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THE JOURNAL FOR CORPORATE PROFESSIONALS

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40th National Convention of
Company Secretaries

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Guidelines for Identifying
Star/Icon Members
of the Institute

Focus on

Arbitrability of Disputes relating to

Oppression & Mismanagement



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ISSN 0972-1983

CHARTERED SECRETARY®

[Registered under Trade Marks Act, 1999]

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Annual Subscription

Inland : Rs. 1000 (Rs. 500 for Students of the ICSI)
Foreign : \$100; £60 (surface mail) Single Copy : Rs. 100

Chartered Secretary is normally published in the first week of every month. ■ Non-receipt of any issue should be notified within that month. ■ Articles on subjects of interest to company secretaries are welcome. ■ Views expressed by contributors are their own and the Institute does not accept any responsibility. ■ The Institute is not in any way responsible for the result of any action taken on the basis of the advertisement published in the journal. ■ All rights reserved. ■ No part of the journal may be reproduced or copied in any form by any means without the written permission of the Institute. ■ The write ups of this issue are also available on the website of the Institute.

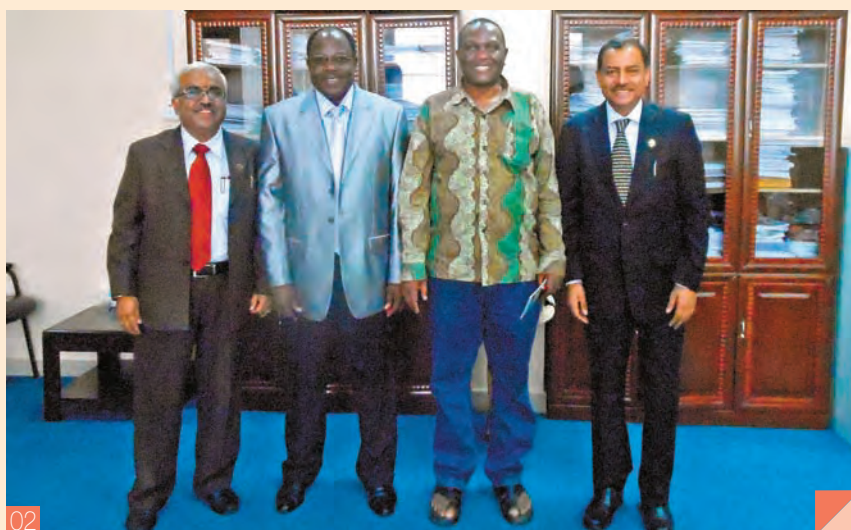
Edited, Printed & Published by

N. K. Jain for The Institute of Company Secretaries of India,
ICSI House, 22, Institutional Area, Lodi Road, New Delhi- 110 003.
Phones : 41504444, 45341000, Grams : COMPSEC
Fax : 91-11-24626727
E-Mail : info@icsi.edu
Website : http://www.icsi.edu

**Design & Printed at****M. P. Printers**

B-220, Phase II, Noida-201305
Gautam Budh Nagar, U. P. - India

- 01 >> Conferment of IOD Distinguished Fellowship - Nesar Ahmad (President, The ICSI) receiving the IOD Distinguished Fellowship from Dr. M. Veerappa Moily (Hon'ble Minister of Corporate Affairs & Power) in the presence of Lt. Gen. J.S. Ahluwalia, PVSM (Retd.) (President, Institute of Directors).
- 02 >> Meeting with DG, EPZ Authority Dar es Salaam, Tanzania - Standing from Left: Umesh H. Ved (Central Council Member, the ICSI), Dr.A. Meru (DG, EPZ Authority, Dar es Salaam), Gandance Cassian Kayombo (Hon'ble Member of Parliament, Govt. of Tanzania) and Nesar Ahmad.
- 03 >> 16th ICPSK Annual International Conference on Governance Perspectives in Harnessing Natural Resources for Development held at Kwale County, Kenya. Group photo of dignitaries and delegates with Dalmas Otieno (Hon'ble Public Service Minister, Govt. of Kenya, sitting 8th from left, first row).
- 04 >> Second ICSI Corporate Governance Week on Good Governance for Sustainability - Programme held at Bangalore - Release of ICSI Publication titled Role of Company Secretary in Corporate Governance - Standing from Left: Gopalakrishna Hegde, G. M. Ganapathi, Justice M.N. Venkatachalliah (former Chief Justice of India), S.N. Ananthasubramanian, S.S. Marthi and C. Dwarkanath.
- 05 >> Programme Held at Hyderabad - Sitting on the dais from Left: Vasudeva Rao Devaki, Shujath Bin Ali, C. Sudhir Babu, Thota Narasimham (Hon'ble Minister for Stamps & Registration, Govt. of Andhra Pradesh), S.N. Ananthasubramanian, Neerabh Kumar Prasad (IAS, Commissioner, Hyderabad Metro Development Authority) and S. S. Marthi.
- 06 >> Programme held at Mumbai - Release of ICSI Publication titled Responsibly Managing e-waste - Standing from Left: Mahavir Lunawat, Chitra Ramakrishna (Jt. Managing Director, NSE), S.N. Ananthasubramanian, Rajeev Agarwal (Whole Time Member, SEBI) and B. Narasimhan.
- 07 >> Programme held at Kolkata - Inauguration - Chief Guest Amlesh Bandopadhyay (Member (Technical), CLB, Kolkata) lighting the lamp. Others standing from Left: S. Gangopadhyay, B.P. Dhanuka, Ranjeet Kanodia, Deepak Khaitan and Anjan Kr. Roy.
- 08 >> Programme held at New Delhi - Release of ICSI Publication titled Sustainability Reporting for Sustainable Future - Standing from Left: N.K. Jain, U. Venkataraman (CEO, Currency Derivatives Segment and Whole Time Director, MCX Stock Exchange), Nesar Ahmad, Dr. M. Veerappa Moily (Hon'ble Union Minister of Corporate Affairs & Power), Sunil Kant Munjal (Jt. MD, Hero MotoCorp. Ltd.), P.K. Mittal and Rajiv Bajaj.
- 09 >> A view of the dignitaries, invitees and delegates.



2nd ICSI Corporate Governance Week

Aug. 27-31, 2012



04



05



06



07



08



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» Meeting of ICSI delegation with Governor of Madhya Pradesh - Ram Naresh Yadav (Hon'ble Governor of Madhya Pradesh interacting with ICSI delegation - From Left: Piyush Bindal, Vivek Nayak, Amit Kumar Jain and Dhanraj Singh Thakur.



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» Signing of MOU with NSE of India Ltd. - Standing from Left: K. Hari (Vice President, NSE), K.C. Kaushik, Sonia Baijal, Banu Dandona, Jay Kumar (Asst. VP, NSE), Dr. J. Ravichandran (Director, NSE), S.N. Ananthasubramanian, B. Narasimhan, Atul H. Mehta, Mahavir Lunawat and Prakash K. Pandya.



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» NIRC - Meeting with Corporate Mentors of NIRC - Group Photo of members together with Nesar Ahmad, N. K. Jain, Pavan Kumar Vijay, Rajiv Bajaj, Deepak Kukreja, Ranjeet Pandey, Vineet K Chaudhary, Yogesh Gupta and G. P. Madaan.



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» SIRC - Madurai Chapter - One Day Seminar jointly with ICAI (Cost Accountants) on Revised Schedule VI & XBRL and CARR and CARO - From Left: Dr. I. Asok, S. Kumararajan, B.T. Bangera (MD, Hi-tech Arai (P) Ltd, Madurai), S. Saraskumar and S. Paramasivan.



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Institute of Directors was established on 12 July 1990 in India, as an apex association of Directors to improve their professional competence. IOD India has since grown to associate with more than 30,000 senior executives representing prominent organisations from both the Private & Public sectors and Govt from India and abroad. IOD India's 'Masterclass for Directors', the training for corporate directorship & Golden Peacock Awards in 12 different disciplines and other flagship initiatives aim to improve the competitiveness of individual Directors and their organizations. The 'Masterclass' programme prepares participants to become Independent Directors of listed companies. Both have become global benchmarks. No business award today receives the kind of recognition and adulation among peers that the Golden Peacock does. Details on www.iodonline.com



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At a Glance

Articles (A 338 - 397)

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Arbitrability of Disputes Relating to Oppression and Mismanagement

p- 1088

B.C. Thiruvengadam

This article distinguishes between contractual rights and statutory rights of a member of a company. The statutory rights are further classified and the importance of qualified minority rights of a member are discussed. It also discusses application of these rights under Sections 397 and 398 of the Companies Act, 1956 and non-application of it in a winding-up petition under just and equitable grounds. It also highlights that a proceeding under oppression and mismanagement is a proceeding *in rem* and powers under Section 402 of the Companies Act, 1956 cannot be exercised by an arbitrator. According to the author, a statutory right cannot be waived as the same is coupled with a legal duty. While highlighting the importance to thwart any attempt to oust the jurisdiction of Company Law Board in a petition for oppression and mismanagement, the author suggests as to how the Company Law Board should handle situations where petitions are filed for oppression and mismanagement to circumvent an arbitration agreement.

Arbitrability of Disputes Relating to Oppression and Mismanagement

p- 1093

V. Durga Rao

Nothing prevents the shareholders to get their disputes with the majority settled through arbitration mechanism, but, the Arbitrator deciding such a dispute can not be seen as a Presiding Officer exercising power under section 397/398 and the final order of the Arbitrator can not be equated with a finding of CLB in an application under section 397/398 of the Companies Act, 1956. The shareholders defending the petition under section 397/398 of the Companies Act, 1956 can prefer an application under section 8 of the Arbitration & Conciliation Act, 1956 seeking a reference based on the facts if they believe that the disputes raised are covered by an arbitration arrangement. It is for the CLB to take a view as to whether the disputes can be settled by an Arbitrator and it's the discretion of CLB based on facts of that particular case.

Arbitrability of Disputes Relating to Oppression and Mismanagement

p- 1100

Mahesh A. Athavale & Anagha Anasingaraju

Two or more persons come together to start a business on the foundation of mutual faith, trust, joint efforts, hard work, sharing of responsibilities and success. Somewhere down the

line, these aspects take a back seat and the parties who have toiled together for years, may be decades - being together in ups and downs - part ways - bitterly. What is it that makes partners turn their back towards each other - what is that turns them into bitter foes? This article tries to deal with the unwritten and extra-legal aspects of arbitration *qua* oppression and mismanagement. It also throws light on the possible ways to avoid prolonged litigation in the courts of law and instead go for amicable settlement.

Arbitrability of Disputes Relating to Oppression and Mismanagement - Revisiting the Legal Provisions

p- 1106

T K A Padmanabhan

The Company Law Board cannot refer the dispute involving oppression and mismanagement under sections 397 and 398 of the Companies Act to an arbitrator for adjudication. The disputing parties themselves, who satisfy the eligibility criteria under section 399, also cannot settle the dispute involving issues of oppression and mismanagement under sections 397 and 398 of the Companies Act through arbitration. However, it appears that a disputing party who does not satisfy the eligibility criteria under section 399, can settle the dispute involving issues of oppression and mismanagement under sections 397 and 398 of the Companies Act by filing a suit before an ordinary civil court of appropriate jurisdiction. Even in such circumstances also the dispute cannot be settled by an arbitrator because he cannot provide the reliefs as specified under section 402 of the Companies Act.

Judicial View : Demystifying Arbitration in Disputes of Oppression and Mismanagement

p- 1115

Aishwarya Singh

This article is an attempt to demystify arbitrability of disputes on oppression and mismanagement. While few such disputes are referred by Company Law Board (CLB) for arbitration, others are adjudicated by CLB itself. In absence of clear cut law explaining the basis of rejection or acceptance of plea of arbitration by CLB, there is constant uncertainty regarding fate of such plea. In fact, this ambiguity is also not even satisfactorily resolved by legal provisions in India. Both, the Companies Act, 1956 as well as Arbitration Act, 1996 justify their respective prevalence. However, they fail to address the solution on occurrence of conflict between the aforementioned legislations. Nevertheless, when faced with a tussle between concerned provisions of the two legislations, judiciary has taken the responsibility of providing clarity on the issue of jurisdiction. Through this article, an in-depth analysis of the judicial view has been conducted. In order to further appreciate judiciary's binding



opinion, a model which brings out the clear position on this pertinent legal issue has also been proposed.

Arbitrability of Disputes Relating to Oppression & Mismanagement

p- 1119

Pramod S Shah

Proceedings under sections 397 and 398 of the Companies Act, 1956 are not outside the purview of Sections 8 and 45 of the Arbitration and Conciliation Act, 1996. Once the CLB is convinced that the issues raised in a petition under section 397/398 relate to or arise out of or is in connection with an arbitration agreement and the relief appropriate to the facts of the case could be determined/granted by an arbitrator, then, the CLB is bound to refer the matter to arbitration in terms of the mandatory provisions of the section 8 or 45 of the Arbitration Act provided the agreement is not null and void, inoperative or incapable of being performed. If any of the requirements of section 8 or 45 is not satisfied then CLB can decline to refer the dispute to arbitration.

Cases of Oppression and Mismanagement - A close look at the jurisdiction of CLB vis-à-vis an Arbitral Tribunal

p- 1127

Dr.K.S. Ravichandran

Mere existence of an Arbitration Agreement cannot oust the jurisdiction conferred upon and the enormous powers of Company Law Board (CLB). Certain reliefs capable of being granted by CLB under Sections 402 and 403 of the Act cannot be granted by an Arbitral Tribunal. Unless the subject matter of the dispute and the parties are common, the proceedings before CLB cannot be stalled by making applications under Section 8 or 45 of Arbitration and Conciliation Act. Merely if certain parties, who are not necessary parties, are added to a company petition under Sections 397 and 398, CLB is not powerless to refer the parties to Arbitration if proper and timely applications are made under appropriate provisions of the Arbitration and Conciliation Act.

Arbitrability of Disputes Relating to Oppression and Mismanagement

p- 1134

Pronamika Bhattacharya

The alternative dispute resolution mechanism, particularly resolution by arbitration of disputes is undoubtedly an effective way of reducing litigation and consequently the burden of the Courts of India. In view of the increasing foreign investment coming into India, resolving disputes by means of arbitration can help evade the long judicial processes enhancing investor confidence. But the biggest drawback is that - who will

decide the competency & qualification of the arbitrator to ensure that order of the arbitrator will be free from bias and lack of relevant knowledge? Also some legislation such as the Companies Act, 1956 have specifically given powers to the Company Law Board to decide violations of rights identified & secured under the Act. Therefore, arbitration cannot be resorted to as a uniform practice even if the provisions of the Arbitration & Conciliation Act 1996 are satisfied. Only a highly competent "Arbitration authority" can reduce the gap between matters not serious enough in public policy to be easily referred for arbitration & matters serious in nature & possibly affecting the right *in rem* and hence cannot be allowed to be decided by the ordinarily appointed arbitrator. A professionally qualified individual like a Company Secretary can perform not just as an arbitrator but also represent before any statutory authority like the Company Law Board.

Arbitrability of Disputes Relating to Oppression and Mismanagement

p- 1138

Naresh Kumar

The author critically examines the relevant provisions of the Arbitration and Conciliation Act, 1996, (Act) and Companies Act, 1956, regarding arbitrability of disputes relating to oppression and mismanagement. The conclusion is that the parties can include an arbitration clause in the contract to settle all differences and disputes arising between the parties out of or relating to their contract by arbitration in accordance with the law and procedure of their choice. However, the CLB alone is vested with statutory powers to deal with the cases of oppression and mismanagement. The parties cannot enforce their contractual rights through a petition before the CLB styling their disputes as acts of oppression and mismanagement.

Arbitrability of Disputes Relating to Oppression and Mismanagement

p- 1144

Rajendra Sawant

Object of arbitration is settlement of dispute in an expeditious, convenient, inexpensive and private manner so that they do not become the subject of future litigation between the parties. The Arbitration and Conciliation Act, 1996 confers powers on the judicial authority to refer dispute to arbitration in respect of which the parties have entered into an arbitration agreement.

The Company Law Board is a designated forum for dealing with the disputes arising among the shareholders *inter se* or between the company and shareholders including those relating to oppression and mismanagement. The issue being discussed in this Article is whether powers conferred on CLB under Chapter VI of Companies Act, 1956 to deal with dispute relating to oppression and mismanagement under Sections 397 and 398 can be ousted by an arbitration agreement.



At a Glance

Legal World (LW 97 - 104)

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- ◆ **LW.78.09.2012** Delhi High Court upholds the CLB order allowing interest on non refunded deposit.
- ◆ **LW.79.09.2012** In the case of amalgamation, the transferee company can change its name as part of the scheme without following other provisions.[Del]
- ◆ **LW.80.09.2012** Bombay High Court rejects the objection based on tax avoidance ground and sanctions the scheme of amalgamation.
- ◆ **LW.81.09.2012** When the company secures the disputed debt involved in a winding up petition, the creditor becomes a secured creditor and winding up petition cannot be maintained.[Cal]
- ◆ **LW.82.09.2012** Court's order sanctioning amalgamation cannot be modified to include what has not been included in the sanctioned scheme.[Del]
- ◆ **LW.83.09.2012** Supreme Court cancels the sentence imposed on the drawer of cheque.[SC]
- ◆ **LW.84.09.2012** In case of shipment on high seas, the policy provided the extension of concession if the validity period lapsed when the shipment had landed at any Indian port and in the present case the goods had reached in the port of India after the date of expiry of the authorization, the rejection of revalidation could not be faulted.[Del]
- ◆ **LW.85.09.2012** In light of the decisions in *Pratap Narain Singh Deo* and *Valsala* it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made.[SC]
- ◆ **LW.86.09.2012** As far as the direction given to the management to pay to the respondent-workman wages from January, 2006 till 9-11-96 is concerned the same appears to be a typing mistake and actually the wages were intended to be given from 1/11/2006 onwards and that mistake is corrected here.[Del]
- ◆ **LW.87.09.2012** In view of clear enunciation of the settled principles, the writ petition could not have been dismissed merely because there was non-compliance of an order passed under Section 17B of the said Act.[Del]

From the Government (GN 185 - 214)

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- ◆ Gazette notification GSR 534(E) dated 14/07/2011- clarification regarding.
- ◆ Amendment to Notification Number G.S.R. 501(E) dated 6th July, 1999
- ◆ Product or Activity Groups for Cost Audit Report and Compliance Report to be filed with the Central Government
- ◆ Companies (Central Government's) General Rules and Forms (Fifth Amendment) Rules, 2012
- ◆ Company Law Board (Second Amendment) Regulations, 2012
- ◆ The Company Law Board (Fees on Application and Petitions) (Amendment) Rules, 2012
- ◆ Constitution of a Committee for Reforming the Regulatory Environment for doing Business in India.
- ◆ Clarification on Para 46A of notification number G.S.R. 914(E) dated 29.12.2011 on Accounting Standard 11 relating to "The

effects of Changes in Foreign Exchange Rates"

- ◆ Applicability of Service Tax on commission payable to Non-Whole Time Directors of a company under section 309(4) of the Companies Act, 1956 - approval of Central Government under section 309/310 of the Companies Act - regarding.
- ◆ Company Law Settlement Scheme, (Jammu & Kashmir) 2012
- ◆ Imposing fees on certain e-forms filed with ROC, RD or MCA(HQ) under MCA-21 where at present no fee is prescribed
- ◆ Filling of Balance Sheet and Profit and Loss Account by companies in NonXBRL for accounting year commencing on or after 1.04.2011
- ◆ Imposing fees on certain e-forms filed with ROC, RD or MCA(HQ) under MCA-21 where at present no fee is prescribed.
- ◆ Redemption of Indian Depository Receipts (IDRs) into Underlying Equity Shares
- ◆ Facility for a Basic Services Demat Account (BSDA)
- ◆ Rationalization of process relating to surrender of registration by sub-brokers
- ◆ The Securities and Exchange Board of India(Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2012.
- ◆ Filing Offer Documents under SEBI (Issue of Capital and Disclosure Requirements)Regulations, 2009
- ◆ Establishment of Local Office of the Board at Bengaluru
- ◆ Establishment of Local Office of the Board at Jaipur
- ◆ Redressal of investor grievances against listed companies in SEBI Complaints Redress System (SCORES).
- ◆ Manner of Dealing with Audit Reports filed by Listed companies
- ◆ Aadhaar Letter as Proof of Address for Know Your Client (KYC) norms.
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- ◆ Direct Market Access - Clarification
- ◆ Activation of ISIN in case of additional issue of shares/ securities
- ◆ System for Making Application to Public issue of Debt Securities
- ◆ Review of the Foreign Direct Investment policy - permitting investments from Pakistan.

Other Highlights

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- ◆ Application for the issue/renewal/restoration of certificate of practice
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- ◆ Online Services available to Members
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The Institute of Company Secretaries of India (ICSI) is a statutory body enacted by the Parliament under the Company Secretaries Act, 1980 to regulate and develop the profession of Company Secretaries in India. The ICSI has on its roll over 30000 members and over 3,25,000 students. The Institute is governed by the Council of the Institute, responsible for the management of the affairs of the Institute and for discharging the functions under the Company Secretaries Act, 1980. The ICSI has its Headquarters at New Delhi, four Regional offices in Chennai, Kolkata, Mumbai and New Delhi and Chapter offices in 68 cities across the country. It has 122 Examination centers across the country including an overseas centre at Dubai.

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Qualification and Experience: Should be a fellow Member of the ICSI, preferably with legal background and experience of a minimum 15 years in a senior position in administration, finance, secretarial and legal in government, autonomous/statutory body or medium to large public / private sector company. The eligible candidates, who were earlier called for interview in June, 2012 may also be considered.

Job contents: The incumbent as 'Secretary' will be required to perform the functions of the Secretary of the Institute and will assist the Council in advising and framing the policies and shall discharge such duties as given in the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982 as also those assigned to him from time to time by the Council. The person selected should be able to take the profession to a higher level and enhance the role of the Institute in Indian industry. The candidate should have suitable experience and must also have the ability to communicate effectively to interact with senior level officers in the Government departments, Regulatory bodies, Industry / Trade Associations, Chambers of Commerce and Professional bodies, etc.

The incumbent should be adaptive in nature, having impeccable personal and professional ethics, integrity and professional competence, strong ability of reaching out to people across the globe for the cause of the profession of the Company Secretaries and the Institute. The incumbent is expected to exhibit exemplary leadership qualities, administrative acumen, objectivity in analysis and good interpersonal relationships within and outside the Institute. Should be strong in building good working relationships and trust with others; strong presentation skills and the ability to envision and innovative thinking. It is also expected that the incumbent will stay abreast of all relevant changes in the environment so as to enhance the quality of advice to the Council and performance of the Institute.

Age: Should be between 40 and 55 years of age as on 1st January, 2013.

Compensation: Basic pay Rs. 90,000/- per month plus HRA, DA, Performance Incentive, Insurance, medical, staff car etc. (CTC Rs. 35 Lakhs approx. per annum). However, the compensation will not be a constraint for a deserving candidate.

Period of engagement: The tenure for the position is for five years on contractual basis with an option for renewal upto a period which shall not exceed the date of superannuation. Either party may give three months' notice for termination of the contract.

How to apply: Eligible candidates applying for the position should email their profile/resume to secretary@transearchindia.com. Candidates who have applied for this position earlier need not apply again if there are no significant changes in their experience/qualifications.

Candidates employed in ICSI (internal candidates) may also be considered subject to fulfillment of the conditions. The Core-Group/Interview Board constituted for the purpose reserves the right to reject the name of any candidate at any stage without assigning any reason whatsoever. The right to consider the candidature of others identified through professional search process is reserved.

The last date of submission of the resume/profile is 21st September, 2012.

This advertisement is in supersession of the earlier advertisement published in the month of March, 2012 for this position at ICSI.

Latest From Corporate Governance

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1. The Norwegian Code of Practice for Corporate Governance -

The Code of Practice for Corporate Governance is issued by the Norwegian Corporate Government Board (NCGB) which is empowered to consider a revised version of the Code of Practice each year. NCGB takes into account international changes for the purpose.

The Code of Practice is principally intended for companies whose shares are listed on Oslo Børs or Oslo Axess, stock exchanges in Norway. The Code also applies to savings banks with listed equity certificates to the extent that it is appropriate.

The current edition of the Code of Practice was issued on 21 October 2010, replacing the edition of 21 October 2009. In 2011 NCGB communicated only few minor changes and adjustments to the Code of Practice by means of a separate document.

In 2012, NCGB invites all interested parties to provide any comments they may have on the Code, on the appropriate issues. The most substantial of the proposals relate to:

- More detailed explanation of the 'comply or explain' principle.
- The justification for the nomination committee's recommendations.
- The content and public disclosure of transaction agreements entered into in connection with takeovers.

Continuing development of the Code, NCGB invites interested parties to put forward their views, comments and proposals, not only in response to the proposed issues but also in general latest by 1 September 2012.

Members willing to give comment on the Code may send feedback via email at info@nues.no. Comment may also be sent to alka.kapoor@icsi.edu.

The Code and proposed issues for comments are available at:
<http://www.nues.no/>

2. Business Roundtable (BRT) Principles of Corporate Governance -- June 27, 2012:

BRT is an association of Chief Executive Officers of leading U.S. companies with over \$6 trillion in annual revenues and more than 14 million employees. BRT member companies comprise nearly a third of the total value of the U.S. stock market and invest more than \$150 billion annually in research and development - nearly half of all private R&D spending in U.S. Our companies pay \$163 billion in dividends to shareholders and generate an estimated \$420 billion in sales for small and medium-sized businesses annually. BRT companies give nearly \$9 billion a year in combined charitable contributions.

The BRT principles for corporate governance were last issued in 2010. The latest issue reflects the new provisions of Dodd-Frank Wall Street Reform and Consumer Protection Act implementation and the continuing evolution of best practices. The principles are of importance to present U.S. economy for employment and economic growth.

BRT's new Principles of Corporate Governance includes important updates in five key areas:

Independent Leadership

BRT endorses the appointment of a lead director where a board combines the positions of CEO and chairman or has a chairman who is not independent. BRT also recommends that the board evaluate its leadership structure annually.

Whistleblower Provisions and Compliance Oversight

BRT recommends that companies establish procedures for handling reports of all types of misconduct, including violations of law and the company's code of conduct. Company audit committees should meet at least annually with the person who has day-to-day responsibility for a company's compliance program.

Risk Oversight

BRT highlights the important role of board of directors in risk oversight, emphasizing the link between strategy and risk and the need for a risk oversight structure that enables a board to understand the company's major risks, how they relate to the company's strategy, and what the company is doing to manage these risks.

Shareholder Communication and Engagement

BRT emphasizes the importance of communication with shareholders and considering the views of shareholders. BRT also notes that, although companies should consider shareholder views, the board has a duty to act in the best interests of the company and all its shareholders.

Political Activities

BRT recommends that, at companies engaged in political activities, the board of directors should have oversight responsibility and consider whether to adopt a policy on disclosure of these activities.

The details can be accessed at:
<http://businessroundtable.org/>

GREEN CORNER

Green Healthy Day



Green initiatives in every day life will lead to healthy life.

1. Start your day by a brisk walk on green grass or exercise naturally without using electrical machinery.
2. Avoid using shower instead use a bucket
3. Choose petroleum-free cosmetic products
4. Use solar charger for laptops to mobiles. Save energy always.
5. Structure your office building to complement natural light.
6. Avoid paper wastage, recycle paper waste
7. Eat green and healthy food
8. Walk or bicycle shorter distances.
9. Avoid carrying polythene bags from vendors and hawkers.
10. Ensure unplugging all the electrical appliances.

Good Things Around



Electroshakti Impex Pvt. Ltd. has introduced commercial electric tricycles for the masses, based in India. Electroshakti pioneers in fuel-free, environment friendly Electric Vehicles (EV's). Electroshakti's product range includes variety of EV Tricycles that cater to a wide variety of requirements across the market segment. From golf course to ferrying passengers, EVs are now a part of Delhi's Landscape.

Remember

8 September - International Literacy Day
10 September - World Suicide Prevention Day
15 September - International Day of Democracy
16 September - International Day for the Preservation of the Ozone Layer

21 September - International Day of Peace
29 September - World Heart Day

Moments of Thought

"We have to generate trust by displaying the corporate governance"

Rajiv Kr. Agarwal (Whole Time Director- SEBI)

FORTHCOMING EVENTS

International Conference on Public Policy and Governance - 2012

4-6 September, 2012

Venue:- J N Tata Auditorium,
Bangalore, India

8th CII Corporate Governance Summit

Sep 18, 2012

Venue: Vivanta - Taj President, Ballroom, Cuffee Parade,
Mumbai, Maharashtra, India

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.



From the President



Professionalism is knowing how to do it, when to do it, and doing it. ●●

Frank Tyger

Dear Professional Colleagues,

Becoming a professional is an attitude adjustment process that begins with understanding and appreciating what it means to be a professional, creating a personal vision of professionalism, and aligning one's values with that vision.

Professionalism indeed is an essential component of long term professional success. Truly, the Professionals in today's dynamic environment are required to speed up the knowledge updation, assimilate and articulate the same to respond to expectations of stakeholders. They have to develop a right attitude to ensure that the services are rendered in a professional manner, adhering to the professional standards and the tenets of professionalism.

The overly competitive world, witnessing overlap in the services being rendered by various professions is now driven by the quality of service, the speed of service, the cost effectiveness of the service and more so the value derived by the service seeker from the service provider. To flourish as a true professional in such a demanding environment, we must recognize the need for change. We need to initiate and enhance

professionalism through truly professional attitude.

Corporate Governance Policy

The second meeting of the Committee constituted by the Ministry of Corporate Affairs to formulate a policy document on Corporate Governance was held on August 22, 2012 at Mumbai. The Committee decided to submit a set of recommended Guiding Principles of Corporate Governance to the Government. I shall keep you informed on the developments.

PMQ Course in Corporate Restructuring and Insolvency

The concept of insolvency practitioners is gaining prominence in India in the context of revival, rehabilitation and winding up of companies. The Companies Bill, 2011 proposes a larger role for professionals like Company Secretaries in the process of revival, rehabilitation and winding up of companies. Interim Administrator, to be appointed from panel of professionals including Company Secretaries, has been assigned vital role to play in the revival and rehabilitation of companies. Similarly, the Provisional Liquidator or Company Liquidator to be appointed from the panel of professionals including Company Secretaries has to play a critical role in winding up process. These regulatory prescriptions will open new areas of practice for Company Secretaries.

I informed you in my earlier communication, The Company Secretaries (Amendment) Regulations 2012 notified on 4th June 2012, provide for Post Membership Qualification (PMQ) Course in Corporate Restructuring and Insolvency. This PMQ Course aims at capacity building of Professionals in the area of legal, practical and application oriented aspects of corporate restructuring, rescue and insolvency and matters related thereto.

I am pleased to inform you that the Institute proposes to launch the PMQ Course in Corporate Restructuring and Insolvency at the 40th National Convention of Company Secretaries. This PMQ course will have written examination as well as compulsory workshop for case studies.

ICSI Certificate Course in valuation

True and transparent business valuation is an important instrument of good corporate governance. The area of valuation is perceived to be limited to corporate valuation like valuation of shares, enterprise wide valuation etc. However, the scope of Valuation extends to co-operative organization, Income tax department, Municipal Corporation, Asset or Business



Valuation for Banking or Insurance company in addition to corporate valuation. Therefore, it becomes necessary for Company Secretaries to understand the intricacies of valuation principles and techniques. As part of capacity building initiatives, the Institute has decided to introduce a Certificate Course on Valuation so as to build the skills and expertise of its members in carrying out the valuation assignment relevant to today's business environment.

I am pleased to inform you that this Certificate Course aims at providing insight into the various conceptual, technical and procedural aspects of valuation including Valuation of tangible or intangible assets; Valuation of shares; Valuation of takeover target; Exchange ratio in merger or amalgamation, is proposed to be launched at 40th National Convention of Company Secretaries.

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. The committee discussed professional development issues, reciprocal arrangements which inter-alia includes joint organisation of short-term courses in emerging areas, reciprocal paperwise exemption between ICSI and ICAI, sharing of knowledge competencies, sharing of space and resources at chapter locations, common overseas offices, joint representation to CBEC on matters relating to applicability of Service Tax, joint professional development programmes at national, regional and chapter levels, announcement of advertisement in each other's journal and recognition of Fellow Membership of the Institute(s) for appointment as Faculties/Associate Professors/Professors in AICTE approved management institutes in the area of Management Discipline etc.

MOU with BSE-IPF

The Institute has entered into an MOU with the Stock Exchange Investors' Protection fund, a recognised Public Trust established by BSE Limited. The areas of collaboration under MOU include Conducting investor awareness programmes on Micro, Small & Medium Enterprises (MSMEs); Conducting programmes for creating awareness about International Financial Reporting Standards (IFRS); Training and education programmes in financial market interface with corporate laws, secretarial practices and corporate governance; Webcasts of panel discussions and

presentation of experts on various aspects of financial markets and corporate governance and creating useful web contents for corporates; Conducting Investor Awareness programmes and education programmes related to capital market; Research in Capital Market through regular exchange of resources.

MOU with NSE

The Institute has entered into an MOU with National Stock Exchange of India Ltd. The areas of collaboration under MOU include, Fee concession to the students of ICSI, in NSE's Certification in Financial Markets (NCFM) modules, being conducted by NSE; Visits of Students and Members of ICSI to NSE through ICSI-CCGRT; Training to Company Secretaries in securities markets and corporate governance; Joint organisation of Investor Awareness Programmes; Joint compliance seminars for the trading members of NSE and Compliance Officers of the listed companies; Regular exchange of resources of mutual interest and Exchange of faculty(ies); Co-operation in developing curriculum of academic and continuing education programmes and developing new certification modules.

Student Conferences

I compliment Nagpur and Coimbatore chapter for their initiatives towards student development. The students of Coimbatore Chapter presented "CORP QUEST 2012" being on the theme "Pace Towards Corporate World" on August 18, 2012, at Coimbatore. The Nagpur Chapter of Western India Regional Council of the Institute organised Annual Regional Conference for CS students on August 18-19, 2012 at Nagpur.

16th Annual International Conference of ICPSK

Mr. Umesh Ved, Council Member, the ICSI and myself attended 16th Annual International Conference of Institute of Certified Public Secretaries of Kenya (ICPSK) held on 8th to 10th August, 2012. The theme of the Conference was "Governance Perspectives in Harnessing Natural Resources for Development". The Conference was designed to provide a platform for the participants to share information and exchange views with Technocrats, Policy Makers and implementers at professional level.

I, as President of CSIA, led the Roundtable Discussion on Governance Forum on Integration of Company Secretaries Profession held on 9th August, 2012. The other participants were from Kenya, Bangladesh and Rawanda. It was agreed to concentrate first on East



From the President

African countries like Rwanda, Tanzania, Brundi, Uganda and South Sudan. Mr. Umesh Ved also attended and participated in the discussion.

Visit to Tanzania

We also visited Tanzania from August 11-14, 2012 and met Deputy Registrar and Assistant Registrar, Ministry of Industry and Trade, Business Registration and Licencing Agency (BRELA) and Mr. Gandence Cassian Kayombo, Member of Parliament, Government of Tanzania and briefed about the ICSI and the Corporate Secretaries International Association (CSIA). We also discussed about the multi dimensional role of the Company Secretaries in Boardrooms in India and also informed about the various recognitions accorded to the profession of Company Secretaries by the Government of India.

During our meeting with 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, we apprised them about the role and functions of ICSI and the profession of Company Secretaries in India and requested them to support the Tanzania Institute of Corporate Secretaries & Advisors (TICSA).

40th National Convention

The theme of the 40th National Convention VISION 2020 - TRANSFORM, CONFORM AND PERFORM to be held at Aamby Valley on October 4-6, 2012 would certainly enable you to strengthen your professional networking, besides, thought provoking discussions and deliberations during technical sessions would provide a clear insight into Imperatives for Professionals including Company Secretaries in guiding the Boards to minimize the impact of economic volatility, through risk management measures; The professional dilemma for Company Secretaries to prioritize, when to be a conscience keeper and when to be a whistle blower; Role of financial markets to enable the economies to withstand the economic volatility; Financial, infrastructure and governance issues in SMEs; and Professional support and guidance to SME to make it sustainable business proposition to ensure global presence through alliances and acquisitions. I look forward to meet you at this gala event.

2nd ICSI Corporate Governance Week

Corporate Governance is the evolution of a culture by which the values, principles, management policies of a

corporation are inculcated and manifested. The Institute has always been making its best endeavour to imbibe the good governance principles amongst the Indian corporate sector.

As one step ahead on its vision, 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. In addition, the programmes, talks and other events on corporate governance were also organised through the Institute's Regional Councils and Chapters during the week. The following publications of the Institute were released during the Corporate Governance Week :

1. Role of Company Secretary in Corporate Governance
2. Gender Diversity in Boardrooms
3. Responsibly Managing E-waste
4. Sustainability Reporting for Sustainable Future
5. Theme Paper on Good Governance for Sustainability

I wish to place on record my sincere appreciation to my colleagues on the Council, particularly Chairman and Members of the Corporate Laws and Governance Committee, Programme Directors, Chairmen of Regional Councils and Chapters for extending their whole hearted support in making the 2nd ICSI Corporate Governance Week a grand success.

Appointment of Chief Executive (Designate)

The Council of the Institute has appointed Shri Sutanu Sinha, FCS, who was Senior Director (Academics & Professional Development), as the 'Chief Executive Designate' w.e.f. August 31, 2012.

With kind regards,

Yours sincerely,

New Delhi
August 31, 2012

(CS NESAR AHMAD)
president@icsi.edu



Corporate Secretaries International Association presents its
2nd International Corporate Governance Roundtable
Can there be Universal Corporate Governance Principles?

17 October 2012, 10:00am to 1:00pm
Deloitte Conference Center, 1633 Broadway, New York, NY

Roundtable Highlights:
East meets West — convergence or divergence?
Leading international governance experts

Who should attend?

- Corporate Secretaries
- Board Secretaries
- Compliance Professionals
- Chief Executive Officers
- Corporate Governance Professionals
- Managing Directors
- Chief Financial Officers
- Chief Operating Officers
- Directors

**To register for the Roundtable download the registration form from
www.csi.org and fax to +1 212 681 2005**

Corporate Secretaries International Association (CSIA), a Geneva-registered global organisation, is dedicated to developing and growing the study and practice of secretaryship to improve professional standards, the quality of governance practice and to improve organisational performance. Its vision is to be 'The Global Voice of Corporate Secretaries and Governance Professionals'.

CSIA Supporting Organisation:





B.C. Thiruvengadam

Sr. Partner
Thiru & Thiru Law Firm, Bengaluru

thiru.bc@thiruandthiru.com



Arbitrability of Disputes Relating to Oppression and Mismanagement

While highlighting the importance to thwart any attempt to oust the jurisdiction of Company Law Board in a petition for oppression and mismanagement, the author suggests as to how the Company Law Board should handle situations where petitions are filed for oppression and mismanagement to circumvent an arbitration agreement.

INTRODUCTION

The moot point is, in a petition for relief in cases of oppression and mismanagement against a company, can the persons in control of the company or the company as such, attempt to oust the jurisdiction of the Company Law Board by filing an application under Section 8 of the Arbitration and Conciliation Act, 1996, to refer the dispute for arbitration on the ground that the petitioner is party to a subsisting agreement between the persons in control of the company and or the company, and that there exists an arbitration clause in such a subsisting agreement?

Arbitration is a dispute resolution mechanism between two or more parties ending in an award that would bind the parties to the arbitration proceedings and no others. In a pending litigation, a party has a right to ask the court to refer the case for arbitration if, and only if:-

- (a) there is a subsisting contract with an arbitration clause to refer all disputes arising from the contract to arbitration;
- (b) the subject matter of the litigation is governed by the arbitration agreement;
- and
- (c) all the parties to the said litigation are parties to the arbitration agreement.

It is well established that not all disputes can be arbitrated. According to Russell, disputes affecting civil rights in which damages are claimed may be referred to arbitration. Civil disputes concerning personal chattel or personal wrong, breaches of contract in general, trespass, slander, disputes relating to tolls or real-estate can be referred for arbitration¹. It is a widely accepted principle that matters which are criminal in nature are not to be arbitrated. Courts have consistently held that disputes which are not *in personam* cannot be referred for arbitration. If an infringement, which is civil in nature, affects the rights of third

* views expressed in this article are the personal views of the author only.

