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FOCUS

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“प्रगतिश्च विकासश्च जीवनं जीवनं खलु।”

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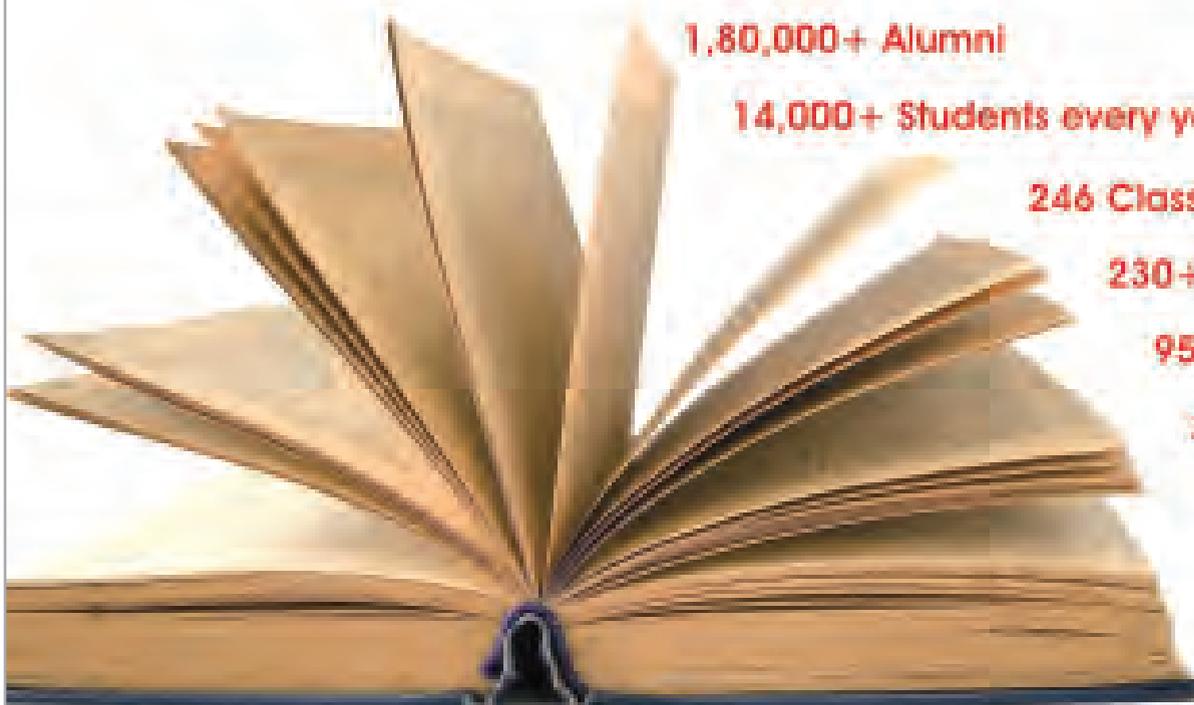


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Dear All,

"The purpose of life is a life of purpose" - Robert Byrne

The excitement and enthusiasm continue as I communicate to you through this third issue of the revamped Focus. We continued with our plan of action for the year 2012 and successfully achieved various milestones. Equally important, many initiatives are in advance stage of finalisation or implementation.

We had a **gala fund raising awareness programme in the Asia's biggest hall** - The Shanmukhananda Hall, Mumbai. About **one thousand participants** witnessed and enjoyed perhaps the biggest cultural evening organised by ICSI-WIRC ever. We were honoured with numerous dignitaries gracing the event including the

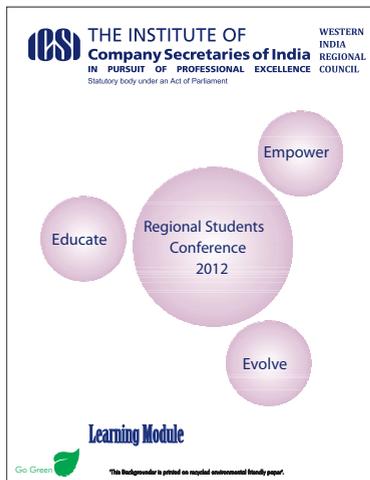
ICSI President, Vice President, Secretary & CEO, Central Council members - S/Shri Ashok Pareek (from east), Atul Mehta, B Narasimhan and Umesh Ved besides regional council members and dignitaries from industry and regulators such as SEBI, MCA, RBI and the like. Sincere thanks to the Fund Raising Committee, and Shri R Narayanan for his guidance and contribution in organising the event. I do look forward to organise more such events. As I write to you, **the renovation project has started at ICSI-WIRO. I take this opportunity to appeal each one of you to please come forward and be part of this noble initiative by contributing your share.**



We continued having increased number of **members' programs** with focus on quality. **Speakers' having subject expertise, well planned and organised schedule, and backgrounders** have become the **hallmark of the ICSI-WIRC's** programs. I thank you all for an **overwhelming response** to each and every program and do look forward to your active participation in future programs as well.



A request to all those who have not become part of ICSI-WIRC's PMS, to please take this prestigious membership of ICSI-WIRC. We are in the process of rolling out a series of programs for PMS members such as free health check-up, cultural get-togethers and much more. To start with, a free health camp is being organised by ICSI-WIRC jointly with MCA, Mumbai for WIRC-PMS members and MCA officials on 28th April, 2012.



We further improved 'Focus' giving it a shape of an **international-level corporate magazine** with articles on varied topics and various other value-added features. I thank advertisers / sponsors for their financial contribution and writers for content support.

We are in advance stage of rolling out various initiatives for students. We held successfully the **first students' conference for the year 2012 organised by Pune Chapter** with the theme 'Educate, Evolve and Empower'. Complements to Pune Chapter! The revamped backgrounder with useful articles and write-ups is a unique delivery to the students' of ICSI-WIRC. During my visit to Pune Chapter, I interacted with the Chairman Pune Chapter alongwith its Managing Committee members and discussed various initiatives to be pursued by ICSI-WIRC jointly with the Chapter.

We are launching new OTC with various useful services to our students and request all members to spread awareness about our OTC. Details of this important student-servicing initiative is being released.

I am sure, by now, you would have received schedule of the **Two-days PCS Conference on 'Mergers & Acquisitions'** to be organised at Lonavla on 4th and 5th May, 2012. The Calendar of other professional development programs is also provided in this Focus so that you can block your diary in advance and plan your schedule accordingly.

Please do write at cschairman.wirc@gmail.com Your suggestions and inputs would help achieve the overall objectives towards our theme of the year 2012 - *"Educate, Empower & Execute"*.

Best Wishes,



Cordially - Mahavir Lunawat
April 16, 2012

Requests...

- Become a member of CS Benevolent Fund (CSBF)
- Help in fund-raising initiatives of ICSI-WIRC
- Become a member of WIRC Professional Membership Scheme (PMS)



Dear Readers,

**“Do not follow where the path may lead.
Go instead where there is no path and leave a trail.”**

- Harold R McAlindon

As you would agree with me, in today’s competitive and dynamic corporate environment, Company Secretariship as a profession provides an ideal platform to launch yourself in all spectrum of corporate world and take control of it – a highly lucrative profession with an important responsibility for the efficient management of the corporate sector. Gone were the days when company secretaries were only meant for secretarial compliances.

It’s an ideal time and opportunity for our fraternity to stand up and create their own niche in the market - be it Taxation, Accounting, Finance, FEMA, IPR, M&A. Even the study materials / training programs recommended / conducted by our institute are business oriented, focusing on the current business requirement (from taxation, finance and legal perspective), so that our professional colleagues / budding professionals can be always ready for the corporate challenge.

In this issue of ‘Focus’, as always, we have tried to include articles which will not only update the reader’s knowledge but will also give a glimpse of new practice area where our members can foray.

In today’s Professional world, dealing with different section of society like management, clients, friends, colleagues, etc. requires specific skills with professionalism, article “How to say No” tried to cover those aspects.

This issue also includes certain compliance related articles which though seems very general, but are of great importance in day to day working of the corporate viz compliance u/s 314 of the Companies Act, regularization of share capital, compliance calendar of different statutes.

Chairman of WIRC - Mr. Mahavir Lunawat has initiated various programs in the current year and one among those is a series of “State Annual Conference” in all the states of Western Region - first of such conference is proposed to be held in the month of May at Bhopal for the state of Madhya Pradesh. The idea for such state conference is to get better visibility and try to weave a close relationship with the respective state government and departments so as to get better recognition for the profession.

Let’s gear up for the challenges!!

CS Amit Kumar Jain

RD Column



Dear Professionals,

Sub: NAMES THROUGH STP

As you are all aware, the facility to obtain names for registering a company through STP (Straight Through Process) by getting the Form 1A certified by professionals is available in the MCA-21 portal. However, in practice it is seen that majority of applications are still being sent to ROC offices for processing. As a result the work in ROC offices are getting accumulated. It is, therefore, necessary for the professionals to avail the STP route so that names are availed immediately and unnecessary clogging of work items in the MCA-21 portal is avoided. The professionals have to take the responsibility to ensure that the name guidelines are complied while certifying the Form 1A and that in case of inadvertent mistake, they withdraw the name availed and apply afresh with new names.

The professionals have a fear that Ministry would proceed against them in case of wrong certification. Such a fear is misplaced. As long as the guidelines are followed while certifying Form 1A and in case of advertent mistake if the names obtained are withdrawn forthwith the chances of the action against the professionals are remote.

The intention of the Ministry is not to punish but to guide. The intention of the professional should accordingly relate to compliance and not violation of the guideline issued.

We hope to see more and more professionals adopting the STP route for getting the names approved for registering a company in future.

(S. M. AMEERUL MILLATH)
Regional Director (West)
Ministry of Corporate Affairs



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<p>This event will cover a comprehensive health check-up (FREE) including BP, Blood Sugar, ECG, serum creatinine, Eye Check up etc. Besides, a blood donation camp has been organized as well.</p>	<p>VENUE MCA Office, Everest, 5th Floor 100 Marine Drive, Mumbai - 400002</p>

Free for all WIRC- PMS Members & MCA Officials

For enrollment, please contact:- Before 25th April 2012
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CASE LAWS AT A GLANCE

RECENT JUDGEMENTS ON COMPANY LAW

CS Ajay Kumar, Practising Company Secretary, Mumbai



1. ANNUAL GENERAL MEETING

Act of holding an Annual General Meeting by company is an obligation or a duty cast on company by governing statute and not a right. ROC has authority to extend statutory time prescribed under section 166 beyond period of three months. A general meeting of a company will not be an Annual General Meeting unless business that is statutorily required to be transacted thereat is gone through. Requirement of holding an Annual General Meeting is for benefit of members of company and not for benefit of company itself or those in management thereof. Company has suo motu authority to hold its Annual General Meeting beyond time prescribed by statute. There is express or implied bar on a Civil Court, in an appropriate action, to compel company to discharge statutory obligation of holding its Annual General Meeting, notwithstanding period prescribed thereof having expired. - **SADHAN KUMAR GHOSH V. BENGAL BRICK FIELD OWNERS' ASSOCIATION** [2011] 108 SCL 124/11/267 (CAL.)



2. FURTHER ISSUE OF SHARE CAPITAL

SEPL had taken over appellant-company by acquiring 71.9 per cent of its shares. Appellant was facing difficulty for arranging funds for project undertaken by it so SEPL lent its own funds as unsecured loans to appellant. Appellant came out with right issue and there was understanding between appellant and SEPL that if and when appellant came out with a rights issue, unsecured loans would be adjusted against share price. SEPL's entitlement to rights shares was equivalent to loan granted by it to appellant. Appellant filed draft letter of offer with SEBI in which it was specifically mentioned that unsecured loans lying in books of company and due to SEPL would be adjusted towards price of shares as per entitlement of latter. SEBI asked appellant to ensure that unsecured loans of promoters were not adjusted against allotment of shares against their entitlements. All that SEPL had done was that it received shares in rights issue and made payment by adjustment of unsecured loans which were payable on demand, same could not be said to be conversion of a loans into equity. Methodology adopted was only a mode of payment for shares received in rights issue and since all necessary disclosures had been made by appellant in offer document, section 81(1) was alone applicable. Therefore, direction issued by Board requiring appellant not to adjust unsecured loans advanced by promoters towards price of shares allotted in rights issue was to be set aside. - **SRM ENERGY LTD. V. SEBI** [2011] 108 SCL 100/11 252 (SAT. MUM)

3. REGISTRATION WITH NAME BEING IDENTICAL WITH OR TOO NEARLY RESEMBLING WITH NAME OF ANOTHER COMPANY - POWER OF

REGIONAL DIRECTOR TO ORDER CHANGE IN NAME - WHEN INTERFERENCE OF COURT IS NOT CALLED FOR - SECTIONS 20 AND 22

The parameters of the provisions of the Trade Marks Act, 1999 are different from the provisions of sections 20 and 22. Even if an action of infringement or passing off action may lie under the Trade Marks, but such action may not be sustainable under the Act. The court, while considering the issue within the parameters of sections 20 and 22, will have to be satisfied that the name of the company is similar or too nearly resembles with the name of another company. Distinguishing features in the names of the petitioner and respondent-company are such that it cannot be said that the name of the respondent-company too nearly resembles the name of the Petitioner-company, the Regional Director's order rejecting the Petitioner-company's application seeking change of name would not call for any interference. - **BISAZZA INDIA LTD. V. PINO BISAZZA GLASS (P.) LTD.** [2011] 101 CLA 416 (GUJ.)

4. BOARD DELEGATING ITS POWER TO CHAIRMAN-CUM-MANAGING DIRECTORS TO TAKE DISCIPLINARY ACTION AGAINST EMPLOYEE -CAN A DELEGATE SUB-DELEGATE ITS POWERS EVEN WITH AUTHORIZATION OF BOARD OF DIRECTORS-SCHEDULE I, TABLE-A

Administrative Rules cannot override the provisions of the Act. Since the Act does not allow sub-delegation of power by the Board of directors of the company and the Board of a government corporation, which has been registered under the Companies Act, allows sub-delegation of power by its managing director to any other employee of the corporation under an administrative rule such sub-delegation cannot clothe the managing director of the corporation to sub-delegate his power to any other person. - **MD. SHAMIN AHMED V. UNION OF INDIA** [2011] 101 CLA 81 (GAU.)

5. DOCTRINE OF EQUITY WHEN CANNOT BE INVOKED TO INTERFERE WITH DECISIONS OF DOMESTIC FORUM TO GRANT INTERIM RELIEF - SECTION 397/398

The Petitioners were well aware of all the acts closely held company from time to time as they were attending various meetings and the fact that it was not economically viable to run the unit which lead to its closure and there was nothing on record to assume that the company created third party right over its fixed assets, the doctrine of equity cannot be invoked to interfere with the decisions of the domestic forum and no interim relief can be granted by the Company Law Board - **WILLIAM ASKEW SOMERVILLE V. EASTERN SCALES (P.) LTD.** [2011] 101 CLA 105 (CLB)

Circulars & Notifications

CS Piyush Bindal, Practising Company Secretary, Bhopal

SERVICE TAX

1. Clarification on Point of Taxation Rules – regarding Circular No.154/5/ 2012 – ST

Source: www.servicetax.gov.in

1. Notification No.4/2012 - Service Tax dated the 17th March 2012 has amended the Point of Taxation Rules 2011 w.e.f. 1st April 2012, inter- alia, amending Rule 7 which applied to individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (g), (p), (q), (s), (t), (u), (za) and (zzzzm) of clause (105) of section 65 of the Finance Act, 1994. Rule 7 determined the point of taxation in such cases as the date of receipt of payment. The provisions have been amended both in the Point of Taxation Rules 2011 and the Service Tax Rules 1994 such that from 1st April, 2012 the payment of tax shall be allowed to be deferred till the receipt of payment upto a value of Rs. 50 lakhs of taxable services. The facility has been granted to all individuals and partnership firms, irrespective of the description of service, whose turnover of taxable services is fifty lakh rupees or less in the previous financial year.
2. Representations have been received, in respect of the specified eight services, requesting clarification on determination of point of taxation in respect of invoices issued on or before 31st March, 2012 where the payment has not been received before 1st April 2012.
3. The issue has been examined. For invoices issued on or before 31st March, 2012, the point of taxation shall continue to be governed by the Rule 7 as it stands till the said date. Thus in respect of invoices issued on or before 31st March, 2012 the point of taxation shall be the date of payment.

2. Clarification on Point of Taxation Rules – regarding Circular No.155/6/ 2012 – ST

Source: www.servicetax.gov.in

1. Notification No. 2/2012 - Service Tax dated the 17th March, 2012 has rescinded Notification No. No. 8/2009 - Service Tax, dated the 24th February, 2009, thus restoring the effective rate of service tax to 12% wef 1st April, 2012. Further the Notification No. 26/2010-Service Tax, dated the 22nd June, 2010 has been superseded by Notification No. 6/2012 - Service Tax dated the 17th March, 2012, wef 1st April, 2012.
2. It has been brought to the attention of the Board that some airlines are collecting differential service tax on tickets issued before 1st April, 2012 for

journey after 1st April, 2012, causing inconvenience to passengers. Representations have also been received in this regard. The position of law in the above respect is clear and is detailed below.

3. Rule 4 of the Point of Taxation Rules 2011 deals with the situations of change in effective rate of tax. In case of airline industry, the ticket so issued in any form is recognized as an invoice by virtue of proviso to Rule 4A of Service Tax Rules 1994. Usually in case of online ticketing and counter sales by the airlines, the payment for the ticket is received before the issuance of the ticket. Rule 4(b)(ii) of the Point of Taxation Rules 2011 addresses such situations and accordingly the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April, 2012 when the payment is received before 1st April, 2012.
 4. In case of sales through agents (IATA or otherwise including online sales and sales through GSA) the payment is received by the agent and remitted to airlines after some time. When the relationship between the airlines and such agents is that of principal and agent in terms of the Indian Contract Act 1872, the payment to the agent is considered as payment to the principal. Accordingly as per Rule 4(b)(ii), the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April, 2012 when the payment is received before 1st April, 2012 by the agent.
 5. However, to the extent airlines have already collected extra amount as service tax and do not refund the same to the customers, such amount will be required to be paid to the credit of the Central Government under Section 73A of the Finance Act 1994 (as amended).
- #### 3. Service tax paid on taxable services used for export of goods at the post-manufacture stage – electronic refund through the Indian Customs EDI System -- Notification 52/2011-ST - review -- regarding Circular No. 156/7 /2012-ST
- Source: www.servicetax.gov.in
1. A Committee has been constituted with Director General of Service Tax, Smt. Sanghamitra Panda as Chairperson, to review the scheme for electronic refund of service tax paid on taxable services

“Whatever course you decide upon, there is always someone to tell you that you are wrong. There are always difficulties arising which tempt you to believe that your critics are right. To map out a course of action and follow it to an end requires courage.” - Ralph Waldo Emerson

used for export of goods, made operational vide Notification 52/2011-ST dated 30th December, 2011. Other members of the Committee are Commissioner of Service Tax, Mumbai-1, Shri Sushil Solanki and Director, TRU, Shri. J. M. Kennedy.

