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“प्रगतिश्च विकासश्च जीवनं जीवनं खलु”

MONTHLY BULLETIN OF WESTERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA





From the Chairman ...

Dear Professional Colleagues,

Change is a continuous process of life. Change provides opportunity to do adjustment and improvement on continuous basis. With a view to improve the skill sets among the students, ICSI has decided to **review the entire Students training structure** including apprenticeship training, SIP, EDP & MSOP. If the review is done on the basis of feedbacks and live experiences it would be more practical and effective. In this direction I appeal to all of you to provide **your valuable suggestions, inputs, views** and may share your experiences with ICSI to improve upon students training process.

National convention of ICSI held at Agra was a grand show. The deliberations happened in technical sessions were very relevant and useful for our profession. **Shri Arun Jaitely, Member of Rajya Sabha**, was the chief guest for valedictory session. He spoke on the theme "**Innovative Business Strategies**". He aptly explained the role of professionals in forming the business strategies and provided some useful tips to the business owners and managers of modern era. Some of the important points from his speech were —

- Define & adopt your core competency
- Position yourself to compete globally
- You should offer goods or services of best quality and at competitive prices
- Control your costs by adopting smart ways
- Do the Business with professional approach and no charity in the matter of business
- Technology & Research are the backbone of any business. So continuous improvement is expected
- You need to have and provide training and education of international standards
- Mergers & Consolidations are inevitable and therefore your need to have the strategy for it
- Adopt ethical business practices, which are sustainable in any difficult situation

During the inaugural session chapters of ICSI were presented various awards for their efforts. I am pleased to inform you all that **Pune Chapter** from our Western Region has **adjudged as Best category A Chapter for the year 2009 & 2010. I congratulate the Team Pune for the awards and wish them good luck for the future.**

ICSI participated in **CII's Programme on XBRL** recently held at Mumbai as Institutional Partner. I got an opportunity to represent ICSI in this programme. **Shri Anil Bhardwaj, Director, Ministry of Corporate Affairs** addressed the participants and explained the way ahead for XBRL process in MCA. Faculties from SAP, E & Y and CII also made useful presentations. The programme was very informative and participants appreciated the efforts.

WIRC arranged a **Programme on LLP** and invited **Shri Santosh Kumar, Registrar of LLP & Shri Henry Richard, Registrar of Mumbai**. The critical issues and practical difficulties were discussed during the programme. Shri Santosh Kumar informed that Ministry is considering decentralizing the process of LLP registration with the help of Registrar of Companies.

As a major initiative in the process of Students Training, **WIRC has arranged two simultaneous MSOP training programmes** before the Diwali festival. Around 90 students successfully completed the training.

Goa Chapter & Bhopal Chapter had successfully arranged the **Regional Students' Conference**. Students expressed their satisfaction for the unique initiative taken by WIRC to establish connection with them. Cultural evening was also arranged at the end of the programme at both places. **Goa Students' composed and presented a song on CS**. I congratulate Teams of Goa and Bhopal for successful organization and wish them all the best.

Keep contributing for the betterment of our CS profession.

With best regards,

Makarand Lele
Chairman, WIRC of ICSI

16th November, 2011

Editorial Board: CS C. S. Kelkar – Editor, CS Amit Kumar Jain – Joint Editor.



CASE LAW DIGEST

by CS Ajay Kumar, Mumbai

A Bird's-Eye View : Recent Judgments on Company Law

1. POWER TO REFUSE REGISTRATION AND APPEAL AGAINST REFUSAL

Certain shares of appellant-company were pledged by 'H' with Respondents with a clear undertaking authorising respondents to sell or transfer said pledged shares – When respondents presented said shares for transfer with appellant on 18-3-1997, which was record date for issuances of bonus shares, appellant refused to issue any shares to respondents. Respondents filed a petition before CLB. CLB in impugned order observed that bonus shares had not been issued to respondents but were illegally issued to 'C', a company managed and controlled by appellant. CLB directed appellant to issue bonus shares as well as to pay compensation. Since respondents lodged their shares for transfer on record date of bonus shares, i.e., 18-3-1997, CLB had rightly directed appellant to issue bonus shares along with compensation. Therefore, respondents were entitled to not only rectification of share register but also to damages. – **PADMINI TECHNOLOGIES LTD. vs. T. S. SAWHNEY [2011] 106 SCL 491 (DELHI)**

2. STATEMENT OF AFFAIRS TO BE MADE TO OFFICIAL LIQUIDATOR

Official Liquidator filed an application under section 454 against respondent-directors to punish them for non-filing of statement of affairs. It was found that respondents had filed statement of affairs and clarified defects raised by Official Liquidator. Respondents stated that due to fire accident in premises of respondent-company, entire movables, computers, books and files were destroyed and, therefore, respondent were unable to clarify some of queries raised by Official Liquidator. Explanation of respondents appeared to be *bona fide*, reasonable and genuine and there was no pleading or evidence on side of applicant contending that fire accident had taken place on account of negligence or intentionally on part of respondents and, therefore, application was to be dismissed and respondents were to be discharged. – **OFFICIAL LIQUIDATOR, NEXT FASHION CREATORS (P.) LTD. (IN LIQUIDATION) vs. SRI RAM RUSTAGI [2011] 106 SCL 486 (KAR)**

3. SCHEME OF AMALGAMATION OF LANDLORD COMPANY WITH TRANSFEREE-COMPANY – LEGAL CONSEQUENCES ON RIGHTS OF RESPONDENTS LANDLORD COMPANY VIS-A-VIS TENANT COMPANY ON AMALGAMATION – SECTIONS 391 TO 394 READ WITH SECTION 10(2)(II) (A) OF TAMIL NADU BUILDINGS (LEASE AND RENT CONTROL) ACT, 1960

On amalgamation with another company, a tenant-company can have the legal consequence of losing its tenancy under the Rent Control Act inasmuch

as amalgamation amounts to transfer/sub-letting of premises to the transferee-company, where it is without obtaining the consent of the landlord, but where the amalgamating company is the landlord and on amalgamation all its assets get transferred to the transferee-company, there is no such consequences. The transferee-company becomes the landlord succeeding to all rights including the vested rights of landlord, which are also not affected because of any delayed decision on the proceedings by an evicted tenant taken under the Rent Control Act. – **SPEEDLINE AGENCIES vs. T STANES & CO. LTD. [2010] 98 CLA 397 (SC)**

4. NON-CO-OPERATION BETWEEN DIRECTORS – DOES IT MAKE BOARD OF DIRECTORS ONLY NON-FUNCTIONAL, AND NOT PUT COMPANY IN DEADLOCK SITUATION – SECTION 397/398

Where petitioner and respondent are directors of the company and no meeting of the Board of Directors can be held due to non-co-operation of the petitioner, it can only be said that the company has a non-functional Board, but it cannot be said that the company is in a deadlock situation. In view of such precarious situation the company has to act in accordance with its Articles of Association and also in accordance with the law, keeping in view the paramount interest of other shareholders and the company. — **GRENTEX & CO. (P) LTD. vs. SHRI RAJEEV KAPUR [2010] 97 CLA 185 (CLB)**

5. INDIVIDUAL SHARE HOLDER HAVING RIGHT TO WAIVE HIS PREEMPTIVE RIGHT TO BUY SHARES – CAN HIS DECISION TO SELL SHARES OUTSIDE COMPANY BE SAID TO BE ULTRAVIRES AND CAN BE INTERFERED BY COURT – SECTION 108

A transfer of shares, which may be in violation of the Articles of Association, would not be void ab initio but only voidable at the option of the aggrieved share holder. If an individual share holder can have the right to waive his preemptive right to buy shares, it logically and as a corollary follows that the share holders, in general, too can take a collective decision to sell shares outside the company, and such a decision cannot be said to be *ultra vires* and cannot be interfered with unless the decision is against the interest of the company or against public interest or oppressive to minority share holders in terms of section 397/398. Since the decision has to rest on the views of the majority, the minority, even if aggrieved, cannot question it. In such a case of disagreement by the minority the remedy lies under section 397/398 and not in the civil court. – **RADHABARI TEA CO. (P.) LTD. vs. MRIDUL KUMAR BHATTACHARJEE [2010] 97 CLA 214 (GUJ.)**

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ROC COLUMN

HENRY RICHARD

Registrar of Companies Maharashtra, Mumbai



Diversification of company's business activity is a healthy sign of corporate growth. However, the companies, while diversifying their activities need to adhere to the procedure prescribed under the Companies Act, 1956. It has been observed in many cases which came to the notice of Registrar of Companies, the companies have not adhered to the prescribed procedure. Hence in this Article, an attempt is made to highlight the procedures prescribed under the Companies Act which the companies are expected to follow.

