposits, commercial paper, debentures, inter-corporate deposits and bank finance but excludes funds raised by issue of instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue as defined in Regulatory Framework for Core Investment Companies issued vide Notification No. DNBS (PD) CC.No. 206/03.10.001/2010-11 dated January 5, 2011.
- ❖ “**Customer interface**” means interaction between the NBFC and its customers while carrying on its NBFI business as defined in Non-Systemically Important Non-Banking financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 issued vide Notification No. DNBR. 008/CGM (CDS) -2015 dated March 27, 2015.
- 3. **Revised checklist of docs :** This is a major relief for the new NBFC applicants as the checklist has been curtailed substantially. Earlier it was a pile of documents which was sought by RBI along with the application and the checklist for each category of NBFC used to be separately complied. However, the relaxed norms bring in a consolidated application form of only 8-9 page application form seeking approx. 8-9 documents in the consolidated checklist. The board resolutions by the company, statutory auditor certificates, the business plan, etc have been curtailed.

3. Format of common application form: <https://rbidocs.rbi.org.in/rdocs/Forms/PDFs/NBFC17062016.pdf>

4. **Fast track processing of application :** This mode will be enabled for Type I NBFC as these will be companies with no public funds and no customer interface and consequently these should be subject to less scrutiny/due diligence. Though the CoR will be granted on conditional basis with restriction imposed on accessing public funds and having customer interface without prior approval of RBI.
5. **Centralised system for application :** The apex bank has centralized the application process with this new notification with powers of granting of CoR being vested to the Mumbai office of RBI at the below address:

Chief General Manager
Department of Non-Banking Regulation
Reserve Bank of India
Centre I, World Trade Centre
Mumbai-400 005

6. **Provisions for specialized NBFCs :** The pre-notification regime of NBFC registration recognized different application format as well as different set of documents for registering specialized NBFCs such as NBFC-IDF, NBFC-MFI, NBFC-Factor, NBFC-CIC-ND, etc. However, the post-notification regime will seek only an extra one page declaration from such specialized NBFC category applicants except for the NBFC-CIC-ND for which a separate form will be available on the COSMOS website.

Conclusion

This move of the apex bank will certainly give the NBFC aspiring entrepreneurs the required flexibility to grow in the space. RBI has certainly devised the mechanism after a lot of thought behind it as it is clearly visible that process has been significantly streamlined to give this sector a major boost considering the fact that the Indian economy is majorly affected through these NBFCs.

4. Checklist of documents for new NBFCs: <https://rbidocs.rbi.org.in/rdocs/Forms/PDFs/CHECK17062016.pdf>



Special Courts

CONTENT OF ARTICLES

INTRODUCTION

SPECIAL COURT

- A. Need of Special Court
- B. Advantages of Special Court
- C. Bare Act Language of Section 435
- D. List of Section used the word Special Court under CA, 2013
- E. Places of Special Court
- F. Constitution of Special Court
- G. Scope of Appeal & Revision
- H. Code of proceeding Before Special Court
- I. How do Special Court Work
- J. Jurisdiction of Special Court
- K. Offence Tried by Special Court
- L. Special Power of Special Court
- M. Offence to be non cognizable
- N. Offence cognizable
- O. Mediation And Conciliation Penal
- P. Company Prosecutor
- Q. Appeal Against Acquittal
- R. Compensation for Accusation Without Reasonable Cause
- S. Application on Fines
- T. Conclusion

Special courts are one most commendable constitute introduced by this Act. Companies Act, 2013 has provided space for "Special Court" by inserting a new section in the Act. With the intention to punish the guilty, the Legislature has brought in, the Special Courts in the Companies Act, 2013. The Companies Act, 2013 overrides the related provisions of the Cr.PC.

Need of Special Court: Slowing down of trial of offences and delaying judgments affects the interest of the related parties of Companies. Scams happening over the last few decades in the corporate world have increased the need of setting up of Special Court. The main reason for establishment of such special court is technicalities involved in these technical matters and Speedy trial of all the offences under the Act.

CS Divesh Goyal
Practising Company Secretary



The intention behind setting up these courts is to let magistrate courts try minor violations, and that graver offences should be dealt by Special Courts.

