

## **Minutes of the meeting with MCA held on 3<sup>rd</sup> April 2014**

A delegation of the following council members, Secretary of the Institute and four representatives of other member company secretaries had a very detailed deliberation at 3 p.m. on **3<sup>rd</sup> April 2014** with Mr. M. J. Joseph, Additional Secretary and Ms. Renuka Kumar, Joint Secretary of the Ministry of Corporate Affairs on the issues emanating from the rules notified under the Companies Act, 2013:

1. CS R. Sridharan, President
2. CS Vikas Khare, Vice President
3. CS Anil Murarka, Council Member
4. CS Sanjay Grover, Council Member
5. CS Sudhir Babu, Council Member
6. CS Ashok Pareek, Council Member
7. CS Umesh Vaid, Council Member
8. CS Gopal krishna Hegde, Council Member
9. CS Atul Mehta, Council Member
10. CS Atul Mittal, Council Member
11. CS B. Narasimham, Council Member
12. CS Nesar Ahmad, Council Member
13. CS M. S. Sahoo, Secretary
14. CS Deepak Gajarani, PCS
15. CS Ramakanta Pathak, PCS
16. CS Ravi Sharma, PCS, and
17. CS SangeetKedia, FCS.

2. The following submissions were made by the delegation:

- a. The stated policy of government is to enhance governance in the corporate sector. A major tool of governance is compliance. Section 205 of the Act requires compliance with the Companies Act, 2013 and all other applicable laws and these are duties of the company secretary. The rules have ignored this.

- b. The Companies Act, 2013 contemplates improving corporate governance and compliance. The rules, however, has kept a large number of companies out of the governance norms.
- c. The final rules are substantially different from the draft rules. The draft rules provided for applicability of certain provisions of the Companies Act, 2013 to all companies, private or public. The rules have excluded private companies from application of those provisions of the Act.
- d. The governance requirement must apply to all companies, private or public. There are private companies such as MNCs which are huge in size in terms of capital, turnover, resources, operations, or their impact on the society and the economy. Many of them use the public money or bank money substantially. They may have low paid up capital, but they often have huge net worth. They cannot be outside the regulatory requirements.
- e. The law requires certain functions to be done by a company secretary. These include reporting to the board about compliance with all applicable laws, ensuring compliance with secretarial standards, and assist the board in governance. As per rules, 93% of the companies would not be required to have company secretaries. This means that these functions are not required to be performed by these companies.
- f. About 93% of registered companies as on date are private companies. Now that the number of members can be upto 200 as against 50 in the earlier law, many public companies would convert themselves to or be reclassified as private companies. With the huge regulatory arbitrage in favour of private companies as provided in the rules, most of the new companies would be incorporated as private companies. As a consequence, all companies except rare exceptions would be private companies and would not be required to comply with governance norms.
- g. Section 203 requires only three kinds of full time KMPs. This does not have any link with the definition of KMP which is more inclusive and which may be part time or full time. Section 203 contemplates different kinds of thresholds for different kinds of KMPs.
- h. It is not that private companies are immune from scams of mis-governance. There are large number of instances of scams and mis-governance in private companies.
- i. The governance requirements are generally linked to size of operations, not whether a company is private or public. For example, the law requires secretarial audit for big companies.
- j. With the notification of the rules doing away with the requirement of company secretary in private companies, many company secretaries have received notices of termination of their jobs from the companies who are not too keen to implement governance norms.
- k. There is total disillusion among students. They have enrolled to the course based on the work opportunities available under the Companies Act 1956, and also the new Companies Act and the draft rules which remained in public domain for long. However, these opportunities have been taken away all of a sudden.

l. The Institute has spent considerable resources to build the capacity of members and members have devoted time and energy to learn to implement the provisions of the Companies Act, 2013 keeping in view the requirements indicated in draft rules. Now such requirement has been withdrawn.

m. If there is a perception that there is some deficiency in pre-certification of e-forms in some cases, the capacity can be built up and disciplinary mechanism under the ICSI framework can be further strengthened. Furthermore, the hefty penalties under the new company law have cast huge accountability on the certifying professionals.

n. The following demands were raised for amendments to the Rules:-

1. The precertification of e-forms must be restored;
2. Every company must have company secretary;
3. Secretarial audit must be made applicable to the companies which are subject to internal audit;
4. The certification for annual return under section 92(2) must be applicable to companies with Rs.5 crore of paid up capital or Rs.25 crore of turnover.

3. Mr. M. J. Joseph, Additional Secretary, MCA made the following observations:

- a. Government bestows highest respect to the ICSI and the CS profession. The statement made by ICSI that no consultative process was followed prior to the finalisation of rules is incorrect. Extensive discussions have taken place at the Rules Advisory Committee meetings with various stakeholders.
- b. Assignment of pre-certification of e-forms is government's expression of confidence on both CAs and CSs on certification matters. However, the quality of certification has been disturbing. A letter in this regard has been sent to President ICSI and ICAI.
- c. Employment is linked to business cycles in the economy. Government does not guarantee job or work to doctors, engineers, lawyers or any other professional.
- d. Secretary MCA has already stated that the Institute must plan its intake of students and focus on their quality rather than having anybody and everybody walk in. This is something similar to Government of India's intake into various services. ICSI should consider preparing a Perspective Plan on employment absorption in the corporates.
- e. The election code of conduct is in force. Until the election process is complete, no modification to the Rules is possible. However, the representations made will be examined expeditiously. As soon as the election process is over, whatever decision is taken on the representations will be implemented.

- f. It is a solemn assurance of Government that the representations of the ICSI will be examined on merits and in consultation with Ministry of Law.
- g. If there is a perception that the rules are deficient in some aspects, they can be revisited and MCA is willing to do the same.
- h. The problems can be solved by discussion and not through agitation.
- i. The profession must earn its reputation and employment is based on merits. It should not depend on Government/MCA for ensuring that students/Members of ICSI will obtain employment.

4. AS, MCA assured the delegation that the demands will receive prompt and consistent attention of Government with full objectivity and open mind. A decision in the matter will be communicated as soon as possible after the model code of conduct is over.