The Memorandum of Association defines the area of activity of a company under the Object Clause. Public Limited Companies are required to pass a Special Resolution pursuant to Section 149(2A) of the Companies Act, 1956 for commencing any new business activity covered under the "Other Object" under object clause of the Memorandum of Association. Private Companies can commence any such activity covered under the "Other Object" of the Memorandum of Association by passing a Board Resolution. If such activity undertaken by a company which is covered under the "other object" becomes the main activity of the company, the company can approach Registrar of Companies for

change of its name to reflect the new activity after complying with the Provisions of Sections 20 and 21 of the Companies Act, 1956. For example a company registered with the name "Vikram Construction Limited" does not have any construction activity as stated in the "main object" and the share holders have passed a Special Resolution u/s. 149(2A) of the Companies Act, 1956 to commence activity relating to computer software and hardware covered under the "other objects" of the object clause of the Memorandum of Association, the company can approach the Registrar of Companies for change of name as "Vikram Computers Limited", if the income generated from new activity is more than 50% of the total income as the existing name does not reflect its main activity. Such application can be made to Registrar of Companies after complying with the requirements of Sections 20 and 21 of the Companies Act, 1956. SEBI has also mandated that no listed company can change its name to reflect any new activity if the company does not generate more than 50% of the total income from such new activity. However, in the case of Non-Banking Financial Companies as defined under the directions issued by RBI, No Objection Certificate from NBFC Division of RBI is also required for change of name of an NBFC company.

In cases where a company wants to diversity into a new activity which is not covered under the object clause of Memorandum of Association of the company, the company can alter the object clause of the Memorandum of Association, so as to enable the company to carry on such new activity. However, the alteration of the object clause can be carried out only under certain specific circumstances as stipulated in Clauses (a) to (g) of sub-section (1) of Section 17 of the Companies Act, 1956 which is reproduced below. The company may by Special Resolution alter the provisions of the Object Clause of Memorandum of Association so as to enable it ...

- (a) to carry on its business more economically or more efficiently;
- (b) to attain its main purpose by new or improved means;
- (c) to enlarge or change the local area of its operations;
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
- (e) to restrict or abandon any of the objects specified in the Memorandum;
- (f) to sell or dispose of the whole, or any part, of the undertaking, or of any of the undertakings, of the company, or
- (g) to amalgamate with any other company or body of persons.

If the proposed alteration of the object clause does not fit into any of the clauses mentioned above, the company is not authorized to make such alteration and any such alteration outside the scope of clauses (a) to (g) of sub-section (1) of Section 17 of the Companies Act, 1956 would be construed as invalid.

In the case of listed companies, apart from the above requirement, any resolution passed for alteration of object clause should be through postal ballot and proper advertisement in a leading English Newspaper and one vernacular Newspaper circulating in the State in which the registered office of the company is situated should be published at the time of dispatching the ballot papers to the members/share holders of the company as required under 2, 3 and 4 of the Companies (Passing of the Resolution by Postal Ballot Rules), 2011.

It has been observed that in large number of cases, the above requirements are not being strictly adhered to when the companies alter the object clause of Memorandum of Association or Change the Name of the Company. The above requirements are not only mentioned in the Companies Act and the Rules made thereunder but also clarified through Circular of Ministry of Corporate Affairs in the form of guidelines issued under sections 20 and 21 of the Companies Act, 1956.

Corporate growth through diversification of business activity is welcome and signifies healthy sign but at the same time adequate attention should be bestowed upon due compliance of the requirements of the Companies Act, 1956 while undertaking such diversification of business activity.

OVERVIEW OF SAP IMPLEMENTATION

by CS Rajendra Kewliya

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INTRODUCTION OF SAP

SAP is a Systems, Applications and Products in Data processing. SAP was founded in 1972 in Waldorf, Germany with help of four former IBM employees. It is one kind of readymade & integrated software. Further, it can be customized with the requirement of any organization. It also controls sales, production, finance, costing, accounting, material management and human resources with standard business practices in real time basis. It allows businesses to make rapid changes in their business requirements with a common set of programs.

SAP IMPLEMENTATION PROCESS

SAP implementation process is massive exercise in the organization. It requires perfect planning from all the angles otherwise it takes several years to set up. Truly, strong team is needed for its implementation. Such team will consist of top management, middle management, technical staff, actual end users & implementation partners. Then, this SAP implementation will generate desired changes in the organization for high level goal in years to come. Basically, it will connect one information to another (different people will work on same information).

DETAILS ABOUT BASIC SAP MODULES

Financial Accounting: It includes general ledger accounting, accounts payable, accounts receivable, asset accounting bank accounting, funds management and direct / indirect taxation, etc.

Controlling: It includes cost centre accounting, overhead cost controlling, activity base costing, product cost controlling, profitability analysis, internal order & profit centre accounting, etc.

Human Resources: It includes recruitment, training & event management, personnel administration, time management, salaries & wages, payroll, incentives, & travel management, etc.

Sales & Distribution: Master data, sales, sales support, billing, shipping, credit control, transportation & foreign trade / excise law formalities, etc.

Production Planning: Make to order, repetitive manufacturing, sales & operation planning, capacity requirement & production orders / product cost planning, job work management.

Quality Management: Planning, inspection, certificates, notifications & test equipment management.

Material Management: Purchasing, invoice verification, logistic, inventory management, inventory valuations, material planning, warehouse management, job work management.

There are also other modules like Treasury, Business Warehousing, Plant Maintenance & Logistic Information / Management.

SAP has also industries specific solutions for Banking, Insurance, Postal services, media Oil & Gas, Telecoms, Defence & Security, health services.

Besides the above functionalities and flexibilities, SAP also adding new features, new modules, new environment and new industry specific solutions to its the clients on regular basis.

Project Planning & Execution: Perfect planning is required for success of any project. SAP implementation is also one kind of project. Further, it involves various steps in the implementation like object and benefits of SAP, appointment of **SAP implementation partners**, agreement with implementation partners, application for SAP implementation licence with requisite fees, understanding of various stages of implementation process, to understand the **business process**, need of organization, time frame work & **deadline of project, cost element**, appointment of project sponsor, formation of **steering committee members**, selection of project manager, selection of **core team members & team leaders**, formation of **IT support and technical teams**, final selection of **end users**, role, functions and responsibilities of team members, preparation of AS IS process documents, study of **AS IS process**, collection of **master data** / information, preparation of **wish list**, signing of **business mapping process**/other relevant documents, training, date wise training chart & project charter, **methodology, testing, validations** of process, requirement of technical support with latest equipments (hardware / software), solution / resolution for complex business process, change management, **gap identification, new developments**, new reporting systems, final preparation, **GO LIVE**, stabilization of new system, extension of legacy system, preparation of day one requirement, uploading of master data into production server, **post go live** support, **user manual**, discussion & finalization among team members for

finalization of configuration of system, daily reporting of work, timely review meetings / monitoring / supervision / discussion of work, provision of help desk, **risk factor and mitigation plan**, etc.

All above steps can be summarized into five categories;

1. Preparatory stage
2. Business Process Mapping
3. Realization (It relates to testing of various business processes and validations)
4. Final Preparations (How AS IS process can be converted into to be list)
5. Go Live (Core Team Members will assurance for proper implementation of system and complete goal & target)

Practical aspects to be kept in mind at the time of implementation

1. Selection of team: Strong, hardworking, dedicated, experienced team is to be formed among the organization. *Project Manager will play vital role in the SAP implementation* and he should have good knowledge of standard business practices, IT, legal, corporate governance and strength of team members. He may be executive director or senior person of the organization.
2. Core Team Members will be selected from each area of the organization. Basically, they are real process owner of the SAP implementation. They have also important role in the implementation.
3. Communication: Project requires constant, good, *accurate, specific and timely communication* among all the project members because it is integrated software.
4. Support and co-operation of Top management: No project can be completed without full support and co-operation of top management.
5. Make good plan: Project requires perfect time bound planning. Team has to consider realistic plan otherwise it cannot be completed in time. Team cannot forget contingency aspect.
6. Motivation & appreciation for team members: Top management should motivate and pay proper reward to their team member on successful implementation.
7. Acceptance of SAP environment: Everybody will have to accept new kind of working environment

of SAP otherwise project cannot be taken in proper shape. It also requires changing mind set from all fronts.