Advantages of Special Court:

- ❖ It will facilitate in good corporate governance and stricter implementation of the Law.
- ❖ Speedy Trial of all the offences under the Act.

BARE ACT LANGUAGE:

Definition:

As stated in section 2(29) of CA, 2013 'Court' means – Special Courts established under Section 435 of the CA, 2013.

435. Establishment of Special Courts. (Notified on 18th May, 2016)

1. The Central Government may, for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many Special Courts as may be necessary.
Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.
2. A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
3. A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

Use of the Word "Special Court" under the Act:

S. No.	Section No.	Title of Section
1.	209	Search and seizure.
2.	212	Investigation into affairs of company by Serious Fraud Investigation Office
3.	274	Directions for filing statement of affairs
4.	435	Establishment of special courts
5.	439	Offences triable by special courts
6.	437	Appeal and revision.
7.	438	Application of Code to proceedings before a special court
8.	440	Transitional provisions.
9.	441	Compounding of certain offences.
10.	445	Compensation for accusation without reasonable cause.

1. Notified by notification dated 18th May, 2016.
2. Substituted by The Companies (Amendment) Act, 2015 w.e.f. 29th of May, 2015. for the words "trial of offences under this Act", the words "trial of offences punishable under this Act with imprisonment of two years or more"
3. Inserted by The Companies (Amendment) Act, 2015 w.e.f. 29th of May,



The Ministry of Corporate Affairs has notified the provisions dealing with 'Special Courts' with effect from 18 May 2016.

A. Places of Special Courts:

The Central government hereby, after obtaining the concurrence of the respective Chief justices of the High Courts, designates the following Courts mentioned in the Table below as Special Courts for the purposes of trial of offences Unfishable under the Companies Act, 2013 with imprisonment of two years or more in terms of section 435 of the Companies Act, 2013.

Existing courts in the State of Maharashtra, Jammu and Kashmir, Goa, Gujarat, Madhya Pradesh, West Bengal, and Union territory of Andaman and Nicobar Islands, and Dadra and Nagar Haveli and Daman and Diu, have been designated as Special Courts

B. Constitution of Special Courts:

All other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

- ❖ Single Judge: A Special Court shall consist of a single judge appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
- ❖ Qualification of judge: Such judge of a Special Court shall be qualified only if he is immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

C. Scope of Appeal and Revision:

Special courts are subject to the jurisdiction of the relevant High Court in the same manner as the criminal courts come under it, under the Code of Criminal Procedure, 1973. If Special court is within the local limits of the jurisdiction of High Court, then whenever the Court of Session is trying cases, in such case High Court has the power to appeal and revision.

D. Code of proceeding Before Special Court:

Section 438 provides that the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

E. How do special courts work?

The Act further provides that where a person is

- (a) accused of, or
- (b) suspected of the commission of, an offence under this Act

and such a case is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, the Magistrate may authorize the detention of such person for a maximum period of 15 days or 7 days as the case may be. Where Such



magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction.

F. Jurisdiction of the Special Court

All offence specified under section 435(1) of Companies Act shall be triable only by the Special Court for the area in which the registered office of the company in relation to which the offence is committed.

G. Offence Tried by Special Court

As per the provisions of the Companies Act, 2013, following offences are triable by Special Courts:

1. Offences for which the Companies Act, 2013, provides for imprisonment of 2 years or more
2. The Special Court may exercise, with respect to the accused or suspected person forwarded to it by the relevant Magistrate, the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person.
3. A Special Court may also take cognizance of an offence under this Act without the accused being committed to it for trial upon:
 - ❖ Perusal of the police report of the facts constituting an offence; or
 - ❖ Upon a complaint in that behalf.

H. Special Powers of the Special Court

1. When trying an offence under the Act, a Special Court may also try an offence other than an offence under the Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.
2. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the Special Court may, if it thinks fit, try in a summary way any offence under this Act, which is punishable with imprisonment for a term not exceeding three years. However the maximum sentence of imprisonment in a summary trial on conviction shall not exceed one year.

I. Offence to be Non- Cognizable

This Section provides that every offence except those offences referred to in sub- section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said code.

