

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

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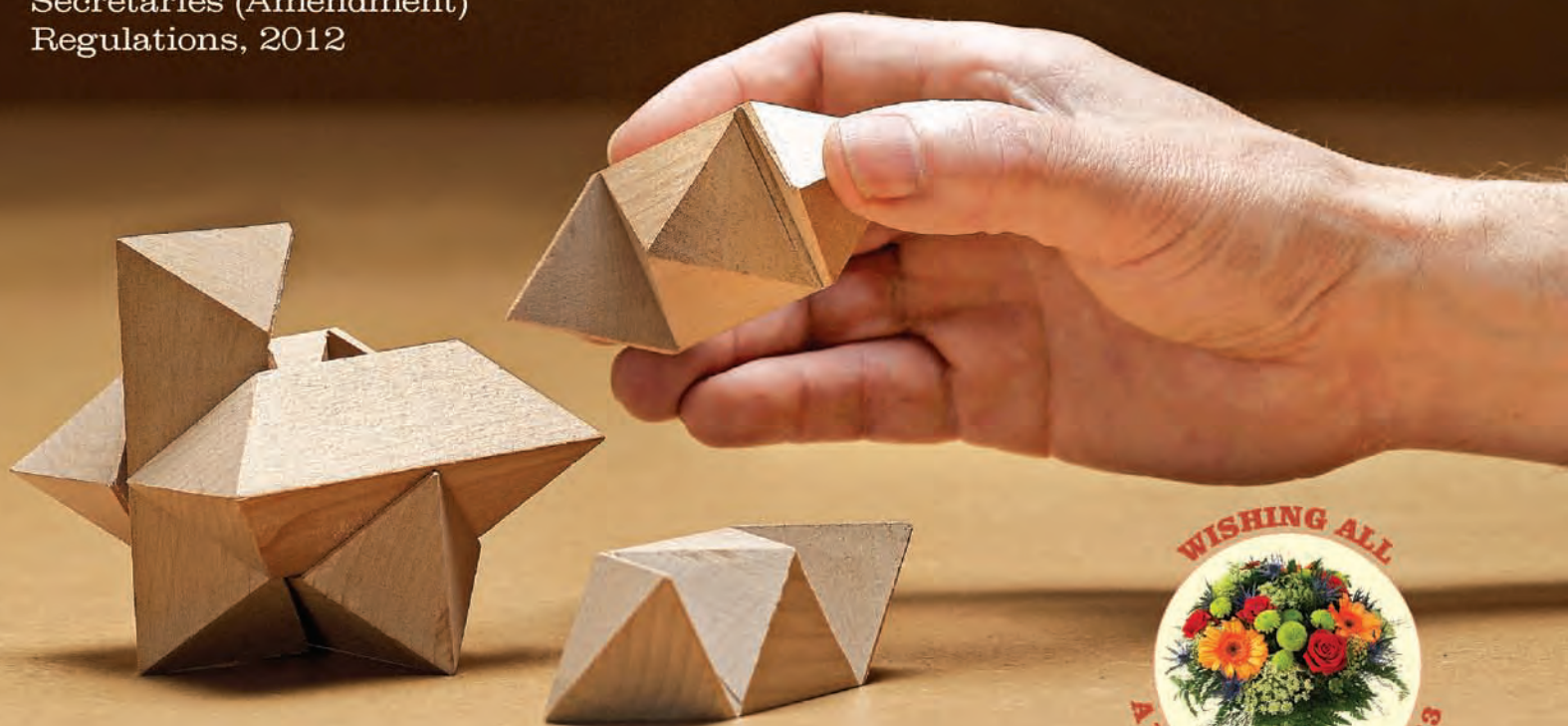
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Focus on

**Corporate
Restructuring
& Insolvency**



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

Chartered Secretary welcomes the New Secretary and the Chief Executive of the Institute



CS M.S. SAHOO
(Secretary, The ICSI)

CS M S Sahoo a Fellow Member of the Institute of Company Secretaries of India has been appointed as Secretary, ICSI w.e.f. 1st January, 2013.

Mr. Sahoo has over three decades of rich work experience in self-employment, private sector, public sector, regulator and government in varied functional areas such as reforms, policy, regulations, research and analysis. Before joining the ICSI, he was an eminent legal practitioner in the field of securities laws. He was a Whole Time Member of the Securities and Exchange Board of India (SEBI) during 2008-11. Prior to this, he served as the Joint Secretary (non-functional), Director and Joint Director in the Ministry of Finance, as the Chief General Manager with SEBI and as Economic Adviser with National Stock Exchange of India Limited (NSE).

As an officer of Indian Economic Service (1985 batch), he served the Government of India for 22 years. He played a key role in designing of major reforms in securities market, including dematerialization of securities, trading of derivatives, corporatisation and demutualization of exchanges, building regulatory and market infrastructural institutions, enforcement process / actions. He was instrumental in development of human resource capacity in securities markets through various interventions such as NSE's Certification in Financial Markets (NCFM), National Institute of Securities Markets (NISM) and a number of reputed publications. He has served / serves as a member on several expert committees / boards and professional groups.

He has delivered talks at various national and international fora and written over 100 articles, including half a dozen award winning articles in Chartered Secretary. His academic qualifications include M. Phil, M.A. (Economics), LL.B., FCS, and PGDM.



CS SUTANU SINHA
(Chief Executive, The ICSI)

CS Sutanu Sinha is a Fellow Member of the Institute of Company Secretaries of India and also a Member of the Institute of Chartered Secretaries and Administrators, London (UK). A Post Graduate in Commerce from the Calcutta University, he stood First Class First in the Post Graduate Diploma in German Examination of the Calcutta University.

Before assuming the office of Chief Executive from 1st January, 2013, Mr. Sinha was heading the Academics & Professional Development Directorate of the Institute of Company Secretaries of India (ICSI) and was appointed as Chief Executive Designate from 31st August, 2012 to 31st December, 2012 by the Council of the ICSI.

He has over twenty five years of professional experience in the Company Secretarial and Corporate Functioning. He possesses a vast work experience in Corporate Planning, Finance, International Trade and other allied areas in the course of his previous assignments in MNC/PSUs. An avid reader and a corporate analyst, Mr. Sinha has contributed several important papers and articles on different aspects of Governance and Management and addressed various Workshops, Seminars and Conferences, both in India and abroad.

His areas of specialization include Corporate Governance, Sustainability and Enterprise Resource Planning. He is also Global Corporate Governance Forum(GCGF), Washington (World Bank Group) trained Trainer for Directors Development Programmes. He has contributed significantly in Institute's initiatives to promote corporate governance in India and overseas.

He has been appointed by the Government of India as Director in the Board of Canara Bank, which is one of the leading Public Sector Banks of the Country. Fluent in many foreign languages, his hobby traverses from instrumental music, painting, photography to Documentary Film-making.



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▶ S. N. Ananthasubramanian

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01 Meeting of ICSI delegation with Hon'ble Governor of Maharashtra - Standing from Left: N.K. Jain, Mahavir Lunawat, S.N. Ananthasubramanian, K. Sankaranarayanan (Hon'ble Governor of Maharashtra), Nesar Ahmad and Sutanu Sinha.

03 ICSI- WIRC - Inauguration of New Chapter Office at Bhayander - Sitting on the dais from Left: Sunil Khandelwal (Corporator, Mira-Bhayander Municipal Corporation), Catleen Pereira (Mayor, Mira-Bhayander Municipal Corporation), Nesar Ahmad, S.N. Ananthasubramanian, M.S. Sahoo and Mahavir Lunawat.

05 ICSI-WIRC - Revival of ICSI-WIRO Library - A glimpse of the meeting in progress.

07 Institute of Chartered Secretaries of Bangladesh (ICSB) - Fourth National Convention on Modernization of the Companies Act: Enhancing Good Governance - Nesar Ahmad addressing. Others sitting on the dais from Left: Md. Shahid Farooqui (Sr. VP, ICSB), Mohd. Sanaullah (President, ICSB) and M. Naseemul Hye (VP, ICSB).

02 ICSI-WIRC - 41st Foundation Day Celebrations - Inauguration - Lighting of Lamp by S.N. Ananthasubramanian. Others standing from Left: Keyoor Bakshi, Mahavir Lunawat, P.K. Malhotra (SAT Presiding Officer), Ashish Chauhan (CEO, BSE), B. Narasimhan and S.M.A. Milath (RD, MCA).

04 ICSI-NIRC and ICSI-CCGRT - Joint Seminar on Turnaround Management & Corporate Restructuring - Inaugural Session - Nesar Ahmad addressing. Others sitting on the dais from Left: Ranjeet Pandey, Rajiv Bajaj, S.N. Ananthasubramanian, Atul Mittal and NPS Chawla.

06 Opening of Revived ICSI-WIRO Library - From Left: Mahavir Lunawat, S.N. Ananthasubramanian, Nesar Ahmad and M.S. Sahoo cutting the ribbon to mark the opening of the library.

08 SIRC - Madurai Chapter - ICSI - CII Joint Interaction Meeting with President, The ICSI - Nesar Ahmad addressing. Others sitting from Left: Kathir Kamanathan (VP, CII Madurai Zone) and S Kumararajan.



Articles (A 01 - 45)

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Resolution versus creditor rights: India strongly needs to tame SARFAESI Act

P-14

Vinod Kothari and Soma Bagaria

Resolution of sickness, liquidation and enforcement of security interests need a balance. Enforcement of security interests is a topical remedy, while liquidation is a holistic remedy. Before either of these, the possibility of revival of a bankrupt entity need to be evaluated, as the society cannot afford to kill businesses which have a chance of survival. Unbridled enthusiasm in enforcing the provisions of the SARFAESI Act has created a situation where the very philosophy of revival of companies has been put to question. We have long ignored the need for a comprehensive reform of bankruptcy laws, and depended on piecemeal changes in law, as also on judicial precedents, for such important issues as priorities of claims, conflicting needs of revival and liquidation, etc.

Restructuring and Insolvency

P-19

Nilesh Sharma

The US financial crisis started in mid 2007 has now become a global financial crisis engulfing all the countries and all the sectors in its reach. The same has given rise to defaults in interest and loan repayments by the borrowers to the banks and financial institutions. The banks are flooded with the requests for restructuring of their loans. A number of borrowers have referred their matters to CDR. Banks have also initiated actions for enforcement of their securities under the SARFAESI Act, 2002. Restructuring and insolvency are the talk of the town. This article throws some light on the meaning of the terms "restructuring" and "insolvency", their advantages and disadvantages, insolvency laws in India, the process of CDR and the current restructuring scenario in India.

Will NCLT Prove to be the Panacea for Sick Industries?

P-22

Dr. S D Israni and Satyan S. Israni

Restructuring and rehabilitation of sick industries should be one of the priorities of the Government. It has been over ten years since the law relating to creation of NCLT was passed by amending the Companies Act during the year 2002, but till now no headway has been made. At the same time, BIFR has continued to exist with the sword of abolition hanging on its head, very much like the plight of sick companies it deals with from day to day. The article highlights the problems that need to be addressed by the Government and it states that mere creation of NCLT as a Tribunal will not solve all the issues relating to restructuring and rehabilitation of sick industries and there is a need for active and effective role by the Government in making the system work. Even professionals will have to discharge the role expected of them under the law.

Schemes of Arrangement - Fairness Rules the Roost

P-26

Dr. K. S. Ravichandran

Professional practitioners such as the Company Secretaries, Chartered Accountants and Lawyers have a larger role to play to ensure that schemes prepared and presented by them not only adhere to the applicable provisions of law but also they are intended to achieve genuine business goals in the most transparent manner. Fairness must rule the roost. Therefore company secretaries who may form part of the core team of advisors preparing and presenting schemes owe a duty to ensure that they understand all the aspects of the scheme rather than listing down procedural steps involved and ensuring compliances.

Corporate Restructuring Would Court Lift Veil?

P-33

Vivek Sadhale and Anand Chapekar

The basic objective of forming a company is to shield the personal assets of the shareholders from unlimited liability for the acts of the company. With all the advantages available to the corporate form of entity, it must also be ensured that there are no fraudulent activities carried out in the company. Corporate veil may be lifted either under express provisions of law; or under judicial pronouncements. It is important to study the various theory of Lifting Corporate Veil being applied by the Courts in case of holding - subsidiary relationships. With Courts potentially taking aggressive stand on lifting of corporate veil smelling a single instance of fraud, it is important that bona fide holding and subsidiary companies do their transactions on arms-length basis and witness all the corporate formalities, to pass the "look at" test.

Intangible Assets - Impact on Mergers and Amalgamations

P-37

V. Ahalada Rao

This article signifies the role of Intangible Assets in mergers & amalgamation in the light of recent amendments in Schedule VI with separate disclosure of Intangible Assets. Various Intangible Assets, their disclosure and impact on the valuation in general and also with specific reference to industry are presented in detail and lucid manner. This article also specifically focuses on errors in valuation of Intangible Assets that help the industry to identify the gaps, improves the financial strength and increase the value per share. The impact will be win - win situation to all viz. stakeholders, regulators and management, with the benefit of better transparency.

Corporate Restructuring and Insolvency

P-41

M. Kurthalanathan

Corporate restructuring is the superlative tool available for the companies to restructure their organization in an efficient manner. The process of restructuring should be in such a way that it should not affect the shareholders and brand image of the company. As per the law the liquidation process remains an integral part of corporate insolvency, but there should be a step



At a Glance

towards enacting a comprehensive framework on rescue mechanisms to help rehabilitate sick companies that have the potential to be revived and to make profits. Now great responsibility is on the professionals like Company Secretaries, Chartered Accountants, Cost Accountants, etc, to deal with the corporate restructuring and insolvency with utmost care.

Corporate Restructuring and Insolvency P-46

Joseph C. F. Sequeira

A Company Secretary is one of the important managerial personnel with the requisite professional vision, education and experience, who can clearly help identify the causative factors and remedies to restore a Company experiencing insolvency conditions where its asset base and shareholder values are at jeopardy. Such corporate initiatives by the management in time can relieve the immense pressure from the creditors by constructive compromise and resolution of litigation affecting its corporate survival. This article draws attention to the remedies and initiatives available to Corporate Entities under the Companies Act, 1956 and the RBI restructuring process (CDR), often neglected by the management.

Procedural Aspects including documentation for Mergers and Amalgamations P-51

Suresh Kumar Thakral

Merger is the fusion or absorption of one company by another, one of the two existing companies merges its identity into another existing company and amalgamation is a legal process in blending of two or more existing undertakings into one undertaking. Mergers and amalgamations have various benefits e.g. synergy, economies of scale, reduction in production cost and other expenses. To effect the amalgamation different ways can be adopted like transfer of undertaking by order of High Court, purchase of share of one company by another company, amalgamation in national interest and under section 494 of the Companies Act, 1956.

Legal World (LW 01 - 12) P-72

► **LW.01.01.2013** There are various disputed questions of facts are involved and the amount so claimed cannot be stated to be admittedly due and payable. [Bom] ► **LW.02.01.2013** Provisions of Section 529-A of Companies Act (a Central legislation) have to be override the provisions of Section 53 of the M.P. Commercial Tax Act of 1994 (a State legislation). [Del] ► **LW.03.01.2013** SAT dismisses Sahara's appeal against SEBI's action with respect to furnishing documents and information [arising out of Supreme Court's order to refund the deposits] as premature. ► **LW.04.01.2013** Having given a clean chit to the appellant with regard to the allegations of violating Regulation 4 of the FUTP Regulations and Clauses A(1),(3),(4) and (5) of the Code of Conduct, we see no reason as to how the appellant can be said to have violated Clause A(2) of the Code of Conduct. [SAT] ► **LW.05.01.2013** Consent cannot confer jurisdiction on a court or tribunal where none exists. [Del] ► **LW.06.01.2013** Where the contract is purely commercial in nature without involving any public service, writ jurisdiction cannot be invoked to resolve the dispute arising out of such contract.

[Del] ► **LW.07.01.2013** The issue of jurisdiction, which is being raised by the petitioner, is dependent on facts and, the evidence which the parties may lead. Therefore, the sensible course would be the one adopted by the learned Arbitrator, which is, to decide the all issues at one-go. [Del] ► **LW.08.01.2013** An 'untoward mishap' can be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business. [SC] ► **LW.09.01.2013** If the service tax was paid for rendering port services, having accepted the amount of service tax paid towards port services and having registered the shipping liner for providing port services, the service cannot be reassessed at the receivers end to deny the refund. [CESTAT] ► **LW.10.01.2013** To examine the issue whether the business of the company was a business of money lending or not, one has to see various aspects of evidences including procedural aspect. [ITAT]

From the Government (GN 01 - 21) P-84

► The Companies Directors Identification Number (Third Amendment) Rules, 2012 ► The Companies Directors Identification Number (Third Amendment) Rules, 2012. ► The Companies (Central Government's) General Rules and Forms (Seventh Amendment) Rules, 2012. ► Amendment in the notification G.S.R. 1060 (E) Dated 21st December, 1989 ► Delegation of Powers by Central Government in relation to Banking Companies ► Companies (Central Government's) General Rules and Forms (Seventh Amendment) Rules, 2012. ► Filing of Cost Audit Report and Compliance Report in the extensible Business Reporting Language (XBRL) mode ► Filing of Form 68 for rectification of mistakes in Form 1, Form 1A and Form 44-regarding ► Filing of Balance Sheet and Profit and loss Account in eXtensible Business Reporting language (XBRL) mode for the financial year commencing on or after 01.04.2011- Corrigendum to General Circular No: 39/2012. ► No Objection Certificate (NO C) from the concerned regulator/ Institute for LLP Name approval/ incorporation. ► Filing of Balance Sheet and Profit and Loss Account in extensible Business Reporting Language (XBRL) mode for the financial year commencing on or after 01.04.2011. ► Requirement of Base Minimum Capital for Stock Broker and Trading Member ► Establishment of Connectivity with both depositories NSDL and CDSL - Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement ► Pre-trade Risk Controls ► Procedural norms on Recognitions, Ownership and Governance for Stock Exchanges and Clearing Corporations. ► Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2012. ► Oversight of Members (Stock Brokers/Trading Members/ Clearing Members of any segment of Stock Exchanges/Clearing Corporations) ► Rajiv Gandhi Equity Savings Scheme, 2012 ► Regulations amending CLB Regulations, 1991

Other Highlights P-106

► Highlights of The Companies Bill, 2012 ► CG & CSR Watch ► Members Admitted/ Restored ► Certificate of Practice Issued/Cancelled ► Licentiate ICSI Admitted ► News From the Regions ► Company Secretaries Benevolent Fund ► Our Members ► Appointment Advertisement ► Prize Query



I am writing this message with a huge sense of satisfaction and fulfillment. My journey in the Institute as part of TEAM ICSI, during the one decade, has been punctuated with immense enrichment in terms of knowledge and experience. During this period, we collectively sailed through challenging times, and moved on to put more feathers in the cap of the Institute and the profession of Company Secretaries. In addition, stakeholders' satisfaction, global networking, ecological concerns and good governance remained focussed in decision making process.

Chartered Secretary more than four decades old highly acclaimed professional journal has kept pace with changing times and been ably kept its readers informed and engaged in the growth story of the profession.

I remember my student days of late seventies, when I read this journal and since then it has undergone metamorphosis in terms of size, style and value of inputs in 1986, 1991 in tune with the time and texture of change.

Since 2003, when I joined the team ICSI this journal grew in leaps and bounds. Various innovative concepts like publication of Executive Chartered Secretary, increase in the number of special issues, the addition of two more disciplines in the prize award scheme of the articles, enhancement in the prize money for replies to prize queries were added to make this journal more attractive, informative and effective. This resulted in substantial increase in the printed copies and circulation of the Chartered Secretary.

The year 2012 was the year of transformation to benchmark with international standards when Chartered Secretary was published with multi colour printing, international look and design while retaining the magic of its quality and authenticity of information, application oriented articles, and all standard columns, you were accustomed to read. I am sure the readers like the Chartered Secretary in its New Avatar.

Being an important medium of communication and a catalyst between the Institute and its stakeholders, the Chartered Secretary continues to expand its reach by embracing new subscribers and stakeholders.

The change is a natural process, as I superannuated on December 31, 2012, the new incumbent will take the lead to place the profession to further heights. I wish the successive leaders of the Institute for their success and the multifaceted growth of the profession.

George Eliot said '**Only in the agony of parting do we look into the depths of love**'. I experience the same now.

I wish best of luck for our readers and wish them a Very Happy and Prosperous New Year 2013.

N. K. Jain



From the President



*"Yesterday is but today's memory,
tomorrow is today's dream"*

Kahlil Gibran



Dear Professional Colleagues,

At the outset, I wish you a very happy, prosperous and rewarding New Year. The New Year may give each one of us strength, enthusiasm and cheer to smilingly meet all challenges and to convert them into opportunities.

During the year, I used best of my energies and time for the cause of the profession with complete dedication and commitment. A number of initiatives have been taken during 2012 and a lot needs to be taken to realise our vision. The achievements during the year were the collective wisdom and efforts of the Council, members, employees and other stakeholders of the Institute and I am sure, we will continue our efforts to achieve further heights in times to come.

The Institute has a powerful vision that is driving all of us to new global benchmarks. Our mission and values provide the guiding principles with which we move seamlessly to realise our vision. As I head towards completing my tenure as President of this esteemed Institute with enduring commitment to serve the profession of Company Secretaries, I deem it my duty to provide you the glimpses of major developments that have taken place and the initiatives taken towards growth of the profession and the Institute during the year.

New Secretary of the Institute

I am pleased to inform you that CS M S Sahoo, a distinguished Fellow Member of the Institute of Company Secretaries of India

and a member of Indian Economic Services (1985 Batch) has joined the Institute as Secretary. I welcome CS M S Sahoo and am sure the Institute and the profession of Company Secretaries will be immensely benefited by his knowledge, experience and administrative acumen.

Superannuation of Shri N K Jain

Shri N K Jain, the Secretary & CEO of the Institute after providing his valuable services to the Institute and the profession of Company Secretaries for about a decade superannuated on December 31, 2012. During his tenure the Institute witnessed growth both in terms of qualitative and quantitative parameters. I wish him all the very best of health, prosperity and peaceful years ahead.

Companies Bill, 2012

The Companies Bill, 2012 has been passed by the Lok Sabha on 18th December, 2012. The Companies Bill, 2012, on its enactment, would pave the way for a modern legislation for growth and regulation of corporate sector in India. The Bill containing various reformatory and contemporary provisions endeavours towards compliance of law in a better and effective manner; ensures investor protection and to promote higher disclosures, transparency, and accountability; and to serve better the interests of the corporates, investors and other stakeholders.

I am sure that on enactment of new Company Law, the role of Company Secretaries will undergo a major transformation.



Policy Document on Corporate Governance

You are aware that the Ministry of Corporate Affairs had constituted a Committee under the Chairmanship of Shri Adi Godrej to formulate a policy document on Corporate Governance and your President was appointed as member secretary/convener of the Committee. The Committee after extensive deliberations formulated policy document on corporate governance which was submitted to Dr. M Veerappa Moily, the then Hon'ble Minister of Corporate Affairs and Power on September 18, 2012, at Mumbai.

The Committee had representation from the professional bodies, i.e. the Institute of Company Secretaries of India, the Institute of Chartered Accountants of India, and the Institute of Cost Accountants of India, Indian Institute of Corporate Affairs, Industry associations - CII, FICCI, ASSOCHAM and eminent persons from the trade and industry.

Company Secretaries (Amendment) Regulations, 2012

The Company Secretaries (Amendment) Regulations, 2012 notified on 4th June 2012, paved the way for introduction of Corporate Compliance Executive Certificate; two new PMQ courses on Competition Law, and Corporate Restructuring and Insolvency. The amended regulations also provide for provisional registration for the Executive Programme, for a person who has appeared or enrolled himself for appearing in the degree examination in any discipline other than Fine Arts.

The Ministry of Corporate Affairs has also approved the Draft Regulations to further amend the Company Secretaries Regulations to provide for new training structure. The draft Regulations have been published elsewhere in this issue. I invite members and all stakeholders to send their suggestions/comments on the draft to the Institute within specified time.

New Syllabus for Company Secretaryship Course

The Council of the Institute approved the new syllabus for Foundation, Executive and Professional Programmes, which is contemporary in approach and global in perspective. The new syllabus has been given contemporary spirit by incorporating Electives at the Professional Programme level.

The new syllabus for Foundation has been implemented w.e.f. February 1, 2012 and the first examination for the same was held in December, 2012 session under the Optical Mark Recognition (OMR) system.

With greater emphasis on due diligence, financial management, compliance management, corporate governance, sustainability and ethics, etc., the new Syllabus for Executive Programme comprises Seven papers instead of six papers as at present and

Nine papers at Professional Programme level including one Paper to be opted by the students out of five elective papers namely, (i) Banking Law and Practice; (ii) Capital, Commodities and Money Market; (iii) Insurance Law and Practice; (iv) Intellectual Property Rights – Law and Practice; and (v) International Business – Laws and Practice, instead of eight papers as at present. The Council has decided to implement the new syllabus for Executive Programme w.e.f. February 1, 2013 and the Professional Programme w.e.f. September 1, 2013.

E-Governance Initiatives

The Institute had successfully launched e-MSOP, a Web-based training to enable the certain categories of candidates who are not able to spare 15 days at a stretch to attend the e-MSOP. A candidate can complete e-MSOP through Virtual Class from any place. On the similar lines and encouraged by the success of e-MSOP, the Institute introduced e-SIP and e-EDP to enable candidates who are not able to undergo the programme as per the timelines. This initiative also enabled candidates to attend the programme located at a place where programmes are not organized.

Study Material on the website

The Institute as part of its green initiatives, leveraged technology for providing online services to students and has uploaded on its website, the study material for the Foundation, Executive and Professional Programmes.

Certificate Course on Valuation

The Institute as part of capacity building of its members initiated the process of developing short term Certificate Courses on new emerging areas, to provide specialized application oriented knowledge to enable the members to render their services in diversified areas. It was in this direction that the Institute launched a Certificate Course on Valuation at 40th National Convention of Company Secretaries, so as to build the skills and expertise of its members in carrying out the valuation assignment relevant to today's business environment. To begin with, the Course would be available at ICSI-NIRC at New Delhi and ICSI-CCGRT at Navi Mumbai and subsequently to be offered from Regional Councils, and A+ and A Grade Chapters.

Corporate Compliance Executive Certificate

You are aware that the Concept of Corporate Compliance Executive Certificate (CCEC) was conceived with an objective to develop a cadre of Compliance Executives to cater to the Corporate Secretarial Compliance and Governance requirements of those companies which are not required to appoint a Company Secretary. Under this course the students who have passed the Foundation Examination and two prescribed papers of Executive Programme will be awarded Corporate Compliance Executive Certificate subject to certain requirements with respect to training, professional development



From the President

programmes etc. The implementation plan is being worked out and the CCEC would be launched shortly.

PMQ Course in Corporate Restructuring and Insolvency

The Institute introduces Post Membership Qualification Courses on new and emerging areas for its members. You are aware that PMQ Course in Corporate Governance is going apace and a new Post Membership Qualification (PMQ) Course in Corporate Restructuring and Insolvency has been launched at 40th National Convention of Company Secretaries. This PMQ Course aims at capacity building of Professionals in the areas of legal, practical and application oriented aspects of corporate restructuring, rescue, rehabilitation, insolvency and matters related thereto, will have written examination as well as compulsory workshop for case studies. This course will be available to members shortly.

MEETINGS WITH GOVERNMENT, REGULATORY AUTHORITIES, ETC.

During the year, the delegation of the Institute met Hon'ble Union Ministers, Chief Ministers, Regulators, Universities and Chambers of Commerce and Industries. A brief description is given below:

Meeting with Ministers

ICSI delegation met Shri Sachin Pilot, Hon'ble Minister of State for Corporate Affairs (I/C) and Dr. M Veerappa Moily, the then Hon'ble Union Minister of Corporate Affairs and Power and discussed matters of professional interest.

Meeting with Regulators

The delegation of the Institute met S/Shri Prashant Saran, Rajeev Kumar Agarwal, Whole time Members and R Ravindran, Executive Director, SEBI; and Shri Ravi Narain, MD & CEO, NSE and Shri Ashish Chauhan, CEO, BSE.

Meeting with Chief Minister, Jammu & Kashmir

The Institute's delegation met Shri Omar Abdullah, Hon'ble Chief Minister of Jammu and Kashmir and apprised him of the activities and initiatives of the Institute towards development of the profession in Jammu & Kashmir. The Institute also submitted a request to recognise the Company Secretaries under Jammu & Kashmir VAT Act, 2005 to appear before the VAT Authorities and to conduct VAT Audit.

Meeting with Shri Oommen Chandy, Chief Minister of Kerala

A delegation of the Institute met Shri Oommen Chandy, Hon'ble Chief Minister of Kerala and apprised him of initiatives taken by the Institute towards growth and development of the profession of Company Secretaries, including Corporate Governance, CSR.

Meeting with Vice Chancellor of University of Kashmir

A delegation of the Institute met Prof. (Dr.) Talat Ahmad, Vice Chancellor and senior faculty members of University of Kashmir and discussed the matters of mutual interest from opening of Study Centre in the University campus to holding joint workshops, seminars, continuing education and training programmes on academic/professional interest; Regular exchange of journals; Recognizing membership of the ICSI, as equivalent to Masters Degree for the purpose of pursuing Ph.D. course in Management, Commerce and Law; Exchange of faculty, undertaking joint research studies in mutually beneficial fields relevant to corporate management, Governance, CSR, financial markets, including commercial laws.

Meeting with Management Associations/Chamber of Commerce

The delegation of the Institute met Shri Babu Thomas, President of Trivandrum Management Association (TRIMA). The delegation also had a meeting with Shri W M Nazeeb, President, Trivandrum Chamber of Commerce (TCC). Both Shri Thomas and Shri Nazeeb assured all support in the development of the profession in the region and emphasized on jointly conducting professional development programmes.

Meeting of the Coordination Committee

The meeting of Co-ordination Committee of three Institutes, i.e., the Institute of Company Secretaries of India, Institute of Chartered Accountants of India and the Institute of Cost Accountants of India was held on August 06, 2012 at the Headquarters of the Institute to deliberate upon areas of mutual interest.

INTERNATIONAL PERSPECTIVE CRF 2012 Conference

The Institute played a Key role in structuring and organizing the Ministry of Corporate Affairs (MCA) 8th Conference of Corporate Registers Forum (CRF-2012) on February 14 -16, 2012 at New Delhi, on the theme 'Control to Self Regulation : Sharing Knowledge - Sharing Best Practices' as Knowledge Partners.

Meeting of India-Netherlands Joint Working Group

The Institute represented at the first meeting of India-Netherlands Joint Working Group (JWG) on Corporate Governance and Corporate Social Responsibility held on February 21-22, 2012 at New Delhi.

Meeting of the Members of CSIA

ICSI delegation attended meeting of Executive Committee of Corporate Secretaries International Association (CSIA) on 17th April, 2012 at Sydney (Australia). The Executive Committee of CSIA comprises eight of its founder members, namely Australia,



Hong Kong, Malaysia, Singapore, South Africa, UK, Zimbabwe and the ICSI from India.

Toolkit for Corporate Secretaries

Towards effective continuum of ICSI interface with global community of corporate secretaries, the Institute participated in a four day Core Group meeting for Preparation of Corporate Secretaries Toolkit, a joint initiative of Global Corporate Governance Forum (GCGF) and Corporate Secretaries International Association (CSIA) from February 21- 24, 2012 at Washington DC, USA. The toolkit aims to develop a framework to provide training of trainers, to train the Company Secretaries and governance professionals in the member countries of CSIA and in countries where the concept of the corporate/company secretary is still developing.

CSIA Council Meeting

ICSI delegation attended 5th CSIA Council Meeting held on October 20, 2012 at New York (USA). ICSI delegation also attended CSIA 2nd International Roundtable Meeting held on October 17, 2012.

Meeting of GRI Focal Point India Advisory Group

The Institute represented at the meeting of GRI Focal Point India Advisory Group held on March 22, 2012 at ICSI House New Delhi. The Group deliberated on strategies 2012 to mainstream sustainability reporting in India and how to make GRI Focal Point India a self sustained unit.

CSIA Presentation to WTO

The Institute participated in the CSIA presentation before the WTO on June 25, 2012 at Geneva seeking inclusion of a separate service head namely 'Corporate Governance, Compliances and Secretarial Advisory Services' under the service Sectoral classification list of WTO. In the post presentation, seven countries supported the initiative of CSIA and some other countries appreciated and agreed to support the proposal when it comes for discussion.

Visit of WTO Official to ICSI Headquarters

Dr. Harsha Vardhana Singh, Deputy Director General, WTO visited Headquarters of the Institute at New Delhi on July 18, 2012 and had a meeting with the senior officials of Institute.

Visit of Mr. Kevin Moore, Director, Global Business Development, CISI

Mr. Kevin Moore, Director, Global Business Development, Chartered Institute of Securities and Investment (CISI), London (UK), visited ICSI Headquarters on September 11, 2012 alongwith Shri Ganesh Iyer, the Country Head of CISI, India.

INTERACTION WITH REGULATORS ABROAD

During visit to South Africa, the discussions were held with regulatory authorities in South Africa to apprise them of the role

of Company Secretaries in corporate governance and the recognitions to Company Secretaries under various laws in India.

During the London visit, meetings were held with Legendary Prof. Mervyn E. King SE, Chairman of the King Committee on Corporate Governance, South Africa and Mr. Ola Ullsten, Former Prime Minister of Sweden; Rt. Hon'ble Baroness Verma, Parliamentary Under Secretary of State for Energy and Climate Change, Government of UK; Shri Amitabh Jain, IAS, Minister (Economic), High Commission of India in UK; Dr. Charles Tannock MEP, ECR, Spokesman on Foreign Affairs in the European Parliament; and Dr. Graham Wilson, Leadership and Organisation Development, Oxford, UK.

During visit to Tanzania, meetings were held with Deputy Registrar and Assistant Registrar, Ministry of Industry and Trade, Business Registration and Licensing Agency (BRELA), Mr. Gandence Cassian Kayombo, Member of Parliament, Government of Tanzania, Dr. Adelhelm Meru, Director General, Export Processing Zones Authority (EPZA) Tanzania and Prof. Bonaventure Rutinwa, Dean, School of Law, University of Dar Es Salaam, Tanzania and apprised them about the role and functions of ICSI and the profession of Company Secretaries in India.

ICSI REPRESENTATION AT INTERNATIONAL CONFERENCES

During the year, the representatives of the Institute attended following Conferences organized by the professional bodies and associated organizations abroad.

- 6th Annual International Conference of Institute of Certified Public Secretaries of Kenya (ICPSK) held on 8th to 10th August, 2012 on the theme "Governance Perspectives in Harnessing Natural Resources for Development".
- The First GRI South Asia Conference on 'Sustainability Reporting for a Sustainable Economy' held on September 26, 2012 at New Delhi.
- 36th Annual Conference of The Institute of Chartered Secretaries and Administrators of Nigeria held on September 27-28, 2012 at Abuja, Nigeria on the theme, "Investing and Sustaining Businesses in Nigeria: Issues of Governance".
- London Global Convention 2012 organized by the Institute of Directors (IOD) India on the theme 'Corporate Governance Perspective & Sustainability Challenges'.
- Conference organised by Society of Corporate Secretaries and Governance Professionals at New York on October 18-19, 2012.
- Asian Roundtable on Corporate Governance organized by OECD in Tokyo, Japan on 24-25 October 2012 to discuss the emerging issues, development & challenges in corporate governance in Asian region.



From the President

- 4th Convention on Modernisation of the Companies Act : Enhancing Good Governance organised by Institute of Chartered Secretaries Bangladesh on December 21-22, 2012 at Dhaka.

COLLABORATIVE PROGRAMMES

During the year, the Institute participated as Co-host, Academic partner/Institutional Partner in a number of programmes organised by Chambers of Commerce as under :

- Joint One Day Seminar with Indian Merchants Chamber on 'Investment Outlook 2012' on April 13, 2012 at BSE Convention Hall, Mumbai
- As Academic Partner with ASSOCHAM program on XBRL and Revised Schedule VI Redefining Financial reporting for Corporates (Including Live Demo on XBRL) on August 08, 2012 at ASSOCHAM, New Delhi and on September 18, 2012 at Mumbai
- Co-organized the event with Indian Merchants Chamber on Regulatory Developments in Securities Market Law on August 17, 2012 at Mumbai
- As Institutional Partner with Confederation of Indian Industry programme on Deepening of Capital Markets: Faster Growth of Economy on December 12, 2012.
- As Institutional Partner with Confederation of Indian Industry Seminar on Master Class on Effective compliance with Competition & Anti Corruption Laws on December 18, 2012 at New Delhi.

PROFESSIONAL DEVELOPMENT PROGRAMMES

Capital Markets Week 2012

The Institute celebrated First Capital Markets Week from April 23-28, 2012 on the theme 'Capital Market - Growth Drivers' by organizing six programmes at Mumbai, Bengaluru, Chennai, Kolkata, Ahmedabad and New Delhi. In addition, forty one programmes, such as investor awareness programmes, lectures, panel discussions, interactive meetings were also organised by Regional Councils and Chapters during the Capital Markets Week.

International Professional Development Fellowship Programme

International Professional Development Fellowship Programme, an initiative of the Institute to provide its members exposure to the expectations of international market for professional services, and opportunities of networking with their counterparts completed its seventh year with the organisation of Fellowship Programme in South Africa covering Sun City, Johannesburg and Cape Town during June 15-23, 2012.

International Conference

7th International Conference was organised on the theme "Governance, Rating and Economic Performance" in association with Chartered Secretaries Southern Africa and

National Foundation for Corporate Governance on June 19, 2012 at Johannesburg, South Africa.

2nd ICSI Corporate Governance Week

The Institute celebrated "2nd ICSI Corporate Governance Week" on the theme Good Governance for Sustainability, from 27th to 31st August, 2012 by organizing five mega programmes at Bengaluru, Hyderabad, Mumbai, Kolkata and New Delhi.

13th National Conference of Practising Company Secretaries

13th National Conference of Practising Company Secretaries on the Theme "Emerging Trends and Opportunities - Preparedness for PCS" was held on May 25-26 at Srinagar, Kashmir.

40th National Convention

The 40th National Convention of Company Secretaries was held on October 04-06, 2012 at Aamby Valley on the theme 'Vision 2020: Transform, Conform and Perform'.

ICSI Convocation

With a view to formalize the award of Associate and Honorary Membership of the Institute and to recognize the achievement of the students in their studies, the Institute convened the Convocation at all four Regions in November 2012.

Visit to Regional Councils/Chapters

During the year, I visited Regional Councils and Chapters spread throughout the length and breadth of the country. During the visits, I attended Conferences, Seminars and availed the opportunity to meet the students, members and media.

Memorandum of Understanding

The Institute has been constantly endeavouring to create synergy through entering into MOUs with stock exchanges, academic institutions and Chambers of Commerce. During the year, the Institute signed MOUs with the following organisations/institutions :

- Bangalore Stock Exchange Ltd.
- Madras Stock Exchange Ltd.
- Alliance University, Bengaluru
- Direct Taxes Regional Training Institute (DTRTI)
- Indian Institute of Corporate Affairs (IICA)
- The Stock Exchange Investors' Protection fund, a recognised Public Trust established by BSE Limited.
- National Stock Exchange of India Ltd.
- CMJ University, Meghalaya
- Symbiosis Centre for Management Studies, NOIDA.

New Training Structure For Students

The Council of the Institute approved New Training Structure for students comprising twenty-four months training with a Company or Practising Company Secretary for Executive Programme passed students, four days Student Induction



Programme (SIP), seventy hours of Information Technology Training (ITT), ten days Executive Development Programme (EDP), five days (forty hours) Professional Development Programme (PDP) and three weeks non- residential/two weeks residential Management Skills Orientation Programme (MSOP).

The Council has also approved the alternate training for thirty-six months with a Practising Company Secretary for the students registered to the Executive Programme. In addition, the Council has also approved the Internal Exemption Policy from undergoing training on the basis of qualification or experience. New training structure will be implemented once the regulations are amended.

Peer Review

During the year eleven (11) Training Programmes for Peer Reviewers were organised empanelling 157 peer reviewers throughout the country and more such training programmes are planned to be organized in other regions. Fifty Two Practice Units were identified through the Random Selection Process in the first phase, out of which Peer Reviewers had been allocated for 20 such Practice unit (PCS firms). Peer Review has been completed for 11 Practice Units. In the second phase the Peer Review Board identified 300 Practice Units to be Peer Reviewed upto March 31, 2013. The duly filled in questionnaires have been received from 77 Practice Units and allotment of Peer Reviewers is in progress. The Peer Review Board has decided to issue Peer Review Certificates to the 11 Peer Reviewed Practice Units and to publish their names in the Chartered Secretary. The names would also be hosted on the web page of the Peer Review Board on the ICSI website. I appeal to all my practising colleagues to participate in the Peer Review Process.

Guidelines for Conversion of Firms of PCS into LLPs

The Council of the Institute has issued Guidelines for Setting up and Conversion of Firms of PCS into LLPs. The guidelines have come into effect from June 9, 2012. Company Secretaries in Practice who are desirous of forming LLPs or wish to convert their firms of PCS into LLPs may now do so by making an application for approval of their firm name to the Directorate of Membership in the Institute.

ICSI Norm on 'Know Your Client'

The Council of the Institute has issued the "Know Your Client" norms for its practising members, which are recommendatory in nature. These norms are available on the website of the Institute.

Strategy Implementation Workshop

The Institute adopted Top Ten Goals to be achieved during 2011-14. A detailed strategic action plan was prepared and the implementation process was initiated. It was in this direction that the Institute organised a Strategy Implementation Workshop for

Council Members and Head of Departments of the Institute to convert the implementation strategy into Specific, Measurable, Actionable, Realistic and Timely (SMART) Action Plan. The action plan so developed is being implemented and the progress is being reviewed on regular basis.

Infrastructure Development

During the year special attention/thrust was given for development of Infrastructure of the Institute in line with Goal No- 2 of the top ten goals, i.e. Improve infrastructure with special attention to Regional Offices and Chapters. The details in brief of the initiatives taken in the form of renovation of premises for proper utilisation of space and to create good ambience for working, additional construction, acquisition of land/ office space, construction of building etc during the year were as under.

A. Head office

- Proposal for acquisition of building at Sec-62, Noida and construction of 4th floor on the existing building of ICSI-Noida building are in process.
- Application has been submitted to Haryana Govt. for allotment of land for setting up of Centre of Excellence (CoE) at Gurgaon for Northern Region. Further, submission of application for allotment of land by West Bengal Govt. for setting up of CoE at Kolkata for Eastern Region is in process.
- Necessary follow up has been made for taking possession of land from APIICL for commencement of work for Research & Training Centre at Hyderabad. The possession will be taken very soon.

B. Regional Councils

- Renovation of ICSI-NIRC building is in progress and nearing completion.
- Renovation of office of WIRC at No.13, Jolly Maker Chambers No. 2 (1st floor) Nariman Point, Mumbai was completed and put to use. Approval for renovation of offices Nos.56 & 57 (5th floor) in the above building has been given and work will commence soon.

C. Chapters

- Bhoomi poojan/Foundation Laying Ceremony for construction of Coimbatore chapter's building was held on July 2, 2012 wherein Minister of Corporate Affairs, Govt. of India, was the Chief Guest.
- Approvals have been given to the proposals for acquisition of land for Ajmer and Vishakhapatnam chapters and built up floor for Shimla and Thane chapters.
- Approval for renovation work of Patna chapter's premises has been given and work will commence soon.
- Approval for construction of additional floor on the existing building of Bhubaneswar chapter has been given.
- Applications have been submitted to Concerned State



From the President

Governments for allotment of land for Gurgaon, Jammu & Srinagar, Agra, Thiruvananthapuram and Kochi Chapters.

- Construction work of Bangalore Chapter's building is in progress.
- Obtaining approval of drawings from concerned authority/ tendering process are in progress for construction of buildings for North Eastern (Guwahati), Faridabad, Udaipur and Bhilwara chapters.

D. ICSI- Support office

- To achieve one of the sub goals of goal No-2 of the top ten goals, i.e. Institute's presence beyond Chapters, the Council has approved the setting up of ICSI- Support offices at eight locations in the 1st phase at Ambala, Bikaner, Gorakhpur, Ernakulum, Hubli, Kottayam, Vijayawada and Siliguri.

ICSI-Direct

The Institute has initiated the process of integrating various processes to provide more efficient services to stakeholders. This initiative uses the latest technologies and platforms to provide an effective two way communication between the Institute and its stakeholders. The first of such processes, which has been launched is Online Registration Services to the student. The Online Registration process on www.icsi.in uses technology to provide a true paperless environment.

Stakeholder Consultation Through Teleconferencing

The Institute initiated the process of periodical teleconferencing between the Headquarters and Regional Councils and Chapters, to understand and resolve day to day matters pertaining to members, students including administrative matters. I appreciate the Regional Councils and Chapters for very encouraging response to this new initiative.

Brand Building / Media Visibility through media coverage in Newspapers & TV Channels

The Institute in its constant endeavour for brand building to enhance the visibility of the CS profession gained extensive coverage on the CS Course & Profession in the Electronic media throughout the year by way of various Seminar telecasts/ Live Panel discussions/ Scrollers ensuring all India visibility of the Institute.

Telecast / Broadcast of TV / Radio Spots on CS

CS Spots were telecast / broadcast on All India Radio- National and Doordarshan National Network.

HR Conclave

With a view to showcase the CS profession and to project true potential of the Company Secretary as a multifaceted professional, Institute in association with NIRC organized HR Conclave on the theme "Company Secretary: A Key Managerial Personnel" In which around 65 HR personnel participated as

delegates. Speakers shared their experience and views on the changing role of Company Secretary during last three decades.

Campus Placement

The Institute has conducted Campus Placement for Members for employment and Students for Training during the year 2012 at EIRC, NIRC, SIRC, WIRC, NOIDA Chapter, Gurgaon Chapter, Pune Chapter, Jaipur Chapter, Hyderabad Chapter and Bangalore Chapter. The response received is very encouraging.

Ph.D Recognitions

As part of capacity building initiative, the Institute has been making constant efforts to secure recognitions for its members to pursue Ph.D. programme in Universities and management institutions. So far more than fifty five Universities have recognised CS Qualification for pursuing Ph.D. programme. During the year following recognitions were achieved :

- Rajiv Gandhi Indian Institute of Management, Shillong has recognised CS qualification (among other professional qualifications) for pursuing FPM (Fellow Programme in Management, equivalent to Ph.D.).
- Mahatma Gandhi University, Meghalaya has also provisionally recognized CS qualification as equivalent to post-graduate degree for pursuing Ph.D. in law, Commerce and Management.

CS Benevolent Fund

I wish to emphasize once again that CS Benevolent Fund is a collective effort towards extending much needed financial support for our members in times of distress and appeal the members to become the life member of CS Benevolent Fund and be the part of the collective efforts. I am pleased to note that EIRC, NIRC, SIRC and Hyderabad, Jaipur and Pune Chapters of the Institute have contributed to the CS Benevolent Fund from their surplus or the surplus generated through organizing Cultural Programmes/similar events. I appeal to other Regional Councils/Chapters to take similar initiative for this cause of benevolence.

Publications

During the year following publications were brought out by the Institute

- Basic of Mutual Fund Investment
- Referencer on Reconciliation of Share Capital Audit
- Referencer on Certification of Securities Transfer
- SEBI (ICDR) Regulations - A Quick Referencer
- Capital, Money and Commodity Market - Terms One Should Know
- Internal and Concurrent Audit of Depository Participants
- Role of Company Secretary in Capital Markets
- Referencer on Transfer Pricing
- Referencer on E-Forms
- Role of CS in CG



- Gender Diversity in Boardrooms
- Responsibly Managing e-waste
- Sustainable Reporting
- Referencer on XBRL
- Guidance note on Passing of Resolutions through Postal Ballot
- Mergers, Acquisitions and Takeovers- Law & Practice
- 41 Years of Chartered Secretary on CD ROM

Way Forward

Collectively, we have adopted a vision "To Be a Global Leader in Promoting Good Corporate Governance". It was in this direction, I have been emphasizing in my previous communications, on quality, values, ethics, training, time management, ownership, responsibility, professional independence, professional synergies, attitude, vision and foresight. These indeed are the mantra for success in an environment where public scrutiny is sharper than any other thing. Therefore, I once again re-emphasize that the strength of our profession is in the hands of each one of us and let us work together to make it more stronger, following the core values enshrined in the ICSI Vision 2020.

Acknowledgements

No one walks alone and when one is walking on the journey of life just where do you start thank those who joined you, walked beside you and helped you along the way. I wish to express my sincere gratitude to -

Shri Sachin Pilot, Hon'ble Minister of State for Corporate Affairs (I/C) for the support extended to the Institute.

Dr. M. Veerappa Moily, the then Hon'ble Union Minister of Corporate Affairs for his blessings and support.

I take immense pleasure in thanking Shri Naved Masood, Secretary, Ministry of Corporate Affairs, Shri U K Sinha, Chairman, SEBI, Shri Sudhir Mital, the then Additional Secretary/Special Secretary, Shri Avinash Kumar Srivastava, Additional Secretary, Mrs. Renuka Kumar, and Shri Manoj Kumar, Joint Secretaries, MCA, for their guidance and support in the growth and development of the profession.

I also wish to thank the officers/officials of various Ministries and Offices of the Central Government, particularly the Ministry of Corporate Affairs, Ministry of Finance, Ministry of Commerce and Industry and SEBI, Stock Exchanges, RBI, IRDA, CBDT, CBEC and other regulatory authorities for their help, guidance and support in development of the profession and encouraging

the activities of the Institute during the year.

I place on record my thanks to various State Governments, Financial/Industrial/Investment Institutions/Corporate Sector, various Chambers of Commerce, Trade Associations and other agencies in general in availing the services of members of the Institute and in recognizing their expertise.

My thanks to Jury Members of the ICSI National Award for Excellence in Corporate Governance led by Hon'ble Mr. Justice M N Venkatachalliah, former Chief Justice of India for sparing their valuable time in adjudging the Awardee companies.

I would like to thank my Central Council Colleagues for their help, co-operation in the growth and development of Profession. I am also thankful to my Colleagues in Regional Councils and Chapters for extending their whole hearted support and cooperation.

I am equally thankful to my predecessors for their valuable support and guidance as and when required.

Words are inadequate in offering my sincere thanks to each and every member of Team ICSI for their commitment, dedication and zeal in achieving highest quality of results under the dynamic leadership of Shri N. K. Jain, who led this premier institution with tremendous dedication, commitment and administrative acumen for about a decade as Secretary & CEO.

I express my heartfelt thanks to my office colleagues, friends and relatives for their help and good wishes. I am grateful to my wife Ghazala, daughter Firdaus and son Nehal, who inspired, encouraged and fully supported me to discharge my responsibilities as a President of this great Institute.

ONCE AGAIN WISHING YOU A VERY HAPPY AND PROSPEROUS NEW YEAR 2013

With kind regards,

Yours sincerely,

New Delhi
January 1, 2013

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Resolution versus creditor rights: India strongly needs to tame SARFAESI Act

➤ Corporate failure is inevitable in the working of a liberalised economy open to global competition and the volatilities of present day business world. An environment that protects the interests of creditors and debtors, classes of creditors, interests of other stakeholders is essential for a congenial business environment.

Law-making in India has recently been increasingly creditor-driven. Whether by way of the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 ("SARFAESI Act"), or amendments to the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"), law-making has moved towards a non-judicial and faster enforcement of security interests by creditors. No doubt, effective collateral rights are the key to any well-laid system. However, the social objective of resolution and restructuring cannot be left completely at the mercy of a creditor-led system. As laws have given preponderance to the SARFAESI Act, SICA seems to have become extremely vulnerable to creditor's discretion.

This article discusses the settled international principles of corporate insolvency versus resolution, some recent rulings of courts which seem to make SICA overshadowed by SARFAESI proceedings, and gives some thought on the necessity of maintaining a balance between the needs of a workout and restructuring on one hand, and enforcement of security interests and liquidation on the other.

This article also focuses on corporate debt obligations -

hence, individual insolvency, where considerations are different, is not discussed here. In addition, the fallout of the 2007-08 crisis has indicated that there are different considerations applicable to liquidation of financial enterprises such as banks and insurance companies. These also are not under our purview in this article. Hence, this article is focused on corporate insolvency of non-financial firms.

INSOLVENCY, CREDITOR RIGHTS AND RESOLUTIONS - NEED FOR BALANCE

Without dwelling on the legal difference between the two, insolvency is inability to pay one's obligations. When such an insolvency arises, there may either be an enforcement of creditors' rights, or there may be a holistic liquidation of the business and distribution of its assets among claimants. Enforcement of creditors' rights may be claims against the debtor, or personal claims, and claims against assets. The latter is mostly restricted to secured obligations. Creditors' claims against collateral or assets over which they have a charge is referred to as enforcement of security interests.

Whether arising out of insolvency proceedings or independently, there may often be a workout or resolution of creditors' claims, by way of settlements. Settlements may be



World Bank's Principles for Effective Insolvency and Creditor Rights Systems, 2005¹ say that effective insolvency principles should "strike a careful balance between liquidation and reorganization, allowing for easy conversion of proceedings from one procedure to another."

informal - such as creditors' schemes or arrangements, or may be formal - such as the proceedings before the Board for Industrial and Financial Reconstruction ("BIFR").

Legal systems of countries have struck a very fine and yet efficient balance between enforcement of creditors' rights, liquidation and workouts. Creditors' rights essentially work on "might is right" principle - the one who has clear and first security interest will have the first claim on the assets backing up the debt. Court-administered winding up proceedings, on the other hand, are based on principles of equitable distribution, with *pari passu* being a guiding rule. Liquidations are a holistic remedy, while enforcement of creditors' claims is a topical remedy. Restructuring or resolutions try and avoid both enforcement of security interest and liquidation, with the idea that if a business is viable and can be nursed back to health, it is too much of a societal cost to wind it up. After all, recreating a business is a huge cost. Besides, a business establishment has lots of lives dependent on it - workers, vendors, buyers, and so on. Therefore, a wise society cannot afford to kill a business that is defaulting, but is still internally healthy, any more than humanity can afford to send sick people to morgue rather than to nursing homes. It is only where a business is found unviable that it is sent for liquidation.

World Bank's Principles for Effective Insolvency and Creditor Rights Systems, 2005¹ say that effective insolvency principles should "strike a careful balance between liquidation and reorganization, allowing for easy conversion of proceedings from one procedure to another."

RESTRUCTURING AND INSOLVENCY LAWS IN INDIA: ERA OF AD-HOC LAW MAKING

The last three decades or so have seen successful attempts of ad hoc law-making, and persistently overlooked the need for a comprehensive reform. We currently have the SICA with a resolution stance, SARFAESI with enforcement of secured claims stance, debt recovery tribunals ("DRTs") law with enforcement of unsecured claims stance, and general insolvency laws buried in the Companies Act, 1956 ("Companies Act"). Each of the special laws have non-obstante provisions, and each bar the jurisdiction of civil courts. Surprisingly, while public policy demands that the need for

resolution should have overtaken enforcement, it is seen that SARFAESI has been constantly making inroads into SICA, as we see later in this article.

The SICA in India has been modelled on the basis of Chapter 9 of the US Bankruptcy code. While the actual working of the law has been lamented, there is no doubt that provisions pertaining to restructuring have served as useful purpose all over the world.

Obsession with non-performing asset problem

Somehow, the lawmakers in India never got to the tough task of insolvency law reform, and have tinkered with the law over last 3-4 decades. In fact, it is clear that the lawmakers were obsessed with the spectre of mounting non-performing loans on bank balance sheets, and therefore, most lawmaking was (a) inspired by the thought that the borrower is unduly delaying the repayment of the bank debt by resorting to a slow civil system, and (b) therefore, there was a need to tighten recovery laws. In essence, the clear stress of lawmaking has been recovery. This could not be deemed inappropriate, as borrowers used years of nationalised banking to their advantage to deliberately turn entities into "sick".