8. Training Management: It is major factor for SAP implementation. It should be organized in systematic manner so that it can better result in future.
9. Master data: It should be prepared in such manner so that correct report can be generated.
10. Preparation of AS IS Process: It should be very clear, precise for discussion with SAP consultants. It is important document in SAP implementation process.
11. IT support team should prepare internal/ local intranet/portal for follow-up, review, development, progress & reporting, etc., for proper SAP implementation.
12. To prepare Balance sheet, profit & loss account for implementation and only data of Balance sheet will be uploaded into production server. **DO NOT UPLOAD TRIAL BALANCE ON PRODUCTION SERVER** in any case otherwise it will create problem in future for FICO team as well as organization.
13. To make proper arrangement of login & password for day-to-day transactions on production server.
14. After successful implementation, everybody is required to do work on time, close month end transactions/activities and in case of need, call IT support team.
15. In case of new activity, first it should be tested on quality server with help of IT support, and then concerned team should go for real transaction.
16. To make priority list of new development as per business requirement.
17. An organization should stop working on old legacy system after successful implementation of SAP.
18. **DO NOT TEST ANYTHING ON PRODUCTION SERVER AND DO NOT SHARE YOUR LOGIN AND PASSWORD TO ANY ONE.**

Conclusion: Finally, on successful implementation, SAP gives a single information system in one enterprise. It improves collaboration among different departments. It also improves operation effectiveness and efficiency.

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Legality of a Share holders' Agreement— Can share holders agree outside the Articles?

by Nidhi Ladha
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Share holders' agreements are quite common in business, and more so today as variety of strategic, institutional investors make investments in companies. There are numerous situations where such agreements are entered into – family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on. In addition, there may be put options, buy back agreements and so on. Questions commonly arise about their enforceability, particularly as against the companies. There may not be a doubt as to their enforceability as between share holders *inter se* (except for violation of specific laws, for example, Securities Contracts (Regulation) Act), but issues arise as to whether such an agreement can govern the rights of shareholders of the company generally.

Essentially, Articles of Association constitute an agreement between the company and its members as well as members *inter se* and is binding on all the members whether he was a member originally or becomes later on. Section 36(1) of the Companies Act states that the registered Memorandum and Articles of Association of a company binds the company and the members to the same extent as if they respectively had been signed by the company and each member and 'member' as defined in section 41 includes any person who has subscribed to the Memorandum of a company and any person holding equity shares of the company whose name has been entered in the register of members or in depository's records. However, quite often, sections of share holders have private agreements among themselves generalising, share holders' agreement (SHA). SHA is a contractual arrangement between the share holders of a company describing how the company should be operated and the defining *inter se* share holders' rights and obligations. SHAs are the result of mutual understanding among the share holders of a company to which, the company generally becomes a consenting party. Such agreements are specifically drafted to provide specific rights, impose definite restrictions over and above those provided by the Companies Act. They are seen as problematic as they can be instruments for groups of share holders to circumvent the normal scheme of the company's legislation or the company's constitution in its Articles of Association. An SHA creates personal obligation between the members signing such agreement however, such agreements do not become a regulation of the company in the way the provisions of Articles are.

An agreement outside the Articles between share holders as to how they are to exercise their voting rights on a resolution to alter the Articles would not necessarily be invalid. This opens up for agreements that changes, or even distorts, the system of the Articles, and this is one of the questions that we will be discussing in this article.

Enforceability of SHAs in India

It would be trite to state that the enforceability of any contract (which is not perceived as violative of any law) is taken for granted. This may not however, always hold good (especially in India). Enforceability of SHA is one such instance. These kinds of agreements have, sometimes, clauses that go against the company legislation like

- drag-along rights,
- tag-along rights,
- right of first refusal (ROFR),
- composition of board of directors,
- maintaining a particular structure for the company
- conferring on share holders which would not otherwise be enforceable if not contained in Articles of the company
- specific provision as to quorum requirement for board and general meetings,
- veto or supermajority rights available to certain share holders at board or share holder level
- providing private arbitration of disputes

Though these rights are present in many investment and joint venture agreements, this is the topic of much discussion as the Indian courts generally have not favoured such complete freedom in these agreements. Courts have either refused to recognize clauses in share holders agreements or, even when consistent with company legislation, enforced such clauses only if they have been incorporated in the Articles of Association of the company. There is a series of rulings in the respect in case of any conflict between the Articles and the SHA, the former will always prevail. Some of these are:

- *V. B. Rangaraj vs. V. B. Gopalakrishnan* (AIR 1992 SC 453)
- *Shanti Prasad Jain vs. Kalinga Tubes Ltd.*, (35 Com. Cas. 351 SC)
- *Mafatlal Industries Ltd., vs. Gujarat Gas Co. Ltd* (97 Comp Cas 301 Guj),
- *Pushpa Katoch vs. Manu Maharani Hotels Limited* ([2006] 131 Comp Cas 42 (Delhi))

In *Western Maharashtra Development Corporation Ltd. vs. Bajaj Auto Ltd* [(2010) 154 Company Cases 593 (Bom)], it was held that such clauses are to hamper the free transferability of shares and in violation of section 111A of the Companies Act, 1956 and hence, are not enforceable. However, the Supreme Court in 2003 in its decision in *M.S. Madhusoodhanan vs. Kerala Kaumudi Pvt. Ltd.* (2003

117 CompCas 19 SC) not disagreeing with the decision in *V. B. Rangaraj* (supra) but distinguishing itself from the facts in that judgment, held that a restriction in relation to identified members on identified shares of a private company did not amount to restriction of transferability of shares *per se*.

Recently also, the Division Bench of Bombay High Court in *Messers Holdings Limited vs. Shyam Madanmohan Ruia and Ors* [(2010) 98 CLA 325] overruling its own previous decision in *Western Maharashtra Development Corporation Ltd* (supra) held that any private arrangement in relation to shares are not in violation of section 111A of the Act. The Bench, analyzing *inter alia* the validity of ROFR, giving liberal meaning to the term 'transferability', held that section 111A of the Act is not a law dealing with the right of the share holders and does not expressly restrict or take away the right of share holders to enter into consensual arrangement/agreement by way of pledge, preemption/sale or otherwise. The expression freely transferable in section 111A of the Act does not mean that the share holder cannot enter into consensual arrangements/agreement with the third party (proposed transferee) in relation to his specific shares.

The Bombay High Court in *IL & FS Trust Co. Ltd vs. Birla Perucchini Ltd* [(2003) 47 SCL 426] has held that the provisions in an agreement, cannot be given effect to insofar as the management of the affairs of the company is concerned, unless those provisions have been incorporated in the Articles of a company. The fact that a company is a party to the subscription agreement (as in the case it was) makes no difference to this position because the same is well-settled in law.

The provision of a share holders' agreement curtailing the rights of directors declared unenforceable if not included in Articles by Bombay High Court in *Rolta India Ltd. & Another vs Venire Industries Ltd. & Others* (2000 100 CompCas 19 Bom). It was held that the share holders cannot infringe upon the Directors' fiduciary rights and duties. Even Directors cannot enter into an agreement, thereby agreeing not to increase the number of Directors when there is no such restriction in the Articles of Association. The share holders cannot dictate the terms to the Directors, except by amendment of Articles of Association or by removal of Directors.

Enforceability of SHAs in International context

There are different views on share holder agreements ranging from a highly critical view to a supportive 'liberty of contract' view. The libertarian view has developed following the decision in *Russell vs. Northern Bank Development Corporation Ltd* [1992] BCC 578; [1992] 1 WLR 588] where the House of Lords found that though a company cannot deprive itself of its power to alter its constitution, the members of the company could agree in a share holders' agreement as to how they will exercise their voting rights on a resolution to alter the articles/constitution. It was held that such an agreement, although incapable of fettering the statutory entitlement of a

company to increase its share capital, could place curbs on the manner in which members exercised their voting rights within the company when exercising a vote on a capital increase. Lord Jauncey stated:

"While a provision in company's articles which restricts its statutory power to alter those articles is invalid an agreement *de hors* the articles between share holders as to how they shall exercise their voting rights on a resolution to alter the articles is not necessarily so."