- Court shall take the offence as cognizable only on receipt of complaint made by:
 - ❖ Registrar
 - ❖ Shareholder of Company
 - ❖ Person authorized by Central Government
- Court may take the offence as cognizable, offence relating to issue and transfer of securities and nonpayment of dividend, on a complaint in writing, by a person authorized by the SEBI.

⁴Section 437



Nothing of section 439 applicable on prosecution by a Company of any of its Officer.

- ❖ Attendance of Complainant: Where the complainant is the Registrar or a person authorized by the Central Government as given under sub-section (2), the presence of such officer before the court trying the offences shall not be necessary unless the court requires this personal attendance at the trial.
- ❖ Non-application of sub-section (2) on the action of the liquidator:- The provisions of sub-section (2) shall not apply to any action taken by the liquidator or a Company in respect of any offence alleged to have been committed in respect of any of the matter in chapter XX or in any other provision of this Act relating to winding up of the Companies.

J. Offence Cognizable:

- ❖ Providing misleading or false information on Incorporation.
- ❖ Misstatement in Prospectus
- ❖ Fraudulently inducing a person to invest money
- ❖ Personating for acquisition of securities
- ❖ Destruction of Documents.

K. MEDIATION AND CONCILIATION PENAL (SECTION 442):

Meanings:

Mediation: In common parlance mediation means intervention of some third party in a dispute with the intention to resolve the dispute.

Conciliation: Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial means.

The new provision introduced by CA, 2013 . Section 442 of the CA, 2013 deals with the constitution and functioning of the mediation and conciliation panel in order to dispose the matter.

❖ Central Government to maintain the panel of mediators:

The Central Government shall maintain a panel of experts to be called as the "Mediation and Conciliation Penal" for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal.

Hence, it is important that the case should be pending before the Central Government or the Tribunal or the Appellate Tribunal under this act.

Any of the parties to the proceedings may apply for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may suo motu refer any matter pertaining to such proceeding to the Mediation and Conciliation Panel.

The Mediation and Conciliation Panel shall follow the prescribed procedure and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendation to the Central Government or the Tribunal or the Appellate Tribunal.



Any party aggrieved by the recommendation of the Mediation and Conciliation Penal may file objection to the Central Government or the Tribunal or the Appellate Tribunal.

L. COMPANY PROSECUTORS (SECTION 443):

- ❖ Appointment: The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) company prosecutors for the conduct of prosecutions arising out of this Act.
- ❖ Power & Privileges: The Company Prosecutor shall have all the powers and privileges conferred to Public Prosecutors appointed under section 24 Code of Criminal Procedure, 1973.

M. APPEAL AGAINST ACQUITTAL (SECTION 444):

The Central government may direct

- ❖ Any company prosecutor, or
- ❖ Authorized any other person either by name or by virtue of his office, to present an appeal from an order to acquittal passed by any court, other than a High Court..

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

N. COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE (SECTION 445):

The provision of Section 250 fo the Code of Criminal Procedure, 1973 shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

O. APPLICATION OF FINES (SECTION 446):

The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

P. APPLICATION OF FINES (SECTION 446):

The new provision made in Companies Act, 2013 with regard to Special Court is a boon and all concerned parties can hope for speedy settlement of cases. Since it is made exclusively for Companies, and for the specific offences, it could be more effective and efficient than general session Courts. It helps in better enforcement of Corporate Governance.



Q.Offences under the Companies Act, 2013, for Which Minimum Punishment is 2 Years or More

Section	Offence	Who is Punishable
305(4)	False declaration of solvency by a Director during voluntary winding up	Director
336(1)	Intentionally and fraudulently concealing material information about the company, relating to properties, debts, creditors, financial statements from the Company Liquidator during winding up	Officer (including any person in accordance with whose directions or instructions the directors of the company have been accustomed to act)
336(2)	Fraudulently misrepresenting material information about the company to the Company Liquidator during winding up	Any person who does such act knowingly
	Taking in pawn or pledge or otherwise receipt of the property, knowing it to be pawned, pledged, or disposed of wherein such	
447	Commitment of fraud provided fraud in question involves public interest	Any person found guilty of such fraud
449	Intentionally giving false evidence upon any examination on oath or solemn affirmation, authorised under the Companies Act, 2013	Any person giving such false evidence
	Intentionally giving false evidence in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under the Companies Act, 2013, or otherwise in or about any matter arising under the Companies Act, 2013	



Activity Reports

Report on Half-a-day Seminar on Modern Company Secretary in the Tech World

On 6th May 2016, The ICSI-Hyderabad Chapter organized Half-a-day Seminar on "Modern Company Secretary in the Tech World" at Chapter Premises for bringing an insight view and importance of the professionals in understanding the techniques required in day to day modern world.