- The Committee has been instructed, as a part of the review, to (a) evolve a scientific approach for the fixation of rates in the schedule of rates for service tax refund; and (b) propose a revised schedule of rates for service tax refund, taking into account the revision of rate of service tax from 10% to 12% and also movement towards 'Negative List' approach to taxation of services. The Committee may interact with/call for data from, the field formations, export promotion councils, chambers of commerce or any other business or industry association, as may be required. The Committee will submit its report to the Chairman, CBEC, before 20/06/2012. Views and suggestions may be posted at the e-mail address: feedbackonestr@gmail.com

CUSTOMS

1. Applicability of exemption under Sr. No. 4 of the Notification 4/2006 - CE dated 1/3/2006 on import of Ore Concentrates - regarding

Circular No.09 / 2012 - Customs

Source: www.cbec.gov.in

- Doubts have been raised whether on imports of Ore Concentrate classifiable under Chapter 26 of the First Schedule to the Customs Tariff Act, 1975, the benefit that is admissible to "Ore" under Serial Number 4 of the Notification No. 4/2006 - CE dated 1.3.2006 can be granted to the "Concentrate" of that Ore. The issue was taken up for discussion during the Conference of Chief Commissioners of Customs on Tariff and allied matters held in May 2011.
- The matter related to: (a) whether the term 'Ore' includes Concentrate, and (b) Whether insertion of Chapter Note 4 in the Chapter 26 will have any impact on the admissibility of notification benefit to Concentrates, was examined. The Conference noted the HS definitions of Ore and Concentrate are as follows:

"The term 'ore' applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine; it also applies to native metals in their gangue (e.g. metalliferous sands").

"The term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or with a view to economical transport".

It was also seen that the recent changes in the Central Excise Tariff treating the concentration of ore as amounting to manufacture would not in any

way change the definition of Ore or Concentrate for the purpose of classification. This has been reiterated in a number of judgments and also vide Board Circular No.696/12/2003 - CX dated 26.2.2003.

- In view of Chapter Note 4 to Chapter 26 of CETA, 1985 inserted vide Finance Act 2011, Ores and Concentrates are two distinct products. Thus, Concentrates suffer Central Excise duty being a manufactured product. The implication for imported Concentrates is that the benefit of exemption of additional duty of Customs leviable under Section 3 of Customs Tariff Act, 1975 in terms of a notification that applies only to Ores is no longer available to Concentrates, even if Concentrates and Ores fall under the same tariff heading.
- Thus, it is concluded in the Conference that the benefit of exemption notification under Sr. No. 4 of the Notification 4/2006-CE dated 1.3.2006 will be available only to imported Ores and not to imported Concentrates.

2. Refund of 4% CVD (SAD)-Extension of time upto 30th June, 2012, for using re-credited 4% CVD (SAD) amount in DEPB-Regarding

Circular No.10/2012-Customs

Source: www.cbec.gov.in

- Your kind attention is invited to the Circular No.02/2012-Customs, dated 16-02-2012, regarding procedure on refund of 4% CVD (SAD). The above Circular provides the facility of manual filing of Bill of Entry for utilizing the amount of re-credited 4% CVD refunds (SAD) for payment of duty in case of re-credited DEPB/ Reward Scheme scrips upto 31-03-2012.
- The matter has been examined in consultation with Director General of Foreign Trade (DGFT) and it has been decided to extend time limit for using re-credited DEPB scrips/ Reward Scheme scrips in case of 4% CVD (SAD) upto 30-06-2012.
- Board also directs all Chief Commissioner of Customs to ensure that all pending application for refund of 4% SAD paid through DEPB/reward scrips are disposed of by 30-04-2012. The Chief Commissioner may constitute a special team to liquidate these refund claims. The report in this regard should be sent to Board by 04-05-2012.
- Board also reiterates Para 8 of Board's Circular No. 27/2010-Customs, dated 13-08-2010 wherein it was mentioned that in the interest of ensuring expeditious grant of refund of 4% SAD, the importers may be advised to make the initial payment of 4% CVD in cash. DGFT has also informed that no re-crediting shall be done if such payment is made by means of scrips. In other words, in future exporters should pay SAD component in cash if they want a refund.

"Most of the important things in the world have been accomplished by people who have kept on trying when there seemed to be no hope at all." - Dale Carnegie

CENTRAL EXCISE

1. Revised Treaty of Trade between India and Nepal

Circular No. 961/04/2012-CX

[Source: www.cbec.gov.in](http://www.cbec.gov.in)

1. As you are aware, Duty Refund Procedure (DRP) prescribed by Notification No. 20/2004-CE(NT) dated 6.9.2004 has been rescinded vide Notification No. 25/2011-CE(NT) dated 5.12.2011 w.e.f 1st March, 2012. Export to Nepal under claim of rebate is permissible under Notification No. 19/2004-CE(NT) dated 6.9.2004 as amended by Notification No. 24/2011-CE(NT) dated 5.12.2011 issued under rule 18 of Central Excise Rules, 2002 and under bond/LUT vide Notification No. 42/2001-CE(NT) dated 26.6.2001 [as amended by Notification No. 26/2011-CE(NT) dated 5.12.2011] in terms of Rule 19 of Central Excise Rules, 2002.
2. Clarifications have been sought as to whether in view of rescinding of Notification No. 20/2004-CE(NT) dated 6.9.2004, goods cleared under DRP invoices by Indian exporters from their factories etc. prior to 1st March, 2012 but yet to be exported to Nepal within the time limit of six months prescribed in Notification No. 20/2004-CE(NT) are to be treated as exports under DRP procedure or as normal export in terms of Notification No. 19/2004-CE(NT) dated 6.9.2004 as amended. It is clarified that such exports shall be treated as exports under the DRP procedure and duty refund will accordingly be credited to the Govt. of Nepal as per the procedure laid down under the DRP. The rebate element will not be admissible to Indian exporters in respect of such goods.
3. Further, Board has also been requested to clarify whether exports under claim of rebate under amended Notifications No. 19/2004-CE(NT) dated 6.9.2004 or under bond in terms of amended Notification No. 42/2001-CE(NT) dated 26.6.2001 are to be permitted even when the export proceeds are paid in Indian Rupees. It is clarified that neither Rule 18 or Rule 19 of Central Excise Rules, 2002, nor the above mentioned notifications make any distinction on the basis of mode of payment of currency for exports. It is therefore clarified that exports to Nepal will continue to be permissible irrespective of whether the payments are made in Indian currency or foreign convertible currency as long as they are in accordance with applicable RBI guidelines.
4. Difficulties, if any, faced in this regard may be brought to the notice of Board immediately.

2. Payment of arrears from Cenvat Credit earned at a later date

Circular No.962/05/2012-CX

[Source: www.cbec.gov.in](http://www.cbec.gov.in)

1. Reference was received from the field formation seeking clarification on the issue as to whether the arrears of duty can be paid by utilizing the cenvat credit which has accrued subsequent to the period to which the arrears pertained. Such clarification has been sought in view of first proviso to rule 3(4) of the Cenvat Credit Rules, 2004. As per this proviso, "While paying duty of excise or service tax, as the case may be, the cenvat credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be."
2. Doubts have been raised whether these restrictions will be applicable to duty payable in terms of Section 11A or duty paid after due date in terms of rule 8 of the Central Excise Rules, 2002.
3. The matter has been examined in the Board. Practice ascertained from field formations points out that in majority of cases the payment of demands confirmed under Section 11A are being permitted to be paid by utilizing cenvat credit without linking the same to the period to which these demand pertain.
4. A harmonious reading of rule 8 of Central Excise Rules' 2002 and first proviso to rule 3 (4) of the Cenvat Credit Rules, 2004 indicates that the restriction with regard to the utilization of cenvat credit is relating to the normal payment of duty in terms of rule 8 of the Central Excise Rules, 2002, where duty for a particular month or quarter is to be discharged by the 5th of the next month. For this proviso, the cenvat credit allowed to be used is what was in balance on the last date of that month or quarter and not what accrued thereafter. Even in case of duty paid late in terms of rule 8, the credit available for utilization will remain same i.e. the credit in balance on the last date of month or quarter, as the case may be.
5. Further duty payable under rule 8 is on a different footing from duty payable under Section 11A. Duty under Rule 8 is paid after self determination by the assessee unlike Duty payable under Section 11A where generally the duty is determined by the Central Excise officer and the payment is mandated after such determination. There is no time limit prescribed under Section 11A i. e., monthly or quarterly unlike the date prescribed under Rule 8 (i.e., 5th of the next month). Therefore, the restriction on the utilization of the cenvat credit accruing subsequent to the last date of the month or quarter in which the arrears arise is not applicable

to the demands confirmed under Section 11A of the Central Excise Act, 1944.

3. Clarification Regarding Mega Power Project (MPP) exemption - reg.

Circular No. 963/06/2012-CX

Source: www.cbec.gov.in

1. Representations have been received seeking clarification regarding the entry at S. No. 91B of Notification No.6/2006-CE dated 1.3.2006 (present entry no. 338 of Notification No. 12/2012-CE dated 17.3.2012). Sl.No.91B of Notification No.6/2006-CE dated 1.3.2006 prescribes exemption to specified goods when supplied to Mega Power Projects. The exemption is available subject to condition No.28 which, inter alia, prescribes that in case the certificate issued by the Joint Secretary in the Ministry of Power regarding the project having the status of Mega Power Project is provisional, the Chief Executive Officer of the Project has to furnish a Fixed Deposit Receipt (FDR) for an amount equal to the Central Excise duty payable for a term of thirty six months or more to the Deputy Commissioner or the Assistant Commissioner of Central Excise having jurisdiction.

2. Representations have been received in the Board seeking clarification on certain issues relating to clearances of goods for Mega Power Projects under the aforesaid Notification. These have been examined by the Board and the following issues are clarified for guidance of the field formations and the trade:

- a) Whether the FDR is required to be submitted to the jurisdictional officer in-charge of the Mega Power Project or to the jurisdictional officer in-charge of the factory from where the goods are cleared for supply to such project: It is clarified that the FDR is required to be submitted to the jurisdictional Deputy Commissioner or Assistant Commissioner, in-charge of the factory from where the goods are cleared in terms of this notification and not to the jurisdictional officer, in-charge of the Project.
- b) Whether only one FDR is required to be submitted in respect of the clearances which are likely to take place over a period of time or the fixed deposits can be submitted at regular intervals: It is clarified that the notification do not provide for submission of a single FDR. The FDRs can be submitted by the Project Director at regular intervals as and when the clearances take place. However, each FDR has to be for a period of thirty six months or as stipulated in the notification.
- c) Clarification has also been sought as to whether the provisions of Central Excise

(Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 are applicable to such clearances: These rules are applicable in case the inputs are removed for further use by a manufacturer and not for use in a project. In fact neither entry no.91B of Notification No.6/2006-CE dated 1.3.2006, as amended, nor condition no.28 corresponding to the said entry prescribes that to avail the exemption, the procedures prescribed under the above mentioned Rules have to be followed. Therefore, it is clarified that the provisions of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 are not applicable in case of such removals.

4. Clarification regarding classification of structural components of Boiler and admissibility of CENVAT credit on these structural components - reg.

Circular No.964/07/2012-CX

Source: www.cbec.gov.in

1. Reference has been received from Trade seeking clarification regarding classification of structural parts/components of Boiler and admissibility of CENVAT credit on these parts/components to the buyers of the Boilers. It has been represented that CENVAT credit is being denied to the supporting structural parts of the Boilers at the buyers' end by classifying the same under Chapter 73 as structural parts and not as a part of Boiler. These are not being covered under the definition of inputs under the CENVAT Credit Rules, 2004, on account of exclusion given in rule 2 (k)(iv)(B)(b). This denial is on the ground that these are used for structures for support of Capital goods, without which the Capital goods can function.
2. The matter has been examined in the Board. The Boilers are a combination of various systems such as Coal Handling System, Coal Feeding System, Draft Air System, Demineralization Plant, Boiler Feed Water System, Boiler Tubes, Boiler Drums, Super Heat System, Flue Gases Treatment System and Ash Handling System etc. All these Systems work in tandem to make a modern Boiler. These Systems comprise of many parts including structural components which are essentially the part of Boiler by way of technical specifications. As per Section Note 4 to the Section XVI of the First Schedule to the Central Excise Tariff Act, 1985, " Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

"Most people never run far enough on their first wind to find out they've got a second. Give your dreams all you've got and you'll be amazed at the energy that comes out of you." - William James

- Accordingly it is clarified that those structural components which are to be used essentially as a part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. It is further clarified that since these structural components are nothing but the parts and accessories of the Boiler, they would be covered by the definition of inputs under Rule 2(k)(iii) of

the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity & steam). Further these structural components shall not be hit by the exclusion clause to the said definition of inputs, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially the part of said Boilers.

LEGAL UPDATES

Saagar Madan, Legal Practitioner, Mumbai

REGISTRATION OF COMPANIES OR LLPS WHICH HAVE AS ONE OF THEIR OBJECTS IS THE OBJECTS TO CARRY ON THE PROFESSION OF CHARTERED ACCOUNTANT, COST ACCOUNTANT, ARCHITECT, COMPANY SECRETARY ETC.

Key Highlights

- At the time of incorporation of companies where one of the objects is to carry on the business of Banking, Insurance or to practice the profession of Chartered Accountancy, Cost Accountancy and Company Secretaries, then the concerned Registrar of Companies shall incorporate the same only on production of in-principle approval/NOC from the concerned regulator/professional Institutes.
- Where one of the objects is to carry on the business/profession of Architecture, then the concerned Registrar of Companies /Registrar of LLP shall incorporate the same only on production of in-principle approval/NOC from the concerned regulator.

REVIEW OF REGULATORY COMPLIANCE AND PERIODIC REPORTING FOR BANKERS TO ISSUE

Key Highlights

- Bankers to an Issue (BTIs) are required to furnish periodical reports on quarterly and annual basis in electronic form in the prescribed format.
- The revised format will include the status of regulatory compliances and investor grievances redressal.
- The Board of directors of BTI shall, henceforth, review the report and record its observations on (i) the deficiencies and non-compliances, and (ii) corrective measures initiated to avoid such instances in future.
- With effect from half year ending March 2012, the Compliance Officer of the BTI shall send the report in the revised format in excel format to SEBI.

PAYMENT OF CHEQUES/DRAFTS/PAY ORDERS/BANKER'S CHEQUES - VALIDITY PERIOD OF CHEQUES

Key Highlights

- Reserve Bank has directed that with effect from April 1, 2012, banks should not make payment of cheques/drafts/pay orders/banker's cheques bearing that date

or any subsequent date, if they are presented beyond the period of three months from the date of such instrument.

RATIONALISATION OF OVERSEAS DIRECT INVESTMENTS BY INDIAN PARTY

Key Highlights

- It has been decided that proposals from the Indian party for creation of charge in the form of pledge/mortgage/hypothecation on the immovable/movable property and other financial assets of the Indian Party and their group companies may be considered by the Reserve Bank under the approval route within the overall limit fixed (presently 400%) for financial commitment subject to submission of a 'No Objection' by the Indian Party and their Group companies from their Indian lenders.
- It has been decided that the bank guarantee issued by a resident bank on behalf of an overseas JV/WOS of the Indian party, which is backed by a counter guarantee/collateral by the Indian party, shall be reckoned for computation of the financial commitment of the Indian Party and reported accordingly.
- It has been decided that issuance of personal guarantee by the promoters of the Indian Party as presently allowed under the General Permission shall also be extended to the indirect resident individual promoters of the Indian Party with the same stipulations as in the case of personal guarantee by the direct promoters.
- It has now been decided that the proposals from the Indian party for undertaking financial commitment without equity contribution in JV/WOS may be considered by the Reserve Bank under the approval route.
- Where the law of the host country does not mandatorily require auditing of the books of account of JV/WOS, the Annual Performance Report (APR) may be submitted by the Indian party based on the unaudited annual accounts of the JV/WOS.
- It has been decided that Compulsorily Convertible Preference Shares shall be treated on par with equity shares and the Indian party shall be allowed to undertake financial commitment based on the exposure to JV by way of CCPS.

"The goal you set must be challenging. At the same time, it should be realistic and attainable, not impossible to reach. It should be challenging enough to make you stretch, but not so far that you break." - Rick Hansen

TOP CORPORATE LAWS STORIES from www.taxmann.com

STATUTES

Draft Manual on the functioning of Official Liquidators

- With a view to streamlining the functioning of the office of the Official Liquidator (OL) and improving the efficiency and bringing uniformity in their working, the MCA is considering preparing a Manual on the functioning of OLs. Various stakeholders from corporate sector, professionals such as Advocates, Company Secretaries, Chartered Accountants, Valuers etc. are connected with the functioning of the OLs. In addition, members of citizens, opinion makers, practitioners and theorists in the field of administrative and legal reformers may also be interested in these reforms. Comments and suggestions on the said draft may be forwarded to adinsolv-mca@nic.in or rd.ser@mca.gov.in - CIRCULAR [NO. 51/14/2012-INSOLVENCY SECTION], DATED 27-3-2012 ISSUED BY MINISTRY OF CORPORATE AFFAIRS

CASE LAWS

Companies Act, 1956 does not debar holding of an annual general meeting beyond prescribed time limit

- The penal provisions contained in section 168 of Companies Act, 1956 do not stipulate that after expiry of time limits, no annual general meeting can be held or its holding would be an offence; it only says that in case of default, the company and every officer responsible for it shall be punishable with fine which might extend to Rs. 50,000. The penal provision does not debar holding of an annual general meeting beyond prescribed time limits under the provisions of section 166 of the Act but enacts that in case of continuing default there would be an additional fine for each day of default. Further, a company can convene an annual general meeting beyond time but subject to payment of penalty. - RUBY GENERAL HOSPITAL LTD. v. SAJAL DUTTA; [2012] 19 taxmann.com 330 (CALCUTTA)

No detailed enquiry required to form a prima facie opinion on alleged misconduct of a CA

- Where there is an alleged misconduct of a Chartered Accountant - that of fudging of accounts of a well-known listed company and admitted by then Chairman of company in a widely publicized letter, it was held that the Director (Discipline) was entitled to form a prima facie opinion on alleged misconduct under section 21(2) of Chartered Accountants Act, 1949 based on said letter and annual reports of company.