¹ Russell On Arbitration, Twelfth Edition



parties, or public at large or the state, the same cannot be referred for arbitration. As a corollary to this, disputes *in rem* are not suitable to be arbitrated, for example, disputes relating to construction of Wills or matters relating to charities.

Rights of a member of the company are twofold, viz., contractual rights and statutory rights. Contractual rights create a legal right in favour of the contracting party which includes right to perform, right to demand performance of a contract and right to take remedial action in the event of breach of contract. Statutory rights are independent of contractual rights, which are conferred specifically to a person or persons by a statute, subject to certain conditions as may be prescribed in the said law. Palmer², based on the rule of *Foss v. Harbottle*³, groups the statutory rights of members of a company as follows:

- (1) Individual Membership rights
- (2) Qualified Minority rights
- (3) The remedy for unfairly prejudicial treatment
- (4) Application for sequestration of assets of the company and the appointment of a judicial factor.

Unlike individual membership rights, qualified minority rights can be exercised in co-operation by a group of minority shareholders, as prescribed in law. Rights conferred under Sections 397 and 398 of the Companies Act, 1956 (the 'ACT') are, to a large extent, qualified minority rights under Section 399 of the Act, to be exercised either collectively as a group or by the member himself if he is qualified to do so. Palmer⁴ states that the purport of qualified minority right is to provide minority members access to a competent dispute resolution forum against oppression by a qualified majority of members.

With respect to investment and management of companies, contractual relationships are established between two or more members, irrespective of whether the company is a party to the contract or not, say, with respect to acquisition of shares, transfer of shares, constitution of the Board of Directors or Managerial powers, etc. Contract may contain an Arbitration clause to refer all disputes between the parties for Arbitration. At times, the terms of the contract are ushered into the Articles of Association of the company with intent to bind the company as well as all its members, who are not parties to the original contract.

Quite often, such contractual rights intertwine or merge with statutory rights and the distinction between these rights becomes hazy and confusing.

While Sections 397 and 398 require a member of a company to be qualified under Section 399 of the Act, such a qualification is not required for a member to seek winding up of a company under "Just and Equitable" grounds by invoking Section 433 (f) of the Act.

A right under Sections 397 and 398 of the Act is like a bullet that is fired out of a gun and cannot return. Strictly speaking, if such a right is exercised, it cannot be withdrawn. It is for the Company Law Board to formulate an opinion under Sections 397 (2) and 398 (2) of the Act to formulate an opinion whether the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members or in a manner prejudicial to the interests of the company; or that a material change has taken place in the management or control of the company, that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company.

It appears to be ironic, that while a member can exercise his individual membership right to seek the extreme step of winding-up of a company, fetters have been placed when it comes to exercising his right to apply to the Company Law Board to regulate the affairs of the company under sections 397 and 398 of the Act. However, if we analyse the legislative wisdom behind the provisions, it is not an irony at all. The terms "just and equitable" used in Section 433 (f) and in the context of Sections 397 and 398 of the Act would mean, being fair to all other stake holders, creditors and the public at large when the persons at the helm of the affairs of the Company have been conducting the affairs of the company in an unfair manner - involving oppression of minority shareholders and mismanagement. It is in a situation beyond redemption or correction that Section 433 (f) of the Act is pressed into service. The Supreme Court, in the case of *S. P. Jain v. Kalinga Tubes Ltd*⁵, observed that, "the principle of 'just and equitable' clause baffles a precise definition. It must rest with the judicial discretion of the court depending upon the facts and circumstances of each case. When there is lack of probity in the management of the Company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, there may arise a case for winding up on the "just and equitable" ground. The Apex court, in the case of *Hind*

² Palmer on Company Law, Twenty-third Edition

³ (1843) 67 ER 189

⁴ Ibid 2

⁵ AIR 1965 SC 1535



Articles

Arbitrability of Disputes Relating to Oppression and Mismanagement

Overseas Private Limited v. Raghunath Prasad Jhunjhunwalla,⁶ held that "the court may refuse to make an order of winding-up of a company on the basis of just and equitable ground, if it is of opinion that some other remedy is available to the petitioners and winding up of the Company would be unfair to the other members and Sections 397 and 398 of the Act are preventive provisions that would safeguard against oppression in management as against the extreme step of winding-up". Invoking Section 433 (f) of the Act is an act similar to calling for a hearse van, while invoking Sections 397 and 398 of the Act is like calling an Ambulance. This position is made very clear in Section 397 (2) (b) which reads thus *"that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up..."*

While discussing the moot issue, it is inevitable that one dwells upon the question whether a member has a mere Right to invoke provisions of Sections 397 and 398 of the Act or is it coupled with a duty? It is the inherent duty of a member of a company to bring to the notice of a regulator about any wrong doing with regard to the affairs of the company. The statutory right and inherent duty are two sides of a coin, and even if a member would like to waive his statutory right, he would fail in his duty by not espousing the cause of (a) larger interest of the members, b) public interest and c) Company's interest, as a company is a legal entity, distinct from its shareholders. Even if a member wants to waive his statutory right, he cannot do so or cannot be compelled to do so. In *Corpus Juris Secundum*⁷ the law as to waiver is stated as follows

"... a waiver in derogation of a statutory right is not favoured, and a waiver will be inoperative and void if it infringes on the rights of others, or would be against public policy or morals .."

A right under Sections 397 and 398 of the Act is like a bullet that is fired out of a gun and cannot return. Strictly speaking, if such a right is exercised, it cannot be withdrawn. It is for the Company Law Board to formulate an opinion under Sections 397 (2) and 398 (2) of the Act to formulate an opinion whether the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members or in a manner prejudicial to the interests of the company; or that a material change has taken place in the management or control of the company, that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company. This Qualified Minority Right is a mere trigger and it is for the Company Law Board to decide as to whether a case has been made out for it to interfere into the affairs of the company or not.

It is significant to note that the first ever legislation in England to regulate corporate entities was the Bubble Act, 1720, which was enacted in public interest to prevent bubble companies defrauding investors and creditors. Though the Bubble Act, 1720 was repealed in 1825, subsequent legislations retained the spirit of public interest. Vide Companies (Amendment) Act, 1963 provisions under Section 398 and 399 of the Act were amended, to bring within its ambit, conduct of the company and its management, which may be prejudicial to the interest of the public.

The term "oppression" refers to lack of probity and fair dealing in the affairs of a company to the prejudice of some portion of its members⁸. Black's Law Dictionary⁹ defines "Oppression" as "The act or instance of unjustly exercising authority or power - unfair treatment of minority shareholders by directors or those in control of the corporation". Random House Dictionary¹⁰ defines "Mismanage" as "to manage incompetently or dishonestly". The definitions of the said terms strays far away from what would amount to contractual obligations. Further, the Scope of the provisions of Sections 397 and 398 of the Act are more *in rem* than *in personum*. The powers of the CLB are derived under Section 402 and 403 of the Act.

The said powers are:

- (a) The regulation of the conduct of the company's affairs in future
- (b) The purchase of the shares or interests of any members of the company by other members thereof or by the company
- (c) In the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital
- (d) The termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand; and any of the following persons, on the other, namely:-
 - (i) The managing director,
 - (ii) Any other director,
 - (v) The manager,
 upon such terms and conditions as may, in the opinion of the Company Law Board, be just and equitable in all the circumstances of the case;
- (e) The termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;
- (f) The setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of

⁶ AIR 1976 SC 565

⁷ Corpus Juris Secundum, Vol. 92 at page 1068

⁸ *Elder v. Elder & Watson Ltd.* (1952) Scottish Cases 49

⁹ Eighth Edition

¹⁰ 1999 edition



the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

- (g) Any other matter for which in the opinion of the Company Law Board, it is just and equitable that provision should be made.

It is important to note that Section 402 (d) and (e) of the Act, empowers the Company Law Board, to set aside or modify any agreement between the company and any persons. This implies that even if there exists a contract containing an arbitration clause, irrespective of the Company being a party or not to such an Agreement or even if there exists an Article containing any arbitration clause, the jurisdiction of the Company Law Board is not ousted. In *Bennett Coleman and Co. v. Union of India*¹¹, the Bombay High Court held that the powers conferred on the court under section 402 proceeds to indicate what type of orders the court could pass and clauses (a) to (g) indicate the widest amplitude of the court's power: under clause (a), the court's order may provide for the regulation of the conduct of the company's affairs in future and under clause (g), the court's order may provide for any other matter, for which, in the opinion of the court, it is just and equitable

that provisions should be made. In the case of *Surendra Kumar Dhawan v. R. Vir*¹² it was held that shareholders have a right to file a petition under Sections 397 and 398 of the Act subject to Section 399 of the Act and any article in the Articles of Association of the company providing for arbitration, cannot debar the jurisdiction of the court in such a matter. Similar view was expressed by the Delhi High Court in *O.P. Gupta v. Shiv General*

*Finance (P) Ltd*¹³

In the case of *Prime Century City Dev. v. Ansal Buildwell Ltd*¹⁴, the Delhi High Court held that a statutory power cannot be exercised by an arbitrator. This judgment is an extension of the ruling of the Apex Court in *Haryana Telecom Ltd's case*¹⁵ and holds that the provisions of the Companies Act cannot be regulated under the Arbitration and Conciliation Act 1996, merely because the latter was a subsequent enactment.

The Companies Act, 1956 as well as The Arbitration and Conciliation Act, 1996 are special enactments. Even though the latter is a subsequent enactment, it is pertinent to note that vide Companies (Amendment) Act, 1991, the word "Court" in Sections 397 and 398 of the Act was substituted by the words "Company Law Board". Vide Companies (Second Amendment) Act, 2002, the words "Company Law Board" have been substituted by the word "Tribunal". Though this amendment, as on this date, has not been given effect to, the Parliament in its wisdom had no intention to bring in an alternative dispute resolution mechanism, while it had taken care to amend the Civil Procedure Code by reinserting Section 89, vide Civil Procedure Code (Amendment) Act, 1999. Further, Section 9 of the Act would bar any agreement, including articles and memorandum of association of the company, which would override the provisions of the Companies Act, 1956.

The next important issue that needs to be considered is whether the Arbitration and Conciliation Act, 1996 would apply to any proceedings before the Company Law Board? Section 5 of the Arbitration and Conciliation Act, 1996 states that, "*Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.*" In other words, where it is necessary to seek an interim order under Section 9 of the Arbitration and Conciliation Act, 1996, or when an application is filed to the Chief Justice of a High Court or any person or institution designated by him under Section 11(5) of the Arbitration and Conciliation Act, 1996, or where an appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996, there is hardly any scope for a civil court to entertain any suit or petition between two or more parties, who are also parties to an arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996.

Though the term "Court" has not been used in Section 5 of the Arbitration and Conciliation Act, 1996, the terms "Judicial Authority" would imply only a Court and not a "Quasi-judicial authority", such as the Company Law Board or any Tribunal. The term "Judicial" as defined under Black's Law Dictionary¹⁶ would mean "of, relating to, or by the court or a judge". In my opinion, no

¹¹ (1977) Comp Cas 92 (Bom)

¹² (1977) 47 Comp Cas 276 (Del)

¹³ (1977) 47 Comp Cas 279 (Del)

¹⁴ (2003) 113 Comp Cas 68 (Del)

¹⁵ AIR 1999 SC 2354

¹⁶ Eighth Edition



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If, in the opinion of the Company Law Board, the averments and allegations made in the petition do not substantiate any cause that would be termed as oppressive or that there is mismanagement, and further finds that the petitioner has filed the petition to circumvent the arbitration agreement to resolve their disputes through arbitration, it should relegate the parties to arbitration.

quasi-judicial authority or a Tribunal, not being recognized as a Court under any law would qualify to be termed as a "judicial authority" within the meaning of Section 5 of the Arbitration and Conciliation Act, 1996. A three judge bench of the Supreme Court in *Bhatia International v. Bulk Trading SA*¹⁷ observed that "Section 5 provides that a judicial authority shall not intervene except where so provided in Part I. Section 8 of the said Act permits a judicial authority before whom an action is brought in a matter to refer parties to arbitration. If the matters were to be taken before a judicial authority in India it would be a Court as defined in Section 2(e). Thus if Part I was to only apply to arbitrations which take place in India the term "Court" would have been used in Sections 5 and 8 of the said Act."

It is pertinent to point out that, with regard to Section 397 or Section 398 of the Act, prior to the Companies (Amendment) Act, 1988, the powers under the said provisions were exercised by the High Courts. Subsequent to the amendment to the Act and having transferred such powers to a Tribunal in the form of the Company Law Board, it is difficult to accept the Company Law Board as a Court. Even though the Company Law Board exercises the power of a Court, it is not a Court in the strict sense of law. In *Prakash Timbers v. Sushma Singha & Anr.*¹⁸, the Allahabad High Court held that the Company Law Board has trappings of a Court, but is not a Court in the strict sense. The Supreme Court, in *ANZ Grindlays Bank v. National Hydro Electric Power Corpn. Ltd*¹⁹, held that though certain powers of the Court under the Civil Procedure Code have been vested in the Company Law Board for certain purposes, that does not render the Company Law

Board as a Civil Court for all purposes. Accordingly, where a legislation constitutes special courts for certain purposes to the exclusion of all other courts, it would depend upon the context in which, and the purposes for which, the jurisdiction of other courts is excluded, to see whether the jurisdiction of the Company Law Board would be affected or not. Hence, the author is of the opinion that provisions of Section 5 of the Arbitration and Conciliation Act, 1996 will not and should not apply to proceedings under Section 397 and 398 of the Act before the Company Law Board or any Tribunal that is to be constituted.

In conclusion, while attempting to warrant the jurisdiction of the Company Law Board in a given case where a party attempts to oust its jurisdiction based on an arbitration clause, he may be justified in raising the following questions:

- a) Is a party justified in filing a petition under sections 397 and 398 for oppression and mismanagement with a view to circumvent the arbitration clause and in such an event, what is the remedy available to the respondent?
- (b) In such a petition, persons who are not party to the arbitral agreement may have been arrayed as parties, without seeking any specific relief against them. How should the Company Law Board deal with such cases?
- (c) Should the question of jurisdiction be tried at the threshold?
- (d) Should the Company Law Board decide these issues while deciding the main petition?

It is always safe to err on the right side of law rather than on the wrong side. It is safe and fair for the Company Law Board, subject to the petition being maintainable under Section 399 of the Act, to consider all the issues as part of the main petition. It would be the bounden duty of the Company Law Board to exercise its power vested under Sections 397(2) and 398(2) of the Act to formulate such opinion as prescribed therein. This process should be completed as expeditiously as possible. If, in the opinion of the Company Law Board, the averments and allegations made in the petition do not substantiate any cause that would be termed as oppressive or that there is mismanagement, and further finds that the petitioner has filed the petition to circumvent the arbitration agreement to resolve their disputes through arbitration, it should relegate the parties to arbitration. This exercise cannot and should not be done at the threshold without going into the merits of the allegations made in the petition. Where there is a pending arbitral proceedings, the Company Law Board should proceed with the matter as if there is no such pending arbitral proceedings, for the reason that the Company Law Board is a quasi-judicial authority and not a full-fledged judicial authority within the meaning of Section 5 of the Arbitration and Conciliation Act 1996.

¹⁷ AIR 2002 SC 1432

¹⁸ AIR 1995 All 320

¹⁹ 1995 82 Comp Cas 745 CLB



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Arbitrability of Disputes Relating to Oppression and Mismanagement

Arbitrability of disputes pertaining to oppression and mismanagement is a tricky and complicated issue. There cannot be any hard and fast rule. This comprehensive article addresses the issues that arise in this regard.

INTRODUCTION

The Arbitration and Conciliation Act, 1996, was intended to comprehensively cover international and commercial arbitrations and conciliations as also domestic arbitrations and conciliations. It envisages the making of an arbitral procedure which is fair, efficient and capable of meeting the needs of the concerned arbitration and for other matters set out in the Objects and Reasons for the Bill. The Act was intended to be one to consolidate and amend the law relating to domestic arbitrations, international commercial arbitrations and enforcement of foreign arbitral awards, as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.

Everyone understands as to what happens if one approaches the Court for relief and especially in civil

cases. If it is a civil case and if the court is not required to follow any special procedure, then, the Court is supposed to follow the procedure prescribed under Civil Procedure Code, 1908. If the stakes are considerable and one party wants to resist the early disposal of the case, then, it is possible for him to drag the matter for years. Civil Procedure Code, 1908 (CPC) contains a very detailed procedure to be followed by the Courts unlike the Arbitrator under the provisions of Arbitration and Conciliation Act, 1996. There is lot of corruption in the system and the Court papers can also go missing. Even when a civil case reaches Supreme Court in an Appeal, it is quite possible that the Supreme Court can order a re-trial. This is what happens with the existing court system and it is unlikely that we can correct this system in the near future. No commercial contract is entered into now-a-days without an 'Arbitration Clause'. Parties to any dispute can get their dispute referred to Arbitrator by agreement even in the absence of an 'Arbitration Clause' in the Agreement. If there is a difficulty in getting a mutually acceptable Arbitrator appointed, then, the parties can approach the Court under Section 11 of Arbitration and Conciliation Act, 1996. If there is a commercial contract without any 'Arbitration Clause', and if disputes arise between the parties, then, one party is likely to suffer irreparable loss as the wrong-doer will use the

* views expressed in this article are the personal views of the author only.



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technicalities in his favour and prefer to get the dispute settled only by a Civil Court. If any commercial dispute is stuck with the Courts, then, anyone can reasonably presume as to when the dispute is likely to be settled. Parties prefer to get their disputes settled out-of court many a times despite approaching the Court and pursuing the matter for few years. It is in this background, individuals and companies prefer to get their disputes settled through 'Alternative Modes of Adjudication or Alternative Dispute Resolution Mechanism (ADR)' like arbitration. There is considerable encouragement from the judiciary and also from the legal professionals towards 'Alternative Dispute Resolution Mechanisms' like mediation and arbitration. In order to understand the issue of 'Arbitrability of Disputes relating to Oppression and Mismanagement', it is important to know some basic issues about Arbitration, Arbitration mechanism and 'oppression and mismanagement' and the same are discussed hereunder.

What is Arbitration?

In simple words arbitration is a process of adjudication of disputes between the parties by a mutually agreeable person or persons, following a procedure agreed upon by the parties to the dispute or decided by that person. The person who decides the dispute is called 'Arbitrator' and he is the judge to decide that particular dispute. The Arbitration and Conciliation Act, 1996 comprehensively covers international and commercial arbitrations and conciliations as also domestic arbitrations and conciliations. Section 2 (a) & (b) of Arbitration and Conciliation Act, 1996 defines the word 'Arbitration', 'Arbitration Agreement' and those are reproduced below:

"2.Definitions -

- (a): "arbitration" means any arbitration whether or not administered by permanent arbitral institution;
- (b) "arbitration agreement" means an agreement referred to in section 7;"

For a complete understanding as to what is arbitration, section 7 of Arbitration and Conciliation Act, 1996 is to be looked-into and the same is reproduced below:

"7. Arbitration Agreement. -

- (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
- (2) An Arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (3) An arbitration agreement shall be in writing.
- (4) An arbitration agreement is in writing if it is contained in -
 - (a) a document signed by the parties;
 - (b) an exchange of letters, telex, telegrams or other means of telecommunication which provides a record of the agreement; or
 - (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

If the parties to the dispute want to get their dispute settled through arbitration mechanism, then, there shall be an agreement between them to that effect. Though, now-a-days, every commercial agreement contains an 'arbitration clause' and even if there is no specific arbitration clause in the agreement or arbitration agreement, if the parties to the dispute agree for a settlement of their disputes through arbitration mechanism, they can do so on their own through an agreement or can get an arbitrator appointed by the Court under section 11 of Arbitration and Conciliation Act, 1996.

Effect of 'Arbitration Clause':

Unless the subject-matter cannot be decided by the Arbitrator or the subject matter cannot oust the jurisdiction of a particular authority, no judicial authority can entertain a dispute which ought to have been decided by an Arbitrator. Section 8 of Arbitration and Conciliation Act, 1996 deals with the effect of arbitration and reads thus:

"8.Power to refer parties to arbitration where there is an arbitration agreement.-

- (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
- (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original



arbitration agreement or a duly certified copy thereof.

- (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

How Arbitration is different from Court adjudication?

While courts follow Civil Procedure Code, 1908 (CPC) in deciding a dispute the Arbitrators follow a procedure agreed upon by the parties or the appropriate procedure will be decided by the Arbitrator in the absence of an agreement between the parties. Though the procedure followed by an Arbitrator is different, an Arbitrator is bound to follow 'substantial law' which determines the rights and liabilities of the respective parties to the dispute. Section 19 of Arbitration and Conciliation Act, 1996 specifies the rules of procedure to be followed by an Arbitrator and the same is reproduced below:

"19. Determination of rules of procedure.-

- (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
- (2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
- (3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
- (4) The power of arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

The biggest advantage with the Arbitration mechanism is that the Arbitrator need not follow Civil Procedure Code which delays the disposal of a case in Courts. The parties to an 'arbitration agreement' can agree on the 'place of arbitration', 'can agree on procedure', 'frequency of sittings with the consent of Arbitrator', can share the expenses incurred and can object to the proceedings if it is established that the Arbitrator is acting in a biased manner. Again, when it comes to a civil case, the parties can go for 'First Appeal', 'Second Appeal' and an Appeal to Supreme Court also. In cases decided by the Arbitrator, the aggrieved party can file a petition under section 34 of Arbitration and Conciliation Act, 1996 on some specific grounds and only an Appeal is available under section 37 of the Act. Though there are problems with existing legal-frame work governing Arbitrations, dispute resolution through arbitration is very much preferable when it comes to commercial disputes. The criticism of existing Arbitration mechanism is that it is too costly, can be delayed like an ordinary civil suit in a Civil Court, non-availability of competent Arbitrators and this mechanism benefits one party with the one-sided 'arbitration clause' in the agreement. Thus, there is a clear

Now, even an isolated incident in the Company can entitle the minority shareholders to approach the Company Law Board under section 397/398 of the Companies Act, 1956 if it is prejudicial to the members of the Company, the company or against public interest. The effect of the incident is looked into. However, it is safe to presume that there can not be any hard and fast rule as to when a relief can be granted to the minority under section 397/398 of the Companies Act, 1956. This issue is very significant to understand the 'arbitrability of disputes relating to oppression and mismanagement'.

difference between Arbitration and adjudication through Courts.

It is also to be noted that the spirit behind the existing procedural laws followed by the Courts are normally followed by the Arbitrator and an Arbitrator has to adhere to the 'principles of natural justice'. If a person wants to file a Civil Suit in a Civil Court, he will present a plaint which contains particulars of the parties concerned, the facts of the case and the relief sought. The opposite side will present a written statement and can also file additional written statement with his defence or can also file a counter-claim. Interim applications are also filed by the parties in a Civil Court. Same happens with the proceedings before the Arbitrator also. A claim is filed with the Arbitrator and the opposite side is supposed to file its reply and they can also file a counter-claim. Interim applications can also be filed and certain interim relief can be granted by the Arbitrator while the Courts are also empowered to grant interim relief before, during or after the Arbitration proceedings under Section 9 of Arbitration and Conciliation Act, 1996.

Oppression and Mis-management?

Section 399 of the Companies Act, 1956 provides a right to the minority shareholders, subject to qualification, to approach the Company Law Board seeking relief against 'Oppression and Mis-management'. Chapter-V containing sections 397 to 409 of the Companies Act, 1956 deals with 'Prevention of Oppression and Mis-management'. Among these sections, it is very important to understand sections 397, 398, 399 and 402 of the Companies Act, 1956. Section 397 deals with the issues of oppression, related issues and the powers of Company Law Board to put an end to the matters complained of. Section 398 of Companies



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Act, 1956 deals with the issue of mis-management, related issues and the powers of the Board to put an end to the matters complained. Section 402 specifically deals with the powers of Tribunal under section 397/398. Though section 397/398 is meant to provide relief to the minority shareholders in the Company against the oppressive actions of the majority as the majority effectively controls the affairs through Board, there was a precedent that even the majority can approach the Company Law Board under section 397/398 of the Companies Act, 1956 when they are made as 'artificial minority'. Dealing with the issue of majority approaching the Company Law Board under section 397/398 of Companies Act, High Court of Kerala, in *Dr. V. Sebastian and others v. City Hospital P.Ltd. and others*, (1985) 57 Comp Cas 453, has held that "sections 397 and 398 of the Companies Act, 1956, are intended primarily to protect minority interests. In ordinary cases, the majority will be able to protect itself by controlling the directors at general body meetings. But where the majority is prevented from doing so, despite the clear indication in the articles that majority rule based on the right to demand poll should operate as a correcting influence, the majority becomes an artificial minority entitled to claim protection under sections 397 and 398".

Though section 397 and section 398 separately deals with the issues of 'oppression' and 'mis-management', both are closely related and connected. It is settled that even a composite petition is maintainable under section 397/398 of the Companies Act, 1956 resulting in claiming relief under section 111A and under section 237 asking for the investigation into the affairs of the Company usually. Though it is settled that the powers of Company Law Board under section 397/398 of Companies Act, 1956 are wide and section 402 cannot limit the powers of the Board under section 397/398, the powers of the Company Law Board under section 397/398 of the Act are preventive in nature though remedial measures can also be passed. There were many precedents as to what is 'oppression' and when a petition is maintainable and relief be granted under section 397/398. Dealing with the meaning of 'oppression' under section 397, the High Court of Madras, in *C. P. Gnanasambandam v. Tamiland Transports (Coimbatore) Private Ltd* (1971) 41 Comp Cas 27, has held; "Oppression means burden some, harsh and wrongful". Again, what is 'burdensome, harsh and wrongful' is a subject matter of interpretation. A glance at sections 397 and 398 of Companies Act, 1956 will give an idea as to when the minority can approach the Board seeking relief and the object of provision and the same are reproduced below:

"397- Application to Company Law Board for relief in cases of oppression.

- (1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may



apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of section 399.

- (2) If, on any application under sub-section (1), the Company Law Board is of opinion
 - (a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and
 - (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up;

the Company Law Board may, with a view to bringing to an end the matters complained of, make such order as it thinks fit."

"398 - Application to Company Law Board for Relief in cases of mismanagement.

- (1) Any members of a company who complain
 - (a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; or
 - (b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ;

may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of section 399.



(2) If, on any application under sub-section (1), the Company Law Board is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Company Law Board may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit."

The gist of section 397/398 is that in public interest, in the interests of the Company, in the interests of the members and when the winding-up will unfairly prejudice the members, the minority shareholders can approach the Company Law Board and the Board is empowered to pass such orders to put an end to the matters complained of.

It was maintained by the Courts earlier, that an isolated incident can not constitute an act of oppression and based on that incident one can not maintain a petition under section 397/398 of the Companies Act, 1956. The Supreme Court of India, in *Shanti Prasad Jain v. Kalinga Tubes Ltd* (1965) 35 Comp Cas 351, has held that "there must be continuous acts on the part of the majority shareholders, continuing up to the date of the petition, showing that the affair of the company were being conducted in a manner oppressive to some part of the members".

The Madras High Court in *C.P. Gnanasambandam v. Tamilnad Transports (Coimbatore) Private Ltd* (1971) 41 Comp Cas 27, has held that "oppression may take various forms but an isolated act of oppression will not normally be sufficient to justify the relief under these sections". The High Court of Delhi, in *Chander Krishan Gupta v. Pannalal Girdhari Lal Private Ltd. and others*, (1984) 55 Comp Cas 702, has held that "that in order that relief may be granted under section 397 of the Act, there must have been continuous acts on the part of the majority shareholders oppression to the minority. This had not been shown in the present case. Mere isolated illegal acts could not amount to oppression. None of the acts alleged, even if true, would amount to oppression."

Though there cannot be any change with regard the precedents defining the oppression as 'burdensome, harsh and wrongful' as it is also a question of interpretation, the long maintained precedent of requiring 'continuity of acts' appears to have changed now with the recent judgments, though the Company Law Board continues to exercise a great amount of discretion in this regard. Now, even an isolated incident in the Company can entitle the minority shareholders to approach the Company Law Board under section 397/398 of the Companies Act, 1956 if it is prejudicial to the members of the company, the company or against public interest. The effect of the incident is looked into. However, it is safe to presume that there can not be any hard and fast rule as to when a relief can be granted to the minority

under section 397/398 of the Companies Act, 1956. This issue is very significant to understand the 'arbitrability of disputes relating to oppression and mismanagement'.

Though there are many issues to be discussed and understood under section 397/398 of the Act, for the purpose of 'arbitrability of disputes relating to oppression and mismanagement', another significant aspect under the said section is to be considered. It is about simultaneous proceedings and also the mentioning of other concluded proceedings under section 397/398 of Companies Act, 1956. There are two legal concepts under the provisions of Civil Procedure Code viz., *Res subjudice* and *Res judicata*. The same dispute can be raised or adjudicated simultaneously before two forums and it is called '*Res subjudice*'. A concluded proceeding can not again be decided except in an appeal available and it is called '*Res judicata*'. Sections 10 and 11 of Civil Procedure Code, 1908 deal with '*Res subjudice*' and '*Res judicata*'. Certain established concepts like '*Res subjudice*' and '*Res judicata*' are followed by all forums, but, these concepts are very important to a proceeding under section 397/398 of the Companies Act, 1956. On this issue, the High Court of Allahabad in *Jaypee Cement Limited, In re*, (2004) 122 Comp Cas 855, has held that "the law is well settled that where the right sought to be enforced by the suit is not a pre-existing common law right but is a right created by statute which provides the remedy for breach of that right, the suit is "impliedly barred". The right of members of a company against oppression and mismanagement is not a pre-existing common law right but is a right created by statute, i.e., the Companies Act. Therefore, such suits were *prima facie* not maintainable. It would be contrary to public policy to hold that if the oppression or mismanagement affects 10 per cent or more members by numbers or shares they can approach the Company Law Board under section 397/398 read with section 399 of the Companies Act and if it affects less than that number they can institute suits. Further, even if the aggrieved members were less than the minimum limit required by section 399, they were not rendered remediless, as they could approach the Central Government, which could refer the case to the Company Law Board under section 401". Though there are several judgments on this issue, it is not necessary to look into all those judgments, but, the issues in this regard can be summed-up as follows:

- The Company Law Board will decide as to whether the principles of '*Res judicata*' and '*Res subjudice*' can be applied in a proceeding under section 397/398 of the Companies Act, 1956 based on the facts of the case.
- If there is only an isolated incident which has been decided by a Court, the members can not get a different finding from the CLB with the same facts.
- Irrespective of pendency of other suits or claims, the CLB can look into the issues raised under section 397/398 of the Companies Act, 1956 and will take a decision in the interests of the Company and in order to put an end to the matters



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complained.

- To what extent the Company Law Board can look into the other concluded proceedings referred and the pending proceedings; is up to the subjective consideration of Company Law Board.

Arbitrability of Disputes relating to Oppression and Mismanagement

The issue of 'arbitrability of disputes relating to oppression and mismanagement' is most complex and one can not say 'yes' or 'no' to the issue. However, without looking at the precedents governing the issue of 'arbitrability of disputes relating to oppression and mismanagement', one can easily say that the jurisdiction of Company Law Board under section 397/398 of Companies Act, 1956 cannot be ousted through an arbitration clause on the following simple reasons.

- The CLB is supposed to look at the public interest also under section 397/398 of the Companies Act, 1956 and as such, we can assume that the Arbitrator may not be in a position to look at public interest as mandated.
- In any proceeding before an arbitrator, a claim petition can be filed and it is similar to a plaint in a Civil Suit. In response to the Claim Petition, opposite party is required to file a counter-statement with his defence and it can also contain a counter-claim. In both plaint in ordinary civil suits before Civil Court and in proceedings before the Arbitrator, the claim or the relief sought should be specific and both the Court and the Arbitrator may not be in a position to go beyond the pleadings in normal circumstances. But, the power of Company Law Board under section 397/398 of the Companies Act, 1956 is different and the object under section 397 is to put an end to the matters complained of, public interest and the interests of the Company. The CLB may provide relief which is completely different from the relief sought by the petitioners under section 397/398. As such, it is clear that the Arbitrator can not exercise or may lack competence in dealing with the issues under section 397/398 of the Companies Act, 1956.

However, the issue is complex. It can also be said that the disputes pertaining to oppression and mismanagement can be arbitrated. Whenever a party pleads the dispute resolution mechanism through arbitrator before a forum, an application under section 8 of Arbitration and Conciliation Act, 1996 is preferred. The forum before which the application is filed, will take a final decision and even before a Civil Court, the decision on section 8 of Arbitration and Conciliation Act, 1996 can not be mechanical in view of the elaborate judgment of Supreme Court in *M/s. S.B.P. & Co. v. M/s. Patel Engineering Ltd. and Another*, 2005 (8) SCC 618.

It is quite possible for the Company Law Board to allow the application under section 8 of Arbitration and Conciliation Act, 1996 if it comes to a conclusion that the disputes raised in the petition under section 397/398 can be adjudicated by an Arbitrator. The judicial precedents with regard to the maintainability of section 397/398 of the Companies Act, 1956 on subjective issues to be noted in this regard. The issue as to whether an isolated incident can entitle the minority to approach the Board under section 397/398 of the Companies Act, 1996, is so important in this regard. There cannot be any hard and fast rule and the Board will take a decision in that regard and if the Arbitration clause is pleaded and if the Board comes to the conclusion that the disputes raised before it can be adjudicated by the Arbitrator, then, the Board can allow the application under section 8 of Arbitration and Conciliation Act, 1996 subject to satisfying the Board on other issues like arbitration clause and its coverage. If the issue is looked from this angle, it can be said that the Arbitrator can decide the disputes pertaining to 'oppression and mismanagement'. The issue of again and again approaching the Board under section 397/398, reference to concluded proceedings, simultaneous proceedings etc., to be considered by the Board keeping in view of the settled principles under the provisions and especially the object of section 397/398 of the Act. Thus it is very difficult to lay a hard and fast rule under section 397/398 of the Companies Act, 1956 as has been held by Courts. Courts have dealt with the issues of ousting the jurisdiction of Company Court with Arbitration Clause while entertaining winding-up petitions. The High Court of Madras in *Rolab Polymers (P.) Ltd. v. Subhadra Enterprises*, (1996) 85 Comp Cas 617, has held that "that, moreover, the legal proceeding which can be stayed under section 34 of the Arbitration Act should be a proceeding in respect of any matter agreed to be referred. Unless the matter has been agreed to be referred, the proceedings can not be stayed, even though it may incidentally have a bearing upon the contract providing for arbitration. In the instant case, it could not, by any stretch of reason, be said that the parties contemplated that any reference to arbitration for winding up of the applicant company was possible or could be done by an arbitrator". The Karnataka High Court in *Hewlett Packard India Ltd. v. BPL Net. Com Limited*, (2002) 2 Comp LJ 271 (Karn), has held that "it is the discretion of the court to entertain the company petition even if there is an arbitration clause in the agreement".

Parallels often drawn between the proposition that the 'winding-up jurisdiction of Company Court can not be ousted by arbitration clause' and the jurisdiction of the CLB under section 397/398. But, this may not be entirely correct. Because, Company Court exercises many functions under Part-VII of Companies Act, 1956 and there is a great amount of responsibility on the Company Court during liquidation proceedings in public interest and in the interests of various stake-holders. But, that's not the case with the proceeding under section 397/398 of Companies Act, 1956 and once the Board gives a finding under section 397/398, in normal circumstances, there ends the matter and the decision of



Any article providing that a difference between the company and its directors or between the directors themselves or between any members of the company or between the company and any person shall be referred to arbitration can not debar the jurisdiction of the court in the matter of a petition under section 397 or 398. The court will not stay a petition under sections 397 and 398 on an application under section 34 of the Arbitration Act, 1940, based on the arbitration clause".

CLB can be assailed to High Court under section 10 (F) of the Companies Act, 1956.

On the issue of arbitrability of 'disputes pertaining to oppression and mismanagement', the High Court of Delhi, in *Surendara Kumar Dhawan and another v. R.Vir and others*, (1977) 47 Comp Cas 277, was pleased to observe that "the shareholders of a company have a right to file a petition under section 397 or section 398 of the Companies Act, 1956, for relief against mismanagement or oppression, if the provisions of section 399 are satisfied. Their right is a statutory right which, by section 9, cannot be ousted by a provision in the articles of association of the company. Any article providing that a difference between the company and its directors or between the directors themselves or between any members of the company or between the company and any person shall be referred to arbitration can not debar the jurisdiction of the court in the matter of a petition under section 397 or 398. The court will not stay a petition under sections 397 and 398 on an application under section 34 of the Arbitration Act, 1940, based on the arbitration clause". On the same lines, the High Court of Delhi, in *O.P.Gupta v. Shiv General Finance (P.) Ltd. and others*, (1977) 47 Comp Cas 279, has held that "merely because there is an article in the articles of association of the company to the effect that any dispute between the company on the one hand and its members on the other will be referred to arbitration, the court will not stay a petition under section 397 and 398 of the Companies Act, 1956, for relief against mismanagement or oppression in the affairs of a company. Such an article can not be called into play for the purpose of staying proceedings under section 397 or section 398. The provisions of sections 397 and 398 and of section 434 give exclusive jurisdiction to the court and the matters dealt with thereby can not be referred to arbitration. No arbitrator can possibly give relief to the petitioner under sections 397 and 398 or pass any order under section 402 or section 403". Again, on the same lines, it was reiterated by the Bombay

High Court, in *Manavendra Ckhitnis and another v. Leela Chitnis Studios P.Ltd. and others*, (1985) 58 Comp Cas 113, that "merely because there is an arbitration clause or an arbitration proceeding, or for that matter an award, the court's jurisdiction under sections 397 and 398 of the Companies Act, 1956, can not stand fettered. On the other hand, the matter which can form the subject-matter of a petition under sections 397 and 398 cannot be the subject-matter of arbitration, for an arbitrator can have no powers such as are conferred on the court by sections such as section 402."

Conclusion

'Arbitrability of disputes pertaining to oppression and mismanagement' is a tricky and complicated issue. There can not be any hard and fast rule. To conclude, the issues can be summed-up as follows:

- Nothing prevents the shareholders to get their disputes with the majority settled through arbitration mechanism, but, the Arbitrator deciding such a dispute can not be seen as a Presiding Officer exercising power under section 397/398 and the final order of the Arbitrator can not be equated with a finding of CLB in an application under section 397/398 of the Companies Act, 1956.
- The CLB exercising power under section 397/398 of the Companies Act, 1956 is duty bound to look at the public interest and the interests of various stake holders even if they are not the members of the company. Certain orders of CLB under section 402 of the Act can affect the outsiders and the CLB observes the 'principles of natural justice' and takes every care that the interests of outsiders are not affected without being heard. If it is said that the Arbitrator can exercise the power under section 397/398 of the Act, then, there is a possibility of getting collusive orders affecting the outsiders and making things more complex.
- The shareholders defending the petition under section 397/398 of the Companies Act, 1956 can prefer an application under section 8 of the Arbitration & Conciliation Act, 1996 seeking a reference based on the facts if they believe that the disputes raised are covered by an arbitration arrangement. It is for the CLB to take a view as to whether the disputes can be settled by an Arbitrator and it's the discretion of CLB based on facts of that particular case.
- In spite of any concluded proceedings, pendency of proceedings, conclusion of arbitration proceedings on some issue or pendency of the arbitration proceedings between or among the shareholders of the Company, the CLB can always entertain a petition under section 397/398 and will take an appropriate decision in the interests of the company, in the interests of the shareholders, in public interests, in order to put an end to the matters complained of and it all depends upon the facts of the case and no hard and fast rule can be laid in this regard.



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Arbitrability of Disputes Relating to Oppression and Mismanagement

This article tries to throw some light on the causes of section 397/398 disputes and the role of arbitration therein. It does not deal with the legal aspects of arbitration and its applicability or otherwise as regards matters before the CLB in respect of oppression and mismanagement but tries to deal with the unwritten and extra-legal aspects of arbitration *qua* oppression and mismanagement.

Day by day, the number, frequency and intensity of disputes between the business partners is increasing. More and more number of petitions are being filed in the Company Law Board (CLB) under section 397-398. In few cases it is observed that lust, greed and wrath are the reasons for such disputes. When two or more persons come together to start a business, the foundation is of mutual faith, trust, joint efforts, hard work, sharing of responsibilities, and success. Somewhere down the line, these aspects take a back seat and the parties who have toiled together for years, may be decades - being together in ups and downs - part ways - bitterly. What is it that

makes partners turn their back towards each other - what is that turns them into bitter foes?