CS Kavitha Rani, Member, Managing Committee of the Hyderabad Chapter, welcomed the dignitaries on to the dais.

CS Mahadev Tirunagari, Chairman of the Chapter in his welcome address has given the essence of the seminar and topic by keeping it wide opened with his views on the topic of discussion.

Later, the eminent speaker, Mr. Satish Bora, Co-Founder and Director of M/s. Mind Chipps Consulting Private Limited, focused on the modern software's, its techniques and tools, which eases the work of qualified professionals.

He has also brought into light about the overall scenarios and issues that a professional are facing in the day to day technological world in terms of maintaining the statutory details and records of the clients in a simplified manner.

Besides, he said that the professionals shall mould themselves to cope up the huge work of various clients by maintaining their data confidentially and in a systematic manner through various technological means.

The penultimate interactive session was splendid with the Members and Students vying up each other with their views on the discussed topic.

CS Kavitha Rani, Member, Managing Committee of the Hyderabad Chapter, has concluded the Session with a vote of thanks.

Report on Embarking Upon the Voyage of Research

The ICSI- Hyderabad Chapter has organized Embarking Upon the Voyage of Research Jointly with CCGRT from 19 May to 21 May 2016 at NI-MSME, Yusufguda, Hyderabad.

CS Ahalada Rao. V, Council Member & Chairman, ICSI Research Committee welcomed the gathering and emphasized the importance of the Research Programme and Scope of the study during Workshop. He advised the participants to actively participate and give their suggestions.

CS Mahadev Tirunagari, Chairman of the Chapter addressed the participants. He explained about the curriculum of the 1 series of the programme.

CS. Thirupal G, Company Secretary in Practice, Bengaluru , CS Anshul K Jain, Mumbai Company Secretary in Practice and CS Amit Gupta, Company Secretary in Practice Lucknow were the moderators for the series and coordinated the 3 days of first series and have discussed on the



following Chapters:

- ❖ Chapter 5 - Acceptance of Deposits by Companies
- ❖ Chapter 6- Registration of Charges
- ❖ Chapter 7- Management and Administration
- ❖ Chapter 8- Declaration and Payment of Dividend

There was lively discussion and active participation by the members present and several Members interacted and gave the suggestions. The programme was well received by the participants.

CS Venkata Ramana R, Vice Chairman of the Chapter proposed vote of thanks on 21 May 2016.

Report on Seminar on “THE INSOLVENCY AND BANKRUPTCY CODE 2016, AND COMPANIES (AMENDMENT) BILL 2016”

On 28 May 2016 Chapter has organized a Seminar on “The Insolvency and Bankruptcy Code 2016, and Companies (Amendment) Bill 2016” in association with FTAPCCI at FTAPCCI Auditorium.

Shri Ravindra Modi, Sr. Vice President, FTAPCCI, in his welcome address said that India currently ranks 136 out of 189 countries in the World Bank's index on the ease of resolving insolvencies. India's weak insolvency regime, its significant inefficiencies and systematic abuse are some of the reasons for the distressed state of credit markets in India today.

He stated that recognizing that reforms in the bankruptcy and insolvency regime are critical for improving the business environment and alleviating distressed credit markets, the Government introduced the Insolvency and Bankruptcy Code Bill in November 2015 and expressed hope that the Code helps in freeing the distressed assets.

Shri Challa Gunaranjan, Chairman, Corporate Affairs Committee, FTAPCCI said that Companies (Amendment) Bill 2016 certainly help ease of doing business and provided the much needed relief, especially in the areas of Alignment of the definition of subsidiary, associate and joint venture with the accounting standards. Additionally amending the definition of a holding company i.e. including foreign companies, addresses the debate whether foreign companies meet the definition of holding companies under the 2013 Act or not.

He said that companies would now be able to lend to group companies in which directors interested, subject to prior approval of the shareholders by a special resolution. This is expected to help providing significant relief and groups could benefit from centralized fund raising by their corporate office.