Thus, in 1981 the Tiwari Committee and in 1991 the Narasimham Committee were unequivocal about the need to bypass the civil system and use special tribunals to recover loans. Hence, DRTs were born. The second Narasimham Committee report made elaborate references to an "asset reconstruction fund", but eventually, asset reconstruction companies came out of the combo piece of law that was enacted in 2002 - the SARFAESI Act. While the DRT law was concerned with recovery of any dues of banks, the SARFAESI Act is limited only to secured debt, but then it launched a completely non-judicial method of recovery, where it is the borrower who has the right of first redressal but there is no need for the lender to take any adjudication at all.

Evidently, banks have been happy using the SARFAESI Act, and thus, attention has been quite scanty on the need for a comprehensive insolvency and resolution law.

Proposals for a code on insolvency laws in India

Significant recommendations and suggestions have been made

¹ http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2009/04/20/000334955_20090420051400/Rendered/PDF/481660WP0FINAL10Box338887B01PUBLIC1.pdf



Article

Resolution versus creditor rights: India strongly needs to tame SARFAESI Act



regarding a law on insolvency of companies which have acknowledged that India does not have a clear policy and comprehensive law on corporate bankruptcy. The two eminent recommendations have been made by the 'Report of The Advisory Group on Bankruptcy Laws' (chaired by Dr. N. L. Mitra)² ("Advisory Group") and 'Justice Eradi Committee on Law Relating to Insolvency of Companies'³ ("Eradi Committee").

The Advisory Group highlighted the importance of having a whole-some bankruptcy policy of the country that would facilitate efficient servicing of the sick companies that require timely intervention of restructuring as well as maximises the protection of the interest of the creditors and the investors with quick liquidation procedure and well laid down game rule for dispensation of the claims. This would have ideally balanced and aligned the interests of the company, creditors and the investors, thereby making the process smooth and acceptable at all ends. The need for a separate bankruptcy code was emphasized not only in relation to domestic entities but also cross-border entities, i.e. Indian entities having entities or ventures outside India and likewise, non-Indian entities having entities and ventures in India.

The Eradi Committee concentrated on the winding up procedure, highlighting the requirement to file statement of affairs, list of creditors, asset value, etc. that typically assist in speedy winding up process. The Eradi Committee also addressed the need to rank the dues of the employees *pari passu* with the secured creditors.

Unfortunately, no cue has been taken from the recommendations made by the Advisory Group and the Eradi Committee and India has not made any progress to form a bankruptcy code. In 2002, the Companies Act was amended, purportedly in a bid to make winding up process smoother. However, the National Company Law Tribunal (NCLT), which was to takeover jurisdiction over corporate insolvency from the courts, has never been constituted, and the provisions of the law, till date, remain in animated suspension.

Speed of resolution is only one of the many issues concerning a corporate insolvency policy. Other significant issues are balance between resolution and liquidation, and the question of conflicting priorities.

Conflicting priorities

One of the most significant issues in corporate insolvency is priority of claims - as it is most natural that in every case of insolvency, there will be several unsatiated claims, each wanting a primacy over the other. This issue, barring extremely general provisions of the Companies Act⁴, has been left completely to the discretion of various law-makers.

The result is a complete chaos. First of all, legislations emanating both from Centre and State governments have been conferring an overriding priority to the claims under the respective laws - such as sales-tax, excise, customs, employee provident funds, employees state insurance, and so on. Second, while workers have been granted parity with secured creditors in a liquidation proceeding, the SARFAESI Act grants no such protection if enforcement of security interest happens

² <http://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/20811.pdf>

³ <http://pib.nic.in/focus/foyr2000/foaug2000/eradi2000.html>

⁴ Sections 529, 529A and 530 of the Companies Act



before commencement of winding up, even though such action may leave the entity with no option but winding up.

Thus, where the law has left a complete void, the courts are left to lay down the law. In *Central Bank of India v. State of Kerala*⁵, the Apex Court was concerned with resolving mutually conflicting provisions of Central and State laws, demanding a first security interest on the assets of the failed corporate. This is only one example - there are scores of rulings where conflict of laws on security interests have come before courts.

SICA ABATEMENT PROVISIONS: NEGATING THE VERY SPIRIT OF REVIVAL PROCEEDINGS

We have noted above that creditor-inspired law-making has been pushing ahead with strengthening the SARFAESI Act, while completely overlooking the very need for revival under SICA. It is not difficult to understand that revival is more of a social concern than creditors' interest. If creditors' interests were to run supreme, creditors would be interested in enforcement rather than revival. In fact, the spirit of Chapter 9 of US Bankruptcy Code and SICA is the same - moratorium on creditors' actions so as to enable revival. Against this principle, the provisions of SICA for abatement of SICA proceedings sound counter-intuitive.

Provisions regarding abatement of reference before BIFR

The second and the third proviso to Section 15(1) of SICA provide two situations wherein the reference before SICA shall abate. The said provisions read as hereunder:

"Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of that Act:

Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of

➤ One of the most significant issues in corporate insolvency is priority of claims - as it is most natural that in every case of insolvency, there will be several unsatiated claims, each wanting a primacy over the other. This issue, barring extremely general provisions of the Companies Act, has been left completely to the discretion of various law-makers.

section 13 of that Act." [emphasis supplied]

To clarify, Section 5(1) of the SARFAESI Act provides for acquisition of financial asset of any bank or financial institution by a securitisation company or a reconstruction company; and Section 13(4) of the SARFAESI Act provides for actions that a secured creditor may take to enforce its security interest subject to fulfilment of conditions set out in the SARFAESI Act.

SICA: a vulnerable statute

(a) Abatement on action by secured creditors under section 13(4) of the SARFAESI Act

The reading of the aforesaid provision suggests that where a reference is pending, i.e. the applicant company has not been declared as a sick company, any action taken by the secured creditors under Section 13(4) of the SARFAESI Act shall abate the reference before the BIFR. Such being the case where an action by secured creditors under Section 13(4) of the SARFAESI Act has the effect of abating the reference before the BIFR, it is surprising that such action has been made unconditional and not appealable under SICA.

This is because it is held by courts that BIFR/AIFR will not determine the legality or otherwise of the action taken by three fourths majority of the secured creditors, as the same comes under the domain of the DRT. The net result of this is that the BIFR has to per-force vacate the reference under SICA, without questioning the action of the creditors.

In the case of *Alpine Industries Ltd. v. AAIFR*⁶, where the reference abated under the third proviso of Section 15(1) of SICA, an appeal was filed before the Delhi High Court on the ground that the BIFR/AIFR shall have made independent inquiry into the action being taken by the secured creditors under Section 13(4) of the SARFAESI Act and that where such action was taken against one unit, the reference before BIFR

⁵ <http://indiankanoon.org/doc/857240/>. This was followed in case of *State of Kerala v. The Official Liquidator of Poysha Industrial Company Ltd.*, decided on 11 August, 2010, available at <http://indiankanoon.org/doc/1321835/>.

⁶ <http://www.indiankanoon.org/doc/1206913/>, decided on March 1, 2011.



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Resolution versus creditor rights: India strongly needs to tame SARFAESI Act

shall continue in relation to other units of such company. It was held:

"Once the measures have been taken, which is not disputed in the present case as one of the unit had been taken over, whether the action was by 3/4th of the secured creditors or less in violation of section 13 (9) of SARFAESI Act, 2002 is not to be re-determined independently by BIFR." [emphasis supplied]

In the recent case of *Chemstar Organics India Ltd. v. Bank of Baroda & Ors*⁷ against abatement of the reference before the BIFR on the ground that action was taken by secured creditors under section 13(4) of the SARFAESI Act, an appeal was made before the Court against the decision of the AAIFR, that did not determine whether the secured creditor who took action represented the requisite three fourths majority. The High Court refused to interfere with the decision of the AAIFR on the ground that this question would be determined by the DRT.

Court rulings simply interpret the law - hence, the real question is, is it a good law to make the revival of a company subject to the discretion of 75% of secured creditors?

(b) Abatement of acquisition of loan by an asset reconstruction company

Even more outrageous is the provision of SICA that provides for abatement based on sale of a financial asset to an asset reconstruction company (ARC). This provision exists in the second proviso to Section 15(1) of SICA, providing that on any such sale/assignment of any non-performing loan by one of the lenders to any ARC, the debtor company's chances of revival will be completely frustrated, as the reference to BIFR shall stand abated.

In an interesting, but critical decision of the Bombay High Court in case of *Paper Prints (India) Pvt. Ltd v. Phoenix ARC Pvt. Ltd*⁸, the Division Bench of the High Court interpreted the second proviso to section 15 (1) of the SICA to suggest that where any financial assets have been acquired by an ARC, the reference before BIFR shall abate. The Division Bench held that the Second Proviso and Third Proviso to section 15(1) of SICA are independent, and there is no presumption as to taking of action by any particular percentage of secured creditors under the second proviso. Under the second proviso, once the "financial assets" have been acquired by an ARC, reference shall not be made at all.

Interestingly, while the abatement provisions pertaining to action under section 13 of the SARFAESI Act might have



needed overwhelming majority of the creditors to join in action, the proviso pertaining to transfer of assets to an ARC does not even require creditors to join in company. Technically, even if one creditor sells one loan given to a sick company to an ARC, however small such a loan is in relation to total assets of the borrower, the revival proceedings stand nipped in the bud.

These two provisions have the effect of making revival discretionary upon creditors, which is completely contrary to the whole spirit of SICA and the social need for revival.

NEED FOR COMPREHENSIVE INSOLVENCY LAW REFORM

Globally, most countries have realised the need for a comprehensive code on insolvency and enforcement of security interests. Corporate failure is inevitable in the working of a liberalised economy open to global competition and the volatilities of present-day business world. As uncertainty in prices, interest rates, commodities and stocks increases in general, corporate failures will increase. An environment that protects interests of creditors and debtors, classes of creditors, interests of other stakeholders, etc., is essential for a congenial business environment.

The present scenario in India is completely chaotic, wherein SARFAESI Act is constantly being made powerful at the cost of social considerations. Use of SARFAESI Act is fairly acceptable in case of security interests on non-core assets, but where the assets in question are the core assets of the borrower, enforcement of security interests cannot be given a free play under "might is right" principle. Hence, India urgently needs to write insolvency and creditors' rights laws that talk to each other, and not talk at each other.

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⁷ <http://www.indiankanoon.org/doc/153758448/>, decided on September 17, 2012 differed from the decision of the Madras High Court in case of *M/s India Radiators Ltd v. India Bank & Ors*, (Division Bench of the Madras High Court), WP(C) No.29330/2010 decided on 13.06.2011.

⁸ <http://indiankanoon.org/doc/57289971/>, decided on July 20, 2012.



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Restructuring and Insolvency

- Besides explaining the meaning of 'restructuring' and 'insolvency', the article outlines the advantages and disadvantages of these processes, as also the legal challenges facing restructuring and insolvency. It makes a mention of the corporate debt restructuring put in place by the RBI sometime in 2001.

What is Restructuring

The term "restructuring" refers to the act of reorganizing the debt, capital, operations or structure of an entity with the objective of improving its profitability or to deal with a crisis situation like bankruptcy or in case of a change of ownership of the business. The restructuring may consist of corporate restructuring, operational restructuring or financial restructuring. The term "financial restructuring" consists of capital restructuring and debt restructuring.

The term "debt restructuring" refers to resizing the debt of a business entity to a sustainable level and synchronization of the repayment obligations towards the resized debt with the cash accruals of the said entity. Normally, the debts of a company are restructured on a consensual basis.

Corporate debt restructuring refers to the restructuring of the outstanding debts of a company when it is finding it difficult to repay its debts. The debt restructuring normally comprises of spreading the repayment obligations of a company over a longer period of time than what is contracted, based on its projected cash flows with the object that the company is able to repay its debt over the extended period of time without any default. The debt restructuring also includes conversion of part of the debt

of a borrower into equity or preference share capital or non interest bearing debentures, reduction of debt as a result of waiver of part of the dues by the lenders or as a result of some upfront payment financed out of sale of some surplus assets or out of promoters contribution, reduction of interest rate, provision of additional funding by the lenders etc.

Restructuring improves the profitability of a company, makes it more efficient and allows it to concentrate on its core activity resulting into improvement in its economic viability.

What is Insolvency

Insolvency means a financial condition or state when an entity is unable to pay its debts as and when they become due. The word insolvency is considered as synonym for bankruptcy but these terms have different meanings. Insolvency is a financial condition or state when an entity is not able to meet its debt obligation on time as they become due and as against the same bankruptcy is a legal procedure for determination of insolvency by a court of law and for adopting the resulting steps required to resolve the insolvency. An entity may be in a state of insolvency, it may continue to run its business without going into the formal bankruptcy process. In this article, however, the words "insolvency" and "bankruptcy" have been used to mean the legal procedure as referred to above.

Insolvency Law in India

In India the law relating to Corporate Insolvency is contained in the following legislations:

(a) Companies Act, 1956, which contains the law relating to



winding up of the companies through the High Courts.

- (b) Sick Industrial Companies (Special Provisions) Act, 1985, which deals with the revival of viable sick industrial companies and for recommendation of the winding up of non-viable industrial companies to the concerned High Court.
- (c) SARFAESI Act, 2002, which deals with enforcement of security by the banks and financial institutions.
- (d) Recovery of Debts due to Banks and Financial Institutions Act, 1993 which deals with recovery of dues of FIs and Banks through Debt Recovery Tribunals.

Presently the focus of insolvency legislations worldwide has been reorganization of the financial and business structure of potentially viable entities facing financial distress so as to allow them to revive and continue their business and liquidation of unviable insolvent entities.

Advantages and disadvantages of a restructuring programme as opposed to insolvency

Restructuring is always a better option for the stakeholders including for secured and unsecured creditors, promoters, shareholders, workers and the society at large as it is more likely to result in rescuing the running business of the borrower in distress. In case, however, the underlying business is not viable, then in that case, insolvency is the best option. The principle which can be applied in deciding whether to go for insolvency or for restructuring is that if the business valuation of the distressed entity is more than the physical valuation of its assets, then restructuring is better option for the stakeholders. In the reverse case, insolvency will be better to take care of the interests of the stakeholders. Advantages of restructuring also include higher valuation/realization for the stakeholders due to rescuing of the business as a going concern, timely action avoids defaults to creditors and consequent loss of goodwill, fresh fund raising is possible, workers employment can be saved, contribution to the Central and State exchequers in the form of various taxes continues due to continuation of the business, suppliers of goods and services and consumers of the finished goods get continued business, process is flexible and less expensive.

Disadvantages of restructuring process/programmes have been that there is no legal protection against the recovery actions from the hostile creditors during the period this process goes on; it is not always possible to develop consensus about the restructuring; the process of developing consensus sometimes results in few creditors being able to negotiate a better deal at the cost of others, who are in favour of restructuring.

As against the above, insolvency process becomes necessary and restructuring fails when the borrower in distress has

reached such a situation where due to the recovery action initiated or due to threat for the recovery action, legal protection against the said recovery actions by the creditors is the only option to protect the business and assets of the borrower. The said process is also of the help when there is no consensus as regards the restructuring or rescue plan due to the rigidity shown by some of the creditors. The said process is, however, cumbersome, rigid, time consuming, expensive, sometimes less effective in saving the running business and saving value for the stakeholders due to the delay involved, mostly results in non-utilization and wastage of valuable productive assets and loss of employment, all stakeholders in majority of the cases suffer due to loss of business, lesser realization of value, loss of revenue to the Central and State exchequers, etc.

Legal challenges and complexities while dealing with insolvency and restructuring.

While dealing with insolvency, the challenges and complexities include the following :

- (a) The law governing the insolvencies is such that it allows the dishonest borrowers to misuse the same by prolonging the proceedings to many years and allows them to siphon away the funds, which otherwise belong to the creditors.
- (b) Insolvency Forum/Courts, which handles the insolvency cases, have mostly worked with such number of benches, which have been highly inadequate to dispose off the same in time.
- (c) Lack of clarity in law about the priority of various debts due to contradiction of Federal and State enactments and due to conflicting interpretation of the said law by different Courts.
- (d) Lack of and delay in decision making on the part of the secured creditors, which mostly are state-owned banks, about the restructuring/compromise of their debt.
- (e) With the growth of economy and increased business uncertainties, the number of insolvency cases is likely to increase and therefore the insolvency mechanism needs to be made efficient, effective and expeditious to take care of the increasing insolvency cases.

Complexities and challenges in the restructuring, which are needed to be cured / taken care of, are:

- (a) Lack of clarity in law about the priority of various debts due to contradiction of Central and State enactments and due to conflicting interpretation of the said law by different Courts. The same affects the restructuring process as various stakeholders are unclear about the amount they will get in the case of liquidation of the borrowers business and therefore claim higher amount than what they deserve.
- (b) Lack of and delay in decision making on the part of the secured creditors, which mostly are state-owned banks, about the restructuring/compromise of their debt.
- (c) The officials of the secured creditors (banks) are more



» In India, Corporate Debt Restructuring mechanism was introduced in the year 2001. It is a voluntary, non-statutory system that allows a financially distressed company with two or more lenders and debts of more than Rs. 10 Crore to restructure its debts with the super majority consent of its lenders i.e. with the consent of lenders representing 75% or more of its debt in value terms and by 60% of the lenders by numbers.

interested in saving their skin rather than to take a decision about restructuring in the interest of their bank. As a result, in many cases restructuring is done to prevent the borrower to become a non-performing assets and to avoid making of provision in the books of the lender banks, without making a true analysis of the viability of the borrower's business. In many cases, the decision to enforce the security of the borrower is made to avoid any personal answerability though the officers of the lender banks know that the business of the borrower can be revived and better recovery can be made through restructuring of the debt of the borrower.

Corporate Debt Restructuring Mechanism in India

In India, Corporate Debt Restructuring mechanism was introduced in the year 2001. It is a voluntary, non-statutory system that allows a financially distressed company with two or more lenders and debts of more than Rs. 10 Crore to restructure its debts with the super majority consent of its lenders i.e. with the consent of lenders representing 75% or more of its debt in value terms and by 60% of the lenders by numbers. The restructuring agreed to by the lenders having the specified strength is binding on the remaining lenders provided they are members of the CDR System. The CDR mechanism put in place by Reserve Bank of India is based on the mechanism prevalent in countries like UK, Thailand, Korea, Malaysia etc. The objective of the CDR mechanism is to ensure timely and transparent mechanism for restructuring the corporate debts of viable entities facing problems, outside the purview of BIFR, DRT and other legal proceeding for the benefit of all concerned. The said mechanism further aims at preserving viable companies that are affected by certain internal and external factors and to minimize the losses to the creditors and other stakeholders through an orderly and coordinated restructuring programme.

Current Restructuring situation in India

Due to globalization of Indian economy and consequent increase in competition, the number of cases referred for restructuring has increased very considerably during the last few years. In India, a number of business entities have found it difficult to service their debts due to increased competition because of globalization, worldwide business slowdown, heavy increase in fuel prices during the last few years, increase in interest rates, increase in foreign debt due to foreign exchange fluctuation etc. In 2009-10, 31 cases involving debt amount of Rs. 48.82 Billion and in 2010-11, 49 cases involving debt amount of Rs. 250.54 Billion were referred for debt restructuring under the Corporate Debt Structuring Mechanism. The said cases increased to 83 involving debt amount of Rs. 762.51 Billion in 2011-12.

Over the above period, however, the number of new cases, which were referred to Board for Industrial & Financial Reconstruction have not witnessed any significant change and have remained between 65 to 75 each year.

The reason for the above has been that though the cases and the debt needing restructuring have increased significantly due to the reasons mentioned above, the references to the statutory insolvency process have not increased as the lenders were of the view that restructuring of the borrowers' businesses were not viable, they opted to enforce their security interests in the assets of the said borrowers by invoking the provisions of the new enactment legislated in the year 2002 for the said purpose i.e. SARFAESI Act, 2002. In 2010-11, in more than 1, 00,000 cases involving debt of Rs. 306 Billion, provisions of SARFAESI Act, 2002 were invoked by the lenders for enforcement of their security interests.

Another change affecting the number of cases referred for restructuring, which has taken place in the last few years, is that which are dealing in asset reconstruction activities have come into existence after the promulgation of SARFAESI Act in the year 2002. The said companies give an easy option to the lenders to exit distressed cases by selling their stakes at discounts to the said companies, which can thereafter proceed to recover from the borrower and make some gain for themselves.

Another important change taking place affecting the restructurings, which are presently taking place through BIFR and through the High Courts, is that a new Companies Bill, 2011, which will replace the existing Companies Act, 1956 and Sick Industrial Companies (Special Provisions) Act, 1985, is before the Parliament and is likely to be enacted very soon. It proposes to establish the National Company Law Tribunal (NCLT) which will handle all the matters relating to revival, restructuring and winding up of the companies.

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Article



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Will NCLT Prove to be the Panacea for Sick Industries?

➤ The proposed National Company Law Tribunal is intended to be a single window to deal with all matters relating to revival, restructuring and winding up of companies. Will the tribunal be the panacea for sick industries is the question that is examined here.

BACKGROUND

In the market place, commencement and closure of business is a normal and routine feature; not all businesses that are started would last for ever or even for a long time. Due to changing exigencies of a situation, it may become incumbent on the businessman to take decisions about the continuity of business or otherwise. The exercise could entail either restructuring of the existing business operations that could also involve merger/amalgamation or demerger or both or even scaling down of operations, depending upon the facts and circumstances of each case. In extreme cases, it may even become necessary to put the company to permanent sleep by winding it up. However, to achieve this objective it is necessary that there is a proper law in the country backed by an effective enforcing machinery in place.

So far as India is concerned, for a long time since independence, the country did not have any special law to deal with corporate insolvency. In fact, the rate at which the Indian economy was growing during the first four decades after independence, it was almost felt as if there was no need for a specific law to deal with corporate insolvency

and that is how it happened during the first four decades after independence.

However, the economic crisis faced by the country during the year 1990-91, sowed the seeds of economic rejuvenation that led to a slew of reforms in the country from the year 1992 onwards and these included the liberalisation/ dilution of various laws including major enactments like the Companies Act, FEMA and the MRTP Act, etc.

It is a normal feature of every economy that from time to time it faces the problem of sick, potentially sick or just uncompetitive manufacturing units, but a growing economy faces such a problem many more times. Such a situation could arise due to the failure of the promoters, change in market conditions, introduction of new technologies/processes, change in government policies adversely affecting certain industries, etc. Consequently, certain industries suddenly find themselves incapable of handling the adverse conditions arising due to one or more such factors. As a result, many such units are forced to close down, while several others continue at much below optimum level of operations.

A major fall out of the growing sickness in industry means that the scarce economic resources of the country are grossly underutilized or still worse, they remain under lock and key either with the Court Receiver or the Official Liquidator, even as

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the Courts take their time to finally adjudicate the matter. In the interim, the quality of assets continue to suffer due to non-use and neglect; also it is not uncommon to find the assets getting stolen when not in use.

To address the issue of growing sickness, the Government of India enacted a law to deal with companies called 'Sick Industrial Undertakings', while the enactment was called, 'Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)'. The law deals with the revival and rehabilitation of sick industrial companies/undertakings. The intention of creating such a special law was to help sick units to be back on their feet as soon as possible.

The Preamble says that the special law had been created in public interest with the main objective of securing timely detection of sick and potentially sick companies owning industrial undertakings. The Preamble also envisaged that measures for effective remedy would be found expeditiously by a Board of experts and equally speedily would the rehabilitation scheme be enforced on the concerned companies.

However, as often happens with many such good intentioned measures, there has been a wide gap between the intention and performance. Though the Board for Industrial and Financial Reconstruction (BIFR) was set up under SICA to deal with revival and rehabilitation of companies, in actual practice, the whole process became very slow and painful for all the genuine stakeholders.

On the other hand, for defaulting borrowers SICA became a refuge that enabled them to avoid their creditors who wanted to recover their dues by seeking statutory protection from BIFR. It was observed that more than being interested in reviving the sick industrial undertakings, companies were keen to get the shelter offered by SICA as a shield against the legitimate dues of the creditors. In other words, the enactment that was created for helping sick and potentially sick companies revive became a tool in the hands of self serving corporate managements who succeeded in defeating the very purpose for which the special law was created.

The other law that deals with insolvency i.e. liquidation of companies is the Companies Act, 1956 (the Companies Act), which contains a full part with sections running from 425 to 560. With such a law it would have been expected that liquidation would be a speedy process which would enable to bring the companies to a close at the earliest. However, the reality has been otherwise, as is evident from the statistics of companies in liquidation. Instead of expeditious liquidation of companies, the provisions of the Companies Act have resulted in a very slow process thereby unduly blocking the scarce national resources. A major problem that sick or potentially sick companies usually face is that of honouring their financial commitments in the

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normal course of business. With a view to addressing this problem, the Central Government created a special enactment called, 'The Recovery of Debts Due to Banks and Financial Institutions Act, 1993.' To achieve the objective of this Act, the Debt Recovery Tribunal (DRT) was set up with Benches in different parts of the country for expeditious disposal of cases so as to enable quick recovery of debts due to banks and financial institutions. Unfortunately, even this special enactment with a separate forum like DRT to recover the dues expeditiously has not been a success to the desired extent.

The fact of the matter is that inspite of all these special enactments and specific bodies created to address the issues concerning industrial sickness, delinquency in payments, delays in winding up, etc., the existing laws put together have failed to achieve their objective as none of them have succeeded in providing an effective and speedy remedy for rehabilitation, reconstruction or liquidation of the companies.

Expert Committee

As all the measures taken to remedy the situation had proved inadequate until then, with a view to find a way out of the tricky situation, the Government of India set up a High Level Committee headed by Justice V.B. Eradi, a retired Judge of the Supreme Court of India, during the year 1999. The Committee came to be known as 'Eradi Committee'.

The Eradi Committee laid great stress on having an efficient system for winding up of companies and disposal of their assets within a time bound framework. Moreover, with a view to ensure expeditious disposal of cases, the Committee also recommended having a unified authority in the nature of National Company Law Tribunal (NCLT), to handle cases relating to sick industries as well as winding up of companies.

National Company Law Tribunal (NCLT)

The Government desired to give effect to the recommendations of the Eradi Committee by incorporating the changes in the Companies Act vide the Companies (Second Amendment) Act, 2002. As a result of this amendment Act of 2002, several new Chapters have been added to the existing Companies Act.



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These include a Chapter on creation and functioning of NCLT, a Chapter on Revival and Rehabilitation of Sick Industrial Companies, as also transfer of powers from the High Courts to the NCLT in respect of mergers and amalgamations and winding up of companies. At the same time an Act was passed by the Parliament repealing the SICA.

Several radical changes including appointment of professional liquidators, time bound liquidation process, etc., have been provided for in the Companies Act by virtue of the said Amendment Act. It was envisaged that with such time bound and professional approach it would be possible to tame the hydra headed monster that was eating away the national assets.

Sad Situation

However, it is sad to mention that the irony of the situation is that even after the lapse of one full decade the relevant provisions of the Companies Amendment Act of 2002 have not been notified nor the NCLT has been constituted; as a result the recommended changes have not taken effect. Consequently, even the Act repealing the SICA has not yet been notified so even the BIFR continues to survive from day to day. In the circumstances, it would not be wrong to say that the BIFR, a body to remedy industrial sickness, is itself floating in the sea of uncertainty for the last ten years.

New Company Law

In the meantime, the Central Government thought of totally overhauling the Companies Act by replacing it with a totally new simplified enactment. Accordingly, the Government appointed another committee under the chairmanship of Dr.J.J.Irani. Based on the report of the committee, a Bill was introduced in Parliament in 2009. Subsequently the Companies Bill 2011 was introduced in Parliament. On 18 December 2012 finally the Lok Sabha passed the Companies Bill 2012.

Present Scenario

Consequently, inspite of all the expert committees and their recommendations, there is not much change at the ground level. In a way the situation on the ground has actually worsened during the last one decade due to the hanging uncertainty about the constitution of NCLT and the impending demise of BIFR. In the meanwhile, the world has experienced tremendous changes and even the Indian economy has witnessed growth never seen since independence, but the law has remained more or less static so far as the winding up process or reconstruction of sick companies is concerned.

Is NCLT the solution?

As mentioned earlier, though the SICA has been repealed by the Parliament, yet the same has not been made effective as the NCLT is yet to be constituted. However, the question that needs to be addressed is, 'will the creation of NCLT by itself prove to be a panacea for all the ills plaguing the sick companies'? 'will



the creation of NCLT automatically speed up the entire process of restructuring / liquidation of a company?'

First of all due to various reasons the constitution of NCLT has remained on paper for the last ten years. As stated earlier, the provisions relating to the constitution of NCLT are covered in the newly introduced Part IB comprising of sections 10FB to 10GF of the Companies Act, 1956, but they are yet to be notified.

Even assuming that the relevant sections are notified and the NCLT is constituted, it will require several consequential simultaneous actions by the Government. The Companies Act envisages that on the creation of NCLT the existing Company Law Board will cease to exist and all the matters will stand transferred to the NCLT.

At the same time, BIFR will also cease to exist and all the pending cases involving sick industries will stand transferred to NCLT. Similar will be the situation so far as the powers relating to Mergers and Amalgamations and winding up of companies are concerned; all such powers that are presently enjoyed by the various High Courts in the country will stand transferred to the NCLT.

Likely Problems

So the moot question that begs an answer is, will the NCLT rise to the occasion and take up the challenge or will it buckle under the weight of all the matters that will land up in its lap. While the intent of the Government cannot be faulted as is evident from the relevant provisions that have been enacted with a view to speed up the whole procedure; the problem lies in execution.

If the experience of CLB is anything to go by, it is not going to be an easy task for the Government. First of all several benches have to be created in different parts of the country to handle not



only Company law related matters, but those concerning sick industries, mergers, winding up, etc. It will require huge premises at different places adequate to take care of all the needs so as to provide the requisite physical infrastructure. The case in point is the Mumbai Bench of CLB where one of the court rooms is so small that it poses practical problems for all concerned. If a similar thing happens when the Tribunal is constituted it will only worsen the situation.

Secondly, it is not enough to merely provide adequate office space which in any case is a must, but it is also important to provide adequate support manpower by way of personal assistants/stenos to Members, apart from the other staff; otherwise Members may not be able to discharge their duties effectively.

Thirdly, the task of appointing members with requisite qualifications and experience is not going to be an easy job. Unfortunately, the track record of the Government in such matters is not very encouraging. It has been seen how several important positions in various government corporations have remained vacant for long stretches of time as no decision was taken by the Government. If a similar situation were to arise in relation to the appointment of NCLT members then it will spell disaster for the Tribunal.

If the experience of other forums is anything to go by then it does not inspire enough confidence that Government will do justice. Consumer forums were created under the Consumer Protection Act to provide cheap, speedy and effective remedy within a period of six months, the fact is that on an average it takes upto three years to get justice.

Similar is the situation in respect of cases under section 138 of the Negotiable Instruments Act, which had again promised effective redressal within six months and now takes atleast three years to reach the decision stage.

The latest development is that the Securities Appellate Tribunal (SAT) has remained without the Presiding Officer for nearly a year, raising doubts about the legality of its orders. Now comes the news that even the remaining two members will be leaving SAT in the next 2/3 weeks, resulting in not only a headless but a memberless body. Can we imagine the plight of all those who have to approach SAT for filing appeal against a SEBI order? It should not be forgotten that time is of utmost importance particularly when it comes to industrial sickness and speedy co-ordination and implementation of the scheme of rehabilitation is the need of the hour.

Hence, any delay in filling vacancies on the Bench or failure to provide required infrastructure would prove disastrous and could defeat the very purpose of creating the NCLT.

The Way Forward

There can be no two views that with exponential growth of business on the one hand and with increasing numbers of mergers and amalgamations, there are bound to be increasing business failures as well. In this context, it is worthwhile to recall the words of Irani Committee, "The Indian system provides neither an opportunity for speedy and effective rehabilitation nor for an efficient exit."

The authorities need to realise that, as remarked by the Irani Committee, globally, reform in insolvency processes is recognized as an important means of improving competitiveness of any economy. This is particularly relevant in the Indian context. But insolvency cannot be seen in isolation and the issue of sickness in industry has to be dealt with simultaneously. The Government has to move forward keeping in view the larger picture and act accordingly.

Conclusion

In conclusion, one cannot over emphasise the need for having an efficient legal system to tackle not just company law related matters, but industrial sickness and insolvency related matters as well. Only an efficient NCLT would help the country in better utilisation of scarce resources and avoidance of wastage of national wealth. At the same time, it would also enable in generating competition and thereby serving the interest of consumers.

Hence, while establishing an alternative system by constituting the NCLT, the Government has to exercise caution and ensure that all that is required to put a first class system in place is provided to the Tribunal. In addition, care should also be taken to ensure that only adequately experienced professionals of proven competence who understand the niceties and intricacies of the subject are appointed as Members/Chairman of the Tribunal. Any compromise on this score would certainly defeat the very purpose for which such an authority is sought to be created.

However, it will not be possible to implement all these changes speedily and in the manner desired, unless there is a change in the mindset of not only the top bureaucrats, but each and every staff member of the Ministry dealing with this subject. Unless each one of them is convinced about the urgency of having an effective and efficient system of insolvency in India, precious time will keep on getting lost and the country will have to bear the cost for it.

It will not be out of place to state that even the practising professionals will have to play the role expected of them in making the system work for the larger good.

We all need to remember that merely creating an NCLT will not be the panacea for all the ills plaguing the corporate sector. CS



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Schemes of Arrangement - Fairness Rules the Roost

➤ A scheme of arrangement or restructuring by whatever name called, to be successful, ought to be framed with exceptional care and caution. Views expressed by courts on innumerable occasions while dealing with schemes of amalgamations, revival etc. provide a valuable insight to avoid pitfalls. This article brings out crucial aspects of framing schemes of arrangement by companies.

INTRODUCTION

The provisions of the Companies Act, 1956* that deal with schemes of compromises and arrangements operate a self contained code could be described as jewels of the Act. Schemes of arrangements are presented to courts every other day, in these days. Mergers and acquisitions are commonly and frequently resorted to for the purpose of achieving the corporate objectives in the most desirable and cost and tax efficient way. A scheme must stand the test of the court. Whether a scheme must be sanctioned or not is a discretion enjoyed by the court subject to parameters evolved through judicial pronouncements over a period of time. A scheme not sanctioned by a Single Judge of a High Court may get sanctioned by a Division Bench in an appeal and again be overturned by Supreme Court. Thus schemes essentially involve opinions. As various components of a scheme emerge from opinions of different people, who may be experts of in different fields, there are bound to be

knee jerk reactions and decisions. Added to unending issues and uncertainties are the changes in the economic, political and legal canvass that makes it absolutely necessary to keep schemes thoroughly dynamic at all times. Hence a scheme must be living!

Genuineness of Purpose is Decisive

The success of a scheme does not lie in scrupulous compliance of legal provisions and procedural aspects. It lies in the genuineness of objectives and fairness to all stakeholders, minority or majority, secured or unsecured.

Unconscionable Schemes are bound to be rejected

The Supreme Court of India in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* [1996] 87 Comp Cas 792, AIR 1997 SC 506, MANU/SC/2143/1996 held as follows:

"On a conjoint reading of the relevant provisions of Sections 391 and 393 it becomes at once clear that the company court which is called upon to sanction such a scheme has not merely to go by the *ipse dixit* of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the court has to

* The Companies Act, 1956 is proposed to be replaced by a new law. The Companies Bill, 2012 has since been passed by Lok Sabha very recently. Readers may refer to the Highlights of the Bill published elsewhere in this issue. Ed.



consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the very concept of compromise or arrangement which is required to receive the *imprimatur* of a court of law. No court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant."

The Supreme Court further held that "It is trite to say that once the scheme gets sanctioned by the court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme *qua* them also has to be kept in view by the company court while putting its seal of approval on the concerned scheme placed for its sanction."

Collateral Purpose

In *Re: JVG Leasing (Securities and Finance) Ltd. and Ors.*, [2008] 144 Comp Cas 780 (Delhi), the Delhi High court held that "if the scheme is intended to be a cloak to achieve some other purpose rather than projected purpose of the revival of the scheme, it would be unfair to the creditors and other persons if such scheme is sanctioned and propounders are allowed to achieve their oblique purpose."

Impact of Sanctioned Schemes - Statutory Force and Binding Nature

Every scheme of compromise or arrangement mandatorily requires the sanction of a court as prescribed under Sections 391 to 394 of the Companies Act, 1956. Once a scheme gets sanctioned, it gets the stamp of approval of the court. It does not remain as a mere proposal nor could it be regarded merely as a contractual arrangement between two parties. Sanctioned schemes have statutory and binding force and therefore there is a great attraction to invoke the relevant provisions of the Companies Act and resort to schemes.

In *J.K. (Bombay) (P.) Ltd. v. New Kaiser-I-Hind Spg. & Wvg. Co. Ltd.* AIR 1970 SC 1041 the Supreme Court has observed that a scheme sanctioned by the Court does not operate as a mere agreement between the parties; it becomes binding on the company, the creditors and the shareholders and has statutory force. It went on to observe that by virtue of Section 391 of the Act, a scheme is statutorily binding even on creditors and shareholders who dissented from or are opposed to its being sanctioned. It has statutory force and cannot be effected except with the sanction of the Court.

In *Tele Sound India Ltd.*, [1983] 53 Comp Cas 926 (Del), the Delhi High Court held that an amalgamation is an absorption of one

company into another or merger of both to form a third, which is not a mere act of the two companies or their members but is brought about by virtue of a statutory instrument and to that extent has statutory genesis and character, and to that extent, it is distinguishable from a mere bilateral arrangement to merge or join in a common endeavour, an undertaking or enterprise.

The Supreme Court in *Miheer H. Mafatlal's case (supra)* held that "when such a scheme is put forward by a company for the sanction of the court in the first instance the court has to direct the holding of meetings of creditors or class of creditors or members or class of members who are concerned with such a scheme and once the majority in number representing three-fourths in value of creditors or class of creditors or members or class of members, as the case may be, present or voting either in person or by proxy at such a meeting accord their approval to any compromise or arrangement thus put to vote, and once such compromise is sanctioned by the court, it would be binding on all creditors or class of creditors or members or class of members, as the case may be, which would also necessarily mean that even to dissenting creditors or class of creditors or dissenting members or class of members such sanctioned scheme would remain binding".

Imaginary things must be allowed to become reality

Normally by the time a scheme is sanctioned, there would have been a lapse of a considerable period of time—between the time the scheme is expected to come into force (usually defined as the "Transfer Date" or the "Appointed Date") and the date on which the scheme lawfully takes effect after it has been sanctioned (which date is usually defined as the "Effective Date"). This time lag cannot be avoided. However during this period certain development may take place in respect of the companies involved in the scheme and also to the parties involved in the scheme. The scheme provides enabling clauses to keep things such as day-to-day business and compliances going on as usual in the ordinary course of its business and in regard to certain things such as transfer of shares; shareholding pattern; ownership of assets; status of liabilities and dividends to the extent within the control of the management to remain constant. A scheme can be designed to meet all such needs and circumstances. While doing so, difficulties are bound to arise as until the scheme is sanctioned there will be uncertainty and once sanctioned issues arising from actual implementation would crop up. Common sense will guide the people involved in implementing the scheme effectively.

In *Marshall Sons and Co. (India) Ltd. v. Income-tax officer*, AIR 1997 the question whether the transferor company should file an income tax return for the period between the transfer date and the date on which the scheme becomes effective came up before the Supreme Court and the Court held:



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Every scheme of compromise or arrangement mandatorily requires the sanction of a court as prescribed under Sections 391 to 394 of the Companies Act, 1956. Once a scheme gets sanctioned, it gets the stamp of approval of the court. It does not remain as a mere proposal nor could it be regarded merely as a contractual arrangement between two parties. Sanctioned schemes have statutory and binding force and therefore there is a great attraction to invoke the relevant provisions of the Companies Act and resort to schemes.

"In the scheme before us, clause 6(b) does expressly provide that with effect from the transfer date, the Transferor Company (Subsidiary Company) shall be deemed to have carried on the business for and on behalf of the Transferee Company (Holding Company) with all attendant consequences. It is equally relevant to notice that the Courts have not only sanctioned the scheme in this case but have also not specified any other date as the date of transfer/amalgamation. In such a situation, it would not be reasonable to say that the scheme of amalgamation takes effect on and from the date of the order sanctioning the scheme. We are, therefore, of the opinion that the notices issued by the Income-tax Officer (impugned in the writ petition) were not warranted in law. The business carried on by the Transferor Company (Subsidiary Company) should be deemed to have been carried on for and on behalf of the Transferee Company. This is the necessary and the logical consequence of the Court sanctioning the scheme of amalgamation as presented to it. The order of the Court, sanctioning the scheme, the filing of the certified copies of the orders of the Court before the Registrar of Companies, the allotment of shares etc. may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation in the circumstances of this case would be January 1, 1982. This is also the ratio of the decision of the Privy Council in *Raghubar Dayal, v. Bank of Upper India Ltd.* AIR 1919 PC 9."

Indeed Courts play the role of an Umpire

The job of presenting schemes to courts in accordance with the Companies (Courts) Rules, 1959, should never be mistaken to be a procedural formality. It must be done with sufficient care and caution. In order to understand the seriousness of the process involved, one must carefully understand the role of

courts in granting sanction to schemes.

In *Coimbatore Cotton Mills Ltd. and Lakshmi Mills Co. Ltd., In re* [1980] 50 Comp Cas 623 (Mad), the Madras High Court has set out the following parameters on the role to be played by courts:

- Approval of the Scheme by requisite majority (in value and in number) in accordance with Section 391(2) of the Companies Act at a meeting or meetings duly convened and held
- If a class whose interests are affected by a scheme does not assent to the scheme or approve it at a meeting convened in accordance with the provisions of Section 391, the court will have no jurisdiction to confirm the scheme, even if it considers that the class concerned is being fairly dealt with or that it would approve the scheme
- The court should satisfy itself that those who took part in the meeting are fairly representative of the class and that the statutory meeting did not coerce the minority in order to promote the adverse interest of those of the class whom they purport to represent
- It is the function of the court to see that the scheme as a whole, having regard to the general conditions and background and object of the scheme, is a reasonable one and if the court so finds, it is not for the court to interfere with the collective wisdom of the shareholders of the company
- When once the court finds that the scheme is a fair one, then it is for the objector to convincingly show that the scheme is unfair and that, therefore, the court should exercise the discretion to reject the scheme, notwithstanding the views of a very large majority of the shareholders that the scheme is a fair one
- If the court is of the opinion that there is such an objection to it as any reasonable man would say that he would not approve of it, then the court may refuse to confirm the scheme
- However, if the scheme as a whole is fair and reasonable, it is the duty of the court not to launch on an investigation upon the commercial merits or demerits of the scheme which is the function of those who are interested in the arrangement
- There should not be any lack of good faith on the part of the majority.

In *Re: Sidhpur Mills Co. Ltd.*, AIR 1962 Guj 305, the Gujarat High Court, while pointing out the correct approach for the sanctioning of the scheme for amalgamation pointed out that the scheme should not be scrutinized in the way a carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel would do it. But, it must be tested from the point of view of an ordinary reasonable shareholder, acting in a businessman-like manner, taking within his comprehension and bearing in mind all the circumstances prevailing at the time



when the meeting was called upon to consider the scheme in question.

In *Miheer H. Mafatlal's case (supra)* the Supreme Court set out the following parameters on the role to be played by courts while sanctioning schemes of compromises and arrangements:

- A company court is not expected to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme
- However the court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties
- The court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by the requisite majority
- Consequently, the company court's jurisdiction to that extent is peripheral and supervisory and not appellate
- The court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire.

If required, Courts do reject Schemes

Courts have in many cases, declined to accord sanction on different grounds. Much would depend on the facts of each case and what applies to one case may not be applicable to another. Courts have to weigh the pros and cons of each case and see whether on an overall basis the scheme is genuine and is intended to operate for the benefit of all concerned.

Lack of Bonafides

In *Re: Saroj G.Poddar*, (1996) 22 C.L.A.200, the court refused to sanction the proposed scheme after it was found that the entire exercise undertaken by the sponsor with the support of the workers union was intended to acquire the land of the company for its exploitation. The court also found that the scheme was not genuine but patently fraudulent as it had been evolved as a cloak to cover the misdeeds of the directors to avoid misfeasance proceedings against them".

In *Bedrock Ltd.*, In *Re*: [2000] 101 Comp Cas 343 (Bom), the Bombay High Court found the scheme to be lacking bona fides because it was ostensibly to dispose of unutilised assets to pay off creditors and in reality to profit from proceeds thereof.

In *Mohan Exports India Ltd.*, In *Re*: [1999] 95 Comp Cas 53 (Del), Delhi High Court refused to accord sanction to a scheme of arrangement on the ground that the said scheme was meant solely to effect transfer of valuable assets of transferor



company to transferee company without payment of Government dues and the Court found the Scheme to be not bona fide.

Failure to disclose particulars

In *Kamani Employees Union and Others* [2000] 109 Comp Cas 659 (Bom) the Bombay High Court refused to accord sanction to a Scheme of Amalgamation on the ground that the manner of holding the meetings and voting were not found to be proper and that the interest of the Directors were not disclosed and the employees interest was also not protected in the Scheme of Amalgamation.

Introduce a Scheme instead of rejecting the Scheme presented

A reading of the decision of the Kerala High Court in *St. Mary's Finance Ltd. v. R. G. Jayaprakash and Ors.* [2000] 99 Comp Cas 359 (Ker) is absolutely necessary to understand what are all the complications a court might face while considering a scheme for according sanction. The first reason why the Court found that the interest of 'B' and another director in St.Mary's Properties Ltd., the largest debtor of the company has not been disclosed. The Court found that the real beneficiary of the scheme was St.Mary's Properties Ltd., to whom the Company had heavily advanced. The Court found that the Company had not only withheld that valid information from creditors alone; but also from the Chairman appointed for chairing the meeting. The Court held that whatever be the majority in support of the scheme the Company managed to obtain through compelled proxies, it has no validity in the eye of law and further held that on that sole reason itself, the compromise now suggested or modified cannot be accepted.



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The Kerala High Court held that the notice of the meeting itself was illegal as the interest of the directors of the company were not disclosed to the creditors as enjoined under Section 393(1)(a) of the Companies Act, 1956.

In the same case, it could be observed that 'B' had sent a letter addressed to the depositors which contains a caution to the depositors that unless they send the proxy forms duly signed to him, their amount will be lost. In such circumstances, he could manage to more than 1000 proxy forms only because of such influence or threat contained in such letters addressed to the depositors. The depositors are always interested in their money rather than the whims and fancies of the persons in management. Therefore the vote by 'B' for and on behalf of 1033 persons who had given proxies can only be considered as due to 'undue influence'. The Court also found that some of the persons who had given proxies had attended the meeting and took part in the voting and as such there was a chance of dual voting. However the Court observed that inspite of these problems, there is bounden duty attached to the court, while considering a petition under Section 391 to protect the interest of depositors, members, public and of the Company. Accordingly the Court formulated a scheme for the working of the company and directed the implementation of the same.

Imperative need to ensure that Objections are strong and provable

Objections, if any must be based on sound footing. It should not be made for the sake of merely putting spokes to delay the sanctioning of the scheme. Courts should also come down heavily on frivolous objectors. Generally objections with regard to valuations do not survive if valuations have been done by experts and there is no allegation of fraud against them. Objections have to be made at the first available opportunity. Questions which have not been raised before the court where the petition for sanction has been made may not ordinarily be allowed to be raised in appeals. Questions of type involved as in the case of Konark Investments described hereunder may require adjudication. As in the case of Deccan Aviation described hereunder, if the objections raised are not directly connected to the scheme, courts will not refuse to sanction the schemes. It would be interesting to note that objections as in the case of IMP Powers Ltd have led to Courts introducing modification to the scheme prior to sanctioning the same. Questions of law such as the one involved in the scheme relating to Bihar Sponge and Iron Limited described elsewhere would require serious consideration of and adjudication by the courts.

Objectors must have *locus standi*

In *Indian Metal and Ferro Alloys Ltd.* [2009] 149 Comp Cas 362 (Orissa), the Orissa High Court did not entertain an objection from a person who is neither a share holder nor a creditor of the company. He was only a share holder of the financial

institutions and banks who have advanced loans to the transferor company.

Facts must make out a case

In *Konark Investments Ltd. and Ors. v. Union of India (UOI)* [1999] 97 Comp Cas 52 (SC), the Supreme Court observed that the Division Bench of the High Court had turned down a sanctioned scheme on the ground that the scheme is intended to avoid taxes. However it was observed that no such contention had been canvassed at the Bar and no factual material in support thereof was laid before the single judge. The Supreme Court observed that it is remarkable that the Division Bench came to the conclusion that the whole purpose of the appellant was to avoid taxes when there is no material discussed or even referred to in its order based whereon such a conclusion could be reached. Before setting aside the order sanctioning the scheme the Division Bench ought to have been mindful of the fact that erstwhile shareholders of the transferor-Company had been allotted shares of the appellant pursuant to the sanction of the Scheme and that they would have sold those shares in the ordinary course to third parties, who would be the sufferers.

Extraneous Matters

In *Deccan Aviation Limited v. G.E. Commercial Aviation Services Ltd. and Ors.* [2009] 150 Comp Cas 37 (Kar), the Karnataka High Court held that under Section 392 of the Companies Act, 1956, "the court can intervene and give directions only to implement the Scheme of arrangement in the light of the Scheme of arrangement and not in respect of a dispute falls outside the Scheme of arrangement."

In *Bharti Mobinet Limited, Bharti Telenet Limited and Bharti Cellular Limited v. DSS Enterprises Pvt. Ltd.* [2005] 60 SCL 473 (Delhi), when an objection was raised to the sanctioning of a scheme on the ground that there was no disclosure of particulars relating to certain disputes pertaining to the Company, the Delhi High Court observed that the dispute which is sought to be raised by the objector, being a shareholder, is in the nature of *inter se* dispute between two groups of shareholders. And the objector was fully aware of the pending litigations in the various courts. The Court held that information regarding pending litigations between shareholders were not such information which were required to be specifically mentioned in the communications issued to the shareholders and creditors. Non-mentioning of such information, in my considered opinion, did not vitiate the scheme. No case of fraud is made out in the facts and circumstances of the present case.

DRT Proceedings and Modification of the Scheme

In *Re: IMP Powers Ltd.* [2008] 142 Comp Cas 481 (Bom), a scheme of arrangement came up before the Bombay High Court for sanction. It was a scheme of arrangement apparently



on the basis of a Corporate Debt Restructuring Scheme and except one of the secured creditors viz., IndusInd Bank Limited, the Scheme was approved by all other secured creditors. IndusInd Bank objected to the scheme on the ground that it had already moved the Debts Recovery Tribunal for recovery of its dues and in view of the decision of the Supreme Court in *Allahabad Bank v. Canara Bank*, Debts Recovery Tribunals have supremacy over all the matters in dispute before the DRT and therefore IndusInd Bank is submitted that while sanctioning a scheme of compromise/arrangement under Section 394 of the Companies Act, 1956, this court would have no jurisdiction to adjudicate upon the claim of IndusInd Bank Ltd. or to foreclose an adjudication on the application for recovery instituted in the Debts Recovery Tribunal. But, it has been submitted that the effect of the scheme involves precisely such a consequence, since the scheme contemplates certain concessions to be granted by lending institutions, including a reduction in the rate of interest to be charged. Moreover, it is submitted that the scheme contemplates the restoration of working capital facilities, a consequence that would be imposed even on a financial institution which is not prepared to be a part of a restructuring package propounded by the CDR cell. The high court allowed the scheme after directing a modification to the scheme whereby any reference to IndusInd Bank was deleted with a further direction that if the Company proposes to sell any of its assets with not less than 15 days notice should be given to the Pegasus Assets Reconstruction Pvt. Ltd., which was the assignee of the financial asset of IndusInd Bank.

Instead of Liquidation, Scheme should promote Living!

In *Re: Maneckchowk and Ahmedabad Manufacturing Co. Ltd.* [1970] 40 Comp Cas 819 (Guj), the Gujarat High court held that "the court should, keeping in view all the aspects of the matter, prefer a living scheme to compulsory liquidation bringing about an end to a company." The above decision was quoted with approval by the Kerala High court in *Sudarsan Chits (India) Ltd. v. Sukumaran Pillai and Ors.*, [1985] 57 Comp Cas 85 (Ker). It seems the above proposition had originated from a decision in *Lawrence Dawson v. J. Hormasji* [1933] 3 Comp Cas 57 (Ran), where it was held that "the court is of course not a mere machine for registration. It will look into the proposed scheme much as a court of appeal will canvass, if asked to do so, the decision of a jury, to ascertain if there was reasonable evidence to support their verdict; but it will, I think, always also prefer a living scheme to a compulsory liquidation bringing about an end to a company and, usually, without any hope of payment in full..."

Revival receives preference

In *Re: JVG Leasing (Securities and Finance) Ltd. and Ors.*, [2008] 144 Comp Cas 780 (Delhi), the Delhi High court held that: "Whenever choice is available to the court between revival of

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the company and its winding up, the court must as far as possible lean in favor of revival of the company. However, that does not mean that whenever a scheme for revival is filed, the court has to automatically and routinely sanction the same."

Scheme is possible even in respect of a company in winding up

The Supreme Court in *Meghal Homes Private Limited v. Shreeniwas Girni KK Samiti* [2007] 78 SCL 482 (SC) held that the company court could sanction a scheme even in the case of a company where an order of winding up has been made and a liquidator has been appointed. The Supreme Court further held that nothing stands in the way of the company court before assets have been disposed of to sanction a scheme provided there is a genuine attempt to revive a company that has gone into liquidation and such revival is in public interest and conforms to commercial morality. From the above case it is clear that essential factors are whether the scheme is bonafide and whether there is a genuine attempt to revive the company and such attempt is in public interest. Thus even if BIFR had recommended a winding up of the Sick Industrial Company under Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Company Court may sanction a scheme of amalgamation. Same situation may not apply if BIFR had not recommended a winding up and BIFR continues to be seized of the matter.

Even a Member of a Company in winding up may propose a Scheme

In *National Steel and General Mills v. Official Liquidator* [1990] 69 Comp Cas (Del), the Delhi High Court considered the question whether a liquidator of a company can alone make an application under Section 391 of Companies Act, 1956. The



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Court held that so long as the name of a person continues to be in the Register of Members, he will continue to be a member and even a bankrupt will be a member so long as his name appears in the Register. Therefore, a member can make an application under Section 391 of the Companies Act, even if the company is being wound up. The court held that the contention that under Section 391 read with Section 457, the liquidator alone can file an application is not tenable. The court further held that the liquidator is only an additional person who can frame a scheme for compromise or arrangement.

Superior Powers of BIFR

In *International Finance Corporation v. Bihar Sponge and Iron Limited and Others*, AIR 2010 Delhi 142, in a writ petition filed before the Delhi High Court against an order of the BIFR which was upheld by AAIFR in an appeal on the ground that the BIFR has no powers to modify Draft Rehabilitation Scheme without taking consent to the petitioners/secured creditors and which consent was mandatory under Section 19 of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Delhi High Court held that there is no illegality committed by both BIFR and AAIFR in granting interest @ LIBOR + 1% in view of the submission of the Operating Agency that increase of 3% interest on the foreign currency would affect the liability of the company and the Debt Servicing Ratio would go below 1.33.

In *Raheja Universal Limited v. NRC Limited* [2012] 115 SCL 715 (SC), the Supreme Court held that the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 shall have precedence and overriding effect over the provisions of Transfer of Property Act. The Supreme Court further held that the BIFR is the authority *proprio vigore* and is required to oversee the entire affairs of the sick industrial company and

ensure that the same are within the framework of the scheme formulated and approved by it for revival of the company in accordance with SICA.