Thus, in this case, an agreement by the company not to use its statutory powers was invalid, but an agreement by share holders as to how they would exercise their voting powers was valid. The judge dismissed the application on the ground that the agreement was unenforceable because it fettered the company's statutory power infringing the principles established in *Gambotto vs. WCP Ltd* (1995) 13 ACLC 342.

The interpretation of a share holders' agreement was at the fore of the litigation in *Euro Brokers Holdings Ltd. vs. Monecor (London) Ltd* [2003] BCC 573; [2003] EWCA Civ 105. This case concerned the enforceability of a provision in a share holders' agreement, made in the context of a joint venture company, requiring a member to sell its shares to the other member in defined circumstances. That question turned on whether the triggering event (a purported board decision) was valid or whether it could be regarded as valid by applying the *Duomatic Principle* (Re Duomatic Ltd [1969] 2 Ch 365) of informal share holder assent.

Both the judge at first instance (Leslie Kosmin QC) and the Court of Appeal (Pill, Waller and Mummery L.JJ.) agreed that this pragmatic common law principle could operate in the context of a share holder agreement.

In *Minnesota Invco of RSA #7, Inc. vs. Midwest Wireless Holdings LLC*, [2006 WL 1596675], the Court of Chancery upheld Drag Along Rights. The court held that the minority owners had lost their rights to block the sale of the holding company by virtue of the reorganization agreements executed when the holding company was formed. Further, the Court held that the minority investors could be "dragged along" to sell their interests in the LLC over their objections because the reorganization agreements superseded their rights as minority owners. The lesson is that a party needs to be careful to protect its existing contract rights when entering into any new agreement that may affect those rights in a less than clear manner.

ROFRs, if reasonable, have been held as valid and enforceable under the Delaware and New York Laws (*Martin vs. Graybar Elec. Co.*, 285 F.2d 619, 625).

In *Puddephatt vs. Leith* ([1916] 1 Ch 200) the court compelled a share holder to vote as was agreed in a share holders' agreement.

The US Courts have long accepted share holder agreements as allowing a small group of investors to 'adopt the decision making procedures of a partnership, avoid the consequences of majority rule (the standard operating procedure for

corporations) and still enjoy the tax advantages and limited liability of a corporation'. This principle got approval of Apex Court of California in *Blount vs. Taft* [246 S.E.2d 763 at 769 (1978)]

Dealing with the enforceability of voting rights as per the share holders and pooling agreements, it is stated in the leading UK journal *Law Quarterly Review* (Vol. 84 p. 561):

"In a pooling agreement, each share holder retains sole ownership of shares binding himself only to vote for a specific person or in a certain way. These agreements are enforceable because the right to vote is a proprietary right— The right to vote may be aided and effectuated by a contract. Generally, pooling agreements are thought of in relation to control of private companies and smaller public companies."

Given this background, a useful discussion on the enforceability of share holders' agreements in general is contained in a recent report on "*The Enforceability and Effectiveness of Typical Share holders Agreement Provisions*" prepared by the Corporation Law Committee of the Association of the Bar of the City of New York and published in the August 2010 issue of *The Business Lawyer*. Along with listing of the types of clauses included in a share holders' agreement, the Report also contains a discussion on the legal principles embedded in the laws of the states of Delaware and New York.

The Supreme Court of Canada in *Ringuet vs. Bergeron*, [1960(24) D.L.R. 449(2-d)], dealing with shareholders entering into agreement to vote unanimously and observing such agreements not to be illegal, at the same time held that the fiduciary relationship occupied by Directors requires the exercise of these entire duties and attention to the best interest of the company and its share holders. It was accordingly held that the discretion of the Directors to act in the administration of the affairs of the company cannot be fettered by agreement and, therefore, such agreement was invalid.

It is uncontroversial in every one of these different perspectives that individual share holders' agreements, whether made by all or some only of the share holders, create personal obligations between themselves only. They do not become a regulation of the company (in the way that the provisions of the Articles are). Neither do they become binding on the transferees of the parties to it or upon new or non-assenting shareholders. It is also uncontroversial that a provision in a company's Articles of Association which restricts the company's statutory power to alter the Articles or a formal undertaking by the company to that effect, would be invalid.

Company's position when it's a party to SHAs

Most of the time, the company is made a consenting party to such agreements and the enforceability of these agreements on the companies is under question.

As noted above, the House of Lords judgment in *Russell vs. Northern Bank* goes far in accepting share holders'

agreements. A company cannot itself be a party to an agreement which would restrict its powers as they are required by companies legislation. But this does not bar share holders' agreements with the same effect from being enforceable by the courts.

As to the question of whether the company should properly be a party following the Northern Bank decision, *Eilis Ferran* his article in *53 Cambridge Law Journal* 344 1994 in the UK has commented that though the decision does not mean that companies must now not be party to such agreements 'considerable caution is required if they are: any covenants whereby a company promises not to exercise a statutory power will be invalid as against the company and, unless severance is possible, as against the other parties; if severance is not possible the whole agreement may be at risk.

In *Walker vs. London Tramways Co* (1879) 12 Ch D 705, the ruling authority while discussing the powers and rights of the company to alter its constitutional documents held that:

"...the company is empowered by the statute to alter the regulations contained in its articles from time to time by special resolutions (Sections 50 and 51 [of the Companies Act 1862]); and any regulation or article purporting to deprive the company of this power is invalid on the ground that it is contrary to the statute".

In *Welton vs. Saffery*, Lord Davey had said that an agreement between share holders as to how they would vote was valid as a personal obligation 'and would not become a regulation of the company, or be binding on the transferees of the parties to it, or upon new or non-assenting shareholders'.

The judgment in *Hickman vs. Kent Marsh Shipbreakers Association* (1915(1) Ch D. 881) lays down that an agreement between share holders cannot be construed to be a contract binding on the company even if the company has taken note of the pooling agreement or even if the company has acted thereon and, on this basis, the English Courts have denied specific performance of such agreements.

Conclusion

In Indian context, while there does exist one landmark decision of the Supreme Court in *V.B. Rangaraj* (supra), often cited in the context of share holders' agreements, most other decisions have been rendered by the High Courts in various states. The High Court decisions are limited in their applicability as they are susceptible to disagreements by other High Courts, thereby conferring limited precedential value. It is difficult to come to clear and crisp answers as to enforceability of SHAs; however, ideally SHAs should be incorporated either by insertion or incorporation by reference. Reference may also be made to provisions of sec. 192(4)(e) of the Companies Act which permits filing of certain agreements that are intended to be binding on members of a class. In order to impact infallible enforceability to SHAs, it may be a good thought to register these agreements in terms of sec. 192.

DRAFTING, REVIEWING & NEGOTIATING CONFIDENTIALITY/NON-DISCLOSURE AGREEMENTS

by CS Luv Tanwani

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The biggest fear of any current management is that an employee or a person inside the Company is ruining or damaging the precious and valuable asset of the organization i.e. Confidential information also known as Proprietary Information. Nowadays we normally find Confidentiality clause in almost every commercial agreement. For big transactions, Companies do execute a separate Non-Disclosure Confidentiality agreement or a secrecy agreement between the clients, consultants, retainers, agents, associates, employees etc. to safeguard their valuable information which is not open to public at large.

Confidentiality agreement is a binding contract between two or more parties whereby one party (Disclosing Party) which gives away the Confidential information and the (Receiving Party) which gets the Confidential information.

There are 2 types – bilateral and unilateral.

Bilateral Confidentiality Agreement also known as mutual Non-Disclosure agreement in which the information is shared from both the parties is an agreement entered between two or more parties where the information is sharing by all the parties.

Unilateral non-disclosure agreement is one in which only one party disclose the Confidential information.

Now, we shall discuss the main clauses and their implications in detail.