Shri Mahadev Tirunagari, Chairman, ICSI Hyderabad Chapter in his address he said that while the legislation of the Insolvency and Bankruptcy Code 2016 is a historical development for economic reforms in India, its effect will be seen in due course when the institutional infrastructure and implementing rules as envisaged under the Code are formed.

He welcomed the amendments made to the Companies Act, 2013 and said that lot of controversial and disputable clauses have been considered in this amendment.



CORPORATE SECRETARY



Shri Thirumalai, Advisor, Indirect Taxes Committee, Past President, FTAPCCI also addressed the participants and he wished Speakers to deliberate elaborately on The Insolvency and bankruptcy code 2016, and Companies (Amendment) Bill 2016, in the technical sessions and also requested all the delegates to participate in the deliberations.

CS Ahalada Rao V, Council Member, The ICSI graced the occasion.

Shri Gowra Srinivas, Vice President, FTAPCCI proposed vote of thanks.

The technical sessions were taken by Shri. L V V Iyer (Partner, L V V Iyer & Associates, Corporate Lawyers, Shri. Divyanshu Pandey (Partner, J. Sagar Associates, advocates & solicitors, Mumbai) and Shri CA P.R RAMESH (Partner, Deloitte India Ltd.)

In the first session, Shri L.V.V. Iyer gave a critical analysis of the "Insolvency and Bankruptcy Code 2016" which has been recently passed in the parliament. He gave a brief introduction to the new code which intends to facilitate timely resolution of corporate bankruptcy, and that it has been modeled on the US Bankruptcy Law largely sought to mitigate the ills of the present system. The session threw light on how successful this code is going to be in its true sense with regard to easing the winding up of failing business and the fast recovery of debts. He presented some important loopholes with the new code such as:

- ❖ The code does not provide for the adjudicating authority to examine whether the dispute is bonafide or not. This could incentivize debtors to seek pre-emptive action by setting up artificial disputes.
- ❖ Displacement of management especially on account of few unpaid creditors can potentially damage the cause of entrepreneurship.
- ❖ No clarity on the right to restore management rights to promoters upon implementation of resolution plan.
- ❖ No clarity as to whether the corporate debtor would have a right of representation before the adjudicating authority orders liquidation.
- ❖ He opined that disgorgement right should be vested with the adjudicating authority to ensure independence.
- ❖ Successful insolvency resolutions from empirical data support the cause of infusion of fresh funds. The code by its over simplification rejects the opportunity to allow institutional lenders to set a precedent.

The next session was taken up by Shri Divyanshu Pandey who spoke extensively on 'The Insolvency Code – Institutional Framework and Contemporary Challenges'. While Shri L.V.V. Iyer gave an account of the problems with the new code, Shri Divyanshu Pandey expressed a positive hope that it would ease doing the business, provided the bill and regulations are put together with effectiveness. He mentioned in his presentation that this is a Uniform Code but malleable - a law which evolves as per the times and depending on the experience gained in early years. He also provided the delegates with complete information on the prescribed Institutional Framework necessary for the implementation of the law viz., 1) The Adjudicating Authorities and their role 2) The Insolvency and Bankruptcy Board 3) Insolvency Professionals 4) Insolvency Professional Agencies which are self-regulating bodies of insolvency professionals and 5) Information Utilities.

He stressed on the point that a set of rules and regulations must be framed for conduct of bankruptcy process, regulation of IUs, IPAs, and IPs- so that delegated legislation under the framework of



the code can evolve as per the needs of the financial system. He also keenly mentioned about a need for the Development of an Enabling Ecosystem for effective implementation of the law which is possible if there are adequate number of benches of adjudicating authorities, adequate infrastructure and resources- digitisation and staffing.

Talking about what kind of a law we want it to be, he concluded the session stating that, if all the inconsistencies and loopholes of the law are resolved, there is a positive hope that this law would definitely make a mark in easing the business and the debt recoveries.

The session was followed by an open discussion where several queries of the participants regarding the new code were well received and answered by the speakers.

The post lunch sessions had CA P.R. RAMESH and Shri L V V Iyer as the speakers and the topic was "Companies (Amendment) Bill, 2016".