It was held that Director (Discipline) had merely to form a prima facie opinion; at that stage it was not necessary for Director (Discipline) to conduct a detailed enquiry and investigation into commission of professional misconduct by a member of Institute; it was not incumbent on Director (Discipline) to have also examined or relied upon documents forming basis of SEBI investigation report or CBI charge sheet at stage of forming prima facie opinion. - TALLURI SRINIVAS v. INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA; [2012] 20 taxmann.com 77 (DELHI)

There is no pre-condition for foreign promoters to furnish local address in India for seeking registration and incorporation of a private limited company in India

- In terms of section 34 of the Companies Act, 1956, it was held that the petitioners who were residents of Moscow and were seeking to incorporate a private limited company with its registered office in India under the said Act, they could not be compelled to furnish local/present address in India as a pre-condition to seek registration and incorporation of a private limited company. It was held that there was nothing in the Act or the applicable Rules which requires the foreign promoters to provide a local address.

This should augur well for foreign promoters and provide clarity to practising professionals and regulators alike. - DMITRY ROSNIN v. REGISTRAR OF COMPANIES; [2012] 19 taxmann.com 219 (BOMBAY)

Holding of office or place of Profit by Directors and their Relatives -Section 314 of the Companies Act, 1956 - A look at some contentious issues.

CS Ramaswami Kalidas, Company Secretary, Mumbai

Section 314 of the Companies Act 1956 (hereinafter referred to as "the Act") lays down a composite code for regulating the holding of office or place of profit, inter-alia, by Directors or their relatives either under the company with which they are associated or under any subsidiary of the company. The Act provides that in cases which fall within the ambit of Section 314(1)(a) and (b) consent of the shareholders by special resolution of the members has to be obtained. As stipulated in the first proviso to Section 314(1), authorization of shareholders by special resolution can also be post facto at the General Meeting of the Company held for the first time after the holding of such office or office of profit.

For appointments which come within the sweep of Section 314(1B) the procedure is a little more tenuous in that not only the previous approval of the members by special resolution will have to be obtained, the central Government has to accord the final stamp of authority for the appointment subject to the breach of the threshold remuneration, specified from time to time. In this discussion we will not only take an overview of the legislation on the subject but also analyze at length at some of the contentious issues the provision throws up.

Objective of the Section

The objective underlying the Section is to prevent a Director from being placed in an inconsistent position of simultaneously being both a master and a servant. It is a settled principle of law that the position of directors is analogous to that of Agents and Trustees of the shareholders. It is but natural that in the discharge of the dual responsibility cast on them the Directors should subject themselves to some kind of fetters prior to hoisting themselves or their relatives to any office or place of profit either under the Company or its Subsidiary.

Applicability of the Section

Considering the objective of the Section, as stated above it is obvious that the Section should have far reaching ramifications. Even private limited companies are not spared from the ambit of its coverage.

"Office or Place of Profit" defined

We have used the expression "office or place of profit" often enough above without attempting to elaborate on the concept. By the deeming provision contained in Sub section (3) under section 314, any office or place held by a Director under the company would be deemed to be an office or place

of profit if the Director obtains from the company by virtue of holding such an office, anything by way of remuneration over and above the remuneration to which he is entitled to as Director. The Calcutta High Court has held that the phrase "office of profit" has to be given its ordinary and natural meaning namely, that by virtue of the office any profit is derived. (*Shaligram Jhajharia vs National Co. Ltd* 1Comp LJ29(Cal)). The remuneration can be by way of salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence or otherwise. It follows from the above that the remuneration is not to be restricted to monetary payments alone. The enjoyment of any perquisites as contemplated under the Income Tax Act, 1961 would also come within the ambit of remuneration. The reference in the Law to the provision of accommodation free of cost as a residence or otherwise should not lead us to the erroneous conclusion that only perquisites of the above genre will come within the scope of remuneration. Other benefits which are measurable in monetary terms would also come within its purview.

The reference to provision of accommodation as above can at best be termed as illustrative. This view also stands fortified by the decision in *Rendell vs Went* (1964)2 All ER 464(HL) where it was held that "perquisite" will cover any advantage or benefit whether in kind or even service, if it can be measured in terms of money or money value.

Where the Director receives any remuneration or benefit from the company only by virtue of holding the office of a director in the company, it would not tantamount to his holding an office or place of profit in the company. Thus where a



"Confidence is a habit that can be developed by acting as if you already had the confidence you desire to have." - Unknown



director holds the office of a Managing Director or Manager in the Company and is paid remuneration for holding the said position, the office held by him cannot be construed as an office or place of profit. In the same vein, where any person acts as a Banker or Trustee for the Debenture holders in the company and he is paid any remuneration for acting as such, the holding of such a position would be out of bounds where Section 314 is concerned. Similarly, when a whole time Director obtains from the Company remuneration to which he is entitled as such Director and nothing beyond such remuneration, he cannot be said to be holding an office of profit under the company as contemplated under Section 314(3)(a) of the Act. The Department has clarified that the appointment of a whole time Director of a company does not ipso facto attract the provisions of Section 314(1) with the result that such an appointment does not require the consent of the company by a special resolution as contemplated by the said section. (Extracts from Department's File No.1(80) CL-1/65). Curiously enough the above clarification by the Department does not appear to bear a date!

Further vide clarification No.4 of 1976 dated 11.2.1976, it has been stated that the provisions of Section 314(1B) have no application in so far as remuneration payable to a Managing Director or Whole time Director as long as such payment is made in terms of Section 309 of the Act and is subject to the required approvals there under.

From the above it follows that the holding of the following offices under the company do not come within the scope of Section 314(1):

Managing Director

Manager

Whole time Director

Banker or Trustee for Debenture holders.

In the case of ordinary Directors where they are paid

only sitting fees for attending meetings of the Board or its committees it cannot be construed that such payment gives rise to their holding an office or place of profit as such payment stems only from the position held by them in their capacity as directors. If any periodic payments be it in the form of commission are also made to them, as long as such payments are made with the approval of the Central government as laid down in Section 309(4) of the Act, such payments will not require additional authorization of the shareholders under section 314(1) as it will only constitute remuneration to which they would be entitled to by virtue of their holding the office of Directors. However in the event that any payment is made to a Director on a regular basis in respect of services rendered by him other than as a Director such as for services rendered by him as an Advocate for the company, it goes without saying that such payment will come within the compass of Section 314(1) as in such a case the director will be deemed to hold an office or place of profit in the company.

Office held by Director in subsidiary company

Where the Director of the holding company also acts as a director in the subsidiary company and he is paid sitting fees by the Subsidiary, the fees so paid will have to be paid over to the Holding company unless such payment is approved by special resolution passed by the members as provided under Section 314(1). The provision does not apply in respect of an office held by the Director of the Subsidiary in its Holding company.

Holding of office or place of profit by Directors' Relatives/ partners

So far our discussion has centered around the holding of office or place of profit by a Director and the implications thereof. Let us now turn our attention to issues emanating from the holding of office or place of profit by a partner or relative of such (Emphasis supplied) a director, appointment of a firm in which such a Director or his relative is a partner, appointment of a private company of which such a Director or relative is a Director or member under the company. In the above cases where the monthly remuneration paid to the relative or partner exceeds the present threshold limit of Rs.50000/- per month, then in accordance with the provisions of Section 314(1) it would be necessary to obtain the approval of the shareholders by special resolution. The proviso under Section 314(1) clarifies that it would be adequate compliance if post facto sanction of the members is obtained at the General Meeting of the members held for the first time after the holding of such office or place of profit. There is therefore no need to seek prior authorization of members in cases which come within the ambit of Section 314(1). We would also clarify at this juncture that the threshold remuneration laid down under Section 314(1) has been revised from time to time and the present threshold as above is operative from 7.7.2011 vide amendments made to the Companies (Central Government's) General Rules and Forms (Amendment) Rules 2011.

(To be continued next issue)

"Believe in yourself! Have faith in your abilities! Without a humble but reasonable confidence in your own powers you cannot be successful or happy." - Norman Vincent Peale

WHAT IS "SUFFICIENT CAUSE" – A LEGAL VIEW POINT

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There are several maxims and phrases in the realm of law that enjoy certain unique attributes peculiar to that particular maxim or phrase, as the case may be. One such phrase that finds a constant presence across the spectrum of various laws is, "Sufficient Cause". This phrase is found particularly in cases involving pleas for condonation of delay. It could be for filing an application or an appeal, basically the plea for condonation arises when there is a failure to seek legal remedy within the prescribed time limit. The time limit would vary depending upon the concerned statute. However, so far as this article is concerned, an attempt has been made to understand the implications of the phrase "sufficient cause" in the light of case law on the subject including some of the decisions of the apex court.

The million-dollar question is what exactly would be 'sufficient cause' in a given case? There cannot be any hard and fast rule and it would invariably depend upon the facts and circumstances of each case. What may be held to be sufficient cause in one case may not be adequate in another case. Hence, it would be a mixed question of law and fact.

According to the Law Lexicon by P.Ramanatha Aiyar, "The words "sufficient cause" in S. 5, Limitation Act, should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide, is imputable to the appellant.



"Fall seven times, stand up eight." - Japanese Proverb

Another view given by the Law Lexicon is that, "The term "sufficient cause" in S. 5 of the Limitation Act, apparently covers not only those circumstances (such as the Courts being closed or time being spent in obtaining copies, or the party being a minor or insane) which the law expressly recognizes as extending the time, but also such circumstances as are not expressly recognized but which may appear to the Court to be reasonable.

With reference to the question as to what is "sufficient cause" within the meaning of the Civil Procedure Code, Order 22 Rule 9 and other similar provisions, it cannot be laid down as a general proposition that ignorance of law can never be considered, but it should be allowed as such only in very special cases."

It should be noted that a mistake of law no matter how honestly made, cannot be held to amount to "sufficient cause", in S.5, Limitation Act, (IX of 1908) unless it can be said that such mistake was made "in good faith" that is to say, the mistake was made notwithstanding due care and attention on the part of the appellant (Law .Lexicon).

It is not possible to lay down precisely as to what facts or matters would constitute "sufficient cause" under this section. The delay in filing the appeal or the application should not have been for reasons, which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. What would be such necessary steps will again depend upon the facts and circumstances of a particular case. [Law of Limitation by Jaswant Singh, Advocate and others, 2001 edition-MLJ Office].

The concept of "sufficient cause" is dependent on facts of each case. Therefore, there cannot be a straitjacket formula to indicate what exactly constitutes sufficient cause. Peculiar circumstances of each case have also to be taken into consideration. The Courts have to adjudge on the touchstone of pragmatic parameters: 1996 A.I.H.C. 4364 (Ori).

One may not always succeed in obtaining condonation of delay from the lower court or even the High Court, then it becomes necessary to approach the Supreme Court and satisfy it about the existence of a 'sufficient cause'. Many times delays occur due to pursuing other remedies, in this context the apex court observed that, "the Division Bench in all fairness ought to have excluded the entire period upto the date of disposal of the review petition, as a period bona fide spent in pursuing other remedies." [State of Kerala & Ors. Vs. M.G. Presanna Civil Appeal No. 189-190 OF 2011 Order dated January 07, 2011]

In Lanka Venkateswarlu (D) by LRs V/S State of A.P. & Ors Civil Appeal No. 2909-2913 OF 2005 - February 24, 2011], whilst considering applications for condonation of delay under Section 5 of the Limitation Act, Supreme Court



remarked that the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers have to be exercised within reasonable bounds, known to the law.

If the spirit behind the empowerment of discretionary power on the Court is taken into consideration, it is

beyond doubt clear that the Court is required to adopt liberal approach in the matter of interpretation of the phrase "sufficient cause". [A.I.R. 1999 Bom. 235: (1999) 2 Mah. L.J. 272].

The settled law as propounded by the Supreme Court in a number of cases is that the term "sufficient cause" in section 5 of the Limitation Act must receive liberal construction so as to advance substantial justice and generally delays in bringing the appeal are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to the parties seeking condonation of delay [G Ramagauda v. Land Acquisition Officer AIR 1988 SC 897; Khurshid Alam v.P.Pagnon Co. (P.) Ltd., and Others [(2001) 45 CLA 392 (CLB)].

In the case of Smt.Nupur Mitra v. Basubani (P.) Ltd. [(1999) 35 CLA 92 (Cal.)/ Cal LJ 1999 (2) 264], the petition under section 111 of the Companies Act, 1956, was filed nearly 50 years after allotment of shares and the CLB dismissed the petition as time barred. However, the said order of the CLB was set aside by the Division Bench of the Calcutta High Court and the said decision was later confirmed by the Supreme Court. Consequently, the matter was remanded back to CLB for consideration afresh. This must be one of the rare cases where a delay of 50 years was condoned, that was possible because there was a "sufficient cause".

Though there is no time limit prescribed for filing an application/complaint under the provisions of MRTP Act,



yet as observed by their Lordships of the Hon'ble Supreme Court in the case of Corporation Bank v. Naveen J. Shah reported in [2000] CLA-BL Supp. 203 (SC) "that does not mean that the claim could be made even after unreasonably long delay. The claim, if at all, was to be made, ought to have been made within a reasonable time. What is a reasonable time to lay a claim depends upon the facts of each case. In the legislative wisdom, three years period has been prescribed as a reasonable time under the Limitation Act to lay a claim for money. It is felt that, that period should be the appropriate standard adopted for computing reasonable time to raise a claim in a matter of this nature. For this reason also the claim made by the respondent ought to have been rejected by the Commission".

The Commission observed that in addition to inordinate delay in filing the application for compensation before the Commission, the applicant had not shown sufficient cause for admitting the application, though filed beyond reasonable time. For condonation of delay in filing an application, the applicant was required to explain day-to-day delay from the last date of limitation. In the circumstances, even on that ground, the application merited dismissal. [Director General (Investigation And Registration) V. Life Insurance Corporation Of India. (Utp No. 172/96) Hemraj Bhavanbhai Shingada V. Life Insurance Corporation of India. (Ca No. 252/97) 2001-(042)-CLA -0315 -MRTPC; 2001-(CC3)-GJX -0164 -MRTPC]

The apex Court, in the case of Collector of Central Excise v. Raghuvar (India) Ltd., [JT 2000(7) SC 99] while interpreting the provisions of sections 11A, 35H along with rules 57G and 57-I of the Central Excise Rules, held that any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of the period so stipulated has the consequence of creation and destruction of rights and therefore, must be specifically enacted and prescribed. Accordingly, the apex court held that the excise authorities could withdraw the concession if wrongly taken even beyond the time prescribed.

Conclusion

In conclusion, it is fairly clear that the courts enjoy wide discretion in ascertaining as to what is 'sufficient cause' in a given case. It needs to be noted that a court is not bound to grant the plea for condonation of delay in each and every case on the ground of sufficient cause. Whether "sufficient cause" exists has to be proven in each and every case and then it is upon the discretion of that particular court whether the explanation so given amounts to sufficient cause or not. Another point to be noted is that the length of delay is not important so long as a case is made out for sufficient cause. In fact, the judgments in a string of cases indicate that the courts have been liberal while considering the existence of 'sufficient cause' to ensure that no injustice is done to a litigant merely on technical grounds, and due consideration is given to all the facts available before the court.



"Genius is 1% inspiration and 99% perspiration." - Thomas Edison

Regularisation of Share Capital in a Company

CS Dilip Kumar Jain (Dr.), Practising Company Secretary, Indore

(Continued from March, 2012 Issue)

Restrictions on the number of allottees in preferential issue of shares

By an unlisted public limited company, the number of allottees on preferential basis cannot be more than 50, otherwise as per first proviso of section 67(3) of the Companies Act, 1956 it will be considered as deemed public issue and the SEBI (ICDR) Regulations 2009 shall be come applicable. However, this restriction is not applicable in case of a right issue made by a company.

In case of a private limited company, as per provisions of section 3(1)(iii) of the Act, the total number of members cannot exceed 50, therefore, it is but natural that the allottee must be less than 50 in any case.

Pricing of the shares

No specific guidelines are available for pricing of the shares to be allotted by an unlisted public company or a private limited company. However, in case of an unlisted company it is required to disclose the price of the shares to be allotted beforehand in the resolution to be passed by the Company under section 81(1A) read with the Unlisted Public Companies (Preferential Allotment) Rules, 2003 as amended vide Notification dt.14.12.2011.

The Auditors is also bound to comments as per the prescribed format under the Para xviii of the CARO that "whether the company has made any preferential allotment of shares to parties and companies covered in the Register maintained under section 301 of the Act and if so whether the price at which shares have been issued is prejudicial to the interest of the company". Therefore, prima facie the share should not be allotted on preferential basis on a price less then the book value of the shares as per the latest audited balance sheet of the company, otherwise the difference amount of the issue price and book value of the shares may also be considered as prejudice to the interest of the company as well as it may also be considered as Gift under the income tax. However, there is no cap on the maximum price of the shares to be allotted by the company under the provisions of the Companies Act.

If a company proposes to issue shares at a price less then its book value, it is the best way to issue shares on right basis to the shareholders.