1. **PURPOSE CLAUSE** – one need to understand for what purpose the agreement of non-disclosure is made or is going to be made. Purpose needs to be mandatorily defined otherwise any party may treat any of its information as Confidential information and receiving party will have to keep any information received from the Disclosing Party as confidential.
2. **MEANING OF CONFIDENTIAL INFORMATION / WHAT DOES CONFIDENTIAL INFORMATION INCLUDES** - what constitutes confidential information? For instance, many agreements include “technical, market, business or financial information, operating results, trade secrets, know-how, methodologies, techniques, principles or processes, manuals, business and marketing plans, market research, strategic plans, forecast, projections, client, employee, contractor, customer or supplier lists or information, arrangements with other entities, project information, databases, pricing information and strategies, costs and margins, quality control procedures, computer programs, algorithms, integrated circuits, circuit layout or design, source and object codes, test results, formulae, concepts not reduced to written form, technical principles, features

or functionality of any product, the appearance, ergonomic features or user interface of any product, product development plans, concepts, designs, plans, drawings, models, prototypes, samples, any invention or discovery, any provisional, pending or completed patent application, any trademark whether pending, registered or otherwise, or any application for registration of any design whether pending, registered or otherwise or any other intellectual property rights whether pending or registered” in their definition of Confidential information. There are few domestic and international agreements which states that all information in any form or mode relating to the purpose shall constitute confidential information.

As a good practice, one can always negotiate on exchange of information only in written format as it is very difficult to protect oral information. However, one can negotiate that in case any information which has been exchanged orally shall be reduced into writing within fifteen (15) days of such disclosure.

3. **EXEMPTIONS TO CONFIDENTIAL INFORMATION** - Another very important part of the Confidential agreement is what doesn't constitutes the Confidential information i.e. exceptions. Normally there are five exceptions which are generally accepted but the Company may define any other exceptions as per their convenience. The exceptions are as follows:
 - a. The information which is rightfully available to Receiving Party without Confidential restriction from a source not under Disclosing Party's control
 - b. The information which is in public domain
 - c. The information which is received or was available with the third party before or during the validity of this Agreement
 - d. The information independently developed by the receiver during the term of the agreement
 - e. The information which is required to be disclosed pursuant to law (Court/Tribunal etc.)
4. **VARIOUS OTHER CLAUSES** - Further we may see the other contents of a Non-disclosure agreement which would have legal implications;
 - a. Disclosing Party reserves all rights in the Confidential information (ownership of confidential information is to be with the Disclosing Party)
 - b. No transfer of Confidential information without prior written consent of the Discloser

- c. Discloser shall in all times keep the information as Confidential and shall take all preventive measures for the protection of such information
 - d. Return of the information after the expiration and or termination of the agreement(This clause states on how the Confidential information will be returned once the purpose or the activity is over)
 - e. Receiver responsible for unauthorized use of the information
 - f. Legal Remedy Clause (Example:- In the event of breach of any terms/obligations/conditions of the Agreement by Receiving Party (including its employees, representatives) will result in irreparable harm/injury to Disclosing Party and the Disclosing Party shall be entitled to an temporary, preliminary and/or permanent injunctive relief in addition to and not in lieu of any other legal or equitable relief including monetary damages)
 - g. Indemnity Clause (Example:-The Receiving Party agrees to indemnify and keep indemnified the Disclosing Party from and against any and all losses, liabilities, claims, expense, damages, costs (including but not limited to advocate fees, litigation cost), which Disclosing Party may suffer/incur as a result of breach of any terms/obligations/conditions of this Agreement by the Receiving Party (including its employees or representatives))
 - h. Non-solicitation Clause (Example:- Each party shall not solicit the employees during the subsistence of this agreement)
 - i. Any other commercial clause(s)
5. DURATION/TERM OF THE AGREEMENT - Another very important part of a Non-Disclosure agreement is its term. How long is the agreement to be in force? When does it start? When does it end? For how long the confidential information needs to be protected.
- Many people confuse themselves in the term clause and the survival clause of the Non-Disclosure agreement. Term would indicate the time period for which a particular business transaction would take place and or activity would take place, say about 2 years and the survival would state the period for which the confidential information needs to be protected, say about 5 years. Many a times, these terms are not acceptable to few but as a good practice one can negotiate and keep the information as Confidential for 5 to 7 years.
6. INDEMNIFICATION CLAUSE - Many Non-Disclosure Agreements have an Indemnification clause. Indemnification means an act or process of indemnifying, preserving, or securing against loss, damage, or penalty and its reimbursement. For eg. "Receiving Party shall indemnify the Disclosing Party for any or all loss, damage suffered in

case of any breach of the terms and conditions of this Agreement". This clause has very wide scope and includes all losses and damages (direct as well indirect). One can always negotiate by with indemnification for only direct losses or damages. Indemnification for indirect losses which includes loss of profit/business etc. should be avoided and negotiated.

7. RETURN OF CONFIDENTIAL INFORMATION –A Non-Disclosure Agreement would sometimes have a clause namely return of information which means that the information provided by the Disclosing Party needs to be returned. This clause also includes the modes in which the information needs to be returned like shredding of papers/files, returning papers, deletion of e-mails, etc. This clause is normally kept for protecting the information after the purpose is over.
8. JURISDICTION AND DISPUTE RESOLUTION CLAUSE - The jurisdiction clause and dispute resolution clause. If both the parties i.e. the Disclosing as well as the Receiving Party are of the same country say India, then you may have Indian laws applicable. In case, the one of the party is from different country then you may negotiate at a neutral jurisdiction. Normally for Indians English law is a always a better option as far as the jurisdiction is concerned as Indian Law are based on the principles of English law to a certain extent.

In case, if any agreement contains the dispute resolution through the Alternate dispute resolution mechanism, then you may certainly go ahead with that as Arbitration is anytime a better option for resolution of disputes because of its private and fast process. In case, if both the parties are of the same country, say India, then we can always have the provisions of Indian Arbitration and Conciliation Act, 1996 applicable with a clause of a sole arbitrator which should be appointed mutually. Always insist on mutual appointment of arbitrators. And if other party is not of the same country then you can always insist the party to have a neutral venue for the Arbitration. Internal Chambers of Commerce, London Court of International Arbitration and Singapore Arbitration Centers are very common in Indian agreements where the other party is of another country.

Nowadays, there are many organizations that protect their confidential information by telling the receiving party to give a letter of undertaking for non-disclosure of confidential information or a promise of Confidentiality/ secrecy, and then also we need to see all the above mentioned points into that letter while signing it.

While reviewing these kind of agreements, one should have good negotiation skills as any clause or term of such agreements may hamper the Company's interest.

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“You and Your Investments”

Continue

by **CS Vrushal Saudagar**
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Continuing series for captioned topic, I personally feel that each fall in Sensex should be looked as an opportunity for fresh investments.

The first thing to remember is that the market has been driven up by inflows from foreign institutional investors. The money is not just pouring into the Indian market. Money is also being invested in other emerging markets. This is a generic term referring to the financial markets of developing nations. Nor is the action limited to stocks. In the last couples of years, money has also flowed into bonds and commodities just as stocks, raw materials or semi-finished products such as metals, grains, cotton, coffee and gold that are traded on commodities exchanges.

ARE STOCK PRICES NOT TOO HIGH?

For this answer we can look at:

- 1) Earning per share (EPS) = net profit / number of shares

How well the company is doing and

- 2) Price Earning (PE) =Market Price / EPS

How other investors are viewing the stock.

A company will have a high PE if investors hope their earnings from the stock will increase; this is why the investors buy the share.

For example if the PE ratio of the Sensex is around 16.7, this means if we add up the price of all the 30 Sensex companies and divided it by their EPS, the result would be 16.7.

The Indian market also has breadth and depth which makes it very attractive. A small change in the share price causes large transactions (buying and selling). The market is said to have depth when there is smaller price movement and larger the transaction and the breadth of the market refers to the number of stocks and volumes being traded.

SHOULD YOU SELL NOW?

It's all depends on what returns you were expecting when you invested your money. It's

Always a good idea to have a target in the mind and book profits (sell your shares and make profit) when that target is reached.

SHOULD YOU INVEST NOW ?

That's up to you. But here are a few thoughts to be kept in mind.

1. Invest only in stock that have comparatively low PE multiples- bank, for instance, are an attractive option.
2. Investors should look to invest regularly in the systematic investment plans of mutual funds: this would ensure that not all their investments are made at the top of the market since this requires you to invest a little amount every month, overtime, your investments even out .
3. Investing in large cap is also a good idea because, in times of trouble, individuals always invest their money in quality and stable companies.

The only precaution you can take is to play as safe as possible. This means you need to do your homework. Don't just buy a share because your neighbor is going to buy.