This article tries to throw some light on the causes of section 397/398 disputes and the role of arbitration therein. It does not deal with the legal aspects of arbitration and its applicability or otherwise as regards matters before the CLB in respect of oppression and mismanagement but tries to deal with the unwritten and extra-legal aspects of arbitration *qua* oppression and mismanagement.

Arbitration

The Arbitration and Conciliation Act, 1996 defines the term "arbitration" as: any arbitration whether or not administered by permanent arbitral institution. Section 8 of the Arbitration Act makes it clear that in case of existence of a binding arbitration clause in the agreement, the parties are required to refer the matter only to arbitration. However, in the absence of any binding agreement, the court may exercise its jurisdiction. There are a number of decisions of the Company Law Board in this regard - to cite a few leading ones - *Naveen Kedia v. Chennai Power*

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Professionals like Practising Company Secretaries play a very significant role in informal arbitration - by advising the parties at the first instance that it is more reasonable, economical and beneficial to resolve the disputes out of court. PCS can participate in meetings held jointly with both parties where parties arrive at a valuation on their free will and then the chances of adhering to such valuation automatically become brighter. Shares may be valued at a price at which the petitioner shall have an option to buy the respondents' shares or to sell his shares. This will ensure that the shares are valued in all fairness with equal opportunity to both sides. Even though this may not be 'arbitration' in its strict sense, the effect of the actions is the same - that of resolving the disputes between parties without resorting to litigation.

Generation Ltd (1999) 95 Comp Cas 640 (CLB-PB); *Escorts Finance Ltd. v. G. R. Solvents and Allied Industries Ltd.* (1999) 96 Comp Cas 323.

For the purpose of this Article the term 'arbitration' is used in its colloquial sense - that of the method of putting an end to the dispute between two or more persons with or without the intervention of a third party. This includes conciliation and mediation.

Arbitration, a form of alternative dispute resolution, is a legal technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), by whose decision (the "award") they agree to be bound. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.

Thus, arbitration is guided by the principles of natural justice. It involves giving an opportunity of being heard to both the parties in dispute and putting an amicable end to the dispute between the parties so that both the parties are agreeable to the decision of the arbitrator in the larger scheme of things.

Are the disputes under Oppression and Mismanagement Arbitrable?

It is important firstly to understand the nature of disputes under oppression and mismanagement. The term 'oppression' is not defined by the Companies Act, 1956. Company Law Lexicon published by The University Book Agency Allahabad, 2000 Edition explains the word 'oppression' as: conduct which is burdensome, harsh and wrongful. Whether a particular act amounts to oppression or not depends on the facts and circumstances of the case. It involves acts which lack fairness and cause the prejudice to its members. The term 'mismanagement' is also not defined by the Act. Company Law Lexicon (*supra*) describes it as serious infighting among Directors of the company resulting in serious prejudice being caused to the company. Illegality of the constitution of the Board also amounts to

mismanagement prejudicial to the public interest. The members complaining of mismanagement under the section have to show to the satisfaction of the CLB that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company. What is prejudicial to public interest or to the interest of the company depends on the facts of the case. Lot of material and case laws is available to understand what conduct is oppressive or amounts to mismanagement.

Common grounds for disputes

A common pattern can be observed which runs through majority of the cases under oppression and mismanagement. The common acts which are complained of in cases under sections





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397 and 398 are:

- (a) Not following the principles of partnership. Especially when the company is in the form of quasi Partnership.
- (b) Changing composition of the Board of Directors by unilateral appointment of family members of respondents as directors to the exclusion of the petitioner/ without taking them into confidence.
- (c) Allotment of further shares only to the respondent group at the exclusion of the petitioner group, so as to push the petitioner group into minority or to convert the petitioner group from majority to minority.
- (d) Removal of the petitioners as directors of the company under section 284 or section 283 (1) g or other ground.
- (e) Ousting the petitioner from day to day management of the company.
- (f) Giving humiliating treatment to the petitioners.
- (g) Not granting inspection of books and records.
- (h) Withholding salary, perquisites which were being paid to the petitioner.
- (i) Diversification of funds for more risky ventures.
- (j) Siphoning of money.
- (k) Depriving petitioner group from dividend but taking out money only by the Respondent group by taking out heavy salary.

The above list is only illustrative. It is saddening to see that these acts are done by persons who are not only business partners, but sometimes even first degree blood relatives - be it brothers, cousins, father- sons and spouses.

Human Angle

What is it that drives people to courts against their own relatives, close friends, partners?

What is it that makes persons back stab their near and dear ones?

Is it merely a greed for money and power?

Are these persons blinded by love for their generation next?

Is it jealousy and envy?

Or is it all of this and more?



One may have to look into a bit of psychology and philosophy. Right from Mahabharat days such disputes are going on and conciliatory efforts even from a personality of the stature of Bhagwan Shrikrishna failed.

Many times the fighting groups are persons who start thinking together, working together as partners in a small partnership - toil day and night - remain together even in adversities in the business and in each other's lives - enjoy the fruits of their hard work - and after few years - crack develops and they think that they cannot continue to remain together and start knocking at doors of the CLB / courts of law.

Matters are still worse in case of family owned companies. Cases filed by and against father & son, brothers, Spouses - start washing dirty linen in public, fighting it out in the courts, allegations flying thick and fast from both sides! And this in turn adds fuel to the fire, with parties not wanting to face each other - leave aside any discussions on the matter.

To analyze whether the disputes of oppression and mismanagement are arbitrable, it is important to understand the psyche and egos of the parties involved. What is it that the parties are after, in such disputes? Are they fighting for any financial gain or only with a motive of teaching lesson to the other. If later is the case arbitration is difficult.



Amicable resolution of the disputes becomes a possibility only when the parties are willing to think logically and be reasonable. Vindictive attitude and mindset of taking revenge makes the arbitration process evaporate.

There have been occasions where family disputes like divorce cases have become the cause of filing of petition under section 397-398. In such scenario addressing emotional and sentimental aspects becomes too tough to be resolved.

Legal but unfair ?

It is now well settled that an action can be legal but still unfair. Minority often can raise objections on the decisions of the Majority which they feel oppressive even if they are otherwise legal.

The Supreme Court in *V S Krishnan v. Westfort Hi-Tech Hospital Ltd* [2008] 142 Comp Cas 235 (SC), observed that: "The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is *mala fide* or for a collateral purpose, it would amount to oppression under Sections 397 and 398."

Why disputes?

At times lack of communication breeds misunderstanding and such misunderstanding leads to disputes. Once the dispute starts, it is difficult to bring the parties together for discussions. Arbitration informally includes getting the parties to sit together and talk with each other and to arrive at a settlement which would be acceptable to all concerned.

Parting Ways

Admittedly, since the onset of the dispute, it becomes very difficult for the two warring parties to work together. Rather, in most cases, the petitioners are driven out of the company and ousted from the day to day management and decision making. It is in the interest of all concerned that one of the parties exits from the business. Irrespective of the prayer before the courts, the only way forward in most of the situations is to part ways. Usually it is the minority which is required to exit the company although in exceptional cases, the courts may also ask the majority to exit the company. The parties arrive at a stage of thinking about compromise only after a prolonged battle before the courts, when a lot of water has already flown under the bridge - valuable time, energy and money has been spent at the cost of business, sometimes even flourishing businesses are ruined and almost closed down - by the time the final verdict of the CLB/ courts is received. Once the battle reaches the court room, the parties are generally aware that one of them has to exit the business. Parties also start working out an acceptable sum for which they are ready to exit the business.

CLB irrespective of whether oppression is proved or not - in the interest of the company, generally ask the petitioner about the sum he expects to leave the company. Because merely deciding whether oppression or mismanagement exists or not, does not take any party anywhere. At times differences are so acute that it is not possible for the parties to work together ever again. CLB has powers to pass orders under section 402 of the Act even if no case is proved under section 397-398 of the Act. There are number of cases in which it has been held that the CLB may pass such order with a view to bringing to an end the matters complained of, as it thinks fit even though a case of oppression/ mismanagement has not been made out or the allegations of oppression/mismanagement have not been established. [*Bharamgouda Adgouda Patil v. Sanjay Founders Pvt Ltd* [2009] 92 CLA 165].

In Needle Industries (India) Ltd. v Needle Industries Newey (India) Holding Ltd [1981] 51 Comp Cas 743; AIR 1981 SC 1298; 1981 SCR (3) 698, it was observed by the apex court that even if the case of oppression was not proved, substantial justice must be done between the parties and the parties must be placed as nearly as may be in the same position in which they would have been, if the wrong doing had not taken place. Similar view was expressed in *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad (Dead) by LRs* (2005) 123 Comp Cas 566 (SC).

Many times, instead of deciding the case on merits, compromise is also suggested in the cases before the CLB where the petitioner is ready to exit the company at the price decided by the court. This happens in most of the cases of the nature of Quasi Partnership. Once parting ways is looked as the only way out the focus then shifts on only one aspect -

Valuation of shares of the company

Either *suo-motu* or at the request of the parties, the CLB may appoint an independent valuer to value the shares of the company. In such cases, the valuation of the shares is made binding on both the parties. There are many factors to be taken into consideration while valuing the shares of the company in such cases. These among others, include the method of valuation, basis of valuation, date of valuation, whether any allowances are to be made for the dispute and its effects on the value of the shares. The courts have a very wide discretion in determining the modes of arriving at a fair price. (*Re, London School of Electronics*, 1985 BCLC 273).

When both the parties agree to go for valuation by way of a consent order, matters might appear to be simple, as long as both parties act upon their consent. In *Unmesh Kantilal Shah v. Chemosyn Ltd.* (2002) 4 Comp LJ 121 (CLB), consent order imposed obligations on both sides. The order directed that if one party would not do his part, the other would not be compellable to



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do his part. It was held that one party could not compel the other unless it had first done its part. Also, in *Consulting Engineers Services (India) Ltd. v. Kaikhosrou K. Framji*, (2002) 4 Comp LJ 227 (Delhi), the CLB passed an order with the consent of the parties directing one to purchase the shares of the other without raising any technical objections. The party directed to purchase was not allowed to avoid the carrying out of the solemn promise duly recorded by the CLB just only by raising hyper technical pleas.

CLB has the power to order compliance of the consent orders. Under the consent terms approved by the CLB one party was to purchase shares held by the other party. The price was negotiated before the CLB. No party could claim thereafter that there was undervaluation or overvaluation of shares. Failure to discharge an obligation which was not a condition precedent to the enforcement of the consent terms could not be brought into account for avoiding compliance. *Bertrand Faure Sitztechnik GmbH & Co. v. IFB Automotive and Seating Systems Ltd.*, (1999) 97 Comp Cas 690 (CLB-PB).

In *Sir J P Srivastva & Sons (Rampur) P. Ltd. v. Gwalior Sugar P. Ltd.*, (1999) 21 SCL 142, the parties agreed to a consent order under which the petitioner was to transfer his shares to the respondent. The valuation was made by a chartered accountant appointed by CLB. The parties were held bound by the order and there was no scope for bringing in the fulfillment of any other obligation which was not mentioned in the order. The rate per share was fixed on the basis of the valuation report. Even in cases which are decided on merits and where oppression has been established, the way forward for the company is that the petitioners/respondents exit the company and in such cases, courts appoint valuers to determine the value of the shares of the petitioner to exit the company. In cases of division of undertaking, valuation matters a lot.

'Fair valuation'

When is valuation said to be 'fair'? The answer to this question, if asked to the parties in dispute, is always different. Admittedly valuation is an art and not a science. It is subjective. A professional valuer tries to bring maximum objectivity in the valuation process. It takes lots of efforts to make the parties agree to the given valuation. Either the respondents want the amount payable to the petitioner reduced by something which they allege is payable by the petitioner to the company; to which the petitioner does not agree. There have been number of cases where both sides do not agree to the valuation done by an independent Professional. It is then for the court to intervene and pass necessary orders to ensure completion of the transaction. Fair value may be expressed as a price as between a willing vendor and willing purchaser. Even after appointment of valuer, parties may have reservations about the method of valuation adopted, the factors that have been considered for valuation, whether the

impact of the dispute on the value of the shares has been considered or simply that the valuation favours the other party more.

Arbitration - the way forward !

If the resolution of disputes lies in buying out the shares of the minority and eventually that is what the minority also agrees to, it makes sense to take steps at the initial stages of differences and disputes - without approaching the courts, saving on time, energy, money and valuable relationships. This is nothing but arbitration - a way of resolving disputes out of court. The signs of dispute are visible to the parties much before the matter goes in the Court Rooms. If the parties exercise some restraint and think through the consequences of their actions, lot of hardship can be avoided. The parties will be able to part on more amicable terms and disputes will be resolved much quicker.

Professionals like Practising Company Secretaries play a very significant role in this form of informal arbitration - by advising the parties at the first instance that it is more reasonable, economical and beneficial to resolve the disputes out of court. PCS can participate in meetings held jointly with both parties where parties arrive at a valuation on their free will and then the chances of adhering to such valuation automatically become brighter. Shares may be valued at a price at which the petitioner shall have an option to buy the respondents' shares or to sell his shares. This will ensure that the shares are valued in all fairness with equal opportunity to both sides. Even though this may not be 'arbitration' in its strict sense, the effect of the actions is the same - that of resolving the disputes between parties without resorting to litigation. This will save a lot of heartburn and of course, help the future of all concerned. It is observed that at times the Secretarial Consultant (PCS rendering advisory services as a retainer) or a Statutory Auditor can act as Arbitrator. **This is possible if he wins the confidence of both the sides and has established his credibility.**

Prevention is better than Cure

As a professional involved in the matters of a company, may be as a Company Secretary or a Chartered Accountant, one gets an early indication of the possible disputes and disturbances. A critical role has to be played by the professional. Needless to say that he/she has to do his/her job with due care, attention and diligence.

If following is taken care of most of the disputes would be nipped at the bud.

- Follow the law and procedures for change in composition of the Board of Directors or Shareholding pattern, in the spirit and letter.
- Issue proper Notices for the Board/General meetings, maintain attendance records, draft proper minutes, get these signed by the chairman.
- Understand the concept of 'Quasi Partnership' and advise the



stakeholders to follow 'DHARMA' of Partnership.

- d. Keep in mind that something which is legal may not necessarily be fair. Try and do a thing which is legal as well as fair.
- e. Do not dislocate the communication channel. In most of the cases communication gap is a major contributor to the disputes.
- f. Concept of Mutual trust, faith and sharing responsibility should be well understood by all the stakeholders.

Few Suggestions for a Professional acting as a Mediator/Arbitrator

- a. One should not take sides of either of the groups of the Board members / Shareholders.
- b. Maintain professional independence in the process.
- c. Be unassuming.
- d. Keep track of the discussions and decisions.
- e. Insist on formal settlement about rights, duties and functions of the stakeholders.

Common methods of exit

Assume that Group A is a minority group and has filed petition against Group B under section 397-398. Now the proposal is for compromise and one of the groups has to exit.

Some of the options available for amicable settlement are as follows;

1. Group A, values the business in his own manner & method. No questions asked by the Group B about valuation and thus share price. Then Group A lets Group B know the valuation. Then Group B will decide to sell or buy the shares at that share price.
2. Group B, values the business in his own manner & method. No questions asked by the Group A about valuation and thus share price. Then Group B lets Group A know the valuation. Then Group B will decide to sell or buy the shares at that

share price.

It is desirable that the Respondents (normally who are running the show) should do the valuation.

3. Group A and Group B together appoint a valuer and based on his valuation either of the Groups decides to take an exit. It has to be pre decided in this option that valuation would be binding and that a specific Group will exit for sure at that valuation. The question about who is to exit can not be left open once the valuation is done.
4. Group A and Group B appoint independent valuers, pay the cost of valuation independently and then CLB decides the fair value.
5. Open Auction. Before a third person (auctioneer) both groups start calling the numbers indicating the value. The highest bidder gets the control of the company and loser needs to take an exit at a value attached to by the successful bidder.
6. Reverse Open Auction. A third person (auctioneer) starts calling numbers before both groups. He starts from a higher number and reduces it in stages. A particular group accepting a particular valuation confirms about its acceptance of that valuation then that group gets the 100% control of the company and the other group needs to take an exit at a value attached to by the successful bidder.
7. Closed quotes: Both groups calculate the enterprise value of the company (share value) put the number in a sealed envelop and hand over the sealed cover to an umpire. On a given date and in a given manner the envelops are opened and the person giving higher value will get a right to buy the other side.
8. Sometimes paying value for shares may not be possible for both the groups, may be due to Cash crunch, then division of undertaking can be a good option provided the nature of business permits such division.
9. In case both groups are cash starved and cannot buy the other group, a possibility can also be explored for a third party sell and sharing the consideration in proportion to the shareholding.

If an amicable settlement does not take place and the deadlock continues the only option that remains is winding up of the company under section 433(f). This obviously is a loss of factors of production and a waste of scarce resources for a developing country like India. All stakeholders especially workers suffer and hence all attempts should be made for settlement of disputes through the process of Arbitration. ■



Articles

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Arbitrability of Disputes Relating to Oppression and Mismanagement - Revisiting the Legal Provisions

Company law Board is a special Tribunal having very wide powers to prevent oppression and mismanagement in a company and to provide adequate relief to the complainant, which an arbitrator does not have. Even if there is an arbitration clause the arbitrator will not be able to give relief as specified under section 402 of the Companies Act and arbitration becomes illusory in such circumstances.

Ambit

We have two moot questions to answer, viz.
(i) Whether the Company Law Board (CLB) has powers to refer a dispute, involving issues of oppression and mismanagement under sections 397 and 398 of the Companies Act, 1956, to arbitration for adjudication and (ii) Whether parties themselves settle a dispute involving issues of oppression and mismanagement under sections 397 and 398 of the Companies Act, 1956 through arbitration, without approaching the CLB?

Ever since the Arbitration and Conciliation Act, 1996 (Arbitration Act for short) was enacted often attempts are being made to resort to arbitration to adjudicate upon disputes of various hues. The prime reason for this is the effect of section 8 of the Arbitration Act,

which mandates any judicial authority, before which a dispute has come, to refer the same to arbitration, provided parties have an agreement to refer disputes to arbitration. Though the Arbitration Act does not contain any express or implied overriding provision to oust the effect of any other laws, vigorous attempts are being made to give legal credence to this effect by resorting to section 8 totally overlooking the provision of section 2(3) of the Arbitration Act which clearly and categorically saves the effect of other laws over the dispute resolution mechanism inspite of having an arbitration provision.

There are numerous rulings of CLB as to on what grounds and circumstances a dispute under sections 397 and 398 of the Companies Act, 1956 (Companies Act for short) could be referred to arbitration. There is a solitary ruling of the Delhi High Court in which the court referred the dispute to arbitration exercising its inherent powers. Though the CLB also has such inherent power, can it refer the matter to arbitration? If it does so, whether such action would be construed as a refusal to exercise its jurisdiction over the reserved matters?

Again the relief against oppression and suppression is available under the Companies Act only when the eligibility conditions are



met by the complainant. If that be so, whether the Companies Act impliedly permits the acts of oppression and suppression against persons who do not qualify to invoke sections 397 and 398? In other words, whether the right to complain and get remedy against oppression and suppression is absolutely denied to such persons or can they get relief under any other enactment, including the Arbitration Act?

These are the issues which are examined in this article in order to find out an answer to the questions posed at the commencement.

Dispute resolution under the Companies Act

The Companies Act is a special Act governing the incorporation, management and dissolution of a company. In other words a company from womb to graveyard is governed by the provisions of the Companies Act. Various kinds of dispute resolution machineries are provided in the Companies Act for adjudicating various kinds of disputes such as High Court, Company Law Board, Securities and Exchange Board of India and the Central Government. The significant aspect of these various dispute resolution machineries is that they have exclusive jurisdiction in their sphere of activity. Again, as these authorities are created under the statute, disputing parties have no choice of their own to prefer any one to other.

Dispute resolution under the Arbitration Act

Unlike the Companies Act, the dispute resolution machinery under arbitration procedure is not statutory but voluntarily created and empowered by the disputing parties. The choice of arbitrator or arbitrators, the procedure to be adopted, costs to be borne are determined as per the agreement between the parties. Once there is a valid arbitration agreement between the parties to refer disputes to arbitration, then by virtue of section 8¹ of the Arbitration Act, no other judicial authority can entertain the dispute and is bound to refer the parties to arbitration. However, this restriction is subject to section 2(3)² which provides that in case any law prescribes a specific authority to adjudicate a specific dispute such dispute need not be resolved by arbitration. Therefore, the bar on a judicial authority to entertain a dispute, which contains arbitration, is not absolute but qualified to the extent prescribed under section 2(3) of the Arbitration Act. This is so because section 5³ of the Arbitration Act permits a judicial authority to intervene in a dispute containing arbitration in a manner as provided in the Act.

The CLB's duty, when a petition under section 397 is submitted, is to make such order as it thinks fit to bring to an end the matters complained of. Likewise, the CLB's duty when a petition under section 398 is submitted is to make such order as it thinks fit to bring to an end or prevent the matters complained of or apprehended.

Arbitrability of Dispute

'Arbitrability' refers to the capacity of the arbitrator to enter into and adjudicate upon the subject matter of dispute. There are certain disputes which are beyond the realm of arbitration inspite of covered under an arbitration agreement such as winding up of a company⁴, suits for divorce or restitution of conjugal rights⁵, disputes about the appointment of a guardian for a minor⁶, disputes about taxation and public rates⁷, excepted contractual matters⁸.

Understanding the importance of arbitrability, the Parliament has taken due care of the same under the Arbitration Act by specifically enacting Section 2(3) while dealing with the scope of arbitration and making sections 5 and 8 subject to section 2(3). Therefore, where an Act specifically provides a dispute resolution mechanism to resolve the disputes arising under such Act, arbitrator cannot arbitrate upon it. For example, Industrial Disputes Act provides for Industrial Tribunal, labour court and conciliation officers as dispute resolution machineries and hence labour disputes cannot be resolved by arbitration. Further, IDA provides for arbitration mechanism for which elaborate procedure is prescribed and arbitral award is also subject to the jurisdiction of the Industrial Tribunal. In effect, arbitration under the Arbitration Act is ruled out.

Disputes as to Oppression and Mismanagement

Dispute relating to oppression is covered under section 397 and dispute relating to mismanagement is covered under section 398 of the Companies Act. The dispute resolution machinery is the

¹ Section 8(1): A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

² Section 2(3): This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

³ Section 5: Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

⁴ Haryana Telecom Ltd v. Sterlite Industries India Ltd, AIR 1999 SC 2354.

⁵ Malka v. Sardar, AIR 1929 Lah 324.

⁶ Sami Chetty v. Adaikalam Chetty, AIR 1924 Mad 484.

⁷ Thorpe v. Cole 150 ER 158.

⁸ Viswanath Sood v. UOI, AIR 1989 SC 952.



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CLB which is a special authority constituted under section 10E of the Companies Act. Section 399 sets out the eligibility criteria, based on numbers and shareholding percentage⁹, for a complainant to invoke the jurisdiction of the CLB in disputes relating to oppression and mismanagement. Section 402 provides for the various kinds of reliefs that can be granted by the CLB.

The cause of action for an aggrieved member to lodge a complaint with CLB, with respect to oppression, under section 397 is that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. Likewise, the cause of action with respect to mismanagement under section 398 is (i) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or (ii) a material change has taken place in the management or control of the company, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company.

The CLB's duty, when a petition under section 397 is submitted, is to make such order as it thinks fit to bring to an end the matters complained of. Likewise, the CLB's duty when a petition under section 398 is submitted is to make such order as it thinks fit to bring to an end or prevent the matters complained of or apprehended.

It is apparent from the language used in sections 397 and 398 that what the legislature intended to remedy is "disputes relating to the affairs of the company" that may take colours of either oppression of members or mismanagement of the company. Thus the dispute complained of is not of a general commercial dispute but a dispute relating to the management of the company. This distinction is crucial because arbitration, in general, provides remedy for resolving commercial disputes and not any specific disputes dealt with in any special statutes. Part VI of the Companies Act, containing eight chapters and running from section 146 to 423, is with respect to the management and administration of a company containing provisions as to various aspects of corporate management and administration of a company. Therefore, fairly it can be concluded that any dispute arising out of or touching these provisions could well said to be dispute as to the "affairs of a company".

Status of the Company Law Board

For the purpose of this article it is imperative to understand the powers of CLB *vis-à-vis* that of a civil court and an arbitrator

⁹ For companies having share capital:

- (a). Not less than 100 members or 1/10th of total members of the company whichever is less [or]
- (b). Member or members holding not less than 10% of the issued share capital

For companies having no share capital:

Not less than 1/5th of the total members of the company.



appointed under the Arbitration Act.

CLB is the creature of a statute and has only such powers that are conferred on it by the statute which created it. In other words it has limited powers. Certain powers of the civil court are conferred on it by virtue of section 10E (4C)¹⁰. Further CLB is deemed to be a civil court for the purposes of section 195 and chapter 26 of the Cr.P.C and every proceeding before it is deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the IPC. Therefore, the moot question naturally arises is whether CLB is a court for all purposes?

It has been observed, in an Australian case¹¹, that a body of tribunal may be constituted entrusting them with work of judicial character but they are not courts in the accepted sense, though they may possess some of the trappings of the court. The phrase "trappings of the court" suggested that the tribunal may have many attributes which the court possesses, but still it will not be regarded as court and the following negative propositions were enumerated:

- "1. A tribunal is not necessarily a court in the strict sense because it gives a final decision.
2. Nor because it hears witnesses on oath.
3. Nor because two or more contending parties appear before it between whom it has to decide.
4. Nor because it gives decisions which affects the rights of

¹⁰ Conferred powers:

- a Discovery and inspection of documents or other material objects producible as evidence.
- b Enforcing the attendance of witnesses and requiring the deposit of their expenses.
- c Compelling the production of documents or other material objects producible as evidence and impounding the same.
- d Examining witness on oath.
- e Granting adjournments.
- f Reception of evidence on affidavits.

¹¹ Shell Company of Australia v. Federal Commissioner of Taxation (1931) AC 275.



subjects.

5. Nor because there is an appeal to the court.
6. Nor because it is a body to which a matter is referred by another body."

Holding that the Central Government while exercising the appellate power under section 111 of the Companies Act, functions as a tribunal and not as a court though it had the trappings of a court, the Supreme Court explained the distinction between a court and tribunal as under¹² :

"All tribunals are not courts, though all courts are tribunals. The word 'courts' is used to designate those tribunals which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold 'rights' and to punish 'wrongs'. Whenever there is an infringement of a right or an injury, the courts are there to restore the vinculum juris, which is disturbed.

By 'courts' is meant courts of civil judicature and by 'tribunals' those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly, one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that courts have 'an air of detachment'. But this is more a matter of age and tradition and is not of the essence, many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient."

Following the above rulings and host of diverse judgments, a Division Bench of the Allahabad High Court had held that CLB is not a court even though it has trappings of a court as under¹³ :

"Broadly speaking, the Company Law Board has the trappings of a court in the sense that it has to determine a matter placed before it judicially, give fair opportunity of hearing to the parties who may be affected by the order, accept the evidence and also order inspection and discovery of documents, compel the attendance of witnesses and pass a reasoned order which gives finality to its decision subject to right of appeal to a party under section 10F of the Companies Act, 1956 or such other legal remedy which is available under law to a party.

The Company Law Board, however, exercises the powers conferred under the Act or in any other statute which confers a power on the Board to adjudicate upon a matter entrusted to it under law or by the Central Government. Sub-section 4D of section 10E and regulation 47 of the Company Law Board Regulations, 1991 are the deeming clauses and treat the Board as a court for this limited purpose. This, however, does not render the Board an ordinary civil or criminal court.

The matters which are not within the jurisdiction of the Board are decided by the High Court or district court as provided under section 10 and other provisions of the Act. The residue may go to the ordinary civil or some other competent authority. The Board has to decide the matters placed before it in a judicial or quasi-judicial manner equipped with certain powers which are possessed by the courts but considering its scope, functions and the special jurisdiction conferred on it, the Board can be held to be only a tribunal and not a court."

In view of the above, the well settled position is that the CLB is not a court even though it has trappings of a court and that its legal status is that of a special tribunal.

Nature of jurisdiction of court under section 402

In order to appreciate the issue as to whether an arbitrator would have the same extent of jurisdiction that of a court/CLB in the matter of oppression and mismanagement so that he can also give the same relief as contemplated under section 402, it becomes imperative to understand the nature and extent of jurisdiction conferred under the court under section 402 of the Companies Act.

This issue came up before the Division Bench of the Bombay High Court¹⁴ in an appeal preferred against the order passed by the Single Judge reconstituting the board of the company passed under section 402. After making an elaborate analysis of Chapter II and Chapter VI of Part VI of the Companies Act (relating to corporate management), the Court held as under:

"Chapter II of the Act which includes section 255 deals with corporate management of a company through directors in normal circumstances, while Chapter VI, which contains sections 397, 398 and 402, deals with emergent situations or extraordinary circumstances where the normal corporate management has failed and has run into oppression or mismanagement and steps are required to be taken to prevent oppression and/or mismanagement in the conduct of the affairs of the company. In the context of this scheme having regard to the object that is sought to be achieved by sections 397 and 398 read with section

¹² Hari Nagar Sugar Mills Ltd v. Shyam Sunder Jhunjunwala (1961) 31 Comp Cas 387.

¹³ Prakash Timbers P. Ltd v. Smt. Sushma Shingla & Anr (1997) 89 Comp Cas 770 (All)

¹⁴ Bennet & Coleman & Co v. UOI (1977) 47 Comp Cas 92 (Bom).



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Both sections 397 and 398 use the word "may apply" and not "shall apply" with respect to the right of preferring an application by the aggrieved member before the CLB. Therefore it is important to establish, whether this aspect of the provisions of sections 397 and 398 are mandatory or directory. ● ●

402, the powers of the court there under cannot be read as subject to the provisions contained in the other chapters which deal with normal corporate management of a company. Further, an analysis of the sections contained in Chapter VI of the Act will also indicate that the powers of the court under section 397 or 398 read with section 402 cannot be read as being subject to the other provisions contained in sections dealing with usual corporate management of a company in normal circumstances.

The topic or subjects dealt with by sections 397 and 398 are such that it becomes impossible to read any such restrictions or limitations on the powers of the court acting under section 402. An examination of the aforesaid sections brings out two aspects; first, the very wide nature of the power conferred on the court, and, secondly, the object that is sought to be achieved by the exercise of such power, with the result that the only limitation that could be impliedly read on the exercise of the power would be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by those sections and beyond this limitation which arises by necessary implication it is difficult to read any other restriction or limitation on the exercise of the court's power. Further, sections 397 and 398 are intended to avoid winding up of the company if possible and keep it going while at the same time relieving the minority shareholders from acts of oppression and mismanagement or preventing its affairs being conducted in a manner prejudicial to public interest and, if that be the objective, the court must have power to interfere with the normal corporate management of the company, and to supplant the entire corporate management, or rather, mismanagement, by resorting to non-corporate management which may take the form of appointing an administrator or a special officer or a committee of advisors etc., who would be in charge of the affairs of the company. The court could even have a truncated form of corporate management if the exigencies of the case required it, any truncated form of corporate management can never conform to all the provisions dealing with corporate management. It will all depend on the facts and circumstances of each case as to how, in what manner and to what extent the court should allow the voice of the shareholders' directors on the board of directors to prevail over that of the other directors and the court's power in that behalf could not in any manner be curbed. Therefore, the position is clear that while acting under sections 397 and 398 read with section 402 of the Companies Act, the court has ample jurisdiction and very wide powers to pass such

orders and give such directions as it thinks fit to achieve the object and there would be no limitation or restriction on such power that the same should be exercised subject to the other provisions of the act dealing with normal corporate management or that such orders directions should be in accordance with such provisions of the Act."

The effect of the above ruling is clear that even though section 402 does not use the words 'notwithstanding anything contrary to any other provisions of the Act' so as to clothe section 402 with overriding powers, this ruling does so. This ruling was rendered when the issues under sections 397 and 398 were dealt with by the company court. However, these powers were transferred to the CLB by the Amendment Act, 1988 w.e.f. 31.5.1991 and therefore, CLB steps into the shoes of the court and by necessary implication has the same wide un-curtailed powers of the court while passing an order under section 402.

But this does not apply to an arbitrator appointed by the parties, as an arbitrator is neither a court nor a tribunal. Therefore, the arbitrator will not have any powers to grant the reliefs contemplated under section 402 as such powers cannot be conferred on him by the parties. This makes the position of an arbitrator inferior to CLB in as much as he will not be able to achieve the objects contemplated under sections 397 and 398 of the Companies Act. To achieve the objects of sections 397 and 398, wide powers as contemplated under section 402 is a must and in this regard the arbitrator comes nowhere near the CLB.

Status of arbitrator

Now let us examine the legal status of arbitrator as to whether he is a court or tribunal. Arbitration could be either 'consentient' i.e. agreed by parties or 'statutory' i.e. prescribed in a statute. In the former parties to a contract agree to resolve the disputes through arbitration while in the latter a particular statute prescribes that disputes should be resolved through arbitrator named therein for example Registrar of Cooperative Societies is the arbitrator prescribed under the cooperative societies legislation to adjudicate certain disputes. Arbitration can be resorted to under the Industrial Disputes Act, 1947 also. We are specifically concerned with consentient arbitration in this article.

The Arbitration Act prescribes certain standard procedures of arbitration in default of any contrary provisions agreed to between the parties. Thus, basically the arbitrator is the choice of the parties i.e. 'chosen judge' and derives his authority under the



arbitration agreement and not from any specific statute. The parties are free to agree for the procedure to be adopted, method of proving documents etc. Thus, arbitration is a private arrangement to resolve dispute without resorting to ordinary civil courts. This is because the Arbitration Act does not override the provisions of special enactments under which certain disputes are to be resolved by a specific authority constituted under such enactment.

The distinction between a court, tribunal and an arbitrator came up before the Supreme Court¹⁵, wherein the question was whether the decision of the arbitrator to whom industrial dispute is voluntarily referred under section 10A of the Industrial Disputes Act, can be termed as a court. The Supreme Court had held as under:

"The arbitrator acting under section 10A of the Industrial Disputes Act is neither a court nor a tribunal even though some of the trappings of the court are present. The arbitrator under section 10A of the Act is not in the same position as a private arbitrator. He lacks essential and fundamental requisites in that he is not invested with the State's inherent judicial power. He is appointed by the parties and the power to decide the dispute between the parties who appointed him is derived by him from the agreement of the parties and from no other source. The mere fact that his appointment once made by the parties is recognised by section 10A of the Act and, thereafter, he is clothed with certain powers having the trappings of the court, does not mean that the power of adjudication which he is exercising is derived from the State".

The above position is squarely applicable to an arbitrator appointed by parties in the ordinary course i.e. consensual arbitrator. In other words, an arbitrator is neither a court nor a tribunal.

STATUS OF ARBITRATION AGREEMENT

The arbitrator's jurisdiction to adjudicate a dispute is basically derived from the arbitration agreement and as such, an agreement between parties to resolve disputes through arbitration in respect of disputes as to oppression and mismanagement will have to face the fate of being declared as null and void to such extent under section 9 of the Companies Act, even though such arbitration agreement is covered under section 7 of the Arbitration Act.

In this regard it is appropriate to cite the observation to the contrary made by the CLB in the case of *20th Century Finance Corporation Ltd v. RFB Latex & Ors* (1999) 97 Comp Cas 636 wherein it has been observed as under:

"Section 9 of the Companies Act deals only with memorandum,

articles or any other agreement or any resolution which are repugnant to the provisions of the Act and does not deal with the provisions of other statutes, whereas section 5 of the Arbitration Act makes it clear that in case of an arbitration agreement, a judicial authority cannot intervene except as provided in that Act, notwithstanding anything contained in any other law.

The Company Law Board being a judicial authority is bound, in terms of section 8 of the Arbitration Act to refer the parties to arbitration if the allegations arise out of the terms of an agreement containing an arbitration agreement as defined in section 7 of that Act, notwithstanding the provisions of section 9 of the Companies Act. In other words, section 9 of the Companies Act does not affect a right of a shareholder to invoke the provisions of section 8 of the Arbitration Act in case there is an agreement to refer the same to arbitration".

Even after making the above observation the CLB refused to refer the parties to arbitration on other grounds (which will be discussed later). It is humbly submitted that the above observation appears to be erroneous. Even if an arbitration agreement is covered under section 7 of the Arbitration Act, it is still an ordinary basic agreement under the Indian Contract Act and is amply covered under the sweep of the term 'agreement' used in section 9 of the Companies Act and not a special agreement made pursuant to a special legislation i.e. Arbitration Act. The main purpose of section 7 of the Arbitration Act is to define what an arbitration agreement is for the purpose of that Act and nothing more. Therefore an arbitration agreement does not acquire any special statutory right so as to become a statutory instrument so that it can go out of the grip of section 9 of the Companies Act.

REFERAL TO ARBITRATION

Let us now analyse the case laws under which disputes of oppression and mismanagement were referred to arbitration.

The Delhi High Court in the case of *Gurnir Singh Gill & Anr v. Saz International P. Ltd & Ors* (1987) 62 Comp Cas 197, while referring the issue of ownership of shares between the warring parties to arbitration with their consent, held as under:

"The power to stay court proceedings (under section 34 of Arbitration Act, 1940) because of the existence of an arbitration clause which has been, or can be, invoked or, for that matter of the existence of an award, is a matter of judicial discretion. The court may well refuse to grant stay of the petition under section 397 and 398 which the parties have sought, and the court can grant much wider and more appropriate relief. But this is not the same as saying that when a court is seized of proceedings under sections 397 and 398, its powers do not extend to the reference of some or all the points in controversy to arbitration particularly when, in the course of proceedings, the parties agree to such

¹⁵ Engineering Mazdoor Sabha v. Hind Cycles Ltd, AIR 1963 SC 874.



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course. While a court may not, and indeed will not, agree to stultify its powers under section 397 to 403 merely because parties can have, or had, recourse to arbitration, there is no reason why the court's very wide amplitude of powers under section 397 to 403 should be read down to prohibit the reference by it, some or all of the points in dispute before it, to arbitration. Its powers cannot be less in this regard to a civil court trying a suit between parties.

Proceedings on a petition for relief against mismanagement and oppression under sections 397 and 398 of the Companies Act, 1956 are civil proceedings before a court and issues arising therefrom can be referred to arbitration, where the disputes raised is purely inter parties and do not affect the rights of strangers to the proceedings."

In the case of *Naveen Kedia & Ors v. Chennai Power Generation Ltd & Ors* (1999) 95 Comp Cas 640, the CLB referred the disputes which arose between the parties out of two intrer-linked agreements, to arbitration on the ground that as a judicial authority it is bound to refer the parties to arbitration and has no discretion under section 45 of the Arbitration Act as it involves international arbitration.

The dispute was between two parties and the relief claimed was that one party be directed to provide funds to the company as envisaged in the agreements. The warring parties were joint venture parties with 50:50 share holding. The principal agreement provided that the respective rights of the parties in the company shall be governed by the terms of the agreement and the company and its shareholders agreed to this. The CLB was influenced by this clause and came to the conclusion that whatever the issues complained against is covered by the agreement, which contains an arbitration clause. There was no finding or any observation whether the issues complained of in the petition also touches the provisions of the Companies Act so as to confer concurrent jurisdiction on it so that as a judicial authority it can refer the dispute to arbitration.

In the case of *Escorts Finance Ltd v. G.R. Solvents and Allied Industries Ltd & Ors* (1999) 96 Comp Cas 323, the CLB referred the dispute, that arose out of sponsorship agreement, to arbitration holding that allegations such as failure to amend articles of association, failure to appoint nominee of the petitioners on the board of the company and the siphoning of funds etc. directly arose from the sponsorship agreement and as such it has to be referred to arbitration and petitioners have failed to make allegations as to substantial acts or oppression or mismanagement. In other words, the CLB was of the opinion that allegations contained in the petition were not relating to sections 397 and 398 of the Companies Act.

All the above cases are distinguishable. The Delhi High Court in

The CLB has no power at all to refer a dispute to arbitration if it finds that no allegation complained of falls under sections 397 and 398 of the Companies Act. In such circumstances the CLB has no option but to dismiss the petition itself as such. ●●

Gurnir Singh's case referred the parties to arbitration even though it squarely fell under sections 397 and 398 of the Companies Act whereas the CLB referred the parties to arbitration (i) in *Navin Kedia's* case without coming to a finding whether at all the allegations, *prima facie*, fell under sections 397 and 398 of the Companies Act so that it has jurisdiction to entertain the petition and (ii) in *Escorts's* case even though there were allegations of oppression and mismanagement as it found it does not fell under sections 397 and 398 of the Companies Act. However, in both the cases as a judicial authority it exercised its powers to refer the dispute to arbitration.