It has been observed that most of the companies, specifically real estate companies make allotment of shares at a very abnormal premium without having any business track record, profitability, dividend paying history, just to avoid payment of the fee on the increased share capital to the Registrar of Companies and payment of stamp duty. It should be noted



that the Income Tax Department is not satisfied in most of the cases for the amount of the premium charged and if the proper justification is not provided, it may cause to addition in income of the Company.

Partly paid up shares

Some time companies issuing partly paid up shares can not be make the shares fully paid up for a longer time. Some companies also issues partly paid up shares at a very higher premium with intention to forfeit the same to built up the reserves. However, there is no specific provisions under the Companies Act, 1956, that when the share should be made fully paid up or needs to be forfeited in case of the balance amount not paid by the partly paid up shareholders.

As per section 283(1)(f) of the Companies Act, 1956, if a director fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call, his office of the director shall be deemed vacated.

In case of a listed company the shares must be fully paid up within a period of one year from the date of allotment as per requirement of the listing agreement.

If a company is having partly paid up shares it should be checked that all the directors having issued partly paid up shares have made then fully paid up within a period of 6 months from the time appointed for payment, otherwise the office of director concerned should be declared as vacated u/s 283(1)(f) of the Companies Act.

Necessary disclosure for partly paid up shares must also be given in the Form 20B and the annual return as well as the list of partly paid up shares should also be annexed to the Annual Return.

Necessary call notice and reminders should be issued as per the provisions of the Articles for making payment of calls together with interest within the stipulated time and necessary actions should be taken for forfeiture of the partly paid up shares if the shareholders fails to make payment of call money within the time in the strict compliance of the Articles of Association of the Company.

Redemption of the preferential shares

Previously there was a trend for issuance of the preferential shares to the investors, which are redeemable as per the terms of the issue within a period of 20 years from the date of allotment. It has been observed that, these preference shares remain outstanding in the books for long and no specific terms and conditions are prescribed at the time of allotment. Therefore, proper care should be taken for such preference shares and necessary steps should be taken either to convert



"If you were granted one wish, and only one, what would it be? Of all things...wealth, power, wisdom, love, liberty...what would you choose? This may seem fanciful; not so, IT IS REALITY. What you choose to think about, to concentrate on with all your mental power, will, indeed, become a reality. So choose carefully." - Thomas D. Willhite

them into equity shares or to redeem to regularize the preference shares.

Declaration of beneficial interest

It is a common mistake which is being committed by a company and its nominee shareholders specifically in case of incorporation of the wholly owned subsidiary companies. In such cases the company authorise its directors or other persons to subscribe some shares as a nominee of the holding company to fulfill the requirement of minimum 2/7 members, but they do not file Form 22B required under section 187(C) of the Companies Act, 1956 at the time of acquisition and change in the beneficial interest on such shares, if any. The holding company is also require to maintain a register as required under section 49 of the Companies Act, 1956 and necessary entries should also be made in the register of members of the subsidiary company.

Issuance of Share Certificates

Section 113 of the Companies Act, 1956 provides that every company shall within 3 months of allotment of shares or debentures issue share certificates and the certificates after registration of transfer shall be delivered within 2 months.

In case of small unlisted public companies as well as private companies, in most of the cases, even the share certificate books are not available and no share certificate is prepared and issued at all, even transfer of shares recorded in the annual return without having any physical share certificates or share transfer in existence. In such cases the share certificates are generated after a very long time when only there is change in the ownership and management of the company.

In order to protect the interest of the company, its directors and the shareholders, share certificates must be properly issued to the shareholders, within the stipulated time and the proper stamp for payment of the stamp duty should be affixed on the share certificates as well as share transfer deeds.

Non payment of stamp duty on the issuance and transfer of shares

It is general practice not to prepare share certificates even if they are issued or not properly stamped, some times, companies affix revenue stamps of Rs.1/- on each certificate, irrespective of the value of the shares involved. Moreover, either no transfer deeds are in existence or no share transfer stamps or inadequate share transfer stamps are affixed in the share transfer deeds. It amounts to evasion of stamp duty and is liable to the penalty upto 10 times of duty payable.

Secretarial Checklist for preferential allotment of shares by an unlisted public company

In view of the amendment made in the Preferential issue of shares by Unlisted Public Companies, all the pending share application money on 14th Dec., 2011 should be regularized



by way of allotment of shares after passing special resolution, if not passed earlier and the following points on allotment of shares to promoters or others on preferential basis should be properly checked and ensured:—

1. Whether there is provision in the Articles of Association authorizing the Board to make preferential allotment? If not, then amend the Articles.
2. Whether there is adequate un-issued equity capital in the authorized capital?
3. Class of persons to whom preferential issue of shares is to be made.
4. Fixing the price with a price band or a fixed price.
5. Finalize the terms of issue.
6. Obtain a certificate from auditors or practicing company secretary stating that the issue is as per the Rules, which shall be placed before the general meeting which will consider the preferential allotment.
7. Fix a date of Board meeting for deciding to convene a General meeting.
8. Finalise the contents of notice and explanatory statement to be sent to the members for issue.
9. Convene a general meeting and obtain the approval of the members for preferential issue. Name, father's name, PAN, address and occupation of persons to whom such allotment is proposed to be made shall be mentioned in the resolution passed by the members.
10. Board to consider the issue of shares as per special resolution passed by the members.
11. Receipt of share application form alongwith share application money from the applicants. All monies payable on subscription of securities shall be paid through cheque or demand draft or other banking channels but not by cash.
12. Share application money received on such application shall be kept in a separate bank account and shall not be utilised for any purpose other than—
 - (a) for adjustment against allotment of securities; or
 - (b) for the repayment of monies where the company is unable to allot securities.
13. Allotment of shares to the allottees within 60 days from the receipt of application money failing which the company shall repay the application money within 15 days thereafter, failing which it will be required to be re-paid with interest at the rate of 12% per annum to the persons to whom such offer is proposed.
14. Allottees shall not be more than 49 as per section 67(3) first proviso of the Companies Act, 1956.

CONTINUAL DISCLOSURE UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATION, 1992

CS Pinakin Shah, Company Secretary, Ahmedabad

Regulation 13 of SEBI (Prohibition Of Insider Trading) Regulation, 1992 (the 'Regulations') deals with disclosure of interest or holding by directors and officers and substantial shareholders in a listed company and reads as under:

Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of : –
- the receipt of intimation of allotment of shares; or
 - the acquisition of shares or voting rights, as the case may be.
- (2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

Continual disclosure.

- (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.
- (4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.
- (5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :
- the receipts of intimation of allotment of shares, or
 - the acquisition or sale of shares or voting rights, as the case may be.
- A bare reading of the regulation 13(1) and (2)

makes it clear that as and when there is a change in shareholding or voting rights of a person holding more than five per cent shares, he should disclose such change to the company in the prescribed form if the change exceeds two per cent of the total shareholding or voting rights in the company.

However the regulation 13(3) speaks about continual disclosure but doubts have been raised about its application to a situation where shareholding reduces below 5% after date of last disclosure. This is better examined by following Illustration where in the shareholder did not disclose sale of shares as required under regulation 13(5) of the regulation after his holding as a percentage of issued share capital fall below 5%.

Mr X was holding more than 5% equity shares in the listed company XYZ as on 31-3-2011. Thereafter, he started selling his holdings in accordance with the details given hereunder:

Date	Sale of shares (%)	Holding as a % of share capital of XYZ	Reporting under regulation 13(5)
31/3/2011		10.00	
30/6/2011	4.98	5.02	Yes
31/7/2011	0.01	5.01	Yes
15/7/2011	0.02	4.99	Yes
30/9/2011	2.99	2.00	No
31/1/2012	1.00	1.00	No

Now the question arises whether this disclosure of sale after 15/7/2011 is mandated where such change results in shareholding falling below 5% from the date of last disclosure.

The regulation 13(3) makes intention of a statutory provision clear and expressive and disclosure of sale after 15/7/2011 is mandated. The purpose of disclosure under the Regulations is to disseminate information to the investors regarding substantial sale of shares with a view to bring transparency in the securities market. Therefore a substantial shareholder cannot be allowed to circumvent the regulatory requirements by selling shares in tranches. Thus, whenever a substantial shareholder exceeds the limit of 2% in change of its shareholding in the company from the date of last disclosure, whether in a single transaction or in tranches, the provisions of regulation 13(3) are attracted and it applies to each and every tranches. This is also confirmed in recent judgement delivered in the matter of Uttar Pradesh Trading Company Ltd. v. Securities and Exchange Board of India [2012] (SAT – Mum.)

"If you fix in your mind the idea that your earning ability is limited, then indeed it is. You will never earn more than that self-set limit. The subconscious will create and maintain the limits you set."

- Thomas D. Willhite

A Diminutive Ready Reckoner on Reporting of Vital Fema Transactions - April 2012

CS Rishikesh Gagan Vyas - Compliance & Governance Personal, Mumbai

This writing is an effort to illustrate in brief the checklist for vital reporting for FEMA transactions.

FOREIGN INVESTMENTS IN INDIA			
WHAT	WHY	WHEN	WHO
Annexure IV	A person resident in India who intends to transfer any security by way of gift to a person resident outside India has to obtain a prior approval from the RBI.	Prior Approval is Required i.e before transaction takes place.	Person resident in India.
Annexure VI Advance Reporting Form	Report by the Indian company receiving amount of consideration for issue of shares / Convertible debentures under the FDI Scheme.	Within 30 days from the date of receipt funds.	An Indian company receiving investment from outside India for issuing shares / convertible debentures / preference shares under the FDI Scheme.
Annexure - 7 Know Your Customer (KYC) Form	Know Your Customer (KYC) Form in respect of the non-resident investor.	On receipt of amount of consideration for issue of shares / convertible debentures.	Indian companies through an Authorized Dealer Category - I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance.
Annexure - 8 FC-GPR	Reporting of issue of shares (including bonus and shares issued on rights basis and shares issued on conversion of stock option under ESOP scheme)/ convertible debentures / convertible preference shares.	Within a period of 30 days from the date of issue of shares.	Indian company.
Annex - 9-I Form FC-TRS	Declaration regarding transfer of shares / compulsorily and mandatorily convertible preference shares (CMCPS)/ debentures by way of sale from resident to non-resident/ non-resident to resident	Within 60 days from the date of receipt of the amount of consideration.	Transferor / Transferee, resident in India through it's AD Category I bank.
Annex 9-II KYC report	In case, the remittance receiving AD Category - I bank is different from the AD Category - I bank handling the transfer transaction, then KYC check should be carried out by the remittance receiving bank.	At the time submission of Form FCTRS.	The KYC report be submitted by the customer to the AD Category - I bank carrying out the transaction along with the Form FC-TRS.
Annex - 10 Form DR	Return to be filed by an Indian Company who has arranged issue of GDR/ADR.	Return to be filed by an Indian Company who has arranged issue of GDR/ADR.	Indian company issuing ADRs / GDRs to RBI.
Annex - 11 Form DR - Quarterly	Quarterly Return.	within 15 days of the close of the calendar quarter.	Indian company issuing ADRs / GDRs to RBI.

“Smile, for everyone lacks self-confidence and more than any other one thing a smile reassures them.” - Andre Maurois

EXTERNAL COMMERCIAL BORROWINGS AND TRADE CREDITS

WHAT	WHY	WHEN	WHO
Annex-I Form ECB	Application for raising External Commercial Borrowings (ECB) under Approval Route.	Before Taking ECB.	Applicants are required to submit an application in form ECB through designated AD bank to the RBI.
Annex II Form 83	Reporting of loan agreement details under Foreign Exchange Management Act, 1999 (for all categories and any amount of ECB).	Within 7 days from the date of signing loan agreement between borrower and lender.	Through the designated Authorized Dealer (AD) one copy is to be forwarded by the designated AD to the RBI.
Annex-III ECB - 2	Reporting of actual transactions of External Commercial Borrowings (ECB) under Foreign Exchange Management Act, 1999 (for all categories and any amount of loan)	Within 7 working days from the close of the month. If there is no transaction during a particular period, a Nil return should be submitted.	Through the designated Authorized Dealer to the RBI.
Annex V	Statement on Guarantees / Letter of Undertaking / Letter of Comfort issued by Authorized Dealer banks.	Not later than 10th of the following month.	Issuer to RBI.

EXTERNAL COMMERCIAL BORROWINGS AND TRADE CREDITS

Annexure A Form ODI Part I	For Investment under Approval/Automatic Route following is to be reported: a) Details of Indian Party b) Details of Investment in New Projects c) Details of Investment in Existing Projects d) Funding of JV/WOS e) Declaration by Indian Party.	Within a period of 30 days from the date of transaction and for Approval route prior approval.	By the Indian Party.
Annexure A Form ODI Part II	Reporting of Remittances	Within a period of 30 days from the date of transaction	By the Indian Party
Annexure A Form ODI Part III	ANNUAL PERFORMANCE REPORT (APR)	Within 3 months of the closing of annual accounts of the JV / WOS as long as the JV/WOS is in existence.	To be submitted by the Indian Party certified by Statutory Auditor of the Company through the designated AD Category- I bank.
Annexure A Form ODI Part IV	Report on Closure / Disinvestment / Voluntary Liquidation /Winding Up of JV / WOS.	Within a period of 30 days of the occurrence of the event.	By the designated AD Category - I bank.
Annexure B Form ODI ESOP Reporting	Statement of shares allotted to Indian employees / directors under ESOP Schemes.	Within 3 months of the closing of annual accounts of the JV / WOS as long as the JV/WOS is in existence.	By the Company through AD Bank.
Annexure C	Statement of shares repurchased by the issuing company from Indian employees / directors under ESOP Schemes.	Within 3 months of the closing of annual accounts of the JV / WOS as long as the JV/WOS is in existence.	By the Company through AD Bank.

ESTABLISHMENT OF LIAISON / BRANCH / PROJECT OFFICES IN INDIA BY FOREIGN ENTITIES			
WHAT	WHY	WHEN	WHO
Annexure I FNC	Application for Establishment of Branch/Liaison Office in India.	Before Establishment.	By the applicant through AD Category - I bank
Annexure II	Format of the Letter of Comfort.	-	By the Parent Company
Annex 3	Annual Activity Certificate.	At the end of March 31, along with the audited Financials on or before September 30.	Branch Office/Liaison Office.
EXPORT OF GOODS AND SERVICES			
Exchange Control Declaration (GR) FORM NO.	For export otherwise than by Post including export of software in physical form i.e., magnetic tapes/discs and paper media.	At the time of Export and within 21 days of Export.	To Commissioner of Customs: After duly verifying and authenticating Original declaration to Reserve Bank; and Duplicate Form to Exporter for being submitted to AD Bank.
SDF (Statutory Declaration Form).	For exports declared to Customs Offices under Electronic Data Interchange (EDI) system for processing shipping bills notified by Central Government.	At the time of Export and within 21 days of Export.	The SDF form should be submitted in duplicate (to be annexed to the relative shipping bill) to the concerned Commissioner of Customs. Then, the Commissioner of Customs will hand over to the exporter, one copy of the shipping bill marked 'Exchange Control Copy' in which form SDF has been appended for being submitted with the authorised dealer.
FORM PP	For export by Post.	At the time of Export and within 21 days of Export.	To AD Bank: After countersigning Original Form to Exporter for submission to Postal Authorities. Postal authorities after despatch forward to Reserve Bank.
SOFTEX FORM	Declaration of export of software otherwise than in physical form, i.e., magnetic tapes/discs, and paper media.	Within 21 days from the date of raising of the invoice which in turn has to be done within a period of 15 days of providing service.	To Designated Official of Ministry of Information Technology, at the Software Technology Parks of India (STPIs) or at the Free Trade Zones (FTZs) or Export Processing Zones (EPZs) or Special Economic Zones (SEZs) in India: After certifying to forward Original to Reserve Bank and Duplicate to the Exporter.

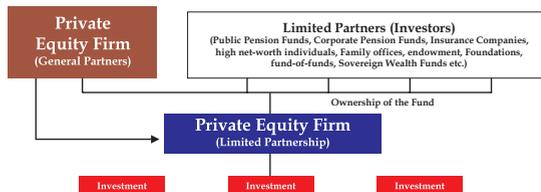


PRIVATE EQUITY: AN OVERVIEW

Bijal Patel, Bimal Parmar, Deepika Trivedi, Monali Meghani, Nikita Timbadia, Srikant Nair, Gaurang Mehta
(Awarded as best project in 17th MSOP at WIRC of ICSI)

A. Private Equity – Introduction and Overview

- ◆ Starting and growing a business always require capital. There are a number of alternative methods to fund growth. These include the owner or proprietor's own capital, arranging debt finance, or seeking an equity partner, as is the case with private equity and venture capital.
- ◆ Private equity covers not only the financing required to create a business, but also includes financing in the subsequent development stages of its life cycle.
- ◆ Private equity investing may broadly be defined as "investing in securities through a negotiated process".
- ◆ Private equity is medium to long term finance provided in return for an equity stake in potentially high growth companies.
- ◆ Run by professionals having knowledgeable investors with strong relationships and considers investing in a range of industry sectors and some specialize in specific industry sectors, exceptions can be for some sectors too.



B. Investment Process

The investment process in the Private Equity would be as follows:

1. Structuring the business
2. Preparation of business plan and marketing collateral
3. Shortlist and evince interest from Investors
4. Due Diligence
5. Obtain Term Sheet
6. Structuring, Valuation and Negotiation
7. Definitive Agreement
8. Closing formalities
9. Funding

The usual time frame covered to complete the above process is 4 to 8 months and the process can be varied based upon deal to deal.