IPO :

Investing in a primary offer is often touted to be less risky than buying in the secondary markets. That is because invariably companies come out with public offers to fund their growth plans. Since the cost of raising loans is higher for younger companies, they opt , for equity.

From an investor's viewpoint, the idea is really to invest in a company when it is still at the nascent

stage and holds promise for growth. And primary offers are also meant to leave some money on the table as a reward for investors who keep faith in the stock even before the company has proved its worth.

But most investor today subscribes to initial public offer (IPO's) not to the stock for a life time or even for a couple of years or month. Instead they look to make a quick by selling their share as soon as the stock hits the bourses.

As more and more individual and institutional investors try to exit the counter on the very first day of listing, the stock goes through wild price swing-the volatility.

Investors would do well to remember that stock which are overpriced to begin with may attract short sellers on listing. Conventional measures such as the price-earnings multiple- something one looks at while deciding whether or not to buy a share- should be an indication of whether the stock price is sustainable.

But then, it is not just the valuation. Like any other commodity, stock price are also influenced by the forces of demand and supply which may in the short run deviate from the intrinsic worth of the stock.

If there is a huge demand for stocks-you can gauge the demand from the oversubscription numbers- investors who got lesser allocations than desired may go on a buying spread in the secondary markets the moment the stock lists.

HOW MUCH ARE YOU WORTH?

Do you thing you're rich? May be you are .May be you are not.

We suggest a reality check.

Don't go by your feelings, your wealth could be just an illusion. Take the case of Rani who tied the knot last year.

Her family screened through various marriage proposals before she finally met the 'right' guy. Of Course, the guy was having a bungalow in a posh locality, a lavish car, and dinners at classy restaurants, all helped her make her decision.

A few months after their very expensive wedding, her 'rich' husband declared bankruptcy. Apparently, he didn't own any of the assets. Not the car, nor the house. He had even borrowed for the wedding. Now, the loan sharks were threatening to take away her jewellery. She has come back at parents place.

HOW TO BUY STOCK CAREFULLY?

There are a lot of people who have made money in stock market using technical analysis. But I don't understand technical analysis and I am sure most people are like me.

However, what I have learnt is if you buy share of good businesses at a fair price with a margin of safety and good management, you can get reasonable returns over the long term. I want to emphasize 'long-term'— typically 3-5 years or more.

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OBITUARY



"FOCUS" deeply regrets to record the sad demise of SHRI BHARAT PATHAK, a Fellow Member of the Institute from Mumbai.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed Soul rest in peace.



NEWS FROM WIRC

AND CHAPTERS

WIRC NEWS

Interactive Session on XBRL

Confederation of Indian Industry in Partnership with ICSI-WIRC organized Interactive Session on XBRL- Extensible Business Reporting Language on Thursday, 20 October 2011: Royal Room, Sunville, Mumbai.

CII has organized the programme to create awareness and educate the participants about the XBRL initiative taken up by the Ministry of Corporate Affairs. ICSI participated in the event as "Institutional Partner". Shri Makarand Lele, Chairman WIRC has chaired the second session. In his opening remarks he expressed a need to look into the ground realities and problems faced by the industry and professionals in implementing the decision of MCA in filing the balance sheets and returns in XBRL mode. Ms. Sneha Rajagopal, Vice President XBRL and Accounting Services, Data Tracks India briefed the participants on the key issue of XBRL. Shri Aman Bhargava, Financial Accounting Advisory Services, Ernst & Young Private Limited and Shri Ravi Marwaha, Group Vice President, SAP India Pvt. Ltd. gave a demonstration on Software Solutions available for regulatory compliances. Earlier in the first session Shri Anil Bhardwaj, Director, Ministry of Corporate Affairs shared the views of MCA and shared future about XBRL in MCA. Shri Nimesh Mittal, Consultant MCA 21, Tata Consultancy Services discussed in detailed the issues relating to Filing in XBRL mode. Shri S. Venkatraman, Controller of Accounts, Mahindra & Mahindra Ltd. gave the welcome and theme address. Shri Sunil R Chandiramani, Partner, Ernst & Young Private Limited shared his experience and knowledge on the subject. Around 150 persons representing industry, CS professionals were present for the programme.

Seminar on Limited Liability Partnership (LLP)

WIRC organized a Seminar on Limited Liability Partnership (LLP) on Saturday 22nd October, 2011 from 9.00 am to 02.00pm at M.C. Ghai Hall, Kalaghoda, Mumbai. Shri. Henry Richard, Honorable ROC, Maharashtra, gave the keynote address. Shri Santosh Kumar, Registrar, LLP, Ministry of Corporate Affairs, New Delhi gave an overview of important aspects relating to Limited Liability Partnership (LLP). Shri Jayesh Thakur, Associate Director, Tax and Regulatory Services, PWC explained LLP as a GenNext Entity with respect to Taxation aspects and structuring of an Entity as an LLP. Around 198 members participated in the seminar.

CHAPTER NEWS

BHOPAL CHAPTER

Chapter had organised Foundation Day on 15th October, 2011 at the Chapter Office premises at 3 p.m. CS M. M. Chawla, Chairman-Bhopal Chapter, made a welcome speech. Senior Member CS S. Jha shared his experience as the Founder Chairman of the Bhopal Chapter.

CS Amit Kumar Jain, Member-WIRC briefed about the new notification and development at the Institute level and

approached all the members and students to enter into all the fields of the profession. CS Dhanraj Singh Thakur, Secretary-Bhopal Chapter gave the progress report of the Chapter for the year.

Students and Members played various games followed by Cake Cutting. It was a joyful event.

CS P K Rai, CS Piyush Bindal, CS DPS Dhaked, CS Awadhesh Parashar, CS Vivek Nayak Management Committee members, were present along with other members and students.

GOA CHAPTER

Western India Region of the Institute of Company Secretaries of India organized a Students Conference on 5th November 2011 hosted by Goa Chapter at Goa Museum Hall. ICSI students from Mumbai, Pune and Goa presented various papers on "Corporate Governance", "Motivation", "Growth of Pharmaceutical Industry in India", "Banking Sector", "Insurance Business". The students composed and presented "CS, the Best" song in the concluding session.

Mr. Sanjay Kumar Gupta, the Registrar of Companies, Goa Daman & Diu, the Chief Guest for the program, felicitated the students for organizing the conference and encouraged them to have a long term vision for progress. CS Makarand Lele, Chairman, Western India Regional Council, ICSI spoke on various opportunities for Company Secretaries and the steps for setting up practice of Company Secretary. CS Swatee Shere Rane, Chairperson of the Goa Chapter of ICSI, applauded the students efforts and urged them to use the platform for sharing their experiences and knowledge. Adv Ramrao, ICSI Counsellor co-ordinated the event and CS Kevin Fernandes, Vice-Chairman of Goa Chapter of ICSI gave the Vote of thanks.

KOLHAPUR CHAPTER

One day Regional Students' Conference was organized by the Chapter on 4th October 2011 at Surya Conference Hall, Rajarampuri, Kolhapur. The event received an overwhelming response from students with 151 students in and around Kolhapur attending the Conference. With a view to reach the students and bring them together the conference comprised sessions on Paper Presentations, Quiz Competition and 20-20 session.

The conference was inaugurated by traditional lighting of lamp at the hands of Chief Guest Mr. Shashank Mukharjee, Chief General Manager of The Ratnakar Bank Ltd, CS Makarand Lele, Chairman, WIRC, Mr. Sandip Mehta, Education Officer of WIRC, CS Devendra Deshpande, Secretary of Pune Chapter, CS Priya Pangaonkar, Vice Chairman of Kolhapur Chapter, CS Prasad Joshi, Secretary of Kolhapur Chapter and other members of Kolhapur and Sangli.

CS Priya Pangaonkar delivered her welcome speech. CS Prasad Joshi read the message delivered by the Kolhapur Chapter Chairman CS Mukund Shinde who could not attend the conference due to injury. In his message Mr. Shinde expressed satisfaction over the response given by the students. He also stated that the Kohapur Chapter is organizing SIP which has received a registration of 90 students.

Thereafter CS Makarand Lele explained the whole theme behind the conference. CS Makarand Lele felicitated the Chief Guest Mr. Mukharjee by presenting the WIRC memento. In his speech Mr. Mukharjee said that the profession of CS is facing many challenges and the CS community is coming with innovations and contributing to the Corporate Governance in a better way.