Important Aspects

Every scheme whether it involves complications or not, must necessarily take into account the following aspects:

- The concept must first be clearly defined
- Parties who are involved must be clearly understood
- Applicable law must also be understood and scrupulously followed
- Procedural steps must be duly determined and adhered to
- Comply with memorandum, articles of association, agreements, contracts and applicable provisions of law
- Apply applicable accounting standards
- Deviations and difficulties must be taken into account
- Objections are bound to come; therefore anticipate likely objections and be prepared
- Disclose all material particulars
- Secure consents and approvals of all those who matter
- If opinion of experts is involved, keep copies of such opinions ready for being scrutinized by interested parties.
- Valuation of companies, divisions, shares and determination of consideration, mode of settlement of consideration, share exchange ratio should be undertaken carefully in a well planned manner. It would be better to secure valuation reports from two independent experts though findings, output and recommendations may not necessarily same or similar
- Apply for modification of schemes if necessary so as to make it useful and inclusive
- Make sufficient provisions for dissentient stakeholders.
- Avoid hidden agenda
- Conduct a mock exercise for understanding implementation issues in advance so as to fully assimilate the risks involved; costs involved; issues that are likely to arise and the ways and means by which such issues could be sorted out.

Conclusion

To put it in a nutshell, the job requires a thorough understanding of the commercial wisdom involved in undertaking the scheme; the rules of law and all the parameters involved. Professional practitioners such as the Company Secretaries, Chartered Accountants and Lawyers have a larger role to play to ensure that schemes prepared and presented by them not only adhere to the applicable provisions of law but also they are intended to achieve genuine business goals in the most transparent manner. Fairness must rule the roost. Therefore company secretaries who may form part of the core team of advisors preparing and presenting schemes owe a duty to ensure that they understand all the aspects of the scheme rather than listing down procedural steps involved and ensuring compliances. CS

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Corporate Restructuring - Would Court Lift Veil?*

➤ Once a transaction between a holding company and its subsidiaries, is found to be fraudulent or sham and against the interests of shareholders, investors, parties to contract or designed to evade taxes, the court is entitled to lift the corporate veil and examine the substance of the transaction. This article sets out various protective measures that could be taken against the possible piercing of the corporate veil.

The doctrine of 'Lifting the corporate veil' is readily applied in cases coming within the purview of Company Law, Law of Contract and Law of Taxation. Once a transaction is shown to be fraudulent, sham, circuitous, or a device designed to defeat the interests of the shareholders, investors, parties to the contract and also for tax evasion, the Court can lift the corporate veil and examine the substance of the transaction said the Supreme Court in *Vodafone International Holdings B.V. v. Union of India & Anr* [2012 (1) Comp LJ 225 (SC)].

While stating that some influence on the subsidiary's decisions by the parent in a group company structure is inevitable, the Supreme Court went on to comment: "Such a restriction, which is the inevitable consequence of any group structure, is generally accepted, both in corporate and tax laws. However, where the subsidiary's executive directors' competencies are transferred to other persons/bodies or where the subsidiary's executive

directors' decision making has become fully subordinate to the Holding Company with the consequence that the subsidiary's executive directors are no more than puppets then the turning point in respect of the subsidiary's place of residence comes about.... It is in the above cases that the principle of lifting the corporate veil or the doctrine of substance over form or the concept of beneficial ownership or the concept of alter ego arises."

Even though the final outcome of the case was in favour of the appellants, the observations of the Court should make all corporates stop and wonder whether they should continue to rely on or create complex corporate structures for liability separation, tax planning or any other "strategic reasons".

Back to the Basics

Company is the most common form of business organization due to the inherent benefit of separate legal entity, perpetual succession and separation of ownership and management. These benefits of separate legal entity, perpetual succession and separation of ownership and management lead to the principle of limited liability, which indeed is the cornerstone principle of company law worldwide. The basic objective of forming a company is to shield the personal assets of the shareholders

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from unlimited liability for the acts of the company. There is separation in management and ownership of the Company.

In 1897, in *Solomon v. Solomon & Company*, the House of Lords had cemented into English law the twin concepts of corporate entity and limited liability and had laid down that a company is a distinct legal person entirely different from the members of that company. The judgment recognized that the company has life of its own, can own property, can sue and be sued in its own name and has perpetual life.

The courts have not always relied upon the principle laid down in *Solomon v. Solomon & Co.* In a number of cases, courts have pierced the corporate veil to reveal the true form and character of the concerned company. With all the advantages available to the corporate form of entity, it must also be ensured that there are no fraudulent activities carried on in the company. The members and managers should not be allowed to carry out fraudulent activities under the name of the company and attempt to escape the personal liability. In case any such event occurs, Courts have been taking corrective actions by lifting the corporate veil. This principle is known as - "Lifting and piercing of corporate veil."

Corporate Veil is required to be lifted because a company has no mind or body of its own and therefore, it has to rely on human agencies to be formed and to act. There may be circumstances that culpable human agencies are trying to do something in colorable manner. A human being might be trying to do something in the shade of corporate veil what he cannot do by himself as an individual. By doing all the above, he might be trying to cheat the public in general and be infringing their rights.

Lifting of Corporate Veil

"There cannot be a consistent rule for lifting veil," per Gajendragadkar, C.J. It would not be possible to evolve a rational, consistent and flexible principle which can be invoked

in determining the question as to whether the veil of corporation (company) should be lifted or not.

Corporate veil may be lifted either under express provisions of law; or under judicial pronouncements. There are various cases under which court had lifted the corporate veil. Few of them are listed below

- Fraudulent conduct behind the veil (*Gilford Motor Co. v. Horne* [1933] Ch. 935 (A.C.))
- Where the doctrine conflicts with Public Policy (*Connors Bros. v. Connors*) (1940) 4ALL-ER.179.
- For determining the character or the status of the Company the Court may ignore the separate entity (*Daimler v. Continental Tyre & Rubber Co. (Great Britain) Ltd.* [1916] 2 A.C. 307 (H.L.))
- Where any evasion of taxes or duties takes place, the Court can lift the veil to look at the real transaction behind the veil. (*Commissioner of Income Tax v. Meenakshi Mills Ltd.*) (1967 AIR 819, 1967 SCR(I) 934.
- Where the only purpose of the Company is to evade the taxes (*Sr. Dinshaw Manakjee Petit A.I.R.* 1927, Bombay, 372.)
- Avoidance of Welfare legislation (*The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar v. The Associated Rubber Industries Limited, Bhavnagar* and another AIR 1986 SC 1, 1985 (51) FLR478, 1986, 157 ITR 77SC.
- Avoidance of the corporate formalities including failure to issue stock, failure to properly approve transactions between corporate and its shareholders.

Under the following provisions of Companies Act, 1956, the corporate veil could be ignored,

- Reduction of membership : (Section 45)
- Violation of requirements to properly publicise company's Name. (Section 147)
- Subsidiary Company (Sections 212 & 214)
- Fraudulent Conduct (Section 542)
- Failure to return application money (Section 69)
- Misrepresentation in prospectus (Section 62).

Lifting of Corporate Veil in Holding - Subsidiary Relationship

The corporate veil creates a separate, legally recognized corporate entity separate from the people behind the company. A company shields the people behind it from personal liability. In limited cases of prevention of fraud, illegality or achieving fairness or justice, courts look beyond the form to the substance of the corporation's actions. Courts in these cases look beyond the veil, and lift it so to speak, to look at the people behind the corporation to hold them accountable.

Many times, a controlling shareholder is itself a company: the controlling shareholder is the holding company, and the



controlled corporation is a subsidiary. In some circumstances courts may pierce the corporate veil protecting the holding company and hold the holding company liable for the subsidiary's obligations. This happens where the subsidiary loses its independent existence because the holding company dominates the subsidiary's affairs by participating in day-to-day operations, resolving important policy decisions, making business decisions without consulting the subsidiary's directors or officers, and issuing instructions directly to the subsidiary's employees or instructing its own employees to conduct the subsidiary's business.

However there are cases where courts have refused to pierce the corporate veil and make the holding company liable under a veil piercing analysis. In the 1984 Bhopal Gas Tragedy, a United States court observed that "There is no need to pierce the corporate veil to prevent fraud or injustice because, even if there were evidence that UCC dominated UCIL, there is no allegation or evidence that UCC did so to commit a fraud or wrong that harmed Plaintiffs".

It is important to study the theory of Lifting Corporate Veil applied by the Courts in case of holding - subsidiary relationships. While the traditional doctrine required the claimant to show fraud or misrepresentation, doctrines of 'instrumentality' and 'alter ego' extend the principles of justice and equity. Further, while piercing the corporate veil, courts consider undercapitalization to exist when a corporation's assets or the value it receives for issuing shares or bonds is disproportionately small considering the nature of the business and the risks of engaging in that business. Courts may also disregard the separate corporate existence when a corporation fails to follow the formalities required by corporation statutes.

It's important to note that in Vodafone Judgment, the Supreme Court reiterated a "look at" approach rather than starting with what it calls a "dissecting approach". The Court or revenue authorities should look at the structure, standing at the threshold, in the context in which it properly belongs to. If it lacks any corporate context or reason to be, a further



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investigation applying "substance over form" is warranted.

Protection against Lifting of Corporate Veil in Holding - Subsidiary Relationship

The table below endeavours to provide practical suggestions which include actions in day to day functioning and should help build a case against 'lifting of corporate veil' in case of holding - subsidiary relationship.

Theory of Lifting Corporate Veil	Factors Considered by Law	Practical Actions to Safeguard Against Lifting of Corporate Veil
Instrumentality Doctrine	<p>a. Holding company dominates subsidiary so much that the subsidiary has no separate will or existence.</p> <p>b. Has the holding company dominated subsidiary's affairs? Participating in day-to-day operations, resolving important policy decisions, making business decisions without consulting the subsidiary's directors or officers, and issuing instructions directly to the subsidiary's employees or instructing its own employees to conduct the subsidiary's business.</p> <p>c. Courts also hold the holding company liable where the holding company runs the</p>	<p>a. Prepare regular minutes for the meeting of shareholders and directors.</p> <p>b. Directors of the subsidiary should be involved in the business. The Directors should take independent decisions without being guided by the Holding company (except when executing Shareholder's decisions). Adopt resolutions reflecting approval of all major corporate actions.</p> <p>c. Day-to-day operations of the business should be conducted by the</p>



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	<p>subsidiary in an unfair manner by allocating profits to the holding company and losses to the subsidiary; the holding company represents the subsidiary as a division or branch rather than as a subsidiary; or the holding company and subsidiary are engaged in essentially the same business.</p> <p>d. The type of conducts explained above cause unjust loss or injury.</p>	<p>employees of the subsidiary. Day-to-day management should be by subsidiary's employees. Employees of the subsidiary should not be required to report to employees of the holding company. Where involvement of the holding company's employees is not feasible (for example support staff), the involvement should be as per an agreement establishing adequate compensation.</p> <p>d. Where personnel of other entities are used they should be through 'contractor agreements' which are on arms-length-basis.</p>
Alter Ego Doctrine	<p>a. Has the shareholder/owner generally disregarded the separate existence of the subsidiary: (1) Confused or mixed the corporate affairs and assets, (2) Abuses controlling power, (3) Ignores the necessary corporate formalities.</p> <p>b. In contract cases, the third party who has had some earlier dealings with the corporation should know that the corporation is a shell. So, courts typically find that the third party assumes the risk and should suffer the loss if other party has been upfront about the signing entity. In tort cases, the third party normally has not dealt voluntarily with the corporation.</p> <p>c. Recognizing the separate existence in spite of the state of affairs explained above would cause unfair result or fraud on the plaintiff.</p>	<p>a. Subsidiary should have separate letter heads.</p> <p>b. All the marketing material/customer communication should be in the name of subsidiary.</p> <p>c. There should be separate premises for the subsidiary and holding company.</p> <p>d. The assets intended to be used by the subsidiary must be held and owned by the subsidiary. Co-sharing of assets should be avoided.</p> <p>e. Do not use subsidiary assets for other entities and vice versa.</p> <p>f. All transactions between subsidiary and other entities should be on an arms - length basis. Example: Subsidiary expenses must be paid by subsidiary and revenue of the subsidiary should be received by the subsidiary & <i>vice versa</i>.</p>
Undercapitalization	<p>a. Corporate assets or value paid for shares/debt is</p>	<p>a. Provide adequate capital to the subsidiary for its</p>

	<p>disproportionate to the nature and risk of business.</p> <p>b. Courts examine the capitalization at the time the corporation was formed or entered a new business.</p> <p>c. For example, if a corporation that faces or may face obligations to creditors and potential lawsuits has received only a token or minimal amount for its shares, or has siphoned off its assets through dividends or salaries, courts may find undercapitalization.</p> <p>d. Such shells designed to take advantage of limited liability protections while not getting exposed to a risk of loss of any of the profits or assets.</p>	<p>line of business. This capital infusion should be properly documented. Terms of debt should not be too favorable.</p> <p>b. Related creditors (affiliates) should not be favorably treated against other creditors.</p> <p>c. Sufficient profits should be retained in the business. Appropriation of profits (dividends) if decided to be paid as per the corporate process should be under a documented dividend policy.</p>
Non-compliance with corporate formalities	<p>a. Courts often cite the lack of corporate formalities in finding that a corporation has become the alter ego or instrumentality of the controlling shareholder or shareholders.</p> <p>b. For example, a court may justify piercing the corporate veil if a corporation began to conduct business before its incorporation was completed; failed to hold shareholders' and directors' meetings; failed to file an Annual Report or tax return; or directed the corporation's business receipts straight to the controlling shareholders or shareholders' personal accounts.</p>	<p>a. Hold regular meetings of shareholders and directors.</p> <p>b. All subsidiary related documentation to be signed in subsidiary's name.</p> <p>c. Keep separate accounting and statutory records.</p> <p>d. Keep separate HR records, policy documents and manuals.</p>

Conclusion

With Courts potentially taking aggressive stand on lifting of corporate veil while smelling even a single instance of fraud, it is important that *bona fide* holding and subsidiary companies do their transactions on arms-length basis and comply with all the corporate formalities such as keeping proper minutes of the meeting, formally approving and documenting all the transaction between the holding and subsidiary companies, etc. to pass the "look at" test. A combination of multiple actions between holding and subsidiary may lead to the conclusion that while subsidiary is projected as a separate legal entity, in real sense it is no more than an alter ego of holding company. The above practical actions to some extent can safeguard both holding and subsidiary companies against lifting of corporate veil.

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Intangible Assets - Impact on Mergers and Amalgamations

➤ Intangible asset valuation has great impact in M&A deals particularly in sectors like pharmaceuticals, information technology and consulting services industry. How and why are explained here.

INTANGIBLE ASSETS(IA)

Intangible Assets are defined as identifiable non-monetary assets that cannot be seen, touched or physically measured which are created through time and/or effort and are identifiable as separate asset. There are two primary forms of intangibles – legal intangibles (such as trade secrets e.g. customer lists, copyrights, patents and trademarks) and competitive intangibles (such as knowledge activities, collaboration activities, leverage activities and structural activities).

Legal intangibles are known under the generic term intellectual property and generate legal property rights defensible in a court of law. Competitive intangibles, whilst legally non-ownable, directly impact effectiveness, productivity, wastage and opportunity costs within an organization – and therefore costs revenues, customer service satisfaction, market value and share price. Human capital is the primary source of competitive intangibles for organizations today. Competitive intangibles are the source from which competitive advantage flows, or is destroyed.

In the International context the IFRS (International Financial Reporting Standards) and International Accounting Standards also insist and recognize the

intangible assets and Intellectual Property Rights(IPRs).

TYPES OF INTANGIBLE ASSETS

- ▶ **Artistic-related:** copyrights (photos, videos, audio materials)
- ▶ **Consumer-related:** customer lists, contractual customer relationships, etc.
- ▶ **Contract-related:** franchises, licensing agreements, broadcast rights, construction permits, exploration permits, import and export permits, service contracts, etc.
- ▶ **Goodwill** (identified only with a business as a whole)
- ▶ **Market-related:** trademarks, brand names, internet domain names, magazine mastheads, etc.
- ▶ **Technology-related:** patents, trade secrets, computer programs, product formulas, etc.

Intangible assets such as brands, intellectual property and licenses now comprise a greater percentage of the economic value of successful businesses than ever before. Some economists argue that they represent the main performance drivers in the current transition from a traditional financial economic structure to a new knowledge-based economy. Intangible assets (other than goodwill) are reported similarly to property, plant and equipment (P&E) assets on the balance sheet. Goodwill is reported separately. The notes to financial statements should include information about purchased intangible assets (e.g. amortization expense for the next five



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years; changes in the carrying value of goodwill; accumulated depreciation if separate accumulated amortization accounts are not used).

ROLE OF INTANGIBLE ASSETS IN MERGERS AND ACQUISITIONS

A corporation's operating value is made up of its working capital, fixed assets, identifiable intangible assets and goodwill. In large mergers and acquisitions the share represented by the intangible assets is progressively large. According to U.S. government statistics, public corporations in America derive 70% of their value from intangible assets, and Pricewaterhouse Coopers' own calculations show that, of the roughly US\$250 million that exchanged hands in 100 American M&A deals between July 2001 and 2003, the purchase price allocation showed that 26% of the purchase price was for tangible assets, 22% was for intangible assets, and goodwill was 52%.

Intangible assets also play an important role in Mergers and acquisitions by Companies in Taiwan. In the recent case of merger between Internet portal Yam.com and Webs-tv.net., like most Internet companies, the bulk of their assets was intangible ones, such as Internet addresses, customer relationships (high click-through rates, high numbers of registered users) and Internet portals. Therefore, the main focus of asset valuation and due diligence for the deal is certain to be on intangibles.

Strategic alliances occur in many different industries and between firms of different sizes. Firms enter into alliances with numerous purposes such as cost-economising in production and research, strengthening market position and accessing other firms' intangible assets.

Alliances are also formed to combine and/or access intangible assets, such as management skills, technical know-how or brand names. Such agreements are aimed at long-term profit optimising by attempting to enhance the value of the firm's assets, rather than at shorter-term cost-cutting. A study of joint ventures in the United States between 1986-93 verified this effect through analysing the stock market value of the companies participating in the alliance.

INDUSTRY WISE ANALYSIS

The recent years has showed tremendous growth in the M&A deal. It has been actively playing in all industrial sectors. It is widely spreading far across the stretches of all industrial verticals and on all business platforms. The increasing volume is witnessed in various sectors like that of finance, pharmaceuticals, telecom, FMCG, industrial development, automobiles and metals. Intangible assets play a crucial role in each and every industry. However their major impact will be in (1) Pharma Industry (2) Information Technology and (3) Consulting/ Service Industry.

PHARMA INDUSTRY

Like many other industries, the pharmaceutical industry experienced a high rate of M&A activity in the 1980s and 1990s. Most of the leading firms in 2003 are the result of one or more horizontal mergers – for example, Glaxo-SmithKline's antecedents include Glaxo, Wellcome, SmithKline French and Beecham; Aventis is the cross-national consolidation of Hoechst (German), Rhone-Poulenc (French), Rorer, Marion, Merrill, Dow (all US), Pfizer is the combination of Pfizer, Warner-Lambert, and Pharmacia, which included Upjohn. Only three of the top US companies have not been involved in major horizontal acquisitions in the last 15 years. The 10-firm concentration ratio based on global sales has increased from 20 percent in 1985 to 48 percent in 2000. All 1999 international joint ventures except one (13 joint ventures) were for manufacturing co-operation, half of which were for pharmaceuticals production in China.

In the pharmaceutical sector, for example, 50% or more of a company's total assets can be intangible, as in the case of Pfizer, or constitute a significant part in the growth in assets, as in the case of Procter and Gamble.

Pharma Industry is the most benefitted industry, as it is totally linked with the major intangible assets. As majority of Intangible assets are integral part of the industry in production as well as in marketing.

The invention is the source/origin for the pharma Industry with which development of a pharma company will be derived. The patent of such invention, either of the promoters of the company or its employees is the key element in the success of the pharma sector. Similarly other IPRs like the patents, copyrights and trade marks will have its role in the development of the pharma industry. The licences of such IPRs are again crucial in development of business. All such IPRs can be properly valued and disclosed in Balance Sheet with which strength of Balance Sheet will be improved. The Intangible asset disclosed in Balance Sheet definitely shows its impact not only on the valuation of share and business but also on the negotiations in pharma industry. Through Mergers and Amalgamations it is easy to acquire or inherit the Intangible assets of one pharma company to another. Notable mergers in the Indian pharmaceutical sector were the ones relating to Ranbaxy, Matrix Laboratories and Nicolas Piramal.

INFORMATION TECHNOLOGY

In Information Technology (IT) sector the significant Intangible asset is Human Resources (HR). The valuation of HR is critical aspect as the approach in the measurement of HR and its contribution is a complicated one. There will be definitely major departure with HR valuation as one way. Human brain is the backbone of any IT company and its recognition in Balance



Intangible assets such as brands, intellectual property and licenses now comprise a greater percentage of the economic value of successful businesses than ever before. Some economists argue that they represent the main performance drivers in the current transition from a traditional financial economic structure to a new knowledge-based economy.

Share valuation will result in substantial improvement in asset valuation on share price. Notable amalgamation cases in the IT sector was the merger of Reliance Communication's telecoms tower business with GTL infrastructure Ltd. for USD 11 billion and the acquisition by BhartiAirtel of Kuwait based Zain Telecom's African business for USD 10.7 billion. Also the Reliance Industries acquired Infotel broadband for USD 1 Billion.

Apart from the HR other Intangible Assets are copyrights, designs of source codes, trademarks, service marks of their brands, websites and other factors add for the Intangible assets valuation. Similarly the licenses also affect the intangible assets valuation and the patents are also granted to certain IT companies which will have a major impact on the Mergers and Amalgamations.

Technology is driving the formation of strategic alliances at the international level in several different but intertwined ways, reflecting the growing ease of communication, cost of research, and need for international standards. The emergence of new communication tools such as the Internet, electronic mail and electronic data interchange (EDI) make cross-border collaborations far easier and more practical than ever before. These information technologies have changed the manner of doing business in many sectors and have enabled firms to share know-how, information, distribution networks and other assets in different locations simultaneously. Technology related alliances among firms are generally aimed at gaining economies of scale and scope in research and development.

In IT industry, the number of companies whose value lies largely with their intellectual capital has increased dramatically in recent years. In 1999, Dr Margaret Blair of the Brookings Institution studied the shift in the make-up of company assets of thousands of non-financial companies over the 20-year period from 1978 to 1998. She found a significant shift in the relationship between tangible and intangible assets over time. In 1978 approximately 80 percent of corporate value was due to tangible assets, with 20 percent accounted for by intangibles. By 1998, the proportions were reversed, with 80 percent of corporate value associated with intangible assets and only 20 percent with tangibles.

The rapid rise of the Internet parallelly with the exponentially growing capabilities of information technology (computers, communications, etc.) has moved the industrialized world into a new economic paradigm: the economics of abundance. In the industrial era tangible assets were the major source of value; but

in the information era information has more value than tangible assets.

CONSULTING/SERVICE INDUSTRY

In Consulting/Service Industry unlike other industries all Intangible assets will have proportionate impact on valuation. Like IT Industry here also first and foremost is the HR valuation. Likewise HR valuation plays a crucial role in copyrights, designs and brand name. Significant characteristic in Consulting/Service is through tangible assets and through their appearance in Balance Sheet maybe minimal, still in Mergers and Amalgamations with intangible assets the valuation gets far higher. The recent M&A cases in service sectors were TCS's acquisition of Aviation Software Development Consultancy and HCL's acquisition of Aquila technology.

VALUATION OF INTANGIBLE ASSETS FOR MERGERS AND ACQUISITIONS

Whether it is in evaluating M&A synergies or simulating their post-merger impact on financial statements, intangible asset valuation and due diligence are key to the success or failure of M&A deals. In view of this, intangible asset valuation over the course of a M&A transaction needs to include three major components: comprehensive planning at the initial stage, full and accurate evaluation and due diligence leading up to the deal, and effective post merger integration.

- It is necessary to thoroughly understand the enterprise's core value, the nature of its intangible assets, and the implications of the merger/acquisition; the feasibility of the merger must be assessed; and a detailed and accurate plan must be developed for on-site due diligence
- As for valuations in the course of the investigation, it is necessary, on the one hand, to integrate technical, legal, financial, tax and industrial consulting, and to understand intangibles thoroughly (including their market characteristics, competitiveness, originality, legal protections and so on); on the other hand, it is necessary to carry out an assessment of potential intangible assets (that is, a preliminary purchase price allocation), and to develop a good understanding of the sources of intangible asset values and their impact on future financial reports. Additionally, one needs to properly estimate the expected synergies, costs and risks, and to formulate a rigorous integration plan on the basis of those estimates.
- In terms of effective post-merger integration, what is required is effective implementation of the integration plan, along with regular tracking consolidation performance and formulation



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of improvement plans as needed.

COMMON SOURCES OF ERRORS IN INTANGIBLE ASSET ASSESSMENT*

Intangible assets have no physical form and value can be hard to assess, because-

- ▶ Failure to understand the enterprise's core value and the special characteristics of its intangible assets
- ▶ Neglect of external industrial and technological competition, such that the service lives of intangible assets are incorrectly estimated
- ▶ Inability to extract intangible asset values individually, so that values are counted twice
- ▶ Asymmetric information making it impossible to get complete information
- ▶ Insufficiently rigorous analysis of the earnings-related utility from future use, underestimation of the deal's costs and risks, or overestimation of the expected synergies
- ▶ Inappropriate valuation methods, or use of unrealistic numbers for comparisons when doing valuations
- ▶ Insufficiently thoroughgoing on-site due diligence, where there is a failure to carry out comprehensive due diligence on the technological, legal, financial and other aspects of intangible assets.

Conclusion

Intangibles are not only inert, they also became commodities in many industries today because most business enterprises have equal access to them. Pharmaceutical companies have similar access to the best pharmaceutical researchers (human capital). Most companies can license-in patents or acquire R&D capabilities *via* corporate acquisitions. The same happens and is usual with brands.

The inertness and commoditization of most intangibles have important implications for today's corporations, their managers and investors.

Merger and acquisition and other large strategic investments

require more transparency concerning the intangible assets of business enterprises. Mergers and acquisition, which decreased in significance with today's lower stock market perspectives, will become more important for companies as they represent often the only way to sell created intangibles that are not anymore of use or do not fit to a new business strategy, or to acquire intangible resources needed to execute a new strategy (such as a customer base or new technologies). But the evaluation of these kinds of strategic investments represents a major challenge for investors, investment bankers and corporate managers.

The merger between Hewlett-Packard (H-P) and Compaq is a good example. The CEOs stated that the new organization will cut costs substantially and become a major player in the highly profitable tech services sector. In contrast to this opinion, the Hewlett and Packard heirs were reported to be against the merger because all past big mergers between technology companies failed. Both companies are intangibles-intensive.

Their major assets are intangible assets such as valuable patents, widely recognized brands, and highly qualified employees. It would be interesting to see what an intangible (intellectual) capital analysis would reveal in the H-P/Compaq merger case and similar ones.

Strategic alliances for R&D, both domestic and international, are concentrated in knowledge-intensive sectors such as information and communication technology (ICT) and pharmaceuticals. The ICT sector recorded the greatest number of cross-border technology-related alliances in 1980-96, at 37% of the total. The pharmaceutical sector had the second largest share, accounting for 28% of the total.

Pharmaceutical companies use alliances to out source a major share of research and development in order to accelerate needed product breakthroughs. Over the period 1980-95, the degree of international technology-related collaboration has more than doubled, including joint research and cross-border patent ownership. The share of patents in OECD countries involving at least two inventors from different countries had increased from 2.1% in 1980 to 4.7% in 1995, meaning that about five patents out of 100 invented in the OECD are the fruit of international collaboration.

Although the degree of internationalisation of technology (measured by the degree of crossborder patent ownership) varies among OECD countries, smaller countries (such as Belgium, Austria and Ireland) and more recent OECD Members (such as Mexico and Poland), which have relatively smaller domestic knowledge and research bases, are highly internationalised. Among the larger countries, the United Kingdom is most internationalised. Four sectors (chemicals, petroleum refining, pharmaceuticals and food and beverages) are the most global in terms of cross-border patenting.

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* also refer the write up by Amrita Nair in Business Line dated November 20, 2012.



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Corporate Restructuring and Insolvency

➤ Corporate Restructuring could be done through mergers, demergers, reverse mergers, disinvestment, takeover/acquisition, joint ventures, strategic alliances, slump sale, buy back, etc. These have briefly been explained here.

INTRODUCTION

As per Collins English dictionary, meaning of corporate restructuring is a change in the business strategy of an organization resulting in diversification, closing parts of the business, etc., to increase its long-term profitability. Corporate restructuring is defined as the process involved in changing the organization of a business. Corporate restructuring can involve making dramatic changes to a business by cutting out or merging departments that often has the effect of displacing staff members.

Corporate Restructuring in India

The opening up of the Indian economy and the government's decision to disinvest, and take apart certain qualitative and quantitative fetters has made corporate restructuring more relevant today, bound by the present economic scenario and market conditions. In the last few years, Indian corporate sector has followed the worldwide trend in consolidation of companies through mergers, acquisitions and strategic interventions.

The process of mergers and acquisitions has gained substantial importance in today's corporate world. This

process is extensively used for restructuring the business organizations. In India, the concept of mergers and acquisitions was initiated by the government bodies. Some well known financial organizations also took necessary initiatives to restructure the corporate sector of India by adopting the mergers and acquisitions policies. The Indian economic reform since 1991 has opened up a whole lot of challenges both in the domestic and international spheres. The increased competition in the global market has impelled the Indian companies to go for mergers and acquisitions as an important strategic choice. The trends of mergers and acquisitions in India have changed over the years. The immediate effects of the mergers and acquisitions have also been diverse across the various sectors of the Indian economy.

Corporate Restructuring as a Business Strategy

Corporate restructuring is the process of significantly changing a company's business model, management team or financial structure to address challenges and increase shareholder value. Restructuring may involve major layoffs or bankruptcy, though restructuring is usually designed to minimize the impact on employees, if possible. Restructuring may involve the company's sale or a merger with another company. For some businesses,



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restructuring is not enough to save a company from crumple. In other cases, it can add substantial shareholder value.

Companies use restructuring as a business strategy to ensure their long-term viability. Shareholders or creditors might force a restructuring if they observe the company's current business strategies as insufficient to prevent a loss on their investments. The nature of these threats can vary, but common catalysts for restructuring involve a loss of market share, the reduction of profit margins or declines in the power of their corporate brand. Other motivators of restructuring include the inability to retain talented professionals and major changes to the marketplace that directly impact the corporation's business model.

Objectives of Corporate Restructuring

- ▶ To unload loss making Businesses
- ▶ To Eliminate Debt
- ▶ To Respond to Changing Trends
- ▶ To Meet Regulatory Change
- ▶ To order redirection of the firm's activities
- ▶ To Organize surplus cash from one business to financed profitable growth in another
- ▶ To reduce risk
- ▶ To develop core competencies
- ▶ To Improve Debt-Equity ratio
- ▶ To obtain tax benefit by merging a loss making company with a profit making company
- ▶ To have a better market share
- ▶ To eliminate competition between the companies.

Needs of Corporate Restructuring

- ▶ To focus on core strengths, operational synergy and efficient allocation of managerial Capabilities and infrastructure
- ▶ Consolidation and economies of scale by expansion
- ▶ Revival and rehabilitation of a sick unit by adjusting losses of the sick unit with profits of a healthy company
- ▶ Acquiring constant supply of raw materials and access to scientific research and technological developments
- ▶ Capital restructuring by appropriate mix of loan and equity funds to reduce the cost of servicing and improve return on capital employed.

Legal and Regulatory Guidelines for Corporate Restructuring

- ▶ The Companies Act, 1956
- ▶ Income Tax Act, 1961
- ▶ Listing Agreement
- ▶ Companies (Court) Rules, 1959
- ▶ The Indian Stamp Act, 1899
- ▶ SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011



Companies use restructuring as a business strategy to ensure their long-term viability. Shareholders or creditors might force a restructuring if they observe the company's current business strategies as insufficient to prevent a loss on their investments. The nature of these threats can vary, but common catalysts for restructuring involve a loss of market share, the reduction of profit margins or declines in the power of their corporate brand.

Tools of Corporate Restructuring

1. Merger

Merger is the combination of two or more companies which can be merged together either by way of amalgamation or absorption. The combining of two or more companies, is generally by offering the stockholders of one company securities in the acquiring company in exchange for the surrender of their stock.

Horizontal Merger: It is a merger of two or more companies that compete in the same industry. It is a merger with a direct competitor and hence expands as the firm's operations in the same industry. Horizontal mergers are designed to achieve economies of scale and result in reduce the number of competitors in the industry.

Vertical Merger: It is a merger which takes place upon the combination of two companies which are operating in the same industry but at different stages of production or distribution system. If a company takes over its supplier/producers of raw material, then it may result in backward integration of its activities. On the other hand, Forward integration may result if a company decides to take over the retailer or Customer Company. Vertical merger may result in many operating and financial economies. Vertical merger provides a way for total integration to those firms which are striving for owning of all phases of the production schedule together with the marketing network

Co generic Merger: In these mergers the acquirer and target companies are related through basic technologies, production processes or markets. These mergers represent an outward



movement by the acquiring company from its current set of business to adjoining business. The potential benefit from these mergers is high because these transactions offer opportunities to diversify around a common case of strategic resources.

Conglomerate Merger: These mergers involve firms engaged in unrelated type of activities i.e. the business of two companies are not related to each other horizontally nor vertically. In a pure conglomerate, there are no important common factors between the companies in production, marketing, research and development and technology. Conglomerate mergers are merger of different kinds of businesses under one flagship company. The purpose of merger remains utilization of financial resources enlarged debt capacity and also synergy of managerial functions. It does not have direct impact on acquisition of monopoly power and is thus favoured throughout the world as a means of diversification.

2. Demerger

It is a form of corporate restructuring in which the entity's business operations are segregated into one or more components. It is the converse of a merger or acquisition. A demerger may possible through a Spin off, Split off, Split up and Sell off.

Spin off: In spin off company distributes its shareholding in subsidiary to its shareholders without changing the ownership pattern.

Split off: The act of splitting off is a part of an existing company to become a new company, which operates completely separate from the original company. Shareholders of the original company are usually given an equivalent stake of ownership in the new company.

Split up: If an existing company is dissolved to form a new company it is known as split up.

Sell off: If a company sells its non- profit making division it results in sell off.

A demerger is often done to help each of the segments operate more smoothly, as they can now focus on a more specific task.

3. Reverse Merger

Reverse merger is the opportunity for the private companies to become public company, without opting for Initial Public offer (IPO). In this process the private company acquires the majority shares of public company, with its own name.

4. Disinvestment

Disinvestment means the action of an organization or government selling or liquidating an asset or subsidiary. It is also known as "divestiture". A company or government organization will divest an asset or subsidiary as a strategic



move for the company, planning to put the proceeds from the divestiture to earn a higher return on investment.

5. Takeover/Acquisition

Takeover means an acquirer takes over the control of the target company. It is also known as acquisition. Normally this type of acquisition is undertaken to achieve market supremacy. It may be friendly or hostile takeover.

Friendly takeover: In this type, one company takes over the management of the target company with the permission of the board.

Hostile takeover: In this type, one company takes over the management of the target company without its knowledge and against the wish of their management.

6. Joint Venture (JV)

A joint venture is an entity formed by two or more companies to undertake financial activity together. The parties agree to contribute equity to form a new entity and share the revenues, expenses, and control of the company. It may be Project based joint venture or Functional based joint venture.

Project based Joint venture: The joint venture entered into by the companies in order to achieve a specific task is known as project based JV.

Functional based Joint venture: The joint venture entered into by the companies in order to achieve mutual benefit is known as functional based JV.

7. Strategic Alliance

Any agreement between two or more parties to collaborate with each other, in order to achieve certain objectives while continuing to remain independent organizations is called strategic alliance.



8. Franchising

Franchising may be defined as an arrangement where one party (franchiser) grants another party (franchisee) the right to use trade name as well as certain business systems and process, to produce and market goods or services according to certain specifications.

The franchisee usually pays a one-time franchisee fee plus a percentage of sales revenue as royalty and gains.

9. Slump sale

Slump sale means the transfer of one or more undertaking as a result of the sale of lump sum consideration without values being assigned to the individual assets and liabilities in such sales. If a company sells or disposes of the whole or substantially the whole of its undertaking for a predetermined lump sum consideration, then it results in a slump sale.

10. Buy Back

Buy back means the repurchase of outstanding shares by a company in order to reduce the number of shares on the market. Companies will buy back shares either to increase the value of shares still available or to eliminate any threats by shareholders who may be looking for a controlling stake. The Company may buy back its own shares from the open market over an extended period of time, by utilizing the Free Reserves and funds from Securities Premium Account.

Risks of Corporate Restructuring

- ▶ The company fails to improve its business position and is forced to close
- ▶ A poorly managed restructuring can introduce greater uncertainty with shareholders and result in stock price declines
- ▶ Even well-executed restructuring can threaten a business's trustworthiness and brand
- ▶ Restructuring in some severe cases may also involve greater government control over decision-making at the company, especially in serious economic times.

Insolvency–Meaning

In legal terminology, it is the situation where the liabilities of a person or firm exceed its assets. In practice, however, insolvency is the situation where an entity cannot raise enough cash to meet its obligations, or to pay debts as they become due for payment. Mere insolvency does not afford enough ground for lenders to petition for involuntary bankruptcy of the borrower, or force a liquidation of his or her assets.

Corporate Insolvency

A company is considered to be insolvent, if it is unable to pay its debts.

There are two tests for corporate insolvency:

- ▶ **Cash-Flow test:** If the company is unable to pay its debts as and when they fall due for payment
- ▶ **Balance Sheet test:** If the value of the company's assets is less than the amount of its liabilities.

The Companies (Second Amendment) Act, 2002 is now operational and the Sick Industrial Companies (Special Provisions) Act, 1985 has been retracted by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003. In India now, procedures for the restructuring and insolvency of companies are contained in the same Act. The Second Amendment is an attempt to create a balance between restructuring and insolvency. The Second Amendment seeks to provide a quick, convenient and timely procedure for dealing with the affairs of a sick industrial company.

Objectives of Corporate Insolvency

- ▶ To restore the debtor company to profitable trading where this is practicable
- ▶ To exploit the return to creditors as a whole where the company itself cannot be saved
- ▶ To set up a fair and equitable system for the ranking of claims and the distribution of assets among creditors, involving a redistribution of rights and
- ▶ To provide a mechanism by which the causes of failure can be identified and those guilty of mismanagement brought to book, and where appropriate, deprived of the right to be involved in the management of other companies.

Cross Border Insolvency

Cross-border insolvency is a term used to describe circumstances in which an insolvent debtor has assets and creditors in more than one country. A cross-border insolvency matter would arise with regard to a company in the following situations:

- ▶ A company may have dealings with parties situated in other countries
- ▶ The company may own interest in properties in other countries
- ▶ Liabilities may be owed to connections with a different country.

Risks of cross-border insolvency

- ▶ Identifying and locating the debtors' assets
- ▶ converting the assets into a monetary form
- ▶ Identifying and reversing any voidable or preference transactions which occurred prior to the administration
- ▶ Identifying creditors and the extent of their claims
- ▶ Making distributions to creditors in accordance with the appropriate priority.

Procedure for Corporate Insolvency

The National Company Law Tribunal (NCLT) is to be established in place of Company law Board having powers to



consider revival and rehabilitation of companies and matters relating to the winding up of companies as well as to deal with the pending liquidation applications transferred from the High Court.

The Board of Directors of the company may apply to the NCLT (when established) and prepare a scheme for the revival and rehabilitation of the company. The application and scheme must be accompanied by a statement prepared by the company's auditor.

The NCLT would make inquiries about the financial state of the company and its prospects. They may require a group of experts to assist in making the inquiry. The NCLT can make an order putting a scheme in place or ordering that the company be liquidated. Creditors may also put forward a scheme.

Approval of a scheme requires consent of all parties by providing financial assistance within 60 days. However, a non-reply is taken as consent. Every party providing financial assistance has a right of rejection. This right of rejection cannot be overridden by a Court.

In a rehabilitation, the debtor remains in possession of the entity. If the NCLT comes to the conclusion that the sick industrial company cannot be revived and that it is just and equitable for the company to be wound up, the Tribunal shall order the winding-up of the company. A levy is charged on each company to establish a rehabilitation and revival fund for sick industrial companies.

The Companies Bill, 2011*-Restructuring and Insolvency of Company (Clause 254)

The Companies Bill, 2011 offers considerable role for professionals in the area of restructuring and insolvency of

company.

Company Administrator

- ▶ The NCLT may appoint a company administrator from the panel of company secretaries, Advocates, CAs, CWAs maintained by the Central Government
- ▶ It will prepare a scheme of revival and rehabilitation
- ▶ If revival scheme is not approved by the creditors, the Tribunal shall order winding up of the company
- ▶ No civil court shall have jurisdiction in respect of any matter on which tribunal or Appellate tribunal is empowered.

Role and Responsibility of Insolvency Practitioners

Roles

1. As Company Administrator: An insolvency practitioner may act as a company administrator in case of revival and rehabilitation of a sick company.
2. As Company Liquidator: An insolvency practitioner may act as a company liquidator in case of winding up of a company.
3. As Negotiator and Arbitrator: An insolvency practitioner may act as a negotiator and arbitrator between different stakeholders.

Responsibilities

- ▶ To collect the company assets
- ▶ To determine the outstanding claims against the company
- ▶ To ascertain any misconduct which has caused prejudice to the general body of creditors

Conclusion

Corporate restructuring is the superlative tool available for the companies to restructure their organization in an efficient manner. The process of restructuring should be in such a way that it should not affect the shareholders and brand image of the company. As per the law the liquidation process remains an integral part of corporate insolvency, but there should be a step towards enacting a comprehensive framework on rescue mechanisms to help rehabilitate sick companies that have the potential to be revived and to make profits. Now the great responsibility is on the professional's like Company secretaries, Chartered Accountants, Cost Accountants, etc. to deal with the corporate restructuring and insolvency with utmost care. CS

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* On 18.12.2012 the Lok Sabha has passed the Bill as Companies Bill, 2012. Highlights of the Bill are published elsewhere in this issue.



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Corporate Restructuring and Insolvency

➤ Corporate restructuring is a process of consolidation or rearrangement in the organization and business operations aimed at strengthening the financial position so as to achieve short term as well as long term business objectives in the competitive environment. The different processes of restructuring have been explained and the role of company secretaries in such processes have been outlined.

"It is the learners who survive, the learned soon find themselves living in a world that no longer exists."

- Eric Hoffer.

INTRODUCTION

A Company sets up a business with the objective of carrying on a business such as trading or shipping or mining or manufacturing. For the purpose of the business the Company borrows money from Financial Institutions and banks on certain terms and conditions like security, repayment period, interest rate, default conditions, and creation of security. The loans are for the purpose of acquiring capital fixed assets like land and building, plant and machinery, and for carrying on its day to day activities and working capital for making payments for raw materials, wages, overheads like rent, water, power and other business expenses involving business credit. As a strategy, the company seeks strategic alliances and joint ventures to grow. A company may also acquire companies with same or similar lines of business, asset base, established customers, etc. which are complementary and synergetic with its main lines of business. It may, therefore, undertake various forms of

corporate restructuring such as take overs, amalgamations, and mergers/demerger by suitable schemes of arrangements with the approval of the shareholders and other interested parties and the intervention of the High Court as per the provisions of law.

MEANING OF CORPORATE RESTRUCTURING

There is no definition of the term corporate restructuring in law. However, the term has a wide meaning in business. Generally speaking it means 'to give a new structure or rebuild or rearrange the organization or business of the company to increase efficiency, economies of scale and profitable growth'. It involves a process of consolidation or rearrangement in the organization and business operations aimed at strengthening its financial position so as to achieve its short-term and long term business objectives in the competitive environment. Corporate Restructuring helps an organisation to meet competitive market challenges.

FORMS OF CORPORATE RESTRUCTURING

(a) Amalgamations and Mergers



The Income tax Act, 1961 vide section 2(1B) defines amalgamation where one or more companies may merge with another or two or more companies to form one Company in which the assets and liabilities of the companies become those of the amalgamated company. The shareholders holding not less than 75% of the value of the shares in the amalgamating company/ies become shareholders of the amalgamated company. The scheme is subject to the approval of the shareholders in general meeting by special resolution. The scheme of amalgamation requires intervention and sanction of the High Court under sections 394 to 396 of the Companies Act, 1956 and becomes effective on the date of filing of the Court sanction with the Registrar of Companies.

(b) Demergers

Demerger is defined in the Income Tax Act, whereby the demerged company transfers its undertaking/s to the resulting company so that its properties and liabilities become the properties and liabilities of the resulting company. The shareholders holding not less than 75% of the value of the shares in the demerged company become shareholders of the resulting company. The scheme is subject to the approval of the shareholders in general meeting by special resolution. The scheme of demerger requires similar intervention and sanction of the High Court under sections 391-394 of the Companies Act, 1956 and becomes effective on the date of filing the Court order with the Registrar of Companies.

(c) Buy back of shares

Section 77A of the Companies Act, 1956 permits a company to buy back its shares subject to the prescribed conditions. This form of capital restructuring is usually followed by companies with large general reserves. This is subject to the approval of the shareholders by special resolution in general meeting.

(d) Reduction of share capital

Section 100 of the Companies Act, 1956 permits a company to extinguish or reduce the liability in respect of unpaid share

capital or cancel any paid up share capital which is lost or not represented by available assets or repay any part of the paid up share capital which is in excess of its wants. This is subject to the approval of the shareholders by special resolution in general meeting.

(e) Conversion of loans/debentures into shares

A Company can also convert its loans and debentures into share capital to reduce debt cost and interest in the long run. Loan agreements usually contain a provision for conversion of loans into shares at the option of the lenders. Such an arrangement does not strain the Company's resources. The conversion of debt into shares requires the approval of the shareholders by special resolution in general meeting, the consents of the lenders, debenture holders & Debenture Trustees. The share issue has to be done in accordance with the SEBI (ICDR) Guidelines and the provisions of the Listing agreement with the Stock Exchange. The provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations and the SEBI (Insider Trading) Regulations, have to be strictly complied with.

INCOME TAX BENEFITS ON AMALGAMATIONS/MERGERS AND DEMERGERS

The Income Tax Act, 1961 exempts capital gains in the hands of the amalgamating company on transfer of assets under section 47(vi) and the shareholders of the amalgamating company on transfer of shares to the amalgamated company under section 47(vii), subject to the conditions stipulated. The Income Tax Act also permits carry forward and set-off of accumulated losses and unabsorbed depreciation of the amalgamating company owning an industrial undertaking or a ship or a hotel to the amalgamated company, subject to the conditions stipulated.

CORPORATE RESTRUCTURING & INSOLVENCY

One of the important areas of corporate restructuring is the special measures required for the organisation to survive, consolidate and grow during an insolvency phase. Often, due to unforeseen circumstances especially in an uncertain economic and political scenario like India, a Company fails to achieve its business objectives and therefore defaults in meeting the committed repayments of the loans to its creditors such as secured creditors, debenture holders and trade creditors. As a result, the creditors file a number of legal cases for money recovery from the defaulters or winding up in cases of admitted dues. Such cases can bring a company's functioning and earnings to a complete stop due to orders of attachment of fixed assets, bank accounts, court injunctions,



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The main reasons for financial default are rising interest rates, scarcity of working capital, poor economies of scale, mismanagement, and slowdown in the Indian economy. Sectors like aviation, textile, infrastructure, iron and steel and telecom have been the worst hit.

recovery proceedings and liquidation proceedings. Therefore the company's top management must take proactive steps to address these issues before it is too late.

The main reasons for financial default are rising interest rates, scarcity of working capital, poor economies of scale, mismanagement, and slowdown in the Indian economy. Sectors like aviation, textile, infrastructure, iron and steel and telecom have been the worst hit.

When a company defaults in repayment of its debts over a period of time, its assets will be classified by the bank as a "non-performing asset (NPA)" and the Bank will have to make adequate provision for such bad and doubtful debts which will affect its liquidity, solvency and profitability.

The debt servicing cost will also increase due to penal interest. Further there will be debt recovery proceedings against the company under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as amended. Steps may also be taken by the unsecured creditors for the winding of a company under the provisions of the Companies Act, 1956 or for insolvency proceedings under the Provincial Insolvency Act. This may adversely affect the business continuity, image and performance of the company. A company classified as NPA, will not be able to obtain fresh loans and other banking facilities except against high margin money and other security.

As per the published figures, the magnitude of loans under the restructuring process, is estimated at "Rs 50,250 crore which were referred for corporate debt restructuring (CDR) during the April-December period of the current financial year ended 31.03.2012. Currently, total outstanding loans referred for restructuring are worth Rs. 1.43 lakh crore, according to CDR forum data. With a share of 26.8%, the iron and steel sector accounts for most of these, followed by infrastructure (12%) and textiles (8%). However, the banks have said that the NPA situation is very much manageable and under control".

FINANCIAL AND BUSINESS RESTRUCTURING DURING INSOLVENCY

The Corporate Restructuring process during insolvency,

usually takes the form of Financial Restructuring (FR) and Business Process Restructuring (BPR) to consolidate and achieve business survival and growth. In FR, there will usually be large accumulated losses reflected in the balance sheet of the company exceeding its net worth, due to which the lenders will hesitate to grant loans or other facilities except against high margins.

Financial restructuring takes place by way of reduction share capital, reduction of debt by sacrifice, reduction of cost of debt (loans and debentures) by conversion into equity or Zero% Optional Fully Convertible Debentures (ZOFCDs), repayment of debt, reduction of interest rates, rescheduling the repayment period, which will help the Company to survive and meet its commitments in the medium and long run. The form of restructuring is usually the schemes of arrangements and compromise with the secured creditors and/or debenture holders under sections 391-394 of the Companies Act, 1956; mergers/demergers, takeovers by strategic investors, amalgamation, share buy-back scheme, redemption of debentures, reduction of paid up share capital under section 100 and other provisions of the Companies Act, 1956.

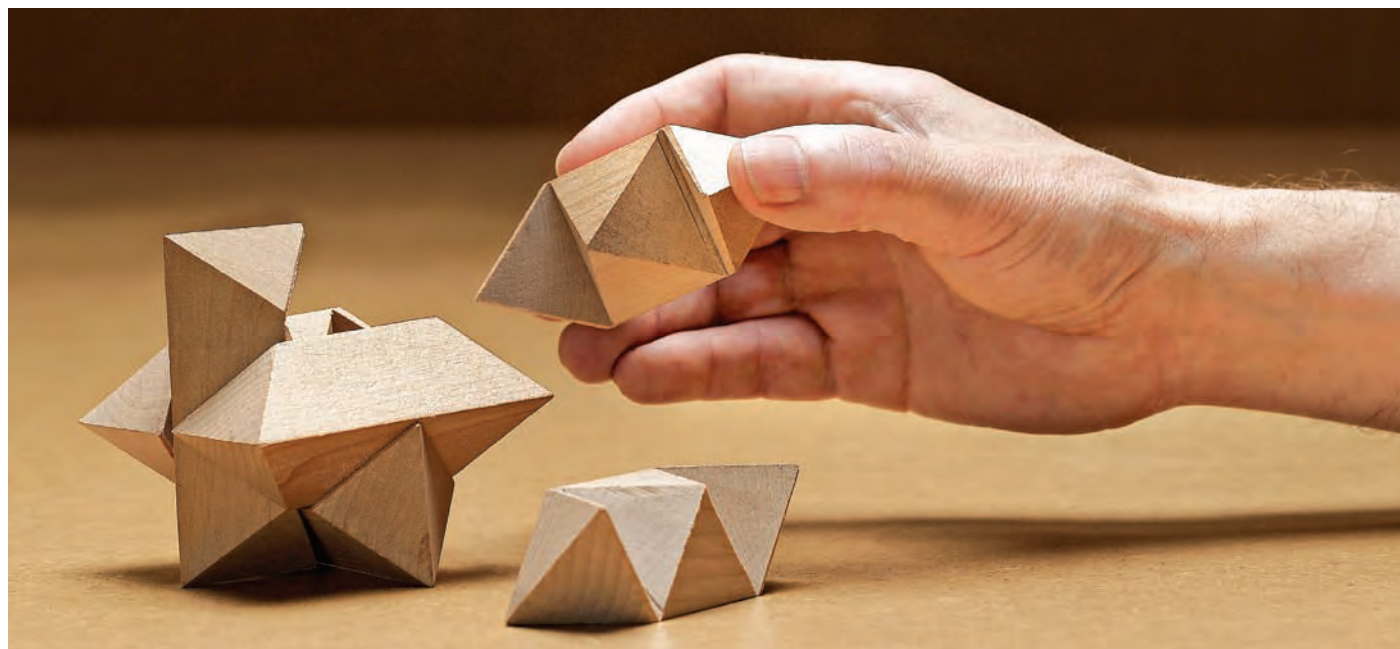
CORPORATE DEBT RESTRUCTURING PROCESS

The Corporate Debt Restructuring (CDR)² Mechanism was introduced in India as a voluntary non-statutory system based on Debtor-Creditor Agreement (DCA) and Inter-Creditor Agreement (ICA) and the in-principle approvals by the majority of 75% creditors (by value) which makes it binding on the remaining 25% creditors to accept the same. The CDR Mechanism covers only multiple banking accounts and participating consortium of lenders, with an outstanding aggregate exposure of Rs.100 million and above. It covers all categories of assets in the books of member-creditors classified in terms of RBI's prudential asset classification standards. Debt Recovery and Bureau of Industrial and Financial Reconstruction (BIFR) cases and other suit-filed cases are eligible for restructuring under CDR. The cases of restructuring of standard and sub-standard class of assets are covered in Category-I, while cases of doubtful assets are covered under Category-II.

Any one or more of the creditors having minimum 20% share

¹ Accord Fintech Pvt. Ltd Copyright 2012.

² www.cdrintia.com



in either working capital or term finance or by the concerned corporate, can invoke the CDR mechanism, if supported by a bank/FI having minimum 20% share as above. The most important part of the CDR Mechanism which is the critical element of ICA is the provision that if 75% of creditors (by value) agree to a debt restructuring package, the same would be binding on the remaining creditors. The process involves the execution of a Debtor-Creditor Agreement (DCA) which will be the legal basis for the CDR and the execution of the legally binding Inter-Creditor Agreement (ICA) by all banks /financial institutions in the CDR System. The DCA has a legally binding 'stand still' agreement binding for 90/180 days whereby both the debtor and creditor(s) agree to 'stand still' and commit themselves not to take recourse to any legal action during the said restructuring period. The scheme is usually prepared by the CDR Cell consisting of experienced bankers. The scheme also provides for the upfront injection of funds by the promoters of the Company.

CONSENTS TO BE OBTAINED FOR FINANCIAL RESTRUCTURING SCHEMES

The financial restructuring process requires the approval of the Board of Directors, the Shareholders, the Debenture Trustee, and the class of creditors covered by the scheme, through a Court convened meeting and the High Court sanctions the scheme. The scheme becomes effective on filing a court certified copy with the concerned Registrar of Companies.

THE BUSINESS PROCESS RESTRUCTURING

Business process restructuring (BPR) is aimed at business

survival and continuity in the short and long term. It will involve hard and practical measures like reduction of workforce under layoff and retrenchments as per the provisions of the Industrial Disputes Act, 1947 or a Voluntary Retirement (VRS) scheme with approvals from the concerned authorities; and other measures such as cost control, sale of assets, sale of slow and non-moving inventory, sale of scrap, increase in productivity of manpower and machine time, repair and maintenance of production facilities, injection of funds by promoters, product innovations, business diversification, optimum use of resources to achieve higher scale of production, etc.