C. Advantages and Disadvantage

Private Equity provides the below advantages:

1. It injects long term equity finance which provides a solid capital base for future growth.
2. It is a business partner, sharing both the risks and rewards. They are rewarded by business success and the capital gain.
3. Able to provide practical advice and assistance to the company based on past experience with other companies which were in similar situations.
4. Easier Access to other sources of finances
5. Network of contacts in many areas that can add value to the company
6. Less expensive mode of fund raising
7. Build Confidence in Customers, Employees, Suppliers Banks & other lending institution and Markets
8. Capable of providing additional rounds of funding should it be required to finance growth.
9. Experienced in the process of preparing a company for an initial public offering (IPO) of its shares onto the stock exchanges

Private Equity provides the below disadvantages:

1. Raising Private Equity finance is demanding, time consuming; at times the business may suffer if promoter devotes more time for the transaction
2. Depending on the investor, promoters may lose a certain amount of power to make management decisions
3. Will have to invest management time to provide regular information for the investor to monitor
4. Might create conflict or differing opinion in long-term strategy due to pressures of EXIT from the investor
5. The cost of complying with regulations could be relatively higher
6. Non-alignment of Interest of fund manager on the board and entrepreneur could hamper the growth of company

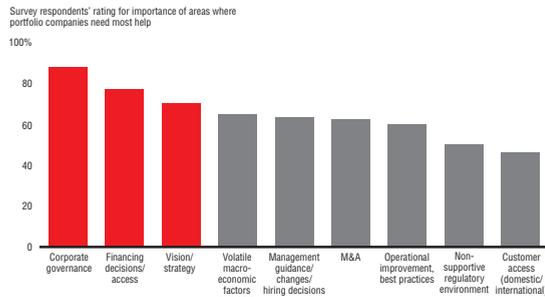
D. Private Equity would help

1. Create a business;
2. Improve and develop your export performance;
3. Exploit the creativity and innovation of your team;
4. Recruit highly qualified personnel;

"People get what they want in life when they reach the point at which they can see themselves having what they seek." - Thomas D. Willhite

5. Sell part or all of your company;
6. Change the size of your business and take over one of your competitors;
7. Launch a new product;
8. Improve your management capacity

Areas where companies need help of Private Equity



Note: Per cent refers to the proportion of respondents who considered area as very important (score of 4 or 5); 1 refers to "least important challenge" and 5 refers to "most important challenge"
Source: Bain IBCA VC/PE research survey 2011 (n=50)

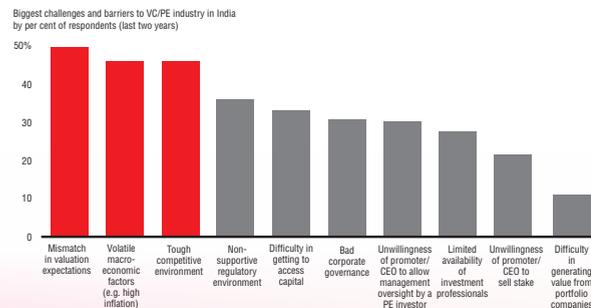
E. Stages of Financing

- **Seed Money:** Low level financing needed to prove a new idea.
- **Start-up:** Early stage firms that need funding for expenses associated with marketing and product development.
- **First-Round:** Early sales and manufacturing funds.
- **Second-Round:** Working capital for early stage companies that are selling product, but not yet turning a profit
- **Third-Round:** Also called Mezzanine financing, this is expansion money for a newly profitable company
- **Fourth-Round:** Also called bridge financing, it is intended to finance the "going public" process

F. Regulations for Private Equity

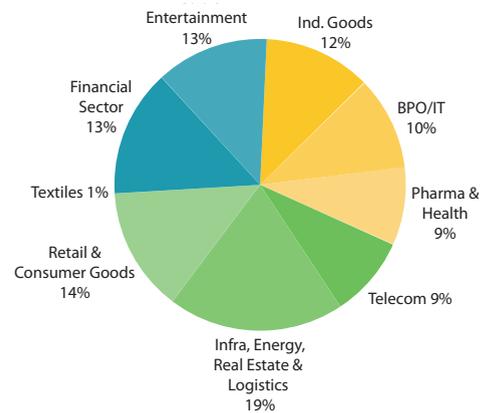
SEBI, RBI, FIPB and Income Tax governs the regulations for Private Equity India

G. Challenges for Private Equity

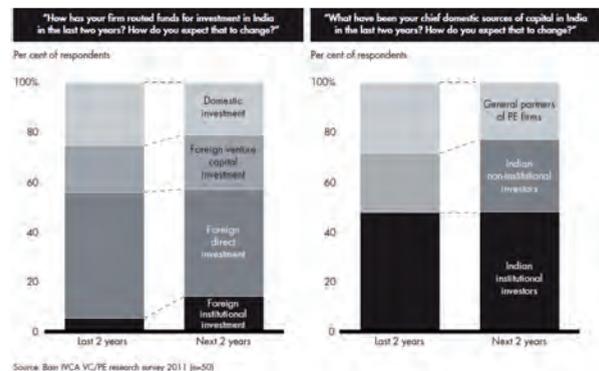


Note: Per cent refers to number of respondents who considered challenges as very important (score of 1 or 2) vs. total respondents; 1 refers to "very important challenge" and 5 refers to "least important challenge"
Source: Bain IBCA VC/PE research survey 2011 (n=50)

I. Statistical Coverage



H. Future of Private Equity



Source: Bain IBCA VC/PE research survey 2011 (n=50)

I. Growth of Private Equity as an important asset class

- ✓ Investing in private equity contributes to portfolio diversification as the correlation between returns on private equity and public equity and bond markets is not high.
- ✓ For many institutions, the potential higher returns of private equity investments over conventional asset classes justify the higher risk of such investments.
- ✓ Private equity investments are relatively illiquid, particularly in the early years.
- ✓ The life-cycle of an average private equity fund investment averages three to seven years.
- ✓ Investors in private securities generally exit their investment and achieve returns through an initial public offering, a sale (to corporate buyers or another private equity firm), a merger, or recapitalization.
- ✓ As the companies are not listed on a public exchange, investors wishing to exit their private equity holding do so by selling the holding to another investor through the secondary market.

“Search and you will find that at the base and birth of every great business organization was an enthusiast, a man consumed with earnestness of purpose, with confidence in his powers, with faith in the worthwhileness of his endeavors.” - Bertie Charles Forbes

Importance of proper and effective Asset Allocation

CS Hemant V. Pandya, Practising Company Secretary, Mumbai

As everyone may agree, one's health requires proper quantum of various food items to obtain required proteins, vitamins, iron and various essential minerals in order to maintain a good physical health, which indeed helps him/her to fight against various illnesses. These illnesses are nothing but risks for human life. Similarly, the same logic applies to Financial Health. In order to maintain a good financial health, we need to diversify our money into different instruments, with proper analysis considering the risk-taking ability so as to maximize the return and also reduce the risk of losing / deteriorating the financial health.

Studies have shown that proper asset allocation is more important for long-term returns as compared with specific investment choices. But since it is difficult to guess which asset category will do best in a certain period, it makes sense to divide our investments among different asset categories. Understanding this strategy can be a key to investment success.

Here, I have tried to cover a comprehensive meaning of Asset Allocation, in a layman's term.

Asset allocation simply means diversifying your money. The goal is to help reduce the risk and enhance the returns. Establishing a well-diversified portfolio may allow us to avoid the risks associated with putting all the eggs in one basket.

Important variables, which can affect your Asset Allocation:

1. Deciding the priority of goals:

Prioritization is very imperative so that we have a clear objective of our goals. Virtually every time management teaches that we should prioritize our goals / objectives which will help us to analyze that we are working upon

4. Returns also depend on our Asset Allocation: Let's see an example -

If tenure of investment is 10 years and above,

Assets	Allocation	Underlying Returns	Weighted Average Return
Debt & Equivalents	30%	8.00%	2.40%
Equity & Equivalents	70%	15.00%	10.50%
Gold Fund	0%	8.00%	0.00%
Total	100%		12.90%

Keeping other things same, if the Allocation changes,

Assets	Allocation	Underlying Returns	Weighted Average Return
Debt & Equivalents	30%	8.00%	2.40%
Equity & Equivalents	50%	15.00%	7.50%
Gold Fund	20%	8.00%	1.60%
Total	100%		11.50%

"The Law of Attraction attracts to you everything you need, according to the nature of your thought life. Your environment and financial condition are the perfect reflection of your habitual thinking. Thought rules the world." - Joseph Edward Murphy

important goals instead of getting caught into minor things. This will ensure us that our money goes for a significant and definite purpose.

2. Risk Tolerances:

Risk Tolerance depends on our age, income, and financial goals. For instance, the

risk, which can be taken by a 30-year-old guy, cannot be compared with a person who is on his verge of retirement. Because a 30-year-old guy, generally has a longer time frame to make up for any of his losses incurred on his portfolio.

3. Duration of goals:

Time Horizon is another crucial factor, which one should look upon. Knowing our time horizon is extremely important when it comes to choosing the type of investments we want and the type of the asset allocation. The way we need to take proper medicine for a fixed time duration to get recovered from the illness faster, similarly we need to decide the time horizon required for a particular goal, so that we can easily achieve the desired targeted amount for our goal at the required time. When we have a long time horizon we can have aggressive asset allocation but if the time period is short then we cannot afford to have more exposure into equity.



Importance of proper and effective Asset Allocation

After going through the above example, we can understand the importance of smart Asset Allocation to maximize the return.

However, this allocation depends upon the category of person's portfolio, mostly classified into three:

- a. **Aggressive portfolio:** This portfolio suggests that maximum portion is invested into Equity say 70%; 20% into Debt instrument and 10% into Gold. Mostly this portfolio is recommended in case of long time horizon.
- b. **Moderate portfolio:** This portfolio implies that Equity portion is 60%; Debt related Instruments 25% and 15 % into Gold. This portfolio would seek to provide regular income with moderate protection against inflation.
- c. **Conservative portfolio:** This portfolio specifies that Equity portion is 30%, Debt related Instruments 60% and 10 % into Gold. This portfolio appeals to people who are very risk averse.



sound enough to work upon our Assets Allocations without any hazard.

Hold on, still we have one important thing to take into account, namely, Inflation. While doing the entire exercise for growing our fund with best Asset Allocation after taking into account the aforesaid variables, we should also consider inflation for the same. Otherwise, optimum growth of corpus may definitely be a difficult task to achieve.

Question may arise here that, when should we act as an Aggressive investor, Moderate Investor and Conservative investor? And also at the time when the age, lifestyle, family commitment and financial goal vary, what action one should take?

To answer the same, as one joins a gym to keep and maintain his body, similarly it is advisable to opt a proper guidance from a Certified Financial Planner who is an expert and has enough knowledge to help us to make our Financial Health stronger and better.

I wish my best luck for all those active readers who will take their step ahead to make their Financial Health Fit.

I am sure that, after considering the above points, we can be

SAY CHEESE !!!

Smile Please



Committee Rules

- Never arrive on time, or you will be stamped a beginner.
- Don't say anything until the meeting is half over; this stamps you as being wise.
- Be as vague as possible; this prevents irritating the others.
- When in doubt, suggest that a subcommittee be appointed.
- Be the first to move for adjournment; this will make you popular - it's what everyone is waiting for.

Cartoon



"I always give 110% to my job.
40% on Monday, 30% on Tuesday,
20% on Wednesday, 15% on Thursday
and 5% on Friday."

"Thoughts are things; they have tremendous power. Thoughts of doubt and fear are pathways to failure. When you conquer negative attitudes of doubt and fear you conquer failure. Thoughts crystallize into habit and habit solidifies into circumstances." - Bryan Adams

MSMEs and Emerging Role of Company Secretary

CS Kaushik M. Jhaveri, Practising Company Secretary, Mumbai

Introduction:

Small and medium enterprises (SMEs), particularly in developing countries, are the backbone of the nation's economy. They constitute the bulk of the industrial base and also contribute significantly to their exports as well as to their Gross Domestic Product (GDP) or Gross National Product (GNP). Micro, Small and Medium Enterprises (MSMEs) contributes 8% of the country's GDP, 45% of the manufactured output and 40% of our exports. It provides employment to about 6 cr. people through 2.6 cr. enterprises. The Micro Small and Medium Enterprise (MSME) sector forms the largest generator of employment in the Indian economy. It forms a major portion of the industrial activity.

Micro, Small and Medium Enterprises (MSME) Development Act, 2006 has come into force from 2nd October, 2006 for governing promotion and development of MSME.

In accordance with provisions of this Act, the MSMEs in India are classified into two categories:

- i. Manufacturing Enterprises
- ii. Service Enterprises

Present ceiling limit on investment to be classified as Micro, small and Medium Enterprises is as under:

Manufacturing Sector	
Enterprises	Investment in Plant & Machinery
Micro Enterprises	Does not exceed Twenty Five Lakh Rupees
Small Enterprises	More than twenty five Lakh rupees but does not exceed five crores rupees
Medium Enterprises	More than five crore rupees but does not exceed ten crore rupees
Service Sector	
Enterprises	Investment in equipment
Micro Enterprises	Does not exceed Ten Lakh rupees
Small Enterprises	More than ten lakh rupees but does not exceed two crore rupees
Medium Enterprises	More than two crore rupees but does not exceed five crore rupees

In recognition of the need for making Finance available for small and medium enterprises, SEBI decided to have separate dedicated platforms of the exchanges for listing and trading of securities issued by SMEs. In view of this SEBI amended SEBI (Issue of Capital and Disclosure Requirements) Regulation, 2009 (SEBI (ICDR) Regulations) by inserting a new chapter on "Issue of specified securities by small and medium enterprises".

SEBI has also specified "Model Equity Listing agreement" to be executed between the Issuer and Stock Exchange.

Certain relaxations have been provided to the issuers whose securities are listed on SME exchange in comparison to listing requirements in Main Board, some of which are as under:

- a. Companies listed on the SME exchange may send to their shareholders, a statement containing the salient features of all the documents, as prescribed in sub-clause (iv) of clause (b) of proviso to section 219 of the Companies Act, 1956, instead of sending a full Annual Report;
- b. Periodical financial results may be submitted on "Half yearly basis" instead of "Quarterly basis"
- c. SMEs need not publish their financial results, as required in Main Board and can make it available on their websites.

Company Secretaries can contribute towards improvement of standards of Corporate Governance among listed SMEs as per Clause 52 of the listing Agreement.

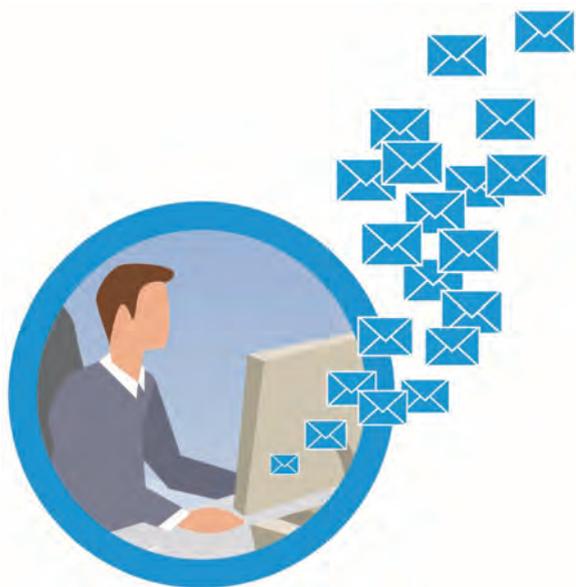
Clause 52 (VII) of Listing agreement relates to Compliance, which is as under:

1. The Issuer shall obtain a certificate from either the auditors or Practising Company Secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the Issuer. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the Issuer.

Funding options for SMEs includes Angel Investors, Banks, Financial Institutions, SIDBI Initiatives, Venture Capital Funds (VCFs), Private Equity (PE), Initial Public



"You cannot prevent the birds of sorrow from flying over your head, but you can prevent them from building nests in your hair." - Chinese Proverb



offers (IPOs), Foreign Investments, External Commercial Borrowings (ECB).

ROLE OF COMPANY SECRETARIES:

There are many ways in which a Company Secretary can guide/advise the SMEs:

1. Advisor to public Issue by SME.
2. Advisor/consultant for SMEs on listing at SME Exchange.
3. Compliance officer under SME listing Agreement.
4. Certifications under various clauses of SME Listing Agreement.
5. Maintaining the Statutory Registers.
6. Monitoring changes in the share ownership of the company.
7. Ensuring that company files statutory information properly.
8. Monitoring changes in relevant legislation and the regulatory environment and taking appropriate action.
9. Developing and overseeing the systems that ensures that the company complies with all applicable codes as well as its legal and statutory requirement.
10. Obtaining project financing and term loans.
11. Co-ordinating the process of obtaining funds from Angel Investors/Venture Capital Funds/Private Equity.
12. Conducting Secretarial Audit/Due Diligence which will be of great help before approaching for the funds.
13. Providing Compliance Certificate to ensure compliance of various regulatory prescriptions in case of an IPO - More relevant in view of BSE proposal to set up new Stock Exchange for SMEs.
14. Helping in converting sole proprietor to Companies.

Other Roles:

1. Secretarial Audit

Proactive Secretarial Audit on a continuous basis would help the initiation of corrective measures and thereby

strengthening the compliance mechanism and processes in the company.

A Company Secretary in Practice has been assigned the role of Secretarial Auditor in the Company Secretaries Act, 1980. Practising Company Secretary is the competent, fit and proper Professional to conduct Secretarial Audit. PCS is highly specialized professional in matters of statutory, procedural and practical aspects involved in proper compliances under the Corporate Laws.

2. Diligence Report for Banks:

For availing Loans from any Bank, SMEs have to submit a Diligence Report obtained from a PCS.

The Practising Company Secretary is required to certify compliance in respect of matters specified in the RBI Circular dated 19th September, 2008. The Diligence Report shall be made on a half yearly basis.

The structure of Diligence report makes it mandatory for the PCS to make critical examinations of all the relevant records and documents with a high degree of care, skill and knowledge.

3. Capital Market

A Company Secretary has substantial role to undertake in securities laws and capital market related matters.

Some of the services provided by Company Secretaries (both in employment and practice) in Capital Markets include:

- i. Advising companies on Compliance of legal and procedural aspects particularly under SEBI Act, Securities Contracts (Regulation) Act, Listing Agreement etc.
- ii. Advisor/consultant in issue, listing, delisting, buy-back of shares and other securities in India and abroad.
- iii. Drafting of prospectus/offer of sale/letter of offer/other documents related to issue of securities and obtaining approvals in association with lead managers.
- iv. Ensuring compliance with SEBI (Prohibition of Insider Trading) Regulations, 1992.
- v. Certifications under various clauses of Listing Agreement.

4. IPO/FPO certification

Company Secretaries Act, 1980 authorises a Company Secretary in Practice to perform the services as a share transfer agent, and issue house, a share and stock broker, a secretarial auditor or consultant.