Now an interesting question that arises is whether a judicial authority, who has no jurisdiction at all to entertain a petition alleging disputes that are subject matter of arbitration has power under the Arbitration Act to refer the same to arbitration? In other words, should a judicial authority having no jurisdiction at all refer the dispute to arbitration or dismiss it.

A careful reading of the language employed in section 8 read with section 5 of the Arbitration Act leads to the conclusion that, what is contemplated under these two sections is a *lis* which is capable of being adjudicated by a judicial authority which could be a Court or Commission or Board or Tribunal and also by an arbitrator. When such a *lis* comes before such a judicial authority he has but to refer the dispute to arbitration. However, the above is subject to the provisions of section 2(3) where the provisions of special laws are saved.

Therefore, in the humble view of the author, the CLB has no power at all to refer a dispute to arbitration if it finds that no allegation complained of falls under sections 397 and 398 of the Companies Act. In such circumstances the CLB has no option but to dismiss the petition itself as such.

The ruling of the Delhi High Court rendered in *Gurnil Singh's* case(*supra*) is no more a good law in view of the ruling rendered by the Supreme Court in *Skypack Courier's* case, which is discussed herein after. The Supreme Court had come down heavily on the practice of courts/tribunals referring the matters to arbitrator instead of deciding the same. In the case of *Skypack*



Couriers Ltd v. Tata Chemicals Ltd. AIR 2000 SC 2008, the National Consumer Disputes Redressal Commission referred certain cases with the consent of the parties and certain cases without the consent of parties to arbitration by a retired judge of the Supreme Court on the ground that detailed evidence is required to be taken after scrutiny of various documents. This was challenged before the Supreme Court, which held as under:

"The Commission under the Consumer Protection Act do not have the jurisdiction to refer the dispute pending before it, for a consensual adjudication by third person and then make the said decision of the so called consensual arbitrator, an order of the Commission itself. Section 22 of the Consumer Protection Act provides that the Commission shall have the powers of a Court. These powers would include the powers to call for documents and take evidence either by itself or on commission. However, the final adjudication has to be made by the Commission. There is no provision in law which provides that adjudication of matters before a Court/commission/Tribunal can be entrusted to a third party/individual and the decision of the person then made a decree or order of a Court/Commission/Tribunal. Of course, an award made by an arbitrator can be and is made a decree of a Court. But this is under the provisions of the Arbitration Act and not de hors the Act. The Commission is referring matters to third person for consensual adjudication de hors the Arbitration Act. It is then making those awards the rule of the court by passing orders based on the award. The Commission is not applying its own mind or adjudication on the disputes. It is merely putting its imprimatur on the decisions given by third parties. By doing this it is abdicating its own functions and duties. Such procedure is unwarranted and unjustified. It cannot be allowed to continue."

This authoritative ruling is squarely applicable to the CLB when it has to decide petitions under sections 397 and 398 of the Companies Act.

Non-referral to arbitration

Now let us examine the cases where the courts and the CLB refused to refer the dispute to arbitration.

The Delhi High Court in the case of *Kare Pvt Ltd.* (1977) 47 Comp

Cas 276 held as under:

"The shareholders right to file a petition under sections 397 and 398 of the Companies Act, 1956 is a statutory right which, by section 9, cannot be ousted by a provision in the articles of association of the company. Any article providing that a difference between the company and its directors or between the directors themselves or between any members of the company or between the company and any person shall be referred to arbitration cannot debar the jurisdiction of the court in the matter of a petition under sections 397 and 398."

The above ratio was followed and reiterated in the case of *O. P. Gupta v. Shiv General Finance (P) Ltd & Ors* (1977) 47 Comp Cas 279 (Del) in which the court held as under:

"An article providing for arbitration contained in the articles of association of a company cannot be called into play for the purpose of staying proceedings under sections 397 and 398. The provisions of sections 397 and 398 and of section 434 give exclusive jurisdiction to the court and the matters dealt with thereby cannot be referred to arbitration. No arbitrator can possibly give relief to the petitioner under sections 397 and 398 or pass any order under section 402 or section 403."

The Bombay High Court in the case of *Manavendra Chitnis & Anr v. Leela Chitnis Studios P Ltd & Ors* (1985) 58 Comp Cas 113 had held as under:

"Merely because there is an arbitration clause or an arbitration proceeding, or for that matter an award, the court's jurisdiction under sections 397 and 398 of the Companies Act, 1956 cannot stand fettered. On the other hand, the matters which can form the subject matter of a petition under sections 397 and 398 cannot be the subject matter of arbitration, for an arbitrator can have no powers such as are conferred on the court by section 402."

The CLB refused to refer the parties to arbitration in the following cases.



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In *20th Century Finance's* case (*supra*) and *Khadwala Securities Ltd & Ors v. KowaSpinning Ltd & Ors* (1999) 97 Comp Cas the CLB refused to refer the dispute to arbitration since some allegations which were independent of the sponsorship agreement, which an arbitrator could not adjudicate for want of jurisdiction, could only be decided by it.

In the case of *Das Lagerwey Wind Turbines Ltd v. Cynosure Investments Pvt Ltd* (2004) 119 Comp Cas 411 it has been held that the allegations made in the petition were independent of the subscription agreement and as such the dispute cannot be referred to arbitration under the subscription agreement.

We have discussed only the decisions rendered by CLB on merits and there are many cases in which then CLB refused to refer the parties to arbitration on technical grounds. It appears that the CLB had taken a stand under which it refuses to refer the dispute to arbitration if the allegations in the petition are independent of any agreement to refer to arbitration and/or allegations fall squarely under sections 397 and 398 of the Companies Act.

Arbitration without approaching CLB

Both sections 397 and 398 use the word "may apply" and not "shall apply" with respect to the right of preferring an application by the aggrieved member before the CLB. Therefore it is important to establish, whether this aspect of the provisions of sections 397 and 398 are mandatory or directory. In this angle, let us now examine the issue whether parties can resolve dispute pertaining to sections 397 and 398 among themselves through the process of arbitration without approaching the CLB for relief.

The cannons of interpretation of the word "may" as used in statutes are well settled and the context in which it is used i.e. mandatory or directory has to be gathered from the intention of the provision and the objects it aims to achieve as the word 'may' is generally an enabling word. Lord Blackburn had stated¹⁶ that the enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right. A minority shareholder has a legal right that his interests in the company are well protected. Sections 397 and 398 provide for relief against oppression of minority shareholders and mismanagement of the affairs of the company by majority shareholders and confers a right on such minority shareholders to invoke the provisions of sections 397 and 398 before the CLB and to get a relief under section 402.

We have seen that the CLB is a special tribunal having very wide powers to prevent oppression and mismanagement of a company and to provide adequate relief to the complainant, which

an arbitrator does not have. In this context, it appears that the word 'may' is used in a mandatory sense. Therefore, to seek a relief under sections 397 and 398 the affected shareholders will have to approach only the CLB and no other authority, including a civil court.

In order to invoke the provisions of sections 397 and 398, the affected shareholder(s) must satisfy the eligibility condition. If they do not satisfy the condition, they cannot approach the CLB. Whether this means that oppression and mismanagement can continue against such shareholder(s) who does not meet the eligibility criteria? No statute can have provisions that enable stifling the voice of minority and the Companies Act is no exception. Though the Companies Act provides for a dispute resolution mechanism for persons who meet the eligibility criteria, it has not shut the doors, for those who does not meet the eligibility criteria, to approach any other authority. In such case the affected person may well file a suit in the civil court and bring a civil action against the company and its management as a civil court can also grant similar reliefs as specified in section 402 by exercising its general and inherent powers, provided the complainant is able to satisfy the court. Even if there is an arbitration clause to resolve the issue, arbitrator will not be able to give the relief as specified under section 402, and since arbitration becomes illusory in such circumstances there is no option but to resolve the issues through a civil court. However, no court ruling dealing with this type of issue has been reported yet. This issue is yet to be tested in a court of law.

Conclusion

In the light of what has been discussed above, the answers to questions raised at the commencement are that—

- (i) The Company Law Board cannot refer the dispute involving oppression and mismanagement under sections 397 and 398 of the Companies Act to an arbitrator for adjudication.
- (ii) The disputing parties themselves, who satisfy the eligibility criteria under section 399, also cannot settle the dispute involving issues of oppression and mismanagement under sections 397 and 398 of the Companies Act through arbitration.
- (iii) However, it appears that a disputing party who does not satisfy the eligibility criteria under section 399, can settle the dispute involving issues of oppression and mismanagement under sections 397 and 398 of the Companies Act by filing a suit before an ordinary civil court of appropriate jurisdiction. Even in such circumstances also the dispute cannot be settled by an arbitrator because he cannot provide the reliefs as specified under section 402 of the Companies Act.

Thus the issue of arbitrability of a dispute relating to oppression and mismanagement is against the arbitrator and in favour of the CLB or a civil court.

¹⁶ Julius v. Lord Bishop of Oxford, (1874-80) All ER Rep 43 (HL).



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Judicial View : Demystifying Arbitration in Disputes of Oppression and Mismanagement

Mere existence of an arbitration clause in an agreement does not bar the jurisdiction of the Company Law Board to entertain disputes relating to oppression and mismanagement. Judiciary has always encouraged arbitration since the results are faster than litigation.

INTRODUCTION

An arbitral tribunal or Company Law Board (CLB) - interesting arguments can be raised from both sides when facing a dispute regarding oppression or mismanagement by a company. If supporting CLB, it may be argued that CLB has extensive powers under the Companies Act, 1956, to grant wide range of reliefs against oppression and mismanagement which is difficult for an arbitrator, not being a statutory body nor having such statutory authority. To the contrary, if CLB comes to a conclusion that appropriate relief justified in a particular case can be granted by an arbitrator, then, there is no reason why the matter cannot be referred to arbitration. On similar lines, few may prefer arbitration over litigation in order to avoid delay and costs involved in the latter. Contradictorily, it may be contended that any dispute regarding oppression and mismanagement is to be adjudicated by CLB alone in accordance with Companies Act, 1956 and that there cannot be two forums for resolving the same matter.

In fact, it can be contended that CLB was constituted for addressing matters of oppression and mismanagement and it must be the court of first instance for the same. Otherwise, it may lose its relevance. However, an unanswered question is - whether arbitration is legally barred in such matters? In other words, is it mandatory to pursue litigation and not arbitration in CLB when faced with oppression or mismanagement? This ambiguity not only confuses the aggrieved parties but also the dispute resolution forums which may suffer the risk of further delaying and frustrating the justice system. In order to bring clarity in this issue, this article is an assiduous attempt to demystify arbitrability of disputes regarding oppression and mismanagement through in-depth analysis of judiciary's view. In order to further appreciate judiciary's binding opinion, we also propose a model which brings out the clear position on this pertinent legal issue.

LEGAL SCENARIO ON ARBITRABILITY: COMPANY LAW BOARD v. ARBITRAL TRIBUNAL

"Nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced."

-Albert Einstein

So as to examine the legal aspects, one must analyze



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fundamental laws regulating arbitration as well as proceedings under CLB. Arbitration in India is regulated by Arbitration Act, 1996 ("**Arbitration Act**") whereas proceedings under CLB are controlled by Companies Act, 1956 ("**Companies Act**"). We will first examine relevant provisions of the Arbitration Act followed by that of Companies Act.

Arbitration Act, 1996

Section 8(1) of Arbitration Act, 1996 states as follows:

"A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration."

On similar lines, Section 45 of Arbitration Act states that notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Hence, the aforementioned provisions seem to be lopsided towards arbitration for resolution of a dispute on oppression or mismanagement.

Companies Act, 1956

We must carefully examine other side of the coin as well. We note that Sections 397 (explains oppression), 398 (explains mismanagement) and 402 (explains scope of power of CLB when resolving disputes of oppression and mismanagement) of Companies Act, are compressive legal provisions on oppression and mismanagement. In fact, these provisions give very wide range of powers to CLB. More specifically, in terms of Section 402 of the Companies Act, any order under either Sections 397 or 398 may provide for-

- "(a) the regulation of the conduct of the company's affairs in future;*
- (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;*
- (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;*
- (d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand; and any of the following persons, on the other, namely:-*
 - (i) the managing director,*

Section 402 of the Companies Act read with Sections 8 and 45 of the Arbitration Act, arguably permits arbitration. Hence, we can safely conclude that arbitration is not barred in cases of oppression and mismanagement. However, a cautious study of Section 8 of the Arbitration Act seems to restrict litigation. In fact, it bars judiciary from interfering in matters which are subject matter of arbitration. As a result, cloud of uncertainty continues to hover over the issue of arbitrability of disputes relating to oppression and mismanagement by companies.

(ii) any other director,

(v) the manager, upon such terms and conditions as may, in the opinion of the CLB, be just and equitable in all the circumstances of the case;

- (e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;*
- (f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;*
- (g) any other matter for which in the opinion of the CLB it is just and equitable that provision should be made."*

Examination of the abovementioned provisions clearly indicate that CLB is the appropriate forum to resolve disputes relating to oppression and mismanagement. However, they nowhere specify that arbitration is barred in such matters. When Section 402 of the Companies Act read with Sections 8 and 45 of the Arbitration Act, arguably permits arbitration. Hence, we can safely conclude that arbitration is not barred in cases of oppression and mismanagement. However, a cautious study of Section 8 of the Arbitration Act seems to restrict litigation. In fact, it bars judiciary from interfering in matters which are subject matter of arbitration. As a result, cloud of uncertainty continues to hover over the issue of arbitrability of disputes relating to oppression and mismanagement by companies.

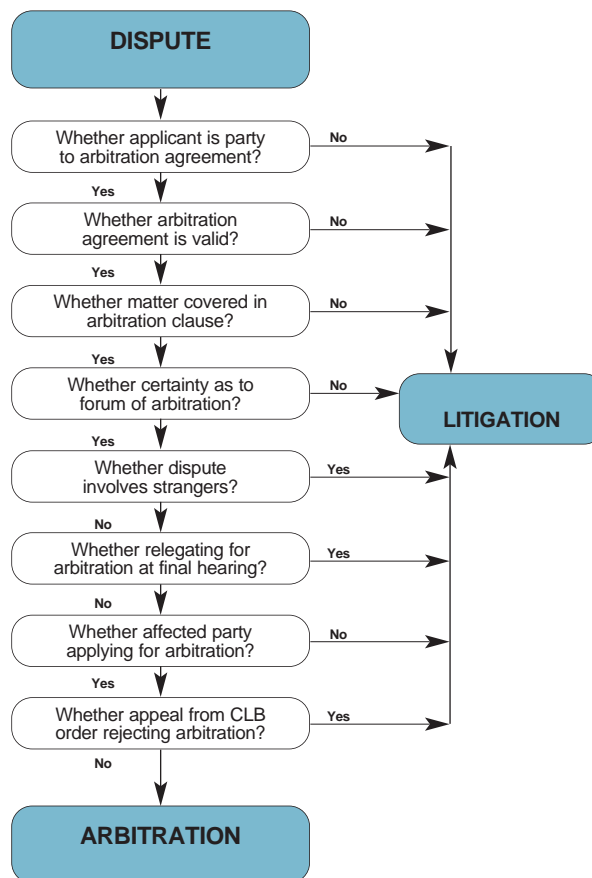


ROLE OF JUDICIARY IN INTERPRETING ARBITRABILITY

When faced with a tussle between concerned provisions of Companies Act and Arbitration Act, judiciary took the responsibility of providing clarity on the issue of jurisdiction. The CLB has taken a firm stand by repeatedly saying in innumerable orders that dispute regarding oppression and mismanagement are bound to be referred to arbitration subject to certain conditions. In fact, it goes on to state that it has no discretion under the Arbitration Act to refer or not to refer parties to arbitration. In *Naveen Kedia v. Chennai Power Generation Limited*¹, it was held that reference to arbitration was mandatory.² In fact, CLB conducted a vast survey of authorities on the conflict between arbitration clauses and jurisdiction under Sections 397 and 398 of Companies Act for prevention of oppression and mismanagement to further bolster the same view.³

In a similar order by CLB in *Escorts Finance Ltd. v. G.R. Solvents and Allied Industries Limited*⁴, it came to a conclusion that when an appropriate relief justified in a particular case can be granted by an arbitrator, then, there is no reason why the matter cannot be referred to arbitration. The CLB felt itself to be bound to refer the parties to arbitration.

From the abovementioned case laws it can be implied that CLB will not immediately refer a matter to arbitration as soon as it is established that there is a dispute and there is a valid arbitration agreement. Instead, it will consider and in its discretion decide in each and every case relating to a reference to arbitration whether appropriate relief can be granted by the arbitrator. What, thus, is implied is that the CLB may in appropriate cases refuse to let the matter go to arbitration and decide the matter itself.⁵ Thus, as a general rule, disputes relating to oppression and mismanagement will be referred to arbitration barring few exceptions. The general rule and the exceptions are explained herein below through a diagrammatic presentation which is followed by accentuating upon each exception individually:



1) When not Party to Arbitration Agreement

In *Sumitomo Corporation case*⁶, the Supreme Court considered disputes *vis-a-vis* the arbitration clause. The Supreme Court concluded that parties to the dispute were not parties to the arbitration clause. The Apex Court refused to refer the parties to the arbitration on the ground that the Company therein was not a party to the arbitration agreement and hence the matter was not sent to arbitration.

2) Invalid Arbitration Agreement

In *Hind Samachar Limited Re*,⁷ the CLB had refused to pass an order of reference because there was no arbitration clause. Similarly, in *Shin-Estu Chemical Company case*⁸, the Supreme Court laid down that while considering the application under Section 45 of Arbitration Act, the court is required to make a *prima facie* determination whether the arbitration agreement is

¹ (1999) 95 Com Cases 640 (CLB-PB).

² *Pinaki Das Gupta v. Maadhyam Advertising P. Ltd.* (2002) 4 Comp LJ 318 (CLB); *Khanwala Securities Ltd. v. Kowa Spgf. Ltd.*, (1999) 21 SCL 269; *20th Century Finance Corporation Limited v. RFB Latex Limited*, (1999) 34 CLA 267; *Sporting Pastime India Ltd., and others v. Kasturi and Sons Ltd.*, (2007) 137 Comp Cas 821 CLB; Justice Bhagwat, 'Law of Arbitration and Conciliations', 4th Edn., 2004; Vini Singh, 'Compulsory Mediation for Family Disputes', available at http://www.arbitrationindia.org/pdf/tia_2_9.pdf (last viewed on August 08, 2012).

³ A. Ramaiya, 'Guide to Companies Act', 3411, 16th Edn., 2004; (1999) 95 Com Cas 640 (CLB-PB).

⁴ (1999) 96 Comp Cas 323.

⁵ Jayant M. Thakur, 'Referring corporate disputes to arbitration', Indian Express Newspapers (Bombay) Limited (2000).

⁶ (2008) 4 SCC 91.

⁷ (2002) 4 Comp LJ 1 (P&H).

⁸ (2005) 7 SCC 234.



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null and void, inoperative, or incapable of performance. If on a *prima facie* determination, the court finds that the arbitration agreement is not null and void, inoperative or incapable of performance, the parties would be referred to arbitration. After affording sufficient opportunity to the parties, where the court arrives on a *prima facie* finding that the arbitration agreement is null and void, inoperative or incapable of performance, the court shall refuse to refer the parties to arbitration. The Supreme Court also held that when the court refuses to refer the parties to arbitration, the court must give a reasoned order as to why the court is not referring the parties to arbitration.

3) Matters not covered by Arbitration Clause

Issues which are the subject matter of a petition and which are not covered by the arbitration clause and, therefore, the arbitrator could not go into them for want of jurisdiction, have to be decided by the CLB.⁹

4) Uncertainty as to Forum for Arbitration

Where two agreements for the same transaction, namely, joint venture agreement and share purchase agreement, provide for different arbitral tribunals, then, in the light of uncertainty regarding the contractual forum to which the parties are to be referred, the application is generally entertained by CLB and not referred for arbitration.¹⁰

5) Involves Strangers

In a petition in *Gurnir Singh Gill v. Saz International PO. Ltd.*¹¹ under Section 397/398 of Companies Act, it was held by the Delhi High court that courts may stay the petition in its discretion and refer all the issues or some of them to arbitration when the disputes raised are purely inter-parties and do not affect the rights of strangers to the proceedings. This view is further bolstered by plethora of judgments.

6) Being relegated for arbitration at Final Hearing

If parties have spent substantial time before CLB, then, dispute cannot be relegated to arbitration at the stage of final hearing. For instance, in *Sudershan Chopra v. Company Law Board*¹², the dispute was not referred to arbitration as it was being argued

before CLB for nearly four years.

7) when not applied by Affected Party

The CLB cannot make an order of reference for arbitration unless the affected party applies for it.¹³

8) Appeal from CLB order rejecting Arbitration

When CLB rejected plea for arbitration in a matter of oppression and mismanagement, the appellant appealed to High Court which also dismissed his plea. Consequently, the appellant appealed to Supreme Court requesting for arbitration. However, the Supreme Court held that appeal shall lie from the order of the CLB to the court authorized by law to hear the appeals. In the event the order is passed by the CLB, the forum, which is provided under law for hearing the appeal from the order of the CLB, will be the appellate forum. In other words, while Section 50 of the Arbitration Act provides for the Orders which can be made the subject-matter of the appeal, the forum to hear the appeal is to be tested with reference to the appropriate law governing the authority or forum which passed the original order, that is, in the case on hand, the CLB. The Companies Act provides for such forum to hear the appeal from the orders of the CLB as the High court within the jurisdiction of which the registered office of the company in issue is situated.¹⁴

Conclusion

"When will mankind be convinced and agree to settle their difficulties by arbitration? "

-Benjamin Franklin

After analyzing the abovementioned model in details, it can be safely concluded that arbitration is always the preferred option if the facts and circumstances are in consonance with the judicial elucidations. However, one must not assume that proceedings under Sections 397 and/or 398 are fettered by an arbitration clause¹⁵. In other words, mere existence of an arbitration clause does not bar jurisdiction of CLB to entertain disputes regarding oppression and mismanagement subject to facts of each case. Nevertheless, as stated earlier, when neither of the exceptions are hindering the arbitration process, the judiciary has always encouraged arbitration. This is because results of arbitration are much faster than litigation. It is a route of simple, expeditious and inexpensive method of resolving disputes without lawyers and courts. In fact, large corporations enter into arbitration agreements on the faith that disputes will not suffer the risk of litigation but quick settlement by arbitral bodies. ■

⁹ *Pinaki Das Gupta v. Maadhyam Advertising P. Ltd.* (2002) 4 Comp LJ 318 (CLB); *Khanwala Securities Ltd. v. Kowa Spgf. Ltd.*, (1999) 21 SCL 269; *20th Century Finance Corporation Limited v. RFB Latex Limited*, (1999) 34 CLA 267.

¹⁰ *Bhatia International v. Bulk Trading* [2002] 2 SCR 411.

¹¹ (1987) 62 Com Cases 197 (Del).

¹² (2004) 58 CLA 362 [P&H].

¹³ *EIH Ltd. v. Mashobra Resort Ltd.*, (2002) 4 Comp LJ 133 (CLB).

¹⁴ *Sumitomo Corporation v. CDC Financial Services (Mauritius) Ltd.* and Ors. AIR 2008 SC 1594.

¹⁵ *O.P. Gupta v. Shiv Finance (P.) Ltd.*, (1977) 47 Comp Cas 279 (Del); *Kare (P.) Ltd., Re.*, (1977) 47 Comp Cas 276 (Del).



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Arbitrability of Disputes Relating to Oppression & Mismanagement

Arbitration as an alternate dispute resolution mechanism provides speedy, efficacious and economical means for settling commercial disputes and is considered as a blessing for the litigants in the present over burdened Judicial System. Whether and to what extent disputes arising in a petition under section 397/398 of the Companies Act, 1956 alleging oppression and mismanagement, could be referred for arbitration is the issue that is examined in this article.

The subject of Arbitrability of Disputes relating to Oppression & Mismanagement gains significance in the light of the recent decision rendered by the Company Law Board in the matter of *Uninor Ltd.* In April 2012, Justice D. R. Deshmukh, Chairman, Company Law Board has under Section 8 of the Arbitration and Conciliation Act, 1996 (the Act), allowed company's application seeking to resolve its dispute with its joint venture partner, Telenor, a Norwegian mobile phone company through international arbitration in Singapore.

It is seen that disputes relating to oppression and mismanagement under Section 397/398 of the Companies Act, 1956 (the Companies Act), often lead to compromise and settlement as such disputes are usually between family owned private limited companies or where there is a joint venture. Although, eventually such cases lead to compromise, the proceedings consume lot of time, money and efforts to reach the settlement. The reasons for such delay include conventional procedures, frequent transfer of

officials and inherent complicated nature of cases apart from pendency of cases before the Company Law Board (CLB).

Alternate dispute resolution (ADR) mechanism which provides quick, practical and economical settlement is considered as a blessing for the present over burdened Judicial system. Almost all the disputes including commercial, civil, labour and family disputes, in respect of which the parties are entitled to conclude a settlement, can be settled by an ADR procedure.

Arbitrability of Disputes

Section 8 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) states that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration. The application shall be accompanied by the original arbitration agreement or a duly certified copy thereof.

Arbitration may be commenced or continued and an arbitral award made even if the application under Section 8 is pending before the judicial authority. Section 45 of the Act states that notwithstanding anything contained in Part I of the Arbitration Act or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial



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authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Section 46 of the Arbitration Act states that any foreign award which would be enforceable under Chapter I of Part II (relating to "enforcement of certain foreign awards") of the Act, shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defense, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award. The Supreme Court in *Kalpana Kothari v. Sudha Yadav*, (2002)(1)SCC 203, held that every judicial authority before which an action has been brought in respect of a matter which is a subject matter of arbitration agreement is under a duty to refer such a dispute to the mechanism agreed upon by the parties, and hence, the spirit of the provision as well as its true meaning has to be given due effect wherever the issue of reference under section 8 of the Arbitration Act is being brought up.

Since this is a mandatory provision the core issue is whether all disputes arising out of Joint Venture, Share Subscription/shareholders' agreement, Articles of Association should be redressed by the process of arbitration alone or could they be decided by any other Court or Tribunal. The Company Law Board conducted a vast survey of authorities on the conflict between arbitration clauses and jurisdiction under Sections 397 and 398 for prevention of oppression and mismanagement. Under the old Act viz. Arbitration Act, 1940, the court had discretion either to stay the legal proceedings and to refer the parties to arbitration, or to allow the proceedings to go on. Under the 1996 Act there is no such discretion. The parties are bound by their arbitration agreement and the court has no discretion to relieve them of it. Accordingly, the CLB held in *Naveen Dedia v. Chennai Power Generation Ltd.*, (1999) 95 Comp Cas 640(CLB-PB) : (1998) 4 Comp LJ 128 that proceedings under sections 397 and 398 would become affected under the 1996 Act by the existence of an arbitration clause.

The CLB must see that the requirements of reference under Section 8 of the Arbitration and Conciliation Act, 1996 (the Act) are satisfied. There should be binding agreement in existence [*Vijay Kumar Chopra v. Hind Samachar Ltd.*, (2001) 2 Comp LJ 133(CLB-PB-N. Delhi)]. The CLB cannot make an order of reference unless the affected party applies for it. The CLB does not have the power to stay the proceedings before it. It can only order a reference. *EIH Ltd. v. Mashobra Resort Ltd.*, (2000) 4 Comp LJ 133 (CLB):(2002) 38 SCL 562. The application under

Section 8 of the Act should be made before making the first statement on the petition. In *VLS Finance Ltd. v. Sunair Hotels Ltd.*, (2002) 111 Comp Cas 403, *GTP Granites Ltd. v. Aurora Trading Co. Ltd.*, (2003) 41 SCL 1018 (CLB), the application was not allowed because it was not filed before making the first statement on the petition.

The parties to the company petition and to the arbitration agreement should be same and the CLB should see to it that by relegating the matter to Arbitration, the other issues and the subject matter will not remain unattended or unresolved [*M/s Bialelli Industries S.P.A v. Shri Rachit Suresh Gangar & Ors.*, CLB, Mumbai Bench Order dtd. 02/05/2012, CA NO.123 of 2011 in CP 48 of 2011]. Also by virtue of the provisions of the Arbitration and Conciliation Act, 1996, an order of the judicial authority under section 8 of that Act ordering the parties to make a reference to arbitration or refusing to do so is not appealable. The same would hold good of an order of the Company Law Board [*Hind Samachar Ltd. Re.*, (2002) 4 Comp LJ 1(P&H)]. Matters which are the subject matter of a petition and which are not covered by the arbitration clause and, therefore, the arbitrator could not go into them for want of jurisdiction, have to be decided by the CLB [*Khandwala Securities Ltd. v. Kowa Spg. Ltd.*, (1999) 21 SCL 269: (2000) 1 Comp LJ 104 (CLB-PB)].

Object of Section 397/398 and Jurisdiction of CLB

Chapter - VI of the Companies Act, 1956 deals with oppression and mismanagement and contains sections 397 to 409, important sections being 397, 398, 399, 402 and 403. While section 399 deals with the qualification for approaching the CLB for seeking relief under section 397/398, section 397/398 deal with the issues as to what constitutes oppression and mismanagement and the powers of the CLB. While section 402 is specific to the powers of Company Law Board, section 403 deals with the scope of passing interim orders by the Company Law Board pending a main petition under section 397/398. There are many precedents on the object and the scope of section 397/398 of the Act. The powers of CLB under section 397 are very wide and discretary, as the object of Section 397 and 398 is to put an end to the matters "complained of" and "to regulate the affairs of the company".

Companies are formed based on the principle of rule of majority and due to benefits attached to it. Obviously, majority rule prevails under Company Law with certain restrictions or limitations. While the majority is allowed to go ahead with their decisions for the overall benefit of the Company, the majority is not supposed to oppress the minority or mismanage the Company's property. There should be proper protection to the interests of every shareholder in a Company or the minority. When there is oppression or mismanagement in the Company, despite other remedies, the most preferred remedy is to



approach the Company Law Board under section 397/398. The Companies Act, does not define the term "oppression" and mismanagement".

Oppression, according to the Dictionary meaning of the word, is any act exercised in a manner burdensome, harsh and wrongful. The meaning of the term 'oppression' was explained by Lord Cooper in the Scottish case of *Elder v. Elder and Watson Ltd.*, thus: "The conduct complained of should be at the lowest involve or visible departure from the standards of fair dealing and a violation of the conditions of fair play or which every shareholder who entrusts his money to a company is entitled to rely." The Supreme Court in *Shanti Prasad v. Kalinga Tubes Ltd.* (1965) 35 Comp Cas 351 held that the act of oppression must involve an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.

Sections 397 and 398 are intended to avoid winding up of the company if possible and keep it going while at the same time relieving in minority. In *Haryana Telecons Ltd v. Sterlite Industries (India) Ltd* (1999) 5 SCC 588, it was held that an arbitrator, notwithstanding any agreement between the parties, would have no jurisdiction to order winding up of a company since such power is conferred on a High Court by the Companies Act and referral of a winding up petition under Section 8 of the Arbitration and Conciliation Act was dismissed.

The Company Law Board, with certain express limitations, exercises all powers in order to set the things in the Company right and to prevent the acts of oppression and mismanagement. In view of the complications and the stakes, a shareholder or a petitioner in a petition under section 397/398 seeks immediate relief. However, established procedure and legal principles cannot be overlooked. It is true that there should be an effective remedy to the shareholders or the minority shareholders when they approach the Company Law Board showing oppression and mismanagement in the Company. But, inevitably, there are many technical things in the course of proceedings before the Board. Adjudication of corporate disputes under section 397/398 requires expertise and it's one of the reasons for establishing CLB/Company Law Tribunal.

Sometimes, there may not be any need for the Board or the Company Court to interfere and it may be enough if a particular issue is decided among the shareholders with the process agreed by them. At times shareholders may do forum-shopping and may feel comfortable approaching the CLB though a particular dispute can be decided by a civil court. In such cases CLB can seriously look into the issues of Arbitration or refer the dispute to the arbitration and need not entertain the application under section 397/398.

The disputes under Section 397/398 of the Companies Act arising out of Joint Venture Agreement, Shareholders

The Company Law Board, with certain express limitations, exercises all powers in order to set the things in the Company right and to prevent the acts of oppression and mismanagement. In view of the complications and the stakes, a shareholder or a petitioner in a petition under section 397/398 seeks immediate relief. However, established procedure and legal principles cannot be overlooked.

Agreement, AOA, etc. mainly relates to the management functions and control of the company where invariably the aggrieved person/group alleges non-compliance of the terms of the agreements and / or AoA. The allegations generally include the following issues:

- Non-appointment of directors nominated by the other group or person-non filing of Form 32 with ROC
- Manner of utilization of funds
- Deadlock in meetings
- Utilisation of funds of the company without knowledge of other group, taking loans
- Non-furnishing of minutes and or/financial information required by the other group or person
- Implementation of projects without the consent of the other group
- Implementing project that is rejected by the other group
- Not sending the notice of meeting, non-provision of agenda of the meeting etc.
- Effecting changes in the shareholding pattern in detriment to the other person or group
- Violation of the provisions of the articles of association

The Companies Act empowers CLB to decide the issues relating to oppression and suppression of minority by majority and *vice versa*, mismanagement of the finances and affairs of the company, non-registration of share transfers, rectification of members register, take inspection, etc. The CLB looks into the disputes raised and allegations made in the petition to ascertain whether the allegations relate to the violation of the contractual terms of the contract or any violation of the provisions of the Act and /or the AoA of the company.

If the allegations pertain to the violation of the Statute or AoA or in relation to the rights of the oppressed person in his capacity as a member of the company, then it refuses to refer the parties to arbitration [*Griesheim GmbH v. Goyal MG Gases Pvt Ltd*, (2004) 62 CLA (CLB-Del)] More so, in a petition where allegations pertain to oppression and mismanagement such



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dispute cannot be referred to arbitration [*Sudershan Chopra v. CLB*, (2004) 64 CLA 214 (P&H)]. The CLB refused to refer the parties to arbitration in *Gautam Kapur v. Limrose Engineering* and *Lammertz Industriadel GmbH v. Altek Lammertz Needles Ltd.* on the above reasoning.

The rationale of the CLB is legally sound because the Companies Act, 1956 is a special Act compared with the Arbitration and Conciliation Act, 1996 where the latter Act is general as far as arbitration is concerned and the former is special as far as violations of its provisions are concerned. Since the CLB is a special Tribunal specifically established to deal with and adjudicate on issues resulting in violations of the Act the provisions of arbitration would have no application to determine such issues. Further, when the acts of the oppressor infringe the rights of the oppressed such infringement or violations cannot be adjudicated through the process of arbitration because violation of statutory rights is not the subject of arbitration agreement. For example, disputes relating to the statutory rights under the Rent control Act, Succession Act, Debt Recovery Act etc., cannot be adjudicated by arbitration but only by the special judicial authority prescribed under the statutes. In other words, disputes arising out of violation of statutory rights and duties are not arbitrable disputes.

To the extent possible, difference between the shareholding groups in any Company is to be addressed and every effort is to be made to ensure that the Company functions smoothly rather resorting to winding-up. The same is the object behind constitution of BIFR and sections 391 to 394 of the Companies Act, 1956. It is more important to protect the interests of the shareholders in a Company. At the same time the relations with foreign states cannot be ignored. There should be appropriate platform given to in case of cross border transaction to redress the grievances of aggrieved foreign investors. It is challenging for the CLB to deal with the applications under Section 8 of the Arbitration and Conciliation Act, especially keeping in mind simultaneously the complications involved in matters under Section 397/398, public policy, national interest, international trade policy, relations with foreign states and the principle of fair and equitable justice.

Complications under section 399

Section 399 of the Companies Act, 1956 deals with the issue as to who can approach the Company Law Board under section 397/398. It lays down a qualification. Among the minority group, every shareholder may not be able to pursue the issue before the Board against the Majority. As such, the provision talks about consent of members in favour of applicant who signs the papers and presents the application to the Board under section 397/398. We have precedents even on the issue of consent, the complicated thing being the precedent saying that the shareholders giving consent should apply their mind as to why they are consenting.

A shareholder is a member of a Company. An illegal transfer of

shares and the dilution of existing shareholding are normally construed as oppression. When a past member challenges the transfer of his shares by the majority in the Company and when the application is not maintainable if it is assumed that the transfer by majority is legal, there will be complications as to whether the application itself is maintainable or not. We have many precedents on this preliminary issue and it is complicated. Normally, an adjudication before the Board under section 397/398 takes time and many disputes get settled in the process. The issue of proceeding against the legal representatives of the majority is another complicated area to look into. Thus, even without going into the issue of oppression and mismanagement, there will be lot of complications in the process and on preliminary issues like maintainability of petition under section 397/398.

Scope of section 397/398 of the Act

There are many precedents on the object and the scope of section 397/398 of the Act. However, the reference made by the Bombay High Court, in *Mauli Chand Sharma and another v. Union of India and others*, (1977) 47 Comp Cas 92 explains the object and the scope of provisions dealing with oppression and mismanagement. The court pointed out :

Chapter II of the Act, which includes section 255, deals with corporate management of the company through directors in normal circumstances, while Chapter VI, which contains sections 397, 398 and 402, deals with emergent situations or extraordinary circumstances where the normal corporate management has failed and has run into oppression or mismanagement and steps are required to be taken to prevent oppression and/or mismanagement in the conduct of the affairs of the company. In the context of this scheme having regard to the object that is sought to be achieved by sections 397 and 398 read with section 402, the powers of the court under the sections can not be read as subject to the provisions contained in the other chapters which deal with normal corporate management of a company. Further, an analysis of the sections contained in Chapter VI of the Act will also indicate that the powers of the court under sections 397 and 398 read with section 402 cannot be read as being subject to the other provisions contained in sections dealing with usual corporate management of a company in normal circumstances.

Matters dealt with by sections 397 and 398 are such that it becomes impossible to read any such restriction or limitation on the powers of the court acting under section 402. Without prejudice to the generality of the powers conferred on the court under these sections, section 402 proceeds to indicate what types of orders the court could pass. Under clause (a) of section 402, the court's order may provide for the regulation of the conduct of the company's affairs in future and under clause (g) the courts order may provide for any other matter for which in the opinion of



the court it is just and equitable that provision should be made. An examination of the aforesaid sections brings out two aspects; first, the very wide nature of the power conferred on the court, and secondly, the object that is sought to be achieved by the exercise of such power, with the result that the only limitation that could be impliedly read on the exercise of the empower would be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by those sections and beyond this limitation which arises by necessary implication it is difficult to read any other restriction or limitation on the exercise of the court's power.

Further, sections 397 and 398 are intended to avoid winding up of the company if possible and keep it going while at the same time relieving in minority shareholders from acts of oppression and mismanagement or preventing its affairs being conducted in a manner prejudicial to public interest and, if that be the objective, the court must have power to interfere with the normal corporate management of the company, and to supplant the entire corporate management, or rather, mismanagement, by resorting to non-corporate management which may take the form of appointing an administrator or a special officer or a committee of advisers, etc., who would be in charge of the company.

Powers of CLB while entertaining applications under section 397/398

There are plethora of judgments on the powers of Company Law Board or the Tribunal under section 397/398 of the Act. While the precedents refer the wording under section 397/398 of the Act which confers widest powers on the Board, there exist complicated issues. Basically, the plain reading of the provisions and the logical analysis makes it very clear that the powers exercised by the Board under section 397/398 of the Act are preventive in nature. Then, what should a shareholder do to get an illegality committed by the majority undone? It's a very very complicated issue and scope of remedial measures under section 397/398 of the Act is interesting and the issue needs to be addressed.

Can a majority approach the Board under section 397/398

Another interesting issue is how to construe "majority" under section 397/398 of the Act and can the majority approach the Board under section 397/398. The concept is that the majority controls the Company and they cannot be overtaken by the minority. But, there can be practical problems where the minority controls the Company warranting interference by the adjudicatory forums like Company Law Board or the Tribunal.

What constitutes "oppression"/"mismanagement"?