Thereafter the first session on the Theme "CHANGE FOR THE BETTER – YES, WE CAN" was conducted by Mr. Abhijit Paranjape who is an HR Trainer. He explained the students that setting the right goal at right time is the key to success. His interactive presentation was well appreciated by the students.

Thereafter 20-20 session was held. CS Makarand Lele explained the role of CS and how to set up practice. CS Shrenik Nagaonkar addressed on the IPO as a funding mechanism. Mr. Anil Wadikar focused on the Effective use of IT. Lastly CS Devendra Deshpande explained some important aspects of Section 25 Company.

In the after lunch sessions Paper Presentation by three students was held on the topics – CS The profession of a Company Secretary on the background of Changing Requirements and incorporation of LLP. CA Mukund Bhawe and Cost Accountant Mr. V. P. Wadkar acted as Jury to this session.

Thereafter Mr. Sandip Mehta, Asst. Education Officer of WIRC gave his presentation of Online Students Services in which he explained the use of website and the various services which students can avail including online registration, online admit card, etc. thereafter CS Makarand Lele, CS Prasad Joshi and Sandip Mehta gave answers to queries raised by students about the profession, training requirements and placement.

The most participated session of the conference was the Quiz Competition in which 4 teams participated. CS Prasad Pusalkar and CS Priya Pangaonkar conducted the quiz. The response from students was enthusiastic and refreshing.

In the valedictory session was graced by CS Makarand Lele, WIRC Chairman, CS Devendra Deshpande, Secretary of Pune Chapter, CS Priya Pangaonkar, Vice Chairman of Kolhapur Chapter and CS PRASAD JOSHI, Secretary of Kolhapur Chapter. One prize each was given for best presentation and quiz competition winners at the hands of CS Makarand Lele. CS Makarand Lele felicitated all the volunteers for their hard work. Thereafter a vote of thanks was delivered by CS Prasad Joshi.

NAVI MUMBAI CHAPTER

On 9-10-2011 Chapter organized a Study Circle Meeting on Insurance Sector A Regulatory Perspective. Mr Mahendra Tripathi, Head-Legal and Compliance of SBI General Insurance Co Ltd, explained the various aspects related to the topic with a power point presentation. He dealt in detail with the questions raised by the participants. He addressed issues relating to settlement of claims, fair disclosure by the proposer and explained the need of insurance in today's era.

PUNE CHAPTER

HALF DAY SEMINAR ON "RESUME WRITING & INTERVIEW TECHNIQUES"

Pune Chapter organized a Half day Seminar on "Resume Writing & Interview Techniques" on Oct 08, 2011 at Pune Chapter. The focus of the programme was to have a discussion on resume writing techniques and interview techniques for fresher Company Secretaries as well as Students.

CS. Parag Inamdhar, Chairman, Placement Committee of Pune Chapter of WIRC of ICSI welcomed and introduced MsAnvayaGondhalekar, Corporate Trainer & HR expert. The Programme was attended by 45 delegates.

7th EXECUTIVE DEVELOPMENT PROGRAMME(EDP)

Pune Chapter organized 7th EDP programme from September 22, 2011 to September 30, 2011 for CS Students who cleared their Executive stage of CS exams. Total 76 Students attended the program at MCCIA, Pune. Certificates were distributed to the participants on last day of the programme.

MEETING OF PRINCIPALS

Pune Chapter organized a meeting of the Principals and Head of the Law / Commerce Faculty Department from Law and Commerce Colleges from Pune and Nagar on September 24, 2011. The aim of the meeting was to have a co-ordination between the Chapter and the Colleges for the betterment of the profession as well as to plan few Joint Programmes with these colleges.

The efforts were made by the members of Managing Committee to reach and personally invite the Principals and Head of Departments of the colleges. CS. Vikas Agarwal, Chairman, Pune welcomed the College representatives and Prof. H P Deshmukh, Co-opted Member on Managing Committee on Pune Chapter introduced the theme of the meeting. The representatives of colleges were presented with a memento on behalf of Pune Chapter. CS. Devendra Deshpande, Secretary Pune Chapter presented a vote of thanks.

FACULTY DEVELOPMENT PROGRAM

In its continuous endeavor to create awareness amongst the Faculty Members imparting knowledge of Corporate Law and of the changing face of the Corporate Law, Pune Chapter organizes aFaculty Refresher Workshop in association with DES Law College, for the faculty Members of Law and Commerce Colleges from Pune. The inauguration session was graced with the presence of Dr. SudhakarJadhavar, Dean, Faculty of Commerce, University of Pune as Chief Guest. Dr. Rohini Honap, Principal, DES Law College welcomed the participants. CS Vikas Agarwal, Chairman, Pune Chapter informed the participants the purpose behind organizing Faculty Development Program. Dr. Sudhakar Jadhavar addressed the gathering highlighting the important of continuous education.

CS Nishad Umranikar, Partner, MSN Associates, Company Secretaries updated the members on latest amendment in Company Law. CS Vivek Sadhale, Company Secretary and Head – Legal, Persistent Systems Limited updated the participants on amendments to SEBI, Security Market and Corporate Lawswile CS Sunil Nanal, Partner, Kanj& Associates, Company Secretaries updated the participants on latest amendment to Foreign Exchange Management Law

Dr. C N Rawal, Principal, BMCC was the Chief Guest for the Valedictory session of the Program. Prof. H. P. Deshmukh, Director (Academics), DES Law College gave an overview of the Program. He stressed the need to organize such program frequently. The program concluded with Vote of thanks by CS Vikas Agarwal, Chairman, Pune Chapter.

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**INVITATION OF APPLICATIONS
FOR
PANEL OF PAPER SETTERS AND EXAMINERS
FOR THE COMPANY SECRETARIES EXAMINATIONS**

The Institute is inviting applications for preparing a panel of Paper Setters and Examiners in the following subjects of Company Secretaries examinations. The applicants are requested to give their option of subjects, in order of preference, under the following disciplines:

I LEGAL DISCIPLINE SUBJECTS

- | | |
|--|------------------------|
| (a) Law: | |
| (i) General and Commercial Laws | Executive Programme |
| (ii) Tax Laws | Executive Programme |
| (iii) Company Law | Executive Programme |
| (iv) Economic and Labour Laws | Executive Programme |
| (v) Securities Laws and Compliances | Executive Programme |
| (b) Law and Practice: | |
| (i) Company Secretarial Practice | Professional Programme |
| (ii) Drafting, Appearances and Pleadings | Professional Programme |
| (iii) Corporate Restructuring and Insolvency | Professional Programme |
| (iv) Advanced Tax Laws and Practice | Professional Programme |
| (c) Law and Management: | |
| (i) Elements of Business Laws and Management | Foundation Programme |
| (ii) Due Diligence and Corporate Compliance Management | Professional Programme |

II MANAGEMENT, BUSINESS COMMUNICATION, ETHICS AND SUSTAINABILITY DISCIPLINE SUBJECTS:

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|--|------------------------|
| (i) English and Business Communication | Foundation Programme |
| (ii) Strategic Management, Alliances and International Trade | Professional Programme |
| (iii) Governance, Business Ethics and Sustainability | Professional Programme |

III ECONOMICS DISCIPLINE SUBJECT:

- | | |
|------------------------------|----------------------|
| (i) Economics and Statistics | Foundation Programme |
|------------------------------|----------------------|

IV ACCOUNTING AND FINANCE DISCIPLINE SUBJECTS:

- | | |
|---|------------------------|
| (i) Financial Accounting | Foundation Programme |
| (ii) Company Accounts, Cost and Management Accounting | Executive Programme |
| (iii) Financial, Treasury and Forex Management | Professional Programme |

SCALE OF HONORARIUM:

Stage of Examination	For Paper Setting	For Evaluation of Answer Books
Foundation Programme	₹ 5,000/- per paper	₹ 40/- per answer book
Executive Programme	₹ 6,000/- per paper	₹ 50/- per answer book
Professional Programme	₹ 7,000/- per paper	₹ 60/- per answer book

QUALIFICATIONS

A person applying for empanelment of his/her name as a Paper Setter/Examiner should be holding professional qualification as member of the Institute of Company Secretaries of India/Institute of Cost and Works Accountants of India/Institute of Chartered Accountants of India at least for five years and/or a Doctorate Degree/Postgraduate Qualification with at least second class in the disciplines of Law, Management, Finance & Accounting and International Trade & Economics with five years experience either in an academic position or in practice or in employment in the concerned field/discipline having relevance to the subjects of examinations.