Compliance certificate on Initial Public offer/Further Public offer by a Company Secretary in practice would help Merchant Bankers to ensure compliance of the various regulatory prescriptions as also the stock exchanges to list the securities on offer under IPO/FPO.

Conclusion:

The professionals like Company Secretaries and other Professionals have an important role to play in educating the promoters of the SMEs and guiding them in raising equity capital on SME exchange and also for complying various provisions of the Companies Act as well as Listing agreement and other Laws as applicable. ■■■

"A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty." - Sir Winston Leonard spencer/Churchill

The interview with Shri P K Malhotra, Officiating Presiding Officer, Securities Appellate Tribunal Mumbai was conducted by Shri Mahavir Lunawat, Chairman, WIRC and Shri Sudipto Pal, Joint Director WIRC



Q: SEBI, being born in 1992 is on the verge of completing a couple of decades and is quite younger compared to SECURITIES EXCHANGE ACT OF 1934 of US. Whether do you think that it is in a position to meet up the challenges of vibrant capital market in India?

A: The Securities and Exchange Board of India (SEBI) was established by a Government Resolution of 12th April, 1988 for the healthy growth of the securities market. The Board was given statutory backing by the Securities and Exchange Board of India Ordinance, 1992 promulgated on 30th January, 1992 and later by an Act of Parliament which received assent of the President on 4th April, 1992. The main object of the SEBI Act is to protect the interest of investors in securities and to promote the development of and to regulate the securities market. SEBI as a regulator of the securities market has been conferred with legislative, administrative and quasi judicial functions. Given its composition and the regulatory framework. SEBI can be said to be one of the powerful regulatory body which enjoy great respect even in other jurisdictions including SEC of USA and FSA of UK. When the Act was passed we took advantage of the good regulatory practices prevalent in other jurisdictions and adopted them suiting to the Indian economic environment. Implemented in the right perspective the regulatory frame work provided in the SEBI Act is capable of meeting the challenges of the capital market.

Q: Will you throw light on SEBI's regulatory, judicial and legislative authority for investor protection and development of capital market?

A: SEBI enjoys full autonomy in its functioning. The Act cast a duty on the Board to protect the interest of investors in security and to promote the development of and regulate the securities market by such measures as it thinks fit. It is empowered to regulate business of stock exchanges, regulate substantial acquisitions of shares and take over of companies, training of intermediaries and promote investors education. For discharging this functions SEBI is empowered to make regulations including regulations in matters relating to the issue of capital, transfer of securities and conduct of Board meetings etc. In case it notices violation of provisions of the Act, Rules or Regulations, it is empowered to launch

prosecutions, imposed monetary penalties and issue directions to the intermediaries as well as to any other person associated with the securities market. Chapter IV of the SEBI Act empowers the Board to conduct any measure to protect the interest of investors in securities and issue directions to any person associated with the securities market. In that sense it can be said to be the heart and soul of the Act. Chapter VI A of the Act provides for imposition of monetary penalties after conducting adjudication proceedings and in that sense it can be said to be the backbone of the Act.

Q: Capital market is complex and there are intricacies, particularly in India, in development and control of it, which is vindicated by the existence of various high level committees, like, takeover regulations advisory committee, primary market advisory committee (pmac), secondary market advisory committee (smac, mutual fund advisory committee, corporate bonds & securitization advisory committee, sebi committee on disclosures and accounting standards (scoda), high powered advisory committee on consent orders and compounding of offences, derivatives market review committee, committee on infrastructure funds. In view of above, what are the major challenges and limitations of a special purpose tribunal like SAT?

A: All this committees performed advisory role to enable SEBI to frame regulations for investors protection and for regulating the securities market. On the other hand, SAT is a specialised tribunal created by the Act to hear appeals against the orders passed by the Board or an adjudicating officer. SAT is a quasi judicial forum, a substitute for a court, to hear appeals against the orders passed by the Board. Any person aggrieved by an order of the Board or an order passed by the adjudicating officer under SEBI Act can prefer an appeal before SAT within 45 days from the date of receipt of the order. The Tribunal consists of a Presiding Officer and two other Members appointed by the Central Government. Appeals against the order passed by SAT lie directly to the Supreme Court and only on question of law arising out of such orders.

Q: Investment and capital market is not only regulated by SEBI, but also by MCA, ministry of finance and RBI. Whether one comprehensive judicial body for entire gamut of investment and capital market will facilitate development and control of India's capital market?

A: This issue is already under active consideration of the Central Government. The Central Government has constituted the Financial Sector Legislative Reform Commission (FSLRC) headed by a former Supreme Court Judge which will make recommendations to harmonise the

"The greatest revolution of our generation is the discovery that human beings, by changing the inner attitudes of their minds, can change the outer aspects of their lives." - William James

different statute, dealing with financial and securities laws.

Q: What are the main challenges of safeguarding rights and facilitating redressed mechanism for common investor?

A: Although SEBI stock exchanges and some of the intermediaries have to be in place system for safeguarding rights of investors and facilitating grievance redressal mechanism. A lot still needs to be done for its effective functioning. The concerned agencies have not done enough for investor's education. I have come across cases where on the basis of complaint made by an investor, the regulator initiated action against the violators and issued directions to them under Section 11 and 11B of the SEBI Act but did nothing to protect interest of the investors who made complaint. SEBI should take more judicious approach in this regard and ensure that the violators of the norms are punished and interest of investors is also taken care of.

Q: Whether there should be a special body with exclusive executive responsibilities for addressing Investor grievance procedure.

A: I do think multiplying the authorities is going to serve the purpose. The in house mechanism with each of the regulators,

be it securities market regulator, insurance sector regulator, banking sector regulator or any other regulator, needs to be strengthened. There should be a dedicated division which should be mandated to look into the grievance in a given time frame. It should also be empowered to redress the grievance through alternate dispute resolution mechanism (ADR). If ADR mechanism fails only then recourse to courts/tribunals should be made.

Q: For legal representation to SAT, in addition to legal practitioner, professionals from ICAI, ICSI & ICWAI are duly authorized to represent their clients. We would like to know from you about contributions of these professionals rendering value to SAT?

A: I am of the view that representation by the professionals like Company Secretaries, Chartered Accountants and Cost Accountants in addition to the Advocates before Tribunals is a healthy development. Since Tribunals are not bound by the strict procedures as laid down in the Evidence Act and Code of Civil Procedure but are free to follow their procedure for expeditious disposal of cases, expertise from professionals is of great help in arriving at just and reasonable conclusion especially in the Tribunals in the financial sectors.

CSBF

COMPANY SECRETARIES BENEVOLENT FUND HOW TO BECOME THE LIFE MEMBER



Application for life membership of CSBF has to be submitted in the prescribed Form-A (available on the website of the Institute i.e. www.icsi.edu) and should be accompanied by Demand Draft or Cheque (payable at par) for **Rs. 5,000/-** drawn in favour of "Company Secretaries Benevolent Fund" payable at New Delhi and the same can be deposited in the offices of any of the Regional Councils located at Delhi, Kolkata, Chennai and Mumbai. However for immediate action, the applications should be sent to **The Secretary & CEO, The Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi-110 003.**

The members can also apply online.

For further information/clarification please contact Mrs. Meenakshi Gupta, Joint Director or Mr. J.S.N. Murthy, Administrative Officer on telephone **No.011-45341047 / 45341049**, mobile No. **9868128682** or through e-mail ids_csbef@icsi.edu or member@icsi.edu.

Following benefits are presently provided by the CSBF:

<p>Financial Assistance in the event of Death of a member of CSBF:-</p> <p>Upto the age of 60 years</p> <ul style="list-style-type: none"> ■ Group Life Insurance Policy for a sum of Rs. 2,00,000; and ■ Upto Rs. 1,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time. <p>Above the age of 60 years</p> <ul style="list-style-type: none"> ■ Upto Rs. 1,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time. <p>Other benefits subject to the Guidelines approved by the</p>	<p>Managing Committee from time to time:-</p> <p><i>Reimbursement of Medical Expenses</i></p> <ul style="list-style-type: none"> ■ Upto Rs. 40,000 <p><i>Financial Assistance for Children's Education (one time)</i></p> <ul style="list-style-type: none"> ■ Upto Rs. 10,000 per child (maximum for two children) in case of the member leaving behind minor children.
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THE MANAGING COMMITTEE OF THE COMPANY SECRETARIES BENEVOLENT FUND (CSBF) IN ITS MEETING HELD ON 29TH SEPTEMBER 2011 HAS DECIDED TO INCREASE THE FINANCIAL ASSISTANCE FROM RS. 3.00 LAKHS TO RS.5.00 LAKHS TO THE NOMINEE(S) OF THE DECEASED MEMBERS OF THE FUND UPTO THE AGE OF 60 YEARS (W.E.F. 1ST APRIL 2012).

THE COMMITTEE HAS ALSO DECIDED TO INCREASE THE LIFE MEMBERSHIP SUBSCRIPTION FOR ENROLMENT AS A MEMBER FROM RS. 5,000 TO RS. 7,500 W.E.F. 1ST APRIL, 2012.

THE MEMBERS WHO ARE NOT THE MEMBERS OF THE CSBF ARE REQUESTED TO BECOME THE MEMBERS OF THE FUND.

FOR FURTHER DETAILS PLEASE VISIT: www.icsi.edu/csbef

"Your definite main goal is a set of thoughts...thoughts you control. Desire is an emotion which you create and control. Enthusiasm is a state of mind also subject to your control. Desire plus enthusiasm is the pulsating force to create things from thought." - Thomas D. Willhite

How to say “No”

CS Amar Kakaria, Investment Banker, Mumbai

Few weeks ago, we received a business proposal from an associate with whom we had successfully undertaken quite a few projects. The proposal was based on something we had orally discussed and agreed upon in the past. However, quite some time had lapsed since our last conversation and situation also changed due to which we decided to enter into an alternate venture. We were no longer interested in the opportunity, but were not quite sure as to how to inform it to him. We didn't want to endanger our business relationship and any future potential opportunities.

Therefore, we delayed in replying to his mail and put it as the last priority. Every few days when we check the pending list, it would be there and we thought we would reply later. At times we contemplated not replying at all, but we thought it would not be appropriate, especially since we knew each other for such a long time. Finally one fine morning, we decided to get ahead by sending reply to his email. We apologized for our delayed response, and at the same time genuinely explained our situation with a conclusion that we had no plans to take up the opportunity anymore. After reading the mail carefully, we clicked "Send" button and hoped for the best. It was early in the morning and we didn't think that our associate would be in the office. Within few minutes of sending the mail, we got a surprising reply. The reply was very genial. Our associate said there were no



worries at all, and he wished us success for our new venture in the days to come.

Have any of us ever had to say “No” before and feel conflicted about doing so? I am sure many of us have to regularly pass through such trauma in our professional and personal life. We often make a big deal out of saying “No”, afraid that we may commit a dreadful crime by replying negatively. In our minds, we are scared that other people will be angry, that we shall be hated, that we'll be deemed as making things difficult for others.

The actual reality is, many of these thoughts are self-created, and may not be applicable at all. Saying “No” is our own privilege, and should not be as difficult as we make it out to be. Here are some thoughts that can be useful to make sure we do not find ourselves doing something that we would prefer not to do.

When to say No??

Was our inclination to say “Yes”, even though there's a voice deep down saying “no”? If yes, let's raise the volume on that inner voice. What could be possible reasons for saying no?

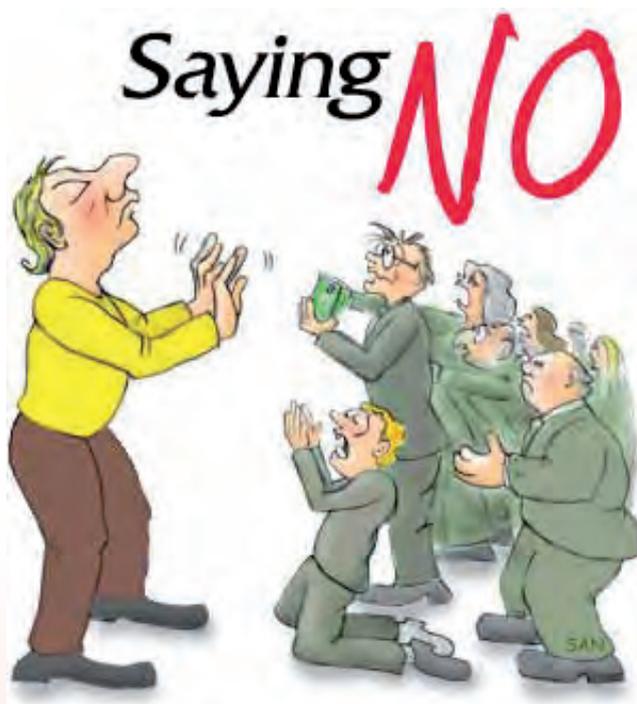
- We have no interest
- It is beyond our means
- It is beyond our comfort level

Note down all our reasons for saying “No” and identify which stem from a lack of confidence versus a sincere apathy in fulfilling the request.

What would happen if we say “Yes”? Perhaps:

- It would make our colleagues happy
- We would be considered as a team player
- Our visibility with seniors would be improved

It comes down to a simple cost – benefit analysis. Whether the benefits outweigh our temporary discomforts? Would the discomfort involved in saying yes outweigh the benefits of possibly going along with the request? Following 3, stages are involved:



“You gain strength, courage, and confidence by every experience in which you really stop to look fear in the face. You are able to say to yourself, “I lived through this horror. I can take the next thing that comes along.” - Eleanor Roosevelt

- Before Saying "No" – Guilt factor prevails
Saying "No" is difficult for many of us and guilt often comes into play in such cases. Whether this guilt has its foundation in religion or a general perception, we often recognize it and make decisions, we would rather not be making.
- While Saying "No" – Practice is the must
We have made the decision, after thoughtfully weighing the results of your cost – benefit analysis, to honestly say "no." Well, then lets go ahead and say it clearly and self-assuredly...in the mirror. Look in own eyes and do it. Just say "No". Say it like we really mean it, and then say it again as we would to the person who made the request. When we pretend, we are speaking to the person who made the request, does it come out differently? Practice and experiment with different ways to say "No" until we find one we are comfortable with. Then go ahead, and say "No" to the concerned person.
- After we say "No" – Be ready for surprises
If we are used to giving in to others, then after all that practice, we may just be surprised to find that they are not willing to accept it. They may push, rephrase the question, or make a new, not altogether different, request. We must be prepared for it and ready for tackling all kind of tricky situations. Revisit the questions we asked ourselves before – what would happen if we said "No" or "Yes"? If we are serious about saying "No" then stick to it. Politely tell the person making the request that we would appreciate it if they respect our wishes and ask them to refrain from pursuing it further. If we are comfortable expressing "reasons why" then we can do so by speaking from personal perspective.

Useful Tips – How To Say "No"

1. Angry No
Saying "No" in an aggressive manner could result in contempt. It can permanently hamper relationship and future opportunities as well.
2. Soft No
This is at the other end of the spectrum in how to say "No". Saying "No" in non-confident manner will make it difficult to convince other person about our decision and give different explanations.
3. Assertive No
This is the best way to say "No" in a firm, yet polite voice. Also, if we want to say the reasons why, keep it short and sweet:
4. Use Body Language Effectively
When saying "no," stand tall and have contact with another person. Use of firm tone in voice can have an additional impact.

Just Say No



5. Have Back-up
When someone asks a question, we are not expected to respond immediately and can seek time. Such time gap provides an opportunity to think the matter and gather our thoughts.

Important Exercise for Next 1 Month – Practice to Say "No"

Whether it is a child at home, a salesman in the shop or an assistant in the office – practice saying "No" to one person for at least the next one month. If done regularly, we shall be an expert by end of the month. The more confidently we say "No", the easier it becomes.

What will happen?

1. We shall feel much more confident and proud.
2. We will not find ourselves doing things we never wanted to do.
3. We shall have more time to focus on the things we want to be involved in.
4. Others will respect our wishes and take us seriously the first time we say "No".

Learning to say no to more requests can be one of the biggest favors we can do ourselves and those whom we love. It also helps reduce stress levels and gives us time for what is really important.

Mahatma Gandhi has rightly said – "When you are aware that you are standing for truth, it really does not matter who is standing against you." Let us be true to ourselves and firmly avoid becoming poor victim by saying "No" to unjust unjustified demands from others.