1. One can find any number of judgments dealing with the term "oppression" under section 397 and can find so much

narration and precedents on what constitutes "oppression". In view of number of precedents and the law of precedents, a professional is often required to look at all the judgments under section 397/398 of the Act in order to substantiate the allegations or counter the Petition. Issue is not that much simple as wording under section 397/398 and an order can not be passed in an application under section 397/398 without a detailed probe and enquiry. There is no need on the part of the Companies to ignore the provisions of the Act when their actions are legal. Again, it cannot be said that the mere non-compliance of provisions of the Act be construed as "Oppression" and "Mismanagement".

Need for giving full particulars and the consequence of failure

There is a proposition and it is also expected that a Petitioner who approaches the Board under section 397/398 of the Act should give full particulars. Again, companies may not be able to disclose everything for the reasons known. In such a case, the issue of non-disclosure of certain facts and its bearing on the adjudication of a petition under section 397/398 of the Act is really interesting to look into.

A Petitioner or a professional dealing with an application under section 397/398 should go through all the precedents under the provisions in order to understand the condition precedents for maintaining an application under section 397/398 of the Act.

Events subsequent to presenting a Petition

When disputes arise among shareholders, they tend to do certain acts fearing at the protection of their respective shareholdings. As such it is very often seen that shareholders commit certain things or act in a harsh way against their opponents even during the pendency of an application under section 397/398. This is very complicated issue having a bearing even on the entire adjudication process. Technically, the Petitioner before the Board should amend the Petition to challenge the actions by the majority or the Respondents when he wants to challenge the further illegalities committed by the majority even during the pendency of a Petition under section 397/398. Company Law Board may not be in a position to pass orders without any pleading warranting an amendment to the Petition and an additional pleading.

Disputed facts

Company Law Board cannot overlook other general substantial laws. For example, The Board should rely on the Contracts Act while deciding the validity of an "agreement" entered into by the Company apart from other provisions and the law. Normally, a challenge to agreements and contracts are decided after a full



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trial and it is the practice before Civil Courts.

Application of law of arbitration?

There is a settled proposition that an Arbitration Agreement or a clause cannot oust the jurisdiction of Company Law Board or the Company Court. But, the issue is not that simple. Some times, there may not be any need for the Board or the Company Court to interfere and it may be enough if a particular issue is decided among the shareholders with the process agreed by them.

Application of settled legal principles

It cannot be said that the settled general legal principles are not applicable to a proceeding before the Board under section 397/398 and again it cannot be said that all the settled legal principles applies even to an application before the Board under section 397/398 of the Act. For example, it is very frequently seen that an averment or a dispute in an application under section 397/398 of the Act, could have been the subject matter before some other forum like Civil Court, but, still the Company Law Board cannot say that it will not look into the issue applying the principle of *sub-judice*. Differentiation has been made between corporal rights and general civil rights.

Public interest under section 397/398 of Companies Act 1956

Dealing with the issue of public interest under section 397/398 of the Companies Act, 1956 and the requirement on the part of the Company Law Board to look into many issues while entertaining a petition under section 397/398 of the Companies Act, 1956, The High Court of Bombay in *Bhalchandra Dharmajee v. Alcock, Ashdown and Co.Ltd* 1972 (42) CC 190 was pleased to observe as follows: "(6) After the amendment of sections 397 and 398 of the Companies Act by sections 10 and 11 of the Companies (Amendment) Act (LIII of 1963), it would appear that the affairs of the company have to be conducted not only in the best interest of its members for their profit but also in a manner which is not prejudicial to public interest. The element of public interest enters into the management of the companies after 1963.

The modern corporation has become the accepted instrument of social policy, because it affects a large part of the economic life of the community. It is therefore necessary that pending the hearing and final disposal of these petitions, an arrangement ought to be made for the collection, realisation, preservation and maintenance of those assets of the company which are in the possession of the company. It is also necessary that an investigation ought to be made into the affairs of the company to find out if it is possible to resuscitate the company. It is only after such investigation that one can come to a conclusion as to whether the company ought to be wound up or whether it ought

to be kept alive so as to incur further liabilities and to diminish the dividend payable in case of winding up to the existing creditors or the shareholders.

Their interests also have not to be sacrificed. It is therefore necessary that pending the hearing and final disposal of these petitions, an arrangement ought to be made for the collection, realisation, preservation and maintenance of those assets of the company which are in the possession of the company. It is also necessary that an investigation ought to be made into the affairs of the company to find out if it is possible to resuscitate the company. It is only after such investigation that one can come to a conclusion as to whether the company ought to be wound up or whether it ought to be kept alive."

Law of Arbitration and section 397/398 of Companies Act, 1956

Many are of the view that certain issues can not be referred to Arbitration and the Arbitration mechanism can not fulfill the object of certain legislations effectively; the apparent example being the proceeding under section 397/398 of the Companies Act, 1956. All are aware of the complications in getting the corporate disputes resolved and the complications in a proceeding under section 397/398 of the Companies Act, 1956. It is also very frequently seen now in a proceeding/petition under section 397/398 of the Companies Act, 1956, that an application under section 8 of Arbitration and Conciliation Act, 1996 is being filed based on an Arbitration Clause asking for reference of the dispute to the Arbitration. Already there is a perception among corporates that the remedy provided to the shareholders when they are oppressed or the company is mismanaged, is not effective.

Why arbitration not advisable in section 397/398 cases

1. Adjudication of a corporate dispute under section 397/398 requires expertise and that is also a reason for constituting "Company Law Board" or the "Tribunal" especially under the provisions of Companies Act, 1956.
2. A proceeding under section 397/398 can not be seen as a proceeding between or among the shareholders only and it is the responsibility of the Company Law Board to look into the functioning of the company, other shareholders, other stake holders, rights of other third parties who are not involved in the proceeding too apart from public interest. In view of the scope of a proceeding under section 397/398 an Arbitrator or an Arbitral Tribunal can not effectively deal with a case of oppression and mismanagement.
3. A proceeding under section 397/398 will normally be based on a series of acts on the part of the majority in the Company and as such no Arbitration clause can effectively cover the scope of allegations in a petition under section 397/398 of the Companies Act, 1956.



4. The object of the Company Law Board under section 397/398 is to 'put an end to the matters complained of' and in order to 'regulate the affairs of the Company'. In view of the scope of section 397/398 and the object, Company Law Board may simultaneously look into a particular issue though that particular issue is a subject matter of a Civil Suit or some other proceeding. The object of section 397/398 is different from the scope of a Civil Suit or some other proceeding.
- Thus, it is likely that the object of section 397/398 and other provisions of the Companies Act, 1956 may get defeated if law of Arbitration is made applicable automatically or mechanically. Without referring to any judgments on the issue, It is felt that the jurisdiction of the Company Law Board/Court/Tribunal under section 397/398 cannot be taken-away unless the Company Law Board/Court/Tribunal feels that there is nothing wrong in referring the dispute to the Arbitration or the Tribunal based on the averments in the Petition and other considerations. It is also true that, at times, share holders will do forum-shopping and may feel comfortable approaching the Company Law Board though a particular dispute can be decided by a Civil Court. This is where the Company Law Board can seriously look into the issue of Arbitration or referring the dispute to Arbitration and infact, logically, the Company Law Board need not entertain an application under section 397/398 of the Companies Act, 1956 at all as nothing prevents the parties to initiate the Arbitral proceedings simultaneously or the option of initiating the Arbitration proceedings is always open to any party despite a petition under section 397/398 of the Companies Act, 1956 being dismissed. From any angle, the jurisdiction of the Company Law Board under section 397/398 of the Companies Act, 1956 need not be taken-away showing an Arbitration clause and if such a proposition is accepted, then, the object of section 397/398 of the Companies Act, 1956 will get defeated. Its another complicated issue and to be handled carefully despite the encouragement to the ADR through Arbitration.

Judicial Review

In *Needle Industries' case* 1981 AIR 1298, 1981 SCR(3) 698 the Supreme Court held that even if a company petition fails to succeed and the complainant does not make out a case of oppression, the court is not powerless to do substantial justice between the parties. In *Needle Industries case* the Supreme Court directed the Indian shareholders to pay the holding company a fair premium on the shares which were part of the rights issue in which the holding company could not participate as the notice did not reach them on time. This direction was issued to meet the ends of justice though the Court clarified that said direction was not the price of oppression, as there is no finding that the Indian shareholders were guilty of oppression. In *Sangramsingh P. Gaekwad*, AIR 2005 SCC 809 the

Supreme Court held that the power of the Court to grant relief in a petition under section 397 is of wide amplitude and that the court can grant appropriate relief even if no case of oppression is made out.

In the recent judgement of the Supreme Court dated 14-3-2008 in *MSDC Radharamanan v. MSDC Chandrasekhara Raja SLP-CNO. 5246 of 2007, 2007138 Comp Cas 897, Mad 2007 80 SCL*, where a father and son were equal shareholders in a company, relations soured between the two and the father, though being the Managing Director, filed a petition for oppression and mismanagement against the son who was the only other director on the Board and an equal shareholder. The Company Law Board did not find any case of oppression but held that since the company was more in the form of a partnership with only two shareholders who were also directors and who could not function together, interest of justice could be served if the son is directed to buy out the shareholding of the father. If the son did not purchase the shares within the specified period, the father thereafter had the right to purchase the shares of the son. The son filed an appeal before the High Court. The High Court (though the father did not appeal against the finding that there was no oppression) held, after going into the facts, that the son was guilty of oppression and upheld the directions of the Company Law Board. The Supreme Court upheld this judgement of the High Court. The Bench of the Supreme Court presided by S.B. Sinha, J. while upholding the judgment of the High Court reiterated that even if no case of oppression is made out the court can grant suitable relief.

Scope of Alternative Dispute resolution Methods

The oppressive acts alleged by one party would not have surfaced at all in the public domain, if there was a consensus among the disputing parties. The effectiveness of alternative dispute resolutions like mediation/ conciliation lies at the initial stage of differences itself. The process and procedures of specific tribunals like CLB are easier than normal Civil Courts, still it is cumbersome and time consuming. In the case of corporate disputes, the ongoing disputes will severely damage the normal functioning of a company - its business gets affected, there will be damage to its image and goodwill.

We are living in a highly competitive environment and each business entity works hard to maintain its place. The valuable time and scarce resources are being wasted in unnecessary legal battles - the results of which sometimes are uncertain. Even where specific protections/ provisions are available in the underlying law, one shall try to resolve the disputes through informal methods wherein the interests of both parties are protected. Alternative dispute resolution methods will help not



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only to solve the differences of parties in a more convenient method but it will keep the human relations out of damage to a great extent. Even on the orders of tribunals established for specific purposes like CLB's as seen above, the aggrieved party may often prefer appeals to the High Courts and ultimately to the Supreme Court. This again drags the solution and both the parties will be bleeding heavily due to the time overrun and the cost. Whereas under mediation, the differences can be solved on the basis of give and take policies of the parties on the guidance of the mediator. As it is a voluntary settlement the parties will honour their respective obligations than finding rescue provisions through repetitive appeals. Even matters which qualify to be a fit and proper case to complain of oppression and mismanagement within the meaning of section 397/398 of the Companies Act, could be solved outside the legal forums particularly in situations where there is a contractual obligation between the parties and the matters alleged arise out of breach of contract or trust.

A perusal of Section 7 of Arbitration and Conciliation Act, 1996 would reveal that an 'Arbitration Agreement' means the agreement by the parties to submit the disputes (present or future) to arbitration and that it shall be in writing and signed by the 'parties'. Either party voluntarily refers the dispute to arbitration or one of the aggrieved parties applies in the court of law to refer the same to an arbitrator. Section 8 stipulates that the party who claims the existence of arbitration agreement may apply 'not later than when submitting his first statement on the substance of the dispute', calling for the arbitration. For a judicial authority to refer the parties to arbitration all the conditions stipulated in Section 8 have to be fulfilled. Such conditions are: an action should have been brought before a judicial authority, the matter in action should be a subject of arbitration agreement and a party to the agreement should apply to the judicial authority, such application should be made not later than when submitting his first statement on the substance of the dispute. the application has to be accompanied by the original or duly certified copy of the arbitration agreement.

Once all these conditions are fulfilled, the judicial authority is bound to refer the parties to arbitration. Proceedings under sections 397 and 398 are not outside the purview of the Sections 8 and 45 of the Arbitration and Conciliation Act, 1996. Once the CLB is convinced that matters governed in a petition under section 397/398 relate to or arise out of or is in connection with an arbitration agreement and the relief appropriate to the facts of the case could be determined/granted by an arbitrator, then, the CLB is bound to refer the matter to arbitration in terms of the mandatory provisions of Section 8 or Section 45 of Arbitration Act provided that the Agreement is not null and void, inoperative or incapable of being performed. If any of the requirements of Section 8 or Section 45 is not satisfied then

CLB can decline to refer the dispute to arbitration.

The judicial authority, *prima facie*, has to come to the conclusion, that the requirements of Section 8 or Section 45 have been fulfilled, before referring the parties to arbitration. By virtue of the mandate of the provisions of Section 8/45 of the Arbitration Act, once the ingredients of this section are satisfied, then even the matters covered under section 397/398 of the Companies Act shall have to be referred to Arbitration in terms of Section 8 or Section 45 as the case may be of the Arbitration Act.

The Arbitration Act helps in speedy justice and decreases the load of litigation on Indian judiciary. However, it is very stringent so far as appeals are concerned. It does not provide for an appeal against an arbitral award, except on the grounds stated in Section 34(2). The Arbitration Act is also silent upon any qualifications that a person must possess to be appointed as an arbitrator. These provisions can lead to gross injustice to the parties in serious matters like oppression and mismanagement in a company.

Lack of Awareness, the deterrent

Lack of awareness about alternative dispute resolution methods is the main reason why these have not found the required acceptability. More awareness should be created among the public to encourage them to resort to alternative methods for solving their disputes. The Arbitration and Conciliation Act, 1996 enables the certified tribunals to refer disputes to arbitration. However, many a times there are differences of opinion on selection of arbitrators and warrants the interference of High Courts to appoint an arbitrator. It points to a direction where a change in the attitude of the people is required. Alternative Dispute Resolution Centers have to be established in all potential areas and the courts and tribunals should give more stress on mediation and conciliation methods to create visibility of this system and encourage people to approach the court as only the last resort and only after they exhaust other alternative methods.

In the case of corporate disputes, the underlying legislations should provide for resolving disputes informally. Even the Memorandum and Articles of Association of companies should recognize the settlements reached through mediation, arbitration and conciliation among the members where public interest is not affected and the informal dispute resolution methods will be an effective remedy to the situation. Following disputes could be referred to arbitration:

- Disputes relating to Share Purchase agreements
- Disputes in relation to Joint ventures between a company and its joint venture partners
- Settlement of oppression and mismanagement by the Board of Directors of the Company
- Disputes between Families & Relatives
- Other disputes depending upon the facts



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Protection of minority rights enshrined under the Companies Act are statutory rights and the powers conferred upon CLB are statutory powers. Shareholders who are parties to an arbitration agreement can neither take away those statutory rights nor enter into any agreement ousting the jurisdiction of CLB nor can any other judicial forum or court exercise those powers specially conferred upon CLB.

While the general rule is that the decisions of majority would prevail, such decisions can be challenged if they are oppressive of the rights of shareholders or if the result of such decisions unfairly prejudice the minority shareholders or if the conduct of the majority could be termed as unfair or lacking probity. In short, if the majority acts in a manner oppressive of the minority, minority could initiate a legal action against the majority or those who are in the control of the management of the affairs of the Company. Of course, it is not uncommon to find cases where the majority gets oppressed in the hands of the minority. Even in such circumstances, the jurisdiction conferred upon CLB comes handy.

Special Judicial Forum and Conferred Powers

Sections 397 and 398 of the Act contain the most fundamental provisions dealing with oppression and mismanagement. Cases of oppression and mismanagement are adjudicated by a special quasi judicial forum styled as "Company Law Board" [CLB] constituted under Section 10E of the Companies Act, 1956 [the Act]. Sub-section (1A) of Section 10E of the Act states that the CLB shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law. CLB enjoys only those powers and carries out only those functions that are conferred upon it. Section 402 and 403 of the Act confer upon CLB enormous powers under to grant suitable relief to parties to cases of oppression and mismanagement. As per Section 10F of the Act, appeals against Orders of CLB could be preferred before the jurisdictional High Courts.



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Arbitration Agreements - the chosen mode of dispute resolution

Agreements such as joint venture agreements, investment agreements, share subscription agreements, shareholder rights agreement, share acquisition agreements, confer certain special rights upon promoters, sponsors, investors, acquirers, certain specified shareholders or shareholder groups. Invariably, the covenants of such agreements are incorporated in Articles of Association also. Leaving aside possible questions challenging validity of such covenants under Section 9 of the Act, it must be noted that once incorporated into the Articles, such covenants enjoy the benefit of Section 36 of the Act, whereby they bind not only the shareholders who are parties to any such agreements but also all other shareholders and also the company. When a covenant binds the company, automatically it binds the Board of Directors also. Thus incorporating those covenants by altering Articles of Association creates valuable rights and binding obligations.

Breach of covenants arising from deliberate non-compliance of mandatory covenants and conditions and denial of rights enshrined in such agreements lead to disputes between parties to such agreement. Such instances might constitute oppression also. Invariably, such agreements include 'arbitration' as the chosen mode for resolution of disputes between parties. However in certain situations, invoking the jurisdiction of CLB by exercising statutory rights of shareholders under Section 397 and 398 of the Act would appear to afford them a necessary relief than, or in addition to, adopting the agreed mode of dispute resolution. Answering parties [Respondents] in such proceedings would naturally invoke the provisions of Arbitration and Conciliation Act, 1996 [ACA] in order to put an end to or scuttle the proceedings before CLB. In such situations, conflict arises. Thus it becomes essential to have an indepth understanding of the inter play between these laws and the applicable principles and propositions.

ACA - Courts must play a minimum role!

ACA was enacted to replace the outdated Arbitration Act, 1940. ACA consolidates the law and contains common and separate provisions with respect to domestic commercial arbitrations, international commercial arbitrations and for enforcement of awards. It contains the law relating to conciliation also. It is based on the Model Law on International Commercial Arbitration adopted by the UN Commission on International Trade Law (UNCITRAL), 1985. ACA came into force from 16th August, 1996. Part I of ACA contains provisions relating to domestic arbitration and domestic arbitral awards. Part II of ACA contains provisions relating to enforcement of foreign awards, both New York Convention Awards and Geneva

Courts have time and again emphasized on legislative objective behind the enactment of ACA by taking note of the need to minimize judicial intervention; ensure speedy adjudication of disputes and reduce grounds of challenge to arbitral awards. However even after more than 15 years of enactment of ACA, the judicial canvass relating to arbitration still appears like a moon shine with a lot of grey areas.

Convention Awards. Part III relates to Conciliation.

Courts have time and again emphasized on legislative objective behind the enactment of ACA by taking note of the need to minimize judicial intervention; ensure speedy adjudication of disputes and reduce grounds of challenge to arbitral awards. However even after more than 15 years of enactment of ACA, the judicial canvass relating to arbitration still appears like a moon shine with a lot of grey areas.

In *Electrosteel Castings Ltd. v Binay Prakash and Ors.*, MANU/JH/0105/2008, in an appeal under Section 10F of the Act, the Jharkhand High Court held that "*the finding of CLB that arbitration has not been intended by the parties to be the sole remedy or mechanism to resolve disputes arising out of or in connection with the agreement; is wholly untenable.*"

Can Arbitration Agreement bar the jurisdiction of CLB?

Section 5 of ACA provides for the extent of judicial intervention in matters of arbitration governed by Part I and lays down that notwithstanding anything contained in any other law for the time being in force, no judicial authority shall intervene except to the extent as provided in Part I.

Section 8 of ACA states that if a Party to an Arbitration Agreement approaches a Court or any other judicial authority [such as CLB] for adjudicating a dispute which should have been resolved only through an arbitration process, the other party or parties [who are most likely to be the defendants or respondents in such suit or other legal proceedings] have a statutory remedy against any such abuse of process of law. Such party or parties who are aggrieved by such a suit or legal proceeding may bring to the notice of the court or judicial



authority about the existence and scope of the Arbitration Agreement amongst the contesting parties. In such a case, the court or other judicial authority such as the CLB would be bound to refer the parties to arbitration. In short, Section 8 enjoins upon a court or judicial authority before which an action is brought, to refer the matter to arbitration, if the court or judicial authority is satisfied that it is a fit case to issue an order directing the parties to suit or legal proceedings to arbitration.

The Supreme Court in *P. Anand Gajapathi Raju and Ors. v. P.V.G. Raju (Dead) and Ors.* MANU/SC/0281/2000, while examining the conditions under which Section 8(1) and (2) of the ACA could be enforced, observed as under:-

"The conditions which are required to be satisfied under sub-sections (1) and (2) of Section 8, before the Court can exercise its powers are:-

- 1) there is an arbitration agreement;
- 2) a party to the agreement brings an action in the court against the other party.
- 3) subject-matter of the action is the same as the subject matter of the arbitration agreement;
- 4) the other party moved the court for referring the parties to arbitration before he submits his first statement on the substance of the dispute.

In *Sukanya Holdings Private Limited v. Jayesh H Pandya and Another* AIR 2003 SC 2252, decided on 14th April 2003, the Supreme Court had observed as follows:

- "For interpretation of Section 8, Section 5 would have no bearing because it only contemplates that in the matters governed by Part I of the Act, judicial authority shall not intervene except where so provided in the Act
- Except Section 8, there is no other provision in the Act that in a pending suit, the dispute is required to be referred to the arbitrator
- Further, the matter is not required to be referred to the Arbitral Tribunal, if 1) the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; 2) in a pending suit, such application is not filed before submitting first statement on the substance of the dispute; or 3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof
- This would, therefore, mean that the Arbitration Act does not oust the jurisdiction of the Civil Court to decide the dispute in a case where parties to the Arbitration Agreement do not take appropriate steps as contemplated under sub-Sections (1) and (2) of Section 8 of the Act"

Section 8 of ACA vis-à-vis Section 34 of Arbitration Act, 1940

Though Section 8 of ACA is in 'pari materia' with Section 34 of the Arbitration Act, 1940 [the predecessor of ACA], there are noticeable distinguishing features. In *Rashtriya Ispat Nigam Ltd v. Verma Transport Company* AIR 2006 SC 2800, decided on 08th August 2006, the Supreme Court held as follows:

"The expression 'first statement on the substance of the dispute' contained in Section 8(1) of the 1996 Act must be contra-distinguished with the expression 'written statement as used in Section 34 of the Arbitration Act, 1940'. It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived its right to invoke the arbitration clause. If an application [under Section 8] is filed before actually filing the first statement on the substance of the dispute, in our opinion, the party cannot be said to have waived its right or acquiesced itself to the jurisdiction of the court".

Timing of Application under Section 8 of ACA

The decision in *Sudarshan Chopra and Ors. v. Company Law Board and Ors.* [2004] 52 SCL 429 (P&H), lays down the proposition that a judicial authority cannot refuse to refer the matter to Arbitration [in pursuance of an application under Section 8 of ACA] even after the submission of the first statement on the substance of the dispute if parties do not object to such application.

In *DR.G.L.Purohit v. Dr. S.S. Agarwal and Ors.*, [2011]163 Comp Cas 205(CLB-Delhi), decided on 05th August 2010, it was held that the timing of the application under Section 8 of the Arbitration and Conciliation Act, 1996, is an essential pre-requisite to be considered for maintainability of such an application. But by consent of the parties, the matter may be referred to arbitration even after the submission of the first statement of the party before the judicial authority and, conversely, by implication, if a party objects to the application such a reference cannot be made.

Commonality of Subject Matter

For the purpose of invoking Section 8 of ACA, the matters complained of in a suit or other legal proceeding should be a matter covered by the Arbitration Agreement. The scope of the Arbitration Agreement and the powers of the Arbitral Tribunal should permit adjudicating such disputes and granting the reliefs prayed for.

In *Spray Engineering Devices Ltd. v. Shree Saibaba Sugars Ltd. and Another* [2008] 145 Comp Cas 166 (CLB), the CLB, upon finding that the matters complained of in the petition cannot be adjudicated without referring to the Arbitration Agreement, in its decision on 17/03/2008, held that *nothing remains in the petition which could be tried by it.*

In this case, the CLB laid down the following legal propositions:

- Even otherwise, if a very little part, to be specific, some irregularities fall outside the scope of Arbitration Agreement,



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then for that little cause, the jurisdiction of the agreement cannot be avoided by the petitioner because if some part of the dispute filed before the Court deserves to be referred to the arbitrator then not only that part but the entire case must be referred to the arbitrator, the concept of the half reference is highly unlawful as well as inconvenient

- In other words, it has to decide whether there is a valid agreement and whether the dispute that is sought to be raised before it is covered by arbitration clause
- Where the allegations of Oppression and Mismanagement contained in the petition can be adjudicated without reference to the terms of the arbitration agreement the question of referring the matter to arbitration does not arise [Conversely if the allegations cannot be maintained without referring to the Arbitration Agreement, CLB will direct the parties to have their disputes resolved through arbitration.]

In *E-Logistics Private Ltd and Another v. Financial Technologies (India) Ltd*, [2007] 139 Comp. Cas. 311 (CLB), in its decision on 26/12/2006, while directing the parties to arbitration, the CLB held that the *grievances of the petitioner*, though styled as acts of oppression and mismanagement in the affairs of the Company, *are directly flowing from the agreements and therefore, those disputes cannot be adjudicated in the present proceedings*, without any reference to the terms of the agreements.

In *Garden Finance Ltd. v. Prakash Inds. Ltd. and Anr.* AIR 2002 Bom 8, decided on 24th April 2001, the Bombay High Court held that *"if there is no identity of subject matter of the suit and the arbitration agreement, Section 5 of the Arbitration Act would also not come in the way of this Court entertaining the present suit"*.

In *Sukanya Holdings case* cited *supra*, Supreme Court held as under:

- There is no provision in the Act that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject matter of the suit to the arbitrators
- Thirdly, there is no provision - as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement
- The relevant language used in Section 8 is - *"in a matter which is the subject matter of an arbitration agreement"*. [If it is so the] court is required to refer the parties to arbitration. Therefore, the suit should be in respect of *'a matter'* which the parties have agreed to refer and which comes within the ambit of arbitration agreement

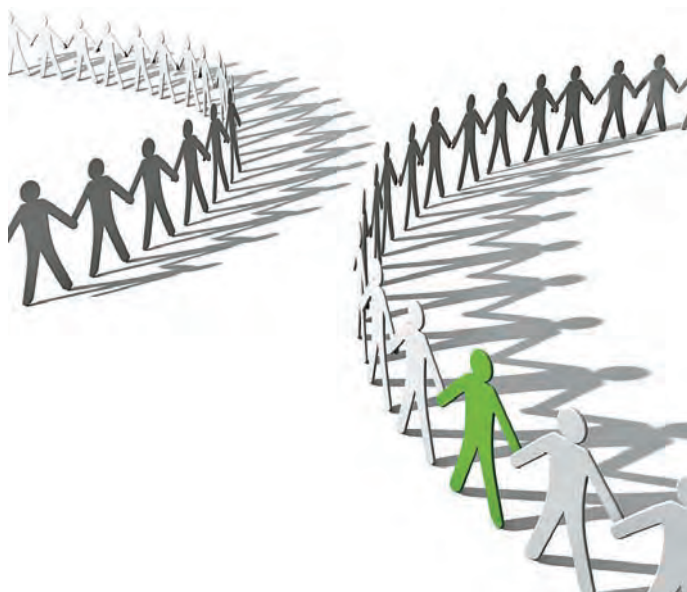
- Where, however, a suit is commenced - *"as to a matter"* which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The word *'a matter'* indicates entire subject matter of the suit should be subject to arbitration agreement
- It would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action that is to say the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, *it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed*
- Such bifurcation of suit in two parts, one to be decided by the arbitral tribunal and other to be decided by the civil court would inevitably delay the proceedings
- The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums

Existence of Arbitration Agreement

In *Prakash K. Raghavendra Rao v Sriram Transport Finance Co. Ltd. and Anr.* AIR 2008 Ker 234, the Kerala High Court, while disposing of a writ petition, held that *"the enquiry contemplated under Section 8(1) of the Act is only to find out whether the agreement produced by one of the parties is an agreement executed by the parties. If it is admitted by the parties that it is an agreement, no other evidence is necessary. Then what is to be looked into is whether the agreement contains an arbitration clause. If one party produces an agreement and the other party disputes the execution of the agreement, Court has to enter a finding whether the agreement so produced was executed by the parties or not. It could be by recording necessary evidence or based on the affidavits or other sufficient materials. If it is found that the agreement produced is the one executed by the parties, and its execution is not vitiated and that agreement contains an arbitration clause, Court shall refer the parties to arbitration, as provided under Section 8(1)."*

Serious Allegations of Fraud and Manipulation of Accounts

In *N. Radhakrishnan v. Maestro Engineers and Ors.*, (2010)1MLJ401(SC), the Supreme Court quoted with approval



the decision of the Madras High Court in *Oomor Sait HG v. Asiam Sait*, 2001 (3) CTC 269 wherein it was held that "*Civil Court can refuse to refer matter to arbitration if complicated question of fact or law is involved or where allegation of fraud is made....Allegations regarding clandestine operation of business under some other name, issue of bogus bills, manipulation of accounts, carrying on similar business without consent of other partner are serious allegations of fraud, misrepresentations etc., and therefore application for reference to Arbitrator is liable to be rejected.*"

Commonality of Parties

A party who applies to a court or any other judicial authority under Section 8 of ACA must show that all the necessary parties to the suit or legal proceedings are parties to the Arbitration Agreement and as aforesaid the subject matter of the suit or other legal proceeding relates to a matter covered by the arbitration agreement and hence the matter must be referred to arbitration. Courts have deprecated the tendency to scuttle the above requirement by addition of some parties [who may not be necessary party or against whom no relief would have been sought].

In *Sundaram Brake Linings Ltd v. Kotak Mahindra Bank Ltd., M.S. Subramanian and G. Manikandan*, (2010) 4 Comp LJ 345 (Mad), in a decision on 24/07/2008, the Madras High Court held that the decision of the Supreme Court in *Sukanya Holdings* cited *supra* does not lay down as a proposition of law that the moment a person who is not a party to an Arbitration Agreement is roped in, the jurisdiction of the Arbitral Tribunal stands ousted. In a Civil Suit, the plaintiff is the *dominus litus* and he may cite any one as a party, at the time of institution. Such a privilege

granted to a plaintiff cannot be (mis)used as a gate pass to avoid an Arbitration Agreement.

In *Ministry of Sound International Ltd. v. Indus Renaissance Partners Entertainment Pvt. Ltd.* 156 (2009) DLT 406, the Delhi High Court held that courts may in a given case examine the question with reference to substance and not merely form of plaint, lest in a case a plaintiff may deliberately, intentionally introduce parties to get over the arbitration agreement. Each case, therefore, has to be scrutinized carefully.

Company should be a Party

In proceedings before CLB, invariably the company, in relation to the affairs of which a petition under Sections 397 and 398 is filed, should be the first respondent. Courts have rejected applications under Section 8 of ACA if it is found that the company is not a party to the Arbitration Agreement in question. That is one of the reasons why the company is invariably added as a party in contracts relating to the affairs of a company.

In *Enercon GMBH v. Enercon (India) Ltd* [2008] 143 Comp Cas 687 (CLB), while dismissing respondents' application under Section 8 of ACA, the Principal Bench of CLB held that "*considering the fact that the company is not a party to SHA and that some of the allegations cannot be traced to the terms of SHA the application (under Section 8 of the Arbitration and Conciliation Act, 1996) is not maintainable.*"

In *Dr. G. L. Purohit v. Dr. S.S. Agarwal and Ors.*, cited *supra*, rejecting an application praying for a direction to refer parties to arbitration, the CLB observed that "*the Company in relation to the affairs of which the Company Petition has been moved is not a party to the Arbitration Agreement.*"

Abandonment of Arbitration - Conduct of Parties is Crucial

In *Bharati Televentures Private Ltd v. DSS Enterprises Private Ltd and Ors.* 123 (2005) DLT 532, it was held that once a party has invoked the jurisdiction of a civil court, it cannot subsequently rely upon the arbitration clause. Once jurisdiction of the civil court is invoked by a party, it would tantamount to abandonment of the arbitration clause. However in the said case, the defendant Nos.1 and 2 had invoked the arbitration clause by filing an application and have been pressing the present application. Subsequent to filing of the present application, defendant Nos. 1 and 2 had filed a civil suit but the said suit was withdrawn. Taking a note of the same the High Court held that mere filing of the civil suit in the present case will not amount to abandonment or waiver of the right to invoke arbitration. The High Court had observed that if the defendants had first filed the civil suit and thereafter their application



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for referring the matter to arbitration, it would have been a different issue.

In *Sudarshan Chopra and Ors. v. Company Law Board and Ors.* [2004] 52 SCL 429 (Punjab & Haryana), after taking note of the various applications taken out by the Group A revealing that the substance of the dispute, the Punjab and Haryana High Court had held that "Group A had not only abandoned its claim to seek arbitration but had even otherwise forfeited this right as it had not submitted to arbitration before it had filed the first substance of its claim before the Company Law Board".

Differences between Section 8 and 45 of ACA

There is a substantial difference between Section 8 in Part I relating to domestic arbitrations and Section 45 in Part II relating to international commercial arbitrations. Section 8 of ACA does not envisage any role to a court or other judicial authority to look into the aspect validity or otherwise of an arbitral agreement. However under Section 45, before directing parties to arbitration, the Court has to satisfy itself that the Arbitration Agreement has not become null and void, inoperative, or incapable of being performed. There is thus a substantial difference between the burden on the court under Section 8 in relation to domestic arbitrations and under Section 45 of ACA relating to international commercial arbitrations while deciding a question whether to direct the suit parties to arbitration or not. Section 45 of the Act does not refer to filing of first statement or written statement or a request for filing of written statement.

Multiple Legal Proceedings may render the Arbitration Agreement inoperative

C.G. Holdings Private Limited and Ors. v. Ramasamy Athappan and Nandakumar Athappan and Ors. [2012] 170 Comp Cas 93 (Mad), was a case where both the parties had moved the CLB with their own petitions under Sections 397 and 398 of the Act. The Appellants before the Madras High Court had moved the Arbitral Tribunal constituted by the International Chamber of Commerce for commencing an international commercial arbitration. In view of multiplicity of proceedings before various courts including those before the CLB, the division bench of the Madras High Court had confirmed the anti arbitration injunction granted by a single judge confirming the finding that the Arbitration Agreement had become inoperative.

In the said case, the Division Bench of the Madras High Court held as follows:

"The waiver is clearly implicit from the acts of the Appellants,

The rights of shareholders to seek remedy against acts of oppression and mismanagement are statutory rights while rights of parties to an Arbitration Agreement are contractual in nature.

which indicates their intention not to proceed with the arbitration. On the facts and circumstances of the case and in view of the pitched battle of litigations between the parties, the learned single Judge rightly held that there is a waiver by estoppel and that the arbitration clause in JVA has become "inoperative". The said conclusion is based on materials on record warranting no interference. We do not find any ground for interference with the order of the learned single Judge."

Appeal against orders of CLB / Courts under Section 8 of ACA

Section 37 of ACA makes it very clear that only those orders which are specified in that section are appealable orders. Section 37 of ACA clearly provides that an appeal shall lie to the court authorised by law to hear appeals from original decrees of the court passing the order under appeal. An order of a Court or Tribunal or CLB under Section 8 of the ACA is not mentioned in Section 37 of ACA at all and therefore there is no appeal against any order of any Court or Tribunal or CLB under Section 8 of ACA. A Division Bench of Delhi High Court in *Tandav Film Entertainment Pvt. Ltd. v. Four Frame Pictures and Anr.* 2010 (114) DRJ 219, while deciding the question whether an appeal would lie against an order passed by a Court under Section 8 of ACA, held that Section 8 of the 1996 Act is peremptory in nature. The Court further held that where an arbitration agreement exists, the Court is under obligation to refer the parties to arbitration in terms of the arbitration agreement. The Court further held the appeal filed against the order referring the disputes to the arbitration and dismissal of the suit is not maintainable.

In *Maruti Clean Coal and Power Limited v. Kolahai Infotech Pvt. Ltd. and Ors.*, MANU/DE/1387/2010, decided on 06th May 2010, it was held that the inevitable inference is that the appeal against an order passed by the Single Judge under Section 8 of the Arbitration and Conciliation Act, 1996 is not maintainable.

Appeal against orders of CLB / Courts under Section 45 of ACA

While Section 37 of ACA applies to appeals against orders



under Part I, Section 50 of ACA applies to international arbitrations covered by New York Convention. Section 50 of ACA stipulates that an appeal shall lie against an order refusing to refer the parties to arbitration under Section 45 or to enforce an award under Section 48 of ACA. Section 50 of ACA clearly provides that an appeal shall lie from the order refusing to refer the parties to arbitration under Section 45 of ACA to the Court authorised by law to hear appeals from such order.

In *Sumitomo Corporation v. CDC Financial Services (Mauritius) Ltd. and Ors.*, AIR 2008 SC 1594, the Supreme Court held as follows:

"While Section 50 of the Arbitration Act provides for the orders which can be made the subject-matter of the appeal, the forum to hear the appeal is to be tested with reference to the appropriate law governing the authority or forum which passed the original order, that is, in the case on hand, the CLB. Section 10F read with Section 10(1)(a) of the Companies Act provides for such forum to hear the appeal from the orders of the CLB as the High Court within the jurisdiction of which the Registered Office of the company in issue is situated."

"The appeal is a statutory remedy and it can lie only to the specified forum. The appellate forum cannot be decided on the basis of cause of action as applicable to original proceedings such as suit which could be filed in any court where part of cause of action arises."

Special Nature of Jurisdiction of CLB

The rights of shareholders to seek remedy against acts of oppression and mismanagement are statutory rights while rights of parties to an Arbitration Agreement are contractual in nature.

In *Sudarshan Chopra's* case cited *supra*, the Punjab and Haryana High Court had held that the jurisdiction of CLB under Sections 397 and 398 is not in any way affected by the existence of arbitration clause and, therefore, the CLB which exercises power under those Sections and passes orders as per the provisions of Section 402 of the Companies Act can proceed with the matter notwithstanding the arbitration clause.

In *Sporting Pastime India Limited and K.K. Shivakumar v. Kasthuri and Sons Limited*, [2007] 141 Comp Cas 111 (Mad), decided on 28th June 2006, the Madras High Court observed that *"the relief sought for in the Company Petition under the provisions of Sections 397 and 398 read with Sections 402 and 403 of the Act for the various acts which are statutorily not performed like failure of the second respondent to maintain the minimum statutory number of seven members in the Company, pledge of the properties and assets of the Company in violation of the Foreign Exchange and Management Act, siphoning of the Company's funds, increase of authorised Share Capital from*

Rs.27 crores to Rs.53 crores, further allotment of shares of Rs.25 crores without meeting the requirements of the Act, loss of substratum of the Company on account of the attachment, by the Income Tax Department of the bank accounts/deposits amounting to Rs.25 crores parked illegally by the second respondent and several statutory violations committed by the respondent group, are neither directly covered by nor emanated from the agreement dated 19.07.2004."

In the said case, affirming the decision of CLB that the power vested under the Act to deal with the Company Petition preferred under Sections 397 and 398 read with 402 and 403 of the Act is available to the CLB to deal with the Company Petition pending before it, the Madras High Court held as follows:

"Therefore, in the light of the statutory obligations, it cannot be said that the issues involved in the Arbitration Tribunal as well as the issues coming under Sections 397 and 398 of the Act are two different issues and therefore, in view of the difference in nature of powers and the authority under Section 8(3) of the Act, 1996, empowering the arbitrator to make an award even during the pendency of an application under Section 8, there is no scope for any conflict in the decisions of the Arbitral Tribunal in respect of the proceedings referred to it. Whereas the scope of Sections 397 and 398 of the Act in dealing with the above statutory obligations is distinct and the CLB has every jurisdiction to deal with it which is not coming under the purview of Clause 21 of the agreement which only indicates the dispute arising out of the agreement and relating to claims and counter claims."