ROLE OF COMPANY SECRETARY IN CORPORATE RESTRUCTURING AND INSOLVENCY

On showing signs of financial sickness, the top management of the company, in consultation with its auditors and solicitors, is required to prepare and offer to the secured creditors a "Restructuring Package" containing various proposals for reducing its debt cost and overheads, moratorium period/extension of loan repayment period, sacrifice required from the lenders and shareholders, measures for working capital management, etc. This will require the letter of acceptance by the secured creditors. Other options are the conversion of debt into equity or preference shares or Zero % Optional Fully Convertible bonds (ZOFCDs) and/or one time settlement (OTS) of dissenting parties. The Restructuring schemes are usually prepared by solicitors and the company's finance professionals.



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Corporate Restructuring and Insolvency

» The Company Secretary should also ensure that there are suitable clauses in the schemes for exclusion of debt for dissenting creditors; for extinction of conditions of loan agreements/sanction letters and for cessation of legal cases. He should ensure that the interests of the lenders and shareholders are amicably resolved through the CDR/Court process. He is required to have a high degree of skill throughout the restructuring process.

The Company Secretary plays a leading role in the restructuring process in reaching these objectives, especially during insolvency stage. The Company Secretary should take active part in the restructuring process and guide the Company on the practicality of the proposed schemes for reduction of share capital, compromise arrangements with the secured lenders and the debenture trustees.

The Company Secretary should also ensure that there are suitable clauses in the schemes for exclusion of debt for dissenting creditors; for extinction of conditions of loan agreements/sanction letters and for cessation of legal cases. He should ensure that the interests of the lenders and shareholders are amicably resolved through the CDR/Court process. He is required to have a high degree of skill throughout the restructuring process especially whilst issuing the notices for convening the class meetings and shareholders meeting; meeting arrangements; notices for exercise of options; advertisement of the legal notices in the newspapers; one time payments(OTS) to creditors and to file the court orders with the ROC with the Nil Dues certificates, mortgage release deeds and Deeds of Satisfaction with the ROC. Where conversion of loans into shares is required under the scheme, the Company Secretary will also be required to obtain the approvals under SEBI (ICDR) Guidelines from SEBI and the Listing agreement/s from the Stock Exchanges.

STEPS FOR RATIONALIZING CORPORATE RESTRUCTURING

In view of the large and growing number of NPS in India, it is necessary for the Central Government in consultation with RBI, Banks and financial Institutions to evolve a suitable Corporate Debt Restructuring (CDR) system that is transparent, less

cumbersome and speedy to implement as presently it takes two to 3 years to obtain CDR Sanction. Secondly, dissenting creditors can only be bound by High Court sanctioned scheme as the CDR system has no provision for enforcing compliance/acceptance of majority approval. The CDR system should be primarily encouraged as a tool to restructure the large corporate debt. The intervention of High Courts under the provisions of the Companies Act, 1956 is time consuming, costly and cumbersome. The National Company Law Tribunal is yet to be established. Tax benefits should be reformed to give liberal exemptions and deductions to encourage corporates to undergo CDR and become productive in the use of the Country's resources, instead of being an NPA undergoing financial crisis and corporate distress. The legal, regulatory and accounting environment should be more supportive towards successful corporate restructuring. The Government should be prepared to take on a large and more meaningful role in the restructuring process.

CORPORATE RESTRUCTURING GLOBALLY AND IN INDIA

Since 1980s, corporate restructuring *via* strategic alliances have been very popular. Strategic alliances in the form of mergers and acquisitions are proving to be a powerful tool, particularly in today's world, due to the need to build differential capabilities in more areas than a company has resources or time to develop. According to the 2008 Boston Consulting Group (BCG) New Global Challengers report, BCM 100, top companies from rapidly developing economies (RDEs) such as India, China, Russia, Mexico and Brazil, are changing the world and challenging the dominance of establishing multinational players across the world. In 2006, they completed 72 outbound acquisitions, up from 21 in 2000. The average size of these transactions grew from \$156 million in 2001 to \$981 million in 2006 of the 100 companies on BCG's list, 41 are from China, 20 from India and 13 from Brazil, with the rest coming from other rapidly developing economies.

Economic reforms and deregulation of the Indian economy have brought in more domestic as well as international players in Indian industries. The first merger and acquisition wave took place in India towards the end of 1990s. These mergers and takeover exhibit a sharp rise in the overall merger and acquisition activity in the Indian corporate sector while there were from 1988 to 1990 (58 cases) which rose in 1991 (71 cases) and 1998 (730 cases). Since 1993, the rate of rise had maintained an average of 20.5%. After 2001, the mergers & acquisitions trend has shown a decline³

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³ Corporate restructuring in India with special reference to strategic intervention - K. D. Pandey and J. Goantiya (March 2012)



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Procedural Aspects including documentation for Mergers and Amalgamations

➤ Amalgamations, mergers, arrangements, demergers etc. being various modes of corporate restructuring involve complying with a host of procedures and formalities including meetings, filing of documents etc. These have comprehensively been outlined in this article.

Combinations, Compromises, Arrangements, Mergers, Amalgamations, Reconstructions, Demergers, etc... have to be in accordance with Sections 390 to 394A and 396A of the Companies Act, 1956 read with Rules 67 to 87 of the Companies (Court) Rules, 1959. The procedural aspects are common for all these. Before discussing the steps involved in mergers/amalgamations it would be appropriate to know the meaning of the terms combination, amalgamations, mergers and coverage of companies for the scheme of amalgamations/mergers etc.

Combination

The term 'combination' is used for merger and amalgamations in the Competition Act. Combinations are regulated under the Act if the combining entities cross the threshold limit of assets and turnover and the Competition Commission is to be informed in this regard.

Mergers

A merger can be defined as the fusion or absorption of one company by another; in a merger, one of the two existing companies merges its identity into another existing company. Also, one or more existing companies may form

a new company and merge their identities into a new company by transferring their assets and liabilities to the new company.

Amalgamation

Amalgamation is a legal process by which two or more companies are joined together to form a new entity. The word 'amalgamation' or 'merger' is not defined anywhere in the Companies Act, 1956. However Section 2(1B) of the Income Tax Act, 1961 defines 'amalgamation' as follows:

"Amalgamation in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company), in such a manner that-

- (i) all the properties of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;
- (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the



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The Court is duty bound to ascertain the *bona fides* of the scheme and whether the scheme is *prima facie* feasible. The Court will not act merely as a rubber stamp while sanctioning a scheme. The Court must consider the application on merits.

amalgamation;

- (iii) shareholders holding not less than three-fourth in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation, otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company."

Thus, for a merger to qualify as an 'amalgamation' for the purpose of the Income Tax Act, the above three conditions have to be satisfied. This definition is relevant *inter alia* for Sections 35(5), 35A(6), 35E(7), 41(4) Explanation 2, 43(1)Explanation 7, 43(6) Explanation 2, 43C, 47 (vi) & (vii), 49(1)(iii)(e), 49(2), 72A of the Income Tax Act, 1961.

Arrangement/compromise

The meaning of the expression 'arrangement' as given under Section 390(b) of the Companies Act includes reorganization of share capital of the company by consolidation of shares of different classes or division into different classes of shares or both. 'Compromise' presupposes the existence of a dispute which it seeks to settle. Nothing like that is implied in the word 'arrangement' which has wider meaning than 'compromise'. An arrangement involves an exchange of one set of rights and liabilities for another. An arrangement, for example, could result in the exchange of shares of one class for shares of a different class. All modes of reorganizing the share capital, takeover of shares of one company by another including interference with preferential and other special rights attached to shares can form part of an arrangement proposed with members. [*Re. General Motor Cars Co.* (1973) 1 Ch. 377; *Hindustan Commercial Bank Limited v. Hindustan General Electric Corporation* AIR 1960 (Cal.) 637]. The Supreme Court said : "Generally, where only one company is involved in a change and the right of the shareholders and creditors are varied, it amounts to reconstruction or reorganization or scheme of arrangement." [*Saraswati Industrial Syndicate Limited v. CIT* (1991) 70 Comp Cas 184 (SC)].

Meaning of 'Company' for Coverage under the scheme of Amalgamation/Merger

The expression "company" means 'any company liable to be wound up under this Act'. As per section 390(a), "company" includes even an unregistered company under section 582. [*Malayalam Plantation India Limited & Harrison's & Crossfields India Ltd. In Re.* (1985) 2 Comp LJ 409 (Ker.)]. It includes companies incorporated outside India, having business operations in India under Section 591. Simply stated, the words 'any company liable to be wound up' means a company to which the provisions relating to winding up apply. [*Khandelwal Udyog Ltd. and Acme Manufacturing Limited In Re.* (1977) 47 Comp Cas 503 (Bom)]. Thus, the expression in section 390(a) covers all companies registered under the provisions of Companies Act, 1956, and companies registered under Companies Act which were in force before the coming into force of the Companies Act, 1956. It also includes all unregistered or other companies in respect of which winding up orders can be made by a court under the provisions of the Act. The words 'a company liable to be wound up' does not mean that the winding up should have commenced or that there should be a state of affairs indicating that the company is liable to be wound up. It merely connotes that by virtue of enabling provisions under the Act, a company, even if it is not a company registered under the Act, would be wound up in accordance with the provisions of the Act relating to winding up. Thus, it is not necessary that the company should be in actual winding up i.e. the section can apply even to a company which is a going concern. [*Bank of India Ltd. v. Ahmedabad Manufacturing & Calico Printing Co. Ltd.*, (1972) 42 Comp Cas 211 (Bom)].

Court will not Act merely as rubber stamp

The Court is duty bound to ascertain the *bona fides* of the scheme and whether the scheme is *prima facie* feasible. The Court will not act merely as a rubber stamp while sanctioning a scheme. The Court must consider the application on merits. [*N.A.P. Alagiri Raja & Company v. N. Guruswamy* (1989) 65 Comp Cas 758 (Mad.)]. The Court should examine the nuts and bolts of the scheme and should not hesitate to reject the scheme or ask for additional material or even point to creditors, members, etc. of pitfalls in the scheme and the Court's role under Section 391(1) is equally useful, vital and pragmatic as under Section 391(2) [*Sakamari Metals & Alloy Limited In Re.* (1981) 51 Comp Cas 266 (Bom.)]. Where a large number of creditors opposed the scheme, it was obvious that there was no possibility of its being implemented [*Krishnakumar Mills Co. Ltd. In Re.* (1975) 45 Comp Cas 248 (Guj.)].

Court will not sanction the scheme when the petition is malafide and motivated or against the public policy etc.

If a compromise or arrangement is not *bona fide* but intended to



cover misdeeds of delinquent directors, the Court shall not sanction the scheme [*Pioneer Dyeing House Limited v. Dr. Shanker Vishnu Marathe* (1967) 2 Comp LJ 16]. If the object of the scheme is to prevent investigation or there is failure in the management of affairs of the company or disregard of law or withholding of material information from the meeting or the scheme is against public policy, the Court will not sanction the scheme [*J.S. Davar v. Dr. S.V. Marathe*, AIR 1967 Bom. 456 (DB)]. Where it was shown that the petition was made *mala fide* and motivated primarily to defeat the claims of certain creditors who had obtained decrees against the company and there was inordinate delay in making the application for sanctioning the scheme and certain information was withheld from the Company Court, the petition for sanctioning the scheme though approved by the creditors and shareholders was rejected [*Richa Jain v. Registrar of Companies* (1990) 69 Comp Cas 248 (Raj.)].

STEPS INVOLVED IN MERGERS/ DEMERGERS/AMALGAMATIONS/ COMPROMISE/ARRANGEMENTS

STEP 1 : Check the object clause of the transferor and transferee company with regard to power to go in for amalgamations and mergers etc.

STEP 2 : Draft a scheme of arrangement or amalgamation or demerger considering the following aspects (the following aspects shall be provided in the scheme):

- (a) Appointed date
- (b) Effective Date or date for Completion of all procedures
- (c) Exchange ratio or Swap ratio
- (d) Power to amalgamate - whether to be included in Main / Ancillary objects
- (e) Object clause - amend to include the object clause of the transferor
- (f) Employees benefits - to be duly taken care of
- (g) Authorized Capital - increase to fit the company post merger
- (h) Any special accounting treatment.

STEP 3 : Convene a Board meeting to consider and approve the DRAFT SCHEME and also to authorize a director or secretary to sign the applications, petitions and all other relevant documents and complete other formalities required in this regard.

Intimate WITHIN 15 minutes of the closure of the board meeting Stock Exchange by phone, fax, telegram, e-mail under Clause 20 of Listing Agreement.

A listed company has also to intimate such price sensitive information to Stock Exchange under Clause 36 of Listing Agreement.



STEP 4 : In case the transferee is a Listed Company, then it has to apply for 'IN PRINCIPLE' (Additional Listing) approval of the Stock Exchanges, where it is listed under Clause 24(a) of Listing Agreement. Where the transferee is an unlisted company, then the listed transferor company has to apply for Delisting to the Stock Exchange on getting the High Court order. The fact that shares of the transferor company will have to be delisted should not come in the way of sanctioning a scheme of amalgamation as decided in *Sumitra Pharmaceuticals & Chemicals Ltd.* (1997) 25 CLA 142 (AP)

STEP 5 : The News may be released to the press for information and others by issuing suitable Press Release.

STEP 6 : File the proposed Scheme with the Stock exchange, for approval, at least 1 month before it is presented to the Court as per Clause 24(f) of Listing Agreement and such scheme shall not in any way violate the requirement of securities laws or stock exchange.

STEP 7 : Financial institution/trustees to debenture holders, if any to be formerly advised and their consent sought.

STEP 8 : The company will make an application to the High Court concerned [under section 10] called as Judge's summons in Form No.33 (verified by an Affidavit in form No.34 of Companies (Court) Rules, 1959) seeking direction of the court to convene meeting of shareholders or creditors as the case may be.

STEP 9 : The Judges summons shall be moved *ex parte* (as decided by Supreme Court in *Chembra Orchard Produce Ltd. v. Regional Director*) 2009(1) Comp LJ 1 (SC) and the court will issue directions (in form 35) covering the following :

- (a) Fixing a day, date, place and time for the meeting
- (b) To appoint chairman of the meeting.



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- (c) To fix Quorum for the meeting.
- (d) Directing the company to advertise notice of the meeting in one English News Paper and one in Vernacular language newspaper.

STEP10 : Notice of extra ordinary general meeting: The Company will submit the draft Notice in form 36 with PROXY in form 37 and Explanatory statement (under section 393) and also the draft Advertisement in form 38 to be published in the newspaper for approval before issue or advertisement. As per Clause 24(h) of Listing Agreement, such Explanatory Statement to disclose the pre and post (expected) capital structure & shareholding pattern & fairness opinion from an independent merchant banker on valuation by the valuer for the company and unlisted company.

STEP11 : The Chairman appointed for the meeting will issue notice to all those who are entitled to with the copy of scheme and proxy form. The Chairman will also release the advertisement as directed by the court. The listed company shall also send 3 copies of all such notices & advertisements to Stock Exchange under Clause 31 of Listing Agreement.

STEP 12 : The Chairman will then file an Affidavit in the court confirming the compliance of the directions of the court (Rule 76).

STEP 13 : On the appointed day the meeting will take place, and the sense of the meeting will be ascertained only by poll as per Rule 77 of the Companies (Court) Rules, 1959. The resolution said to have passed if majority in number representing three fourths in value of the creditors or members present and voting either in person or proxies agree to any compromise or arrangement (under section 391).

STEP 14 : The Chairman then files a Report (in form 39) about the outcome of the meeting within 7 days after the conclusion of the meeting. The listed company has to send proceedings of the meeting to Stock Exchange under Clause 31 of Listing Agreement.

STEP 15 : The Company will present the petition (in form 40) to the Court seeking its confirmation for the scheme approved by the shareholders along with the said Scheme. Memorandum, Articles, Audited accounts, Valuer's Report, Chairman's Report and proof of compliances. The petition should be moved within 7 days of the filing of the report by the chairman of the meeting. A delayed petition may be rejected. File the copy of said petition with RoC in e-form 61.

STEP 16 : The court will admit petition and fix date for hearing and will issue directions to issue notice of application made under section 391 & 394 to Central Government (Regional Director and Registrar of Companies under section 394A) and

also direct the company to release an advertisement (in Form 5) in English Newspaper and Vernacular Newspaper about the date of hearing.

STEP 17 : The company will then file Affidavit (in Form 25) with the Court about the due compliance of its directions.

STEP 18 : On the date fixed for hearing, hearing will take place. If there is no objection from any sides the court will approve the scheme and will also direct the official Liquidator to submit a report on the functioning of Transferor Company to pass an order to Dissolve Transferor Company without winding up.

STEP 19 : The copy of court order under section 391 (in Form 41) will be filed with RoC in e-form 21 within 30 days (advisable to file within 14 days as per Rule 81) from the date of order and only then will come into effect [Effective Date or Completion of Procedure Date].

STEP 20 : If the transferor company ceases to exist on receipt of the Report of the Official Liquidator the Court will pass an order that the Transferor Company is dissolved without winding up.

STEP 21 : The copy of court order under section 394 (in form 42) directing properties, rights, powers, liabilities and duties of Transferor Company specified in schedule be transferred to Transferee Company without any further act / deed [vesting by operation of law]. Such order shall be effective only when filed with RoC in e-form 21 within 30 days (advisable within 14 days as per Rule 84) of receipt of order [Effective Date or Completion of Procedures Date] and also dissolution of transferor company will take effect.

STEP 22 : Fix the Book Closure date for unlisted companies and issue public notices under section 154 of Companies Act; Fix Record Date for listed company and give atleast 7 working days prior notice to Stock Exchange under Clause 16 of Listing Agreement.

STEP 23 : Issue of Share to Shareholders of Transferor Company based on Swap Ratio.

File e-form 2 within 30 days of allotment.
Make Entries in Register / Index of Members.

STEP 24 : Apply for Final Listing of new shares, if the Transferee is a listed company. If transferor is a listed company merging with unlisted transferee company, then file certified copy of Court order to Stock Exchange for delisting.

STEP 25 : The resulting Unlisted transferee company which has merged with Listed transferor company has the option to apply to SEBI for relaxation from applicability of Rule 19(2)(b) of



Securities Contracts (Regulation) Rules, 1967 [i.e. to offer less than 25% of public] for listing without an Initial Public Offer (IPO) if it satisfies the following conditions : [Rule 19(7) of SCRR]

1. Allotment of shares to shareholders of listed transferor company and listing shares of unlisted transferee company is made pursuant to Scheme sanctioned by High Court.
2. Atleast 25% of the paid up capital (including outstanding convertible instruments) of the unlisted transferee company seeking listing shall be shares allotted to the Public Shareholders in the listed transferor company.
3. Shares of the listed transferor company shall remain locked in with the proposed to be listed transferor company.
 - ▶ No additional lock-in if it is a demerger or division of a listed company to a newly formed / existing company with minimum capital of Rs.5 lakhs under Companies Act, 1956.
 - ▶ Otherwise, the promoters' shares shall be locked in to the extent 20% of the post merger paid up capital and entire per-merger capital of the unlisted company, for a period of 3 years from the date of listing.

Note: Even equity shares with differential voting rights (DVR) can be listed without an IPO if it is issued to all existing holders by way of rights / bonus issue, compliance of minimum public shareholding requirement and disclosure alongwith shareholding pattern under Clause 35 of listing agreement. Similarly, warrants can be listed without IPO if issued alongwith Non-convertible Debentures as per Chapter VIII of SEBI (ICDR) Regulations and the minimum trade for is Rs.1 lakh.

Unlisted transferee company which has applied for listing without IPO to SEBI has to [RULE 19(7) of SCRR]

- ▶ Take steps for listing where the shares of the listed transferor company are listed within 30 days of final order of High Court sanctioning the scheme
- ▶ Issue an advertisement before commencement of trading in English, Hindi & Regional Newspapers where Registered Office of the company is situated
- ▶ Commence trading within 45 days of final order of High Court sanctioning the scheme.

STEP 26 : Annexation of court order to memorandum (MOA) [under section 391(4)].

STEP 27 : Preservation of Books & Papers of Transferor Company [Section 396A].

The Companies (Court) Rules, 1959 specify the procedure for application of sections 391 to 394A of Companies Act and has provided the following forms to be filed in the course of

application under section 391 and petition under section 394 to High Court.

Forms 33 & 34 Application to Court & Affidavit

Form 35 Court directions

Forms 36, 37 & 38 Notice, Proxy & Advertisement [Affidavit under/Rule 76]

Form 39 Chairman's report within 7 days of meeting

Form 40 Petition to court

Form 41 The order will be in form 41 with such variation as may be necessary

PROVISIONS UNDER THE COMPANIES ACT, 1956

Chapter V containing sections 390 to 396A of the Companies Act, 1956 is a complete code in itself. It provides for the law and procedure to be complied with by the companies for compromises, arrangements and reconstruction. Rule 67 to 87 of the Companies (Court) Rules, 1959 lay down the court procedure for the approval of schemes. The terms amalgamation and merger are synonymous under the Act.

Court for the purposes of Section 391 to 394 of the Act would mean the High Court having jurisdiction over the registered office of the company. In every High Court, a judge will be designated as company judge who will hear, *inter alia*, petitions under these sections.

Section 391(1) of the Companies Act, 1956 provides that where a compromise or arrangement is proposed between company and its creditors or any class of them or between company and its members or any class of them, the Court may on the application of the company or any creditor or member of the company or liquidator (where company is being wound up), order a meeting of creditors or class of creditors or members or class of members, as the case may be, to be called, held and conducted in such manner as it directs. From the above provision of law, it is clear that there could be a compromise or arrangement between a company on the one side and its creditors or any class of them on the other side. There could be an arrangement between a company and its members or any class of them. In such a scheme of compromise or arrangement, the creditors or members could be the interested parties. In the case of a company in winding up, the liquidator becomes the party entitled to present the scheme to the court. All or any one of the interested parties have to make an application to the court praying for sanctioning the scheme of compromise or arrangement.

It has been held in several cases that Section 391 is a 'complete code' or 'single window clearance system', and that the Court has been given wide powers under the section, to frame a scheme for the revival of a company. Being a complete code, the Court can, under this 'section', sanction a scheme containing



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all the alterations required in the structure of the company for the purpose of carrying out of the scheme.

When an application is made, the Court will naturally consider the merits of the scheme. The Court will also see whether all interested parties or whether all parties whose rights are likely to be affected have been put on notice about the scheme. In other words, Court gives an opportunity to all persons who are concerned or interested in the scheme. The Court may order a meeting of the creditors and / or the members. While ordering the convening of a meeting, the Court has the power to direct the manner in which the meeting should be reported. The Court has the discretion to sanction the scheme. The use of the word 'may' in Sub-section (1) of Section 391 of the Act, clearly implies that the Court has the discretion to make or not to make the order. As already stated, even before convening a meeting, the Court should pay attention to the fairness of the proposed scheme because it would be no use putting before the meeting a scheme, which is not fair. The Court may also refuse a meeting to be called where the proposals contained therein are illegal, or in violation of provisions of the Act or incapable of modification. [*Tranvancore National & Quilon Bank, In Re.* (1939) 9 Comp Cas 14 (Mad.)]. Thus, the Court does not have to compulsorily call for a meeting, but in its discretion, dismiss the application at that stage itself [*Sakamari Metals & Alloys Limited, In Re.* (1981) 51 Comp Cas 266 (Bom.)].

Section 393 of the Act, regarding furnishing of adequate information about the scheme to creditors and members, should also be complied with. Accordingly, with every notice calling the meeting, sent to the creditor or member, a statement should be included setting forth, the terms of compromise or arrangement as well as specifically stating any material interests of director(s) or, managing director(s) or manager of the company in whatsoever capacity, in the scheme and the effect of their

interest as in contradiction to the interests of other persons.

Also, where a notice calling the meeting is given by advertisement, there shall be included either the statement as aforesaid or notification of the place where and the manner in which, the creditors or members entitled to attend the meeting may obtain the copies of such statement. In case, the compromise or arrangement affects the rights of debenture holders, the statement shall accordingly give like information in such respect. Every such copy should be made available to the members or creditors entitled to attend the meeting, in the manner specified and free of charge. Where default is made in complying with any of the requirements of Section 393 of the Act, the company and every officer in default including liquidator of the company and debenture trustee is liable to be punished in accordance with the provisions of the Act.

At the meeting the scheme is to be passed with the support of majority in number and three-fourth in value of those present and voting. The creditors or members who are present at the meeting but remain neutral or abstain from voting, will not be counted in ascertaining the majority in number or value [*Hindustan General Electric Corporation, In Re.* AIR 1959, (Cal.) 679].

The Court, while sanctioning the scheme, must be satisfied that there is full and fair disclosure of information by the petitioner about the state of affairs of the company and its latest financial position. The Court should also be satisfied that statutory majority are acting *bona fide* and the compromise or arrangement is such as may be reasonably approved. [*Dorman Long & Co. Limited* (1933) All ER Rep. 460]. Therefore, the Court would like to be satisfied basically on three points: Firstly that the provisions of the statute have been complied with. Secondly, that the majority are acting *bona fide* and are not coercing the minority in order to promote interests adverse to those of the class, they purport to represent and; thirdly that the arrangement is such, as a man of business, would reasonably approve [*Anglo Continental Supply Co., Re.* (1922) 2 Ch. 723]. The scheme, if sanctioned by the Court, with or without modification, if any, to make it operational, is binding on all the creditors including government, creditors and liquidator, contributories, all the members or classes thereof, as the case may be, and also on the company. It takes effect not from the date of sanction of the Court, but from the date it was arrived at.

Powers of the Court to supervise the Implementation of the scheme.

Section 392 of the Companies Act, 1956 confers the powers on the High Court sanctioning a compromise or arrangement in respect of a company, to supervise the carrying out of a compromise or arrangement and give any directions or making modifications in the scheme, as it considers necessary, either at the time of sanctioning it or any time thereafter. Under this



Section, the Court cannot issue directions which do not relate either to the sanctioned scheme itself or its working in relation to the company which the scheme seeks to reconstruct. [*Mysore Electro Chemical Works Ltd. v. ITO*, (1982) 52 Comp Cas 32 (Ker.)] The Court has powers to give directions even to third parties to the compromise or arrangement provided such direction is necessary for the proper working of compromise or arrangement.

Powers of the Court to Sanction Modification of the terms of a Scheme

As regards the modification of a scheme, application thereof can be made by any person interested. 'Any person interested' should not be confined to creditor or liquidator of the company whereby any person who has obtained a transfer of shares in the company but has not yet been registered as member is also to be included therein. [*K.K. Gupta v. K.P. Jain* (1979) 49 Comp Cas 342: AIR 1979 SC 734]. In *Saroj G. Poddar (Smt.)*, in *Re.*, (1996) 22 CLA 200 at 216 (Bom.); *T. Mathew v. Saroj Poddar* (1996) 22 CLA 200 at 216 (Bom.) the following main points emerged:

- (a) The scheme can be modified by the Court either at the time of or after its sanction.
- (b) Such modification can include the substitution of sponsoring Institution.
- (c) Modification of scheme or substitution of sponsor should be necessary for proper, efficient and smooth working of the scheme.
- (d) Modification can be made at the instance of any person who is interested in the affairs of the company and the court can also introduce modification *suo motu*.
- (e) The Court should examine the *bona fides* of the person applying to be substitute as a sponsor, his capability and his interest in the company.

Powers of the Court to Order a winding up while considering a Scheme

If the Court is satisfied that a compromise or arrangement sanctioned under Section 391 cannot be carried out satisfactorily with or without modifications, it may vide Section 392(2) of the Act, either on its own motion or on the application of any person interested in the affairs of the company, make an order for winding up which shall be deemed to be the same as under Section 433 of the Act.

Powers of the Court to make Consequential Orders

Where an application is made to the Court under Section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as mentioned therein, and the Court is satisfied that the scheme relates to the reconstruction or amalgamation of any two or more companies, it will make consequential orders as provided in Section 394 of the Act.

» In India accounting for amalgamations is governed by Accounting Standard (AS-14) issued by the Institute of Chartered Accountants of India. It classifies amalgamations into two broad categories, amalgamation in the nature of merger and amalgamation in the nature of purchase.

Need for Reports from Registrar of Companies

In a scheme of compromise or arrangement, the Court is bound to seek a report of the Registrar of Companies representing the Ministry of Corporate Affairs (MCA) in order to ensure that the affairs of the company have not been conducted in a prejudicial manner. The Registrar of Companies makes a report to the Regional Director in the MCA. On receipt of the report of the Registrar of Companies, the Regional Director submits his report to the Court through the Standing counsel of the Central Government in the form of an affidavit. Thus the Court receives the report of the government and only after considering the same, passes necessary orders sanctioning or rejecting the scheme.

Registration of the order of the Court and other post sanctioned formalities

Sub-section (3) of Section 391 provides that the order of the Court becomes effective only after a certified copy thereof is filed with the Registrar of Companies in e-form 21. Thus, the order of the Court should be filed within 30 days of the date of the order with the Registrar of Companies having jurisdiction over the registered office of the company. The Registrar has to register the order and issue a certificate of registration of the same.

Section 391 (4) provides that a copy of every such order of the Court has to be attached to every copy of the Memorandum of Association of the Company. Section 391 (5) says that if default is made in complying with Sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine. Under section 391(6) the Court may, at any time after an application has been made, stay the commencement or continuation of any suit or proceedings against the company on such terms as it may think fit, until the application is finally disposed of. Section 391 (7) provides that an appeal from the order of the Court can be made to the higher Court so empowered.

Rules 67 to 87 of the Companies (Court) Rules, 1959 lay down the Court procedure for the approval of schemes of



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amalgamation, merger and demerger. Two companies can file a joint application for the approval of a Scheme. Neither the Companies Act, 1956 nor the Companies (Court) Rules, 1959 prohibit filing of joint petition by two companies when the subject matter is the same and common question of fact and law would arise for decision..." [W.A. *Beardshell & Co. (P) Ltd. and Mettur Industries Ltd., Re.* (1968) 38 Comp Cas 197 (Mad.)].

Section 396 of the Act empowers the Central Government to provide for amalgamation of companies in public interest. As such, the public sector undertakings have to seek the approval of the Ministry of Corporate Affairs for their schemes of compromises, arrangement and reconstruction.

Cost and other important factors

In every merger or amalgamation or demerger, as part of corporate restructuring programme, there has to be study of the cost of implementation of the scheme. Most of the schemes provide for transfer of assets and liabilities from one company to another. Whenever there is a transfer, there has to be a study of the taxes and duties payable thereon. In that perspective, every such scheme has to be considered from the point of view of the following cost elements:

From the Income Tax Point of view :

- ▶ The liability to pay capital gains tax.
- ▶ The ability to carry forward the accumulated losses and unabsorbed depreciation of the transferor company to the transferee company.

From Sales Tax Point of View :

- ▶ The liability to pay state and central sales taxes.

From Stamp Duty Point of View :

- ▶ The liability to pay stamp duty on the assets conveyed from the transferor company to the transferee company.

Other Factors :

Besides the above, there are several other factors which have to be studied in depth. One such major factor would be the ability to utilize the licences, consents and permissions and other rights of the transferor company in or by the transferee company. It may include an industrial licence or a consent under the pollution control laws. These aspects have to be taken into account before finalising the scheme.

Accounting Standards

Compliance of Accounting Standards is a mandatory requirement under the Companies Act, 1956 by virtue of Section 211(3A). In India accounting for amalgamations is governed by Accounting Standard (AS-14) issued by the Institute of Chartered Accountants of India. It classifies amalgamations into two broad categories, amalgamation in the nature of merger and

amalgamation in the nature of purchase.

The first category covers those amalgamations where there is a genuine pooling i.e. not merely of the assets and liabilities of the amalgamating companies but also of the shareholders' interests and of the businesses of these companies. Such amalgamations are in the nature of 'merger'.

The second category on the other hand covers those amalgamations which are in effect a mode by which one company acquires another company and as a consequence, the shareholders of the company which is acquired normally do not continue to have a proportionate share in the equity of the combined company; or the business of the company which is acquired is not intended to be continued. Such amalgamations are amalgamations in the nature of 'purchase'.

Amalgamation in the nature of merger is an amalgamation, which satisfies all the following conditions:

- (i) All the assets and liabilities of the transferor company become, after amalgamation, the assets and liabilities of the transferee company.
- (ii) Shareholders holding not less than 90% of the face value of the equity shares of the transferor company (other than the equity shares already held therein, immediately before the amalgamation, by the transferee company or its subsidiaries or their nominees) become equity shareholders of the transferee company by virtue of the amalgamation.
- (iii) The consideration for the amalgamation receivable by those equity shareholders of the transferor company who agree to become equity shareholders of the transferee company is discharged by the transferee company wholly by the issue of equity shares in the transferee company, except that cash may be paid in respect of any fractional shares.
- (iv) The business of the transferor company is intended to be carried on, after the amalgamation, by the transferee company.
- (v) No adjustment is intended to be made to the book values of the assets and liabilities of the transferor company when they are incorporated in the financial statements of the transferee company except to ensure uniformity of accounting policies.

Amalgamation in the nature of purchase is an amalgamation, which does not satisfy any one or more of the conditions specified in sub-paragraph above. cs

Safeguarding and caring for your well being



Company Secretaries Benevolent Fund

Saathi Haath Badhana

Company Secretaries Benevolent Fund (CSBF)

Cultural Evening on 12th January, 2013 from 6.00 P.M.

at Air Force Auditorium, Subroto Park, New Delhi.

The Institute has set up the Company Secretaries Benevolent Fund (CSBF) with an objective of extending financial assistance to its members and their families and educational expenses for their children in times of distress. The members are also provided reimbursement of medical expenses in accordance with the guidelines in place.

In order to maintain the fund sustainable, to provide better financial assistance, it is considered necessary to strengthen the financial position of the fund.

With a view to achieve this righteous objective, spread the awareness and to undertake Membership Campaign, the CSBF is organizing a Cultural Evening on Saturday, the 12th January, 2013 from 6.00 P.M. onwards at Air Force Auditorium, Subroto Park, New Delhi, which will be followed by Dinner.

The Managing Committee of CSBF cordially invites all the members to attend and participate in the programme. Entry shall be free for all the Members of CSBF and those who intend to get themselves enrolled as Members of the Fund at the venue, besides the invitees including Sponsors / Advertisers and Donors.

The glimpses of the previous CSBF cultural evening organized on 9th January, 2010, which was a grand success, may be viewed at web link - <http://www.icsi.edu/csbfb/Videoclippings.aspx>

For this event, resources are being mobilised through Corporate Sponsorships / Advertisements, Donors invitation Cards and Advertisement in Souvenir as detailed below:

Category of Sponsor	Amount of Donation (Rs.)
Principal Sponsor <i>(Already sponsored by Jaypee Group)</i>	11 lacs
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For further details please visit Institute's website - www.icsi.edu or www.icsi.edu/csbfb



Highlights of The Companies Bill, 2012

(as passed by the Lok Sabha on 18.12.12)

Highlights of the Companies Bill, 2012 (as passed by the Lok Sabha on 18.12.12)

- ▶ The Bill has 470 clauses as against 658 Sections in the existing Companies Act, 1956.
- ▶ The entire bill has been divided into 29 chapters.
- ▶ Many new chapters have been introduced, viz., Registered Valuers (ch.17); Government companies (ch. 23); Companies to furnish information or statistics (ch. 25); Nidhis (ch. 26); National Company Law Tribunal & Appellate Tribunal (ch. 27); Special Courts (ch. 28).
- ▶ The Bill is forward looking in its approach which empowers the Central Government to make rules, etc. through delegated legislation (clause 469 and others).
- ▶ The Companies Bill is the result of detailed consultative process adopted by the Government.

The salient and unique features of the Bill are as under:

1. DEFINITIONS

- ▶ New definitions are introduced in the Bill, some of which are accounting standards, auditing standards, associate company, CEO, CFO, control, deposit, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right etc..
- ▶ Definition of private company changed - the limit on maximum number of members increased from 50 to 200.
- ▶ Private company which is a subsidiary of a public company shall be deemed to be a public company.
- ▶ Listed company - A company which has any of its securities listed on any recognised stock exchange.
- ▶ Associate Company - A company is considered to be an associate company of the other, if the other company has significant influence over such company (not being a subsidiary) or is a joint venture company. Significant influence means control of at least 20 per cent. of total share capital of a company or of business decisions under an agreement.
- ▶ Dormant Company - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.
- ▶ "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.
- ▶ "foreign company" means any company or body corporate incorporated outside India which,-
 - (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - (b) conducts any business activity in India in any other manner.
- ▶ "Key Managerial Personnel (KMP), in relation to a company, means-
 - (i) the Chief Executive Officer or the Managing Director or the Manager,
 - (ii) the Company Secretary;
 - (iii) the whole-time director;
 - (iv) the Chief Financial Officer; and
 - (v) such other officer as may be prescribed
- ▶ "officer who is in default", means any of the following officers of a company, namely:-
 - (i) whole-time director;
 - (ii) key managerial personnel;
 - (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
 - (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
 - (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
 - (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the

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(as passed by the Lok Sabha on 18.12.12)



- Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.
- ▶ Bill defines the term 'promoter' to mean a person -
 - (a) who has been named as such in a prospectus or is identified by the company in the annual return, or
 - (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
 - (c) in accordance with whose advice, directions or instructions the Board of Directors is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

- ▶ Subsidiary company in relation to any other company (that is holding company), means a company in which the holding company -
 - Controls the composition of the Board of Directors; or
 - Exercises or controls more than one half of the total share capital (instead of equity share capital as prescribed under the 1956 Act) either at its own or together with one or more of its subsidiary companies.
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
- ▶ Small company has been defined as a company other than a public company having a paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed not exceeding Rs.5 crore or turnover of which does not exceed two crore rupees or such higher amount as may be prescribed not exceeding twenty crore rupees. [clause 2(85)].
 - ▶ The number of persons in any association or partnership not to exceed such number of persons as may be prescribed (not exceeding one hundred). The restriction not to apply to an association or partnership, constituted by professionals who are governed by special Acts. (clause 464)

2. CLASSIFICATION & REGISTRATION

- ▶ Concept of One Person Company (OPC limited) introduced [Clause 2(62)].
- ▶ Concept of Small companies have been introduced which shall be subjected to a lesser stringent regulatory framework [Clause 2(85)].
- ▶ Provision for Conversion of Companies already registered has been introduced [Clause 18].
- ▶ Registration process has been made faster and compatible with e-governance.
- ▶ For the first time, articles may contain provisions for

entrenchment [clause 5(3)].

- ▶ A declaration, in the prescribed form, required to be filed with the Registrar at the time of registration of a company that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been complied with, will be required to signed by both - a person named in the articles as a director, manager or secretary of the company as well as by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company. (clause 7)

▶ Registered office

- ▶ A company shall, on and from the 15th day of its incorporation and at all times thereafter have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
- ▶ Company is required to furnish to the Registrar verification of its registered office within 30 days of its incorporation in the prescribed manner.
- ▶ Where a company has changed its name(s) during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.
- ▶ Notice of change, verified in the manner prescribed, shall be given to the Registrar, within 15 days of the change, who shall record the same.

▶ Commencement of business

- ▶ A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that:
 - every subscriber to the memorandum has paid the value of shares agreed to be taken by him;
 - Paid-up capital is not less than Rs. five lakhs in the case of public company and one lakh in case of a private company.
- ▶ the company has filed with the Registrar the verification of its registered office.

3. PROSPECTUS AND ALLOTMENT OF SECURITIES

- ▶ This chapter is divided into two parts. Part I relates to 'Public offer' and Part II relates to 'Private Placement'
- ▶ "Public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.'
- ▶ The term 'private placement' has been defined to bring clarity. "Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer)



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through issue of a private placement offer letter and which satisfies the conditions specified in this section.

- ▶ Detailed disclosures are provided in the Bill itself. It includes disclosures about sources of promoter's contribution.
- ▶ In case of variation in the terms of contract referred to in the prospectus or objects for which the prospectus was issued, the dissenting shareholders shall be given exit opportunity by promoters or controlling shareholders.

Punishment for fraudulently inducing persons to invest money (clause 36)

- ▶ Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution shall be liable for punishment for fraud. This provision is proposed to help in curbing a major source of corporate delinquency.

4. SHARE CAPITAL AND DEBENTURES

- ▶ If a company with intent to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extend to 10 times the face value of such shares or rupees 10 crores, whichever is higher. Stringent penalties have also been imposed for defaulting officers of the company. [clause 46(5)]
- ▶ Where any depository has transferred shares with an intention to defraud a person, it shall be liable under section 447 i.e. provisions for punishment for fraud.[clause 56(7)]
- ▶ Security Premium Account may also be applied for the purchase of its own shares or other securities. [Clause 52(2)(e)]
- ▶ Except as provided in section 54 (Issue of sweat equity shares), a company shall not issue shares at a discount [Clause(53)]
- ▶ A company limited by shares cannot issue any preference shares which are irredeemable. However, a company limited by shares may, if so authorised by its articles, can issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue.
- ▶ A company may issue preference shares for a period exceeding twenty years for infrastructural projects subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders. [Clause 55].
- ▶ Every company shall deliver debenture certificate within six months of allotment. [Clause 56(4)(d)].
- ▶ Reduction of share capital to be made subject to confirmation by the Tribunal. The Tribunal on receiving an

application for reduction of share capital, shall give notice to the Central Government, Registrar and to the SEBI and consider the representations received in this behalf. (Clause 66)

5. E-GOVERNANCE

E-Governance proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

6. BOARD AND GOVERNANCE

▶ Number of directors

- ▶ Minimum : Public company -3 Private -2 , OPC-1.
- ▶ Maximum : limit increased to 15 from 12 .
More directors can be added by passing of special resolution without getting the approval of Central Government as earlier required.

▶ Woman director

At least one woman director shall be on the Board of such class or classes of companies as may be prescribed.

▶ Resident Director

Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. [clause 149(2)].

▶ Appointment of Key Managerial Personnel [Clause 203(1)]

- Every company belonging to such class or classes of companies as may be prescribed shall have the whole-time key managerial personnel.
- Unless the articles of a company provide otherwise or the company does not carry multiple businesses, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time [Proviso to Clause 203(1)]
Provided that nothing contained above shall apply to such class of companies engaged in multiple businesses and which has appointed one or more chief executive officers for each such business as may be notified by the Central Government.
- Every Company Secretary being a whole-time KMP shall be appointed by a resolution of the Board which shall contain the terms and conditions of appointment including the remuneration.
- If the office of any whole-time KMP is vacated, the same shall be filled up by the Board at a meeting of the

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Board within a period of six months from the date of such vacancy [Clause 203 (2) & (4)].

- ▶ If a company does not appoint a Key Managerial Personnel, the penalty proposed is :
 - On company - one lakh rupees which may extend to five lakh rupees.
 - On every director and KMP who is in default - 50,000 rupees and 1,000 rupees per day if contravention continues.

▶ Independent Directors

- ▶ Concept of independent directors has been introduced for the first time in Company Law: [clause 149(5)]
 - All listed companies shall have at least one-third of the Board as independent directors.
 - Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors.
 - The independent director has been clearly defined in the Bill.
 - Nominee director nominated by any financial institution, or in pursuance of any agreement, or appointed by any government to represent its shareholding shall not be deemed to be an independent director.
 - An independent director shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
 - An Independent director shall not be entitled to any stock option.
 - Only an independent director can be appointed as alternate director to an independent director. [clause 161(2)].

Person other than retiring director

- ▶ If a person other than retiring director stands for directorship but fails to get appointed, he or the member intending to propose him as a director, as the case may be, shall be refunded the sum deposited by him, if he gets more than twenty five per cent of total valid votes [clause 160(1)].

Resignation of director

- ▶ A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice, intimate the Registrar and also place such resignation in the subsequent general meeting of the company. [clause 168(1)]. The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar.
- ▶ The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. [clause 168(2)].

- ▶ If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting [clause 168(3)].

Participation of directors through video-conferencing

- ▶ Participation of directors at Board Meetings has been permitted through video-conferencing or other electronic means, provided such participation is capable of recording and recognizing. Also, the recording and storing of the proceedings of such meetings should be carried out [clause 173(2)].

The Central Government may however, by notification, specify such matters which shall not be dealt with in the meeting through video-conferencing and such other electronic means as may be prescribed. [clause 173(2)]

Notice of Board Meeting

- ▶ At least seven days' notice is required to be given for a Board meeting. The notice may be sent by electronic means to every director at his address registered with the company. [clause 173(3)].

A Board Meeting may be called at shorter notice subject to the condition that at least one independent director, if any, shall be present at the meeting. However, in the absence of any independent director from such a meeting, the decisions taken at such meeting shall be final only on ratification thereof by at least one independent director. [clause 173(3)].

Duties of directors (clause 166)

For the first time, duties of directors have been defined in the Bill. A director of a company shall :

- ▶ act in accordance with the articles of the company.
- ▶ act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- ▶ exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- ▶ not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- ▶ not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- ▶ not assign his office and any assignment so made shall be void.



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Penalty:

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Board Committees

- ▶ Besides the Audit Committee, the constitution of Nomination and Remuneration Committee has also been made mandatory in the case of listed companies and such other class or classes of companies as may be prescribed. [clause 178(1)].
- ▶ The Audit committee shall consist of a minimum of three directors with independent directors forming a majority and majority of members including its Chairperson shall be persons with ability to read and understand the financial statement. [clause 177(2)].
- ▶ The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees [Clause 178(3)].
- ▶ The Nomination and Remuneration Committee shall consist of three or more non-executive director(s) out of which not less than one half shall be independent directors. [clause 178(1)].
- ▶ Where the combined membership of the shareholders, debenture holders, deposit holders and any other security holders is more than one thousand at any time during the financial year, the company shall constitute a Stakeholders Relationship Committee. [clause 178(5)].

Managerial Remuneration [clause 197]

- ▶ Provisions relating to limits on remuneration provided in the existing Act being included in the Bill. Maximum limit of 11% (of net profits) being retained.
- ▶ For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration (Schedule V) and in case a company is not able to comply with Schedule V, approval of Central Government would be necessary.

Certain Insurance Premium not to be treated as part of the remuneration

- ▶ The premium paid on any insurance taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, shall not be treated as part of the remuneration payable to any such personnel. [Clause 197 (13)]

7. DISCLOSURES

Annual return [clause 92]

- ▶ Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding;
 - (i) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
 - (ii) its shares, debentures and other securities and shareholding pattern;
 - (iii) its indebtedness;
 - (iv) its members and debenture-holders along with changes therein since the close of the previous financial year;;
 - (v) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;
 - (vi) meetings of members or a class thereof, Board and its various committees along with attendance details;
 - (vii) remuneration of directors and key managerial personnel;
 - (viii) penalties imposed on the company, its directors or officers and details of compounding of offences;
 - (ix) matters related to certification of compliances, disclosures as may be prescribed;
 - (x) details in respect of shares held by foreign institutional investors; and
 - (xi) such other matters as may be prescribed.

The prescribed disclosures under the Annual Return shows significant transformation in non financial annual disclosures and reporting by companies as compared to the existing format.

Similar to the existing compliance certificate as stipulated under section 383A of Companies Act, 1956 certification of compliances has been prescribed under clause 92(1)(ix).

- ▶ Annual Return is required to be signed by :
 - (i) A director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice.
It means that now in respect of all the companies (except one person companies and small companies), whether private or public, listed or unlisted, the annual return has to be signed by either a company secretary in employment or by a company secretary in practice i.e. where no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.
 - (ii) in addition to the above, the annual return, filed by a listed company or by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice that the annual return discloses the facts correctly and

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adequately and that the Company has complied with all the provisions of the Act.

It means, in case of a listed company and other prescribed companies, even if the Annual Return is signed by the Company Secretary in employment, it is further required to be certified by the Company Secretary in Whole time practice.

- (iii) In relation to a One Person Company and Small Company, the annual return is required to be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

Penalty

In case a Company Secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under, such Company Secretary shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Changes in shareholding of promoters and top ten shareholders

- A return to be filed with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders (to ensure audit trail of ownership) by a listed company.

Board's report (Clause 134)

- Board's Report has been made more informative and includes extensive disclosures like -
 - (i) extract of annual return in the prescribed form;
 - (ii) company's policy on director's appointment and remuneration including the criteria for determining qualifications, positive attributes, independence of a director etc. ;
 - (iii) a statement of declaration by independent directors;
 - (iv) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report and by the company secretary in practice in his secretarial audit report;
 - (v) particulars of loans, guarantees, or investments made;
 - (vi) particulars of contracts or arrangements entered into;
 - (vii) the conservation of energy, technology absorption, foreign exchange earnings and outgo in the prescribed manner;
 - (viii) statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
 - (ix) the details about the policy developed and

implemented by the company on corporate social responsibility initiatives taken during the year

- (x) in case of listed companies and other prescribed class of companies, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of committees and individual directors.
- The Directors' Responsibility Statement shall also include the statement that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- The Boards' Report is to be signed by the Chairperson of the company if he is authorized by the Board and where he is not so authorized, it shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director. (Clause 134).

Related Party Transactions

- Every contract or arrangement entered into with a related party shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement [Clause 188(2)].
- Any arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company [Clause 192].
- Where a one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also its director, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes (Clause 193).

8. CORPORATE SOCIAL RESPONSIBILITY (CLAUSE 135)

- Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the



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amount of expenditure to be incurred on the CSR activities.

- ▶ The Board of every company shall ensure that the company spends in every financial year atleast 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy.
- ▶ Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount. The approach is to 'comply or explain'.
- ▶ The company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities.

9. DEPOSITS (CLAUSE 173)

- ▶ A company may, subject to the passing of a resolution in general meeting and subject to the prescribed rules, accept deposits from its members subject to fulfillment of the following specified conditions:
 - i. passing of resolution in a general meeting.
 - ii. issue of circular to members including therein a statement showing the financial position of the company, the credit ratings obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.
 - iii. filing a copy of the circular along with such statement with the registrar within 30 days before the date of issue of the circular.
 - iv. Providing deposit insurance.
 - v. Certification by the company that it has not defaulted in the repayment of deposits.
 - vi. Provision of security in respect of deposit and interest and creation of charge on company's properties and assets. An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in deposit repayment reserve account.
- ▶ A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to compliance of rules as may be prescribed by Central Government in consultation by Reserve Bank of India. (Clause 76).
- ▶ The penalty for failure to repay deposit has been made extremely stringent. Where a company fails to repay the deposit and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to liability under section 447 i.e. punishment for fraud), be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors (Clause 75).

Stringent punishment is proposed for failure to distribute dividend within thirty days of its declaration. (Clause 127)

10. INVESTMENT COMPANIES (CLAUSE 186)

- ▶ A company can make investment through not more than two layers of investment companies, unless otherwise prescribed.
- ▶ This shall not affect
 - a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
 - a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.
- ▶ The restriction on the number of step-down subsidiary companies has been introduced to prevent the abuse of diversion of funds through many step-down subsidiaries.

11. COMPANY SECRETARY

Functions of Company Secretary (clause 205)

- ▶ The functions of the company secretary shall include-
 - to report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;
 - to ensure that the company complies with the applicable secretarial standards;
 - to discharge such other duties as may be prescribed.

Secretarial Audit (Clause 204)

- Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be prescribed.
- It shall be the duty of the company to give all assistance and facilities to the Company Secretary in Practice, for auditing the secretarial and related records of the company.
- The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in his report.
- If a company or any officer of the company or the Company Secretary in Practice, contravenes the provisions of this section, the company, every officer of the company or the Company Secretary in Practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

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Secretarial Standards Introduced [Clause 118(10) & 205]

- ▶ For the first time, the Secretarial Standards has been introduced and provided statutory recognition
- ▶ Clause 118(10) reads as:
"Every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government."
- ▶ Clause 205 casts duty on the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.
- ▶ It is the beginning of a new era where non financial standards have been given importance and statutory recognition besides Financial Standards.

12. GENERAL MEETINGS

- ▶ To encourage wider participation of shareholders at General Meetings, the Central Government may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means [clause 108].
- ▶ One person companies have been given the option to dispense with the requirement of holding an AGM. [clause 96(1)].

Report on annual general meeting [clause 121]

- ▶ Every listed company shall prepare a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made there under. The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM. Non-filing of the report has been made a punishable offence.

13. AUDITORS

- ▶ A company shall appoint an individual or a firm as an auditor at annual general meeting who shall hold office till the conclusion of sixth annual general meeting.
- ▶ However, the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.
- ▶ No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint-
 - (a) an individual as auditor for more than one term of five consecutive years; and
 - (b) an audit firm as auditor for more than two terms of five

consecutive years:

Provided that-

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:
- ▶ Members of a company may resolve to provide that in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members .
- ▶ The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies. (clause 141)
- ▶ Auditor cannot render any of the following services, directly or indirectly to the company or its holding company or subsidiary company:
 - ▶ Accounting and book-keeping service
 - ▶ Internal audit
 - ▶ Design and implementation of any financial information system
 - ▶ Actuarial services
 - ▶ Investment advisory services
 - ▶ Investment banking services
 - ▶ Rendering of outsourced financial services
 - ▶ Management services
 - ▶ Other prescribed services

Internal Audit

- ▶ Prescribed class of companies shall be required to appoint an internal auditor to conduct internal audit of the functions and activities of the company. (clause 138)

Cost Audit (clause 148)

- ▶ The Central Government after consultation with regulatory body may direct class of companies engaged in production of such goods or providing such services as may be prescribed to include in the books of accounts particulars relating to utilisation of material or labour or to such other items of cost.
- ▶ If the Central Government is of the opinion, that it is necessary to do so, it may, direct that the audit of cost records of class of companies, which are required to maintain cost records and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.
- ▶ 'cost auditing standards' have been mandated.

14. FINANCIAL STATEMENT (CLAUSE 2(40))

- ▶ For the first time, the term 'financial statement' has been



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defined to include:-

- (i) a balance sheet as at the end of the financial year;
 - (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) cash flow statement for the financial year;
 - (iv) a statement of changes in equity, if applicable; and
 - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):
- the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Signing of financial statement (Clause 134)

The financial statement, including consolidated financial statement, if any, shall be approved by the Board of directors before they are signed on behalf of the Board at least by the Chairperson of the company authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

15. NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA) (CLAUSE 132)

- The Central Government may by notification constitute a National Financial Reporting Authority to provide for matters related to accounting and auditing standards.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
 - (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
 - (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
 - (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and
 - (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-

- (a) have the power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

- (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit.
- (c) where professional or other misconduct is proved, have the power to make order for-
 - (A) imposing penalty of -
 - (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
 - (II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;
 - (B) debarbing the member or the firm from engaging himself or itself from practice as member of the institute for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

- Any person aggrieved by any order of the National Financial Reporting Authority, may prefer an appeal before the Appellate Authority constituted by the Central Government.

16. INVESTOR PROTECTION MEASURES

- Issue and transfer of securities and non-payment of dividend by listed companies, shall be administered by SEBI by making regulations. (Clause 24)
- An act of fraudulent inducement of persons to invest money is punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than three times the amount involved in fraud. (Clause 36)
- A suit may be filed by a person who is affected by any misleading statement or the inclusion or omission of any matter in the Prospectus or who has invested money by fraudulent inducement. (Clause 37).

Class action suits

- For the first time, a provision has been made for class action suits. It is provided that specified number of

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member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors.

- ▶ Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.
- ▶ The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company. (clause 245)

Serious Fraud Investigation Office (clause 211)

Statutory status to SFIO has been proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill.

Stringent penalty provided for fraud related offences.

Fraud defined (Clause 447)

- ▶ The term "Fraud" has for the first time been defined in the Bill. Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years

Prohibition of insider trading

New clause has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included [clause 195].

Prohibition on Forward dealings

Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company.(clause 194).