"We all need a daily check up from the neck up to avoid stinkin 'thinkin' which ultimately leads to hardening of the attitudes." - Zig Ziglar

COMPLIANCES FOR THE MONTH OF MAY

CS Hemant V. Pandya, Company Secretary, Mumbai

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections / Rules/ Clauses are covered	Due Date before which you need to comply the activity	You need to submit this to
TAX RELATED COMPLIANCES					
1	Pay excise duty on the goods removed from the factory or warehouse for the previous month	Rule 8(1)	Central Excise Rules, 2002	May 5	Excise Authorities
2	Pay excise duty on the goods removed from the factory or warehouse for the previous month (E- payment)	Rule 8(1)	Central Excise Rules, 2002	May 6	Excise Authorities
3	Submit monthly Central Excise E.R.1 Return (E. R. 2 return for 100% EOU/ units in FTZ / SEZ).	Rule 12 (1) / 17 (3)	Central Excise Rules, 2002	May 10	Excise Authorities
4	Submit monthly return return by manufacturer of Final Product (N.A. for SSI)	Rule 9(7)	CENVAT Credit Rules, 2004	May 10	Supritendent of Central Excise
5	Submit return containing information of principal input for the preceding month E.R.6	Rule 9A	CENVAT Credit Rules, 2004	May 10	Supritendent of Central Excise
6	Submit monthly return for receipt of inputs & capital goods for the preceding month in Form No. E.R.2	Rule 9 (7) & Rule 12	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	May 10	Supritendent of Central Excise
7	Submit monthly Return for availment of CENVAT Credit for preceding month in Form No. ER 1	Rule 9(7) & Rule 12	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	May 10	Supritendent of Central Excise
8	Deposit duty on goods cleared during a calendar month, where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a Financial Year	Second Proviso to Rule 8(1)	Central Excise Rules, 2002	if paid electronically - 16th May, otherwise 15th May	Excise Authorities
9	Monthly payment of excise duty for the preceding month SSI Units in Form GAR-7	Rule 8	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	May 15	Excise Authorities
10	Monthly payment of excise duty for the preceding month SSI Units in Form GAR-7 (E-payment)	Rule 8	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	May 16	Excise Authorities
11	Deposit duty on goods cleared during a calendar month, where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a Financial Year [E-payment]	Second Proviso to Rule 8(1)	Central Excise Rules, 2002	May 16	Excise Authorities
INCOME TAX RELATED COMPLIANCE					
1	Deposit TDS from salaries for the previous month in Challan No. 281	Section 192	Income Tax Act, 1961	May 7	Designated Bank/ Income Tax Authorities
2	Deposit TDS on interest on Securities, Dividends other than dividends referred to in Section 115O, Interest other than interest on Securities, Winnings from Lotteries & crossword puzzles, Winning from Horse Races	Section 193, Section 194 to Section 194BB	Income Tax Act, 1961	May 7	Designated Bank/ Income Tax Authorities

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections/ Rules / Clauses are covered	Due Date before which you need to comply the activity	You need to submit this to
INCOME TAX RELATED COMPLIANCE					
3	Deposit TDS on Contractor's Bill/ Rent Advertising / Professional Service Bill deducted in the previous month	Section 194C to Section 194H	Income Tax Act, 1961	May 7	Designated Bank / Income Tax Authorities
4	Deposit TDS on payment to non-resident, Foreign company being holder of mutual fund units, Units held by an offshore fund, Income from foreign currency bond, Income of FILs from securities	Section 195, Section 196 A to 196 D	Income Tax Act, 1961	May 7	Designated Bank / Income Tax Authorities
5	Payment of Tax Collected at Source	Section 206	Income Tax Act, 1961	May 7	Designated Bank / Income Tax Authorities
6	Payment of Securities Transaction Tax for the previous month of March (Challan No. ITNS 283)	Section 100	Income Tax Act, 1961	May 7	Designated Bank / Income Tax Authorities
7	Submit a statement of tax deduction from interest, dividend or any other sum payable to non residents during the months January to March in Form 27Q	Section 194E, 195, 196A, 196B, 196C, 196D and Rule 31A and 37A	Income Tax Act, 1961 read with Income Tax Rules, 1962	May 15	Income Tax Authorities
8	Issue Annual TDS Certificates in Form 16A to vendors (where monthly certificates not given)	Section 203	Income Tax Act, 1961	May 31	Income Tax Authorities
9	Furnish statement of deductions of tax from contributions paid by trustees of approved superannuation fund.	Rule 6 of Part B of 4th Schedule	Income Tax Act, 1961	May 31	Income Tax Authorities
10	Issue certificate (Form no. 16) of TDS on salaries and perquisite value paid to employees	Section 203 read with Rule 31 (1) (a)	Income Tax Act, 1961 read Income Tax Rules, 1962	May 31	Income Tax Authorities
FINANCE ACT & SERVICE TAX RELATED COMPLIANCE					
1	Pay Service tax collected during the previous month by persons other than individuals, proprietors and partnership firms in G.A.R-7	Section 68 read with Rule 6	The Finance Act, 1994 read with The Service Tax Rules, 1994	May 5	Service Tax Authorities
2	Pay Service tax collected during the previous month by persons other than individuals, proprietors and partnership firms in G.A.R-7 (E-payment)	Section 68 read with Rule 6	The Finance Act, 1994 read with The Service Tax Rules, 1994	May 6	Service Tax Authorities
THE MAHARASHTRA STATE TAX RELATED COMPLIANCE					
1	Submit monthly return and payment of tax for the previous month in Form 209 by Dealer to whom a certificate of Entitlement has been granted for availing incentives by way of exemption	Rule 18	The Maharashtra Value Added Tax Act, 2005 read with the Rules thereunder	May 1	Sales Tax Authorities
2	Submit monthly return and pay tax for the previous month (if tax liability during the previous year exceeds Rs. 1 Lakh)	Rules 17 / 18 and 41	The Maharashtra Value Added Tax Act, 2005 read with the Rules thereunder	May 25	Sales Tax Authorities

DATES TO REMEMBER

Compliance Calendar

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections / Rules/ Clauses are covered	Due Date before which you need to comply the activity	You need to submit this to
THE MAHARASHTRA STATE TAX RELATED COMPLIANCE					
3	Submit monthly return of Professional Tax if tax liability is Rs. 20 thousand or more in Form No. III (Return-cum-challan)	Rule 11 (3) (c)	The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 read with The Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975	May 31	Profession tax Authorities
4	Credit Professional Tax deducted in the previous month in Form III	Rule 17	The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 read with The Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975	Within 15 days of such deduction	Profession Tax Authorities
COMPANY LAW RELATED COMPLIANCES					
1	Payment of monthly Provident Fund dues (Corporate) for previous month in prescribed challan	Section 418	Companies Act, 1956	May 15	(i) Post Office Saving Bank Account or (ii) Special Account with SBI or any Scheduled Bank
2	Letter to Auditors asking their certification / eligibility for appointment as Auditor of the Company	Section 224 (1) (B)	Companies Act, 1956	Before Board meeting for Audited Accounts finalisation (May 31)	Auditors
ECONOMIC, INDUSTRIAL & LABOUR LAW RELATED COMPLIANCES					
1	Pay monthly Provident Fund dues (non-corporate)	Paragraph 38	Employees' Provident Funds Scheme, 1952	May 15	Provident Fund Authorities
2	File monthly return in Form No. 5 for employees leaving / joining during the previous month i.e. April	Paragraph 20(2) read with Paragraph 36(1) & (2)	The Employees Pension Scheme, 1995 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	May 15	Provident Fund Commissioner
3	File monthly return in Form no. 2(IF) of employees entitled for membership of Insurance Fund	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	May 15	Provident Fund Commissioner
4	File monthly return in Form no. 3(IF) for members of Insurance Fund leaving service during the previous month i.e. April	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	May 15	Provident Fund Commissioner

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections / Rules/ Clauses are covered	Due Date before which you need to comply the activity	You need to submit this to
ECONOMIC, INDUSTRIAL & LABOUR LAW RELATED COMPLIANCES					
5	File monthly return in Form no. F4(PS) of members joining service during the month	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	May 15	Provident Fund Commissioner
6	Pay ESI contribution for previous month i.e. April	Regulation 31	Employee State Insurance Act, 1948 Employees State Insurance (Gen) Regulations,	May 21	ESIC Authority
7	Submit monthly return of Provident Fund for the previous month	Paragraph 38	Employees' Provident Funds Scheme, 1952	May 25	Regional Provident Fund Commissioner
8	Submit report on annual purchases and consumption of ODS for use in activities specified in Form 5 of Schedule XI	Rule 14(2)	Ozone Depleting Substance (Regulation & Control) Rules, 2000	within 60 days of the end of a c c o u n t i n g year(May 31 for accounting year ended on March 31)	Concerned registering authority specified in column (4) of schedule V
9	Submit return of declaration	Regulation 14	Employees State Insurance (General) Regulations, 1950	Within 10 days from the date of receiving the relevant papers	ESIC Authority
10	Submit Form 6 or 7	Regulation 26	Employees' State Insurance Act, 1948 and Employees' State Insurance (Gen) Regulations, 1950	a) Within 42 days of termination of the contribution period b) within 21 days of termination of Factory/ establishment c) within 7 days of the receipt of requisition	ESIC Authority
11	Issue Notice for payment of Gratuity and Notice for Inadmissible claim in Form L&M	Section 8	Payment of Gratuity Act, 1972	Within 15 days of receipt of application	Applicant employee or legal heir
RBI (NBFC) RELATED COMPLIANCES					
1	File return of exposure o capital markets in Form NBS-6	Para 22	NBFC-D Prudential Norms Directions, 2007	May 7	RBI
2	File a monthly return in prescribed format (NBC-ND)	Circular No. DNBS (RID) CC No. 57/02.02.15/2005-06	Department of Non-Banking Supervision, RBI	May 7	RBI
LISTING AGREEMENT RELATED COMPLIANCES					
1	Submit limited review report for the quarter ended March 31	Clause 41	Listing Agreement	May 15	Stock Exchanges
2	Submit annual audited financial results (if, This is not submitted then required to submit audited consolidated half yearly financial results)	Clause 41	Listing Agreement	May 30	Stock Exchanges

Though all precautions have been taken in compiling this calendar, WIRC of ICSI should not be held responsible in case of any discrepancy. In case of doubt, please refer to relevant law/rules.



WIRC News

KANDIVALI STUDY CIRCLE

10 COMMON MISTAKES INVESTORS MAKE

Study Circle Meeting held on 10 COMMON MISTAKES INVESTORS MAKE on 4th March, 2012 at Kandivali Recreation Club, Kandivali (West), Mumbai.

Mr. Harsh Roongta, CEO, Apnapaisa.com was the speaker. Mr. Santosh Jain, a Practising Company Secretary introduced the Guest Speaker. Mr. Harsh Roongta then started his Power Point Presentation on 10 COMMON MISTAKES INVESTORS MAKE & addressed the members in detail regarding the several cardinal mistakes made by the investors and provided the guidance to eradicate such mistakes. During his session he explained in detail each topic by giving illustrations. During his speech, he interacted with the Members at various stages and replied to the query raised by them. The session was interactive, as the participants asked different questions & got clarifications on their queries. The entire session was very lively and educative.

The Meeting ended with a vote of thanks and as a token of love, the memento was presented by Mr. Hemant Pandya, a Practising Company Secretary to the speaker.

89 participants had attended the meeting.

WIRC report

Fema Update on Inbound & Outbound Transactions & Compounding Offence

WIRC organized Study Circle Meeting on 30th March 2012 at Sardar Vallabhai Patel Engineering College Andheri on Fema Update on Inbound & Outbound Transactions & Compounding Offence . The speaker was Ms. Sudha Bhushan. It was a practical discussion on recent directives of RBI. There were 41 delegates.

Critical Aspects of Companies Act

WIRC organized a Full Day Seminar on Critical Aspects of Companies Act

On 31st March 2012 at Bajaj Bhavan Nariman Point Mumbai Speakers were Shri R V Dani, Joint Director, MCA on Inspection & Investigation u/s 209, Shri Ashish Jani, Partner, Deloitte on Related Party Provisions & Accounting Standards, Shri Rajkumar Adukia, CS, CA & ICWA :- on New Companies Bill. Ms. Naina Desai, Company Secretary, L & T Power Development on Roles, Rights & Responsibilities

of Independent Directors, Shri Satyan Israni, Advocate on Transfer, Transmission & Nomination. All the discussion were informative and interesting to all the 78 delegates, who attended the programme.

Statutory Compliance

WIRC organized full day seminar on Seminar on Statutory Compliance Management on 7th April 2012 at Bajaj Bhavan Nariman Point Mumbai

Shri V Narasimhan, Executive Vice President, Kotak Mahindra Bank.

As a special invitee delivered a key note address.

The speakers were Shri V.Sundaresan, Chief General Manager, SEBI on Development of Capital Market & its Regulation, Shri R Rajagopalan, General Manager, RBI on FEMA, Shri Lancy D'souza, Advocate & Legal Advisor Bombay Chamber of Commerce on Labour Law. All the discussion were insightful to 72 delegates of the programme.

Mergers & amalgamation, takeover and Debt restructuring ICSI- WIRC organized a Seminar on Mergers & amalgamation, takeover and Debt restructuring on 14th April 2012 at Kamalnayan Bajaj Hall, Nariman Point, Mumbai. Shri Arun Nanda, Director, Mahindra & Mahindra and Shri N J N Vazifdar were Chief Guest and special invitee for the Inaugural session.

Shri Arun Nanda with his anecdotes, explained the rationale of M&A, and also, voiced prominent role that members play in the critical strategic areas of corporate management. Shri Vazifdar expressed his views regarding effectiveness of mergers, amalgamation in the context of regulatory fabric.

First speaker Shri Sharad Abhyankar, Advocate & Solicitor, Khaitan & Co. explained about various aspects of mergers and amalgamations under companies act.

Second speaker Shri Yogesh Chande, Advocate discussed elaborately the new SEBI Takeover Code.

Third speaker Shri Sujal Shah, Chartered Accountant dealt with various aspects and methods of Valuation for Mergers and Amalgamations.

The program was attended by 119 Members and Students Guide to SME IPO

WIRC organized Study Circle Meeting on 15th April 2012 at Don Bosco Hall Borivali on Guide to SME IPO. Speaker, Mr Hitesh Kothari addressed nearly 123 delegates.

Aurangabad Chapter

1) For seminar and work shops

Name of the programme: **Students Felicitation Programme**; Date, time and venue of the programme: **Date & Time: 2nd March, 2012 at 6:00 P.M.**; Venue: **Hotel Atithi, Jalna Road, Aurangabad**; Name of guest: **Chief Guest** : Dr. P V Jabde, Principle of Deogiri College, **Guest of Honor**: C.M. Roa, Principle of M.P. Law College and CS/CA Mr. Gautam Nandawat; **Name of the faculties with topics**; Attendance: **Total 75 students passed in various modules plus parents of CS completed students and some members were present.**

Brief of Programme: Aurangabad Chapter has organized Students Felicitation Programme for the students who have cleared December, 2011 exams.

Dr. P.V. Jabde, principle of Deogiri College was the chief guest of Programme, Dr. C.M. Roa, Principle of M.P. Law College and CS/CA Mr. Gautam Nandawat were the guest of honour of Programme. Mr. Mahesh Singhi, Chairman of Aurangabad Chapter of ICSI has delivered welcome speech and Principles of Deogiri college and M.P. Law College and Mr. Gautam Nandawat encouraged and motivated the students. Some students and parents expressed their views and extended their thanks to the Aurangabad Chapter for helping and supporting the students. CS A.R. Joshi, senior member of Aurangabad Chapter, guided the students for preparation for the examinations. CS L. A. Jaipurker, Vice-chairman of Aurangabad Chapter expressed his views on the analysis of results. CS Ashish Gupta, Secretary of Aurangabad Chapter concluded the programme with a vote of thanks. CS Students Sonali was the anchor for the programme.

2) For seminar and work shops

Name of the programme: Union Budget 2012; **Date, time and venue of the programme:** **Date & Time:** 24th March, 2012 at 10:30 A.M. to 2:30 P.M.; **Venue:** Hotel Atithi, Jalna Road, Aurangabad; **Name of guest: Chief Guest :** Mr. A.S. Kulkarni, Asst. Commissioner of Central Excise and Custom; **Name of the faculties with topics:** CA Gaurav Trilokchandani from Ernst and Yong Pvt. Ltd., CA Sohail Gala from Ernst and Yong Pvt. Ltd.; **Attendance:** Total 31 participants including Members, Students and other delegates were present in the Seminar.

Details of Seminar:

Aurangabad Chapter has organized seminar on Union Budget-2012 on 24th March, 2012 at Hotel Atithi, Jalna Road, Aurangabad.

Mr. A.S. Kulkarni, Asst. Commissioner of Central Excise and Custom was the chief guest of Seminar. After welcome speech of Chapter Chairman Mr. Mahesh Singhi, chief guest Mr. A.S. Kulkarni addressed to the seminar and stated that Union Budget 2012 is revenue generated for revenue authority, he expressed his gratitude to Aurangabad Chapter of ICSI for inviting in the seminar. CA Sohail Gala from E&Y deliberated on Direct Taxation in detail covering changes and new provisions related with all taxpayers from individual to corporate. Second session was taken by CA Gaurav Trilokchandani and he deliberated on Indirect Taxation. Both sessions were very interactive and effective discussion had with faculties and chief guest. CS Ashish Gupta, Secretary of Aurangabad Chapter concluded the programme with a vote of thanks. CS Pooja Chirputker was the anchor for the programme.

CS L.A. Jaipurker, Vice chairman of Aurangabad chapter, CS S. Chirputker and CS Madhu Ghatiya members of managing committee of Aurangabad chapter were present and actively participated in the seminar.

Bhopal Chapter

EXECUTIVE DEVELOPMENT PROGRAMME

Bhopal Chapter successfully organized its first Executive Development Programme From 16th to 23rd March 2012 between 10.00 AM to 6.00 PM at Hotel Rajhans Regent, ISBT, Bhopal. The Programme was inaugurated by CS Amit Kumar Jain, Ex-Officio Member, CS Dhanraj Singh Thakur, Chairman, CS Piyush Bindal, Secretary and CS M M Chawla, Ex-Chairman and Member, Bhopal Chapter followed by the General Instructions and Briefing to all the participants.

The Programme was according to the Training Structure mandated by the Institute and was made interesting with the Combination of both soft skills & Light topics and Technical Topics which were taken by some of the best and Eminent faculties named as Mr. Anil Chawla, Mr. Ritesh Sharma, Mr. Gajendra Thakur, CS Pradeep Mutreja, Ms. Neety Jain, CS B L Saboo, CS M M Chawla, CS H R Mutreja, CA M K Sharma, CS Sandesh Yashlaha, CS Amit Kumar Jain, M.r Mukul Sharma. CS Amreen Khan, was the coordinator of the programme.

In the Valedictory session Mr. Arvind Saran Dt. Commissioner, Excise & Customs & Mrs. Samriti Saran Deputy Commissioner, Excise, Customs & Service Tax were invited as the Chief Guest and Guest of Honour respectively who addressed and distributed the certificates and Prizes for the Best Presentation Group, Best Presenter and Best Participant to the participants and explained the keys for the good successful practical life. CS Vivek Nayak gave vote of thanks for the programme. CS Awadhesh Parashar and CS P K Rai were also present in the session. Around 65 students attended the programme.

Indore Chapter

Report on Career Awareness Program

Held at Devi Ahilya Arts & Commerce College, Indore, on 20th March, 2012

A career awareness program was organize by Indore Chapter on 20th March, 2012 at Devi Ahilya Arts & Commerce College, Indore at 4 pm. The program was attended by approximately 90 Student of B. Com. 1st & 2nd Year.

On behalf of Indore Chapter CS Ritesh Gupta, Chairman ICSI Indore Chapter, CS Ashish Karodia, Secretary of ICSI Indore Chapter & Ms. Reshma Khan, Programming Officer of ICSI Indore Chapter had addressed the program.