Conclusion

Protection of minority rights enshrined under the Act are statutory rights and the powers conferred upon CLB are statutory powers. Shareholders who are parties to an arbitration agreement can neither take away those statutory rights nor enter into any agreement ousting the jurisdiction of CLB nor can any other judicial forum or court exercise those powers specially conferred upon CLB. Mere existence of an Arbitration Agreement cannot oust the jurisdiction conferred upon and the enormous powers of CLB. Certain reliefs capable of being granted by CLB under Sections 402 and 403 of the Act cannot be granted by an Arbitral Tribunal. Unless the subject matter of the dispute and the parties are common, the proceedings before CLB cannot be stalled by making applications under Section 8 or 45 of ACA. Merely if certain parties, who are not necessary parties, are added to a company petition under Sections 397 and 398, CLB is not powerless to refer the parties to Arbitration if proper and timely applications are made under appropriate provisions of the ACA. ■



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Arbitrability of Disputes Relating to Oppression and Mismanagement

The mere fact that an agreement contains an arbitration clause would not ban the court/tribunal from adjudicating the disputes. Issues arising from proceedings arising under sections 397/398 cannot be left to be adjudicated by an arbitrator.

Sections 397 - 409 of the Companies Act, 1956 deal with "Oppression and Mismanagement". These provisions are very essential and can be effective for the protection of the interests of those who are vulnerable and may be suppressed by those in power in a corporate environment. The quasi-judicial bodies, Judicial bodies and the Central Government of India are entrusted with the responsibility of settling disputes relating to oppression and mismanagement in a Company under the Companies Act, 1956. The law on this point is very clear, candidly described and aims at achieving "justice".

Every shareholder of a company has an official, signed and legally valid agreement only with the company executed at the time of buying the shares thereof and consequently, a new shareholder owes to the existing and future shareholders a fiduciary responsibility not to act in detriment of the brother shareholders! Controlling

shareholders owe an additional duty of loyalty to the minority shareholders of a corporation. This duty generally applies when a controlling shareholder engages in transactions with the company. The controlling shareholder must show that its transactions with the company are objectively fair. The standard applies only when the controlling shareholder stands on both sides of a transaction and only if the controlling shareholder receives something from the company to the exclusion of, and detriment to, the minority stockholders of the company.

Section 399(1) of the Companies Act stipulates that in the case of a company having a share capital, not less than one hundred members of the Company or not less than one - tenth of the total members, whichever is less, OR any member(s) holding not less than one - tenth of the issued share capital of the Company, provided that the applicant(s) have paid all sums due on their shares and in case of a company not having share capital not less than one - fifth of the total number of its members, shall have the right to apply for redress of their complaints under sections 397 and 398 to the Company Law Board [to be substituted by the National Company Law Tribunal with the coming into force of the Companies (Second Amendment Act), 2002]. Therefore a group of shareholders,



being the minority can seek protection of their shareholders' rights in the event of suppression by the remaining shareholders who may form a larger proportion of the total shareholding of a company. Under section 402, section 408 and section 409 of the Companies Act, 1956 the Company Law Board (CLB) and the Central Government have extensive powers to grant a wide range of reliefs against oppression and mismanagement when a complaint is brought before the CLB under any or both the sections 397 and 398, full particulars are required to be given by the petitioning shareholder about the alleged acts of mismanagement & oppression. None of the allegation which are proposed to be raised by a petitioner can be vague or uncertain.

The primary question for consideration is can a dispute where, Party A alleges acts or instances of oppression over it by Party B often on the ground that the latter holds a larger portion of share capital of the company and holds itself entitled to take decisions adding to its value at the detriment of the former, wherein both hold shareholders interest in XYZ Ltd., be settled by resorting to Arbitration proceedings under the Arbitration & Conciliation Act, 1996. In place of acts or instances of oppression it may even be acts or instances of Mismanagement wherein the company funds are laundered/siphoned off by a larger and stronger group of shareholders to the detriment of a disagreeing minority group of shareholders. Other relevant questions may be can the CLB prohibit the parties to a contract containing an arbitration clause from pursuing arbitration proceedings according to the clause in their contract or can the CLB carry out parallel judicial proceedings? Or what consequences follow in the event of contradictory orders by the arbitrator and the CLB? Or where an applicant is not able to satisfy the condition under section 399(1), i.e he holds less than 10% of the total voting power and is being oppressed by the majority what will be his recourse? Following discussion seeks to find answers to these questions.

Looking at the current scenario of the rate of pendency of any form of dispute before adjudicating authorities the alternate dispute resolution mechanism has become not just popular or widely accepted but has attained importance of being a

"mandatory" clause in any major Agreement/Understanding between parties. Use of Arbitration as an alternative dispute resolution mechanism offers a valid alternative to litigation, but the option to refer disputes for arbitration is sometimes omitted by prior arrangements between the parties. Generally all disputes involving private rights that can be decided by a civil court may be referred to arbitration. Sometimes referring disputes to arbitration may be required under a statute for e.g. Section 7 B of The Telegraph Act 1885. On the other hand there are certain matters which cannot be referred to arbitration as per the Indian laws - to name a few could be, personal law matters, criminal proceedings, disputes under TRAI Act, 1997, IRDA Act, 1999.

Complicated commercial and business transactions lead to multiple forms of Joint Venture Agreement (JVA), Share Purchase Agreement (SPA) and Share Holders Agreement (SHA), all carrying an arbitration clause to settle disputes that arise from these agreements. The JVA, SPA and SHAs are contracts between the executing parties. An arbitration clause appearing in these contracts is an arbitration agreement between such parties to the contract. It is pertinent to note here that these contracts generally do not bind the company, a separate entity, unless it is also a party to such contract. However, in some of the cases the terms and conditions of these agreements are incorporated in the articles of association of the company also. Further, a study and interpretation of section 36 of the Companies Act, 1956 (the Act) leads to the conclusion that articles of association (hereinafter referred to as the Articles) of a company, when registered, bind the company and the members thereof to the same extent as if it had been signed by the company and by each member. Thus, it will not be wrong to say that the Articles are a contract entered into between each member and the company respectively. The Articles are a contract and an arbitration clause incorporated in it partakes the nature of an arbitration agreement between the members and the company. Therefore where any JVA, SHA and SPA in which the Company is not a party and consequently will not bind the company if the terms of such Agreements are not made part of the Articles of the Company, either each and every clause of the contract could be incorporated in the Articles or by way of a reference to such contracts in the Articles.

The nature of disputes arising out of aforesaid agreements or like instruments mainly confines to the management functions and control of the company where invariably the aggrieved person/group alleges non-compliance with the terms of the agreements and/or the Articles and are usually of the following kinds:

- Manner of utilization of funds, i.e. selection of projects to invest in or of association's e.g suppliers etc. to be entered into
- Deadlock in meetings due to non-appointment of nominated director(s)



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where no rights of third party are affected (right *in personam* - arising to only parties to an agreement) then any dispute arising between the parties to an agreement may be referred to arbitration. Thus in a contract between majority shareholders with the Company to the detriment of the minority cannot be referred to arbitration because under section 402 only the Company Law Board has the authority to decide the case and the rights of the minority shareholders are rights *in rem* to the contract between the Company & majority shareholders.

- Non-supplying of information required by the other group
- Effecting changes in the shareholding pattern in detriment to the other person or group

Thus the possible answer to the last question raised in the earlier paragraph can be - If the articles contain arbitration clause or if the contract contains arbitration clause, then an oppressed shareholder who does not have the required eligibility in terms of shareholding can resort to the remedy of arbitration. Because in such cases the Company Law Board (CLB) has no jurisdiction to adjudicate because of the ineligibility of the applicant shareholder to approach it. However, nowadays the arbitration clause in any contract is usually pressed in aid as a defence strategy against an action of oppression and mismanagement brought against the company and indulging shareholders before the Company Law Board.

Before taking note of the decisions in which the CLB has formulated legal principles to determine what are and what are not arbitrable disputes, let us take a look at the relevant provisions of the Arbitration and Conciliation Act, 1996:

Section 7: To submit any dispute between parties to a contract for arbitration, an arbitration agreement should exist between the parties. 'Arbitration Agreement' means the agreement by the parties to submit the disputes (present or future) to arbitration and that it shall be in writing and signed by the 'parties'.

Section 8(1) requires any judicial authority to refer the matter before it for arbitration where an arbitration clause is provided in a contract for resolving the disputes arising from or under such contract between the parties. Further, it stipulates that the party who claims the existence of arbitration agreement may

apply for arbitration of the disputes 'not later than when submitting his first statement on the substance of the dispute'. Once all conditions stipulated under section 8 are satisfied the judicial authority is bound to refer the parties to arbitration.

Under Section 16 of the Arbitration Act the arbitral tribunal is competent to rule on its jurisdiction. The arbitrator has the authority to reject any reference made to it if it believes that such matters are not referable to arbitration.

Since section 8 is a mandatory provision the core issue (summation of earlier raised questions) is whether all disputes arising out of JVA, SPA, SHA, Articles should be adjudicated by the process of arbitration alone if there is an arbitration clause in the said agreements or could they be decided by the Court itself? The Judicial authority *prima facie* has to come to the conclusion that the requirements of section 8 have been fulfilled, before referring the parties to arbitration. By virtue of the mandate of the provision of section 8 of the Arbitration Act once the ingredients of this section are satisfied, then even in respect of matters covered under section 397/398 of the Companies Act, 1956 shall have to be referred to arbitration in terms of Section 8 as the case may be of the Arbitration Act. The Apex Court in the matter of *P. Anand Gajapati Raju v. P.V.G. Rau* (2000) 4 SCC 539 held that the language of section 8 of the Arbitration Act 1996 is pre-emptory. It is obligatory for the court to refer the parties to arbitration, if the arbitration agreement covers all the disputes between the parties in the proceedings before the Court. In *Pinaki Das Gupta v. Maadhyam Advertising (P) Ltd.* 2003 114 CC 346 the CLB (Delhi) had observed that the main grievance of the petitioner in the petition was non - performance of the terms of the agreement and it was found that the arbitration clause in the agreement specifically provided for arbitration in cases of non-performance of the terms of the Agreement. Therefore, it was held that the matter covered in the petition was the subject matter of the arbitration agreement. There was no scope to examine whether the petitioner has been oppressed or not. Matter was referred to the arbitrator.

On the other hand there are judgements stating that matters under section 397/398 of the Companies Act, 1956 cannot be adjudicated by an arbitrator. An arbitrator can have no powers such as those conferred on the court by section 402 of the Companies Act and other statutes. In *Haryana Telecom Ltd v. Sterlite Industries (India) Ltd.*, (1999) 5 SCC 688, the rationale adopted by the Supreme Court was that the dispute should be the subject of arbitration agreement, so that it could be referred to arbitration. In this case the Supreme Court refused to refer the winding up petition, based on inability to pay debt, to arbitration on the ground that winding up of a company is not the subject of arbitration agreement. Thus, what can be referred to the arbitrator is only that dispute or matter which the arbitrator is competent to decide. In the *Haryana Telecom* case it was held that the arbitrator notwithstanding any agreement



between the parties, would have no jurisdiction to order winding up of a company since such power is conferred on a High Court by the Companies Act. In an earlier decision in *O. P. Gupta v. SGF (Pvt.) Ltd.* (1977) 47 Comp Cas 297 (Del) an application was filed for stay of petition under section 397 and 398 of the Companies Act, 1956 before the Delhi High Court. It was held that power to stay the petition was discretionary and it was for the Court to decide whether matter should be referred to arbitrator for adjudication or not. Even if the Articles of Association of a company contains provisions for arbitration, the matters dealt with by 397 and 398 cannot be referred to arbitration or such proceeding be stayed as a matter of practice. In another judgement the Delhi High Court has clearly stated that the right of shareholders under section 397 or 398 is a statutory right, which by section 8 of the Arbitration Act, 1940 cannot be ousted by a provision in the articles of association of the Company. This application was instituted by the respondents for stay of the proceedings on account of the fact that there was an arbitration clause in the Articles of Association of the Company. The Delhi High Court held that the Articles cannot debar the court's jurisdiction in the matter of a petition under section 397/398 of the Companies Act 1956 (*Surendra Kumar Dhawan v. R. Vir & others* (1977) 47 CC 276). In a recent judgement on 15th April 2011 in *Booze Allen and Hamilton Inc. v. SBI Home Finance and others* the Supreme Court observed that - adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public as a matter of public policy. This decision sets out the position that a mortgage suit cannot be referred to arbitration because it involves a right *in rem* - a situation where third party rights may be affected. Therefore we can rightly conclude that where no rights of third party are affected (right *in personam* - arising to only parties to an agreement) then any dispute arising between the parties to an agreement may be referred to arbitration. Thus in a contract between majority shareholders with the Company to the detriment of the minority cannot be referred to arbitration because under section 402 only the Company Law Board has the authority to decide the case and the rights of the minority shareholders are rights *in rem* to the contract between the Company & majority shareholders.

It is undoubtedly true that the Arbitration Act can help in speedy justice and decrease the load of litigation on Indian Judiciary considerably. But the biggest drawback of the Arbitration Act is that it is silent about the necessary qualifications that a person must possess to be appointed as an arbitrator. On the contrary Section 402 of the Companies Act 1956 gives specific power to the specialised CLB to dispose disputes arising under section 397/398. Such loopholes can lead to gross injustice to the parties in serious matters like oppression and mismanagement in a company. The existing statutory control that we see over disputes in key sectors like power & telecom is a clear indicator that the Indian

legislature is not yet ready to do away the governmental/court's interference to control key sectors of growth in India. Even though this may not be in the interest of the Indian economy with the increasing infusion of foreign Investment because investors seek the freedom of choice of the forum & mechanism for dispute resolution.

To conclude the Companies Act, 1956 has empowered the Company Law Board to decide the issues relating to oppression and suppression of minority by majority and also *vice versa*, and also mismanagement of the finances and affairs of the company. In other words, the Company Law Board is the statutory forum established to adjudicate and determine all issues arising out of the Act and pertaining to its jurisdiction. But often, in a petition under sections 397 and 398, the respondents make a claim that the disputes alleged in the petition are subject matter of arbitration contained in the agreements and/or the Articles of the company and therefore they should be referred to arbitration as CLB has no jurisdiction to adjudicate. The CLB looks into the disputes raised and allegations made in the petition to ascertain whether the allegations relate to the violation of the contractual terms of the contract or any violation of the provisions of the Act and /or the Articles of the Company. If the allegations pertain to the violation of the Statute or the Articles or in relation to the rights of the oppressed person in his capacity as a member of the company, then it refuses to refer the parties to arbitration.

The rationale adopted by the CLB is legally sound because the Companies Act, 1956 is a special Act compared with the Arbitration and Conciliation Act, 1996 which is general one as far as arbitration is concerned and the former is special as far as violations of its provisions are concerned. Since the CLB is a special Tribunal specifically established to deal with and adjudicate on issues resulting in violations of the Act the provisions of arbitration would have no application to determine such issues. Further, when the acts of the oppressor infringe the rights of the oppressed such infringement or violations cannot be adjudicated through the process of arbitration because violation of statutory rights is not the subject of arbitration agreement. Merely the existence of an Arbitration clause in a contract is not a valid ground to bar the Courts from exercising its jurisdiction. When an arbitration clause in any agreement uses the phrase "disputes arising under or in connection with this agreement" it may cover a wide range of disputes. However, disputes such as oppression and mismanagement which may or may not lead to winding up are serious corporate issues and may considerably affect the prospects of the Company, its directors/employees and possibly the economy of the nation. The standard of proof in such matters is as high as required for ordering winding up of a company. Thus, matters which fall within the purview of section 397/398 cannot be left to arbitration. ■



Articles

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Arbitrability of Disputes Relating to Oppression and Mismanagement

Parties can include an arbitration clause in the contract to settle all differences and disputes arising between them out of or relating to their contract by arbitration in accordance with the law and procedure of their choice. However, the CLB alone is vested with statutory powers to deal with the cases of oppression and mismanagement. The parties cannot enforce their contractual rights through a petition before the CLB styling their disputes as acts of oppression and mismanagement.

Arbitration and Conciliation Act, 1996

Arbitration-Important Definitions

Section 2(1) of the Arbitration and Conciliation Act, 1996, (Act) defines arbitration as "any arbitration whether or not administered by a permanent arbitral institution."

Reference can be made to the following definitions to clarify the concept of 'arbitration' in proper perspective:

Halsbury's definition:

"Arbitration is the reference of dispute between not less than two parties, for determination, after hearing both sides in a judicial manner, by a person or person other than a court of competent jurisdiction" (Halsbury Laws

of England, Fourth Edition, Vol. II).

Ronal Bernstein's definition:

"Where two or more persons agree that a dispute or a potential dispute between them shall be decided in a legally binding way by one or more impartial persons in a judicial manner, that is, upon evidence put before him or them, the agreement is called an arbitration agreement or a submission to arbitration."

It emerges from the above definitions that "Arbitration" is the method for resolving and adjudicating commercial disputes by the decision of one or more impartial person(s) called arbitrators and not a court of law.

Act not in derogation of other laws

Section 2(3) of the Act provides that the provisions of Part I of the Act (which apply to arbitration which takes place in India) shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Simply stated, the provisions of the Act are in addition to and not in derogation of the provisions of any other law in force.

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Parties to be referred to arbitration where arbitration agreement exists

Section 8(1) of the Act provides that a judicial authority, before which an action is brought in a matter, which is the subject of an arbitration agreement shall, if a party so applied not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

The Supreme Court in *P. Anand Gajapathi Raju v. P.V.G Raju*, 2000 (4) SCC 539 observed that the language of section 8 is preemptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator.

The Supreme Court in the matter of *Sukanya Holdings (P) Limited v. Jayesh H. Pandya* AIR 2003 SC 2252 held as under:

'The language used in section 8 is - in a matter which is the subject-matter of an arbitration agreement' Court is required to refer the parties to arbitration. Therefore, the suit should be in respect of a "matter" which the parties have agreed and which comes within the ambit of arbitration agreement. Where, however, a suit commences- "as to matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to an arbitration agreement, there is no question of application of section 8. The words 'a matter' indicate entire subject-matter of the suit should be subjection to arbitration.

In *Afcons Infrastructure Limited v. Cherian Varkey Construction Company (P) Limited*, Kochi, AIR 2007 (NOC) 233 (Ker.) the Supreme Court ruled that power of court to refer parties for arbitration would and must necessarily include, imply and inhere in it the power and jurisdiction to appoint arbitrator also.

Power of judicial authority to refer parties to arbitration

Section 45 of the Act provides that notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908, a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Simply stated, section 45 makes it mandatory for a judicial authority to refer the parties to arbitration if the following conditions are satisfied:

- (i) The matter pertains to the agreement made by the parties to be referred for arbitration under section 45,
- (ii) One of the parties or any person claiming through or under him has made a request for referral to arbitration, and
- (iii) The arbitration agreement is or has not been rendered null and void, inoperative or incapable of being performed.

In *Shin Etsu Chemical Company Limited v. Aksh Optifibre Limited* (2005) 7 SCC 234, the Supreme Court held that "the words 'shall' and 'unless' appearing in section 45 mandate that



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A judicial authority does not have discretion for refusing to refer the parties to arbitration. Section 45 of the Act uses the mandatory expression 'shall' and makes it obligatory upon the judicial authority to refer the parties to arbitration, if conditions specified therein are fulfilled.

before referring the parties to arbitration, the judicial authority should be satisfied that the arbitration agreement is not null and void, inoperative or incapable of being performed." Clearly section 45 casts an obligation upon the judicial authority when seized of the matter to record a finding as to the validity of the arbitration agreement as stipulated in the section and there is nothing to suggest either from the language of the section or otherwise the findings to be recorded is to be only *ex-facie* or *prima facie*. Existence of the above three conditions as *sine qua non* for referring the parties to arbitration.

COMPANIES ACT, 1956 Oppression and Mismanagement

The words "oppression" and "mismanagement" are not defined under the Companies Act, 1956. In fact, it is impossible to define these words with precision. As such, meaning and interpretation of these words depend on the particular facts and circumstances of each case. The following judgments make it clear that the words are used in a generic sense rather than in literal sense.

The clarification given by Lord Cooper in case of *Elder v. Elder & Watson*, (1952) Scottish Cases 49, (which was cited by Wanchoo CJ) and followed in the Supreme Court of India in *Shanti Prasad v. Kalinga Tubes*, (1965) 1 Comp. L.J at P.204 is thus:

"The essence of the matter seems to be that the conduct complained of should be the lowest, involve a visible departure from the standards of fair dealing, on which every shareholder who entrusts his money to the company is entitled to rely".

In *Scottish Co-operative Wholesale Society, Ltd. v. Meyer*, the society created a subsidiary company to enable it to enter into rayon industry. Subsequently when the need for the subsidiary ceased to exist, the society adopted a policy of running down its business which depressed the value of its share. The two petitioners, who were managing directors and minority shareholders of the company, successfully pleaded 'oppression'. The Court ordered the Society to purchase the minority shares at the value at which they stood before the oppressive policy started. Lord Simonds in the judgment (1959)

AC 324 at P.342 while allowing the prayer ruled that in case of oppression and mismanagement the complaining shareholder must be under a burden which is unjust or harsh or tyrannical. The judgment was also followed in *H.R. Harmer Limited* [(1958) 3 All ER (689)], stating that "a persistent course of unjust conduct must be shown".

An attempt to force new and more risky objects upon an unwilling minority may be in circumstances amount to oppression. [*Hindustan Co-operative Insurance Society Limited* AIR 1961 Cal. 443.] In this case the Life Insurance Corporation of India acquired the life insurance business of the company and paid compensation. The directors, who had the majority voting power, instead of distributing the amount among shareholders, changed the main objects of the company to deploy the compensation money for the new objects. The High Court ruled that it was an act of "oppression" because the majority exercised its authority, in a manner burdensome, harsh and wrongfully. The majority forced the minority shareholders to invest their money in different kinds of business against their will rather than the life insurance business with safeguards and statutory protections.

The term 'oppression' means exercise of majority power in a burdensome, harsh and wrongful manner [*Murty v. Industrial Development Corporation of Orissa Limited* (1977) Comp Cas 389(Or)]. It is used in company law to denote that shareholders are subject to some sort of oppression and also that the affairs of the company are being conducted in an oppressive manner.

It may be noted that Section 399 prescribes the mandatory qualifications for application under section 397 and 398. Where the company has share capital, - the application must be signed by at least 100 members or by one-tenth of the total number of the members, whichever is less, or by any member or members holding not less than one-tenth of the total number of members. If the company has no share capital, the application has to be signed by at least one-fifth of the total number of its members.

In order to succeed in case of 'mismanagement', it must be established that the affairs of the company are being conducted in a manner prejudicial to the interest of the company or public interest [Section 398(1)(A)] or that, by reason of any change in the management or control of the company, it is likely that the affairs of the company will be conducted in that manner



[Section 398(1)(b)].

If the court is so convinced, it may, with a view to bring to an end or prevent the matter complained of or apprehended, make such order as it thinks it [(section 398(2))]. In the case of *Rajahmundry Electric Supply Corporation v. A. Nageswara Rao*, AIR 1956 SC 213, mismanagement was alleged the petitioners. The Supreme Court found that the Vice Chairman of the company grossly mismanaged the affairs of the company and had drawn considerable amounts for his personal purpose, that large amounts were owing to the Government for charges of supply of electricity, that machinery was in a state of disrepair, that the directorate had become greatly attenuated and 'a powerful local junta was ruling the roost', and that the shareholders outside the group of the chairman were powerless to set matters right. This was held to be sufficient evidence of mismanagement. The Supreme Court accordingly appointed two administrators for the management of the company for a period of six months vesting in them all the powers of the directors.

The mismanagement should be present and continuing. The allegation of mismanagement in the past, even if proved, are not enough to establish an existing injury to the interest of the company or public interest [*R.S. Mathur v. H.S. Mathur*, (1970)1 Comp LJ 35].

Powers of the CLB

Section 10E of the Companies Act, provides for general powers and functions to the Company Law Board (CLB) as may be conferred under the Companies Act or any other law and conferred by the Central Government. Sub-section (4C) of section 10E specifically provides that every bench of the CLB shall have powers vested in a court under the Code of Civil Procedure, 1908, while trying a suit. Further, sub-section (4D)

of section 10E provides that every bench of the CLB shall be deemed to be a civil court for the purpose of section 195 and every proceeding to be a judicial proceeding.

Section 402 of the Companies Act, 1956 enumerates the powers vested with the CLB under sections 397 and 398 for regulation of the conduct of the company's affairs in future.

Arbitrability of disputes relating to Oppression and Mismanagement

The issue of arbitrability of disputes relating to oppression and mismanagement depends on the following differences between the two enactments:

- a. It is an important rule of interpretation that a special law prevails over the general law. In case of oppression and mismanagement, the Companies Act, 1956 is a special enactment, which deals with corporate management and shareholders rights, whereas Arbitration and Conciliation Act, 1996 is the general enactment dealing with resolution of commercial disputes.
- b. The Arbitration and Conciliation Act, is a latter enactment. It is a well settled principle that a latter enactment prevails over an earlier enactment because the latter law was enacted, after considering the existing provisions in the earlier enactment.
- c. The object of the Arbitration and Conciliation Act is to provide the law and procedure pertaining to arbitration and conciliation, whereas the object of the Companies Act is to lay down the law and procedure for the companies and other associations.
- d. The Arbitration and Conciliation Act deals with contractual rights of parties, whereas the Companies Act deals with the statutory rights of shareholders and companies.
- e. The Arbitration and Conciliation Act, does not prescribe qualifications and experience of arbitrators, whereas the Companies Act, prescribes the qualification, experience and powers of the members of CLB to adjudicate the disputes in a judicial manner. Provisions of Section 10E of the Companies Act, provides powers and functions to the CLB and states that every bench of the CLB to be considered a civil court and its proceeding a judicial proceeding.
- f. Under the Arbitration and Conciliation Act, 1996, relief is provided to the claimant, whereas under sections 397 and 398 of the Companies Act, relief is provided to the company.



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In *Sangramsingh P Gaekwad v. Stantadevi P Gaekwad* [364 (SC)2005] 11 SCC 314 the Supreme Court ruled that violations of contractual rights may be agitated by way of a civil suit and only in extra ordinary circumstances, would such matters be looked into by the CLB under section 397 of the Companies Act.

In *Sumitomo Corp. v. CDC Financial Services (Mauritius) Ltd.* [(2008) 83 CLA/ 343 (SC) 2008] 4 SCC 91 the apex court approved the ruling of the CLB that the proceedings under sections 397 and 398 of the Companies Act can be invoked only if the disputes even among the shareholders relate to the affairs of the company.

In *Haryana Telecom Limited v. Sterlite Industries (India) Limited*, AIR 1999 SC 2354 the Supreme Court observed that "sub-section (1) of section 8 of the Arbitration and Conciliation Act provides that the judicial authority before whom an action is brought in a matter, will refer the parties to arbitration in the said matter in accordance with the arbitration agreement. This, however, postulates, in our opinion, that what can be referred to the arbitrator is only the dispute on matter which the arbitrator is competent or empowered to decide."

The High Court of Delhi in *O.P. Gupta v. Shiv General Finance (P) Limited* (1977)47 Comp Cas 297 ruled that a member's right to move the Company Law Board was a statutory right and cannot be affected by an arbitration clause in the articles of association of a company.

In *R. Balakrishnan and Ors. v. Vijay Dairy and Firm Products Private Limited and Ors.* (2005) 25 Comp Cas 66 (CLB), the CLB dismissed that petition without going into the merits on the ground that the company petition is intended for the purpose of recovering the money due under the settlement agreement, which is not an object contemplated in Section 397.

In *State of Orissa v. Klockner & Co.*, AIR, 1966, SC 2140 the Supreme Court ruled that in the absence of any serious challenge to the commercial contract or to the arbitration agreement, it has to be found that the agreement was valid, operative and capable of being performed and that there are disputes between the parties with regard to the matter agreed to be referred to arbitration.

It was further ruled that a judicial authority does not have discretion for refusing to refer the parties to arbitration. Section 45 of the Act uses the mandatory expression 'shall' and makes it obligatory upon the judicial authority to refer the parties to arbitration, if conditions specified therein are fulfilled. Stay of suit is mandatory if the conditions specified in section 3 of the Foreign Awards (Recognition and Enforcement) Act, 1961 are fulfilled.

Section 45 of the Act provides that notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908, a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

In *E-Logistics Private Limited and Sanjeevi v. Financial Technologies (India) Limited* (2007) 139 Comp Cas 311(CLB), the CLB directed the parties to have their disputes resolved through arbitration as per the Arbitration Agreement. The CLB ruled that the grievances of the petitioner, though styled as acts of oppression and mismanagement in the affairs of the Company, but, in fact, were flowing from their agreement and, therefore, those disputes cannot be adjudicated in the present proceedings. The same logic was followed in *Bahety and Ors. v. Ratika Computronix P. Ltd. and Ors* (2010) 157 Comp Cas 225 (CLB).

Recently in *Telenor Asia (P) Limited and Ors v. Unitech Wireless (Tamil Nadu) (P) Limited and Ors* (2012)107 CLA 547(CLB), the CLB ruled that where the share subscription agreement and shareholders' agreements are vitiated by fraud are complicated question of law and fact, and the same ought not to be tried by the CLB in a summary jurisdiction under section 397/398, but left to be adjudicated by the arbitral tribunal. A reference to arbitral tribunal in case of international arbitration between the parties is now mandatory in law by virtue of section 45 of Arbitration and Conciliation Act, if the ingredients of the section are present, that is, the contract provides for it, one of the parties makes the requisite application and the judicial form does not find that the arbitration agreement is null and void, inoperative or incapable of being performed.

The dispute pertained to international arbitration in which the Wireless (Tamil Nadu) (P) Limited, Applicants were Indian Strategic Partners ("ISP") in the joint venture agreement with



Telenor Asia (P) Limited of Singapore. The CLB distinguished the case law cited before it on facts and explained why reference to arbitration was denied in those cases. It also rejected other arguments against allowing application for reference to arbitration explaining the legal position under section 45 of the Arbitration and Conciliation Act, which has made it mandatory to make reference to arbitration in case of international reference when contract provides for it. The CLB disposed of the application by referring the parties to arbitration in accordance with the rules of the Singapore International Arbitration Centre as per the agreement.

In *GC Holdings (P) Limited v. Ramasamy Athappan* (2012) 109 CLA 238 (Mad), the parties first filed their contentions before the CLB, which dealt with and resolved the issues. The CLB subsequently modified its own earlier order, issuing various directions. The parties then approached the High Court and the Single judge allowed the injunction application restraining the appellants from referring the disputes to arbitrator under section 45 of the Arbitration and Conciliation Act.

The Division Bench of the High Court of Madras ruled that where on the facts and circumstances of the case and in view of the pitched battle of litigation between the parties the Single Judge has rightly held that there was a waiver by estoppels and that the arbitration clause in the joint venture agreement had become inoperative, there will be no ground for interference with the order of the Single Judge allowing injunction application restraining the appellant from proceeding with the arbitration under section 45 of the Arbitration and Conciliation Act. When the CLB has already resolved the same issues in the company petition, the appellants cannot contend that they are needed to be raised in the arbitration.

In this case the issues related to the disputes pertaining to the joint venture agreement (JVA) in relation to the affairs of *Cheran Enterprises (P) Limited*. The CG Holdings contended before the International Chamber of Commerce (ICC) that the

terms of the JVA was violated by misrepresentation on the part of ORE Holdings and others and claimed damages for the losses suffered by the GC Holdings. The CLB had elaborately dealt with the acts of alleged mismanagement, but the same were again agitated before the ICC.

The High Court found no merit in the contention of the appellants that plaintiffs were attempting to frustrate the arbitration. The High Court, however, observed that since most of the issues were dealt with and resolved by the CLB, the appellants could not raise them before the arbitrator. The Court emphasized that the basic objective in referring the matter to arbitration was to provide speedy remedy to the parties, the same should not be allowed before the ICC so as to make the whole process expensive. Regarding applicability of section 45 of the Arbitration and Conciliation Act, the High Court explained the legal position - the existence, validity and scope of arbitration agreement could be determined by court before the commencement of arbitration proceedings or at the stage of enforcement of the award under section 48 of the Act. The appellants, having initiated proceedings before various forums, cannot now seek arbitration as an additional remedy. Waiver is already 'implicit from the acts of the appellants', which indicates their intention not to proceed with the arbitration.

Conclusion

The parties have freedom to contract. They can include an arbitration clause in the contract to settle all differences and disputes arising between the parties out of or relating to their contract by arbitration in accordance with the law and procedure of their choice. However, the CLB alone is vested with statutory powers to deal with the cases of oppression and mismanagement. The parties cannot enforce their contractual rights through a petition before the CLB styling their disputes as acts of oppression and mismanagement. ■



Articles

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Arbitrability of Disputes Relating to Oppression and Mismanagement

Oppression and Mismanagement involve disputes of very serious nature and hence the Companies Act has left such issues to be decided by the Company Law Board being a quasi judicial body. However opinion is divided as to whether such issues could be referred to arbitration for resolution.

INTRODUCTION

It is not uncommon to find an arbitration clause in a shareholders agreement. An arbitration clause in a shareholders agreement generally provides 'any or all disputes or differences arising out of or in connection with this agreement or its performance, shall be submitted to final and binding arbitration.....'. Thus by virtue of arbitration clause which itself is an arbitration agreement, pursuant to Section 7 of Arbitration and Conciliation, Act, 1996, the shareholders and the company, agree to refer to the arbitrator any or all the disputes or differences arising *inter se* shareholders or between the company and shareholders. Normally all the terms of shareholders agreement including arbitration clause are incorporated in the articles of association of the company.

Section 10 of the Companies Act, 1956 provides that powers and functions conferred on the Court under Companies Act, 1956 shall be exercisable by the High Court within whose jurisdiction registered office of the company concerned is situated except to the extent to which jurisdiction has been conferred on any District Court or District Court subordinate to that High Court pursuant to Section 10(2) of the Companies Act, 1956.





Sections 397 and 398 confer a special statutory right to the shareholders and CLB is the only forum designated by the Companies Act, 1956, which can be approached by the shareholders for enforcing their right under Sections 397 and 398, provided conditions of Section 399 are fulfilled.

Section 10-E of the Companies Act, 1956 as amended by Companies (Amendment) Act, 1988, provides for Constitution of Board of Company Law Administration. The Central Government in terms of Section 10(E) of the Companies Act, 1956 has constituted an independent Company Law Board (CLB) vide Notification No. 364 dated the 31st May, 1991. CLB is a quasi-judicial body, exercising equitable jurisdiction. Certain powers including powers under Section 397-407 and functions under the Companies Act, 1956, which were earlier being exercised by the High Court or the Central Government, are transferred to CLB vide the Companies (Amendment) Act, 1988. The issue being discussed in this Article is whether powers conferred on CLB under Chapter VI of the Companies Act, 1956 to deal with dispute relating to oppression and mismanagement under Sections 397 and 398 can be ousted by an arbitration agreement.

Power of Judicial Authority to refer matter to Arbitration

Section 8(1) of Arbitration and Conciliation Act, 1996 provides that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

Similar powers are given to judicial authority in Chapter I (New York Convention Award) and Chapter II (Geneva Convention Awards) of Part II of Arbitration and Conciliation Act, 1996.

Section 45 in Chapter I (New York Convention Award) of Arbitration and Conciliation Act, 1996 provides that notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer

the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Section 54 in Chapter II (Geneva Convention Awards) of Arbitration and Conciliation Act, 1996 provides that notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, on being seized of a dispute regarding a contract made between persons to whom Section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

The Arbitration and Conciliation Act, 1996, gives powers to judicial authority to refer the dispute to the arbitration in respect of which the parties have entered into an arbitration agreement. The parties to arbitration agreement cannot file a suit in a court of law in respect of any matter covered by the agreement; otherwise the very purpose of arbitration will be frustrated. The court will normally not intervene except when provided by the Act. However, the other party to the arbitration agreement has to make application to judicial authority for referring dispute to the arbitration, before submitting its first reply on the statement of dispute. If the plea of arbitration has not been raised before the judicial authority, the parties have deemed to waive their right of arbitration.

The Supreme Court in the matter of *P. Anand Gajapati Raju v. P.V.G. Raju (Died) & Ors* [(2000) 4 SCC 539] held that the conditions which are required to be satisfied under Sub-sections (1) and (2) of Section 8 of Arbitration and Conciliation Act, 1996 before the Court can exercise its powers are : (1) there is an arbitration agreement; (2) a party to the agreement brings an action in the Court against the other party; (3) subject matter of the action is the same as the subject matter of the arbitration agreement; (4) the other party moves the Court for referring the parties to arbitration before it submits his first statement on the substance of the dispute. The language of Section 8 of the Arbitration and Conciliation Act, 1996 is pre-emptory. It is obligatory for the Court to refer the parties to arbitration, if the arbitration agreement covers all the disputes between the parties in proceedings before the Court.

In *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums* [AIR 2003 SC 2881], the Supreme Court has held that Section 8 of Arbitration and Conciliation Act, 1996 in clear terms mandates that a judicial authority before which an action is brought in a matter which is the subject of an arbitration



Articles

Arbitrability of Disputes Relating to Oppression and Mismanagement

Oppression and mismanagement, being disputes of very serious nature, the Companies Act, 1956 has given powers to CLB to deal with such disputes. Section 399 of the Companies Act, 1956 provides for requisite number of members or members holding requisite voting power to complain to CLB under Sections 397 and 398 of the Companies Act, 1956 and pray for relief under Section 402 of the Companies Act, 1956.

agreement to refer such parties to arbitration, the language of this Section is unambiguous. The Civil Court had no jurisdiction to entertain a suit after an application under Section 8 of the Act is made for arbitration. The Arbitral Tribunal is empowered to rule on its own jurisdiction including rule on any objection with respect to the existence or validity of the arbitration agreement.

In *Smt. Kalpana Kothari v. Smt. Sudha Yadav and Ors.* [AIR 2002 SC 404], the Supreme Court observed that Section 8 of the Arbitration and Conciliation Act, 1996 mandates that the judicial authority before which an action has been brought in respect of a matter, which is the subject matter of an arbitration agreement, shall refer the parties to arbitration if a party to such an agreement applies not later than when submitting his first statement.

Can an arbitrator order winding up of a company?

The Supreme Court in *Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd.* [AIR 1999 SC 2354] observed that Sub-section (1) of Section 8 of the Companies Act, 1956 provides that where the judicial authority before whom an action is brought in a matter, will refer the parties to arbitration the said matter in accordance with the arbitration agreement. This, however, postulates, in our opinion, that what can be referred to the arbitrator is only that dispute or matter which the arbitrator is competent or empowered to decide. An arbitrator, notwithstanding any agreement between the parties, would have no jurisdiction to order winding up of a company since such power is conferred on a high court by the Companies Act and referral of a winding up petition under Section 8 of the Arbitration and Conciliation Act, 1996 was dismissed.

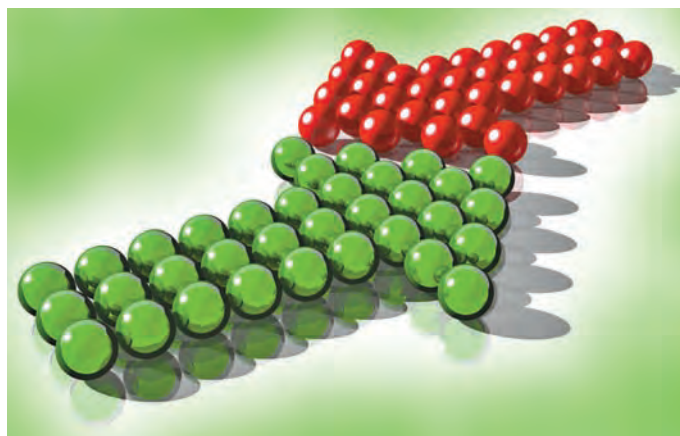
Powers of CLB under the Companies Act, 1956 for prevention of Oppression and Mismanagement

Chapter VI of the Companies Act, 1956 deals with powers of CLB for prevention of oppression and mismanagement.

Under Section 397, any member(s) (not less than 100 members

of the company or 1/10th of the total number of its members, whichever is less, or members holding not less than 1/10th of the issued share capital of the company) may apply to CLB, alleging that affairs of the company are being conducted in a manner prejudicial to public interest or oppressive to any member or members. If on any such application, CLB is of opinion that the affairs of the company are being conducted against public interest or in a manner oppressive to any member(s), and the fact would otherwise justify winding up on the ground of being 'just and equitable', but that the winding up order would be prejudicial to the interest of any member or members, CLB make such order as it thinks fit to bring an end to matters complained of.