17.INSPECTION, ENQUIRY AND INVESTIGATION

- ▶ A new clause has been added to provide that where in connection with enquiry or investigation into the affairs of the company or reference by the Central Government, or on complaint by specified number of members or creditors or any other person having a reasonable any person that the transfer or disposal of funds, properties or assets is likely to take place which is prejudicial to the interest of the company, then the Tribunal may order for the freezing of such transfer, removal or disposal of assets for a period of three years. [clause 221]
- ▶ Another new clause seeks to provide that the provisions of inspection or investigation applicable to Indian companies shall also apply mutatis-mutandis to inspection or investigation of foreign companies. (clause 228).

18. RESTRUCTURING AND LIQUIDATION

- ▶ The entire rehabilitation and liquidation process has been made time bound.
- ▶ Winding up is to be resorted to only when revival is not feasible. (clause 258).
- ▶ The Tribunal may appoint an interim administrator or a company administrator from the panel of Company Secretaries, CAs, CWAs, etc. maintained by the Central Government. [clause 259(1)].
- ▶ The Company Administrator shall prepare a scheme of revival and rehabilitation. [clause 261(1)].
- ▶ If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company. (clause 258).
- ▶ No civil court shall have jurisdiction in respect of any matter on which Tribunal or Appellate Tribunal is empowered. (clause 268).

19. COMPANY LIQUIDATORS (CLAUSE 275)

The Tribunal may appoint Provisional Liquidator or the Company Liquidator from a panel maintained by the Central Government consisting of Company Secretaries, Chartered Accountants, Advocates and Cost Accountants.

On an appointment as provisional liquidator or Company Liquidator, such liquidator is required to file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal.

Professional assistance to Company Liquidator (CLAUSE 291)

The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including



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Company Secretaries to assist him in the performance of his duties and functions under the Act.

20.COMPOUNDING OF CERTAIN OFFENCES (CLAUSE 441)

This clause provides for the compounding of certain offences by Tribunal or regional director in certain cases before the investigation has been initiated or is pending under this Act. It further provides the procedure followed for compounding of offence. It clause also provides penalty for any officer or other employee of the company who fails to comply with the order of Tribunal or Regional Director.

21.NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL (CLAUSE 408 AND 410)

The Central Government shall, by notification, constitute, a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to be known as National Company law Appellate Tribunal.

22. SPECIAL COURTS

- ▶ For the speedy trial of offences, the Central Government has been empowered to establish special courts in consultation with the Chief Justice of the High Court within whose jurisdiction the judge is to be appointed. (clause 435).
- ▶ All offences under this Act shall be triable by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned. (clause 436)
- ▶ The Special Court would have the liberty to try summary proceedings for offences punishable with imprisonment for a term not exceeding three years, although it may order for the regular trial. (clause 436).

23. MEDIATION AND CONCILIATION PANEL (CLAUSE 442)

- ▶ The Central government shall maintain a panel of experts to be called Mediation and Conciliation Panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

24. CROSS - BORDER MERGERS (CLAUSE 234)

- ▶ The Bill has allowed cross border mergers with any foreign

company;

- ▶ The cross border merger may be made between companies registered under this Act and companies incorporated under jurisdiction of such countries as may be notified by the Central Government.

25. REGISTERED VALUERS (CLAUSE 247)

- ▶ A new chapter has been inserted in relation to registered valuers.
- ▶ Valuation in respect of any property, stock, shares, debentures, securities, goodwill, networth or assets of a company shall be valued by a person registered as a valuer.
- ▶ The Central Government shall maintain a register of valuers.

The valuer shall be a person having such qualification and experience and registered as a valuer in such manner and on such terms and conditions as may be prescribed.

26.POWER TO EXEMPT CLASS OR CLASSES OF COMPANIES FROM PROVISIONS OF THIS ACT (CLAUSE 462)

- ▶ The Central Government may in the public interest, by notification direct that any provisions of this Act:
 1. shall not apply to such class or classes of companies; or
 2. shall apply to class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.
- ▶ The notification in draft to be laid in both the Houses of Parliament for a period of 30 days.
- ▶ Houses may disapprove or modify.

27.ADJUDICATION OF PENALTY (CLAUSE 454)

The Central government may by an order publish in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudicating penalty under the provisions of this Bill in the manner as may be prescribed.

Disclaimer:

This document has been prepared on the basis of Companies Bill, 2012 as passed by the Lok Sabha on 18th December, 2012. The Institute of Company Secretaries of India does not own the responsibility of any error or omission. The users and readers are advised to cross check with the original Bill before acting upon this document.

COMPANY SECRETARIES BENEVOLENT FUND

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Company Secretaries Benevolent Fund

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 ₹ 7500/- 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 by following the steps given below:

- The member has to visit the portal www.icsi.in
- The member has to login to self profile by selecting the option Member – Associate / Fellow
- The member has to enter his membership number.
- The member has to enter his password in the box provided (The member has to Click on Reset password if creating for the first time and follow the instructions)
- After Logging in the member has to click on the link 'Request for CSBF Membership'.
- The member has to click on Download link to download the Form 'A' i.e. Form for admission as a Member of CSBF.
- The member has to fill up the form complete in all respects.
- The member has to scan the duly filled in form and upload the same.
- After uploading the scanned form the member has to click on 'Proceed for Payment' button for payment through net banking.
- A copy of the Acknowledgement Number generated may be retained by the member for future reference.

Following benefits are presently provided by the CSBF:-

Financial Assistance in the event of Death of a member of CSBF:-

Upto the age of 60 years

- ◆ Group Life Insurance Policy for a sum of ₹ 2,00,000; and
- ◆ Upto ₹ 3,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time.

Above the age of 60 years

- ◆ Upto ₹ 2,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time.

Other benefits subject to the Guidelines approved by the Managing Committee from time to time :-

Reimbursement of Medical Expenses

- ◆ Upto ₹ 60,000/-

Financial Assistance for Children's Education (one time)

- ◆ Upto ₹ 20,000 per child (Maximum for two children) in case of the member leaving behind minor children.

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

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Corporate Laws

LW.01.01.2013

DEUTSCHE BANK v. PEARL ENGINEERING
POLYMERS LIMITED [BOM]

Company Petition No. 221 of 2012.

Anoop V. Mohta, J.
[Decided on 19/11/2012]

Companies Act, 1956 - Sections 433(e) and 434 - Winding up - Respondent availed loans from AFIC - Assignment and sale of debts by AFIC to petitioner bank under a scheme approved by the Singapore High Court - Petitioner filed winding up petition - Respondent raised various bonafide disputes - Whether the petition merits admission - Held, No.

Brief facts

The present Petitioner is a body corporate and is also authorized to carry on banking business in India and constituted under the Laws of Germany. Respondent Company availed of a financial assistance including term loan from AFIC in order to establish a plant to produce 17250 TPA of specialty bottle grade polyester chips at Kurkumbh, Plot No. D-17, MIDC Industrial Area, Taluka Daund, District Pune, Maharashtra.

One Asian Finance & Investment Corporation Ltd. ("AFIC") being an institution as per the laws of Republic of Singapore was engaged in investment for industrial activities in the Asian Region. Under the terms of an agreement relating to sale of assets and subscription for shares dated 28th February, 2005 ("Purchase Agreement"), ACTIS AFIC Holdings Ltd. agreed to purchase certain financial and investments (including the debts owed by the Respondent Company to AFIC) from AFIC and to subscribe to the shares of AFIC. The said Purchase Agreement was valid and conditional upon approval of the shareholders of AFIC and grant of order by the High Court of Republic of Singapore to sanction the scheme of arrangement between AFIC, its shareholders and ACTIS AFIC Holdings Ltd.

The scheme became effective pursuant to the order dated 10th May, 2005 passed by the High Court of Singapore. Thus ACTIS AFIC Holdings Ltd., became entitled to all rights in respect of the Company's said loan. Thereafter, as a result of the internal arrangement between the ACTIS group of companies under a Trust Deed dated 7th June, 2005 ("Trust Deed"), AFIC was appointed as a Trustee of ACTIS AFIC Equity Management Ltd. ACTIS AFIC Credit Management Ltd. and ACTIS AFIC Labuan Ltd., to hold in trust the assets for the aforesaid companies. Thus, AFIC as trustee of ACTIS AFIC Credit Management Ltd. came to hold the legal title to the said loan and rights there to. It is pertinent to note that under the terms of the Trust Deed, AFIC, ACTIS AFIC Holdings Ltd. and ACTIS AFIC Credit Management Limited agreed that debts owed by the Respondent Company to AFIC shall be held by AFIC on trust for ACTIS AFIC Credit Management Limited. Thus, the transfer from ACTIS AFIC Holding Ltd. to ACTIS AFIC Credit Management Ltd. of the beneficial interest in the loan took place, with AFIC as trustee continuing to hold the legal title thereto, now as trustee for ACTIS AFIC Credit Management Ltd. Thereafter, vide Trade Confirmation dated 26th March, 2007 executed by AFIC (the Trustee appointed under the Agreement dated 7th June, 2005) and ACTIS AFIC Credit Management Ltd. as also the Petitioner, ACTIS AFIC Credit Management Ltd. with AFIC signed and recorded the terms of the sale of the loan of the Respondent Company to the Petitioner. Pursuant thereto AFIC acting on behalf as investment manager for ACTIS AFIC Credit Management Ltd. assigned all its rights, title, interest, obligations, benefits arising under a Loan Agreement dated 30th July, 1993 and the Amendment Agreement dated 24th November, 2003 executed between AFIC and the Respondent Company to the present Petitioners vide Sale and Purchase Agreement dated 30th March, 2007. Thus the Petitioner became the legal and beneficial holder of all rights inclusive of the rights of recovery of the said loan in its own right.

As there were constant defaults and the liability was quite huge, the Petitioner had filed a winding-up Petition (291/2010) which was withdrawn with liberty and, therefore, the present Company Petition.

Decision: Petition dismissed.

Reason

There is nothing on record to show and justify that at any point of time, the Respondent Company admitted the Petitioner's ownership, entitlement and/or agreed to make the payment so claimed. These disputed facts go to the root of the matter. The earlier background, the litigation and the reasons for withdrawal, as reflected in the affidavit, are also additional factors, which unless adjudicated finally, just cannot be overlooked.

I have already dealt with in Company Petition No. 86 of 2012



(17-10-2012) by referring to the Supreme Court Judgment, *IBA Health (India) Private Limited v. Info-Drive Systems SDN. BHD.*, [(2010) 10 SCC 553], about the effect of disputed questions and facts and the defence so raised in such matter. If it is a *bona fide* dispute, the Court needs to consider these aspects before passing any order or even admission of the Company Petition.

The issues are also with regard to the details of valid/binding assignment of debts/the Sale & Purchase Agreement in question. The aspect of Master Circular for External Commercial Borrowing dated 2nd July, 2012 issued by the Reserve Bank of India and the related Regulations and detailed reasoning to justify the entitlement of the Petitioner to file present Petition is also a matter of debate. Certain issues are even pending before the concerned Authorities in this regard between the parties referring to the details of the assignment. Therefore, it is not the question of invalidation and/or illegality of the assignment of loans, but the question is the final authority and entitlement of the Petitioner to claim the same. The Respondent specifically averred and contended that the due and payable amount to the erstwhile AFIC was paid in the year 2005 itself. The aspect of violation of the Foreign Exchange Management Act, 1999 and FEMA Regulations, 2000, as averred and as denied is also an additional factor.

The Petitioner needs to stand on his own leg for claiming the benefits of the provisions in question. We cannot compare such liquidation action with the ordinary money recovery suits. The Company Judge is not competent to decide the validity and/or dispute so raised with regard to the Sale and Purchase Agreement and so also the Deed of Assignment in question, as it requires various decisions prior and even post of the transactions.

The documents relied and referred by both the Counsel itself shows that there are various questions, which need to be adjudicated first before accepting the averments of the Petitioner. Unless the transactions based upon which the present Petition is filed by the Petitioner has binding force and unless it is declared accordingly in view of the challenge so raised, I am inclined to observe that the present Company Petition, as filed, is not sufficient to pass the winding-up order against the Respondent-Company. There is no foundation to accept and exercise the discretion that the Respondent-Company "neglect to pay due and payable/agreed amount". The Petitioner is not remedy less to recover the amount.

In view of above, I am inclined to observe that there are various disputed questions of facts involved; and the amount so claimed cannot be stated to be admittedly due and payable apart from the entitlement of the Petitioner. Therefore, the Petition is dismissed.

LW.02.01.2013

COMMISSIONER, COMMERCIAL TAX, GOVT. OF
MADHYA PRADESH v. OFFICIAL LIQUIDATOR [DEL]

CO.A (SB) 22/2008

Indermeet Kaur, J.

[Decided on 22/11/2012]

Sections 529-A, 530, 530 (1)(a) of the Companies Act, 1956 read with Section 53 of the Madhya Pradesh Commercial Tax Act, 1994 - outstanding tax dues - ranked as preferential creditor instead of secured creditor - Whether correct - Held, Yes.

Brief facts

The company under liquidation owed to the appellant a sum of Rs.1,40,60,422/- towards sales tax, central tax and entry tax dues payable for its Morena Unit and Gwalior Unit. The Official Liquidator ranked the appellant as preferential creditor. Against this ranking, the appellant came in appeal contending that in terms of the provisions of 33-C of the Madhya Pradesh General Sales Tax Act, 1958 and Section 53 of the M.P. Commercial Tax Act, 1994, any amount of tax/penalty/interest payable by a dealer or other person under this Act shall be first charge on the property of the dealer or such person and as such he be treated *pari passu* with the secured creditors.

Decision: Appeal dismissed.

Reason

The statutory mandate contained in section 529A is clear. It starts with a *non-obstante* clause. It clearly states that notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, the dues of the workmen and debts due to the secured creditors to the extent that such debts rank under clause (c) of the proviso to sub-section (1) of section 529 shall be paid *pari passu* and in priority to all other debts.

The claims made by the appellant relate to his tax dues which as per his submission would categorize under Section 53 of the M.P. Commercial Tax Act, 1994. Section 53 of the M.P. Commercial Tax Act, 1994 clearly stipulates that this provision is subject to the provision of Section 530 of the Companies Act, 1956.

Tax liability of the company falls within Section 530 (1)(a). Section 530 is subject to the provisions of Section 529-A and as such the said dues as contained in Section 530 (1)(a) are to be paid subject to the provisions of Section 529 A.



Judgments relied upon by the learned counsel for the appellant on this count are of no assistance to him. The judgment of the Apex Court reported as *Central Bank of India v. State of Kerala & Others* JT 2009 (3) SC 216 does not come to his aid as Section 529-A of the Companies Act was not the scope of discussion in terms of question which has been answered by the Apex Court and as is evident from para 2 of the judgment. The judgment of the Bombay High Court in *State of Maharashtra v. Official Liquidator of Reliance Heat Transfer Pvt. Ltd.* (In liquidation) (2004) 12, Comp Cas 648 which deals with the provisions of Section 38-C of the Bombay Sales Tax Act, 1959 is inapplicable; it is even otherwise not binding on this Court.

Provisions of Section 529-A of Companies Act (a Central legislation) have to override the provisions of Section 53 of the M.P. Commercial Tax Act of 1994 (a State legislation). Even otherwise as noted *supra* Section 53 of the Act of 1994 (under which the appellant is claiming his right) clearly specifies that the tax liability will be subject to the provisions of Section 530 of the Companies Act; Section 530 of the Companies Act has to be read subject to the provisions of Section 529-A of the said Act. There appears to be no conflict between the State Act and the Central Act. That apart, even if there is a conflict between a State legislation and a Central legislation, the Central legislation must prevail.

LW.03.01.2013

SAHARA INDIA REAL ESTATE CORPORATION LIMITED
& ANR v. SECURITIES AND EXCHANGE BOARD OF
INDIA [SAT]

Appeal No. 221 of 2012

P.K. Malhotra, Presiding Officer & S.S.N. Moorthy,
Member.

[Decided on 29/11/2012]

**Constitution of India - Article 137 - Securities and
Exchange Board of India Act, 1992 - Section 15T**

Brief facts

The appeal is filed by Sahara India Real Estate Corporation Limited and Sahara Housing Investment Corporation Limited impugning the letter dated November 1, 2012 issued by the Securities and Exchange Board of India (for short the Board) to the two appellants asking them to furnish details of all the bank accounts and properties. The impugned letter refers to the judgment of the Supreme Court dated August 31, 2012 in Civil Appeal no. 9813 and 9833 of 2011 and states that the appellants have failed to furnish the documents to the Board

within the stipulated time and thereby violated the direction of the Supreme Court.

The grievance of the appellants is that the Board has deliberately refused to accept the documents / information and wrongly proceeded on the basis that the appellants are in non-compliance of the directions in the said judgment of the Supreme Court. The appellants are apprehending that the Board may not accept the payments that may be tendered in compliance with the orders of Supreme Court as the Board has arbitrarily refused to accept the documents/information with regard to the investors of the Optionally Fully Convertible Debentures (OFCD) issued by the appellants.

It is, therefore, prayed that this Tribunal may direct the Registrar, Securities Appellate Tribunal, to accept custody of the amount to be paid by the appellants to the respondent by November 30, 2012, being the total amount payable by the appellants, towards the outstanding and unredeemed OFCDs along with the interest thereon as per the directions of the Supreme Court. It is further prayed that the Board be directed to provide the time frame within which the respondent will repay the amount to the OFCD holders and a scheme as to how SEBI proposes to refund the money/implement the said judgment dated August 31, 2012.

Decision: Appeal dismissed.

Reason

We have heard learned counsel for the parties for some time. The Supreme Court by its judgment dated August 31, 2012 while dismissing the appeals filed by the appellants against the order passed by this Tribunal, issued certain directions in modification of the directions issued by the Board and endorsed by this Tribunal.

During the course of hearing, we were told that since the required documents, as per directions contained in the order of the Supreme Court, were not furnished by the appellants to the Board within the stipulated period, the Board has already filed a contempt petition before the Supreme Court. With regard to certain other directions the Board filed interlocutory applications (65 and 66 of 2012) which were disposed of on October 19, 2012 observing that there is no reason to pass any orders in the interlocutory applications since the directions given by the Court in its judgment dated August 31, 2012 are self explanatory. We are told a contempt petition filed by the respondent Board and a review petition filed by the appellants against the order dated August 31, 2012 are already pending before Supreme Court. The interlocutory application has already been disposed of observing that the directions given by the Apex Court are self explanatory. Under these circumstances, we fail to understand how this Tribunal gets the jurisdiction to entertain this appeal when the parties are



supposed to take action in accordance with the directions given by the Supreme Court. Admittedly, the appellants have not yet tendered the money to the respondent Board as per directions contained in para 1 of the order, as reproduced above. The cause of action, if any, will arise if the money is tendered by the appellants as per directions of the Supreme Court and the same is not accepted by the Board. The Supreme Court is seized of the matter. The Board has been directed to submit status report, duly approved by Justice B.N. Agrawal who has been requested to oversee the implementation of the directions. We see no reason how this Tribunal gets jurisdiction to entertain the appeal or give any further directions in the matter. We are, therefore, of the view that any further direction or modification in the directions issued by the Supreme Court can be sought for and granted by that Court alone. We, therefore, find the appeal premature as well as non-maintainable.

LW.04.01.2013

AJMERAS ASSOCIATES LTD. v. SECURITIES AND EXCHANGE BOARD OF INDIA [SAT]

Misc. Application No. 79 of 2012 &
Appeal No. 141 of 2012

P.K. Malhotra, Presiding Officer & S.S.N. Moorthy,
Member.

[Decided on 21/11/2012]

Securities and Exchange Board of India (Stock brokers and Sub-brokers) Regulations, 1992 - clause 2 of Code of Conduct - Obligation to exercise due care and skill - delivery based trade - what is the required due care and skill - SAT clarifies.

Brief facts

The allegation against the appellant is that it traded, along with other brokers, in the scrip of Advik Laboratories Limited (ALL) on behalf of its clients who traded in the scrip of the company synchronizing their trades, creating artificial volumes and price rise enabling the promoter shareholders to offload their shares at a higher price. The appellant was found guilty of violating Clause A (2) of the Code of Conduct for Stock Brokers prescribed in Schedule II under Regulation 7 of the Securities and Exchange Board of India (Stock brokers and Sub-brokers) Regulations, 1992 (Code of Conduct) and a penalty of Rs.1 lac under Section 15HB of the Act was imposed on the appellant. Hence, this appeal.

Decision: Appeal allowed.

Reason

We have heard learned counsel for the parties who have also taken us through the records. We are of the view that the appeal must succeed. Clause A (2) of the Code of Conduct makes it obligatory for a stock broker to act with due skill, care and diligence in the conduct of its business. As per adjudicating officers own findings, the trading in the shares was delivery based and ownership in the shares traded also changed. It is also a finding of the adjudicating officer that the appellant is not guilty of creating false market or that it indulged in any act detrimental to the investors interest or that it had not maintained high standards of integrity, promptitude and fairness. Therefore, we fail to understand what other skill, care and diligence was required to be exercised by the appellant in the conduct of its business as a stock broker. Even if the clients trading in the scrip were with the connected persons, that by itself, is not enough to say that the due diligence of required standard was not maintained. Having given a clean chit to the appellant with regard to the allegations of violating Regulation 4 of the FUTP Regulations and Clauses A(1),(3),(4) and (5) of the Code of Conduct, we see no reason as to how the appellant can be said to have violated Clause A(2) of the Code of Conduct. We, therefore, set aside the impugned order and allow the appeal with no order as to costs.



General Laws

LW.05.01.2013

RATNAGIRI GAS & POWER PVT LTD v. JOINT VENTURE OF WHESSOE OIL & GAS LTD & ORS [DEL]

FAO (OS) 484/2012

S. Ravindra Bhat & R.V. Easwar, JJ.

[Decided on 30/11/2012]

Arbitration and Conciliation Act, 1996 - Section 9 - Powers of court while granting interim relief - disputes arising out of contract - injunction against encashing PBGs granted - further direction to pay some payment for which there was no dispute - Whether possible - Held, No.



Brief facts

A contract was entered into between the appellant and the respondents for carrying out the work of Phase-H of EPC-I6 package, for completion of the balance work of the top of the jetty facilities for the Ratnagiri LNG Terminal project ("project", for short). As required by the contract, the JV furnished two performance bank guarantees (PBGs) to the appellant on 21-9-2006; they were extended till 29-6-2010. The amounts were Rs. 18,44,25,120 and USD 5,203,872 respectively. On 23-6-2010, the appellant by a letter requested the State Bank of India (SBI) which issued the PBGs to extend the validity of the guarantees till 31-3-2013 failing which the letter itself was asked to be treated as notice to enforce the PBGs. The joint-venture companies, who are respondents in the present appeal, approached this court seeking directions to restrain the appellant from enforcing any payment from the SBI under the PBGs and the SBI from making any payment to the appellant under the PBGs.

The respondents had sought an injunction against the appellant before the learned Single Judge for (a) restraining the appellant from enforcing the PBGs; (b) restraining the SBI from making payment to the appellant under the PBGs and (c) directing the appellant to accept the reduced PBG to the extent of 10% of the balance 2% work remaining to be executed by the JV.

In the course of the proceedings before the learned Single Judge, the issue of payment of USD 4.38 m had cropped up, when the letter dated 22-3-2012 written by the appellant in reply to the letter dated 19-3-2012 written by the JV had come up for consideration; in that letter the appellant had undisputedly agreed to the request of the JV for reimbursement of additional costs due to time acceleration and price escalation amounting to USD 4.38 m, and had even bound itself to pay the amount within seven days of submission of the approved invoice by the JV. However, the only objection raised by the appellant in the course of the proceedings was that it had not received the original invoice from the JV so that payment could not be made under the alleged settlement dated 22-3-2012.

The Single Judge directed the payment of the actual bank-related charges in respect of the PBGs (both INR & USD) as an interim measure, upon condition that if the payment is made the JV will keep the PBGs alive till 30-11-2012. The direction was to remain in effect till an order is passed on any application that may be filed by either party before the learned arbitrator (once he is appointed) under section 17 of the Act.

Further, the Single Judge directed the payment of USD 4.38 m to be made by the appellant to the JV, at the same time also noting that the foremost concern at that stage was the keeping alive of the PBGs. The appellant had challenged this direction

in the appeal.

Decision: Appeal allowed.

Reason

The short question which arises before us is whether, given the nature and scope of the proceedings under section 9, could the learned Single Judge have properly directed the appellant to pay the amount of USD 4.38 m to the respondent?

It will be seen that the payment of the actual bank-related charges was linked to the extension of the PBGs. The injunction application filed by the JV under section 9 had thus worked itself out once the learned Single Judge issued the above directions vide paragraph 21 of the impugned order.

What followed in paragraph 22 of the impugned order is the direction for payment of the USD 4.38 m which is under challenge before us as being without jurisdiction and outside the provisions of section 9. The point that weighs in favour of the respondent-JV is that the appellant had agreed before the learned Single Judge for the above payment and thus in equity it cannot resile from it. But the precise point that arises for consideration is whether that can enlarge the scope and content of the nature of the proceedings under the section.

The object of section 9 which enables the court to pass interim orders for the protection of the parties is to support the arbitration proceedings and to render "more effective the decision at which the arbitrators will ultimately arrive on the substance of the dispute" (Lord Mustill in *Channel Tunnel Group Ltd. v Balfour Beatty Construction Ltd.* (1993) All ER 664 HL), provided that "this and no more is what such measures aim to do" and there is nothing in the orders contrary to the spirit of arbitration. The contention of the appellant that there was no dispute regarding the payment of the price escalation and acceleration charges/costs there was nothing arbitrable and therefore section 9 would not apply seems to us to be not without force, if we are to hold that section 9 can be set in motion only when there is a dispute. Even granting that the section can be invoked before the arbitral proceedings, it seems to us that the existence of a dispute between the parties before the filing of an injunction application under section 9 on the point for which interim relief is sought is essential. Sub-clause (b) of clause (ii) of the section permits a party to approach the court for interim relief for "securing the amount in dispute in the arbitration". Admittedly there is no pre-existing dispute between the parties in the present case with reference to the price escalation and additional costs for acceleration; as rightly pointed out on behalf of the appellant, there is no mention of any such dispute in the affidavit filed by the JV before the learned Single Judge nor did the JV make any such prayer in the interim application. The powers of the court under the said sub-clause



could not have therefore been invoked. It would actually amount to recovering sums in advance of the hearing before the arbitrator. The power can be exercised only when an identified fund is in dispute. There was no such identification by the JV of any fund that was in dispute when it approached the court under section 9. The affidavit and the prayers made therein bear this out.

The position with regard to bank guarantees may now be noticed as the whole purport of the proceedings before the learned Single Judge was the protection sought by the JV against the enforcement of the PBGs. A contract relating to bank guarantee is independent of, and altogether different from, the contract out of which the requirement for giving the guarantee arose. It was apparently on this basis that the appellant sought to encash the PBGs against which the JV had sought protection under section 9. The court undoubtedly had the power to grant the injunction subject to fulfilment of the usual criteria, such as existence of genuine hardship, balance of convenience, existence of special equities between the parties, prevention of injustice, existence of a *prima facie* case and so on and so forth. But the power to intervene and pass orders granting interim protection does not, with respect, extend to the contract between the parties which existed independently of the contract relating to the bank guarantee.

The only other provision which can be pressed into service is sub-clause (e) which empowers the court to pass "such other interim measure of protection as may appear to the court to be just and convenient". It is true that in granting interim protection the well-settled principles which normally direct and guide the court are to be applied and as rightly pointed out on behalf of the respondent, the Supreme Court in *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.* (2007) 7 SCC 125 have opined so. But the ruling will have no application where the court has no power to grant injunction or interim protection for the reason that it has not been prayed for or that it does not relate to the matter that is raised in the application for interim protection. The question here is not whether the learned Single Judge had kept in view those principles which the court is normally expected or bound to apply while passing orders granting interim relief, for, in granting such relief to the JV restraining the appellant herein from encashing the PBGs these principles were undisputedly applied; the question is when there is no dispute about or prayer for any interim relief on the aspect of payment of USD 4.38 m, can the court direct payment as a matter of interim relief. It is a question of the jurisdiction of the court; it can rule only in respect of what is brought before it under section 9. The phrase "just and convenient" in the sub-clause cannot be stretched to interpret it in such a wide manner as to impinge on the power of the arbitrator, if and when appointed, to decide the disputes that may be referred to him. That the learned Single Judge expressly stated that the

payment of the amount of USD 4.38 m would be without prejudice and subject to the orders of the arbitral Tribunal, if and when appointed, does not help matters where the question is whether such a direction can be issued at all in the first place. In this context, it is relevant to note the judgment of the Supreme Court in *Sundaram Finance Ltd. v. NEPC India Ltd.* (1999) 2 SCC 479. It was observed that it is implicit when a party applies under section 9 that (a) it accepts that there is a final and binding arbitration agreement in existence and (b) that a dispute has arisen which is referable to the arbitral Tribunal, and c) there has to be a "manifest intention" on the part of the person invoking section 9 to take recourse to the arbitral Tribunal. In the case before us, no such intention of either party was manifest, to have recourse to arbitral proceedings in respect of the payment of the USD 4.38 m.

Consent cannot confer jurisdiction on a court or tribunal where none exists. That is a well-settled position which does not require the citing of any authority. Therefore, that the parties consented to pay the amount cannot confer jurisdiction upon the court to pass the impugned direction. The court needs to be satisfied that there exists a dispute between the parties which would justify interim protection to them.

In view of the foregoing discussion, we allow the appeal and set aside the direction of the learned Single Judge to the appellant to pay the amount of USD 4.38 m to the respondent-JV.

LW.06.01.2013

PARSVNATH DEVELOPERS LIMITED v. RAIL LAND DEVELOPMENT AUTHORITY[DEL]

W.P.(C) 6693/2011 & W.P.(C) 5089/2012

Sunil Gaur, J.
[Decided on 22/11/2012]

Constitution of India - Writ jurisdiction of High Court - Issues arising out of commercial contracts - Whether amenable to writ jurisdiction - Held, No.

Brief facts

The entire controversy in the above captioned two writ petitions centers around floating of 'Special Purpose Vehicle' (SPV) for implementation of the project for development of plot. The petitioner's bid was accepted by the respondent. As per Request for Proposal (RFP), petitioner had to incorporate a Special Purpose Vehicle company for the implementation of the project. Initially the respondent accepted petitioner's request to accord consent to use an existing company, i.e.,



M/s. Parsvnath Promoters & Developers Pvt. Ltd. (PPDPL) as Special Purpose Vehicle for entering into a Development Agreement to implement the project in question and later some dispute arose on this and the first writ was filed.

Petitioner then, without prejudice to its stand in the above captioned first writ petition, incorporated a new company a new company namely, M/s. Parsvnath Rail Land Project Pvt. Ltd. (henceforth referred to as 'PRLPPL') and offered it as Special Purpose Vehicle seeking extension of timelines by treating the period of delay in signing the Development Agreement as 'zero period' in the above captioned second writ petition.

Respondent raised issues as to the maintainability of the writ petitions as it involved mere commercial contract and not discharge of any public service.

Decision: Petition dismissed.

Reason

The submissions advanced by both sides on the maintainability of the above captioned two writ petitions and the material on record have been accorded due consideration and thereupon it transpires that this Court while exercising writ jurisdiction would interfere in contractual matters, only if it is shown that some public law character is attached to the contract in respect of which writ jurisdiction is invoked and if element of discharge of public duty is attached to such contracts.

In respect of project in question, a Division Bench of this Court in LPA No. 264/2010, ABW Infrastructure (*supra*), has already affirmed the Single Bench decision holding that the project in question is a commercial contract and had refused to entertain writ petition of a third party while relegating it to avail of the civil remedy.

Having thoughtfully deliberated upon submissions advanced, material on record and the decisions cited, this Court is of the considered view that there is no basis or justification to take a different view than the one already taken in respect of the project in question, by a Single Bench as well by a Division Bench of this Court in ABW Infrastructure (*supra*), which has attained finality, as the project in question of respondent is a commercial venture having no public character nor Railway Land Development Authority i.e. the respondent is discharging any public duty in undertaking the project in question.

In view of the aforesaid, while refusing to entertain the above captioned writ petitions, as they relate to purely commercial venture involving no public law character, petitioner is relegated to avail of the civil remedy as available in law.

LW.07.01.2013

NATIONAL TEXTILE CORPORATION LTD v. UNION OF INDIA & ORS [DEL]

W.P.(C) 5527/2012 & CM 11291/2012

RajivShakdher, J.
[Decided on 22/11/2012]

Writ jurisdiction of High Court read with Arbitration and Conciliation Act, 1996 - arbitration between Government entities - Whether court can interfere under writ jurisdiction - Held, No.

Brief facts

Sita Ram Mills Ltd SRML was nationalized w.e.f. 01.04.1994 under the Textile Undertakings (Nationalization), Act, 1995 (in short Nationalization Act); that prior to the takeover of the management of SRML, a sum of Rs.11,70,39,000/- became due and payable by SRML to Respondent no.2/UCO Bank; post the take over of management of SRML by the Petitioner i.e., the National Textile Company Ltd. (in short NTC) under the Textile Management Act, 1984 (in short TM Act), Respondent no.1/ Union of India (in short UOI) issued a guarantee for a sum of Rs.1,73,00,000/- in favour of Respondent no.2/UCO Bank: since the Petitioner / NTC did not pay the sum to Respondent no.2/UCO Bank, a suit was filed by Respondent no.2/UCO Bank being : Suit No.4489/1996 in the Bombay High Court, on 21.11.1996, for recovery of a sum of Rs.3,19,09,000/-; as the Petitioner was declared a sick industrial company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short SICA), the proceedings in the suit filed against the Petitioner / NTC were stayed; in terms of the provisions of the Nationalization Act the properties of SRML vested with the Government and therefore, in terms of the said Act, claims pertaining to pre and post takeover in terms of the said Act were required to be lodged with the Commissioner of Payment (in short COP) in terms of the date specified, as per the notification issued in that behalf; Respondent no.2/UCO Bank submitted its claim with COP on 17.01.2002, which was registered, after an initial hesitation, on 04.07.2005; in pursuance of the said claim an affidavit of proof of claim dated 13.07.2005 was filed, wherein a sum of Rs.1,05,35,86,783.47 was claimed towards pre and post take over liability under the Nationalization Act; the COP vide award dated 13.03.2006 allowed a part of the claim under Category 1 of the Nationalization Act to the tune of Rs.70,23,025/- towards principal; the claim of Rs.1,18,80,098/- was relegated to Category II(b) being an outstanding liability against unserved interest; the balance claim in the sum of Rs.103,46,83,660.47



towards interest beyond appointed date, was rejected; the claimant received a sum of Rs.70,23,025/- by way of a cheque dated 20.03.2006; by a subsequent award dated 28.03.2007 a further sum equivalent to Rs.89,59,609/- was awarded by the COP towards pending liability of interest till the appointed date; the said sum was received by the claimant vide cheque dated 30.03.2007; therefore, in all Respondent no.2/UCO Bank has received a total sum of Rs.1,59,82,634/- against the total claim of Rs.1,05,35,86,783.47; Respondent no.2/UCO Bank lodged its request for initiation of arbitration with Respondent no.1/UOI vide communication dated 30.08.2004.

It is in the background of the aforementioned assertions made in the statement of claim by Respondent no.2/UCO Bank that it sought the recovery of a balance sum of Rs.103,76,04,149.47 from Respondent no.1/UOI and SRML jointly and severally with further interest @ 16.5% p.a. with quarterly rests from 01.01.2002 till the date of payment and / or realization.

The present writ petition has been filed to assail the notice dated 17.10.2011, issued by the Arbitrator, who is acting under the aegis of the Permanent Machinery of Arbitrators (in short PMA), established by the Govt. of India, in respect of disputes, concerning Central Public Sector Undertakings, Banks, Trusts and/or other Government departments.

The Petitioner/National Textile Corporation Ltd. (in short NTC) has, at stage of issuance of notice by the learned Arbitrator, approached this court to lay challenge to her jurisdiction to proceed further with the matter.

Decision: Petition dismissed.

Reason

Though the provisions of the Arbitration and Conciliation Act, 1996 (1996 Act) were not applicable as they are sought to be excluded under the PMA mechanism, there is a liberal reference to the provision contained in the 1996 Act in the Petitioner / NTC's application dated 17.02.2012, which seeks decision on the preliminary issue of jurisdiction.

I would therefore, take it that the 1996 Act has no application. Since the PMA mechanism itself excludes its applicability; even so, principles analogous to those evolved by courts under the 1996 Act, would have me hold that, where a party approaches an Arbitrator, without the intervention of the Court, the Arbitrator is empowered to ascertain both the existence and validity of the Arbitration agreement. The principle is evolved to ensure quick and effective adjudication of disputes by the Arbitrator.

The argument that Petitioner/NTC is not party to the proceedings is dependent on whether or not the Petitioner/

NTC is the owner of SRML. The Arbitrator has thought it fit to issue notice to the petitioner/ NTC. In the given facts, this issue cannot be examined by learned Arbitrator, in a summary manner, without appreciating the full contours of the claim set up by Respondent no.2/UCO Bank.

The interesting aspect is that the defence of the Petitioner/ NTC *qua* the claim set up by Respondent no. 2/UCO Bank, is based mainly on one particular fact, which is that, it is not liable for the debts due. There is no defence on merits, therefore, bifurcation of issues would only delay the proceedings before the Arbitrator.

In my view, therefore, for this court to interdict the proceedings before the learned Arbitrator, at this stage, under Article 226 of the Constitution of India would result in delaying the adjudication of the disputes. In my opinion, the learned Arbitrator is right in holding that, to avoid delay, in a matter, all issues need to be decided together. As discussed above, the issue of jurisdiction, which is being raised by the petitioner / NTC, is dependent on facts and, the evidence which the parties may lead. Therefore, the sensible course would be the one adopted by the learned Arbitrator, which is, to decide all the issues at one-go.



Labour Laws

LW.08.01.2013

MST. PARAM PAL SINGH THROUGH FATHER v. NATIONAL INSURANCE COMPANY & ANR [SC]

Civil Appeal No. 9084 of 2012 (Arising out of SLP (C) No. 16063 of 2007)

T.S. Thakur & Fakkir Mohamed Ibrahim Kalifulla, JJ.
[Decided on 14/12/2012]

Workmen's Compensation Act,1923 - Sections 3, 3(1), 4(4) -Death of truck driver due to heart attack while driving the truck to the destination- Whether accident arising out of



and in the course of employment - Held yes. Adopted son claimed compensation - whether tenable - Held, Yes.

Brief facts

The Appellant claimed himself to be the adopted son of the deceased Jeet Singh alias Ajit Singh. According to the claimant the deceased Jeet Singh alias Ajit Singh was employed as Truck Driver by the second Respondent herein to drive truck bearing No. DL-IG-8255. It is stated that in July 2002 the deceased Jeet Singh alias Ajit Singh was assigned the duty of driving the above said truck in connection with the trade and business of the second Respondent from Delhi to Nimiaghat, that on 17.07.2002 when the vehicle reached near about the destination Nimiaghat, District Giridih, the deceased suffered a health set-back and therefore he parked the vehicle on the road side of a nearby hotel. It is further stated that immediately after parking the vehicle he fainted and the persons nearby took him to the hospital where the doctors declared that he was brought dead. An FIR was stated to have been lodged with the police and thereafter the post-mortem was conducted at Civil Hospital, District Giridih. The said truck was insured with the first Respondent herein. In the above said background the Appellant preferred the application before the Commissioner of Workmen's Compensation, Delhi contending that the death of the deceased was in the course of his employment with the trade and business of the second Respondent and that his death was due to stress and strain while driving the said truck continuously over a period of time. It was further claimed that at the time of his death the deceased was drawing wages at the rate of Rs. 3091/- per month apart from a sum of Rs. 50/- per day as allowances and in all a sum of Rs. 4591/- per month. The age of the deceased was stated to be 45 years at the time of his death. Appellant also claimed interest @ 12% p.a. from the date of accident till realization apart from claiming penalty.

The Workmen's Compensation Commissioner determined the compensation payable to the Appellant herein in a sum of Rs. 2,20,280/- along with another sum of Rs. 2500/- as funeral charges under Section 4(4) of the Workmen's Compensation Act. A separate show-cause-notice was issued for payment of interest and penalty. The Respondent herein preferred an appeal in FAO No. 184/2005 in which the High Court passed the impugned order setting aside the order passed by the Commissioner. It is in the above said background the Appellant-claimant has come forward with this appeal.

Decision: Appeal allowed.

Reason

Having heard learned Counsel for the respective parties and having perused the judgment of the learned Judge as well as that of the Workmen's Compensation Commissioner and all other material papers placed before us, we find that the

judgment of the learned Judge cannot be sustained.

In the first instance we wish to deal with the issue relating to validity of the adoption of the Appellant since if only his adoption is held to be valid there is scope for examining his right to claim compensation over the death of the deceased as his adopted son. In Hindu Law in the celebrated decision of this Court reported in *Lakshman Singh Kothari v. Rupkanwar*, AIR 1961 SC 1378 the legal requirement for a valid adoption has been succinctly stated. All the factors born out by records as well as in the oral version of the witnesses, examined on behalf of the Appellant, in our considered opinion conclusively proved that the Appellant was the adopted son of the deceased having been adopted as early as on 15.02.1999 i.e. long before the death of the deceased, namely, 17.07.2002. We find that everyone of the prescription required for a valid adoption were very much present in the form of both oral and documentary evidence on record and consequently the conclusion of the learned Judge in having held that the Appellant was not the adopted son of the deceased cannot be sustained and the same is set aside. Having reached the above conclusion, we proceed to deal with the claim of the Appellant on merits.

As far as the employment of the deceased was concerned, the Commissioner has noted that the FIR which was marked as Exhibit AW1/1 disclose that the second driver Bhure Singh himself admitted therein that the deceased was the senior driver who was driving the vehicle at the time of his death. As regards the said piece of evidence contained in AW1/1 nothing was brought out in his evidence either by way of trip sheet or attendance register or payment of wages register or any other document to show that the deceased was not in the employment of the second Respondent at any point of time or on the fateful day. The Commissioner also noted that there was no cross-examination of WW1/A Santokh Singh on that issue. On the other hand RW.1 Anil Sharma in his cross-examination admitted that a sum of Rs. 10,000/- was given to the family of the deceased for cremation purposes. Therefore, the issue relating to the employment of the deceased by the second Respondent as found to have been established before the Commissioner cannot be assailed.

Once we cross the said hurdle only other question to be considered is whether death of the deceased was in an accident arising out of and in the course of his employment with the second Respondent? It is common ground that the vehicle which was driven by the deceased did not meet with any road accident on 17.07.2002. As a matter of fact, the deceased while driving the vehicle from Delhi to Nimiaghat when reached near the destination, namely, Nimiaghat felt giddy and thereafter stated to have collapsed as he was found in a faint condition in the vehicle which he managed to park on the road side.



Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 year old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can therefore be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second Respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside. The appeal stands allowed. The order impugned is set aside. The order of the Commissioner for Workmen's Compensation shall stand restored and there shall be no order as to costs.



Tax Laws

LW.09.01.2013

NIRMA LTD v. CCE, VADODARA [CESTAT]

Appeal No.ST/525/12

Mr. M.V. Ravindran, Member (Judicial)
[Decided on 07/12/2012]

Service tax read with Section 11BB of the Central Excise Act, 1944 - Port services - Refund claim - Refund allowed to assessee - Interest on refund denied - Whether correct - Held, No.

Brief facts

The appellant filed four refund claims on 31.10.08, 30.01.09, 31.08.09 & 30.11.09. The said refund claims were partly allowed by the adjudicating authority and partly rejected. Against the rejection of such claim, the appellant preferred the appeal before the first appellate authority who allowed appeals and sanctioned the refund. Based upon such a decision of the first appellate authority, the adjudicating authority sanctioned the refund claims to the appellant. The appellant thereafter sought interest from the authorities under the provisions of Section 11BB of the Central Excise Act, 1944 which was turned down on the ground that the amounts have been refunded within three months of the date of the appeal being disposed of by the first appellate authority.

Decision: Appeal allowed.

Reason

After hearing both sides for some time, I find that the issue involved in this case is identical to the issue of the very same appellant in final order No.A/747-749/WZB/AHD/2011 dated 22.03.11. The relevant portion of the said order is reproduced herein under.

The refund claims filed by the appellant under Notification No.41/07 have been denied to the appellants on the ground that services provided in the port relating to repo charges; documentation charges etc. are not covered by port services in view of the fact that the service provider was not authorised by the port; as regards transportation of goods by road from the place of removal to ICD/Port or airport, the details of export invoices relating to export goods were not mentioned and there is no indication in the LR that the goods were directly transported from the factory to the port/ICD and in the case of, transportation by rail also some conditions have not been fulfilled; some of the refund claims are time barred since they were filed beyond the period prescribed in the notification and the claim for interest by the appellant because of delay in sanctioning the claim is not admissible since for refunds under service tax provisions of Section 11BB requiring the department to pay interest are not applicable.

In the case of appeal No.ST/101/10 in which the impugned order is OIA No.47/10, the learned consultant had shown lorry receipts by the transporter and I find that the lorry receipts issued by the transporter, the invoice number issued by the



exporter, the port to which the goods were retrained and the value in US\$ has been indicated. It is not known what documents were verified by the original adjudicating authority and the Commissioner (Appeals). On the one hand it is the claim of the appellant that all the lorry receipts contain the relevant details where as the facts as found by the lower authorities are entirely different. It was submitted that even though photocopies were shown and enclosed to the appeal memorandum, original documents have been submitted to the department. I would like the original adjudicating authority to verify once again and see whether relevant details are available in lorry receipt or not. If they are not available the photocopy of the lorry receipt can be taken and made part of the order in original so that it becomes clear that the original documents do not have the relevant details relating to export goods. Another ground taken by the lower authorities for rejecting the claim is that the amount of service tax paid towards GTA services for bringing the empty container to the factory for stuffing is not admissible. I am unable to understand how goods can be stuffed in a container without bringing the empty container from elsewhere. In any case the issue is squarely covered by the decision of this Tribunal vide final order No.A/645/WZB/AHD/09 dated 27.02.09 and reported in 2009 (02) LCX0057. This amount should have been allowed. As regards port services, the refund has been rejected on the ground that the service provider was not authorised. This cannot be the basis for rejection. What is required for the verification is whether service tax was paid for rendering port services or not. If the service tax was paid for rendering port services, having accepted the amount of service tax paid towards port services and having registered the shipping liner for providing port services, the service cannot be reassessed at the receivers end to deny the refund. Therefore the lower authority is required to verify and record a clear finding that the services provided by the shipping liners were not these services but some other service which is not eligible for refund. Another ground taken for rejecting the refund claim is limitation. In this case the claim has been rejected on the ground that from the relevant date namely date of ARE-I, the refund claim was time barred. However, I find the notification itself provides clearly that the relevant date for determination of limitation is the date on which proper officer of Customs makes an order permitting clearance and loading of the goods for exportation. Therefore the finding that the claim is time barred because it is filed beyond the period when counted from the date of ARE-1 appears to be against the provisions of Notification No 41/07-ST dated 06.10.07. This aspect has to be once again examined in the light of statute. Further it is also noticed that the observation of the lower authority in para 12 of the order in original in the case of Appeal No.ST/102/2010 that interest is not admissible since provisions of Section 11BB of Central Excise Act, 1944 are not applicable is against the law. I find that provisions of Section 83 of Finance Act, 1994 clearly provide that provisions of

Section 11BB are made applicable to service tax matters. I am surprised that this aspect has not been verified before rejecting the refund claim by both the lower authorities. The discussion above would show that the lower authorities appear to have not taken care to verify and record the facts correctly and have also not applied statutory provisions correctly. In the interest of justice, the impugned orders are required to be set aside and the matter is remanded to the original adjudicating authority who I hope at least will take pains to verify the facts, correctly record them and also apply the statute correctly to the facts of the case. Since the matter involves refund in respect of export of goods, this work has to be done expeditiously and preferably within three months from the date of receipt of this order. With these observations, the three orders impugned in the appeals are set aside, the matter is remanded to the original adjudicating authority to expeditiously reconsider the issues and pass an order which is factually and statutorily correct.

It can be seen that the issue involved in this case and the issue involved in the appellant's own case as per the portion reproduced hereinabove is the same and respectfully following the same, I find the impugned orders rejecting the interest claim of the appellant needs to be set aside and I do so. The impugned order is set aside and I hold that the appellant is eligible for the interest after three months of filing of the refund claim with the authorities till the same was sanctioned to the appellants.

LW.10.01.2013

KRISHNA GOPAL MAHESWARI v. ADDITIONAL
COMMISSIONER OF INCOME-TAX, RANGE-5,
FIROZABAD [ITAT]

IT Appeal No. 82 (Agra) of 2012

Bhavnes Saini, J. & A.L. Gehlot, J.
[Decided on 23/10/2012]

Income Tax Act, 1961 - Section 2(22)(e) - deemed dividend - loans to director who was holding 10% of the share capital of the lending company - AO assessed the loan as dividend - whether correct - Held, Yes.

Brief facts

The assessee returned income from house property, share from firm and trading of shares of companies. During the assessment proceedings, the A.O. noticed that the assessee has taken unsecured loan from Krishna Beads Industries Private Limited of Rs. 37,28,059/-. The assessee is a Director and having substantial interest in the company Krishna Beads Industries Private Limited. The assessee was holding not less



than 10% of the voting power in the said Company. The A.O. after considering the assessee's submission noticed that the object clause of the company nowhere shows that the company's main business was of money lending. The A.O. examined the Balance Sheet of the company and noticed that the total loans and advance are only Rs. 47,90,339/-, out of which loan to the extent of Rs. 37,28,029/- was given to the assessee. The A.O. has also examined the Profit & Loss Account of the company and noticed that interest received from the assessee of Rs. 62,280/- has been shown as indirect income. The company also have no license of money lending business. The A.O. made addition of Rs. 37, 28,059/- under section 2(22) (e) of the Act. The Order of the A.O. has been confirmed by the CIT (A).

Decision: Appeal dismissed.

Reason

We have heard the parties and records perused. The issue to be examined in this case is whether the lending of money is a substantial part of business of the company, from which loans and advances were received by the assessee, in the ordinary course of its business.

To examine the issue, we would like to see section 2(22) (e) of the Act. If we consider the object of introduction of sub-clause (e), we notice that a company in which public are not substantially interested may not declare dividends or adequate dividends and may merely give loans to shareholders and such loans, not being dividends under the general law, would not be taxable as income in the hands of shareholders. As the public would not have substantial interest in such company, those substantially interested in the company may not recover the loans or allow them to be that barred by time. The result would be that the amounts which were ostensibly received as loans or advances become the income of shareholders and yet they would not be required to pay any tax on said income under the general law. It is to avoid the evil of this nature that sub-clause (e) of section 2(22) has been enacted.

On a plain reading of section 2(22) (e), we find that the section is applicable for any payment by a company, not being a company in which the public are substantially interested, of any sum by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than the 10% of the voting power. But this deemed dividend does not include any advance or loan made to shareholder by a company in the ordinary course of its business, where the lending of money is substantial part of business of the company. On consideration of the facts of the case, we noticed that there is no dispute about the facts that all the conditions laid down under section 2(22)(e) are satisfied for application of section 2(22)(e) except condition laid down under clause (ii) of section 2(22)(e) of the Act.

The issue whether the business of the company was a business of money lending or not, to examine this aspect one has to see various aspects of evidences including procedural aspect which are required to be taken under Companies Act and report to controlling Officers including Registrar of Companies, SEBI and others. For doing money lending business one has to obtain necessary permission from competent authority. We may state here that the assessee has failed to furnish any single evidence to support that the company has followed such procedure based on which it can be said that the substantial part of the business of the company was money lending. If we examine this aspect from business activities, we noticed that there are accepted principles that the business activities and transaction are recorded in the books of account.

We may also mention that the assessee did not take interest bearing loans and advances from different parties. The auditor has also in his report clarified that the company has not granted but taken unsecured loans, interest free, from other parties covered in the register maintained under Section 301 of the Companies Act, 1956. In money lending business, the transactions are taking and giving money on finance. This is a fundamental characteristic of money lending business.

In the light of above discussion, we find that the assessee has failed to establish that the substantial part of business of the company is money lending and the loans and advances received by the assessee is in the ordinary course of money lending business. Unless the assessee establishes that money lending business was the substantial part of the business of the company and the loans and advances received during the course of money lending business, the assessee will not fall under the exceptional circumstances provided in section 2(22)(e)(ii) for the purpose not to include the calculation of deemed dividend. Further, merely stating in the object clause that the business of the assessee company was money lending cannot be held that the case of assessee falls under exceptional circumstances not to treat the deemed dividend. On the basis of above discussions, we do not find any infirmity in the order of CIT (A). Order of CIT (A) is accordingly confirmed.

CORRIGENDA

In December 2012 issue of Chartered secretary on page 1550 the name 'T N Pandey, FCS' may please be read as T N Pandey and on page 1566 the name 'T Ramappa, FCS' be read as 'T Ramappa, ACS'.

The errors are regretted.



From the Government



Corporate Laws

01 The Companies Directors Identification Number (Third Amendment) Rules, 2012

[Issued by the Ministry of Corporate Affairs vide F No. 5/80/2012-CL-V dated 24.12.2012.]

In exercise of the powers conferred by clause a and b of sub-section (1) of section 642 read with section 266A, 266B, 266D and 266E of the Companies Act, 1956 (I of 1956), the Central Government hereby makes the following rules further to amend the Companies (Directors Identification Number) Rules, 2006 namely: -

- Short title and commencement. (1) These rules may be called the Companies Directors Identification Number (Third Amendment) Rules, 2012.
(2) They shall come into force with effect from 25.12.2012
- In the Companies (Directors Identification Number) Rules, 2006, in Annexure 'A' for Form DIN-I, the following Form of DIN- I shall be substituted, namely:-

FORM NO. DIN-1

[See Rule 3(1) of the Companies (Director Identification Number) Rules, 2006, Rule 10 of Limited Liability Partnership Rules, 2009]

Application for allotment of Director Identification Number

Note -

- All fields marked in • are to be mandatorily filled.
- Income-tax Permanent Account Name (Income-tax PAN) is mandatory in case of Indian nationals and in such case applicant details should be as per Income-tax PAN. In case the details as per Income-tax PAN are incorrect, applicant is advised to first correct the details in Income-tax PAN. Refer instruction kit for details.
- In case of foreign nationals, Passport number is mandatory.

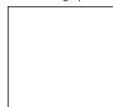
- *Applicant's name (Enter full name and do not use abbreviations)

- First name
- Last name
- Middle name

- *Father's name (Even married women must give father's name)

- First name
- Last name
- Middle name

Photograph



(Attach a latest passport size photograph by clicking on above box)

3. *Whether a citizen of India Yes ☐ No ☐

4. Nationality Remove Photograph

4A *Whether resident in India Yes ☐ No ☐

4B. *(a) Current occupation

*(b) Educational qualification

5. *Date of birth (DD/MM/YYYY)

6. Gender ☐ Male ☐ Female 7. Place of birth

8. Income-tax permanent account number Verify income-tax PAN detail

9. Voter's identity card number

10. Passport number

11. Driving license number

12. Permanent residential address

*Line I

Line II

*City

*State *Pin code

*ISO country code

Country

Phone *Mobile Fax

*e-mail ID

13. *Whether present residential address is same as permanent residential address ☐ Yes ☐ No

14. Present residential address

Line I

Line II

City

State *Pin code

ISO country code

Country

Phone Fax

Certification

☐ I hereby verify that I have satisfied myself about the identity of the applicant based on the perusal of the original of the attached documents.
Note: In case where the applicant is residing outside India, the particulars have to be verified from the documents duly attested by the attesting authority as mentioned in the instruction kit.

☐ I also verify having attested the photograph of the said person

☐ who is personally known to me; or

☐ who met me in person along with the original of the attached documents.

*☐ It is further certified that all required attachments have been completely attached to this application.