CS Ritesh Gupta explained about the course, syllabus and subjects of CS Foundation and executive programs & also explained about scope of CS and opportunity available for CS in employment as well as in practice, CS Ashish Karodia had explained about the eligibility criteria, examination patterns, trainings requirement etc.

Ms. Reshma Khan, Programming Officer of ICSI Indore chapter gave the details of Oral Coaching Classes to the Students, Started by ICSI Indore Chapter for Foundation & Executive Program & Introduced Faculty Members appointed for Oral Coaching Classes.

The Pamphlets of the course was distributed to all the students and career counseling kit presented to the principal of the college.

The Faculty members also replied the queries raised by the students. The Programme was concluded by Vote of Thanks.

Kolhapur Chapter

REPORT OF TWO DAYS SEMINAR AT KOLHAPUR ON 16-17 MARCH 2012

KOLHAPUR CHAPTER OF WIRC OF Institute of Company Secretaries of India Two Day's Seminar at Kolhapur on 16th and 17th March 2012 at Surya Conference Hall, Rajarampuri, Kolhapur. The event received an overwhelming response from members and students. The seminar was divided in to two days. Theme for the first day was "SETTING UP OF AN INDUSTRY" while for the second day it was "REGISTRATION OF PATENT AND PRACTICAL ASPECTS OF COST ACCOUNTING RECORD RULES".

The Seminar was inaugurated by traditional lighting of lamp at the hands of CA Mahaveer Kapse, CS Priya Pangaonkar, Vice Chairman of Kolhapur Chapter, CS Prasad Joshi, Secretary of Kolhapur Chapter, CS Prashant Kamat, Treasurer of Kolhapur Chapter and other members of Kolhapur.

Nashik Chapter

Name of the programme: BUDGET - 2012

Date, time and venue of the programme: Tuesday, 20 March, 2012 at Nasik Engineering Cluster, Ambad MIDC Area, Nasik

Name of the faculties with topics: 1) CMA R.K. Deodhar - Central Excise 2) CMA S.R. Bhargave - Service Tax (3)Mr. Arun Sawant - Customs

Attendance: 130

The Seminar was attended by many corporate members, students and practicing members. New provisions in sales Tax by CMA Sanjay Bhargave, Renowned Cost Accountant, Pune, Changes in Central Excise by CMA R. K. Deodhar and Provisions in EXIM Policy and Amendments in Customs Act by Mr. Arun Sawant were discussed. Quires raised by corporate members and students were solved by faculties.

Vote of thanks given by CMA Pradny Chandorkar. The programme was coordinated by CMS/CS Shilpa Parkhi, Treasurer of Nasik Chapter of WIRC of ICSI

We are happy to state that the response to the aforesaid programme was overwhelming.

Thane Chapter

1. 27th Student Induction Programme

The ICSI Thane Chapter arranged 27th SIP at the Chapter premises between 1st March 2012 and 7th March 2012. 40 students participated in the programme that was inaugurated by CS R T Rajguroo, past chairman of the Thane Chapter.

During the seven days of the programme, various faculties from different fields undertook training sessions

on the various topics prescribed by the Institute like Introduction to CS Course (R T Rajguroo), Winning People in corporate World/Job Market (Mr. Suniel Raikar), Positive Approach to studying & Appearing for Professional Exams (CS Chanda Makhija).

Mr. Sunil Ullal took an engaging session on presentation skills. According to him, timely attendance, proper dress code, eye contact, use of simple and appropriate language, division of the total speech into introduction, main part and conclusion, politeness in addressing the questions plays vital role in attaching the attention of the audience to make the speech lively and interesting.

CS Allad Oak took a session on basics of Legal Drafting, Personal Effectiveness and Time Management (CS Mukesh Tank), Importance of Knowledge (CS Kiran Somvanshi), Introduction to stock Market (CS Rahul Sahastrabudhe), Grooming and Office Culture by Sneha Raikar.

In his session on profession of Company Secretary, CS Suhas Ganpule deliberated on the professional functions and responsibilities of Company Secretaries and the opportunities available to Company Secretaries both in employment and in practice. He also answered the queries raised the participants. The SWOT Analysis session was conducted by Mrs. Jyoti Muley.

The students in the programme made presentations, which were well appreciated. In Valedictory session many students expressed their views about the faculties and on other relevant matters after Mr. Rajguroo called upon them to give their feedback about the programme. Mr. Amey Vaidya was selected as the best participant of the programme.

2. 28th Student Induction Programme

The ICSI Thane Chapter organized the 28th SIP at the Chapter premises between 13th March 2012 and 19th March 2012. 35 students participated in the programme that was inaugurated by by CS Kiran Somvanshi - Chairperson of the Thane Chapter. General instructions and briefing about the programme was given to all the students. The programme was structured based on the training structure mandated by ICSI and was made interesting through use of audio-visual aids.

The following sessions were taken by various faculties. Importance of Knowledge by CS Kiran Somvanshi, SWOT Analysis - Mrs. Jyoti Muley, Opportunities both in Practice & Employment by CS Janak Pandya. With his experience of almost a decade, he gave the students a hint of what they will be required to do as CS Professionals.

Corporate trainer Mr. Sunier Raikar took a session on Winning People in corporate World/Job Market. Session on the profession of Company Secretary was taken by CS Suhas Ganpule; Analyzing Financial Statements by CA Jigna Katira covering the necessity and usefulness of proper analysis of the Financial Statements, methodology and techniques to be adopted for analyzing the financial statements, how to study the Financial Statements through ratio analysis. Grooming and Office Culture by Mrs Sneha Raikar; Introduction to CS Course by R T Rajguroo; Introduction to Tax Laws by CS Tejas

Davda; Positive Approach to studying & Appearing for Professional Exams by CS Chanda Makhija, Personal Effectiveness and Time Management by CS Mukesh Tank; Introduction to stock Market by CS Rahul Sahastrabuddhe.

The students in the programme made presentations, which were well appreciated. In Valedictory session many students expressed their views about the faculties and on other relevant matters after Mr. Rajguroo called upon them to give their feedback about the programme. Ms. Bhakti Thakkar was selected as the best participant of the programme.

Vadodara Chapter

Name of the programme - Study Circle Meeting

Date, time and venue of the programme - 3rd March, 2012 from 6:00 pm to 8:15 pm

Venue - Chapter Premises

Name of the faculties with topics - CS Jaydev Betai

Verification & Scrutiny of documents for IPO

Attendance - 78 Participants

ICSI - Vadodara Chapter organised Study Circle Meeting on the subject of "Verification & Scrutiny of Documents for IPO" on Saturday, the 3rd March, 2012 at the Chapter premises.

Mr. Jaydev Betai, Practicing Company Secretary made threadbare analysis of documentation to be made for IPO right from the stage of conceiving the idea of IPO in simple and lucid way. He also shared his practical experience. His address was supported by detailed power point presentation on IPO Guidelines, documents and Due Diligence including IPO's in 2011, Preparation for IPO, SME Exchange, ICDR, Premium Fixation, IPO Grading, and Book Building Process etc.

Earlier Mr. Nishant Javlekar, Managing Committee Member introduced the speaker. Ms. Swati Bhatt, Vice Chairperson presented plant sapling to Mr. Betai. Lastly, Mr. Devesh A Pathak, Former WIRC member & former Chairman of the Chapter proposed vote of thanks. Around 78 participants had attended the meeting.

Name of the programme - Study Circle Meeting

Date, time and venue of the programme - 23rd March, 2012 from 6:00 pm to 8:15 pm.

Venue - Chapter Premises

Name of the faculties with topics - Mr. S V Diwanji (Cost Accountant), Mr. Y S Thakar (Cost Accountant)

- Cost Audit Record/Report Rules, 2011
- Legal Aspects - Appointment of Cost Auditors

Attendance - 60 Participants

A study circle meeting was organised by ICSI - Vadodara Chapter on Friday, the 23rd March, 2012 at 6:00 pm at the chapter premises on the theme of "Cost Audit Record/Report Rules - 2011" & "Legal Aspects - Appointment of Cost Auditor".

CMA S. V. Diwanji & CMA Y. S. Thaker addressed the gathering and explained the applicability and implications of the Companies (Cost Accounting Records) Rules, 2011 & The Companies (Cost Audit Report) Rules, 2011. They also elaborated the procedure for Appointment of Cost Auditors as well as contents of Compliance Report and Compliance Audit Report with illustration by PPT.

Earlier Ms. Kirti Gohil and Ms. Kruti Parikh introduced the speakers. CS Vishvesh Vachhrajani, Former Chairman WIRC & CS J. B. Sojitra offered floral welcome to the speakers. Lastly CS Devesh A. Pathak, Former Member, ICSI - WIRC proposed vote of thanks. Around 60 participants had attended the meeting.

Tentative PDC Calendar - May 2012

S. No.	Date	Day	Venue	Programme	Topic
1	6th	Sunday	Kandivali	Study Circle Meeting	To be decided
2	12th	Saturday	To be Decided	Full Day Seminar	Foreign Direct Investment , ECB, FCCBs & Private Equity Funding
3	13th	Sunday	Borivali	Study Circle Meeting	To be decided
4	18th	Friday	Ghatkopar	Study Circle Meeting	To be decided
5	20th	Sunday	Bhayander	Study Circle Meeting	To be decided
6	26th	Saturday	To be Decided	Full Day Seminar	Small & Medium Enterprises (SME) -Emerging Role & Opportunity
7	27th	Sunday	Andheri	Study Circle Meeting	To be decided
11	28th	Saturday	Venue to decided	Full Day Seminar	Corporate Governance - Independent Director , Audit Committee & Beyond

"The man who trims himself to suit everybody will soon whittle himself away." - Charles Schwab

Obesity

By: Dr. Mita Shah, Obesity & Diabetes Care Physician, Anil Clinic & Narmada Kidney Foundation



What is obesity?

Obesity is a disorder in which you are at least 20 percent over your normal body weight. Obesity always involves a high proportion of body fat in relation to muscle and bone.

Food requirements vary, even among individuals of the same height, build, age, and sex. The basic needs of most active people are about 2,000 calories a day for women and 2,500 for men.

Only 1 percent of people with obesity have a hormonal problem that is a cause of their weight problem. If you eat more than you need for the energy you expend, your body stores the surplus as fat. If the amount of fat becomes excessive, you are obese. Normal BMI should be between 18 to 23.

What are the risks?

Statistics indicate that obesity is associated with increase in illness and death from *diabetes mellitus*, *stroke coronary artery disease*, and *kidney and gallbladder disorders*. The more overweight you are, the stronger this association becomes.

1. Coronary Heart Disease:

The statistics suggest that if you are more than 40 percent overweight you are twice as likely to die of *coronary artery disease* as a person who is not overweight. The risks seem higher when the excess weight is concentrated around the waist, and the ratio of the waist to the hip measurement is sometimes used to measure this risk. People with a high waist-to-hip ratio are at greater risk than those whose excess fat is distributed in the hip area.

2. High Blood Pressure :

Obesity also contributes to *high blood pressure*, which is itself a risk factor in both heart disease and stroke. If you have high blood pressure, you can reduce your blood pressure simply by losing weight.

3. Diabetes :

Similarly, symptoms of *diabetes* sometimes develop in people with a family tendency as a direct consequence of obesity and may disappear when excess weight is lost.

4. Surgical and Anesthetic complications:

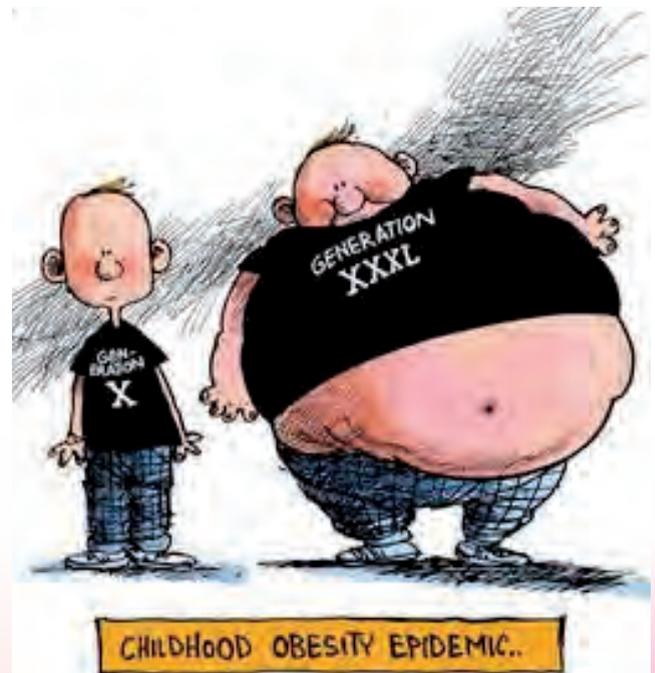
Very obese people who have surgery have more surgical and *anesthetic complications* than do people who are not obese.

What should be done?

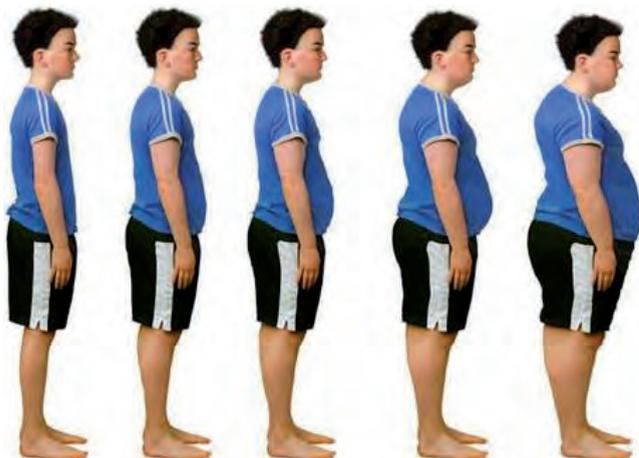
If you are overweight, it is because you consume more calories than you use. In order to lose weight, you must help your body use up more calories than you consume. In other words, you must create an energy deficit. *There are two ways that you can do this. First, change your diet; second, exercise more.*

1. Diet Modification :

Crash diets, that are overly restrictive may compromise your intake of vital nutrients. These diets are not feasible for most people on a lifelong basis. *So do not try to achieve massive weight losses in a few days, weeks, or even months.. Use a food and exercise program that gives you an energy deficit of around 750 calories a day. This will help you lose about 1 to 2 kg in a month.* When you plan your diet, make sure that it is varied and balanced. Choose foods that you like from the widest selection of naturally occurring foods. Establish eating patterns that you can maintain for life.



"Nobody can make you feel inferior without your consent." - Eleanor Roosevelt



2. Exercise Program:

There are few points that should be carefully considered.

Unless you have a serious medical condition which contraindicates exercise, **YOU CAN AND MUST EXERCISE.**

- Get the physical examination done by your doctor.
- When you exercise, your body expends energy in the form of calories. To use exercise effectively in your weight-reduction program, go slowly but steadily.
- Exercise should achieve a heart rate of about 60-70% of your maximum heart rate. For normal people, the following can be used as rough guide:

Maximum heart rate = 220 - age. So a 40 years old person should achieve gradually an exercise related heart rate intensity of about 108-120 (60-70% of his maximum heart rate 180).

At every exercise schedule, there must be at least 5 minutes of warming up and 5 minutes of cooling down.

BMI CHART

	Weight (kg)		Height (cm)							
	145	150	155	160	165	170	175	180	185	190
50	24	22	21	20	18	17	16	15	15	14
52	25	23	22	20	19	18	17	16	15	14
54	26	24	22	21	20	19	18	17	16	15
56	27	25	23	22	21	19	18	17	16	16
58	28	26	24	23	21	20	19	18	17	16
60	29	27	25	23	22	21	20	19	18	17
62	29	28	26	24	23	21	20	19	18	17
64	30	28	27	25	24	22	21	20	19	18
66	31	29	27	26	24	23	22	20	19	18
68	32	30	28	27	25	24	22	21	20	19
70	33	31	29	27	26	24	23	22	20	19
72	34	32	30	28	26	25	24	22	21	20
74	35	33	31	29	27	26	24	23	22	20
76	36	34	32	30	28	26	25	23	22	21
78	37	35	32	30	29	27	25	24	23	22
80	38	36	33	31	29	28	26	25	23	22
82	39	36	34	32	30	28	27	25	24	23
84	40	37	35	33	31	29	27	26	25	23
86	41	38	36	34	32	30	28	27	25	24
88	42	39	37	34	32	30	29	27	26	24
90	43	40	37	35	33	31	29	28	26	25

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The Western India Regional Council (WIRC) of the Institute of Company Secretaries (ICSI) organizes number of high quality professional development programmes on contemporary issues and on topics of emerging importance. In order to facilitate the members to register for the programmes and pay fees and get benefits, ICSI- WIRC is pleased to announce continuation of its popular Programme Membership Scheme.

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CS Quiz

Mr. S, on 23 June 20XX moved a notice for removal of a director of ABC Ltd. Mr. S requested the notice be made as a part of Agenda to be placed in the forthcoming Annual General Meeting on 30 September 20XX of the ABC Ltd.

ABC Ltd., filed a petition in the Company Law Board (CLB) instantly praying that ABC Ltd., be exempt from publication, circulation and / or reading out at the Annual General Meeting the notice issued by Mr. S, and also sought a declaration that the said notice did not comply with the numerical requirements provided under section 188, one must fulfill the criteria, that members propose to issue the notice must hold not less than 1/20th of the total voting power or not less than 100 members. ABC Ltd., contended that Mr. S was holding 0.001% only in the paid up share capital of the company and therefore he does not meet the requirement as contemplated under section 188.

Mr. S contended that by being a shareholder he reserves all right to move notice for removal of director and he is not required to meet the requirement of section 188 of the Companies Act.

Whose contention is tenable?

Conditions

1. Answers should not exceed one typed page in double space.
2. Last date of receipt of answer is 5th May, 2012.
3. Two prizes (a first and a second) in kind will be awarded to the best answers and the names of the contributors will be published in the journal.
4. The envelope should be superscribed 'Prize Query March 2012 Issue' and addressed by name to :

Amit Kumar Jain, Editor

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