Section 398, any member(s) (not less than 100 members of the company or 1/10th of the total number of its members, whichever is less, or members holding not less than 1/10th of the issued share capital of the company) may complain to CLB alleging that affairs of the company are being conducted in a manner prejudicial to public interest or prejudicial to the interest of the company, or that there has been material change effected in the management or control or ownership of the company, which is likely to conduct the affairs of the company in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company. If on any such application CLB is of opinion that the affairs of the company are being conducted as aforesaid or material change in management or control or ownership is likely to conduct the affairs of the company as aforesaid, CLB may make such order as it thinks fit, with a view to bring an end or preventing the matters complained of or apprehended.





Thus Sections 397 and 398 confer a special statutory right to the shareholders and CLB is the only forum designated by the Companies Act, 1956, which can be approached by the shareholders for enforcing their right under Sections 397 and 398, provided conditions of Section 399 are fulfilled.

In *Pinaki Das Gupta v. Maadhyam Advertising (P.) Ltd.* [MANU/CL/0040/2002], the CLB held that no doubt Company Law Board has vast powers under Section 402 of the Companies Act, 1956 yet, granting of relief depends on facts of a particular case and if for granting the relief, determination of *bona fide* disputes is required and the same is covered by an arbitration agreement, then, it is for the arbitrator to decide these issues and not the Company Law Board. Granting of relief in a proceeding under Section 397/ 398 is discretionary depending on the facts of a case. If CLB comes to a conclusion that appropriate relief justified in a particular case can be granted by an arbitrator, then, there is no reason why the matter cannot be referred to arbitration. However, it has been held in some judicial pronouncements that disputes relating to Sections 397 and 398 cannot be adjudicated by an arbitrator. An arbitrator can have no powers such as are conferred on CLB by Section 402 of the Companies Act.

The Delhi High Court in an application filed before it for stay of petition under Sections 397 and 398 of the Companies Act, 1956 held that power to stay the petition was discretionary and it was for the Court to decide whether matter should be referred to arbitrator for adjudication or not. If it is found that the arbitrator cannot deal with the matter because of an impediment in the law, then obviously the Court is empowered to refuse to stay those proceedings. Section 9(b) of the Companies Act, 1956, which states that any provision in any memorandum, article, or agreement to the extent that it is repugnant to the Act will be void. The repugnancy between the articles of association and Sections 397 and 398 of the Companies Act, 1956 can be resolved in one or two ways, either the article is wholly void by reason of Section 9(b) of the Companies Act, 1956 or the article does not apply when proceedings for winding up a company or a petition under Section 397 or 398 are moved in the Court. [*O.P. Gupta v. Sfflv General Finance (Pvt.) Ltd* (1977) 47 Comp Cas 297 (Delhi)].

In *Surendra Kumar Dhawan v. R. Vir* [1977] 47 Comp Cas 276 (Delhi) the Delhi High Court has clearly stated that the member of a company has a right to file a winding-up petition under Section 433 of the Companies Act, 1956, in certain circumstances. That statutory right cannot be ousted by articles or any provisions of the same. Similarly, the shareholders of a company have a right to file a petition under Section 397 or Section 398 of the Act if the provisions of Section 399 are satisfied. This right is a statutory right, which cannot be ousted by a provision of the article. The application was instituted by the respondents for stay of the proceedings on account of the fact that there was an arbitration clause in the Articles of the company. The Hon'ble Judge held that the Articles cannot debar the court's jurisdiction in the matter of a



petition under Sections 397 and 398 of the Companies Act, 1956.

Conclusion

Arbitration and Conciliation Act, 1996 provides quick redressal of disputes by private arbitration. The object of arbitration is settlement of dispute in an expeditious, convenient, inexpensive and private manner so that they do not become the subject of future litigation between the parties. Arbitration and Conciliation Act, 1996, also gives powers to judicial authority to refer to disputes to the arbitrator, when it is seized of disputes, in respect of which parties have entered into arbitration agreement.

When an arbitration clause in a shareholders' agreement or articles of association of the company uses the phrase 'any dispute or difference', it includes a wide range of disputes arising out of relationship *inter se* shareholders or conduct of affairs of the company. There may be a situation where majority shareholders oppresses minority or minority shareholders oppresses majority through their affirmative vote. In case of mismanagement, the affairs of the company are conducted in a manner prejudicial to the interest of public or any member(s) of the company. Oppression and mismanagement, being disputes of very serious nature, the Companies Act, 1956 has given powers to CLB to deal with such disputes. Section 399 of the Companies Act, 1956 provides for requisite number of members or members holding requisite voting power to complain to CLB under Sections 397 and 398 of the Companies Act, 1956 and pray for relief under Section 402 of the Companies Act, 1956.

However, there are conflicting judicial pronouncements regarding arbitrability of disputes relating to oppression and mismanagement of the company. In few cases it has been held that dispute relating to oppression and mismanagement is arbitrable. Whereas in some of the cases it has been held that powers of CLB to deal with dispute relating to oppression and mismanagement, cannot be ousted by an arbitration agreement. ■



Corporate Laws



LW.78.09.2012

**CEMENT CORPORATION OF INDIA v.
POPULATION FOUNDATION OF INDIA [DEL]**

Co.Appeal (SB) No. 40/2007

Indermeet Kaur, J. [Decided on 18/07/2012]

Companies Act, 1956 - Section 58A - nonrefund of deposit - CLB directed to refund deposit with interest-company refunded the principal but not the interest-depositor again approached CLB for refund of interest which was allowed - Company's application for recalling the order rejected - Whether correct - Held, Yes.

Brief facts

Population Foundation of India (hereinafter referred to as the respondent) made certain deposits to the tune of Rs.75 lacs to Cement Corporation of India (hereinafter referred to as the petitioner); the said amounts not having been returned back to the respondent, an application under Section 58(A) of the Companies Act was filed before the Company Law Board. The Company Law Board after considering the respective contentions of the parties passed order dated 16.01.2004 directing the Petitioner to refund the deposit with interest. Against this order, an appeal was preferred by the petitioner before the High Court but withdrawn on 29.05.2006. However, the High Court vide order dated 29.05.2006 clarified that if Population Foundation of India has any grievance or a legal right,

it would be entitled to pursue the same. On the basis of this order, the respondent filed another application before the CLB for the payment of interest which was allowed by CLB vide order dated 31.08.2007. The petitioner applied for the recall of this order but CLB refused to do so vide order dated 18.10.07. These two orders are now the subject matter of appeal before the High Court.

Decision : Appeal dismissed.

Reason

The question which has to be answered is whether the petitioner is liable to pay interest on the aforementioned sum of Rs.75 lacs made by him or whether this payment of Rs.75 lacs made by him as full and final settlement between the parties.

The stand of the respondent is forceful and is answered in his favour by the documents on record. Record shows that admittedly on 16.01.2004, the petitioner had been directed to refund the deposits of the respondents along with the interest at the contracted rate till the date of maturity and thereafter at the rate of 5 % per annum till date i.e. the date of actual payment. This order has since attained finality by the withdrawal of the appeal by the petitioner on 29.05.2006.

The communication of the petitioner to the respondent dated 10.05.2006 had made an offer of Rs.75 lacs as a onetime settlement; the reply of the respondent dated 17.05.2006 had however clearly stated that this amount of Rs. 75 lacs was a payment of principal amount; it was accepted as the principal figure which is further clarified by the order dated 29.05.2006 when the petitioner had withdrawn his appeal, at that point of time also, the respondent not being satisfied with the amount of Rs.75 lacs which he had received had got the benefit of the Court permitting him to get his grievance/legal right addressed. This was accordingly followed up by his filing an application before the Company Law Board pursuant to which the aforementioned two impugned orders had been passed.

The next submission of the learned counsel for the petitioner is that the respondent is bound by the order of the BIFR which had approved the scheme of rehabilitation of the petitioner company on 03.05.2006; attention has been drawn to Para 7.1 of the said scheme; submission being that the respondent was entitled to receive only the principal sum and no interest quotient was permitted which order of the BIFR was approved by the AIFR vide its order dated 28.03.2000; further submission being that this scheme has been approved by the High Court and finally by the Supreme Court in the year 2009; the petitioner is bound by the terms contained therein; on this count also, he is not entitled to any interest.

This submission of the learned counsel for the petitioner is also without force. A Bench of this Court in *LG Electronics Ltd v. Usha (India) Ltd. & Anr* EFA (OS) No.16/2003 dated 16.03.2007 has held that the deposit amounts by A company with B company where B company is declared as a sick company would not attract the provisions of Section 22 of the SICA; the said amounts having been deposited as a trust money, provisions of Section 22 of the SICA would not be applicable.

The Division Bench of this Court had noted that a deposit made by



a depositor to a company is not a loan; it is money which is given in trust; bar of Section 22 (1) of the SICA is not applicable; as such the amount due to the respondent could not come within the ambit of the scheme promulgated by the BIFR; the BIFR was only dealing with the assets of the sick company; the deposits made by the respondent with the petitioner being a trust money with the respondent were not encompassed within this scheme; the terms of the scheme would thus even otherwise not be binding upon the respondent. On all counts, the impugned orders calls for no interference.

LW.79.09.2012

DOOSAN POWER SYSTEMS INDIA PRIVATE LIMITED v. DOOSAN CHENNAI WORKS PRIVATE LIMITED [DEL]

C.P.No. 151/2012

Indermeet Kaur, J. [Decided on 10/07/2012]

Companies Act, 1956 - Sections 391 to 394 - amalgamation - scheme provided for change of name and corresponding amendment/alteration in the memorandum and articles of association of transferee company - Regional director objected and insisted separate proceedings prescribed in the Act to be followed - Whether tenable - Held, No.

Brief facts

This petition has been filed under Section 391 to 394 of the Companies Act, 1956 (for short Act) by the Petitioner/Transferor Company seeking sanction of the Scheme of Amalgamation (for short Scheme) of Doosan Power Systems India Private Limited (hereinafter referred to as Petitioner Company or the Transferor Company) with Doosan Chennai Works Private Limited (hereinafter referred to as Transferee Company). One of the terms of the scheme is that upon sanction of amalgamation, the name of the transferee company will be changed and the memorandum and articles of association of the transferee company amended/alterd accordingly. Regional director took an objection that this has to be done by following the specific procedure prescribed in the Act and not under the scheme of amalgamation.

Decision : Objection rejected and scheme sanctioned.

Reason

In reply to the abovesaid objection, it is submitted by the petitioner that the approval of the Scheme in terms of Section 391-394 of the Act is a Single Window Clearance and no further fact on the part of Transferee Company is required to be done after the approval of the Scheme, for giving effect to the alteration in the Memorandum of Association and change in Name of the Transferee Company. Further, reliance upon the order dated 18.7.2011 passed by this Court in the matter of BSK Engineers Pvt. Ltd. (Company Petition NO.44/2011), wherein similar

objections raised by the Regional Director, had been rejected by this Court in this regard. In view of the aforesaid submissions, objections raised by the Regional Director no longer Survive. In view of the approval accorded by the Shareholders and Creditors of the Petitioner/Transferor Company, representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner/Transferor Company will comply with the statutory requirements in accordance with law. Certified copy of the order will be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, and in terms of the Scheme, the whole of the undertaking, the property, rights and powers of the Petitioner/Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and dues of the Petitioner/Transferor Company will be transferred to the Transferee Company without any further act or deed. It is however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other department which may be specifically required under any law. The Transferor Company shall stand dissolved without following the process of winding up. Further, since the jurisdiction of the Transferee Company is before the High Court of Madras and the said Transferee Company has already moved a petition over there, this order is subject to the sanction of the Scheme by the High Court of Madras.

LW.80.09.2012

IN RE: AVM CAPITAL SERVICES (P.) LTD [BOM]

Co. Scheme Petition Nos. 670 to 675 of 2011, Co. Summons For Direction Nos. 598 To 603 of 2011

S.J. Kathawalla, J. [Decided on 12/07/2012]

Companies Act, 1956 - sections 391 and 394 - amalgamation - promoter holding shares in transferor companies and also in transferor company - Scheme proposed to achieve this indirect shareholding of the promoter to become direct - Lone objector objected on the ground of tax avoidance - whether tenable -Held, No.

Brief facts

By the above Company Scheme Petitions, sanction of this Court is



sought under Sections 391 to 394 read with Sections 80, 100 to 103 of the Companies Act, 1956, to the scheme of arrangement whereunder the five Companies AVM Capital Services Private Limited (ACPL); Chevy Capital Services Private Limited (CCSPL); PM Capital Services Private Limited (PCSPL); Pranit Trading Private Limited (PTPL); and Viramrut Trading Private Limited (VTPL) (the Transferor Companies) are sought to be merged with Unichem Laboratories Limited (ULL) (the Transferee Company). Pursuant to the Scheme, the entire undertaking of the Transferor Companies would stand vested with the Transferee Company.

The Scheme was approved by an overwhelming majority of 99.99% in value of the shareholders present and voted. The Objector was the only share holder who opposed the Scheme. The first, and the main objection of the Objector is that the Scheme is propounded to avoid capital gains tax that would have arisen if the Transferor Companies would have directly transferred their shares to the Promoters.

Decision : Scheme sanctioned.

Reason

I have considered the main charge of the Objector that the Scheme is a device for avoidance of tax, and have also considered the submissions advanced on behalf of the Petitioners in response to this charge.

In view of the observations of the Hon'ble Supreme Court in the Vodafone decision, the submission of the Objector herein that he is fortified by the decision in McDowell's case, and that the decision in Azadi Bachao Andolan is *per in curium* or is contrary to the decision in McDowell's case is rejected. The decision of the Gujarat High Court in the case of Wood Polymer Limited (*supra*) is no longer good law, in view of the decision of the Supreme Court in the case of Azadi Bachao Andolan and Vodafone International Holdings (*supra*).

As regards the submission of the Objector that this Court should direct the Transferee Company to implead the income tax authority as a necessary party, in my view, the income tax authority is not required to be heard while sanctioning the Scheme under Section 391-394 of the Companies Act, 1956.

The Objector has also raised a grievance that the shares of the Transferee Company held by the Transferor Companies which are purely tradable and transferable without any restrictions cannot be transferred through the present Scheme of Arrangement. As submitted on behalf of the Petitioners, the Promoters are not looking for an exit from the Transferee Company through divestment and have adopted one of the available methods for reorganizing their shareholding. In the case of scheme of arrangement between Tata Services Limited and Tatanet services Limited, wherein a commercial division of Tata Services Limited was proposed to be transferred, the Regional Director had objected that the transfer could be achieved through compliance of the provisions of Section 293(1)(a) of the Companies Act, 1956. This Court dealing with the said objection has held that if the Petitioners have adopted an elaborate route to achieve the

objective, they cannot be faulted for the same.

The purpose of the Scheme is to provide long term stability and transparency in the Transferee Company. The Transferor Companies are in existence since 1975. It was felt that it would be in the interest of the Transferee Company to merge the five Transferor Companies with the Transferee Company, and to enable the Promoter thereof to hold shares directly in the Transferee Company rather than indirectly. The object of the Scheme is not to avoid any tax. Even today the shares are owned/controlled by the same Promoter albeit through the Transferor Companies. Under the Scheme the only difference is that the Promoter will now hold shares directly in the Transferee Company. It is correctly submitted by the Transferee Company that there is nothing illegal or unlawful or dubious or colourful in the Scheme and the same is a perfectly legitimate scheme and permissible by law. Therefore, the objection of the Objector that the Scheme is a tax avoidance device and ought not to be approved, stands rejected.

LW.81.09.2012

ROAD BUILDER (M) SDN BHD v. TANTIA CONSTRUCTIONS LTD [CAL]

A.P.O. No. 118 of 2012 & C.P. No. 366 of 2011

Ashim Kumar Banerjee & Shukla Kabir Sinha, JJ.

[Decided on 31/07/2012]

Section 434(1)(b) of the Companies Act, 1956 read with Order 37 of the Code of Civil Procedure - Winding up petition by unsecured creditor - Respondent furnishing bank guarantee - winding up court relegated parties to civil suit - whether tenable - Held, Yes.

Brief facts

The parties entered into a joint venture agreement for setting up a project in the State of Mizoram. However, the joint venture did not materialise. The appellant thereafter agreed to sell its plant, machinery, vehicles and all other equipments arranged for the said project to the respondent at and for a sum of Rs.2,75,73,614/-. They accordingly agreed on terms for sale and prepared a schedule containing 47 items of plant and machinery and 18 vehicles including two-wheelers and four-wheelers and an agreement was entered into by the company to the said effect. The respondent paid a sum of Rs.5 lacs as first instalment. It was agreed that they would make payment of the purchase price at a monthly instalment of Rs.20 lacs except the last instalment. The instalments were payable on the 15th day of each English calendar month and default would attract interest at the rate of 12 per cent per annum. The company paid diverse sums from time to time, aggregating to Rs.48 lacs and defaulted balance sum of Rs.2,27,73,614.41p that attracted an additional sum of Rs.64,28,359/- as and by way of interest up to March 31, 2011. The appellant issued a statutory notice of demand on April 14,



2011. The company replied to the same on May 16, 2011 being dealt with in a rejoinder by the appellant issued on June 8, 2011. The company denied its liability as according to them money did not become due and payable in absence of "No Objection Certificate" being issued by the appropriate authorities enabling the respondent company to register the vehicles in their name. There are other issues to raise by the company. The appellant filed a winding up petition that was contested by the company, taking identical stand as they took in their reply to the statutory notice of demand. The learned Judge considered the defence and held that company was unable to disclose any *bona fide* defence. The learned Judge gave opportunity to the company to secure the claim by way of a Bank Guarantee and the respondent furnished the same. Then, the court relegated the parties to civil suit. Aggrieved, appellant appealed to the Division Bench.

Decision : Appeal dismissed.

Reason

We have considered the rival contentions. Concept of *bona fide* dispute was discussed by the learned Single Judge in the case of *Kiranmayee Devi* reported in 49 Calcutta Weekly Notes Page-246. His Lordship set out five eventualities to deal with the concept of *bona fide* dispute in a summary trial under Order 37 of Code of Civil Procedure. Same analogy would be applicable in the case of a winding up proceeding at the instance of an unsecured creditor. The fifth eventuality so pointed out by His Lordship as quoted below in *Kiranmayee Devi (Supra)* would adequately cover the present controversy.

"(e) If the defendant has no defence or the defence is illusory or sham practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition and thereby show mercy to the defendant by enabling him to try to prove a defence."

If we look to the statute itself we would find that any unsecured claim as soon as it is secured, would debar a winding up proceeding being brought by the creditor, no matter whether the claim was *bona fide* or not. In the instant case, statutory notice of demand was replied to by the company. The company put up a defence. Learned Judge was not satisfied, even then he wanted to give an opportunity to the company to show their *bona fide*. It is rather an extension of the benefit which the company could otherwise avail under the statutory provisions so discussed above. The company duly availed such benefit and secured the claim. The order reached finality being acted upon.

The matter may be viewed from another angle. In a case where a litigant invokes the discretionary power of the learned Judge and the learned Judge uses such power in one way the litigant cannot complain that it should have been other way round unless such exercise was so perverse that it would require correction by the Court of Appeal. Right to claim winding up as statutorily provided, is a discretionary remedy. Learned Single Judge exercised discretion in one way. If we independently consider the

controversy we might exercise our discretion contrary to what was observed by the learned Single Judge. Being a Court of Appeal we are not competent to do so. The duty of the Court of Appeal is to see whether discretion is properly and judiciously exercised by the Learned Judge. If the result of the test is positive interference is not warranted. We cannot substitute our independent views on the controversy sitting in a Court of Appeal. It is nobody's case that the discretion was used perversely or *de hors* the Statute.

LW.82.09.2012

INDO RAMA TEXTILE LTD v. INDO RAMA SYNTHETICS LTD [DEL]

Co. Appl. 762/2009

Manmohan, J. [Decided on 23/07/2012]

Companies Act, 1956 read with Income tax Act, 1961-Demerger-Certain common facilities were retained by the demerged company- resulting company was allowed to use the common facilities on payment of charge to the demerged company- due to non payment of charges demerged company withdrew the common facilities- Resulting company sought modification of the scheme to compulsorily transfer the common facilities to it-whether tenable-Held,No.

Brief facts

Indo Rama Synthetics Ltd (IRSL) had two units viz Spinning unit and Polymer unit. It demerged the spinning unit to the resulting company Indo Rama Textile Ltd (IRTL) in the year 2003. In the said scheme of demerger IRSL retained certain common facilities, including a housing colony, with it and a Memorandum of Understanding was entered into between IRSL and IRTL to share these common facilities wherein IRTL was to pay certain charges to IRSL. In the year 2007 IRSL demanded more charges from IRTL for the use of common facilities which IRTL refused to pay and IRSL withdrew the common facilities. Consequently IRSL invoked the arbitration clause of the MoU in 2009 and appointed a sole arbitrator. IRTL approached the court to terminate the mandate of the arbitrator but the court rejected its application. On 27th May, 2009, Applicant applied under Section 392(1)(b) of Act, 1956, to this Court seeking a restraint order against respondent-IRSL from disturbing the Applicant's possession or withdrawal of facilities.

Decision : Application disposed of.

Reason

Having heard the parties at length, this Court is of the view that the Scheme of Arrangement sanctioned by this Court in 2003 has to be read as a whole and not in a piecemeal manner. In fact, upon reading the Scheme of Arrangement in its entirety, in particular Clauses 1.1(vii), 3, 6, 24 along with the Schedules and map annexed to it, this Court has no hesitation in concluding that the



Housing colony as well as common utilities were specifically agreed to be retained and owned by respondent-IRSL. The properties, buildings and assets that were transferred to IRTL under the Scheme of Arrangement were specifically mentioned in its Schedules 1 and 2.

This Court is of the view that shareholders and creditors of respondent-IRSL and IRTL gave their consents to the Scheme of Arrangement knowing fully well that common utilities and housing colony would continue to be retained and owned by the respondent- IRSL.

Even the Applicant before entering into the share purchase agreement was aware of the Memorandum of Understanding dated 28th July, 2005, which specifically stated that housing colony was being offered by respondent-IRSL as a resource to IRTL for five years upon payment of actual cost. In the opinion of this Court, if respondent-IRSL was not the owner of the common resources and infrastructure, there was no question of it offering the common assets for use to IRTL on payment of cost.

In fact, it is settled legal position that there is no requirement under the provisions of the 1961 Act, or 1956 Act for transfer of all common assets and/or liabilities relatable to the Undertaking being demerged. The Applicant's submission that all common assets that cannot be divided must be transferred to the transferee namely, IRTL overlooks the explicit language of Section 2(19AA)(i) of the Act, 1961, which states that "all the properties of the undertaking being transferred by the demerged company, immediately before the demerger becomes the property of resulting company by virtue of the demerger". The expression "being transferred" is relatable to such assets as are being transferred to make it a going concern. Moreover, if the applicant's submission is accepted it would put all the schemes of demerger in a 'straightjacket' format and it would also infringe upon the two company's freedom to negotiate with regard to the transfer of common assets. This Court is of the view that while framing a scheme of demerger, the existing and the resulting companies after ensuring that both of them are a going concern, are free to negotiate which common asset/liability would be transferred to which undertaking. After all, it is on this asset/liability transfer basis that share swap ratio are assessed, determined and allotted.

The Applicant's submission also overlooks the primary function of the Company Court, namely, to ensure that the Scheme serves larger public interest, that means, to ensure both the existing and resulting unit are economically and technically viable. Consequently, merely because certain common assets and liabilities have not been transferred, the transaction would not cease to be demerger of an Undertaking, provided the assets and liabilities transferred, by themselves, constitutes a running business and the business can be carried on uninterruptedly with such assets and liabilities alone.

Consequently, the contention urged by the Applicant that in view of Section 2(19AA) of the 1961 Act the Scheme of Demerger must necessarily comply with Section 2(19AA) which is meant for availing tax concession cannot be read as a mandatory

requirement for all schemes of amalgamation/arrangement/demerger under Sections 391/392/394 of the 1956 Act. The said provision cannot be read and interpreted to include assets/units/undertakings/business belonging to the respondent-IRSL which were never transferred or intended to be transferred to IRTL and which are not mentioned in the Scheme of Arrangement. In the opinion of this Court, the Applicant is in error in contending that the common infrastructure is liable to be made over to them by virtue of reasoning of Section 2(19AA) of the Act, 1961 as the division of assets was indicated in the Scheme.

From the aforesaid, it is apparent that in the proceedings under Section 392(1)(b) of the Act, 1956, the Court cannot rewrite the scheme approved in the meeting called under Section 391(2) of the Act, 1956; but, it can only make such modification as it may consider necessary for proper working of the compromise or arrangement.

It is pertinent to mention that when the scheme was sanctioned in the year 2003, both the Transferor and Transferee Companies were owned and managed by O.P. Lohia group but now both the entities are owned and managed by different business groups. Consequently, to ensure that the scheme sanctioned by this Court is properly implemented, this Court modifies only the dispute redressal mechanism in Clause 36 of the Scheme by directing that in the event of any dispute, doubt or issue arising between the parties, the same shall be referred to a sole arbitrator to be appointed with the consent of the parties. If, however, no consensus is reached between the parties, then the sole arbitrator shall be appointed by the concerned Court. ■

General Laws

LW.83.09.2012

NIHALI DEVI v. STATE GOVT. OF NCT OF DELHI & ANR [SC]

Criminal Appeal No. 1100 of 2012 (Arising out of SLP (Crl.) No. 8941 of 2011)

Aftab Alam & H.L. Gokhale, JJ. [Decided on 25/07/2012]

Negotiable Instruments Act, 1881 - Section 138- accused convicted and sentenced- she paid the penalty during the proceedings- whether sentence can be annulled-Held,yes.



Brief facts

The Appellant is convicted Under Section 138 of the Negotiable Instruments Act, 1881. She was sentenced by the trial court to two years' simple imprisonment; in addition she was also directed to pay a sum of Rs. 1,20,000/- to the complainant as compensation. In appeal, the conviction and sentence was maintained and her revision before the High Court was dismissed as barred by limitation by 565 days.

Decision Appeal allowed.

Reason

The relevant facts are that the Appellant is a woman and is over 66 years of age. Before the trial court she actually admitted her liability to pay the amounts of the two cheques. It, however, appears that it was on account of her highly strained financial condition that she was unable to make the payment. Her two sons had died earlier. During the pendency of the appeal her daughter who was suffering from cancer was undergoing treatment and understandably the Appellant was all through by her bed side. The daughter finally passed away on April 15, 2011. Even in those circumstances she was trying to pay the compensation amount to the complainant, even though in small instalments. In that position, it is not difficult to imagine that she was unable to follow the proceedings in the appeal and was not even aware when it was finally dismissed. That was one of the reasons for the delay in filing the revision before the High Court which the High Court, unfortunately, did not take into account.

At the time of filing the special leave petition she had deposited a sum of Rs. 50,000/- out of the compensation amount of Rs. 1,20,000/-. Hence, this Court directed her to deposit the remaining amount of Rs. 70,000/- as the condition to allow her prayer for exemption from surrendering. She filed proof of deposit of the remaining amount on October 18, 2011, and the full amount of compensation i.e. Rs. 1,20,000/- now remains deposited in the court below which the complainant -Respondent No. 2 is free to withdraw. In the aforesaid facts and circumstances, it appears to us that the sentence of two years' imprisonment given to the Appellant is unduly harsh. It is clear to us that she is a victim of tragic circumstances and she never intended not to repay the amounts for which she issued the two cheques in favour of Respondent No. 2. We, accordingly, set aside the sentence of imprisonment awarded to the Appellant and substitute it by a fine of Rs. 25,000/- which, she must pay within four months from today, failing which she will have to undergo simple imprisonment for 15 days. Out of the amount of fine, if deposited, Rs. 20,000/- will be paid to the complainant, which he would be free to withdraw.

In the result, the appeal is disposed of with the aforesaid modification and reduction in the Appellant's sentence.

LW.84.09.2012

PSG STEEL PVT LTD v. UNION OF INDIA & ORS [DEL]

W P (C) No.7418/2011

S Ravindra Bhat & R V Easwar, JJ.

[Decided on 20/07/2012]

Foreign Trade Development Act, 1992 - Section 15 - revalidation of scrip - goods landed in India after the validity period - whether entitled for revalidation - Held,No.

Brief facts

The petitioner claims a direction in the nature of mandamus to the first respondent to issue instructions to revalidate its scrip which entitled it to customs duty concessions for a period of six months in terms of Serve From India Scheme (SFIS). The beneficiaries of that policy, like the petitioner are entitled to exemption from customs duty in respect of capital goods imported during the period of the scrip's authorization. In this case, the scrip was issued to the petitioner on 15.04.2009 and was valid in terms of the scheme till 30.04.2011.

The petitioner, who had availed of the facility of the customs duty exemption in terms of the SFIS, had apparently entered into contract for purchase of certain equipment from Italy on 18.4.2011. The goods were shipped on 18.04.2011 from Antwerp and landed at the Inland Container Depot, Faridabad on 26.05.2011. By this time, the validity of the scrip had expired (on 30.04.2011). The petitioner was, therefore, required to pay duty. The petitioner sought revalidation of the scrip under the SFIS, which was turned down by the Policy Relaxation Committee (PRC) on 29.08.2011.

Decision : Petition dismissed.

Reason

This Court has considered the submissions of the parties. The terms of the SFIS and the authorization issued under it were clear i.e. that the benefits could be availed for the period of two years. In case of shipment on high seas, the policy provided the extension of concession if the validity period lapsed when the shipment had landed at any Indian port. In other words, in the present case, if the goods had reached in the port of India by the date of expiry of the authorization i.e.30.04.2011, the petitioner could have qualified for extension to facilitate their clearance. However, such was not the case. The goods in fact reached on 26.05.2011 - a fact known to the petitioner when it booked them after entering into contract with the foreign supplier, on 18.04.2011. Having regard to these circumstances, the respondents' action directing payment of full duty and refusal to give the benefit cannot be characterized as unreasonable.

It was brought to the notice of the Court that the order of the Policy Relaxation Committee (PRC) is appealable under Section-15 of the Foreign Trade Development Act, 1992 to the Central Government. This Court is of the opinion that the petitioner should be permitted to avail of that remedy. In case there is any delay, the said authority shall consider the appeal on its merits provided the petitioner approaches it within a period of two weeks from today.



In view of the above conclusions, this Court is of the opinion that the relief claimed cannot be granted. ■

Labour & Industrial Laws

LW.85.09.2012

THE ORIENTAL INSURANCE CO LTD. V. SIBY GEORGE & ORS [SC]

Civil Appeal No. 5669 of 2012 (Arising out of SLP (C) No.9516 of 2010)

Aftab Alam & Ranjana Prakash Desai, JJ.

[Decided on 31/07/2012]

Workmen Compensation Act, 1923 - Sections 4(A)(1) and 4(A)(3)-Supreme Court reiterated the law as to when the compensation under the act and interest thereon becomes payable.

Brief facts

The short question that arises for consideration in this appeal is when does the payment of compensation under the Workmen's Compensation Act, 1923 (hereinafter the Act) become due and consequently what is the point in time from which interest would be payable on the amount of compensation as provided under section 4-A (3) of the Act.

In this case, the Commissioner for Workmen's Compensation directed for payment of simple interest at the rate of 12% per annum from the date of the accident on July 12, 2006. The appellant's appeal against the order of the Commissioner was dismissed by the Kerala High Court as barred by limitation. Against the order of the High Court the appellant filed the special leave petition giving rise to this appeal.

Decision : Appeal dismissed.

Reason

Now, coming back to the question when does the payment of compensation fall due and what would be the point for the commencement of interest, it may be noted that neither the decision in Mubasir Ahmed nor the one in Mohd. Nasir can be said

to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975 a four Judge Bench of this Court in *Pratap Narain Singh Deo. v. Shrinivas Sabata and Anr.*, AIR 1976 SC 222 and in *Kerala State Electricity Board v. Valsala K.*, AIR 1999 SC 3502 directly answered the question.

In light of the decisions in Pratap Narain Singh Deo and Valsala it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala do not express the correct view and do not make binding precedents.

LW.86.09.2012

M/S AMBICA RUBBER INDUSTRIES & ANR v. RAJENDER YADAV & ANR [DEL]

W.P. (C) 14695-96/2006

P.K.Bhasin, J. [Decided on 30/07/2012]

Industrial Disputes Act, 1947- dismissal of workman-labour court directed reinstatement and 50% back wages- whether tenable-Held, Yes.

Brief facts

By way of this writ petition the petitioner-employer had challenged the award whereby the relief of re-instatement in service with 50% back wages was granted to the respondent-workman by the Labour Court as also the order dated 3.4.2006 whereby review petition filed by it for recalling the award on the ground that it was passed without hearing any arguments from its side was also dismissed.

Decision : Petition dismissed.

Reason

After having gone through the impugned award and the arguments made on behalf of the petitioner I find myself unable to agree with the learned counsel for the petitioner. The Labour Court has after proper appreciation of evidence adduced from both the sides come to the conclusion that this is not a case of abandonment of job by the respondent. This Court does not find any perversity in that conclusion. Just because the respondent-workman had taken some advance and not returned, though he had denied having received any advance, it could not be inferred from that that he had abandoned his job. He had worked for more than ten years and so it cannot be expected that suddenly he would leave the job only to avoid payment of some money to his employer. He had in fact immediately in December, 1996 written to the petitioner that he had been illegally removed from service. Then he had approached



the Labour Authorities also claiming reinstatement. That conduct of the respondent negatives any intention on his part to abandon his 10 years old job and even because of his alleged absence from 1.11.96 it could not be inferred that he did not want to work with the petitioner any more. The petitioner did not even call upon her to resume his duties which it would have done in case it had not terminated his services. So, no fault can be found with the findings of the Labour Court that the services of the respondent was terminated by the petitioner illegally. Compliance of Section 25-F had to be done by the petitioner even if some money was to be taken by it from the respondent and particularly when the petitioner is not claiming that that amount was allowed to be retained by the respondent as compensation etc. payable under Section 25-F. The submission of the learned counsel for the petitioner that since its Unit stands closed since long and so reinstatement is not possible now, cannot be entertained since it was not taken before the Labour Court even though its case now is that its Unit had already been shut down when the respondent had raised the dispute. However, as far as the direction given to the management to pay to the respondent-workman wages from January, 2006 till 9-11-96 is concerned the same appears to be a typing mistake and actually the wages were intended to be given from 1/11/2006 onwards and that mistake is corrected here. To that extent the award would stand corrected but otherwise the writ petition is dismissed.

LW.87.09.2012

**MOHIT ELECTRONICS v. WORKMAN TAHIR
HUSSAN [DEL]**

LPA.No. 71/2012

Badar Durrez Ahmed & Siddharth Mridul, JJ.

[Decided on 25/07/2012]

Industrial Disputes Act, 1947 - Section 17(B) - labour court directed payment of wages- management appealed to High court without complying with the said order- High court dismissed the appeal and commenced contempt proceedings - Whether correct - Held, No.

Brief facts

This appeal is directed against the judgment/order dated 18.01.2012 passed by a learned Single Judge of this court in CM No.21618/2010 and WP(C) No.6284/2004 whereby the writ petition of the appellant herein was dismissed on the ground that there was non-compliance of an order passed under Section 17B of the Industrial Disputes Act, 1947 inasmuch as the allegation was that the appellant had not complied with the said order by not paying wages to the respondent from August 2008 onwards. By virtue of the impugned order contempt proceedings were also initiated and the appellant's proprietor Mr Ravinder Kumar who was present in court on the date on which the impugned order was passed was directed to show cause as to why he be not proceeded

against for having committed contempt of court.

Decision : Appeal allowed.

Reason

Without going into the question of whether the non-compliance was intentional and/or wilful, the court could not, simply because there was non-compliance, dismiss the writ petition and initiate contempt proceedings. We note from the order in appeal that while the submission of the learned counsel for the appellant was recorded, there is no finding returned by the learned Single Judge as to whether the non-compliance was intentional and wilful or not. Despite the fact that there is no such finding, the learned Single Judge went on to dismiss the writ petition and also initiate contempt proceedings against the proprietor of the appellant. This, in our view, was an error.

The issue also stands settled by a decision of a Division Bench of this court in the case of *DTC v. Gurcharan Singh*, LPA No.132/2012 decided on 30.03.2012. We concur with the said reasoning and do not feel the need to discuss the matter any further.

In view of clear enunciation of the settled principles, the writ petition could not have been dismissed merely because there was non-compliance of an order passed under Section 17B of the said Act. Furthermore, such non-compliance could also not lead to the initiation of contempt proceedings. Consequently, following the said decision in the case of *Gurcharan Singh (Supra)* we allow this appeal and set aside the impugned order dated 18.01.2012 and remit the matter to the learned Single Judge for a decision in accordance with law. The respondent has a remedy under Section 33C (2) of the said Act which he may pursue, in accordance with law. ■

SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out special issues of Chartered Secretary on the following topics during the remaining period of the year 2012:

1. Attitudinal shift in the functioning of Corporates and Company Secretaries - October 2012 issue and
2. Corporate Restructuring and Insolvency - December 2012 issue.

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues.

The articles may kindly be forwarded to:

The Deputy Director (Publications), **The ICSI**, 22, Institutional Area, Lodi Road, New Delhi 110003.

E-Mail: ak.sil@icsi.edu

copy to [<ks.gopalakrishnan@icsi.edu>](mailto:ks.gopalakrishnan@icsi.edu).



From the Government

Corporate Laws

It is hereby clarified that any employee of a company holding shares of the company upto 0.5% of paid up share capital thereof under any scheme formulated for allotment of shares to such employees including under Employees' Stock Option Plan or by way of qualification shares are also covered under the category of persons not having any interest in the capital of the company in terms of the Ministry's notification GSR 534(E) dated 14.07.2011.

L. K. Trivedi
Under Secretary

02 Amendment to Notification Number G.S.R. 501(E) dated 6th July, 1999

[Issued by the Ministry of Corporate Affairs vide Notification No. G.S.R. 617(E) Dated 07.08.2012.]

1. In exercise of the powers conferred by sub-section (1) of section 642, read with sub-section (2) of section 637A of the Companies Act, 1956 (1 of 1956), the Central Government hereby amends the notification of the Government of India in the erstwhile Ministry of Law, Justice and Company Affairs (Department of Company Affairs) number G.S.R. 501(E), dated the 6th July, 1999 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 6th July, 1999, namely:-
2. In the said notification, after sub-rule (3), and Table-III, the following sub-rule (4) and Table-IV shall be inserted, namely:-
“(4) In case of delays in filing applications with the Central Government under sub-section (2) of section 233B of the said Act, the fee as specified in the Table-IV below shall be applicable:

Table - IV

Period of Delay	Fee Payable with the Application
Upto 30 days	Two times of normal fee
More than 30 days and upto 60 days	Four times of normal fee
More than 60 days and upto 90 days	Six times of normal fee
More than 90 days	Nine times of normal fee

Note: Normal fee means the fee as given in the Table-I above.”

B. B. Goyal
Adviser (Cost)

01 Gazette notification GSR 534(E) dated 14/07/2011- clarification regarding.

[Issued by the Ministry of Corporate Affairs vide F.No. 14/11/2012-CL-VII Dated 16.08.2012.]

I am directed to refer to the Gazette Notification No. GSR 534(E) dated 15th July, 2011 whereby companies were exempted from obtaining the approval of the Central Government for payment of remuneration exceeding the limits imposed by the Companies Act, 1956 in respect of the managerial persons not having any interest in the capital of the company and not related to the directors or promoters thereof.

In this regard, a number of representations have been received from stakeholders pointing to the corporate practice of allocating shares by way of qualification shares and/ or shares under any scheme for allotment of shares to the employees of the company including under Employees' Stock Option Plan (ESOP).



03 Product or Activity Groups for Cost Audit Report and Compliance Report to be filed with the Central Government

[Issued by the Ministry of Corporate Affairs vide Notification No. S.O. 1747(E) Dated 07.08.2012.]