*☐ It is further certified that the applicant has given an affidavit in respect of the following and the affidavit by the applicant as per Annexure - 1 of the DIN Rules has been attached -

*☐ the applicant is not restrained/disqualified/removed of, for being appointed as director of a company under the provisions of Companies Act, 1956 including Sections 203, 274, 284 and 388(E) of the said Act or for being appointed as a designated partner of a limited liability partnership under the provisions of the Limited Liability Partnership Act, 2008 including section 5 of the said Act.

*☐ the applicant has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court.

*☐ the applicant has not been allotted a Director Identification Number (DIN) under section 266B of the Companies Act, 1956 or a Designated Partner Identification Number (DPIN) under section 7 of the Limited Liability Partnership Act, 2008.

*☐ I have been duly authorised by the applicant to sign and submit this application.

Attachments (Refer instruction kit for details)

1. *Proof of identity of applicant Attach

2. *Proof of residence of applicant Attach

3. *Affidavit by the applicant as per Annexure - 1 of the DIN Rules Attach

4. Optional attachment(s) - if any Attach

Remove Attachment

List of Attachments



From the Government

To be digitally signed by

*Category

In case of Chartered accountant or Company secretary or Cost accountant (in whole- time practice)

Membership number or certificate of practice number of Chartered accountant or Company secretary or Cost accountant (in whole- time practice)

Whether associate or fellow ☐ Associate ☐ Fellow

In case of secretary (who is member of ICSI), in wholetime employment of existing company in which the applicant is proposed to be a director .

Membership number of the secretary

Whether associate or fellow ☐ Associate ☐ Fellow

Corporate identity number (CIN) of company with which secretary is associated and in which applicant is proposed to be a director

Pre-fill

Name of company

This eForm has been taken on record by the Central Government through electronic mode and on the basis of statement of correctness given by the person filing the form

Affidavit from the applicant in case of Form DIN-1 as per Annexure 1 of the DIN rules

(Affidavit to be notarized in non 'judicial stamp paper of Rs. 10, to be scanned as annexed with DIN-1)

1. I, (name of applicant), Son/Daughter* of (applicant's father's name), born on (date of birth), resident of (present residential address of the applicant) hereby confirm and verify that the particulars given in the Form DIN-1 are true and correct and also in agreement with the documents being attached to the Form DIN-1 and I am solely responsible for its accuracy.
2. I further confirm that
 - (i) The photograph and document attached to the Form DIN-1 belong to me. I further confirm that all required documents have been duly attested by me or duly attested by either Public Notary or a Gazetted Officer of a Government and are attached to the form DIN-1 and
 - (ii) I am not restrained/disqualified/removed of, for being appointed as director of a company under the provisions of Companies Act, 1956 including Section 203, 274, 284 and 388 (E) of the said Act or for being appointed as a designated partner of a limited liability partnership under the provisions of the Limited Liability Partnership Act, 2008 including section 5 of the said Act and
 - (iii) I have not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court and
 - (iv) I have not been already allotted a Director Identification Number (DIN) under Section 266B of the Companies Act, 1956 or a Designated Partner Identification Number (DPIN) under section 7 of the Limited Liability Partnership Act, 2008.
 - (v) Mr/Ms CA/CS/CWA in practice has been authorised to digitally sign DIN application on my behalf.
 - (vi) The particulars of address provided in DIN-1 of the applicant and documents attached as address proof are correct beyond all reasonable doubts.
 - (vii) I have not furnished any false information or suppressed any material information with view to obtain DIN. In case information provided is found to be false or suppressed or willful omission, I have no objection to de-activate and cancel the DIN allotted by the Central Government and I shall be liable for penal action u/s 628 of the Companies Act.
 - (viii) In case of DIN allotted by the Central Government has not been activated within 365 days from the date of allotment, I have no objection for cancelling/ Deactivating for cancelling/deactivating the allotted DIN.

*Note: Strike out whichever is not applicable.

Signature:
(Name)

Renuka Kumar
Joint Secretary

02 The Companies Directors Identification Number (Third Amendment) Rules, 2012.

[Issued by the Ministry of Corporate Affairs vide F No. 5/80/2012-CL V dated 24.12.2012.]

In exercise of the powers conferred by clause a and b of sub-section (1) of section 642 read with section 266A, 266B, 266D and 266E of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Directors Identification Number) Rules, 2006 namely: -

1. Short title and commencement. (1) These rules may be called the Companies Directors Identification Number (Third Amendment) Rules, 2012.
- (2) They shall come into force with effect from 25.12.2012.

2. In the Companies (Directors Identification Number) Rules, 2006, In Form DIN - 4, the certification column after serial no. 17, the following 2nd para of the certification in Form DIN-4 shall be substituted, namely:-

- I hereby verify that I have satisfied myself about the identity of the director/designated partner based on the perusal of the original of the attached documents.
- I also verify having attested the photograph of the said person
 - Who is personally known to me, or
 - Who met me in person along with the original of the attached documents.
- It is further certified that all required attachments have been completely attached to this application.

Renuka Kumar
Joint Secretary

03 The Companies (Central Government's) General Rules and Forms (Seventh Amendment) Rules, 2012.

[Issued by the Ministry of Corporate Affairs vide F No. 5/80/2012-CL V dated 24.12.2012.]

In exercise of the powers conferred by sub-section (1) of section 642 read with section 610B of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Central Government's) General Rules and Forms, 1956, namely: -

1. (1) These rules may be called the Companies (Central Government's) General Rules and Forms (Seventh Amendment) Rules, 2012.
- (2) They shall come into force with effect from 25.12.2012.
2. In the Companies (Central Government's) General Rules and Forms, 1956, in Annexure 'A' for Form 18, the following Form shall be substituted, namely:-





From the Government

FORM NO. 18

[Pursuant to section 146 of the Companies Act, 1956]

Notice of situation or change of situation of registered office

Note - All fields marked in *are to be mandatorily filled.

1. This form is for ☐ New company ☐ Existing company
 2. (a) *Form 1A reference number (Service request number (SRN) of Form 1A) or corporate identity number (CIN) of company
 - (b) Global location number (GLN) of company Pre-fill
 - 3.* (a) Name of the company
 - (b) Address of the registered office of the company
 - (c) Name of office of existing Registrar. of Companies(RoC)
 - (d) Purpose of the form ☐ Change within local limits of city, town or village
☐ Change outside local limits of city, town or village
☐ Change in office of RoC within same state
☐ Change in state within office of same RoC
☐ Change in state outside office of existing RoC
 4. Notice is hereby given that
 - (a) The address of the registered office of the company with effect from ☐ (DD/MM/YYYY) is
☐ The date of incorporation of the company is
- *Address Line I
- Line II
- *City
- * State
- * District
- Country * Pin code
- *e-mail ID
- (b). *Registered Office is
 ☐ Owned by Company ☐ Owned by Director (Not taken on lease by company)
☐ Taken on Lease by company ☐ Owned by any other entity/Person (Not taken on lease by company)
 - (c) *Name of office of proposed RoC or new RoC
 - (d) The full address of the police station under whose jurisdiction the registered office of the company is situated

*Name

*Address Line I

Line II

*City

*State

*Pin code
 5. (a) SRN of Form23
 - (b) SRN of relevant form
 - (Mention the SRN of related Form 1AD, 21; if applicable)
 6. (a) Date of order of company law board (CLB) or any other competent authority (DD/MM/YYYY)
 - (b) Petition number

Attachments

1. *Proof of Registered Office address.
2. No Objection Certificate from director if registered office is owned by director (not taken on lease by company)
3. A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/Person (not taken on lease by company).
4. Optional attachment(s) - if any

Verification

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

- ☐ I have been authorised by the Board of directors' resolution number dated (DD/MM/YYYY) to sign and submit this form.
- ☐ I am authorised to sign and submit this form.
- * ☐ The company undertakes to file the Form 18 for change of registered office address with the RoC within prescribed period.

Managing director or director or manager or secretary of the company

*Designation

*Director identification number of the director or Managing Director; or Income-tax permanent account number (income-tax PAN) of the manager; or Membership number, if applicable or income-tax PAN of the secretary (secretary of a company who is not a member of ICSI, may quote his/her income-tax PAN)

Certificate

- * ☐ it is hereby certified that I have verified the above particular (including attachment(s)) from the records of
- and found them to be true and correct. I further certify that all required attachment(s) have been completely attached to this form .
- * ☐ I further certify that I have personally visited the new address, verified it and I am of the opinion that the premises are indeed at the disposal of the applicant company.
- ☐ Chartered accountant (in whole-time practice) or ☐ Cost accountant (in whole-time practice) or ☐ Company secretary (in whole-time practice)
- * Whether associate or fellow ☐ Associate ☐ Fellow
- * Membership number or certificate of practice number

For office use only:

eForm Service request number (SRN) eForm filing date (DD/MM/YYYY)

Digital signature of the authorising officer

This e-Form is hereby registered

Date of signing (DD/MM/YYYY)

OR

This eForm has been taken on file maintained by the registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company.

Renuka Kumar
Joint Secretary

04 Amendment in the notification G.S.R. 1060 (E) dated 21st December, 1989

[Issued by the Ministry of Corporate Affairs vide F No. 3/2/2012-CL-V dated 21.12.2012.]

In pursuance of clause (39) of section 2 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following further amendment in the notification of the Government of India in the erstwhile Ministry of Industry (Department of Company Affairs) number G.S.R. 1060 (E), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 21st December, 1989, namely:-

In the said notification, after entry 22, the following entry shall be inserted namely:-
"23. MCX Stock Exchange Limited."

Renuka Kumar
Joint Secretary

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[GN-03]

January 2013



CHARTERED SECRETARY



05 Delegation of Powers by Central Government in relation to Banking Companies

[Issued by the Ministry of Corporate Affairs vide F No. 17/231/2012-CL-V dated 21.12.2012.]

In exercise of the powers conferred by sub-section (1) of section 637 of the Companies Act, 1956 (1 of 1956), the Central Government hereby delegates its powers under sections 388B, 188C and 388E of the said Act in relation to banking companies falling within the purview of the Banking Regulation Act, 1949 (10 of 1949), to the Reserve Bank of India subject to condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if, in its opinion, such a course of action is necessary in the public interest.

2. This notification shall come into force on the date of its publication in the Official Gazette.

Renuka Kumar
Joint Secretary

06 Companies (Central Government's) General Rules and Forms (Seventh Amendment) Rules, 2012.

[Issued by the Ministry of Corporate Affairs vide F No. 52/2/CAB/2012 dated 19.12.2012.]

In exercise of the powers conferred by sub-section (1) of section 642 read with section 610B of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Central Government's) General Rules and Forms, 1956, namely: –

1. (1) These rules may be called the Companies (Central Government's) General Rules and Forms (Seventh Amendment) Rules, 2012.
- (2) These rules shall come into force with effect from the 23rd December, 2012.
2. In the Companies (Central Government's) General Rules and Forms, 1956, in Annexure 'A' for Form 23C, the following Form shall be substituted, namely:-

FORM NO. 23C [Pursuant to section 233B (2) of Companies Act, 1956]	Form of application to the Central Government for appointment of cost auditor
--	--

Note - All fields marked in * are to be mandatorily filled.

1. (a) *Corporate identity number (CIN) or foreign company registration number (FCRN) of the company Pre-fill
- (b) Global location number (GLN) of company

2. (a) Name of the company
- (b) Address of the registered office or of the principal place of business in India of the company
- (c) *e-mailID of the company
- (d) *Phone
3. (a) *Category of cost audit order ☐ Company specific order ☐ Industry-wise general order
- (b) * Number of industries for which the form is being filed
- (i) *Number of the Central Government's order directing cost audit 52/ / CAB/ Pre-fill
- (ii) *Date of the Central Government's order directing cost audit (DD/MM/YYYY)
- (iii) Name of Industry to which cost audit order relates
4. **Details of the cost auditor proposed to be appointed**
- (a) *Category of cost auditor ☐ Individual ☐ Cost auditor's firm
- (b) *Income-tax permanent account number of cost auditor or cost auditor's firm
- (c) *Name of the cost auditor or cost auditor's firm proposed to be appointed as cost auditor as per Board resolution
- (d) *Membership number of cost auditor or cost auditor's firm's registration number
- (e) Address of the cost auditor or cost auditor's firm
 - (i) *Line I
 - Line II
 - (ii) *City
 - (iii) *State
 - (iv) Country
 - (v) *Pin code
- (f) *e-mail ID of the cost auditor or cost auditor's firm
- (g) *Whether the cost auditor is subject to any disqualification under section 233B(5) of the Companies Act, 1956 ☐ Yes ☐ No
- (h) Whether appointment of auditor is within the limits specified in sub-section 1B of section 224 (applicable in case of appointment in public company) ☐ Yes ☐ No
- (i) *Scope of audit for the proposed cost auditor as per the Board resolution
5. *Proposed remuneration of the cost auditor (In Rs.)
6. Financial year to be covered by the cost auditor
 - (a) *From (DD/MM/YYYY)
 - (b) *To (DD/MM/YYYY)
7. *Date of meeting of Board of directors proposing the name of the cost auditor (DD/MM/YYYY)
8. (a) *Is there any change in the cost auditor ☐ Yes ☐ No
- (b) If yes, name and address of previous auditor
- (c) Reasons for change in the auditor



From the Government

(d) Whether the change is due to death of existing cost auditor ☐ Yes ☐ No

If yes, enter

(i) Date of death (DD/MM/YYYY)

(ii) Service request number (SRN) of Form 23C filed earlier for appointment of deceased cost auditor

(e) Whether the previous cost auditor has been informed of the change ☐ Yes ☐ No

Attachments

1. *Copy of the Board resolution of the company sanctioning the proposal for which the Central Government approval has been sought

Attach

2. *Copy of the certificate obtained from cost auditor regarding compliance of the section 224(1B) of the Companies Act, 1956

Attach

3. Optional attachment(s) - if any

Attach

List of attachments

Remove attachment

Verification

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete.

☐ I have been authorised by the Board of directors' resolution number dated (DD/MM/YYYY) to sign and submit this application.

☐ I am authorised to sign and submit this application.

To be digitally signed by

Managing Director or director or manager or secretary of the company (in case of indian company) or authorised representative

(In case of a foreign company)

*Designation

*Director identification number of the director or

Managing Director; or Income-tax PAN of the manager

or authorised representative; or Membership

number, if applicable or income-tax PAN of the secretary

(secretary of a company who is not a member of ICSI,

may quote his / her income-tax PAN)

Modify

Check Form

Prescrutiny

Submit

This eForm has been taken on file maintained by the Central Government through electronic mode and on the basis of statement of correctness given by the company

B. B. Goyal

Advisor (Cost)

In continuation of MCA's General Circular Nos. 8/2012 dated May 10, 2012 [as amended on June 29, 2012] and 18/2012 dated July 26, 2012, it has been decided that all cost auditors and the companies concerned are allowed to file their Cost Audit Reports and Compliance Reports for the year 2011-12 [including the overdue reports relating to any previous year(s)] with the Central Government in the XBRL mode, without any penalty, within 180 days from the close of the company's financial year to which the report relates or by January 31, 2013, whichever is later. The Institute is requested to circulate this for the information of all concerned.

B. B. Goyal

Advisor (Cost)

08 Filing of Form 68 for rectification of mistakes in Form 1, Form 1A and Form 44-regarding

[Issued by the Ministry of Corporate Affairs vide General Circular No. 42/2012 dated 21.12.2012.]

Rule 20G(1) of Companies (Central Government's) General Rules and Forms (Second Amendment), 2010 allows for filing of an application for rectification of mistakes made while filing Form No.1, Form No.1A and Form No.44 electronically, on the Ministry's website. Such applications are to be made to the Registrar of companies in Form No.68 and are required to be accompanied by a fee of Rs.1000 in case of Form No.1, Form 1 A and Rs.10,000 for Form 44. Rule 20G(2) permits filing of an application in Form No.68 to be filed with the Registrar within a period of three hundred and sixty five days from the date of approval of the aforesaid forms by the Registrar concerned.

2. Requests have been received from time to time by this Ministry to extend the facilities for rectification of mistakes as above companies incorporated prior to the year 2009 and to other companies which could not avail of this facility earlier. After due consideration it has been decided to allow such companies to rectify mistakes in Forms 1, 1A and 44 by filing. Form 68 on payment of fee stipulated above.
3. Form 68 (electronic mode) may be filed for rectification of mistakes in the forms referred above within a period of 180 days from the effective date.
4. This circular is effective from 23/12/2012.

07 Filing of Cost Audit Report and Compliance Report in the eXtensible Business Reporting Language (XBRL) mode

[Issued by the Ministry of Corporate Affairs vide General Circular No. 43/2012 dated 26.12.2012.]

Sanjay Shorey

Joint Director

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[GN-05]

January 2013



CHARTERED SECRETARY



09 Filing of Balance Sheet and Profit and loss Account in eXtensible Business Reporting language (XBRI) mode for the financial year commencing on or after 01.04.2011- Corrigendum to General Circular No: 39/2012.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 41/2012 dated 18.12.2012.]

In continuation to General Circular No: 39/2012 dated 12.12.2012 of this Ministry on the Subject cited above, the following words in Para-I "or within 30 days from the date of AGM of the company" should be read as "or within 30 days from the DUE date of AGM of the company".

2. All other terms and conditions of the General Circular Nos: 16/2012 dated 06.07.2012 and 39/2012 dated 12.12.2012 will remain same.

Dr. Pankaj Srivastava
Director

11 Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode for the financial year commencing on or after 01.04.2011.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 39/2012 dated 12.12.2012.]

In continuation of the Ministry's General Circular Nos: 16/2012 dated 06.07.2012 and 34/2012 dated 25.10.2012 on the subject cited above, it is stated that the time limit to file the financial statements in the XBRL mode without any additional fee/penalty has been extended up to 15th January 2013 or within 30 days from the date of AGM of the company, whichever is later.

2. All other terms and conditions of the General Circular No: 16/2012 dated 06.07.2012 will remain the same.

Sanjay Kumar Gupta
Deputy Director

10 No Objection Certificate (NOC) from the concerned regulator/ Institute for LLP Name approval/ incorporation.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 40/2012 dated 17.12.2012.]

In continuation of this Ministry's Circular No 2/2012 dated 15th March, 2012 on registration of companies or LLPs where one of their objects is to carry on the profession of Chartered Accountant, Company Secretary, Cost Accountant, Architect, etc. relating to the requirement of obtaining NOC from the concerned regulator, it is hereby stated that the approval of the council/regulator governing the profession shall be obtained both at the time of application for incorporation and while seeking to change the name of an existing Limited Liability Partnership.

2. All ROCs are accordingly advised to ensure that in-principle approval/NOC of the regulator/institute governing such profession is obtained at the time of incorporation/conversion into LLP and not while making application for name approval for new LLP.
3. However, in case of change of name of an existing LLP, NOC from the concerned regulator shall be obtained at the time of making application for name approval because change of name of LLP is made by filing Form 5 through STP mode.

J. N. Tikku
Joint Director

12 Requirement of Base Minimum Capital for Stock Broker and Trading Member

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DRMNP/ 36 /2012 dated 19.12.2012.]

1. SEBI vide circular no SMD/SED/RCG/270/96 dated January 19, 1996 and circular no MRD/DoP/SE/Cir-07/2005 dated February 23, 2005 had prescribed the requirement of Base Minimum Capital (BMC) for stock brokers trading on stock exchange. BMC is the deposit given by the member of the exchange against which no exposure for trades is allowed.
2. The BMC deposit requirement was prescribed to be commensurate with the risks, other than market risk, that the broker may bring to the system. Over the years the market structure has undergone significant structural changes. The various technological changes and the increased speeds of trading have brought to fore the greater quantum of risks arising during the course of execution of transactions. In light of this, based on deliberations at various forums, it has been decided to realign the BMC requirements with the risk profiles of the stock brokers/trading members in cash/derivative segment of the stock exchange.
3. Accordingly, the requirement of BMC would be implemented in the following manner –
 - a. It shall be enhanced for members holding registration as "stock-broker" in cash segment.



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- b. BMC shall be introduced for members holding registration as “trading member” in any derivative segment.
- c. Stock brokers / trading members shall maintain the prescribed BMC based on their profiles –

Categories	BMC Deposit
Only Proprietary trading without Algorithmic trading (Algo)	₹ 10 Lacs
Trading only on behalf of Client (without proprietary trading) and without Algo	₹ 15 Lacs
Proprietary trading and trading on behalf of Client without Algo	₹ 25 Lacs
All Trading Members/Brokers with Algo	₹ 50 Lacs

Explanation: The profiling of members may be explained with the following example – A scenario may arise, wherein, a member has registration as a “stock broker” as well as a “trading member” and is engaged as a principal doing proprietary trading on cash segment and is also engaged as an agent and transacting only on behalf of the clients in the derivatives segment. Further, the member may not have availed facility for algorithmic trading. In such a case, the profile of such a member shall be assessed as “Proprietary trading and trading on behalf of client without Algo”. The applicable BMC deposit for such a member shall be ₹ 25 Lacs.

- d. This BMC deposit requirement stipulated in the table at 3 (c) above, is applicable to all stock brokers / trading members of exchanges having nation-wide trading terminals.
 - e. For stock brokers / trading members of exchanges not having nation-wide trading terminals, the deposit requirement shall be 40% of the above said BMC deposit requirements.
 - f. The BMC deposit shall be maintained for meeting contingencies in any segment of the exchange. For members having registration for more than one segment of the same exchange, the BMC deposit requirement shall not be additive for such number of segments and shall be the highest applicable BMC deposit, across various segment.
 - g. No exposure shall be granted against such BMC deposit. The Stock Exchanges shall be permitted to prescribe suitable deposit requirements, over and above the SEBI prescribed norms, based on their perception and evaluation of risks involved.
 - h. Minimum 50% of the deposit shall be in the form of cash and cash equivalents. The existing guidelines on collateral composition shall continue to remain applicable.
4. The SEBI circulars specified at para 1 above, stand modified suitably. All other relevant provisions shall

continue to remain applicable.

5. The provisions of this circular shall be implemented by March 31, 2013
6. Stock exchanges are directed to:
 - (i) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
 - (ii) bring the provisions of this circular to the notice of the stock brokers/trading members of the stock exchange and also to disseminate the same on the website.
 - (iii) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.
7. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
8. This Circular is available on SEBI website at www.sebi.gov.in.

Shashi Kumar

Deputy General Manager

13 Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/ 35 /2012 dated 17.12.2012.]

1. It is observed from the information provided by the depositories that the companies listed in Annexure ‘A’ have established connectivity with both the depositories.
2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:
 - a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.
 - b) There are no other grounds/reasons for continuation of the trading in TFTS.



3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

Maninder Cheema
Deputy General Manager

Annexure A

Sr. No.	Name of the Company	ISIN
1.	Lifeline Drugs & Pharma Limited	INE776N01010
2.	Dera Paints & Chemicals Limited	INE844D01017
3.	Ravindra Energy Limited	INE206N01018
4.	Count N Denier (India) Limited	INE146N01016
5.	Monotype India Limited	INE811D01016
6.	Golechha Global Finance Limited	INE427D01011
7.	Shree Manufacturing Company Limited	INE632A01012
8.	Midwest Gold Limited	INE519N01014
9.	Delta Leasing And Finance Limited	INE874N01013

14 Pre-trade Risk Controls

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/34/2012 dated 13.12.2012.]

1. SEBI has issued various circulars from time to time to implement risk management in cash market and equity derivatives segments. Stock exchanges have operationalised these measures by putting in place checks to be carried out at their end and by the stock brokers.
2. The recent incidents of erroneous orders have brought to fore certain areas that require additional risk control measures to mitigate disruption of trading at the exchanges.
3. In view of the above, SEBI engaged in a consultative process with the market participants, stock exchanges, its Risk Management Review Committee (RMRC) and Technical Advisory Committee (TAC). Global practices in this regard were also studied.
4. Pursuant to the above, it has been decided to prescribe a framework of dynamic trade based price checks to prevent aberrant orders or uncontrolled trades. These measures would be implemented in phases in order to ensure the Indian stock exchanges deploy latest technology while maintaining adequate controls. As an initial measure, it has been decided that stock exchanges shall implement the measures as given below.

Order-level checks

5. Minimum pre-trade risk controls for all categories of orders placed on Stocks, Exchange Traded Funds (ETFs), Index Futures and Stock futures shall be as

follows:

5.1. Value/Quantity Limit per order:

- (a) Any order with value exceeding Rs. 10 crore per order shall not be accepted by the stock exchange for execution in the normal market.
- (b) In addition, stock exchange shall ensure that appropriate checks for value and / or quantity are implemented by the stock brokers based on the respective risk profile of their clients.

5.2. Cumulative limit on value of unexecuted orders of a stock broker:

- (a) Vide SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012, stock exchanges have been directed to ensure that the trading algorithms of the stock brokers have a 'client level cumulative open order value check'.
- (b) In continuation to the above, stock exchange are directed to ensure that stock brokers put-in place a mechanism to limit the cumulative value of all unexecuted orders placed from their terminals to below a threshold limit set by the stock brokers. Stock exchanges shall ensure that such limits are effective.

- 5.3. Stock exchanges shall enhance monitoring of the operating controls of the stock brokers to ensure implementation of the checks mentioned at point 5.1(b) and 5.2(b) above; and levy deterrent penalty in case any failure is observed at the end of stockbroker in implementing such checks.

Dynamic Price Bands (earlier called Dummy Filters or Operating Range)

6. Vide circular no. SMDRPD/Policy/Cir-37/2001 dated June 28, 2001, stock exchanges had been advised to implement appropriate individual scrip wise price bands in either direction, for all scrips in the compulsory rolling settlement except for the scrips on which derivatives products are available or scrips included in indices on which derivatives products are available.

For scrips excluded from the requirement of price bands, stock exchanges have implemented a mechanism of dynamic price bands (commonly known as dummy filters or operating range) which prevents acceptance of orders for execution that are placed beyond the price limits set by the stock exchanges. Such dynamic price bands are relaxed by the stock exchanges as and when a market-wide trend is observed in either direction.

- 6.1 It has been decided to tighten the initial price threshold of the dynamic price bands. Stock exchange shall set the dynamic price bands at 10% of the previous closing price for the following securities:

- (a) Stocks on which derivatives products are



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- available,
- (b) Stocks included in indices on which derivatives products are available,
- (c) Index futures,
- (d) Stock futures.

6.2 Further, in the event of a market trend in either direction, the dynamic price bands shall be relaxed by the stock exchanges in increments of 5%. Stock exchanges shall frame suitable rules with mutual consultation for such relaxation of dynamic price bands and shall make it known to the market.

Risk Reduction Mode

- 7 Stock exchanges shall ensure that the stock brokers are mandatorily put in risk-reduction mode when 90% of the stock broker's collateral available for adjustment against margins gets utilized on account of trades that fall under a margin system. Such risk reduction mode shall include the following:
 - (a) All unexecuted orders shall be cancelled once stock broker breaches 90% collateral utilization level.
 - (b) Only orders with Immediate or Cancel attribute shall be permitted in this mode.
 - (c) All new orders shall be checked for sufficiency of margins.
 - (d) Non-margined orders shall not be accepted from the stock broker in risk reduction mode.
 - (e) The stock broker shall be moved back to the normal risk management mode as and when the collateral of the stock broker is lower than 90% utilization level.
- 8 Stock exchanges may prescribe more stringent norms based on their assessment, if desired.
- 9 Stock exchanges are directed to:
 - (a) take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant byelaws, rules and regulations, within one month from the issuance of the circular and with atleast one week advance notice to the market;
 - (b) bring the provisions of this circular to the notice of the stock brokers and also disseminate the same on its website;
 - (c) communicate to SEBI the status of implementation of the provisions of this circular.
- 10 This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema
Deputy General Manager

15 Procedural norms on Recognitions, Ownership and Governance for Stock Exchanges and Clearing Corporations.

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DSA/33/2012 dated 13.12.2012.]

The Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (henceforth referred to as 'SECC Regulations') were notified on June 20, 2012. In terms of the powers under regulation 51 of the SECC Regulations, the Board hereby issues the following instructions for the effective implementation of the SECC Regulations. This circular shall be read in conjunction with the Securities Contracts (Regulation) Act, 1956 (SCRA), Securities Contracts (Regulation) Rules, 1957 (SCRR), SECC Regulations and other applicable laws.

PART - A RECOGNITION

1. Stages Application for seeking recognition as a Stock Exchange/ Clearing Corporation:-

- 1.1 An applicant seeking recognition as a stock exchange/ clearing corporation shall substantiate its capability to fulfill all the requirements laid down under SCRA, SCRR and regulation 7 of the SECC Regulations at the time of making the application.
- 1.2 Further, for the purpose of grant of in-principle approval under regulation 7(5) of the SECC Regulations, the Board may take into account the factors which it may deem fit in the interest of the securities market. For this purpose, the Board may consider the information and documents including but not limited to the following:-
 - Business feasibility plan for the next five years,
 - Net worth certificate/ financial books and bank account details,
 - Detailed write-up on each of its functions,
 - Details of authorised officials along with specimen signatures of the authorised signatories,
 - Proposed organisational structure,
 - Necessary undertakings,
 - Manpower planning,
 - Background and necessary information (as specified herein) to establish that its shareholders/promoters are fit and proper persons, Information regarding its Office set-up, Appointment of Managing Director after following due process
- 1.3 Before grant of final approval, in addition to the above, the applicant should satisfy the Board with regard to compliance of the following :



- a) Appointment of heads of key departments such as legal, listing, member registration, trading and surveillance in case of a stock exchange, and
- b) Appointment of heads of key departments such as risk, legal, clearing and settlement, in case of a clearing corporation.
- c) Satisfactory compliance with observations of SEBI during inquiry/ inspection by SEBI.
- d) Any other requirement as SEBI may deem necessary for disposal of the application .

1.4 After grant of recognition, the stock exchange can commence trading operations with a minimum of 50 trading members and the clearing corporation can commence clearing and settlement operations with a minimum of 25 clearing members.

2. Bye-laws of a Clearing Corporation:- A clearing corporation shall in terms of applicable provisions of section 9 of the SCRA and regulation 4 of SECC Regulations make bye-laws, providing inter alia for the following:-

- a) the timings for pay-in and pay-out of funds and securities;
- b) rules for clearing and settlement;
- c) risk management mechanism;
- d) process of netting, novation and guarantee for settlement of trades;
- e) norms for contribution into and utilisation of the Fund in terms of regulation 39 of SECC Regulations ;
- f) rights and obligations of the clearing members vis-a-vis the clearing corporation, other clearing members, the trading members and clients of such trading members;
- g) criteria for admission and regulation of clearing members;
- h) default handling mechanism;
- i) Committees as mentioned in para 7 of this circular.
- j) any other matter as may be specified by SEBI.

PART -B

3. ACTION PLAN FOR ACHIEVING NETWORK:-

- 3(a). A recognised stock exchange having a network of less than Rs.100 crore, as on the date of commencement of the SECC Regulations, shall,, submit its plan duly approved by its shareholders to SEBI for achieving the network in terms of regulation 14 of SECC Regulations, within 90 days from the date of this circular.
- 3.(b). A clearing corporation which has made application for recognition in terms of second proviso of regulation 3 of the SECC Regulations and has a network of less than Rs. 300 crore shall submit its plan duly approved by its shareholders to SEBI, for achieving the network in terms of regulation 14 of the SECC Regulations, within 90 days from the date

of this circular.

PART -B OWNERSHIP

4. Application for grant of approval for shareholding beyond 2% or 5%:-

4.1 A shareholder seeking SEBI's approval for holding more than 2% or 5% of paid up equity share capital of a stock exchange or clearing corporation shall submit the following particulars:-

- a) Name
- b) Address
- c) Details of employment/ business, if any:
- d) SEBI registration number,if any.
- e) Details of registration with other statutory authorities.
- f) Declaration regarding the fulfillment of requirements of regulation 20 of SECC Regulations.
- g) Details of action /penalties taken/imposed against/upon him/it by any statutory authority in India or abroad.
- h) Details of activities that may, in the opinion of the shareholder, lead to his/its disqualification.
- i) Association with trading members/clearing members of stock exchanges/clearing corporations.
- j) Cases pending before any Court, Tribunal or any other statutory authority in India or abroad, if any.
- k) Previous approvals from SEBI as fit and proper, if any.

4.2 The stock exchange/clearing corporation may also lay down any fit and proper criteria without diluting and limiting the principles and criteria laid down in regulation 20 of SECC Regulations.

4.3 The stock exchange/clearing corporation application shall ensure that all their shareholder are fit and proper persons.

4.4 The application for approval under clause 4.1 shall be submitted to SEBI through the stock exchange/clearing corporation concerned. The stock exchange/clearing corporation shall verify the declarations/ undertakings given by the shareholders and forward the application which is, in its opinion, fit for approval alongwith its recommendation for SEBI's approval.

5. Monitoring of shareholding limits:-

5.1 The stock exchange/clearing corporation shall put in place a monitoring mechanism to ensure compliance with the shareholding restrictions prescribed in SECC Regulations at all times. stock exchange/clearing corporation shall:-

- a) Disseminate on its website, the number of



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shares available in the nonpublic, FII and FDI category. The information shall also be disseminated by the stock exchange on which the shares may be listed.

- b) Check the shareholding data on a periodic basis to ensure that the shareholding restrictions specified under Chapter IV of the SECC Regulations are complied with at all times.
- c) Upon breach of shareholding limits, they shall intimate the same to SEBI within 7 days.

PART-C GOVERNANCE

6. Procedure for appointment:-

6.1 All directors while seeking approval shall submit to the stock exchange/clearing corporation the following details:-

- a) Name
- b) Address
- c) Educational qualification
- d) Details of employment/ Occupation, past and present
- e) Details of other directorships
- f) DIN No.
- g) Declaration regarding the fulfillment of requirements specified under regulation 20 of SECC Regulations.
- h) Declaration confirming compliance of Regulation 23(7) read with Regulation 2(1)(b) of SECC Regulations, in respect of non association with trading member or clearing member.
- i) Details of regulatory action taken against by any statutory authority in India.
- j) Details of activities that may in the opinion of the director, lead to his disqualification.
- k) Association with trading members/clearing members of stock exchanges/clearing corporations.
- l) Disclosure of the names of his dependents associated with the securities market as member, sub-broker, authorized person or holding any SEBI registration.
- m) An undertaking that he shall abide by the code of conduct and code of ethics prescribed in Part A and Part B of Schedule II to SECC Regulations.
- n) In the case of public interest directors, consent letters for acting as a public interest director.
- o) Pending / completed criminal cases pending before any authority in India or abroad, if any.

6.1.1 The stock exchange/ clearing corporation shall forward the above details to SEBI while recommending their names alongwith the minutes of the governing board meeting where their name/s was approved, copy of the shareholder's resolution

(wherever applicable), a confirmation by the stock exchange/ clearing corporation that they are fit and proper persons in terms of their fit and proper criteria and are not associated with any trading member or clearing member in terms of regulation 23(7) read with regulation 2(1)(b) of SECC Regulations.

6.2 Managing Director / Executive Director:-

6.2.1 The stock exchange/ clearing corporation shall constitute a Committee for the selection of the CEO /Managing Director/ Executive Director, as the case may be. The managing director shall be selected through open advertisement in all editions of atleast one national daily from amongst persons qualified in the fields of capital market/ finance/ management and possessing sufficient experience. In case of re-appointment, or extension the stock exchange/ clearing corporation shall apply to SEBI two months before the last working day of such Managing Director.

6.2.2 In case a vacancy of managing director arises due to unforeseen reasons, the stock exchange/ clearing corporation shall forward the new names to SEBI within 60 days from the date of submission of resignation or such vacation of office.

6.3 Public Interest Directors:-

6.3.1 The names of public interest directors shall be forwarded to SEBI after the approval of the Board of the stock exchange/clearing corporation. The shareholders approval shall not be necessary. A minimum of two names shall be submitted to SEBI for each vacancy of public interest directors.

6.3.2 The stock exchange/ clearing corporation shall ensure that public interest directors are selected from diverse field of work. While deciding to propose a particular person as a public interest director, the stock exchange/ clearing corporation shall also take into account the following factors:

- a) Qualification in the area of law, finance, accounting, economics, management, administration or any other area relevant to the financial markets.
- b) Atleast one person may be inducted having experience and background in finance / accounts who may preferably be inducted in the audit committee.
- c) Persons currently holding positions of trust and responsibility in reputed organisations or person who have retired from such positions.
- d) Persons who are likely to have interested positions in commercial contracts and financial affairs of stock exchanges, may be excluded. Also, persons who are regular traders/ speculators in the market or are director in the



board of the promoter entity of the Stock Exchange or Clearing Corporation, shall be excluded.

6.3.3 Chairperson of the stock exchange/ clearing corporation shall be appointed with the prior approval of SEBI.

6.3.4 Public interest directors shall not be simultaneously on the board of any other stock exchange/ clearing corporation or their subsidiary.

6.3.5 Public interest directors shall peruse the relevant laws, code of conduct, code of ethics, etc and submit an undertaking to the stock exchange/clearing corporation that they are aware of their role, responsibilities and obligations. The stock exchange/clearing corporation shall also provide at least seven days of training to every public interest director each year.

6.3.6 In case of extension of the term of the public interest director or appointment of a new public interest director, the stock exchange/clearing corporation shall apply to SEBI two months before the expiry of the term. In addition to the other requirements prescribed herein, the application for extension of term of the public interest director shall be accompanied with, his attendance details on meetings of various mandatory committees and on the governing board of the stock exchange / clearing corporation, reasons for waiver of the cooling off period.

6.3.7 The public interest director shall not be subject to retirement by rotation.

6.3.8 The existing public interest director shall continue holding the post, till a new public interest director is appointed in his place.

6.3.9 In case of existing public interest directors, who are in their second term, they may complete their term.

6.4 Share Holder Directors

6.4.1 The names of persons to be appointed as share holder directors shall first be approved by the governing board of the stock exchange/ clearing corporation, followed by shareholders approval before submitting the same to SEBI for approval.

6.4.2 The manner of election, appointment, tenure, resignation, vacation, etc. of shareholder directors shall be governed by the Companies Act, 1956 save as otherwise specifically provided under the SECC Regulations or in accordance with the Securities Contracts (Regulation) Act, 1956, circulars issued thereunder.

6.5 Selection of trading members/clearing members on

the Advisory Committee to the governing board:-

Prior to appointment to the advisory committee, the governing board of the stock exchange/ clearing corporation shall satisfy itself that the trading members/ clearing members are fit and proper persons in terms of regulation 20 of the SECC Regulations. The governing board shall frame the eligibility norms, term of office, cooling off period etc., of members of the advisory committee in consultation with the trading members/clearing members of the stock exchange/ clearing corporation.

6.6 Appointment of Compliance Officer:- The stock exchange/ clearing corporation shall appoint a compliance officer in terms of regulation 32 of SECC Regulations within 30 days from the date of this circular.

6.7 Appointment of key management personnel:- The stock exchange/ clearing corporation shall ensure that all key management personnel employed by them are fit and proper.

6.8 General conditions on appointment of directors:-

6.8.1 The stock exchange/ clearing corporation shall complete the appointment process within 30 days from SEBI's nomination/approval for directors and submit a compliance report within one week from the date of appointment.

6.8.2 In case any other official of the stock exchange/ clearing corporation is appointed on the governing board in addition to the Managing Director, the same shall be subject to the approval of shareholders and SEBI, in that order.

7. Statutory Committees:

7.1 In order to ensure effective oversight of the functioning of stock exchanges, SEBI, from time to time, through various circulars has mandated the formation of various committees by stock exchanges. A list of all such mandatory committees along with their new composition and function is placed under Annexure A to this circular. The list of mandatory committees for clearing corporations is placed under Annexure B to this circular.

7.2 The stock exchanges and clearing corporations shall form the respective committees in accordance with the composition prescribed therein and accordingly no approval from SEBI is required. The existing stock exchange/clearing house of a stock exchange and person who clears and settles trades of a recognized stock exchange shall submit a confirmation within three months from the date of this circular. The stock exchange and clearing corporation shall submit a confirmation within three months from the date of their recognition. The confirmation shall be submitted within three months with regard to the formation and composition of such committees. Any other conditions pertaining to the



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committees prescribed under the earlier circulars shall continue to apply. In addition to the above lists, the committees that are mandated for listed companies shall apply mutatis mutandis to stock exchanges and clearing corporations.

7.3 The stock exchanges/ clearing corporations shall lay down the policy for the frequency of meetings, quorum, etc., for the statutory committees. The meeting shall be conducted with atleast one public interest director being present except in the case of oversight committees wherein minimum 50% of the public interest directors need to be present. In the case of public interest directors committee, all public interest directors shall be present.

7.4. Independent external persons appointed to committees: The independent external persons shall be from amongst the persons of integrity, having a sound reputation and not having any conflicts of interests. They shall be specialists in the field of work assigned to the committee. The stock exchange/ clearing corporation shall frame the guidelines for appointment, tenure, code of conduct, etc., of independent external persons. Extension of the tenure may be granted at the expiry of the tenure pursuant to a review of the contribution, record of attendance at meetings, etc.

7.5. SEBI vide circular dated May 31, 2000 had mandated appointment of a governing council / executive committee for the Derivative Exchange/Segment of the stock exchanges. In light of the governance norms and the oversight committees prescribed under the SECC Regulations, the requirement of governing council is not mandatory.

7.6 The present functioning of the defaults committee shall continue, however, the same shall constitute of a majority of public interest directors.

7.7 The stock exchange and clearing corporation shall submit details about the above mentioned committees by way of Monthly development report/Quarterly development report.

8. Norms for compensation policy:-

8.1 Regulation 27 of the SECC Regulations mandates that the compensation policy for key management personnel of stock exchange/ clearing corporation shall be in accordance with the norms specified by SEBI. The compensation norms, in this regard, shall be as follows:-

- The variable pay component will not exceed one-third of total pay.
- 50% of the variable pay will be paid on a deferred basis after three years.
- ESOPs and other equity linked instruments in the stock exchange/ clearing corporation will not

form part of the compensation for the key management personnel.

d) The compensation policy will have malus¹ and clawback arrangements².

8.2 Apart from the above, the compensation policy of the stock exchange/ clearing corporation shall take into consideration the following:

- financial condition / health of the stock exchange/ clearing corporation,
- average levels of compensation payable to employees in similar ranks,
- should not contain any provisions regarding incentives to take excessive risks over the short term,
- revenues, net profit of the stock exchange/ clearing corporation,
- comparable to the industry standards,
- role and responsibilities of the key management personnel,
- periodic review

8.3 The stock exchange shall confirm to SEBI within three months from the date of this circular that the compensation for the key management personnel is in accordance with the norms specified above.

8.4 Further, at the time of seeking approval of SEBI for the appointment of the managing director, the stock exchange/ clearing corporation shall seek approval for the compensation of the managing director from SEBI. The compensation of the Managing Director of a stock exchange already appointed with the approval of SEBI shall be in accordance with the compensation policy as mentioned above. The same shall be submitted to SEBI for approval within three months from the date of this circular.

8.5 The requirement of disclosures under Regulation 27(5) of the SECC Regulations shall be with effect from the financial year 2012-13.

9. Regulatory departments:-

9.1 Regulation 28 of the SECC Regulations mandate segregation of regulatory departments from other departments. For this purpose, an indicative list of regulatory departments is given below. The governing board of the stock exchange/ clearing corporation may specify any other department having a regulatory function in addition to the list given below as a regulatory department.

9.2 Departments handling the following functions shall be considered as regulatory departments in a Stock

¹ A malus arrangement permits the stock exchange/clearing corporation to prevent vesting of all or part of the amount of a deferred remuneration.

² A clawback is a contractual agreement between the employee and the stock exchange/clearing corporation in which the employee agrees to return previously paid or vested remuneration to the stock exchange/clearing corporation under certain circumstances.



Exchange:-

- a) surveillance,
- b) listing,
- c) member registration,
- d) compliance,
- e) inspection,
- f) enforcement,
- g) arbitration,
- h) default,
- i) investor protection,
- j) investor services,

9.3 Departments handling the following functions shall be considered as regulatory departments in a Clearing Corporation:-

- a) Risk management,
- b) member registration,
- c) compliance,
- d) inspection,
- e) enforcement,
- f) default,
- g) investor protection,
- h) investor services,

9.4 The stock exchange /Clearing Corporation shall ensure that the regulatory departments viz., surveillance, inspection, risk management, default, investor protection, investor services etc, are sufficiently staffed with adequate number of persons having professional and relevant experience at all times.

PART- D MISCELLANEOUS

10. Procedure for submitting amendments to Articles/ Rules/Byelaws/ Regulations, etc, for SEBI's approval:-

The amendments to the Memorandum, Articles of Association, Rules, bye-laws, Regulations (as may be applicable) etc., of the stock exchange/clearing corporation, in terms of SCRA, SCRR, other applicable provisions in this regard, shall be submitted to SEBI for approval, subsequent to the following. The proposed amendment/s shall first be approved by the governing board of the stock exchange/clearing corporation, followed by shareholders approval (wherever applicable), then published in the Gazette of India (wherever applicable) and the respective State and then shall be

submitted to SEBI for approval. The proposal shall be accompanied by the minutes of the governing board, the shareholder's resolution and public criticism. However, in case the amendments are pursuant to Regulations, circular etc, issued by SEBI, the same shall not be subject to shareholder's approval.

11. Internal manual for conflict resolution: The stock exchange/clearing corporation shall have an internal

manual covering the management of conflicts between commercial and regulatory functions of the stock exchange/clearing corporation. The stock exchange/clearing corporation shall put in place a policy for comprehensive training and awareness of its employees on the various conflicts of interests involved in the functioning of its regulatory departments. Further, the entire conflict management framework shall periodically be reviewed and be strengthened based on the observations of such review.

12. Report to SEBI:- The public interest directors shall identify important issues which may involve conflict of interest for the stock exchange/ clearing corporation, may have significant impact on the functioning of SE/CC, may not be in the interest of market. The same shall be reported to SEBI.

13. Disclosure of Transactions: In terms of the code of conduct / code of ethics under SECC Regulations, every director, their family, firms/corporate entities in which the Directors hold twenty percent or more beneficial interest or hold controlling interest, shall disclose all transactions / dealings in securities to the stock exchange/clearing corporation. The details including time period for the disclosure in this regard shall be prescribed by the stock exchange/clearing corporation, however the time period for disclosure shall not be later than fifteen days of the transaction/dealing.

14. Clarifications regarding implementation of SECC Regulations:-

14.1 In respect of regulation 23(7) following is clarified

- a) no trading member or clearing member, or their associates and agents, irrespective of the stock exchange/clearing corporation of which they are members, shall be on the governing board of any recognised stock exchange or recognised clearing corporation.
- b) a person who is a director in an entity, that itself is a trading member or clearing member or has associate(s) as trading members or clearing members in terms of regulation 2(1)(b), he/she will deemed to be trading member or clearing member.
- c) However, a person who is an independent director on the board of a Bank or Financial Institution, which is in public sector or which either has no identifiable ultimate promoter or the ultimate promoter is in Public Sector or such Banks or Financial Institutions has well diversified shareholding, and it / its associate is a Clearing Member and / or Trading Member, the applicant will not be deemed to be Clearing Member and/or Trading Member or their associate for the purpose of Regulation 23(7). However, the appointment shall be subject to



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fulfilment of other requirements and satisfaction of SEBI.

- d) Further, a person who is an independent director on the board of the Public Limited Company whose other independent director(s) are also independent director in an entity, which is trading or clearing member, the person will not be deemed to be associate of trading member or clearing member subject to that Public Limited Company does not have any other association with trading member or clearing member.
- e) Recognised Stock Exchange and recognised clearing corporation, shall monitor and ensure the compliance of the Regulation 23(7) on continuous basis, to ensure that directors appointed, on their governing board, will not get associated with Trading Member or Clearing Member after approval and appointment,

14.2 For the purpose of Regulation 27(6), it is clarified that in terms of the said Regulation, the tenure refers to the period of posting as key management personnel in a regulatory department, which shall be for a fixed period.

14.3 For the purpose of regulation 35, the Governing Board of a recognised stock exchange or a recognised clearing corporation shall confirm compliance of that regulation in writing on half yearly basis.

15. The recognized stock exchanges/ clearing corporations are advised to:-

- i. make necessary amendments to the relevant rules/ bye-laws/ regulations for the implementation of the above decision immediately;
- ii. bring the provisions of this circular to the notice of the members of the stock exchange/ clearing corporation and also to disseminate the same through their website; and
- iii. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly / Quarterly Development Reports to SEBI.

16. This circular is issued in exercise of the powers conferred under regulation 51 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 read with section 8 and 10 of Securities Contracts (Regulation) Act, 1956 read with Section 11 (1) of the Securities and Exchange Board of India Act, 1992 with a view to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect immediately.

17. This circular is also available on SEBI website at www.sebi.gov.in.

Rajesh Kumar D
Deputy General Manager

16 Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2012.

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2012-13/25/5455 dated 11.12.2012. Published in the Gazette of India Extraordinary, Part III Section 4 dated 11.12.2012]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, namely:-

1. These Regulations may be called the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2012.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, in regulation 4, in sub-regulation (2), after the clause (r), the following clause and explanation shall be inserted, namely,-
"(s) mis-selling of units of a mutual fund scheme;
Explanation.- For the purpose of this clause, "mis-selling" means sale of units of a mutual fund scheme by any person, directly or indirectly, by-
(i) making a false or misleading statement, or
(ii) concealing or omitting material facts of the scheme, or
(iii) concealing the associated risk factors of the scheme, or
(iv) not taking reasonable care to ensure suitability of the scheme to the buyer."

U. K. Sinha
Chairman

17 Oversight of Members (Stock Brokers/Trading Members/ Clearing Members of any segment of Stock Exchanges/ Clearing Corporations)

[Issued by the Securities and Exchange Board of India vide CIR/MIRSD/13/2012 dated 07.12.2012.]

1. Please refer to SEBI Circular no. MIRSD/Master Cir-04/2010 dated March 17, 2010 on the captioned subject.



2. It has been decided, in consultation with Stock Exchanges and the associations of stock brokers, to modify the provisions of Para 2 & 3, Part I of the above mentioned Circular as below:
 - a. Para 2, Part I: The Stock Exchange or the Clearing Corporation, as the case may be, shall, in consultation with SEBI, formulate a policy for annual inspection of their members in various segments and follow up action thereon. The policy shall also cover various kinds of risks posed to the investors and market at large on account of the activities/business conduct of their members.
 - b. Para 3, Part I: The Stock Exchange or the Clearing Corporation, as the case may be, shall conduct inspection of their members in various segments in terms of the above policy and in case of members who hold multiple memberships of the exchanges, the Stock Exchanges shall establish an information sharing mechanism with one another on the important outcome of inspection in order to improve the effectiveness of supervision.
3. The other provisions specified in SEBI Circular no. MIRSD/Master Cir-04/2010 dated March 17, 2010 shall remain applicable.
4. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
5. This circular is available on SEBI website at www.sebi.gov.in.

Krishnanand Raghavan
Deputy General Manager

18 Rajiv Gandhi Equity Savings Scheme, 2012

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/32/2012 dated 06.12.2012.]

1. As announced in the Union Budget 2012-13, the Finance Act 2012 has introduced a new section 80CCG on 'Deduction in respect of investment made under an equity savings scheme' to give tax benefits to new investors who invest up to Rs. 50,000 and whose gross total annual income is less than or equal to Rs. 10 lakhs. The objective of the scheme is to encourage flow of savings in the financial instruments and improve the depth of the domestic capital market.
2. Vide notification 51/2012 dated November 23, 2012 (copy enclosed), the scheme has been notified by the Department of Revenue, Ministry of Finance (MoF). The notification is available on the website of Income Tax

Department under section "Notifications".

3. Stock exchanges, Depositories, Mutual Funds, Asset Management Companies (AMCs), Trustee Companies and Boards of Trustees of Mutual Funds are directed to take note of the notification and take necessary steps to implement the scheme. AMCs / Trustees shall ensure that RGESS eligible Exchange Traded Funds (ETFs) and Mutual Funds (MFs) schemes are in compliance with the aforementioned notification.
4. With regard to implementation of the MoF notification, the following is clarified:
 - (i) For RGESS eligible close-ended Mutual Funds schemes, advice given by AMCs to the depository for extinguishment of units of close-ended schemes upon maturity of the scheme shall be considered as settled through depository mechanism and therefore RGESS compliant.
 - (ii) AMCs shall disclose that the concerned RGESS eligible Exchange Traded Funds and Mutual Fund schemes is in compliance with the provisions of RGESS guidelines notified by Ministry of Finance vide notification no. 51/2012 F. No. 142/35/2012-TPL dated November 23, 2012, in Scheme Information Document (SID), in case of new fund offer, or by way of addendum, in case of existing RGESS eligible Exchange Traded Funds and Mutual Fund schemes.
 - (iii) Section 6(c) of the notification states that the eligible securities brought into the demat account will automatically be subject to lock-in during the first year, unless the new investor specifies otherwise and for such specifications, the new retail investors shall submit a declaration in Form B indicating that such securities are not to be included within the above limit of investment. It is clarified that such declaration shall be submitted by an investor to its Depository Participant within a period of one month from the date of transaction.
 - (iv) For transactions undertaken by investors through their RGESS designated demat account, Depositories may seek necessary transactional details from stock exchanges viz. Actual Trade value, Trading date, Settlement number, etc, for the purpose of enforcing lock-in and for generating reports mandated vide MoF notification on RGESS. On receipt of such request from depositories, stock exchanges shall provide the details to depositories on an immediate basis. It shall also be ensured that a uniform file structure is used by stock exchanges and depositories for such intimation of transaction details.
 - (v) With regard to point 3(ix)(a) & (b) of RGESS notification, depositories may seek confirmation, as applicable, from stock exchanges.
 - (vi) With regard to the securities held in the RGESS



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designated account, treatment of the corporate actions shall be as given at Annexure A.

5. Stock exchanges shall furnish list of RGESS eligible stocks / ETFs / MF schemes on their website. Further, the list shall also be forwarded to the depositories at monthly intervals and whenever there is any change in the said list. For this purpose, Mutual Funds / AMCs shall communicate list of RGESS eligible MF schemes / ETFs to the stock exchanges.
6. Stock exchanges and the depositories are directed to:
 - (i) make necessary amendments, if any, to the relevant bye-laws, rules and regulations for the implementation of the scheme.
 - (ii) create wide publicity of the scheme among the investors and market participants, including through investor programs and displaying details on their website.
 - (iii) communicate to SEBI, the status of implementation of the provisions of this circular, as applicable.
7. Mutual Funds / AMCs are directed to create wide publicity of the scheme among the investors, including displaying details on their website.
8. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992, Section 19 of the Depositories Act, 1996 and the Regulation 77 of SEBI (Mutual Funds) Regulations, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Maninder Cheema
Deputy General Manager

Annexure A

Treatment of corporate actions

- (i) **Involuntary corporate actions:** In case of corporate actions where investors has no choice in the matter, for example: demerger of companies, etc, the compliance status of RGESS demat account shall not change.
- (ii) **Voluntary corporate actions:** In case of corporate actions where investors has the option to exercise his choice and thereby result in debit of securities, for example: buy-back, etc, the same shall be considered as a sale transaction for the purpose of the scheme.