Shri P.R. Ramesh spoke on the Companies Act, 2013, the background for the amendment bill 2016, several implementation challenges, the factors necessitating the amendment like: making the process of incorporation simpler, to provide greater flexibility for carrying out business, improve transparency and quality of information, strike right balance among objectives like corporate governance and incentivizing individuals to take up positions of responsibility and last but not the least, encouraging start – ups and providing positive environment for them to thrive. He opined that the amendment bill is based on the theme of the Government of India i.e. "maximum governance – minimum government".

He presented the key amendments by giving a clear cut distinction between Companies Act 2013 and the Companies (Amendment) Bill 2016 along with rationale/implications in certain definitions like inter alia, holding company, turnover; the incorporation of companies; provisions related to the private companies and placement; Acceptance of Deposits; Charges; Management and Administration; Declaration of Interim Dividend; Corporate Social Responsibility (CSR); Financial Statements, Board's Report, Re-opening of Accounts; Auditors; Appointment and Qualification of Directors; Meetings of Board and its Powers of Inter-corporate loans and RPT (Related Party Transactions); and some Miscellaneous provisions. He made all the delegates in the seminar cognizant of the new provisions incorporated into the amendment bill 2016 like Section 3A – To provide for liability of members when the business is carried on for more than six months with members fewer than seven in case of public companies and fewer than two in case of private companies and Section 446A – Factors for determining level of punishment along etc.

The presentation also included CLC recommendations not considered in the Bill such as Sec. 2(57A) – Definition of nominee director, Sec.143 (12), Reporting of fraud by auditor etc. The session ended with a brief discussion on some unresolved issues.

The final session for the day was by Shri L. V. V. Iyer who gave a critical analysis of the Companies (Amendment) Bill 2016 as an extension to Shri P.R. Ramesh's catchy and plain sailing presentation. In addition, he spoke on the Concept of "significant beneficial owner" introduced in the new bill which is in essence the "Ultimate Beneficial Owner" (Section 90). As concluding remarks, he mentioned his view on the proposed deletion of Section 194 and Section 195, as a welcome change.

After the sessions, an open discussion followed on the Companies (Amendment) Bill 2016. The seminar was very informative to all the delegates and thought provoking to analyze all the pros and cons of the new bills, suggestions as to what can make the bills more efficient and the way forward for the entire corporate business community.

Shri Abhay Kumar Jain, Co-Chairman of Corporate Affairs Committee, FTAPCCI proposed vote of thanks.



ICSI -Hyderabad Chapter organised programme jointly with CCGRT on "Embarking upon the Voyage of Research" first series on Research review symposium on Indian company law" held from 19 – 21 May 2016 at NIMSME. Hyderabad.



Printed Matter - Book Post



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory Body Under An Act of Parliament

6-3-609/5, Anand Nagar Colony, Khairatabad, Hyderabad - 500 004

Tel : 040-2339 9541, 2339 6494 Fax : +91-40-2332 5458 E-mail : Hyderabad@icsi.edu

Hyderabad
Chapter

Chapter Office : 6-3-609/5, Anand Nagar Colony, Khairatabad, Hyderabad- 500 004. Ph: 23399541, 23396494, Fax : 23325458
E-mail : hyderabad@icsi.edu, website:www.icsi.edu, Working Days & Hours : Monday-Saturday 10.00a.m. to 5.45 p.m

Disclaimer : Views expressed by the contributors are of their own and that The Institute of Company Secretaries of India - Hyderabad Chapter does not accept any responsibility.

Printed and Published by : V.S. Sarma, on behalf of The Institute of Company Secretaries of India - Hyderabad Chapter, 6-3-609/5, Anand Nagar Colony, Khairatabad, Hyderabad- 500 004 and printed at The Printt House, 1-8-677/E/1, Padma Colony, Nallakunta, Hyderabad. Tel: 040-27603339, 66752838 and Published at The Institute of Company Secretaries of India - Hyderabad Chapter, 6-3-609/5, Anand Nagar, Khairatabad, Hyderabad-500 004, Tel: 040-23399541/23396494.

Editor : Rahul Jain, The Institute of Company Secretaries of India-Hyderabad Chapter, 6-3-609/5, Anand Nagar, Khairatabad, Hyderabad. 500 004.