DESIRABLE EXPERIENCE

Persons having adequate experience of teaching and as Head Examiner/Moderator/Paper Setter/Examiner in subjects of Legal, Management, Finance & Accounting and International Trade and Economics discipline at graduate/post-graduate level or professional examinations or in writing book(s) or study material in the relevant subject(s) OR any other specialised graduate/post-graduate level qualification(s) with relevant work experience having direct relevance to the aforesaid subject(s) of examination(s) will be preferred.

HOW TO APPLY

Candidates fulfilling the above conditions and not registered as a student of the Institute may send their bio-data in the prescribed application form. The prescribed application form may be downloaded from the Institute's website <http://www.icsi.edu/Webmodules/Member/forms/examnew.pdf> The blank application form can also be obtained by post from the Joint Director (Examinations), The Institute of Company Secretaries of India, C - 37, Institutional Area, Sector-62, NOIDA-201 309 or by sending an e-mail to exam@icsi.edu.



NABARD Consultancy Services REQUIRES A Company Secretary

NABCONS (NABARD Consultancy Services) is engaged in providing consultancy services in the field of agriculture and rural development. The sphere of activities include preparation of detailed project reports, technical appraisal, Financial feasibility studies, Monitoring and Evaluation studies, Capacity Building and other activities. The company is in its 9th year of operation with the annual turnover of around ₹ 17 crore. The Company has ambitious plan to increase the business to ₹ 100 crore. For further details visit Our website www.nabcons.com

The Company requires a Company Secretary with

Qualification : Graduate in Commerce and Associate membership of the Institute of Company Secretaries of India. Additional qualifications in law, Accounts, Business Management and Finance would be preferable.

Experience: 3 to 5 years of experience in handling the secretarial matters.

Responsibilities: Company Secretarial matters, Income tax matters, Service tax matters, Internal and Statutory Audit and CAG Audit matters and Public relations matters.

Salary will be negotiable. The contract would be initially for a period of 2 years.

Placement : Mumbai.

Apply within 15 days with a detailed resume giving Name, Address, Email-id, Contact No.s, Qualifications, experience Achievements and salary expected to the **address mentioned below:**

Chief Executive Officer, NABARD Consultancy Services, NABARD Buildings, C-24,
Bandra Kurla Complex, Mumbai - 400 051 E-mail address:nabconsacs@gmail.com

REQUIRED

A COMPANY SECRETARY

The Candidate should have minimum 1 to 2 years of experience in Company Law and Secretarial Matters.

Salary will match the industry norms.

Please forward your resume within 7 days to the HR Manager of the Company.

Arkray Healthcare Private Limited

701/702, Opulence, TPS-III, 6th Road,
Santacruz (E), Mumbai-400 055.

E-mail : hr@arkray.co.in

Fax : 61559356

REQUIRED

A COMPANY SECRETARY

A Public Limited Company requires a qualified Company Secretary having 2-3 years post qualification experience. Applications from Fresher who have obtained practical experience prior to qualifying may also be considered on merits.

Interested candidates may apply to

BYGGING INDIA LIMITED

69, RNA Arcade, Lokhandwala Complex,
Andheri (W), Mumbai-400 053.



REQUIRED A COMPANY SECRETARY

for International Consulting Firm in Dubai

- Minimum 5 to 10 years Post Qualification Experience.
- Knowledge of Company Incorporation, drafting resolutions, MOA, etc.
- Proactive, self starter personality, excellent interpersonal and communication skills
- Good hand on Computers
- Age 30 to 45 years
- Selected candidate will be incharge of the Business Incorporation division

Send CV at jcainfo@airtelmail.in : jcashj@eim.ae
Tel.: 022-4002 9795

REQUIRED

A COMPANY SECRETARY

A Private Limited Company dealing in steel and cotton, and having subsidiaries abroad requires a qualified Company Secretary with practical experience. Freshers may apply. Package will be commensurate with experience and qualification.

Interested candidates may apply to :

The Director,

Madhurima International Private Limited

122, Maker Chambers III,
Nariman Point, Mumbai-400 021.

**Best Chapter Award —
Pune Chapter A Category for 2009 and 2010**



CS Vikas Agarwal, Chairman, Pune Chapter, CS Shridhar Kulkarni, Chairman, Pune Chapter for 2010, CS Prajot Tungare, Chairman, Pune Chapter for 2009, CS Devendra Deshpande, Secretary Pune Chapter, CS Vikas Khare, Central Council Member from Pune and CS Makarand Lele, Chairman, WIRC receiving Best Chapter Award in A Category awarded to Pune Chapter for the year 2009 and 2010.

**Faculty Development Programme Organised by
Pune Chapter**



Deep Prajwalan by Dr. Sudhakar Jadhavar, Dean, Faculty of Commerce, University of Pune, Dr. Rohini Honap, Principal, DES Law College, Prof. H. P. Deshmukh, Director (Academics), DES Law College and CS Vikas Agarwal, Chairman, Pune Chapter at the Inauguration of the Programme.

**ICSI-WIRC organised Regional Students' Conference
hosted by Bhopal Chapter on
12th November 2011 at Bhopal**



CS Ashish Garg, Regional Council Member, WIRC, CS Dhanraj Singh Thakur, Secretary, Bhopal Chapter, CS Ashish Doshi and CS Amit Jain, Regional Council Member, WIRC, CS Prakash Pandya, Secretary, WIRC, CS Makarand Lele, Chairman, WIRC, CS MM Chawla, Chairman, Bhopal Chapter

**Farewell Ceremony held on 8th October, 2011 at
Indore Chapter**



Farewell Ceremony for CS M.K. Apte Sir on 8th October, 2011 at Indore Chapter

**KOLHAPUR CHAPTER OF WIRC OF ICSI hosted a one
day Regional Students' Conference on
4th October 2011 at Kolhapur.**



CS Prasad Joshi, Secretary of Kolhapur Chapter, CS Priya Pangaonkar, Vice Chairman of Kolhapur Chapter, Chief Guest Mr. Shashank Mukharjee, Chief General Manager of The Ratnakar Bank Ltd, CS Makarand Lele, Chairman, WIRC, CS Devendra Deshpande, Secretary of Pune Chapter, Mr. Sandip Mehta, Education Officer of WIRC

**ICSI-WIRC organized a Regional Students' Conference
hosted by Goa Chapter on
5th November 2011 at Panjim, Goa**



CS Makarand Lele, Chairman, ICSI-WIRC, Shri Sanjay Kumar Gupta, ROC, Goa Daman & Diu, CS Kevin Fernandes, Vice-Chairman of Goa Chapter, CS Prakash Pandya, Secretary, ICSI-WIRC, CS Swatee Shere Rane, Chairperson, Goa Chapter lighting the lamp, Adv Ramrao, ICSI Counsellor

CII in Partnership with ICSI-WIRC organized Interactive Session on XBRL on 20.10.2011 at Sunville, Mumbai



CS Makarand Lele, Chairman, ICSI-WIRC Mr. Ravi Marwaha, GVP, TIP, BAT, SAP India Pvt. Ltd., Ms. Sneha Rajagopal, Vice President, XBRL, and Accounting Services Data Tracks India, Mr. Aman Bhargava, Financial Accounting Advisory Services Ernst Young Pvt. Ltd.



Addressing CS Makarand Lele, Chairman, ICSI-WIRC

Seminar on Limited Liability Partnership (LLP) held on Saturday, 22nd October, 2011 at Mumbai



Addressing CS Makarand Lele, Chairman, WIRC, CS Atul Mehta, Central Council member the ICSI and Shri Henry Richard, ROC, Maharashtra



Shri Jayesh Thakur, Associate Director, Tax and Regulatory Services, PWC, Shri Henry Richards, ROC, Maharashtra and Shri Santosh Kumar, Registrar of LLP, Ministry of Corporate Affairs, New Delhi

Group photo of 14th and 15th MSOP Organised by WIRC



Students with CS Makarand Lele, Chairman, CS Prakash Pandya, Secretary, CS Sanjay Gupta, Chairman, PDC of ICSI-WIRC, Shri Sudipto Pal, JD and Shri Sandeep Mehta, A. EO, WIRC



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