Consolidated list of 'corporate actions'

Sr. No.	Corporate Action	Classification (Involuntary or Voluntary)
1	Amalgamation	Involuntary
2	Scheme of Arrangement	Involuntary
3	Reduction of Capital	Involuntary
4	Bonus issue	Involuntary
5	Buy Back of Shares	Voluntary (Involuntary in case of court intervention)
6	Stock Split	Involuntary

7	Consolidation of Shares	Involuntary
8	Conversion of Partly Paid up	Involuntary
9	Dividend [Final/ Interim/ Special]	Involuntary
10	Exchange of Share Certificate [Name change]	Involuntary
11	Rights Issue	Voluntary
12	Conversion (compulsory)*	Involuntary
13	Conversion (optionally)*	Involuntary
14	Redemption	Involuntary (voluntary, if there is option to continue with revised terms)
15	Dividend on Mutual Fund	Involuntary
16	Redemption of Mutual Fund	Involuntary on maturity (voluntary, if there is option to shift between different scheme(s) or on account of exit option due to change in fundamental attributes of scheme)

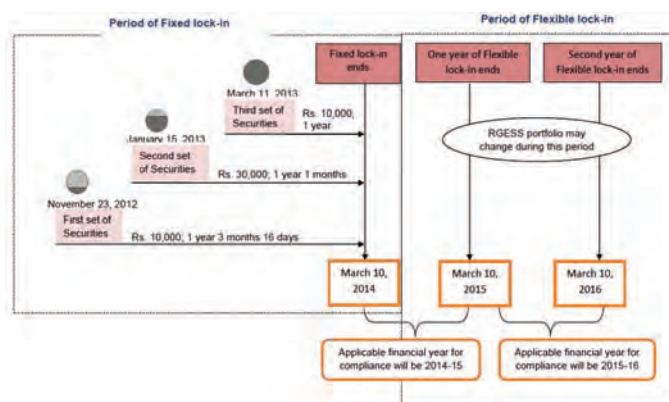
* Considering any conversion into equities (e.g.: Conversion of warrants into equities)

Annexure B – Illustration of lock-in period in RGESS

I. RGESS lock-in period if investments are brought in at once



II. RGESS lock-in period if investments are brought in installment





Ministry of Finance Department of Revenue

[Published in the Gazette of India Extraordinary, Part II, Section 3, Sub Section (ii) dated 23.11.2012.]

S.O. 2777(E).— In exercise of the powers conferred by sub-section (1) of section 80CCG of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-

1. Short title, commencement and application. - (1) This Scheme may be called the Rajiv Gandhi Equity Savings Scheme, 2012.
- (2) It shall come into force on the date of its publication in the Official Gazette.
- (3) This Scheme shall apply for claiming deduction in the computation of total income of the assessment year relevant to a previous year on account of investment in eligible securities under sub-section (1) of section 80CCG of the Income-tax Act, 1961.
2. Objective of Scheme.-The objective of the Scheme is to encourage the savings of the small investors in domestic capital market.
3. Definitions.- In this Scheme, unless the context otherwise requires,-
 - (i) "Act" means the Income-tax Act, 1961 (43 of 1961);
 - (ii) "demat account" means an account opened with the depository participant in accordance with the guidelines laid down by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (iii) "depository" means a company as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);
 - (iv) "depository participant" means a participant as defined in clause (g) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);
 - (v) "eligible securities" means any of the following :-
 - (a) equity shares, on the day of purchase, falling in the list of equity declared as "BSE-100" or "CNX-100" by the Bombay Stock Exchange and the National Stock Exchange, as the case may be;
 - (b) equity shares of public sector enterprises which are categorised as Maharatna, Navratna or Miniratna by the Central Government;
 - (c) Units of Exchange Traded Funds (ETFs) or Mutual Fund (MF) schemes with Rajiv Gandhi Equity Savings Scheme (RGESS) eligible securities as underlying, as mentioned in sub-clause (i) or sub-clause (ii) above, provided they are listed and traded on a stock exchange and settled through a depository mechanism;
 - (d) Follow on Public Offer of sub-clauses (i) and (ii) above;

- (e) New Fund Offers (NFOs) of sub-clause (iii) above;
- (f) Initial Public Offer of a public sector undertaking wherein the government shareholding is at least fifty-one per cent. which is scheduled for getting listed in the relevant previous year and whose annual turnover is not less than four thousand crore rupees during each of the preceding three years;
- (vi) "financial year" means a year commencing on the 1st day of April and ending on the 31st day of March;
- (vii) "Form" means the Form appended to the Scheme;
- (viii) "investment" means investment by an assessee in any of the eligible securities in accordance with the Scheme;
- (ix) "new retail investor" means the following resident individuals:-
 - (a) any individual who has not opened a demat account and has not made any transactions in the derivative segment as on the date of notification of the Scheme;
 - (b) any individual who has opened a demat account before the notification of the Scheme but has not made any transactions in the equity segment or the derivative segment till the date of notification of the Scheme, and any individual who is not the first account holder of an existing joint demat account shall be deemed to have not opened a demat account for the purposes of this Scheme
- (x) "Scheme" means the Rajiv Gandhi Equity Savings Scheme;
- (xi) words and expressions used and not defined in this Scheme, but defined in the Act, shall have the meanings respectively assigned to them in the Act.
4. **Eligibility** .- The deduction under the Scheme shall be available to a new retail investor who complies with the conditions of the Scheme and whose gross total income for the financial year in which the investment is made under the Scheme is less than or equal to ten lakh rupees.
5. **Procedure at time of opening demat account**.-The new retail investor shall follow the following procedure at the time of opening or designating a demat account :-
 - (a) the new retail investor shall open a new demat account or designate his existing demat account for the purpose of availing the benefit under the Scheme;
 - (b) the new retail investor shall submit a declaration in Form A to the depository participant who will forward the same to the depository for verifying the status of the new retail investor;
 - (c) the new retail investor shall furnish his Permanent Account Number (PAN) while opening the demat



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account or designating the existing account as a Rajiv Gandhi Equity Savings Scheme eligible account, as the case may be.

6. Procedure for investment under Scheme.- A new retail investor shall make investments under the Scheme in the following manner :-

- (a) the new retail investor may make investment in eligible securities in one or more than one transactions during the year in which the deduction has to be claimed;
- (b) the new retail investor may make any amount of investment in the demat account but the amount eligible for deduction, under the Scheme shall not exceed fifty thousand rupees;
- (c) the eligible securities brought into the demat account, as declared or designated by the new retail investor, will automatically be subject to lock-in during its first year, as per the provisions of paragraph 7, unless the new retail investor specifies otherwise and for such specification, the new retail investor shall submit a declaration in Form B indicating that such securities are not to be included within the above limit of investment;
- (d) the new retail investor shall be eligible for a deduction under sub- section (1) of section 80CCG of the Act in respect of the actual amount invested in eligible securities , in the first financial year in respect of which a declaration in Form B has not been made, subject to the maximum investment limit of fifty thousand rupees;
- (e) the new retail investor who has claimed a deduction under sub- section(1) of section 80CCG of the Act, in any assessment year, shall not be allowed any deduction under the Scheme for any subsequent assessment year;
- (f) the new retail investor shall be permitted a grace period of three trading days from the end of the financial year so that the eligible securities purchased on the last trading day of the financial year also get credited in the demat account and such securities shall be deemed to have been purchased in the financial year itself;
- (g) the new retail investor may also keep securities other than the eligible securities covered under the Scheme in the demat account through which benefits under the Scheme are availed;
- (h) the new retail investor can make investments in securities other than the eligible securities covered under the Scheme and such investments shall not be subject to the conditions of the Scheme nor shall they be counted for availing the benefit under the Scheme;
- (i) the investment under the Scheme shall consist of all eligible securities covered under the Scheme that

are initially bought by the investor under the Scheme or that are bought subsequently by the investor as per the provisions of the Scheme;

- (j) the deduction claimed shall be withdrawn if the lock-in period requirements of the investment are not complied with or any other condition of the Scheme is violated.

7. Period of holding requirements. - (1) The period of holding of eligible securities shall be three years to be counted in the manner detailed hereunder.

- (2) All eligible securities are required to be held for a period called the fixed lock-in period which shall commence from the date of purchase of such securities in the relevant financial year and end one year from the date of purchase of the last set of eligible securities (in the same financial year) on which deduction is claimed under the Scheme.
- (3) The new retail investor shall not be permitted to sell, pledge or hypothecate any eligible security during the fixed lock-in period.
- (4) The period of two years beginning immediately after the end of the fixed lock-in period shall be called the flexible lock-in period.
- (5) The new retail investor shall be permitted to trade the eligible securities after the completion of the fixed lock-in period subject to the following conditions:-
 - (a) the new retail investor shall ensure that the demat account under the Scheme is compliant for a cumulative period of a minimum of two hundred and seventy days during each of the two years of the flexible lock-in period as laid down hereunder:-
 - (A) the demat account shall be considered compliant for the number of days where value of the investment portfolio of eligible securities , within the flexible lock-in period, is equal to or higher than the amount claimed as investment for the purposes of deduction under section 80CCG of the Act;
 - (B) in case the value of investment portfolio in the demat account falls due to fall in the market rate of eligible securities in the flexible lock-in period, then notwithstanding sub clause(A), -
 - (i) the demat account shall be considered compliant from the first day of the flexible lock-in period to the day any such eligible securities are sold during this period;
 - (ii) where the assessee sells the eligible securities mentioned in sub-clause (B) from his demat account, he shall have to purchase eligible securities and the said demat account shall be compliant from the day on which the value of the investment portfolio in the account becomes -
 - (I) at least equivalent to the investment claimed as eligible for deduction under section 80CCG of the Act or;



- (II) the value of the investment portfolio under the Scheme before such sale, whichever is less.
- (6) The new retail investor's demat account created under the Scheme shall, on the expiry of the period of holding of the investment, be converted automatically into an ordinary demat account.
 - (7) For the purpose of valuation of investment during the flexible lock-in period, the closing price as on the previous day of the date of trading, shall be considered.
 - (8) While making the initial investments upto fifty thousand rupees, the total cost of acquisition of eligible securities shall not include brokerage charges, Securities Transaction Tax, stamp duty, service tax and all taxes, which are appearing in the contract note.
 - (9) Where the investment of the new retail investor undergoes a change as a result of involuntary corporate actions like demerger of companies, amalgamation, etc. resulting in debit or credit of securities covered under the Scheme, the deduction claimed by such investor shall not be affected.
 - (10) In case of voluntary corporate actions like buy-back, etc. resulting only in debit of securities, where new retail investor has the option to exercise his choice, the same shall be considered as a sale transaction for the purpose of the Scheme.
 - (11) The Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall notify the corporate actions, referred to in subparagraph (9), allowed under the Scheme in this regard.
8. If the new retail investor fails to fulfil any of the provisions of the Scheme, the deduction originally allowed to him under sub-section (1) of section 80CCG of the Act for any previous year, shall be deemed to be the income of the assessee of such previous year and shall be liable to tax for the assessment year relevant to such previous year.
 9. (1) The depository shall certify the new retail investor status of the assessee at the time of designating his demat account as demat account for the purpose of the Scheme.
(2) The depository participant shall furnish an annual statement of the eligible securities invested in or traded through the demat account to the demat account holder.
 10. The depository shall provide a consolidated statement of details in the electronic format, as specified in Form C, on all the Rajiv Gandhi Equity Savings Scheme beneficiaries to the Director General of Income Tax (Systems) or any other person authorised by him, within a period of thirty days from the end of the relevant

financial year.

11. For the purpose of paragraph 10, the Director General of Income Tax (Systems) shall determine the procedures, formats and standards for furnishing of the report in electronic format in Form C by the depositories.
12. Assessee shall be liable to submit the relevant records to the income-tax authorities for verification, as and when required.

Raman Chopra
Director

Form A **[See paragraph 5(b)]**

Declaration to be submitted by the investors to the depository participants for availing the benefits under the Rajiv Gandhi Equity Savings Scheme.

Name of the Investor:
(first holder)

Address of the investor:

Permanent Account Number (PAN):

1. It is hereby certified that* ---
 - (a) I do not have a demat account and I have not traded in any derivatives.
 - (b) I have demat account no in depository participant but I have not traded in any equity shares or derivatives in this account.
 - (c) I have a joint demat account no in depository participant but I am not the first account holder.
2. I hereby declare that I have read and understood all the terms and conditions of the Rajiv Gandhi Equity Savings Scheme.
3. It is hereby verified that I am an eligible new retail investor for availing the benefits under the Rajiv Gandhi Equity Savings Scheme.
4. I undertake to abide by all the requirements and fulfill all obligations under the Scheme, and will comply with all the terms and conditions of the Scheme.
5. I understand that, in case I fail to comply with any condition specified in the Scheme, the benefits availed there under will be withdrawn and the tax shall be payable by me accordingly.

Signature of the Investor

Place:
Date:

* Tick which ever is appropriate.



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Form B [See paragraph 6(c) and (d)]

Declaration to be submitted by the new retail investor to the depository participant on purchase of eligible securities.

**To
Depository participant**

Address

It is hereby informed that I have demat account no indepository participant and the following securities

- (a)
- (b)
- (c)
- (d)
- (e) purchased in the aforesaid demat account on are not to be included as investment for the purpose of the Rajiv Gandhi Equity Savings Scheme.

Signature

Name of the Investor:
(first holder)

Address of the investor:

Permanent Account Number (PAN):

Form C [See paragraphs 10 and 11]

Annual report to be submitted by the depository to the Income Tax Department in Electronic Format before 30th April.

(For 80 CCG benefits of Financial Year 2012-13)

							2012-13 Report to be furnished by 30th April 2013	2013-14 Report to be furnished by 30th April 2014	2014-15 Report to be furnished by 30th April 2015	2015-16 Report to be furnished by 30th April 2016
Name	PAN	DEMAT A/c No.	Date of opening A/c	Date of investment for the Purpose of lock-in (date of making the last investment in RGESS# eligible scrip)	Amount of Investment	Scrips locked in RGESS#	Whether A/c eligible under the RGESS# Scheme	Whether A/c compliant with RGESS# with respect to fixed lock-in*	Whether A/c compliant with RGESS# with respect to 270 days period*	Whether A/c compliant with RGESS# with respect to 270 days period*

*The Electronic Format shall be determined by the Director General of Income Tax (Systems) by 31st March, 2013.

**The Financial Year shall be enhanced by one Financial Year every year.

#RGESS means the Rajiv Gandhi Equity Savings Scheme.

19 Regulations amending CLB Regulations, 1991

[Issued by the Company Law Board vide Order dated 07.12.2012. (File No.10/36/2001-CLB)]

In exercise of the powers conferred by sub-section (4B) and sub-section (6) of section 10(E) of the Companies Act, 1956 (1 of 1956) read with Regulation 4 of the Company Law Board Regulations, 1991, the Chairman, Company Law Board, hereby, makes the following Regulations further to amend the Company Law Board Regulations, 1991, namely:-

- The Company Law Board Regulations, 1991, in regulation 4,-
 - in sub-regulation (1), the expression "247" shall be omitted;
 - for the second proviso, the following second proviso shall be substituted namely:-

"Provided further that notwithstanding anything contained in regulation 7, it shall be lawful for the Chairman to *inter-se* transfer any matter pending before a Regional Bench to any other Regional Bench or to the Principal Bench either at the joint request of the parties or for other reasons to be recorded in writing."

- This order shall come into force with immediate effect.

P.K. Malhotra

Secretary, Company Law Board

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The soft copy (CD) of List of Members of the Institute as on 1st April, 2012 is available at Rs.250/- (Rupees Two Hundred and Fifty only) for the Members of the ICSI and at Rs.500/- (Rupees Five Hundred only) for others.

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**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

SOUTHERN
INDIA
REGIONAL
COUNCIL

ALL REGIONAL COUNCILS JOINT RESIDENTIAL SEMINAR

[Joint participation by EIRC, NIRC, SIRC and WIRC]

Day and Dates : **Friday and Saturday, the 18th and 19th January 2013**
Venue : **Fortune Kences Hotel, Opp APSRTC Terminal, Tirupati 517 501**

THEME: CS- PRECISION AND PERFORMANCE

Technical Sessions: 1] **Companies Bill 2011**
2] **Updates on FEMA** 3] **Procedural, Legal & Taxation aspects of SEZ**
Darshan of Lord Balaji is being proposed on 18th January 2013

**8 PCH for
Members of ICSI**

Residential Delegates

Type of Accommodation	Delegate Fee *₹	Type of Accommodation	Delegate Fee *₹	Other Details
Single Occupancy	7303	Double Occupancy	5618	Delegate Fees [Inclusive of organizational expenses, room tariff, lunch & tea/Coffee for both days, dinner on 18.1.2013 breakfast on 19.1.2013] & Darshan Check-in 18.1.2013 – 8.30 a.m. onwards. Check-out 19.1.2-13 - 9.00 a.m. Members who wish to check-in early and check-out late are requested to pay the differential amount to the Hotel at the time of check-in. Limited rooms have been blocked and hence delegates are requested to give their confirmation for room booking well in advance.
Corporate Members **	6742	Corporate Members **	5056	
Accompanying Spouse/children above 12 years	6180	Accompanying Spouse/children above 12 years	4494	

Non-residential Delegates – Delegate Fees & Darshan - [Inclusive of organizational expenses, lunch & tea/Coffee for both days] * inclusive of Service Tax per person

Particulars	Delegate Fee *	Particulars	Delegate Fee *	Particulars	Delegate Fee *
Delegate Fee	3933	Corporate Members **	3371	Accompanying spouse	2809

Mode of Payment & Other Particulars

**** EIRC/NIRC/SIRC/WIRC**

Mode of Payment	Details	Other Particulars
Cheque/DD	Favouring "SIRC of the ICSI" payable at Chennai	The delegate Fee once paid shall not be refunded under any circumstances; it can neither be transferred to some other professional programmes nor carried forward. It stands forfeited. Communication in regard to payment made by way of cheque or through on line to be sent to siro@icsi.edu and or ICSI-SIRC House, 9 Wheat Crofts Road, Nungambakkam, Chennai 600 034 on or before 11th January 2013. No spot Registration.
On Line Payment	HDFC Bank/Acc No. 04921110000013	
Service Cards	RTGS/NEFT IFSC – HDFC 0000492	
Debit Card/Credit Card	This mode of payment is accepted only at SIRC of the ICSI, Chennai	

For further information please contact

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87.	Ms. Shima Devi	ACS - 18830	EIRC	146.	Ms. Pooja Agarwal	ACS - 15356	NIRC
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90.	Sh. Sushil Kumar Modi	ACS - 12928	WIRC	149.	Sh. Umesh Khemka	ACS - 12443	EIRC
91.	Ms. Anshu Singhal	ACS - 19007	SIRC	150.	Sh. S C Ghoge	ACS - 728	WIRC
92.	Sh. Anil Kumar Jain	FCS - 1420	NIRC	151.	Sh. J R Sarma	ACS - 4294	SIRC
93.	Sh. Om Prakash Bagdia	FCS - 5591	WIRC	152.	Sh. Jag Mohan Bansal	ACS - 12832	NIRC
94.	Sh. M.N.V. Krishna Mohan Kumar	ACS - 17964	SIRC	153.	Sh. S Rajeswara Rao	FCS - 5830	WIRC
95.	Ms. Priya Murthy Ananthan	ACS - 12168	WIRC	154.	Sh. Kamal Mehta	FCS - 2520	NIRC
96.	Sh. Vass Devvadhwa	FCS - 2657	NIRC	155.	Sh. G Dwarakanath	ACS - 3383	SIRC
97.	Sh. Sunil Kumar	ACS - 27976	NIRC	156.	Ms. Mona Sheoraj Chhangani	ACS - 29342	N IRC
98.	Sh. M M Tambe	ACS - 4545	WIRC	157.	Sh. Mahesh Narayanan	ACS - 29567	SIRC
99.	Sh. Rajesh Tayal	FCS - 3855	WIRC	158.	Sh. Milan P Shah	ACS - 5958	WIRC
100.	Sh. S S Thanu	ACS - 22137	SIRC	159.	Sh. G Gehani	FCS - 1291	NIRC



News From the Institute

160.	Ms. Sonali Singh	ACS - 26585	NIRC	7	Sh. Baij Nath Mali	FCS - 1505	11447	NIRC
161.	Sh. Umashankar Choudhary	FCS - 257	WIRC	8	Ms. Dipali Rameshbhai Kothiya	ACS - 31157	11448	WIRC
162.	Sh. Rajesh Somani	ACS - 18357	NIRC	9	Ms. Isha Gupta	ACS - 22178	11449	NIRC
163.	Sh. Balkrishnan Sukumar	FCS - 3033	SIRC	10	Mrs. Ruchi Vijay	ACS - 22614	11450	WIRC
164.	Sh. Shailesh Kumar Gupta	ACS - 10840	NIRC	11	Sh. Ritesh Heda	ACS - 24371	11451	SIRC
165.	Sh. Navneet Kumar Bhalani	ACS - 10287	WIRC	12	Sh. Girish Kamlakar Sathe	ACS - 12499	11452	WIRC
166.	Sh. H R Patel	ACS - 1624	WIRC	13	Mr. Harshil Munnalal Vijay	ACS - 31146	11453	WIRC
167.	Sh. Narendra Kumar Ambawat	ACS - 13718	WIRC	14	Sh. Pankaj Khandelwal	ACS - 26051	11454	WIRC
168.	Ms. Aartisharma	ACS - 29384	WIRC	15	Ms. Neha Wadhawan	ACS - 25235	11455	NIRC
169.	Ms. K C Bajpai	ACS - 5133	NIRC	16	Ms. Sneha Manoj Shah	ACS - 28735	11456	WIRC
170.	Ms. Manisha Gupta	FCS - 6378	NIRC	17	Mr. Lalit Ashokkumar Jain	ACS - 31125	11457	WIRC
171.	Sh. Bal Krishan Pradhan	ACS - 20739	WIRC	18	Mr. K G Lokesha	ACS - 26892	11458	SIRC
172.	Ms. Rashmi Goyal	ACS - 29530	NIRC	19	Mr. Ajay Kumar Jain	ACS - 26558	11459	NIRC
173.	Ms. Usha Parashar	ACS - 24232	NIRC	20	Ms. Bini Cyriac	ACS - 27140	11460	SIRC
174.	Sh. R.S. Hariharan	ACS - 2292	SIRC	21	Mr. Abhinav Shrivastava	ACS - 31172	11461	SIRC
175.	Sh. Jayanta Chatterjee	ACS - 19298	WIRC	22	Ms. Anju Kumari	ACS - 28628	11462	NIRC
176.	Sh. B Muralidharan Iyer	ACS - 29887	WIRC	23	Sh. Pawan Kumar Baid	ACS - 18170	11463	WIRC
177.	Sh. Dinesh Arora	FCS - 5393	NIRC	24	Ms. Akila Ravikrishnan	ACS - 9553	11464	SIRC
178.	Sh. Vijay Kumar Agarwal	ACS - 12030	NIRC	25	Ms. Neha Khatri	ACS - 28969	11465	NIRC
179.	Ms. Yamini Maheshwari	ACS - 25081	NIRC	26	Sh. Rajnish C. Popat	FCS - 6399	11466	SIRC
180.	Ms. Gaurangi Manohar Potdar	ACS - 19656	WIRC	27	Mr. Satish Kumar	ACS - 31173	11467	NIRC
181.	Sh. A Ramarao	ACS - 4750	SIRC	28	Ms. Sonam Agrawal	ACS - 31209	11468	WIRC
182.	Sh. T P Nair	ACS - 1628	SIRC	29	Sh. Subhasis Bosu	ACS - 16643	11469	EIRC
183.	Ms. S Usha	ACS - 15250	SIRC	30	Mrs. Shubhlaxmi Bansod	ACS - 26734	11470	WIRC
184.	Sh. Rajeev Kumar Gupta	ACS - 5129	NIRC	31	Mrs. Isha Kharkia	ACS - 24304	11471	EIRC
185.	Sh. Ram Chandra Kant Thakkar	ACS - 16143	WIRC	32	Ms. Rita Lohiya	ACS - 24066	11472	WIRC
186.	Sh. Pankaj Kajaria	ACS - 16734	EIRC	33	Ms. Sweta Bhadani	ACS - 30851	11473	EIRC
187.	Ms. Meenakshi Dash	ACS - 24508	SIRC	34	Mr. Vallabh Mohan Joshi	ACS - 30132	11474	WIRC
188.	Ms. Versha Saroha	ACS - 27051	NIRC	35	Mr. Neeraj Bajaj	ACS - 28501	11475	NIRC
189.	Ms. D Aparna	ACS - 12866	SIRC	36	Ms. Monika Jain	ACS - 25480	11476	NIRC
190.	Ms. Monica Kohli	ACS - 13485	NIRC	37	Mr. Kailash Kumar Bhati	ACS - 22305	11477	WIRC
191.	Sh. Rajendra Bharadia	ACS - 11289	WIRC	38	Mr. Mehul Rajeshkumar Thakkar	ACS - 31211	11478	WIRC
192.	Sh. J M Contractor	ACS - 3512	WIRC	39	Mr. Vijay Raghuvirsinh Jadeja	ACS - 31035	11479	WIRC
193.	Sh. Chandan Narang	ACS - 21397	NIRC	40	Ms. Ravneet Kaur Sethi	ACS - 29425	11480	NIRC
194.	Sh. Hemant Sultania	ACS - 21017	NIRC	41	Sh. Anand Kumar Gupta	FCS - 6396	11481	NIRC
195.	Sh. A Ponnai	ACS - 12016	SIRC	42	Ms. Neha Gera	ACS - 24409	11482	NIRC
196.	Sh. K N Rajagopalan	ACS - 1644	SIRC	43	Mr. Mohammed Muneerali T	ACS - 31059	11483	SIRC
197.	Sh. Ullal Narendra Kini	FCS - 3070	NIRC	44	Mr. Sunil Sharma	ACS - 30044	11484	NIRC
198.	Sh. Vivekanand Sharan	FCS - 4629	EIRC	45	Ms. Shweta Malpani	ACS - 21710	11485	WIRC
199.	Sh. Akhil Prasad	FCS - 3518	NIRC	46	Ms. Mamta Gupta	ACS - 28794	11486	NIRC
200.	Sh. R P Koolwal	ACS - 5556	NIRC	47	Ms. Krutika Dilip Shah	ACS - 31279	11487	WIRC
201.	Ms. Bharti Kukreja	ACS - 22586	NIRC	48	Ms. Nivedita Shankar	ACS - 30893	11488	EIRC
				49	Mr. Yash Nigam	ACS - 27808	11489	NIRC
				50	Mr. Deepu R	ACS - 28543	11490	SIRC
				51	Sh. V L Ganesh	ACS - 5930	11491	WIRC
				52	Sh. S. Dhandapani	ACS - 20564	11492	SIRC
				53	Ms. Nikita Gupta	ACS - 31075	11493	NIRC
				54	Mr. Ravindra Sunil Chavan	ACS - 30984	11494	WIRC
				55	Mr. Vipin Kumar	ACS - 29313	11495	NIRC
				56	Mr. Anoop Kumar Jain	ACS - 27463	11496	NIRC
				57	Mrs. Sujana Nandula	ACS - 31300	11497	SIRC
				58	Ms. Bhuwaneeesvari V M	ACS - 26887	11498	SIRC
				59	Mr. Lokesh Singhal	ACS - 31072	11499	WIRC
				60	Ms. Sripriyadarshini L R M	ACS - 24671	11500	SIRC
				61	Mrs. Shilpi Sircar	ACS - 29855	11501	WIRC
				62	Mrs. Shweta Nitin Kulkarni	ACS - 26144	11502	WIRC
				63	Mrs. Zankhana Ankit Agarwal	ACS - 29785	11503	WIRC

Certificate of Practice

Sl. No.	Name	ACS/FCS No.	C P No.	Region
ISSUED*				
1	Mr. Maulik Jagdishbhai Sheth	ACS - 31148	11441	WIRC
2	Ms. Smriti Shrishimal	ACS - 31134	11442	WIRC
3	Ms. Purna Badriprasad Poddar	ACS - 31138	11443	WIRC
4	Mr. Harshavardhan Boratti	ACS - 31152	11444	SIRC
5	Ms. Savita Liladhar Vaswani	ACS - 31015	11445	WIRC
6	Ms. Rashmi Chhotalal Sarvaiya	ACS - 24810	11446	WIRC

* Issued During the Month of November, 2012



64	Mr. Mukesh Kumar Dukia	ACS - 31259	11504	NIRC
65	Ms. Prabhjot Kaur	ACS - 29914	11505	NIRC
66	Mrs. Monika Moorjani	FCS - 6248	11506	NIRC

CANCELLED*

1.	Ms. Savita Gopichand Matta	ACS - 28565	11200	WIRC
2.	Ms. Himadri	ACS - 26577	10328	NIRC
3.	Sh. Vikas Aggarwal	ACS - 26512	10092	NIRC
4.	Sh. Mohit Nehra	ACS - 28220	10201	NIRC
5.	Sh. Lalit Mohan Sharma	ACS - 23269	8884	NIRC
6.	Sh. Nadeem Pasha	FCS - 6770	7435	NIRC
7.	Sh. Prassan Navinkumar Sinha	ACS - 28105	10261	WIRC
8.	Ms. Reshma Shukla	ACS - 27717	10954	EIRC
9.	Sh. Manoj Pandey	ACS - 28955	10482	SIRC
10.	Sh. Jayaraman Chandrasekaran	FCS - 3243	1424	SIRC
11.	Ms. Pooja Ghosh	ACS - 27068	9972	EIRC
12.	Ms. Rutva Dhvani Oza	ACS - 30774	11241	WIRC
13.	Sh. Rajiv Kumar Agrawal	ACS - 28791	10396	NIRC
14.	Ms. Priya Wason	ACS - 29815	10950	NIRC
15.	Sh. Virendra Singh Mertiya	ACS - 28730	10693	NIRC
16.	Sh. Sudhakar Senapaty	ACS - 23347	8751	NIRC
17.	Sh. Anil Bhalchandra Kale	ACS - 6058	11060	WIRC
18.	Sh. Dillip Chandra Maharathi	ACS - 24955	11254	NIRC
19.	Ms. Nidhi Ramesh Ostwal	ACS - 21329	8810	WIRC
20.	Ms. Suchi Agrawal	ACS - 22632	9101	EIRC
21.	Ms. Anjali Tomar	ACS - 26875	11102	NIRC
22.	Mrs. Amita S. Karia	ACS - 28106	10191	WIRC
23.	Ms. Bishakha Chakraborty	ACS - 30435	11151	WIRC
24.	Sh. Puneet Shah	ACS - 29960	11069	WIRC
25.	Sh. Akash Gupta	ACS - 23248	11318	NIRC
26.	Sh. Nitin Jain	ACS - 18510	8752	NIRC
27.	Ms. Shampa Ghosh	ACS - 16737	10505	EIRC
28.	Ms. Kajal Jayant Mehta	ACS - 29151	10906	WIRC

Licentiate ICSI

Sl. No.	Name	Licentiate No.	Region
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ADMITTED**

1.	Sh. Abhijit Chandrakant Nimbalkar	6443	WEST
2.	Sh. Sushant Ramesh Chaudhary	6444	WEST
3.	Sh. Sudheesh Kumar K	6445	SOUTH
4.	Sh. Satishkumar Rajaram Savant	6446	WEST
5.	Sh. Parag Sharma	6447	NORTH
6.	Sh. Prateek Goenka	6448	EAST
7.	Sh. Ankur Agrawal	6449	EAST
8.	Sh. Jaydeep Pravinbhai Patel	6450	WEST
9.	Ms. Iyshwarya R	6451	SOUTH
10.	Ms. Ekta Bhargava	6452	NORTH
11.	Ms. Mahima Keswani	6453	NORTH

* Cancelled During the Month of November, 2012

** Admitted from 01st November 2012 to 30th November, 2012

ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEES FOR 2012-13

The names of members who could not remit their annual membership fee for the year 2012-13 by the last extended date i.e. **31st August, 2012** stand removed from the Register of Members w.e.f. **1st September, 2012**. They may pay the fee and get their names restored by making an application in Form 'BB' with the entrance fee (Associate members Rs. 1500/- & Fellow members Rs. 1000/- respectively) alongwith restoration fee of Rs. 250/-. Form-BB is available on the web-site of the Institute and also published else where in this issue.

The Certificate of Practice of the members who could not remit their annual Certificate of Practice fee for the year 2012-13 by the specified date i.e. on or before **30th September, 2012** stand cancelled w.e.f. **1st October, 2012**. They may restore their Certificate of Practice by making an application in Form 'D' with the restoration fee of Rs. 250/-. Form-D is available on the web-site of the Institute and also published else where in this issue.

The annual membership and certificate of practice fee payable is as follows:-

- | | |
|--|----------------------|
| 1] Annual Associate Membership fee | Rs. 1125/- |
| 2] Annual Fellow Membership fee | Rs. 1500/- |
| 3] Annual Certificate of Practice fee | Rs. 1000/-(*) |

* *The certificate of practice fee must be accompanied by a declaration in form 'D' duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu and also published elsewhere in this issue.*

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of :

- On-Line (through payment Gateway of the Institute's web portal (www.icsi.in).
- Credit card at the Institute's Headquarter at Lodi Road, New Delhi or Regional Offices located at Kolkata, New Delhi, Chennai and Mumbai.
- Cash/ local cheque drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi at the Institute's Headquarter or Regional/ Chapter Offices located at Kolkata, New Delhi, Chennai, Mumbai and Chandigarh, Jaipur, Bangalore, Hyderabad, Ahmedabad, Pune respectively. Out Station cheques will not be accepted. However, at par cheques will be accepted.
- Demand draft / Pay order drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi (indicating on the reverse name and membership number).

For queries, if any,

the members may please contact the Membership Section on telephone Nos.011-45341047 or Mobile No.9868128682 / through e-mail ids: annualfee@icsi.edu, member@icsi.edu

APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION* OF CERTIFICATE OF PRACTICE

See Reg. 10, 13 & 14

To
The Secretary to the Council of
The Institute of Company Secretaries of India
'ICSI HOUSE', 22, Institutional Area,
Lodi Road, New Delhi - 110 003

Sir,

I furnish below my particulars

- (i) Membership Number FCS/ACS:
- (ii) Name in full:
(in block letters) Surname Name
- (iii) Date of Birth:
- (iv) Professional Address:
- (v) Phone Nos. (Resi.) (Off.)
- (vi) Mobile No Email id
- (vii) Additions to or change in qualifications, if any:

1. Submitted for (tick whichever is applicable):

(a) Issue (b) Renewal (c) Restoration

2. (a) Particulars of Certificate of Practice issued / surrendered/Cancelled earlier

Sl. No	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

3. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the ICWAI.
- ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.
- iii. I hereby undertake that, I shall adhere to the mandatory ceiling of not more than eighty companies in aggregate in a calendar year in terms of the **Guidelines for Issuing Compliance Certificate and Signing of Annual Return** issued by the Institute on 27th November, 2007.
- iv. I state that I have issued / did not issue advertisements during the year 20 - in accordance with the **Guidelines for Advertisement by Company Secretary in Practice** issued by the Institute*.
- v. I state that I issued Corporate Governance compliance certificates under Clause 49 of the listing agreement during the year 20 -*
- vi. I state that I have / have not undertaken Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20 - *
- vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the **Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/Firm of Practising Company Secretaries** issued by the Institute. *
4. I send herewith Bank draft drawn on Bank Branch bearing No for Rs towards annual certificate of practice fee for the year ending 31st March
5. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Encl.

Place:

Date:

* Applicable in case of renewal or restoration of Certificate of Practice

APPLICATION FOR RESTORATION OF MEMBERSHIP

To,
The Secretary to the Council of
The Institute of Company Secretaries of India
'ICSI' House, 22, Institutional Area
Lodi Road, New Delhi-110003

Sir,

I hereby apply for restoration of my name in the Register as an Associate/Fellow Member of the Institute of Company Secretaries Of India in accordance with the provisions contained in the Company Secretaries Act, 1980 and Regulations made thereunder and declare that I am eligible for the membership of the Institute and am not subject to any disabilities stated in the act or the Regulations of the Institute. The required particulars are furnished below:

1. Name in full :
(In Block Letters) Surname M. Name F. Name

2. Address

(i) Professional

Designation

Name of Company

Address

.....

.....

Pin Code:

Telephone No. Fax

E -mail

(ii) Residential

.....

.....

Pin Code:

Contd.

Telephone No. Fax

3. Date of admission as Associate / :
Fellow Member of the Institute

4. Membership Number

5. I hereby undertake that if re-admitted as an Associate/Fellow Member of the Institute, I will be bounded by the Company Secretaries Act, 1980 and the Regulations made thereunder, as amended from time to time

6. I also undertake that such instances will not recur and I will make the payment of annual fee in future within the stipulated time (i.e. on or before 30th June of each year)

7. I send herewith a sum of Rs..... being the arrears of Annual Membership fee of Rs. for the years to and restoration fee of Rs.250/- alongwith entrance fee (Rs. 1500/- for Associates & Rs. 1000/- for fellows)

8. I solemnly declare that what I have stated above is true and correct.

Place:

Yours faithfully

Date:

Signature



Company Secretaries Benevolent Fund

MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND*



Sl. No.	LM No.	Name	Mem No.	City
NIRC				
1	9879	MR. NIRAJ KUMAR VERMA	ACS - 31226	LUCKNOW
2	9892	MR. GAURAV YADAV	ACS - 28484	FARIDABAD
SIRC				
3	9873	MR. SANDEEP C. S. G.	ACS - 30645	HYDERABAD
4	9874	SH. K.E. VENKATACHALAPATHY	ACS - 6335	BANGALORE
5	9875	MS. YEDLAPATI KARUNA PRIYA DARSINI	ACS - 31287	SECUNDERABAD
6	9876	MR. MANIKANDA VELAUTHAM	ACS - 31194	CHENNAI
7	9878	MS. USHA MIRYALA	ACS - 31195	HYDERABAD
8	9880	MR. NARASIMHA H S	ACS - 31238	BANGALORE
9	9881	MR. VISHNU CHAVDA	ACS - 31301	HYDERABAD
10	9883	SH. S VASUDEVAN	ACS - 30081	CHENNAI

11	9884	MR. B CHAGAN LAL	ACS - 30194	HYDERABAD
12	9885	MR. PREM KUMAR BHATTAD	ACS - 30285	HYDERABAD
13	9887	SH. NAVEEN KUMAR SIVA	FCS - 6108	HYDERABAD
14	9894	MS. PRASHANTHA LAXMI KALVA	ACS - 31264	HYDERABAD
15	9895	MR. AITHE MAHENDHAR	ACS - 31069	SECUNDERABAD

WIRC

16	9871	MS. RITU AGGARWAL	ACS - 25208	PUNE
17	9872	MR. VISHAL CHHABRA	ACS - 27545	DHAR
18	9877	MS. VINA NIRAJ OZA	ACS - 31133	MUMBAI
19	9882	SH. NOEL JACOB	FCS - 3190	MUMBAI
20	9886	MS. ARCHANA INDRADEV TRIPATHI	ACS - 29445	MUMBAI
21	9888	SH. JINESH PRAKASH MEGHANI	ACS - 22953	MUMBAI
22	9889	MS. TEJASWINI RAMKRISHNA CHAUDHARI	ACS - 18907	PUNE
23	9890	MS. ASHWINI RAO	ACS - 25708	PUNE
24	9891	SH. NISCHAL KAPADIA	ACS - 24579	NAVI MUMBAI
25	9893	SH. SURESH SINGHAL	ACS - 8577	VADODARA
26	9896	SH. MANISH L GHIA	FCS - 6252	MUMBAI

* During the Period 22nd November 2012 to 20th December 2012.



List of Companies Registered for Imparting Training During the Month of November 2012

Region	Training Period	Stipend (Rs.)
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Eastern

Shree Balaji (Mala) Textiles Pvt. Ltd. 180, Mahatma Gandhi Road 2nd Floor Kolkata - 700007 <i>binod_shreebalajitextiles@yahoo.co.in</i>	15 Months & 3 Months Practical Training	Suitable
Limtex India Ltd. "The Legacy", 25A Shakespeare Sarani, 2nd Floor Kolkata - 700017 <i>info@limtex.com</i>	15 Months & 3 Months Practical Training	3500/-
Nicco Corporation Ltd. Nicco House, 1B & 2 Hare Street, Kolkata - 700001	3 Months Practical Training	Suitable

Northern

Wellindia Securities Ltd. A- 78, Sector- 2, Noida - 201301	15 Months Training	Suitable
Triguna Hospitality Ventures (India) Pvt. Ltd. Plot No. 86- P ,Sector- 44, Gurgaon - 122003	15 Months Training	7000/-
Total Hospitality Ltd. 204 ,Deenar Bhawan 44, Nehru Place New Delhi - 110019	15 Months & 3 Months Practical Training	Suitable
Sunborne Energy Services India Pvt. Ltd. 403 , Tower A, Unitech Cyber Park , Sector -39 Gurgaon	15 Months & 3 Months Practical Training	7500/-
Vimal Moulders (India) Pvt. Ltd. B -104/3, Naraina Industrial Area Phase- I, New Delhi - 110028 <i>vimal@del3.vsnl.net.in</i>	15 Months Training	Suitable

Max Life Insurance Co. Ltd. 3rd,11th, & 12th Floor, DLF Square Jacaranda Marg,Dlf City Phase II Gurgaon - 122002	15 Months & 3 Months Practical Training	7500/-
Sunrydge India Heritage Pvt. Ltd. 10-D, Sagar Apartments 6, Tilak Marg New Delhi-110 001	15 Months	Suitable
Sud & Waren Pvt. Ltd. 72, Sector-6, Faridabad-121 006 <i>sud@sudwaren.com</i>	3 Months Practical Training	Suitable
ABM International Ltd. 10/60, Industrial Area, Kirti Nagar New Delhi - 110015 <i>abmintl@vsnl.com</i>	15 Months & 3 Months Practical Training	Suitable
Uma Hotels & Resorts Pvt. Ltd. 20/37, MLA Flats, Mansarovar, Jaipur - 302020 <i>info@hoteltangmahal.com</i>	15 Months & 3 Months Practical Training	Suitable
Prima Telecom Ltd. G -71, World Trade Centre, Barakhamba Lane, New Delhi - 110001 <i>info@primatelindia.com</i>	15 Months Training	Suitable
Advance Metering Technology Ltd. C-124 ,Hoisery Complex, Noida Phase- II Extn., Noida - 201305 <i>corporate@pkgroup.in</i>	15 Months & 3 Months Practical Training	Suitable
Solitaire Capital Advisors Pvt. Ltd. 112/113 , Charmwood Plaza Eros Garden, Surajkund Road Faridabad - 121009 <i>solitaire@solitairecapital.com</i>	15 Months & 3 Months Practical Training	Suitable
Karamjeet Singh & Co. Ltd. 95, Navjeevan Vihar New Delhi - 110017	15 Months Training	4000/-
Urja Global Ltd. 487/63, 1st Floor, National Market, Peeragarhi, New Delhi - 110087 <i>info@urjaglobal.com</i>	15 Months Training	Suitable
Loktak Downstream Hydroelectric Corporation Ltd. NHPC Limited, NHPC Office Complex, Sector- 33, Faridabad - 121003 <i>vipinjain@nhpc.nic.in</i>	15 Months	10000/-



News From the Institute

Rashleela Enterprises Pvt. Ltd. C- 5, Krishna Balram, Basement Opp. Saint Anselm School, Malviya Nagar, Jaipur - 302017 <i>sales@raslilaindia.com</i>	15months Training	Suitable	Aseem Global Ltd. 5476 ,South Basti, Harphool Singh, Sadar Bazar, New Delhi - 110006 <i>contactus@aseemglobal.com</i>	15 Months Training	Suitable
Mothers Pride Education Personna Pvt. Ltd. 11/77,West Punjabi Bagh, New Delhi - 110026 <i>professional@ourcompany.in</i>	15 Months Training	6000/-	Kurukshetra Expressway Pvt. Ltd. SCO First Floor, Bras Market Sector-1 Rewari - 123401 <i>kexpv@kepl.net</i>	15 Months Training	Suitable
Agarwal Polysacks Ltd. 46-48, 3rd A Road Sardarpura, Jodhpur - 342003 <i>agarwal@datainfosys.net</i>	15 Months & 3 Months Practical Training	Suitable	Southern Silver Springs Pleasure Resorts Pvt. Ltd. 244,Hoody Village, Rajapalya ITPL Road, Whitefield Bangalore - 560048	15 Months Training	8000/-
Asian Oilfield Services Ltd. IRIS Tech Park, 506, 5th Floor, Tower 'A' Sector 48,Sohna Road Gurgaon - 122018 <i>mail@asianoilfield.com</i>	15 Months & 3 Months Practical Training	5000/-	Vasishta Constructions Pvt. Ltd. Plot No. 23, Rao & Raju Colony Road No. 2, Banjara Hills, Hyderabad - 500034 <i>info@vasishta.in</i>	15 Months & 3 Months Practical Training	3000/-
VRC Construtions (India) Pvt. Ltd. 2nd Floor, Shiva Tower 100/28, Rajapur, Sector-9 Rohini, New Delhi - 110025 <i>vrcon@hotmail.com</i>	15 Months & 3 Months Practical Training	Suitable	Photon Infotech Pvt. Ltd. No. 7, 7th Cross Street, Shastri Nagar, Adyar Chennai - 600020	15 Months 3 Months Practical Training	Suitable
Jindal Polyfilms Ltd. Plot No. 12, Sector B-1 Local Shopping Complex Vasant Kunj New Delhi - 110070	15 Months Training	Suitable	Shell India Markets Pvt. Ltd. 2nd Floor, Campus 4A RMZ Millenia Business Park 143, Dr.MGR Road, Perungudi Chennai - 600096	15 Months & 3 Months Practical Training	3500/-
Religare Wellness Ltd. D -1/5, Okhla Industrial Area, Phase II, New Delhi -110020	15 Months Training	5000/-	Traco Cable Company Ltd. 4th Floor, KSHB Office Complex, XXXVIII1242, Panampilly Nagar P.B. No. 4269 Kochi - 682036 <i>mail@tracocable.com</i>	15 Months Training	4000/-
The J&K Development Finance Corporation Ltd. 121- Green Avenue, I.G. Road, Peer Bagh, Srinagar - 190014	15 Months & 3 Months Practical Training	Suitable	Microchip Technology (India) Pvt. Ltd. Plot No. 149- B, EPIP Industrial Area, 1st Phase, Whitefield, Bangalore - 560066 <i>srinivasa.bs@microchip.com</i>	3 Months Practical Training	Suitable
Faces Cosmetics India Pvt. Ltd. 1004, 10th Floor, Tower-A BPTP Park Centra Sector- 30, NH- 8 Gurgaon - 122001	15 Months Training	Suitable	Pierian Services Pvt. Ltd. 979,19th Main,13th Cross B.S.K. 2nd Stage Bangalore - 560070	15 Months Training	Suitable
A2Z Infraservices Ltd. Plot No. B-38, Sector- 32 Institutional Area Gurgaon - 122001 <i>reachus@a2zemail.com</i>	15 Months Training	Suitable	Western Frontline Corporation Ltd. 4th Floor, Shalin Building Nehru Bridge Corner, Ashram Road Ahmedabad - 380009 <i>frontline1@dataone.in</i>	15 Months & 3 Months Practical Training	Suitable
Allied Strips Ltd. 14-B, 1st Floor, Manohar Park ,Rohtak Road, New Delhi - 110026 <i>asl@alliedstrips.com</i>	15 Months & 3 Months Practical Training	3500/-			



Diffusion Engineers Ltd. T-5 & 6, MIDC, Hingna Industrial Area, Nagpur-440 016 <i>info@diffusionengineers.com</i>	15 Months Training	Suitable	CS GAJANAN DINANATH ATHAVALE Company Secretary in Practice 153, Ecstasy City of Joy Business Park Jata Shankar Dosa Marg Mulund (West) Mumbai - 400 080	PCSA - 3203
Aadhar Housing Finance Pvt. Ltd. 201, Raheja Point, 2nd Floor, Near Shamrao Vithal Bank, Nehru Road, Vakola, Santacruz (E) Mumbai-400 055	15 Months & 3 Months Practical Training	Suitable/-	CS SUPREET KAUR REKHI Company Secretary in Practice 4/2990, 1st Floor Shalimar Park Extn. Stree No. 11, Shahdara Delhi -110 032	PCSA - 3204
Advanced Enzyme Technologies Ltd. Sun Magnetica, 'A' Wing, 5th Floor, LIC Service Road, Louiswadi, Thane - 400604 <i>info@enzymeindia.com</i>	3 Months Practical Training	3500/-	CS MEETA DOGRA Company Secretary in Practice 45B, MIG Flats, Pocket -C, Phase -III Ashok Vihar, New Delhi -110 052	PCSA - 3205
IL&FS Renewable Energy Ltd. IL&Fs Financial Centre Plot C- 22, G Block, Bandra Kurla Complex, Mumbai - 400051	15 Months Training	10000/-	CS JANAKKUMAR BHARATKUMAR PATEL Company Secretary in Practice 5/5, Shreeji Apartment Opp. Azad Society, Ambawadi Ahmedabad - 380 015	PCSA - 3206
Mahan Coal Ltd. Parihar House, Plot No. 489 Majan Khurd, Majan More, Waidhan, Dist.Singrauli, Madhya Pradesh - 400025	15 Months Training	Suitable	CS PINGALI VITHAL KUMAR Company Secretary in Practice 1-95-11, Plot No.- 134, Sector - 5 MVP Colony, Visakhapatnam - 530 017	PCSA - 3207
ISGEC Hitachi Zosen Limited Plot No.13-B ,GIDC, Dahej, Distt. Bharuch, Gujarat - 392130 <i>info@isgechitachizosen.com</i>	15 Months Training	Suitable	CS JAGAT SINGH Company Secretary in Practice G-7/53, 2nd Floor, Sector-16 Rohini, New Delhi -110 089	PCSA - 3208
Karvy Financial Services Ltd. 762, Building No. 7, 6th Floor Solitaire Corporate Park, Andheri (East) Mumbai - 400093	15 Months & 3 Months Practical Training	Suitable	CS RAKHEE JAIN Company Secretary in Practice 451, Seva Nagar Hiran Magri Sector -4, Udaipur - 313 001	PCSA - 3209
			CS NEHA BAKLIWAL Company Secretary in Practice 447/9, Opp. Bhojan Shala Agra Gate Ajmer -305 001	PCSA - 3210
			CS RANTU KUMAR DAS Company Secretary in Practice 73-B, S.P. Mukherjee Road Nr. Kalighat Post Office Kolkata - 700 026	PCSA - 3211
			CS GAURAV CHAKRESH KUMAR JAIN Company Secretary in Practice Office No.-B-101, World Of Mother Complex Near Jai Ganesh Vision, Akurdi Pune - 411 035	PCSA - 3212
			CS ANJANA YOGESH MANSETA Company Secretary in Practice 501, Sheetal Enclave Nr. Tangent Furniture Showroom Mindspace, Malad(W) Mumbai -400 064	PCSA - 3213
CS JASPINDER SINGH Company Secretary in Practice Plot No.405, WZ-2002 Chand Nagar New Delhi -110 018		PCSA - 3202		

List of Practising Members
Registered for the
**Purpose of
Imparting Training
During the Month of
November, 2012**





News From the Institute

CS MANISH SHUKLA Company Secretary In Practice 50/240, Halsey Road Kanpur 208 001	PCSA - 3214	CS RITU RITOLIA Company Secretary in Practice J.C. Mallick Road, Yadav Bhawan, Hirapur Dhanbad -826 001	PCSA - 3223
CS YOGESH JAYRAM KOHINKAR Company Secretary in Practice B-202, 2nd floor Ajin Yatara Apartment Nr. Sawai Hotel, Sinhagad Road Pune -411 030	PCSA - 3215	CS PHANIRAJ HIREHAL SUBRAMANYAM Company Secretary in Practice #22/619, Gurupati, Office No. 1 3rd floor, 4th Cross, 5th Main, Hanumantha Nagar Bangalore - 560019	PCSA - 3224
CS SHILPA GUPTA Company Secretary in Practice V-204, First Floor Duggal Housing Complex Khanpur, New Delhi -110 062	PCSA - 3216	CS MINU BUBNA Company Secretary in Practice 105, Cotton Street Kolkata - 700 007	PCSA - 3225
CS PRAMOD KUMAR SABOT Company Secretary in Practice 104, Maurya Atira 1st Floor Above Reliance Fresh Opp.Atithi Dining Hall Lane Bodakdev Ahmedabad - 380 015	PCSA - 3217	CS ASHISH BUBNA Company Secretary in Practice 105, Cotton Street Kolkata - 700 007	PCSA - 3226
CS HETA SHALIN SHAH Company Secretary in Practice 301, 2nd Floor "Sampanna" B/H Navrangppura Bus Stand Ahmedabad -380 009	PCSA - 3218	CS YAMINI JAIN Company Secretary in Practice 175, Tilak Nagar Indore - 452 018	PCSA - 3227
CS S. RAMACHANDRAN Company Secretary in Practice AP 212 (New No.33) 9th Street 2nd Sector K.K. Nagar, Chennai -600 078	PCSA - 3219	CS SIREESHA BOPPANA Company Secretary in Practice Block No. 52-B, B2/44 Jeevan Bima Nagar Padi Era Anna Nagar West Extension Chennai -641 046	PCSA - 3228
CS SHAILESH KUMAR Company Secretary in Practice Bilaspur House Dadijee Lane Boring Road Patna - 800 001	PCSA - 3220	CS RACHANA SHARMA Company Secretary in Practice 71-B , BW Block Shalimar Bagh Delhi -110 088	PCSA -3229
CS S. BHASKAR Company Secretary in Practice New No. 74 (Old No. 62) "Akshaya Flats" 12th Avenue Ashok Nagar Chennai - 600 083	PCSA - 3221	CS RADHIKA LALSEN VAIUDE Company Secretary in Practice 25-260/A Krantinagar J.S.S. Road Girgaon Mumbai -400 004	PCSA - 3230
CS ANANDA KRISHNA DESHKULKARNI Company Secretary in Practice #434, 1st Floor 4th Main KHB Colony 2nd Stage Adasarahalli Bangalore - 560 079	PCSA - 3222	CS SHAILESH BAHETI Company Secretary in Practice # 32 1st Floor Raghava Ratna Towers Chirag Ali Lane Abids Hyderabad - 500 001	PCSA - 3231
		CS SHIRIN BHATT Company Secretary in Practice DB-77E, G -8 Area Hari Nagar New Delhi - 110 064	PCSA - 3232



News From the Regions

» Eastern India Regional Council

73rd Management Skills Orientation Programme (MSOP)

Inaugural Session: From 4.12.2012 to 20.12.2012 the EIRC of the ICSI organized its 73rd Management Skills Orientation Programme at ICSI-EIRC Premises, Kolkata. R Bandyopadhyay, Member, Central Administrative Tribunal - Calcutta was invited as Chief Guest to inaugurate the programme.

Valedictory Session: On 20.12.2012 at the Valedictory session P Bhattacharya, Officer-in-Charge, Kanya Police Station, Kolkata, was invited as the Chief Guest. P Mukherjee, Additional Officer-in-Charge, Kanya Police Station was also present on the occasion. Bhattacharya handed over the training completion certificates to the participants. Dr. Tapas Kumar Roy, Assistant Education Officer, ICSI-EIRO coordinated the entire programme.

Best Participant Awards: Saswati Mishra, Sonu Shaw and Surabhi Jain were adjudged as the first, second and third best participants of the MSOP.

Investor Awareness Programmes

On 18.10.2012 the Ministry of Corporate Affairs decided to mainstream the investor awareness programme as a national agenda for the last few years. With a view to convert the investor education and awareness programme of the Ministry into a mass movement the EIRC of the ICSI organized an Investor Awareness Programme at the ICSI-EIRC AC Auditorium. CS R. N Chakraborty, one of the senior most members of the Institute and Practising Company Secretary and CS Bhavesh Sexena, Additional Senior Manager, Corporate Affairs, Mitsubishi Chemical Corporation PTA India were invited as guest speakers in the said programme. Utpal Mukherjee, Executive Officer, EIRO of the ICSI was present and addressed on the said occasion. Dr. Tapas Kumar Roy, Assistant Education Officer, EIRO of the ICSI conducted the entire programme and explained the objective of organizing the programme.

CS R. N Chakraborty and CS Bhavesh Sexena addressed on the benefits of investing money in different instruments for augmenting income. The speakers also highlighted the avenues of investment

in the equities and debt market. They spoke about mutual funds, derivatives, how the stock exchanges work, how to invest in the market, depository participants, how to determine the financial position of the company, etc. The participants consisted of students, teachers and officials of the Institute. A background material along with kit was distributed among all the participants. The event was organized under the Investor Education and Protection Fund, Ministry of Corporate Affairs, Government of India.

Again on 12.10.2012 a similar programme was organized at Haldia Law College, ICARE Complex, P.O. Hatiberia, Haldia, Purba Medinipur. CS Bhavesh Sexena, Additional Senior Manager, Corporate Affairs, Mitsubishi Chemical Corporation PTA India and Dr Rakesh Kumar Singh, Vice-Principal, Haldia Law College were the Guest Speakers of the said programme. Dr Rakesh Kumar Singh in his address explained the need for organizing such type of programmes with reference to modern day financial market conditions. He also highlighted the legal provisions as laid down in the Companies Act and SEBI Laws for the protection of investors. CS Bhavesh Sexena nicely explained the process of wealth creation, creation of investment surplus and its investment in different options for getting reasonable and satisfactory rate of return with minimal and affordable risk. There was an overwhelming response among the gathering during presentation through Power Point. Sexena also addressed on the process of investment grievances redressal mechanism.

Utpal Mukherjee in his address explained as to why the Institute has taken the responsibility of organizing such programmes in different places in and around West Bengal. Mukherjee also explained in detail the courses conducted by the institute amongst the gathering.

Dr. Tapas Kumar Roy gave key notes of entire discussions and also explained the radical changes incorporated in the capital market as compared to last decade. He requested the gathering to visit the sites like www.iepf.gov.in, www.watchoutinvestors.com, www.investorhelpline.in for getting all investment related information with updates. There was a question answer session followed by the address of the speakers where both the speakers replied the queries raised by the participants. A background material along with kit was distributed among the participants. A large numbers of students and senior lecturers were present on the said occasion. Amrita Bhattacharya, Lecturer, Haldia Law College, anchored the entire programme.

Yet again on 18.9.2012 another programme was organized at ICSI-EIRC AC Auditorium. CS Ranjeet Kumar Kanodia, Chairman, ICSI-EIRC, Practising Company Secretary and CS Siddhartha Murarka, Practising Company Secretary addressed the gathering on two different aspects on Investors awareness. CS Ranjeet Kumar Kanodia in his address explained the dos and don'ts regarding Primary and Secondary Capital Market. He also covered critical areas with regard to Capital Market which investors should know.



News From the Institute & Regions

CS Siddhartha Murarka highlighted mechanism of Stock exchanges to protect the interest of the investors. He suggested to check the credentials of the company, its management, fundamentals and recent announcements made by them and other disclosures made under various regulations. The sources of information are the websites of the exchanges and companies, databases of data vendors, business newspapers and magazines etc. Murarka also addressed on the issues like trading, clearing and settlement, redressal of complaints, investors rights and obligations, etc.

Utpal Mukherjee gave key notes of entire discussions on the day. Mukherjee also explained the radical changes incorporated in the capital market as compared to last decade. At the end of the programme there was a question answer session where both the speakers replied the queries raised by the participants with regard to Investor grievances. A background material along with kit was distributed among all the participants. A large number of students were present on the said occasion.

Another programme was held on 30.11.2012 at the ICSI-EIRC AC Auditorium. CS H.M. Choraria, Past President, the ICSI, Practising Company Secretary was invited as guest speaker in the said programme who highlighted the avenues of investment in the equities and debt market. They spoke about mutual funds, derivatives, how the stock exchanges work, how to invest in the market, depository participants, how to determine the financial position of the company etc. The audience consisted of students, teachers and officials of the Institute. The programme ended after question-answer session. A background material along with kit was distributed among all the participants. The event was organized under the Investors Education and Protection Fund, Ministry of Corporate Affairs, Government of India.

BHUBANESWAR CHAPTER Investor Awareness Programmes

On 29.11.2012 the Bhubaneswar Chapter organized Investor Awareness Programme at Bhubaneswar. Again on 8.12.2012 the programme was conducted at Bolangir and Sambalpur, Odisha. On 16.12.2012 two such programmes were arranged at Balasore and Bhadrak, Odisha. These programmes were held under the aegis of IEPF, MCA, Govt. of India. The Registrar of Companies, MCA, Odisha and the Regional Director (E), MCA co-ordinated the above programmes. Investors/general public, school/college teachers, housewives, advocates, members of the Institute and students, small traders and businessmen were present in these programmes. Print & electronic media were invited for the above programmes for coverage of the proceedings of the programme. Reports of the programmes were published in regional newspapers and also telecast in local TV channels. While CS B. Narasimhan, Central Council Member, the ICSI addressed at Bhubaneswar as the Chief Speaker of the programme, CS B.K. Sahu, Dy. Company Secretary, M/s.

NALCO, Bhubaneswar addressed at Bolangir and Sambalpur. CS J.B. Das, Chairman, CS A. Acharya, Vice Chairman, CS D. Mohapatra, Secretary, CS P. Nayak, Treasurer of the Chapter also addressed at some of the above programmes. While CS Sushil Kumar Hota, Practising Company Secretary, Bolangir contributed a lot for success of the programme at Bolangir, CS Lokesh Kumar Gohil, PCS, Sambalpur attended and addressed the programme at Sambalpur. Members of Bhadrak Chamber of Commerce and CS Amar Nayak arranged the programme at Bhadrak. U.C. Mishra, Office-in-Charge of the Chapter co-ordinated for success of these programmes.

Career Awareness Programmes

Bhubaneswar Chapter organized 49-Career Awareness Programmes at the following Schools/Colleges of Bargarh, Bhadrak and Balasore districts of Odisha as per the details given below: On 22.11.2012 the Career Awareness Programme was held at Radhakanta Behera Degree College, Bhadrak. On 23.11.2012 at Salandi Degree Mahavidyalaya, Bhadrak District, IGM Degree College of Science & Technology, Dist.: Bhadrak and Babaramani Degree College, Belaligaon, Bhadrak. On 26.11.2012 at Salandi Degree Mahavidyalaya, Uttarbahaini, Bhadrak; On 27.11.2012 at Rameswar Junior College, Randia and Bhadrak Women's College, Bhadrak; On 29.11.2012 at BNMA College, Paliabindha, Bhadrak and Tihidi College, Tihidi, Bhadrak. On 30.11.2012 at Bhandari Pokhari Junior Mahavidyalaya, Dist: Bhadrak. On 1.12.2012 at A.N. Mahavidyalaya, Antara, Balasore and Jambeshwar Mahavidyalaya, Garasang, Dist: Balasore. On 3.12.2012 at Panchayat Degree College, Barikpur, Utkal Keshari Dr. HKMM Junior College, Dist: Bhadrak and Bant Anchaliika College, Bant, Dist: Bhadrak. On 4.12.2012 at Simulia College, Markona and Balikhand College, Balasore. On 7.12.2012 at Dept. of MBA, BIET, Barpada, Bhadrak. On 8.12.2012 at KKR Women's College, Barpada, Agarpada College, Agarpada, Agarpada Women's College, Agarpada, P.N. Autonomous College, Khurdha, Banki Autonomous College, Banki, Dist: Cuttack, Hatakeswar Mahila Mahavidyalaya, Baghamari, Khurdha, Pathani Samanta College, Khandapada, Dist: Nayagarh, Anchaliika College, Paharsrigida, Dist: Bargarh and Chichinda College, Chichinda, Dist: Bargarh. On 10.12.2012 at ALSS Junior College, Motto, Chandpalli, Bhadrak, Motto Degree College, Chandbali, Bhadrak, Chandbali College, Chandbali, Bhadrak, Kamgaon Junior College, Kamgaon and Larambha College, Larambha, Dist: Bargarh. On 11.12.2012 at Trupti Junior Women's College, Mandari Degree College, Basudev Pur, Gandhi Memorial College, Kalapani, Kadubahal College, Kadubahal, Dist: Bargarh. On 12.12.2012 at Dr. Harekrushna Mahatab College, Khaira College, Khaira, and P S Women's College, Nahanga, Dist: Balasore. On 13.12.2012 at RJ School of Management Studies, Balasore. On 15.12.2012 at Saheed Memorial College, Eram and Saheed Mahavidyalaya, Barapur, Bhadrak. On 17.12.2012 at Soro College, Soro, and Soro Women's College, Soro, Dist: Balasore. On 18.12.2012 at Atal



Bihari College, Basudevpur and Mandari College, Mandari, Dist: Bhadrak. On 19.12.2012 at Ghanteswar Degree College, Ghanteswar, Chandbali College (10+2 Arts, Science & Commerce) and Ghanteswar Junior Mahavidyalaya, Ghanteswar, Bhadrak. Principals, Directors, HODs of Arts, Science, Commerce and faculty of other disciplines of the above Institutions/Colleges attended and cooperated at the above programmes. CS A.K. Nayak, CS S. Pradhan, and CS S.N. Mallick, Practising Company Secretaries elaborated and explained the students about the course contents, examination patterns, fee structure, coaching, library and other training facilities of the ICSI. CS brochures, posters were distributed amongst the students. ICSI Teacher's kits were also presented to the colleges. All the above programmes were coordinated by U.C. Mishra, Chapter Official.

Participation in Book Fair

From 1.12.2012 to 12.12.2012, the Bhubaneswar Chapter participated in the 12 days Rajdhani Book Fair at Bhubaneswar. The fair was inaugurated by A.K. Sahoo, Hon'ble Minister, Information & Broadcasting and Energy. During the 12 days of the fair, ICSI posters, banners, prospectus, brochures, ICSI profile, journals were displayed for information of the students and their parents. During the 12 days fair about 300 students visited the stall. Members of Institute and Managing Committee Members of the Chapter also visited the stall. The visitors to the stall were well apprised about the career prospects of the profession of CS both in employment and in practice. Course contents, course fees, library and oral coaching facilities of the Institute were also informed to the visitors. All the visitors were invited to visit the Chapter Office for admission. U.C. Mishra and M.K. Sarangi, Chapter Official, Jatin Mahananda and other volunteer professional programme students managed the stall and provided information to the visitors. On 12.12.2012 the fair concluded with the address of the Hon'ble Minister of Health & Family Welfare, Damodar Rout, Odisha.

Seminar on Career as a Company Secretary

On 13.12.2012 Bhubaneswar Chapter organized a seminar on Career as a Company Secretary at RJ School of Management Studies, Balasore, Odisha. This programme was addressed by CS A.K. Nayak, Company Secretary, Bhadrak on behalf of the Chapter wherein Prof. S. K. Pani, Director, S.S. Tripathy, Faculty of MBA, RJ School of Management Studies addressed on the occasion. Career prospects of Company Secretary both in employment and in practise, fees for admission, course contents, examination patterns, oral coaching, library facilities of the Institute were also explained to the students. Posters, Leaflets, brochures about the CS course were also distributed to all the participant students and teacher's kits, ICSI Profile; journals were presented to the Management Institute. About 100 students attended the programme. U.C. Mishra, Chapter Official provided all administrative support for the programme.

> Northern India Regional Council

Investor Awareness Programmes

On 16.10.2012 the Regional Council organised investor Awareness Programme on Recent Developments in Capital Market at JDM, University of Delhi. Again on 20.11.2012 the programme was held at Delhi College of Advanced Studies, Delhi. J K Bareja and CS Anupam Jha were the speakers.

Again on 20.10.2012 the Investor Awareness Programme on Understanding of Capital Market was held at Maharaj Agrasen Institute of Management, Delhi. CS G P Madaan, Past Chairman, NIRC-ICSI and CS J K Bareja were the speakers.

Yet again on 6.11.2012 an Investor Awareness Programme on Recent Developments in Capital Market was held at Hindu College, University of Delhi. CS G P Madaan, Past Chairman, NIRC-ICSI and CS J K Bareja were the speakers.

Another programme was held on 30.11.2012 on Opening of Demat Account & Mutual Fund at SKV, Shalimar Bagh, Delhi. CS J.K. Bareja, FCS was the speaker.

Two Day Regional Conference on Transforming the Profession through Strategic Performance

On 3 - 4.11.2012 the Regional council organized Two day Regional Conference on Transforming the Profession Through Strategic Performance (Host: Jaipur Chapter). Ghanshyam Tiwari, (Deputy Leader of Opposition, Rajasthan Legislative Assembly) was the Chief Guest. Guest of Honour was CS Nesar Ahmad (President, ICSI). Chairmen of Technical Sessions and Guest Speakers were CS Sunil Goyal, M.K. Sharma (General Manager, SIDBI), H.P. Tiwari (Executive Director- Rajasthan Patrika), CS Hitender Mehta, O P Dadhich (Commissioner-Service Tax, Jaipur), CS (Dr.) Sanjeev Gemawat, Suneel Keswani (Corporate Trainer), CS Umesh Ved, CS Atul Mehta, CS U.K. Chaudhary, CS Bimal Jain, Sanjay Gupta (Deputy Director, E-Governance, MCA) and CA Bhupendra Mantri.

Vaishali Study Circle Meeting on Latest Developments in XBRL and Service Tax

On 10.11.2012 the Vaishali Study Circle discussed Latest Developments in XBRL & Service Tax. CMA Rajni Chawla was the speaker.



News From the Institute & Regions

Diwali Puja

On 12.11.2012 the Regional Council organised Diwali Puja.

West Zone Study Circle Meeting on Scope and Compliances of Labour Law

On 17.11.2012 at the West Zone Study Circle Meeting the Scope and Compliances of Labour Law was discussed. CS M.K. Pandey was the speaker.

Zangoora Show (Theatrical Performance) for Members & their Families at Kingdom of Dreams, Gurgaon

On 18.11.2012 a programme on Zangoora Show (Theatrical Performance) for Members & their Families was held at Kingdom of Dreams, Gurgaon.

Meeting of Company Secretaries in Practice on Recent Development in Capital Market

On 19.11.2012 a Meeting of Company Secretaries in Practice on Recent Development in Capital Market was held. CS Nitin Somani was the speaker.

Study Circle Meeting on Issue relating to Managerial Remuneration

On 23.11.2012 a Study Circle Meeting on Issue relating to Managerial Remuneration was held. CS P.K. Rustagi was the speaker.

Seminar on Turnaround Management & Corporate Restructuring Jointly with CCGRT

On 24.11.2012 at a Seminar on Turnaround Management & Corporate Restructuring Jointly organized with CCGRT, the Presidential address was given by CS Nesar Ahmad, President, the ICSI; Key-note Address was given by CS S.N. Ananthasubramanian, Vice-President, the ICSI. Guest Speakers were CS Shashikala Rao, Kalpataru Tripathi, Partner, Amarchand & Mangaldas & Suresh A Shroff & Co; Pankaj Tewari, Senior Manager PricewaterhouseCoopers and Prof. R Bala Krishnan.

ICSI Convocation-2012

On 24.11.2012 at the ICSI Convocation-2012 Dr. Ashok K Chauhan, Founder President, Ritnand Balved Education Foundation (Amity Education Group) was the speaker.

First Regional Sports Competition

On 25.11.2012 the First Regional Sports Competition was held.

North Zone Study Group Meeting on Professional Ethics

On 25.11.2012 the North Zone Study Group discussed the topic Professional Ethics. CS S. Kumar was the speaker.

South Zone Study Group Meeting on Practical Aspect & Secretarial Compliance on Managerial Remuneration & Loan to Directors

On 30.11.2012 at the South Zone Study Group Meeting on Practical Aspect & Secretarial Compliance on Managerial Remuneration & Loan to Directors CS Sanjay Grover & CS Ashok Tyagi were the speakers.

East Zone Study Circle Meeting on Drafting of the Reply of Show Cause Notices

On 30.11.2012 at the East Zone Study Circle Meeting on Drafting of the Reply of Show Cause Notices, CS Rupesh Aggarwal was the speaker.

Final Sports Competition at Surat

On 2.12.2012 the Final Sports Competition was held at Surat.

Inauguration of 169th Management Skills Orientation Programme (MSOP)

On 6.11.2012 the inauguration of 169th Management Skills Orientation Programme (MSOP) was held. Chief Guest was CS B.S. Bhargava, Guest of Honour was CS Amit Manchanda. On 26.11.2012 at the valedictory session the Chief Guest was CS Jayant Sood and the Guest of Honour was CS Sandeep Masand.

GURGAON CHAPTER

Study Circle Meeting - Central Excise

On 23.11.2012 Gurgaon Chapter organized a Study Circle Meeting on Procedure and compliance under Central Excise Tax, 1944. CS R K Khurana was the Guest Speaker for the meeting. He stated that in Indian economy manufacture constitutes a major part of the economic activity of our country. The Central Government had also realized that development of this sector is highly required for balanced growth of Indian economy. Although the services sector is growing exponentially, the maximum employment would be in the manufacturing especially the SSI and other ancillary sector. Central Excise has for the past decade been the mainstay of the revenue with service tax and direct taxes stealing the show as far as growth of the taxes are concerned. The Central Government gets the revenue from Central Excise, Income Tax, Customs, and is administered by Central Government. The power to levy Central Excise duty is derived from Constitution. The Indian Parliament



has exclusive powers to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to the Constitution. Explaining the role of Company Secretaries he said that there is a great need for professionals to advise and assist the assesses. A Company Secretary, with his training and experience is well equipped to position himself in the dynamic role as an advisor and facilitator for due compliance of excise law. In particular, a CS can render various services like facilitate registration with tax authorities, advising on applicability of excise laws: Whether a small scale unit falling outside the scope of the definition of excise law, exemptions and rebates available under excise law, advising on the maintenance of proper books and accounts and records, including records for Cenvat Credit, calculation and deposit of excise duty, filing of returns, representing clients before the tax authorities etc.

Career Awareness Programmes

On 23 and 24.11.2012 the Gurgaon Chapter of NIRC organized seven career awareness programmes at six schools of rural areas of Rewari District, Haryana and S N Siddeshwar School, Sector-9, Gurgaon. In the programmes the students were appraised about the mode of registration in the course, syllabus, structure of the course and opportunities available both in employment and in practice. ICSI Teacher's Kit, Brochures, Pamphlets, posters received from the institute for the above programmes were distributed. The programme at Gurgaon was addressed by Animesh Srivastava, Executive Officer of the Gurgaon Chapter. Around 1500 students taken together attended the programme from all streams of the schools. Detailed information was provided about the course offered by the Institute and the eligibility criteria for the course, examinations, requirements of training etc. the role of Company Secretary and importance of the profession of Company Secretary in changing economic scenario. The opportunities available to those who complete the Company Secretary Ship course were also highlighted. A film having interview of President on Doordarshan (Lok Sabha TV) was also shown to the students which were very much liked by the students and the teachers.

Motivational Talk

On 08.12.2012 a motivational talk "Yes We Will" for members of Gurgaon Chapter was organized at the chapter premises. The talk was addressed by CS Govind Kumar Mishra, Corporate Trainer. CS Govind Mishra started his talk by discussing strategies to regain focus on work and personal life. He said everyone wants success. Everyone strives for it. But unfortunately everyone does not get it. Those who do not get success get dejected and start thinking that success is not in their fate. Only those are deprived of success who start with wrong notions and assumptions and are not willing to pay the price for it. He also talked about time management, financial management, and emotional management. The essence is that success lies in passion, purpose, planning, perseverance and

pride. Learn, if you can, from us that secret of success lies in your enthusiasm. The difference between impossible and possible lies in your determination. If you have the will to win, you have achieved half the success. A golden rule for you is to think only for the best. Work only for the best and expect only the best.

10th MSOP

On 11.12.2012 the Gurgaon Chapter of NIRC of the ICSI inaugurated the 10th Management Skills Orientation Programme (MSOP) at the Chapter premises. The Chief Guest on this occasion was CS Narinder Kumar, Group CFO & CS, VLCC Health Care Ltd., Gurgaon. CS Deepak Kukreja, NIRC Member congratulated the participants and said CS is a key managerial person in every company. He said that now is the time to apply the academic knowledge in real world and advised the participants to attend this training with sincerity as it would give them a chance to interact with various experts on different fields. Chief Guest CS Narinder Kumar while advising the participants to constantly update oneself with various developments in professional fields said Corporate should be governed in the best possible way. It is the prime responsibility of CS to take care of interest of all stakeholders. A CS can play a much larger role in a meaningful manner. He also advised them to have very good computer skills. He wished bright future to the participants. CS Dhananjay Shukla expressed that now participants should look from books to business and a CS should always strive for excellence.

Workshop on MS-Excel

On 14.12.2012 a practical workshop on MS-Excel was organized by Gurgaon Chapter for CS Members. It was conducted by Abhishek Malhan. CS Punit Handa in his inaugural address said computer skills are very much required for professionals and the current workshop will practically demonstrate about MS-Excel's applications in our routine business functions. Abhishek Malhan introduced that Microsoft Excel is a spreadsheet application used to create and manage business transactions that deal with accounting. To make this possible, it can assist you with creating lists of transactions, then using those lists to create charts and other analysis tools. It helps to handle financial transactions for regular people, businesses, government agencies, and international monetary relationships. Microsoft Excel is more flexible and useful than most people realize. Although Excel is a popular spreadsheet programme used primarily for managing data within businesses, it also has a large capacity for practical, everyday use. The strength of Excel lies in its ability to quickly sort through, manage and organize data. The spreadsheets in Microsoft Excel are widely used by businesses as templates with formulas used to accurately calculate business expenses. For example, companies use spreadsheets filled with formulas to calculate taxes, billing, employee wages and other expenses. Also, spreadsheets are given to employees in many companies so



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that they can calculate all of their personal expenses and turn them in for reimbursement. Excel allows you to make these basic mathematical operations by plugging in different signs into the formula sections (e.g. +, =, -, x). A practical demonstration was given for most of the applications and the same was attended by about 35 members.

MEERUT CHAPTER

Seminar on Indian Corporations : Expectations and Challenges

In furtherance of Investor Awareness Initiative of Ministry Corporate Affairs, Meerut Chapter of NIRC of the ICSI organised a seminar on 14.12.2012 jointly with Economics Department of Chaudhary Charan Singh University on Indian Corporation: Expectations and Challenges at Bhraspati Bhawan, CCS University, Meerut. Nesar Ahmad, President, the ICSI was the Guest of Honour. Other faculties of the Seminar were Rajiv Bajaj, Chairman, NIRC of the ICSI; Prof Y Vimla, Department of Botany, CCSU; Akhil Prasad, Director, Fidelity; Prof. Surajit Majumdar, Institute for Studies in Industrial Development, New Delhi; Dr. Atvir Singh, Head of Department of Economics, CCSU and V.K.Malhotra, Department of Economics.

Nesar Ahmad in his address while congratulating the Meerut Chapter for organising the seminar for members and students, spoke about the importance of the role of Corporates, Academicians and Professionals. He emphasised that these three pillars need to move together to attain a comprehensive change in the business world. He also informed about the new initiatives of the Institute towards growth and development of the profession in line with the requirements of the businesses. He also said that the academicians are required to develop professionals as per the needs of the businesses.

Rajiv Bajaj enlightened on the importance of knowledge of Corporate Governance. He observed that Corporate Governance is a desire that comes from within, not only by professionals but by individuals as well. He further mentioned that Corporate Governance is contribution to the society and does not mean avoiding profits. Other faculties emphasised mainly on integrity and sustainability required in the process of development. All the sessions were very informative and well appreciated by the gathering. The seminar received an overwhelming response from students, members and other participants. Around 250 participants attended the same and participation certificate was also given to them.

MODINAGAR CHAPTER

Study Circle Meeting On Companies Bill, 2012

On 23.12.2012 Modinagar Chapter of NIRC of the ICSI organised a study circle meeting on the Companies Bill, 2012

[as passed by Lok Sabha on 18.12.2012] at Centre for Management Development, Modinagar which was attended by Members of the Institute, Cost Accountants and Professional Programme students.

CS Rajiv Bajaj, Guest Speaker, CS M.K Singhal, CS S.K Sharma and CS Deepak Garg focused on the Companies Bill, 2012 briefing about various clauses as under: CLASSIFICATION & REGISTRATION: Concept of One Person Company (OPC limited) introduced Clause 2(62), concept of Small companies have been introduced which shall be subjected to a lesser stringent regulatory framework Clause 2(85), Provision for Conversion of Companies already registered has been introduced Clause 18, provisions for entrenchment Clause 5(3), A declaration, in the prescribed form Clause 7, Registered office, Commencement of business etc; PROSPECTUS AND ALLOTMENT OF SECURITIES: This chapter is divided into two parts. Part I relates to 'Public offer' and Part II relates to 'Private Placement'.

SHARE CAPITAL AND DEBENTURES: If a company with intent to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extend to 10 times the face value of such shares or Rupees 10 crores, whichever is higher. Stringent penalties have also been imposed for defaulting officers of the company. [Clause 46(5), provisions for punishment for fraud. [Clause 56 (7), Security Premium Account Clause 52(2) (e), issue share at a discount. Clause (53) and issue of preference shares for a period exceeding twenty years for infrastructural projects subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders Clause 55.

E-GOVERNANCE: E-Governance proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

BOARD AND GOVERNANCE: Various clauses such as Clause 203(1), Clause 203(2) & (4), Clause 149(5), Clause 160(1), Clause 161(2), Clause 166, Clause 168(2), Clause 168(3), Clause 173(2), Clause 173(3), Clause 178(1), Clause 177(2), Clause 178(3), Clause 178(1), Clause 178(5), and Clause 197(13) were discussed.

CORPORATE SOCIAL RESPONSIBILITY (Clause 135): Every company having net worth of Rupees 500 Crore or more, or turnover of Rupees 1000 Crore or more or a net profit of Rupees 5 Crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

DEPOSITS (Clause 173): A company may, subject to the passing of a resolution in general meeting and subject to the



prescribed rules, accept deposits from its members subject to fulfilment of specified conditions.

INVESTMENT COMPANIES (Clause 186): A company can make investment through not more than two layers of investment companies, unless otherwise prescribed.

- This shall not affect a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country; a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.
- The restriction on the number of step-down subsidiary companies has been introduced to prevent the abuse of diversion of funds through many step-down subsidiaries.

COMPANY SECRETARY: Functions of Company Secretary (Clause 205), Secretarial Audit (Clause 204), Secretarial Standards Introduced [Clause 118(10) & 205], Clause 118(10).

GENERAL MEETINGS: To encourage wider participation of shareholders at General Meetings, the Central Government may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means [Clause 108, One person companies have been given the option to dispense with the requirement of holding an AGM. [Clause 96(1)].

Report on Annual General Meeting [Clause 121]: Ø Every listed company shall prepare a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made thereunder. The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM. Non-filing of the report has been made a punishable offence.

AUDITORS: A company shall appoint an individual or a firm as an auditor at annual general meeting who shall hold office till the conclusion of sixth annual general meeting.

- Members of a company may resolve to provide that in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members.
- The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies. (Clause 141)
- Auditor cannot render any of the following services, directly or indirectly to the company or its holding company or subsidiary company:
 - Accounting and book-keeping service
 - Internal audit
 - Design and implementation of any financial information system
 - Actuarial services
 - Investment advisory services
 - Investment banking services
 - Ø Rendering of outsourced financial services
 - Management services
 - Other prescribed services.

Internal Audit: ● Internal audit may be made mandatory for prescribed companies (Clause 138)

Cost Audit (Clause 148): ● The Central Government after consultation with regulatory body may direct class of companies engaged in production of such goods or providing such services as may be prescribed to include in the books of accounts particulars relating to utilisation of material or labour or to such other items of cost.

- If the Central Government is of the opinion, that it is necessary to do so, it may, direct that the audit of cost records of class of companies, which are required to maintain cost records and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

- Cost auditing standards' have been mandated.

FINANCIAL STATEMENT (Clause 2(40): ● For the first time, the term 'financial statement' has been defined to include:- i. a balance sheet as at the end of the financial year; ii. a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; iii. cash flow statement for the financial year; iv. a statement of changes in equity, if applicable; and v. any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-Clause (iv), ● the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA) (Clause 132): ● The Central Government may by notification constitute a National Financial Reporting Authority to provide for matters related to accounting and auditing standards.

● Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be; (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed; (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and (d) perform such other functions relating to Clauses (a), (b) and (c) as may be prescribed. Ø Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall- (a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered



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Accountants Act, 1949. Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section; (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit; (c) where professional or other misconduct is proved, have the power to make order for- (A) imposing penalty of - (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and (II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms; (B) debarring the member or the firm from engaging himself or itself from practice as member of the institute for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority. ● Any person aggrieved by any order of the National Financial Reporting Authority, may prefer an appeal before the Appellate Authority constituted by the Central Government.

INSPECTION, ENQUIRY AND INVESTIGATION: Transfer, removal or disposal of assets for a period of three years. [Clause 221] and, mutatis-mutandis to inspection or investigation of foreign companies. Clause 228.

COMPANY LIQUIDATORS (Clause 275): Appoint of Provisional Liquidator or the Company Liquidator from a panel maintained by the Central Government consisting of Company Secretaries, Chartered Accountants, Advocates and Cost Accountants, such liquidator is required to file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal. Professional assistance to Company Liquidator (Clause 291). The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Act.

COMPOUNDING OF CERTAIN OFFENCES (Clause 441): This clause provides for the compounding of certain offences by Tribunal or regional director in certain cases before the investigation has been initiated or is pending under this Act. It further provides the procedure followed for compounding of offence. It Clause also provides penalty for any officer or other employee of the company who fails to comply with the order of Tribunal or Regional Director.

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL (Clause 408 and 410): The Central Government shall, by notification, constitute, a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to be known as National Company law Appellate Tribunal.

SPECIAL COURTS: For the speedy trial of offences, the Central Government has been empowered to establish special courts in consultation with the Chief Justice of the High Court within whose jurisdiction the judge is to be appointed. Clause 435. Clause 436 and Clause 436.

MEDIATION AND CONCILIATION PANEL (Clause 442): The

Central government shall maintain a panel of experts to be called Mediation and Conciliation Panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

CROSS - BORDER MERGERS (Clause 234) REGISTERED VALUERS (Clause 247): The cross border merger may be made between companies registered under this Act and companies incorporated under jurisdiction of such countries as may be notified by the Central Government.

REGISTERED VALUERS (Clause 247): A new chapter has been inserted in relation to registered valuers. Valuation in respect of any property, stock, shares, debentures, securities, goodwill, net worth or assets of a company shall be valued by a person registered as a valuer.

POWER TO EXEMPT CLASS OR CLASSES OF COMPANIES FROM PROVISIONS OF THIS ACT (Clause 462): The Central Government may in the public interest, by notification direct that any provisions of this Act shall not apply to such class or classes of companies; or shall apply to class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

ADJUDICATION OF PENALTY (Clause 454): The Central government may by an order publish in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudicating penalty under the provisions of this Bill in the manner as may be prescribed.

Investor Awareness Programme

On 25.11.2012 the Chapter organised Investor Awareness Programme on Capital Market at Auditorium, MM (PG) College, Modinagar. The programme was attended by a large number of professional members, college faculty and students. CS Anupan Jha was the Guest Speaker of the programme. CS M.K. Singhal, CS S.K. Sharma, CS Anup Gupta, CS Deepak Grag, CS Sushil Antal, CS Karuna Gupta highlighted various provisions, tips, options and areas for investment in capital and security market. CS Anupan Jha briefed on risk factors, investment options available both in IPO and Secondary market with reasonable factors of ebbs and flow in the market. CS M.K. Singhal, Chapter Chairman highlighted investment in different segment with remedies, redressal available for investors explaining Dos and Don'ts while dealing in securities. Queries raised by the participants were replied suitably.

> Southern India Regional Council

First Convocation of the ICSI - SIRC

The Institute of Company Secretaries of India organized the 1st



convocation of its Southern India Regional Council at ICSI - SIRC House, Chennai on 30.11.2012. Prof. S Sudalaimuthu, Vice Chancellor, Alagappa University, Tamilnadu delivered the convocation address and gave away the certificates to the new members. CS Sridharan R, Council Member, The ICSI and Chairman, Convocation Sub Committee in his welcome address said that education and opportunities have created unprecedented social and economic mobility. There is a revolution of expectations and the surge of aspirations in an increasingly young India. He reiterated that while there should be pride in successes, there is also need to be conscious of challenges ahead. He advised the young professionals to consistently develop their physical, emotional, psychological and mental levels. CS Nesar Ahmad, President, the ICSI in his address while congratulating the newly admitted members, meritorious students of the CS Course, their parents and teachers, spoke about the importance of continuous learning and advised all young professionals to have a craving for learning with application of knowledge towards professional success in tandem with societal expectations. Nesar Ahmad also informed about the new initiatives of the Institute towards the growth and development of the profession.

In his convocation address, Prof. Sudalaimuthu lauded the efforts of ICSI in making the curriculum to be updated with the requirement of the corporates. He quoted the long relationship the ICSI has with the Alagappa University in the terms of MOU which was signed in the year 1991. He also congratulated the ICSI for organizing the convocation for the new members. Prof. Sudalaimuthu observed that the Company Secretaries are the conscience keepers of the company and they are the black box of the company. He also advised the new members to keep themselves updated with the latest happenings in the various laws to survive in the competitive world. He also advised the young members to maintain a healthy life. Prof. Sudalaimuthu concluded his convocation address by quoting that one's success lies in his hands only and it is up to him to make his life successful with his dedicated efforts. The new members recited the oath. Seventeen members received the certificate of membership. CS N K Jain Secretary & CEO, The ICSI while making concluding remarks congratulated all the newly admitted members and meritorious students. He emphasized that the perception of business towards Company Secretaries has been changing over a period of time as the portfolio of the profession has expanded beyond company law. He advised the young professionals to keep pace with the increased technological advancements, respond to the speed of change and innovation, meet with rising quality standards, satisfy accelerated demands and above all to perform, exceeding the expectations.

The Convocation Programme was attended by the Press and electronic media viz. Raj TV & Sun TV. In all 14 Press Corps covered the proceedings. The programme was telecast in the news channel of SUN TV [main news] and news in RAJ TV - prime time.

➤ Western India Regional Council

AURANGABAD CHAPTER

Full Day Workshop on Recent Supreme Court Judgment related with issue of shares and other critical issues of Company Law

On 3.11.2012 a Full Day Workshop on the above topic was held at Aurangabad. Dr. K.R. Chandratre, Past President, the ICSI was the Guest Speaker who in his address discussed on issue of shares and debentures by listed/unlisted companies and implications of recently announced landmark judgment of Supreme Court. He also highlighted the recent changes in Schedule XII and related party transaction and office or place of profit. Chapter Chairman CS Mahesh Singhi, Secretary CS Ashish Gupta and many senior and young members and students participated in the workshop and was liked by the delegates as it covered the most awaited and current landmark judgment of the Supreme Court. Active participation and discussion in the house made the workshop very interactive. At the end of the workshop Stock Holding Corporation of India Limited briefed about the National Retirement Pension Plan. CS Anurag Geete was the anchor of the programme.

INDORE CHAPTER

Career Awareness Programmes

On 3.11.2012 a career awareness programme was organised by Indore Chapter of WIRC of the ICSI at Saint Umar Higher Secondary School, Indore. On behalf of Indore Chapter Reshma Khan, Programming Officer of the Chapter addressed the participants. ICSI kit having Brochure and other Journals of the Institute were distributed. Details of the course, syllabus and subjects of CS Foundation and executive programmes, scope of CS and opportunities available for CS in employment as well as in practice, eligibility criteria, examination patterns, training requirements, etc. were also explained to the participants. Again on 18.10.2012 the Indore Chapter of WIRC of the ICSI organised a Career Awareness Programme at Kastoorba Girls Higher Secondary School, on the following topics - Awareness about Company Secretary Course, Eligibility of Admission in CS, Scope & Work Areas for CS, Company Secretaries in Practice & Employment and information about Institute & its Affiliation. The speakers were Reshma Khan and other Staff of the Chapter. The speakers explained all the details of CS course, training, exemption, etc. Around two hundred and fifty students of class 12 were present at the programme.



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

CENTRE FOR
CORPORATE
GOVERNANCE,
RESEARCH &
TRAINING (CCGRT)

Announces!!!



AN INVITATION TO ATTEND A VARIETY OF PROFESSIONAL DEVELOPMENT PROGRAMS ORGANIZED BY ICSI-CCGRT

ICSI-CCGRT proposes its new schemes of Annual Membership Scheme for the Professional Development / Participative Programs organized by it.

The Scheme has been introduced keeping in view the convenience to make payment / take approvals at one time to attend different professional development programs organized during the period.

The New Annual Membership Schemes with its salient features as under:

- With a Membership fee of ₹5,600/-* the member would be entitled to attend 05 programs at CCGRT within 06 months from the month of registration
- With a Membership fee of ₹11,500/-* the member would be entitled to attend 12 programs conducted at CCGRT and Mumbai area from 1st January to 31st December 2013.
- With a Membership fee of ₹18,000/-* the member would be entitled to attend unlimited programs in Mumbai from 1st January to 31st December 2013. Bulk registration for more than 02 membership would be charged at a discounted rate of ₹17,000/-* per membership.
- Scheme for Outstation Members (i.e. other than Mumbai, Navi Mumbai & Thane):
 - With a Membership fee of ₹9,000/-* member would be entitled to attend 05 programs held at CCGRT from 1st January to 31st December 2013. Residential facility would be complimentary subject to availability.

* Including Service Tax @ 12.36%

Note: Only the participants attending the program would be given background material.

Fee may way of D.D / local cheque payable at Mumbai and drawn in favour of "ICSI-CCGRT A/c" may be sent to the undersigned at ICSI - CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai 400 614.

Phone: 022 - 2757 7815/16, 022 - 4102 1505, e-mail: ccgrt@icsi.edu

For any clarifications please contact Shri K C Kaushik, Assistant Director (Mobile: 09769133686) / Co-ordinator (Phone: 022-41021501/15)

Gopal Chalam
Dean
ICSI - CCGRT



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CENTRE FOR
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PCH-4

Series on International Trade Development and Investor Awareness

PDP-8

DOING BUSINESS IN THE US

Background	<p>The long term market of the United States of America / USA is quite strong. At this crucial juncture, time is ripe for flow of investment, business and trade with the US (India's main trading partner). However, legal hurdles pose challenges.</p> <p>CCGRT in association with the US consulate aims to present a legal & regulatory roadmap for doing business in the US.</p>
Day, Date & Timing	<p>Wednesday, January 30, 2013</p> <p>09.30 a.m. - 05.30 p.m.</p>
Venue	<p>ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614</p>
Focus of Coverage	<ul style="list-style-type: none"> ● Economic prospects for Trade and Investment from India in the US in a sustainable way ● Comprehensive legal & regulatory provisions, particularly focus on tax laws ● Selective Cases about setting up Indian business in the US and Cases of Indian Trade ● Regulations for USA Visa
Speakers being approached include	<p>Mr. Martin Claessens, Commercial officer, American Consulate General Shri B M Misra, Head, Department of Economic & Policy Research Shri Kamal Vora, Officer, American Consulate General Shri Shishir Lagu, Partner, KAV & Co Shri Vaibhav Manek, Partner, KAV & Co <i>Endeavours are being made to request the US Consulate General, Mr. Peter Haas to inaugurate the programme</i></p>
Participant Mix	<p>Company Secretaries, Chartered Accountants and other professionals, and students of various professional courses, dealing with the subject.</p>
Fees (inclusive of Service Tax @12.36%)	<p>Members ₹1350/- per Member Students ₹1000/- per Student Others ₹ 1700/- per participant to cover the cost of program kit, lunch and other organizational expenses. <i>Early bird discount of ₹ 250/- for registration with payment by 25th January, 2013.</i></p>

Limited seats and hence prior registration is desirable.

Registration : The Fees maybe paid by Cash at CCGRT or drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to **Shri Gopal Chalam**, Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614
 Phone: 022-27577814, 4102 1515 e mail: ccgrt@icsi.edu

**Prior registration desirable*



Draft Regulations

To be published in the Gazette of India,
Extraordinary
Part III- Section 4

MINISTRY OF CORPORATE AFFAIRS
(THE INSTITUTE OF COMPANY SECRETARIES OF INDIA)
(Constituted under the Company Secretaries Act, 1980)

NOTIFICATION
New Delhi, the ... December, 2012

No. 710/1(M)/1: The following draft of certain regulations, further to amend the Company Secretaries Regulations, 1982 which the Council of the Institute of Company Secretaries of India proposes to make, in exercise of the powers conferred by sub-section (1) of section 39 of the Company Secretaries Act, 1980 (56 of 1980), and with the prior approval of the Central Government, is hereby published, as required by sub section (3) of section 39 of the said Act for information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration after the expiry of the period of forty five days from the date on which copies of the Official Gazette containing this notification are made available to the public.

Any person desiring to make any objection or suggestion in respect of the said draft regulations, may forward the same for consideration by the Council of the Institute within the period so specified above to the Secretary, the Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003.

Any objection or suggestion, which may be received from any person with respect to the said draft regulations before the expiry of the period so specified, will be considered by the Council.

DRAFT REGULATIONS

1. (1) These regulations may be called the Company Secretaries (Amendment) Regulations, 2012.
- (2) They shall come into force on the date of their final publication in the Official Gazette.
2. In the Company Secretaries Regulations, 1982 (hereinafter referred to as the regulations):-
 - (i) in regulation 40, for clause (bb), the following clause shall be substituted, namely: -
 "(bb) is a student registered for the Executive Programme on or after the 1st September, 2009 and successfully completes the Student Induction Programme within a period of six months of his registration either on regular basis or online for such number of days or hours and in such manner as may be provided by the Council from time to time or may be exempted therefrom." ;
 - (ii) for regulation 47, the following regulation shall be substituted, namely: -

"47 Practical experience or training

A candidate who has passed the final examination or Professional Programme Examination of the Institute shall be required to possess the practical experience or to undergo the practical training or to have the experience and training or may be exempted therefrom as specified in this Chapter for becoming eligible to Associate Membership of the Institute.";

(iii) in regulation 48,-

(A) in clause (a), for sub-clause (i) the following sub-clause (i) shall be substituted namely; -

"(i) one year experience as an Assistant or Deputy Company Secretary or any other post equivalent or higher thereto in the Secretarial Department or two years' experience as a Secretarial Officer or Executive or three years' experience as an Assistant in the Secretarial Department in any company or body corporate having a paid-up share capital and reserves of not less than fifty lakhs rupees or any organisation having gross fixed assets of not less than one crore rupees including any public sector undertaking, autonomous or statutory body, financial institution or bank which in the opinion of the Council provides scope for acquiring sufficient professional experience;"

(B) for sub-clause (iii), the following shall be substituted, namely: -

"(iii) two years' experience of continuous practice on a whole-time basis as a Chartered Accountant or Cost Accountant having carried out statutory or cost or Internal audit or providing management consultancy services or two years' experience of continuous practice as an Advocate in a High Court having rendered services as Counsel or Advisor to a Company having paid-up share capital and reserves of not less than fifty lakhs rupees or any organisation having gross fixed assets of not less than one crore rupees including any public sector undertaking, autonomous or statutory body, financial institution or bank which in the opinion of the Council provides scope for acquiring sufficient professional experience;

(iiia) having such professional qualification as may be approved by the Council from time to time with two years' experience in a law firm or management consultancy firm or Chartered Accountant firm or Cost Accountant firm having a standing of at least ten years and gross fixed assets minimum of ten lakhs rupees or such standing or assets as may be approved by the Council from time to time.";

(C) for sub-clause (iv), the following sub-clause shall be substituted, namely: -

"(iv) two years' experience as an Executive or three years' experience as an Assistant in the secretarial, administration, accounts, finance, personnel or legal department in any company or body corporate having a



paid-up share capital and reserves of not less than fifty lakhs rupees or any organisation having fixed assets of not less than one crore rupees including Central or State Government, any Public Sector Undertaking, autonomous or statutory body, financial institution, banking or insurance company which in the opinion of the Council provides scope for acquiring sufficient professional experience;"

(D) in sub-clause (v) for the words, "have acquired" the words, "has acquired" shall be substituted;

(E) after sub-clause (v), the following sub-clause (vi) shall be inserted, namely: -

"(vi) being a fellow member of any professional Institute or having qualification equivalent to Company Secretary as may be approved by the Council and having working experience of five years;"

(F) in clause (b), for the words, "fifteen months" the words, "twenty four months" shall be substituted;

(G) in clause (c), for the words, "fifteen months" the words, "twenty four months" shall be substituted;

(H) for clause (d), the following clause shall be substituted, namely: -

"(d) A candidate registered for Executive Programme on or after 1st September, 2009 and is required to undergo training under clause (b) or (c) or regulation 49A shall complete the Executive Development Programme and Professional Development Programme either on regular basis or online for such number of days or hours and in such manner as may be approved by the Council or exempted therefrom.";

(iv) after regulation 49, the following regulation shall be inserted, namely: -

"49A Alternate training for thirty six months on enrolment for Executive Programme

A candidate who has passed the Foundation Programme Examination of the Institute or is exempted therefrom and enrolled for Executive Programme may commence his training immediately at his option for a period of thirty six months with prior approval of the Institute under a Company Secretary in practice or a firm of such Company Secretaries registered with the Institute and recognised for this purpose by the Council in lieu of twenty four months training specified in regulation 48.";

(v) for regulation 50, the following regulation shall be substituted, namely: -

"50 Compulsory Practical Training

(a) Every candidate passing the final examination or Professional Programme Examination of the Institute in addition to acquiring qualification and practical experience as specified in sub-clauses (iii), (iiia), (iv) and (vi) of regulation 48 shall be required to undergo compulsory practical training for a total period of one month or for such period as may be decided by the Council from time to time in Secretarial Department including shares or legal, as the

case may be, in a public limited company or body corporate having a paid-up share capital of not less than fifty lakhs rupees as approved by the Council or under a Company Secretary in practice or in a firm of such Company Secretaries as approved by the Council.

"(b) After passing the final examination or Professional Programme examination and completion of training requirements or exemption thereof, the candidate shall complete Management Skills Orientation Programme either on regular basis or online either three weeks non-residential or two weeks residential, which comprises of Advanced Soft Skills Training and Advanced Technical Training for such period and in such manner and of such contents as may be provided by the Council;

Provided that the Council may on an application made in this behalf by the candidate exempt him from undergoing Management Skills Orientation Programme if the Council is satisfied that the candidate has already undergone the training prescribed by such professional institutions, in India or abroad, as may be recognised by the Council in this behalf on reciprocal basis.";

(vi) for regulation 51, the following regulations shall be substituted, namely: -

"51 Exemption from undergoing Management Skills Orientation Programme

A candidate may be exempted from undergoing Advanced Soft Skills Training of Management Skills Orientation Programme for experience as specified in sub clauses (i), (ii), (iiia), (iv) and (vi) of clause (a) of regulation 48.

51A Full exemption from Training including Management Skills Orientation Programme

A candidate may be exempted on an application made in this behalf by the candidate to the Council from undergoing training as specified in clause (b) and (c) of regulation 48 or regulation 49A including Management Skills Orientation Programme, if the Council is satisfied that the candidate has passed the final examination or Professional Programme examination of the Institute and occupying position such as Chief Executive Officer, Managing Director, Chairman or other position as deemed equivalent or higher thereto by the Council for a period of ten years in a body corporate having paid up share capital of ten crore rupees or a listed company or any other institution or organisation as may be approved by the Council from time to time or any officer of the Central or State Government not below the rank of Director or Commissioner or equivalent position as may be approved by the Council.";

(viii) regulation 52 shall be omitted.

(ix) in regulation 53, for the expression "regulations 48, 51 and 52", the expression "regulations 48, 49A, 50, 51 and 51A" shall be substituted.

N. K. Jain

Secretary and CEO

A Governance Initiative

Latest on Corporate Governance

1. The International Integrated Reporting Council (IIRC) -Integrated Reporting Prototype Framework released (26th November, 2012):

The IIRC released a Prototype of the International <IR> Framework, a significant further step towards publication of version 1.0 of the Framework in 2013. Release of the Prototype Framework is an interim step intended to demonstrate progress towards defining key concepts and principles that underpin <IR>. The IIRC also announced that a formal Consultation Draft of the Framework will be published in April 2013, to be followed by the final "version 1.0" in December 2013.

This Prototype framework shall help businesses and others starting on their <IR> journey, by outlining the key considerations that are critical to <IR>.

The Framework establishes Guiding Principles and Content Elements that govern the overall content of an integrated report, helping organizations determine how best to disclose their unique value creation story in a meaningful and transparent way.

Although this Prototype Framework is not a formal part of the due process for developing the Framework, stakeholder feedback would be appreciated. The IIRC has welcomed feedback from stakeholders on the content of the Prototype Framework to prototype@theiirc.org.

The details can be had at:

<http://www.theiirc.org/resources-2/framework-development/prototype-of-the-international-ir-framework/>

2. UN Global Compact Good Practice Notes on Human Rights Released (19 December, 2012):

The Global Compact released three good practice notes on human rights. The three notes address the following topics:

● Developing Corporate Human Rights Policies and the Role of Legal counsel:

This Good Practice Note aims: (1) to illustrate how transnational corporations' (TNCs) inhouse corporate counsel are perfectly situated to propel their corporations to adopt practices that ensure respect for human rights; and (2) to encourage this positive role by concisely highlighting key lessons learned and good practices in this area.

● Community Engagement and Investment to Advance Human Rights in Supply Chains:

For companies embracing their responsibility to address the full range of human rights impacted in their supply chains, including but not limited to labor rights, this Note aims to explain some of the critical advantages, pitfalls and good practices related to engaging with and investing in suppliers' communities.

● Supporting Worker Empowerment - Including Support for Workers' Assertion of their Human Rights - in the Supply Chain.

This Note is focused on what businesses can do to better support workers in their supply chain, including through supporting workers' assertion of their human rights. This Note explores some of the good practices, advantages and pitfalls related to working with suppliers and other stakeholders, especially trade unions, to support workers in the supply chain, including in assertion of their human rights.

The details can be had at:

<http://www.unglobalcompact.org/news/291-12-19-2012>

GREEN CORNER

Control Noise Pollution



- Automobiles account to the highest production of noise. Regular servicing of the vehicles is an effectual measure to lower the intensity of sound produced by them. Lubrication of the machinery and servicing should be done to minimize noise generation.
- Soundproof doors and windows can be installed to block unwanted noise from outside. Preferably, install dual-paned windows
- Use of music systems and television sets with high volumes can cause noise pollution at home. Instead, using these appliances with the volume kept at a moderate level is a better option.
- Planting bushes and trees in and around sound generating sources is another effective solution for noise pollution. Dense shrubs and trees block sound passage, thus avoiding disturbance to the surrounding areas.
- An effective way to manage noise would be to wear ear protection while working in noisy conditions.
- Do not honk horns in your vehicles unless it is absolutely necessary.
- Teach our kids about goodness of being quiet.

Very few people want to hear your music, no matter how cool you think it is.

Good Things Around

Ban of Plastic bags in Delhi

Ban finally imposed: The ban, notified in October, has finally been imposed since November 23. The notification provides that no person shall manufacture, import, store, sell or transport any kind of plastic bag in the area that makes up the National Capital Territory (NCT) of Delhi. It stipulates that no person, including a shopkeeper, vendor, wholesaler, retailer, trader and hawker, shall sell or store or use any kind of plastic carry bag for storing or dispensing eatables or non-eatable goods or materials.

Remember

2013 - International Year of Water Cooperation

Moments of Thought



"To achieve truly sustainable growth, poverty eradication is of utmost importance."



- Vice President of India Shri M. Hamid Ansari

'Engineering for Sustainable Development and Inclusive Growth: Vision 2025'

Speech at 27th Indian Engineering Congress

FORTHCOMING EVENTS

International Conference on Technology, Innovation and Social Change

Dates: Jan 22, 2013 to Jan 24, 2013

Organizer: The Centre for Social Entrepreneurship, Tata Institute of Social Sciences, Mumbai

<http://www.tiss.edu/events/international-conference-on-technology-innovation-and-social-change>

FEEDBACK & SUGGESTIONS

Readers may give their feedback and suggestions on this page to Mrs. Alka Kapoor, Joint Director, ICSI
(alka.kapoor@icsi.edu)

Disclaimer:

The contents under '**CG & CSR: Watch**' have been collated from different sources.

Readers are advised to cross check from original sources.



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2013

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LIST OF HOLIDAYS

JANUARY

25th : Milad-Un-Nabi or
Id-E-Milad (Birthday of
Prophet Mohammad)

26th : Republic Day

MARCH

27th : Holi

29th : Good Friday

APRIL

19th : Ram Navami

24th : Mahavir Jayanti

MAY

25th : Buddha Purnima

AUGUST

09th : Idu'l Fitr

15th : Independence Day

28th : Janamashtami

OCTOBER

02nd : Mahatma Gandhi's
Birthday

13th : Dussehra

16th : Idu'l Zuha (Bakrid)

NOVEMBER

03rd : Diwali (Deepavali)

14th : Muharram

17th : Guru Nanak's Birthday

DECEMBER

25th : Christmas Day



● Gazetted Holidays
● Restricted Holidays

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	(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) Due Diligence and Corporate Compliance Management	Professional Programme
II	MANAGEMENT, ETHICS AND SUSTAINABILITY DISCIPLINE SUBJECTS:	
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	(ii) Governance, Business Ethics and Sustainability	Professional Programme
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DESIRABLE EXPERIENCE:

Persons having adequate experience of teaching and as Head Examiner/Examiner in subjects of Law, Management, Finance, Accounting, International Trade, etc., 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 subjects at graduate/post-graduate level with relevant work experience having direct relevance to the aforesaid subject(s) of examination(s) will be preferred.

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Our Members

ON THE MOVE

SHRI RAJIV SHARMA, FCS on his appointment as Chief Financial Officer of Reliance Equity Advisors (India) Limited. Earlier he was with Axis Private Equity as CFO.

CS QUIZ

Prize query

A steel company S owned by the Government purchased certain items of machinery; a part of which was financed by a loan from the Central Government. Subsequently owing to global market conditions obtained a part of the loan was waived. Company S adjusted this waiver by bringing down the cost of machinery to the extent of the loan. But, company S claimed depreciation in its income-tax assessments at the original cost of the machinery. Is action of company S legally tenable?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th February, 2013.
- 3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors and their replies will be published in the journal.
- 4] The envelope should be superscribed '**Prize Query January, 2013 Issue**' and addressed to :

Deputy Director (Publications)
The Institute of Company Secretaries
of India, 'ICSI House', 22, Institutional
Area, Lodi Road, New Delhi-110003.

ANNOUNCEMENT

The Institute is pleased to announce the setting up of the following two new Chapters:

1. Bhayander Chapter under the jurisdiction of the Western India Regional Council of the Institute from 28th December 2012.
2. Dubai (International Chapter).

KIND ATTENTION! MEMBERS

Prize Query Scheme

Enhancement of the Prize Amount

MEMBERS will be glad to know that the prize money for replies to prize queries published in Chartered Secretary has now been enhanced to Rs. 1000 in cash for each of the two best answers for the prize query published from July 2012 issue and onwards. The names of the winners and their replies will also be published in the journal.

The decision of the Board will be final and binding on the members and no query will be entertained once a decision is finalized about the prize winners. Further the Board has all the inherent powers to cancel any particular month's prize query scheme if sufficient number of responses are not received to make it a healthy competition.

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Executive Programme (6 Papers)

Foundation Programme (4 Papers)

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Eligibility

Foundation Programme : 10+2 Pass or its equivalent
Executive Programme : Graduation

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- 24x7 Study through E-Learning (<http://elearning.icsi.edu>)
- The Online CS Course includes: Web based Training (WBT), Video based Training (VBT), Live Virtual Classroom (LVC)

Admission to CS Course :

- Admission is open throughout the year.
- Examination is held twice a year in June and December

Cut-off dates :

CS Foundation Programme : 31st March, 30th September

CS Executive Programme : 28th February, 31st May,
31st August & 30th November

Prospectus & Application Form:

- Available at Headquarters/Regional Councils/Chapters

Foundation Programme **Executive Programme**

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