1. In exercise of the powers conferred by clause (b) of sub-section (1) of section 642 read with section 610B of the Companies Act, 1956 (1 of 1956), the Central Government hereby constitutes the Product or Activity Groups as given in the Annexure enclosed.
2. Pursuant to the above, all companies shall use the Product or Activity Groups as given in the Annexure, wherever it appears, in the Cost Audit Report and in the Compliance Report to be filed with the Central Government in compliance with the following rules, namely:-
 - a) The Companies (Cost Accounting Records) Rules, 2011 notified vide GSR 429(E), dated the 3rd June, 2011;
 - b) The Companies (Cost Audit Report) Rules, 2011 notified vide GSR 430(E), dated the 3rd June, 2011;
 - c) The Cost Accounting Records (Telecommunication Industry) Rules, 2011 notified vide GSR 869(E), dated the 7th December, 2011;
 - d) The Cost Accounting Records (Petroleum Industry) Rules, 2011 notified vide GSR 870(E), dated the 7th December, 2011;
 - e) The Cost Accounting Records (Electricity Industry) Rules, 2011 notified vide GSR 871(E), dated the 7th December, 2011;
 - f) The Cost Accounting Records (Sugar Industry) Rules, 2011 notified vide GSR 872(E), dated the 7th December, 2011;
 - g) The Cost Accounting Records (Fertilizer Industry) Rules, 2011 notified vide GSR 873(E), dated the 7th December, 2011;
 - h) The Cost Accounting Records (Pharmaceutical Industry) Rules, 2011 notified vide GSR 874(E), dated the 7th December, 2011.
3. The Product or Activity Group as given in the Annexure shall also be used, wherever so desired by the Central Government, in respect of any other document required to be filed either with the Registrar or with the Central Government in compliance with any provisions of the Companies Act, 1956 (1 of 1956).

Annexure

Serial Number	Product or Activity Group Code	Name of the Product or Activity Group	Central Excise Tariff Act (CETA) Chapter Headings covered in the Product or Activity Group
1	1001	Livestock	0101 to 0106
2	1002	Meat and Meat Products	0201 to 0210; 0410; 1601 to 1603
3	1003	Marine Products	0301 to 0307; 1604 to 1605
4	1004	Milk and Milk Products	0401 to 0406
5	1005	Poultry and Related Products	0407 to 0408
6	1006	Bee Products	0409
7	1007	Human Hair and Related Products	0501; 6703 to 6704
8	1008	Products of Animal Origin	0502; 0504 to 0508; 0510 to 0511
9	1009	Plants, Trees and Flowers	0601 to 0604
10	1010	Vegetables	0701 to 0714
11	1011	Fruits and Nuts	0801 to 0814
12	1012	Coffee and Coffee Products (incl. 210111)	0901
13	1013	Tea and Tea Products (incl. 210120)	0902
14	1014	Spices - processed or unprocessed	0903 to 0910
15	1015	Cereals, Flour and Product of Cereals	1001 to 1008; 1101 to 1109
16	1016	Oil Seeds and Products of Oil Seeds	1201 to 1208
17	1017	Other Seeds and Plants	1209 to 1214
18	1018	Vegetable Saps or Products	1301 to 1302; 1401; 1404
19	1019	Animal or Vegetable Fats and Oils	1501 to 1518; 1520 to 1522
20	1020	Sugar and Sugar Products	1701 to 1702
21	1021	Molasses	1703
22	1022	Sugar Confectionery or Chocolates	1704; 1806
23	1023	Cocoa Products	1801 to 1805
24	1024	Prepared Food Products	1901 to 1905; 2001 to 2009; 2101 to 2106; 2501
25	1025	Mineral Water and Aerated Drinks	2201 to 2202
26	1026	Alcoholic Beverages	2203 to 2206; 2208
27	1027	Ethyl Alcohol and other Spirits	2207
28	1028	Vinegar	2209
29	1029	Food Residues or Prepared Animal Feed	2301 to 2309
30	1030	Unmanufactured and Manufactured Tobacco	2401; 2403
31	1031	Tobacco Products	2402
32	2001	Mineral Products	2502 to 2522; 2524 to 2526; 2528 to 2530; 2601 to 2621
33	2002	Cement	2523
34	2003	Mineral Fuels (other than Petroleum)	2701 to 2708
35	2004	Petroleum Oils - Crude	2709
36	2005	Petroleum Oils - Refined	2710
37	2006	Petroleum Gases and other Gaseous Hydrocarbons	2711
38	2007	Other Petroleum Products	2712 to 2715
39	2008	Electrical Energy	2716
40	2009	Chemical Elements	2801 to 2805
41	2010	Inorganic Chemicals and their Derivatives	2806 to 2837; 2839 to 2850; 2852 to 2853
42	2011	Organic Chemicals and their Derivatives (excluding Bulk Drugs)	2901 to 2942
43	2012	Bulk Drugs	2901 to 2942
44	2013	Albuminoidal Substances, Starches, Glues and Enzymes	3501 to 3507



From the Government

45	2014	Miscellaneous Chemical Products	3801 to 3807; 3809 to 3825
46	2015	Pharmaceutical Products	3001 to 3006
47	2016	Animal or Vegetable Fertilizers	3101
48	2017	Mineral or Chemical Fertilizers - Nitrogenous	3102
49	2018	Mineral or Chemical Fertilizers - Phosphatic	3103
50	2019	Mineral or Chemical Fertilizers - Potassic	3104
51	2020	Mineral or Chemical Fertilizers - Others	3105
52	2021	Tanning Substances	3201 to 3202
53	2022	Colours, Dyes and Pigments	3203 to 3207; 3212
54	2023	Paints and Varnishes	3208 to 3211
55	2024	Inks and Colours	3213; 3215
56	2025	Plasters and Fillers	3214
57	2026	Essential Oils	3301 to 3302
58	2027	Personal Care Products	3303 to 3307; 8212; 9615 to 9616
59	2028	Soaps, Detergents and Cleaning Agents	3401 to 3402
60	2029	Lubricating Preparations	3403
61	2030	Waxes and Wax Products	3404 to 3407
62	2031	Explosives	3601 to 3603
63	2032	Fireworks, Matches and Combustible Materials	3604 to 3606
64	2033	Photographic and Cinematographic Goods	3701 to 3707
65	2034	Insecticides	3808
66	2035	Chemicals - Plastics and Polymers	3901 to 3915
67	2036	Articles of Plastics and Polymers	3916 to 3926
68	2037	Rubber and Rubber Products	4001 to 4010; 4014 to 4017
69	2038	Rubber Tyres and Tubes	4011 to 4013
70	3001	Raw Hides, Skins and Leather	4101 to 4107; 4112 to 4115
71	3002	Leather Products	4201 to 4203; 4205 to 4206
72	3003	Furskins and Fur Products	4301 to 4304
73	3004	Wood and Wood Products	4401 to 4421
74	3005	Cork and Cork Products	4501 to 4504
75	3006	Straw and Plaiting materials	4601 to 4602
76	3007	Pulp of Wood and other substances	4701 to 4707
77	3008	Newsprint	4801
78	3009	Paper and Paperboard	4802 to 4813
79	3010	Articles of Paper and Paperboard	4814; 4816 to 4823
80	3011	Printing and Publishing	4901 to 4911
81	3012	Silk	5001 to 5003
82	3013	Silk Yarn	5004 to 5006
83	3014	Silk Fabrics	5007
84	3015	Wool	5101 to 5105
85	3016	Wool Yarn	5106 to 5110
86	3017	Wool Fabrics	5111 to 5113
87	3018	Cotton	5201 to 5203
88	3019	Sewing Thread	5204; 5401
89	3020	Cotton Yarn	5205 to 5207
90	3021	Cotton Fabrics	5208 to 5212
91	3022	Other Textile Yarns or Fibers	5301 to 5303; 5305 to 5308
92	3023	Other Textile Fabrics	5309 to 5311
93	3024	Synthetic Yarns or Fibers	5402 to 5406; 5501 to 5511; 5601 to 5609
94	3025	Synthetic Fabrics	5407 to 5408; 5512 to 5516
95	3026	Carpets and textile floor coverings	5701 to 5705
96	3027	Other Textile Fabrics or Products	5801 to 5811; 5901 to 5911; 6301; 6305 to 6310
97	3028	Knitted or Crocheted Fabrics	6001 to 6006
98	3029	Apparel and Clothing	6101 to 6117; 6201 to 6217
99	3030	Furnishings	6302 to 6304

100	3031	Footwear and Parts thereof	6401 to 6406
101	3032	Headgear and Parts thereof	6501 to 6502; 6504 to 6507
102	3033	Umbrellas, Sticks etc.	6601 to 6603
103	3034	Articles of Skins and other parts of birds	6701
104	3035	Artificial Flowers and Fruits	6702
105	3036	Articles of Stones, Plaster, Cement, Asbestos and Mica	6801 to 6815
106	3037	Ceramic Products	6901 to 6914
107	3038	Glass and Glass Products	7001 to 7011; 7013 to 7020
108	3039	Pearls, Diamonds, Stones and Jewellery Articles	7101 to 7118
109	4001	Primary Ferrous Materials	7201 to 7205
110	4002	Iron and Non-Alloy Steel	7206 to 7217
111	4003	Stainless Steel	7218 to 7223
112	4004	Other Alloy or Non-Alloy Steel	7224 to 7229
113	4005	Steel Products	7301 to 7326
114	4006	Copper and Copper Products	7401 to 7413; 7415; 7418 to 7419
115	4007	Nickel and Nickel Products	7501 to 7508
116	4008	Aluminium and Aluminium Products	7601 to 7616
117	4009	Lead and Lead Products	7801 to 7802; 7804; 7806
118	4010	Zinc and Zinc Products	7901 to 7905; 7907
119	4011	Tin and Tin Products	8001 to 8003; 8007
120	4012	Other Base Metals and their Products	8101 to 8113; 8301 to 8311
121	4013	Hand Tools	8201 to 8211; 8213 to 8215
122	4014	Nuclear Reactors and Accessories	8401
123	4015	Boilers and Accessories	8402 to 8404
124	4016	Engines or Motors and parts thereof	8405 to 8412
125	4017	Machinery and Mechanical appliances	8413 to 8484; 8486 to 8487
126	4018	Electric Motors, Generators, Transformers and Parts thereof	8501 to 8505
127	4019	Batteries and Accumulators	8506 to 8507
128	4020	Electrical and Electronic Equipments or Appliances	8508 to 8519; 8521 to 8523; 8525 to 8548
129	4021	Railway Rolling Stock	8601 to 8606
130	4022	Parts of Railway Rolling Stock	8607
131	4023	Railway Track Fixtures and Fittings	8608
132	4024	Containers	8609
133	4025	Commercial Vehicles (3 or more wheels)	8701; 8704 to 8707; 8709; 8716
134	4026	Passenger Vehicles (4 or more wheels)	8702 to 8703
135	4027	Parts and Accessories of Vehicles	8708; 8714
136	4028	Tanks and Armoured Vehicles and parts thereof	8710
137	4029	Passenger Vehicles (2 and 3 Wheelers) - Motorised	8711; 8713
138	4030	Passenger Vehicles (2 or 3 Wheelers) - Non Motorised	8712; 8713; 8715
139	4031	Non-powered Aircraft and parts thereof	8801; 8803
140	4032	Aircraft, Spacecraft and parts thereof	8802 to 8803; 8805
141	4033	Parachutes and Rotochutes	8804
142	4034	Ships and Boats	8901 to 8904
143	4035	Floating Structures	8905 to 8908
144	4036	Optical Equipments and parts thereof	9001 to 9005; 9012 to 9013; 9033
145	4037	Photographic or Cinematographic Equipment and parts thereof	9006 to 9008; 9010 to 9011; 9033
146	4038	Measuring Instruments and parts thereof	9014 to 9017; 9023 to 9033
147	4039	Surgical or Medical Instrument and parts thereof	9018 to 9022; 9033
148	4040	Clocks or Watches and Parts thereof	9101 to 9114
149	4041	Musical Instruments and Parts thereof	9201 to 9202; 9205 to 9209



150	4042	Arms or Ammunition and Parts thereof	9301 to 9307
151	4043	Medical or Vehicular or other Furniture and Mattress and parts thereof	9401 to 9404
152	4044	Lights and Fittings	9405
153	4045	Prefabricated Buildings	9406
154	4046	Toys, games and sports Equipments	9503 to 9508
155	4047	Stationery Items	9608 to 9612
156	4048	Miscellaneous manufactured articles	9601 to 9607; 9613 to 9614; 9617 to 9618
157	4100	Ancillary products or activities not elsewhere specified	As Applicable
158	5001	Construction of residential buildings	Not Applicable
159	5002	Construction of non-residential buildings	Not Applicable
160	5003	Construction of highways, roads, rails, bridges, etc.	Not Applicable
161	5004	Construction of industrial and nonindustrial plants, structures and facilities	Not Applicable
162	5005	Laying of pipelines, communication and power lines	Not Applicable
163	5006	Other construction activities not elsewhere specified	Not Applicable
164	5051	Real estate development activities	Not Applicable
165	5061	Architectural and engineering services	Not Applicable
166	5071	Construction and real estate related services	Not Applicable
167	5101	Basic telephone services - wired and WLL	Not Applicable
168	5102	Cellular mobile telephone services - wireless and WLL	Not Applicable
169	5103	Internet and broadband services	Not Applicable
170	5104	National long distance services	Not Applicable
171	5105	International long distance services	Not Applicable
172	5106	Public mobile radio trunk services	Not Applicable
173	5107	Global mobile personal communication services	Not Applicable
174	5108	Passive telecom infrastructure and tower facilities	Not Applicable
175	5109	Cable landing stations	Not Applicable
176	5121	Broadcasting and related services	Not Applicable
177	5131	Performing art and entertainment services	Not Applicable
178	5141	Other communication services not elsewhere specified	Not Applicable
179	5201	Publishing of newspapers, journals and periodicals	Not Applicable
180	5202	Book publishing	Not Applicable
181	5203	Advertising services	Not Applicable
182	5204	News agency activities	Not Applicable
183	5301	Transportation of passengers - by road	Not Applicable
184	5302	Transportation of passengers - by rail	Not Applicable
185	5303	Transportation of passengers - by water	Not Applicable
186	5304	Transportation of passengers - by air	Not Applicable
187	5401	Transportation or distribution of goods - by road	Not Applicable
188	5402	Transportation or distribution of goods - by rail	Not Applicable
189	5403	Transportation or distribution of goods - by water	Not Applicable
190	5404	Transportation or distribution of goods - by air	Not Applicable
191	5405	Transportation or distribution of goods - by pipeline	Not Applicable

192	5406	Transmission or distribution of electricity	Not Applicable
193	5411	Cargo and baggage handling activities	Not Applicable
194	5421	Service activities incidental to transportation	Not Applicable
195	5431	Storage and warehousing activities	Not Applicable
196	5441	Port activities	Not Applicable
197	5451	Rental services of transport vehicles	Not Applicable
198	5461	Tours and travel activities	Not Applicable
199	6001	Banking services	Not Applicable
200	6002	Non-banking financial services	Not Applicable
201	6003	Investment banking services	Not Applicable
202	6004	Financial leasing services	Not Applicable
203	6005	Services auxiliary to banking and financial services	Not Applicable
204	6006	Leasing or rental of tangible assets	Not Applicable
205	6007	Leasing of non-financial intangible assets	Not Applicable
206	6101	Life insurance services	Not Applicable
207	6102	Non-life insurance services	Not Applicable
208	6103	Reinsurance services	Not Applicable
209	6104	Pension services	Not Applicable
210	6201	Brokerage and agency services	Not Applicable
211	6202	Market intermediaries' services	Not Applicable
212	6301	Postal services	Not Applicable
213	6302	Courier services	Not Applicable
214	6401	Accounting, auditing and bookkeeping services	Not Applicable
215	6402	Management consulting services	Not Applicable
216	6403	Legal services	Not Applicable
217	6404	Human Resource placement and management services	Not Applicable
218	6405	Business support services	Not Applicable
219	6406	Research and experimental development services	Not Applicable
220	6407	Other professional services	Not Applicable
221	6501	Education services	Not Applicable
222	6502	Human healthcare services	Not Applicable
223	6503	Veterinary services	Not Applicable
224	6504	Sports, amusement and recreational activities	Not Applicable
225	6505	Other personal service activities	Not Applicable
226	6506	Other social services	Not Applicable
227	6601	Accommodation, food and beverage services	Not Applicable
228	6701	Collection and waste management activities	Not Applicable
229	6702	Dyeing, colouring, washing and drycleaning services	Not Applicable
230	6703	General cleaning services	Not Applicable
231	6704	Installation, maintenance and repair services	Not Applicable
232	6705	Investigation and security services	Not Applicable
233	6706	Market research and public opinion polling services	Not Applicable
234	6707	Packaging activities	Not Applicable
235	6708	Photographic services	Not Applicable
236	6801	Information technology (IT) and IT enabled services	Not Applicable
237	6901	General public administration services	Not Applicable
238	7001	Any other service activity not elsewhere specified	Not Applicable
239	8001	Wholesale trade of agricultural raw materials and live animals	Not Applicable



From the Government

240	8002	Wholesale trade of food, beverages and tobacco [includes fruits, vegetables, dairy products, etc.]	Not Applicable
241	8003	Wholesale trade of textiles, clothing and footwear	Not Applicable
242	8004	Wholesale trade of household appliances, articles and equipments	Not Applicable
243	8005	Wholesale trade of miscellaneous consumer goods	Not Applicable
244	8006	Wholesale trade of construction materials and hardware	Not Applicable
245	8007	Wholesale trade of chemical and pharmaceutical products	Not Applicable
246	8008	Wholesale trade of personal care products	Not Applicable
247	8009	Wholesale trade of machinery, equipment and supplies	Not Applicable
248	8010	Wholesale trade of solid, liquid and gaseous fuels and related products	Not Applicable
249	8011	Wholesale trade of ores, minerals, metals and articles thereof	Not Applicable
250	8012	Wholesale trade of stones, pearls and precious metals	Not Applicable
251	8013	Wholesale trade of other products not elsewhere specified	Not Applicable
252	9001	Retail trade of agricultural raw materials and live animals	Not Applicable
253	9002	Retail trade of food, beverages and tobacco [includes fruits, vegetables, dairy products, etc.]	Not Applicable
254	9003	Retail trade of textiles, clothing and footwear	Not Applicable
255	9004	Retail trade of household appliances, articles and equipments	Not Applicable
256	9005	Retail trade of miscellaneous consumer goods	Not Applicable
257	9006	Retail trade of construction materials and hardware	Not Applicable
258	9007	Retail trade of chemical and pharmaceutical products	Not Applicable
259	9008	Retail trade of personal care products	Not Applicable
260	9009	Retail trade of machinery, equipment and supplies	Not Applicable
261	9010	Retail trade of solid, liquid and gaseous fuels and related products	Not Applicable
262	9011	Retail trade of ores, minerals, metals and articles thereof	Not Applicable
263	9012	Retail trade of stones, pearls and precious metals	Not Applicable
264	9013	Retail trade of vehicles	Not Applicable
265	9014	Retail trade of other products not elsewhere specified	Not Applicable
266	9015	Retail sale of any product via mail order, Internet, television, radio and telephone, etc.	Not Applicable
267	9016	Retail sale of any product not in stores, stalls or markets	Not Applicable

NOTES:

1. The Product or Activity Group classification do not have any correlation with the industry name mentioned in the Cost Audit Orders issued by the Central Government under section 233B of the Companies Act, 1956.
2. In case of any Product or Activity Group where multiple units of measurement are in use for the products or activities covered therein, then the relevant Product or Activity Group shall be repeated against each unit of measurement separately.
3. Wherever same Central Excise Tariff Act (CETA) Chapter Headings have been shown against two or more Product or Activity Groups, the actual details shall be shown against the most appropriate Product or Activity Group.

B. B. Goyal
Adviser (Cost)

04 Companies (Central Government's General Rules and Forms (Fifth Amendment) Rules, 2012

[Issued by the Ministry of Corporate Affairs vide F.No. 1/1/2003-CL V Dated 26.07.2012.]

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 (Fifth Amendment) Rules, 2012.
(2) These rules shall come into force with effect from the 12th August, 2012.
2. In the Companies (Central Government's) General Rules and Forms, 1956, in Annexure 'A',-
(a) under FORM 21,-
(A) with respect to the portion occurring in the square brackets,-
(i) after figure and letter, "17A" the figures "18, 19" shall be inserted;
(ii) after figure "186", the figure "188" shall be inserted;
(B) in serial number 13, after item (b) and entries relating thereto, the following shall be inserted, namely:-
" (c) SRN of Form 24AAA "
(b) under FORM 23, in serial number 10, after item (a) and entries relating thereto, the following shall be inserted, namely:-
" (b) SRN of Form 24AAA

Renuka Kumar
Joint Secretary

05 Company Law Board (Second Amendment) Regulations, 2012

[Issued by the Ministry of Corporate Affairs vide Notification No. G.S.R. 630(E) Dated 12.08.2012.]

In exercise of the powers conferred by sub-section (4B) and sub-section (6) of section 10E of the Companies Act, 1956 (1 of 1956), the Company Law Board hereby makes the following regulations further to amend the Company Law Board Regulations, 1991, namely:—

1. (1) These regulations may be called the Company Law Board (Second Amendment) Regulations, 2012.
(2) They shall come into force on the date of their publication in the Official Gazette.



2. In Chapter II of the Company Law Board Regulations, 1991 (hereinafter referred to as the said regulations),—
 - (a) In regulation 14,—
 - (i) in sub-regulation (3), the figure "188" shall be omitted;
 - (ii) the first proviso shall be omitted;
 - (iii) in the second proviso, for the words "Provided Further" word "Provided" shall be substituted.
 - (b) In regulation 29, in sub-regulation (4), the "proviso" shall be omitted.
3. In Chapter III of the said regulations, the regulation 36 shall be omitted.
4. In Annexure-III of the said regulations, against serial numbers 1, 2, 3, 13 and 18, the entire under column numbers 2, 3 and 4 respectively, shall be omitted.

06 The Company Law Board (Fees on Application and Petitions) (Amendment) Rules, 2012

[Published in Gazette of India, Extraordinary, Part-II, Sec. 3(i) vide GSR No. 547(E) Dated 10.07.2012.]

In exercise of the power conferred by Section 642 read with sub-section (2) of Section 637 A of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Company Law Board (Fees on Application and Petitions) Rules, 1991, namely:-

1. (1) These rules may be called the Company Law Board (Fees on Application and Petitions) (Amendment) Rules, 2012.
- (2) They shall come into force with effect from 12th August, 2012.
2. In Company Law Board (Fees on Application and Petitions) Rules, 1991, in the Schedule, serial numbers 1, 2, 3, 13, 18 and the entries relating thereto shall be omitted.

Renuka Kumar
Joint Secretary

07 Constitution of a Committee for Reforming the Regulatory Environment for doing Business in India.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 26/2012 dated 23.08.2012.]

The undersigned is directed to state as under:-

1. The report of The World Bank and the International Finance Corporation, entitled "Doing Business 2012:

Doing business in a very Transparent World", India has been ranked at a low of 132 amongst a sample of 183 countries. Although, there is a seven-point improvement over 2010 ranking of 139. However, India continues to lag behind even the BRIC and SAARC countries on most of the parameters.

2. Easing of business environment mandates extensive examination of regulations in different areas of root functioning such as financial reforms, governance reforms, liberalized policy framework, process reforms, etc.,. Thus there is a need to conduct an in-depth study into the entire gamut of regulatory framework and come out with a detailed roadmap for improving the climate of business in India in a time bound manner. Such an exercise needs to be undertaken for periodical improvement in the ranking, leading to a situation where India gradually moves towards upward position with almost zero hassles.

3. Accordingly, to achieve this, it has been decided to constitute a Committee to conduct this study and prepare a detailed report within a period of six months. The Committee shall consist of following persons:

I. Mr. M. Damodaran - **Chairman**

II. **Members:**

1. Shri Y.C Deveshwar, Chairman, ITC
2. Shri Ishaat Hussain, Director, Tata Sons Limited
3. Shri K.V. Kamath, Chairman, Infosys
4. Shri Madhu Tandon,
5. Shri Anand Mahindra, Chairman, Mahindra Group
6. Shri Kumar Mangalam Birla, Chairman, Aditya Birla Group
7. Chairman, SEBI or his nominee
8. A representative of Reserve Bank of India
9. Shri R.K. Pachauri, Vice-Chairman, TERI
10. Shri Vijai Sharma, Ex. MoEF Secretary
11. Shri Subas Pani, former Secretary, M/o Rural Development
12. A representative not below the rank of Joint Secretary from M/o Power
13. A representative not below the rank of Joint Secretary from M/o Petroleum
14. A representative not below the rank of Joint Secretary from M/o Highways
15. A representative not below the rank of Joint Secretary from M/o Urban Development
16. A representative not below the rank of Joint Secretary from M/o Commerce & Industry
17. A representative not below the rank of Joint Secretary from M/o Economic Affairs
18. Shri Amitabh Choudhary, CEO, HDFC Standard Life
19. Shri Anil Bharadwaj, Secretary General, FISME



From the Government

20. Shri P.R. Ramesh, Chairman, Deloitte India

The Indian Institute of Corporate Affairs (IICA) will render the necessary secretarial assistance and logistic support to the Committee which shall submit its report to the Ministry of Corporate Affairs not later than six months from the date of holding of its first meeting. Further, the committee is free to hold its meeting at anywhere in India as decided by its chairman. The Chairman of the Committee shall be free to make its own procedure for conducting the meeting of the Committee.

4. In carrying out its task the Committee may,
 - (a) Elicit opinions about the policy action initiatives required and the changes in the statute required for meeting the objective of conducive business environment.
 - (b) Hold wide consultations with all the stakeholders in the corporate sector, academics and members of public;
 - (c) Issue questionnaires and invite written comments through public advertisements; and
 - (d) Take such other steps as may be considered necessary to suggest a comprehensive policy framework to enable regulatory environment for doing business in India.

This issues with the approval of Hon'ble Corporate Affair Minister.

Sanjay Shorey
Joint Director

08 Clarification on Para 46A of notification number G.S.R. 914(E) dated 29.12.2011 on Accounting Standard 11 relating to "The effects of Changes in Foreign Exchange Rates".

[Issued by the Ministry of Corporate Affairs vide General Circular No. 25/2012 dated 09.08.2012.]

The Ministry has received several representations from industry associations that Para 6 of Accounting Standard-11 and Para 4(e) of AS-16 are posing problems in proper implementation of Para 46A of notification 914(E) dated 29.12.2011. In order to resolve the problems faced by industry, it is hereby clarified that Para 6 of Accounting Standard-11 and Para 4(e) of the Accounting Standard-16 shall not apply to a company which is applying clause 46-A of Accounting Standard-11.

J. N. Tikku
Joint Director

09 Applicability of Service Tax on commission payable to Non-Whole Time Directors of a company under section 309(4) of the Companies Act, 1956 - approval of Central Government under section 309/310 of the Companies Act - regarding.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 24/2012 dated 09.08.2012.]

The Finance Act 2012 has introduced Service Tax which is applicable to anyone who provides a Service not covered under the negative/exempted list and if the value of annual revenue is more than Rs. 10 lakh. The Non-Whole Time Directors of the Company are presently not covered under the exempted list and as such, the sitting fee commission payable to them by the company is liable to Service Tax.

If such Service Tax is paid by the company, it will be deemed to be a part of remuneration under section 198 of the Act and would accordingly increase the remuneration amount of such Non-Whole Time Directors. This remuneration could then exceed the limit of 1% profit [u/s 309(4)] of the company when the company has a Managing/Whole Time Directors/Managers or 3% of the profit [u/s 309(4)] of the company if the company does not have a Managing/Whole Time Directors/Managers, as the case may be. As per existing provisions of the Companies Act, 1956, this would require prior approval of Central Government u/s 309 and 310 of the Act.

It has now been decided that any increase in remuneration of Non-Whole Time Director(s) of a company solely on account of payment of service tax on commission payable to them by the company shall not require approval of Central Government under section 309 and 310 of the Companies Act even if it exceeds the limit 1% or 3% of the profit [u/s 309(4)] of the company, as the case may be, in the financial year 2012-13.

L. K. Trivedi
Under Secretary

10 Company Law Settlement Scheme, (Jammu & Kashmir) 2012

[Issued by the Ministry of Corporate Affairs vide General Circular No. 23/2012 dated 06.08.2012.]

1. It has been observed that a large number of companies are not filing their due statutory documents (i.e. Balance Sheets and Annual Returns) timely with the Registrar of Companies. Due to this, the records available in the electronic registry are not updated and thereby are not



available to the stakeholders for inspection. Further, due to non filing the documents on time, companies are burdened with additional fee, facing the prosecutions and being debarred from filing other documents electronically as provided in General Circular No. 33/2011 dated 01.06.2011 read with 63/2011 dated 06/03/2011 & 9/2012 dated 15/05/2012. Also, it has been further observed that non compliance of the filing of Balance Sheets and Annual Returns is even more critical in the state of Jammu & Kashmir.

2. In order to give an opportunity to the defaulting companies in the state of Jammu & Kashmir to enable them to make their default good by filing such belated documents and to become a regular compliant in future, the Ministry, in exercise of the powers under Section 611(2) and 637B(b) of the Companies Act, 1956 has decided to introduce a Special Scheme namely, "Company Law Settlement Scheme (Jammu & Kashmir), 2012" condoning the delay in filing documents with the Registrar, granting immunity from prosecution and charging additional fee of 25 percent of actual additional fee payable for filing belated documents under the Companies Act, 1956 and the rules made there under. The details of the Scheme are as under:-

- (i) The scheme shall come into force on the 15.08.2012 and shall remain in force up to 14.12.2012.

- (ii) **Definitions** - In this Scheme, unless the context otherwise requires, -

- (a) "Act" means the Companies Act, 1956 (1 of 1956);
- (b) "Company" means a company registered in the state of Jammu and Kashmir under the Companies Act, 1956 and a foreign company falling under section 591 of the Act having their liaison office in the state of Jammu & Kashmir;
- (c) "defaulting company" means a company as defined above, which has made a default in filing of documents on the due date(s) specified under the Companies Act, 1956 and rules made there under;
- (d) "designated authority" means the Registrar of Companies (Jammu & Kashmir) having jurisdiction over the registered office of the company registered in the state of Jammu and Kashmir and Registrar of Companies (Delhi) for foreign companies falling under section 591 of the Act having their liaison office in the state of Jammu & Kashmir.

- (iii) **Applicability:** - Any "defaulting company" is permitted to file belated documents, which were due for filing till 30.06.2012, in accordance with the provisions of this Scheme:

- (iv) **Manner of payment of fees and additional fee**

on filing belated document for seeking immunity under the Scheme - The defaulting company shall pay statutory filing fees as prescribed under the Companies Act and rules made there under along with an additional fee of 25 percent of the actual additional fee standardised under subsection(2) of Section 611 of the Companies Act, 1956, payable on the date of filing of each belated document;

- (v) **Withdrawal of appeal against prosecution launched for the offences-** If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of which application is made under this Scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish the proof of such withdrawal along with the application;

- (vi) **Application for issue of immunity in respect of document(s) filed under the scheme** - The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form annexed to the concerned Registrar of Companies, after closure of Scheme and after the document(s) are taken on file, or on record or approved by the designated authority as the case may be, but not after the expiry of six months from the date of closure of the Scheme. There shall not be any fee payable on this Form;

- (vii) **Order by designated authority granting immunity from the penalty and prosecution** - The designated authority shall consider the application and upon being satisfied shall grant the immunity certificate in respect of documents filed in the Scheme. In case, company has shifted its registered office from Jammu & Kashmir to any other State subsequent to its filing of belated documents under the Scheme, the concerned Registrar of Companies shall consider the application and upon being satisfied shall grant such immunity certificate;

- (viii) **Scheme not to apply to certain documents** -

- (a) This Scheme shall not apply to the filing of documents other than following documents:-

Form 20 B – Form of filing annual return by a company having a share capital



From the Government

Form 21A – Particulars of annual return for the company not having share capital

Form 23AC & 23ACA – Form for filing Balance Sheet and Profit & Loss account

Form 23AC-XBRL & 23ACA-XBRL – Form for filing XBRL Balance Sheet and Profit & Loss account

Form 23B – Information by auditor to the Registrar

Form 52 – Filing of annual accounts by a foreign company

Form 66 – Form for submission of Compliance Certificate with the Registrar

(b) This Scheme shall not apply to companies against which action under sub-section (5) of section 560 of the Act has been initiated by the Registrar of Companies;

(ix) After granting the immunity, the concerned Registrar of Companies shall withdraw the prosecution(s) pending, if any, before the concerned Court(s);

3. At the conclusion of the Scheme, the designated authority shall take necessary action under the Companies Act, 1956 against the companies who have not availed this Scheme and are in default in filing of documents in a timely manner.

Sanjay Shorey
Joint Director

FORM

[Pursuant to Company Law Settlement Scheme, (Jammu & Kashmir) 2012]

Application for issue of immunity certificate under the Company Law Settlement Scheme, (Jammu & Kashmir) 2012

Note -All fields marked in* are to be mandatorily filled.

To

The Registrar of Companies,

Sir/ Madam,

I herewith make an application for issue of immunity certificate under the Company Law Settlement Scheme, (Jammu & Kashmir) 2012 and give below the following particulars, namely:-

1. (a) *Corporate identity number (CIN) or foreign company registration number (FCRN) of the company

(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-mail id of the company"
(d) Date of incorporation of Indian company (DD/MM/YYYY) or date of establishment of the principal place of business in India of foreign company

3. Details of documents filed under the Company Law Settlement Scheme, (Jammu & Kashmir) 2012

Total number of Service Request Number (SRN)(s)

SRN	Form number(s)	Date of filing (DDMMYYYY)	Date of event (DDMMYYYY)	Statutory filing fees (in Rs.)	Actual additional fees (in Rs.)	Additio nal fee charged under CLSS, (JK) 2012 (in Rs.)	Total fees paid (in Rs.)
Total (in Rs.)							

4. *Whether any appeal(s) was filed against any notice issued or complaint filed before the competent court for violatoin of the provisions under the Act in respect of the above mentioned document(s).If yes, attach proof of withdrawal of such appeal ☐ Yes ☐ No ☐ Not Applicable
5. *Whether any prosecution(s)is pending in court against the company and its officers in respect of belated documents filed under the scheme. If yes, provide details there of as an attachment. ☐ Yes ☐ No
6. *Whether any director(s) of the company is declared as proclaimed offender or facing criminal case(s) for economic offences. If yes, provide details of such director(s) as an attachment ☐ Yes ☐ No

Attachments

1 Proof of withdrawal of any appeal(s) against any notice issued or complaint filed before the competent court

List of attachments

2 Details in respect of prosecution(s) pending against the company and its officers in respect of belated documents filed under the scheme which requires withdrawal by the Registrar

3 Details of director(s) declared as proclaimed offender or facing criminal case(s) for economic offences

4 . Optional attachment(s) - if any

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 by the Board of directors to sign and submit this application.

*☐ The company had failed to comply with the provisions of the Act as mentioned in respect of filing of above mentioned documents.

☐ The company has withdrawn the appeals pending before any Court or Company Law Boord or Regional Director or any other adjudicating authority.

To be digitally signed by

Managing Directcr or director or manager or secretary of the company (in case of an Indian company) or authorised representative (in case of a foreign company)

☐



*Designation

*Director identification number of the director or Managing Director; or Income-tax permanent account number (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)

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 approved

This e-Form is hereby rejected

Date of signing (DD/MM/YYYY)

11 Imposing fees on certain e-forms filed with ROC, RD or MCA(HQ) under MCA-21 where at present no fee is prescribed

[Issued by the Ministry of Corporate Affairs vide General Circular No. 22/2012 dated 03.08.2012.]

I am directed to refer to the Ministry's General Circular no. 14/2012 dated 21st June 2012 & General Circular no. 19/2012 dated 27th July 2012 and to say that fees on Form 23B (Information by statutory auditor to the Registrar) has been further deferred for one week and shall now be applicable from 12th August, 2012.

Sanjay Shorey
Joint Director

12 Filling of Balance Sheet and Profit and Loss Account by companies in NonXBRL for accounting year commencing on or after 1.04.2011

[Issued by the Ministry of Corporate Affairs vide General Circular No. 21/2012 dated 02.08.2012.]

Notification no. S.O-447 (E) dated 28.02.2011 on revised schedule VI is effective from 1st April 2011. The current year filing based on revised schedule VI is due for filing. The revised form 23AC & ACA is under finalization and will be notified shortly on the MCA website.

All companies who are required to file non XBRL eform 23 AC & ACA as per revised schedule VI be allowed to file their financial statement without any additional fee/penalty upto 15th September 2012 or with in 30 days from the date of their AGM, which ever is later.

Sanjay Kumar Gupta
Deputy Director

13 Imposing fees on certain e-forms filed with ROC, RD or MCA(HQ) under MCA-21 where at present no fee is prescribed

[Issued by the Ministry of Corporate Affairs vide General Circular No. 19/2012 dated 27.07.2012.]

I am directed to refer to the Ministry's General Circular no. 14/2012 dated 21st June 2012 and to say that fees on Form 23B (Information by statutory auditor to the Registrar) has been deferred for two weeks and shall now be applicable from 5th August, 2012.

Sanjay Shorey
Joint Director

14 Redemption of Indian Depository Receipts (IDRs) into Underlying Equity Shares

[Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/10/2012 dated 28.08.2012.]

1. SEBI, vide circular No: CIR/CFD/DIL/3/2011 dated June 03, 2011, has prescribed the framework for redemption of IDRs into underlying equity shares. The circular has, inter-alia, stated that after the completion of one year from the date of issuance of IDRs, redemption of the IDRs shall be permitted only if the IDRs are infrequently traded on the stock exchange(s) in India.
2. The Hon'ble Finance Minister in his Budget speech on March 16, 2012, has proposed, inter alia, that two-way fungibility of IDRs be permitted subject to a ceiling, with the objective of encouraging greater foreign participation in Indian capital market.
3. For implementation of the said budget proposal and to improve the attractiveness of IDRs as an instrument thereby ensuring long term sustainability of IDRs, it is decided to prescribe a framework for two-way fungibility of IDRs.
4. However, to retain the domestic liquidity, it is decided to allow partial fungibility of IDRs (i.e. redemption/conversion of IDRs into underlying equity shares) in a financial year to the extent of 25 % of the IDRs originally issued. Suitable instructions for modifying the existing legal framework governing IDRs, in order to implement the decision to allow redemption of IDRs into underlying equity shares and re-conversion of equity shares of a foreign issuer (which has already listed their IDRs) into IDRs, will be issued separately.
5. As and when the instructions for modifying the existing legal framework referred to at para 4 above are issued,



this circular shall be effective and SEBI circular No: CIR/CFD/DIL/3/2011 dated June 03, 2011 would stand rescinded.

6. This circular is issued in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.
7. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

Sunil Kadam
General Manager

15 Facility for a Basic Services Demat Account (BSDA)

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/22/2012 dated 27.08.2012.]

1. The SEBI Board had taken decisions to extend the reach of IPOs for the benefit of retail investors. With a view to achieve wider financial inclusion, encourage holding of demat accounts and to reduce the cost of maintaining securities in demat accounts for retail individual investors, it has been decided that all depository participants (DPs) shall make available a "Basic Services Demat Account" (BSDA) with limited services as per terms specified herein.
2. **Eligibility:** Individuals shall be eligible to opt for BSDA subject to the following conditions.
 - a. All the individuals who have or propose to have only one demat account where they are the sole or first holder.
 - b. Individuals having any other demat account/s where they are not the first holder shall be eligible for BSDA in respect of the single demat account where they are sole or first holder.
 - c. The individual shall have only one BSDA in his/her name across all depositories.
 - d. Value of securities held in the demat account shall not exceed Rupees Two Lakhs at any point of time.
3. **Option to open BSDA:** The DP shall give option:
 - a. To open BSDA to all eligible individuals who open a demat account after the date of applicability of this circular;
 - b. To all the existing eligible individuals to convert their demat account into BSDA on the date of the next billing cycle based on value of holding of securities in the account as on the last day of previous billing cycle.
4. **Charges:**
 - a. The charge structure may be on a slab basis as indicated below:
 - i. No Annual Maintenance Charges (AMC) shall be levied, if the value of holding is upto Rs. 50,000.
 - ii. For the value of holding from Rs 50,001 to Rs 200,000, AMC not exceeding Rs 100 may be charged.
 - b. The value of holding shall be determined by the DPs on the basis of the daily closing price or NAV of the securities or units of mutual funds, as the case may be. Where such price is not available the last traded price may be taken into account and for unlisted securities other than units of mutual funds, face value may be taken in to account.
 - c. If the value of holding in such BSDA exceeds the prescribed criteria at any date, the DPs may levy charges as applicable to regular accounts (non-BSDA) from that date onwards.
 - d. The DPs shall reassess the eligibility of the BOs at the end of every billing cycle and give option to the BOs who are eligible to opt for BSDA.
5. **Services for Basic Services Demat Accounts:**
 - a. **Transaction statements:**
 - i. Transaction statements shall be sent to the BO at the end of each quarter. If there are no transactions in any quarter, no transaction statement may be sent for that quarter.
 - ii. If there are no transactions and no security balance in an account, then no further transaction statement needs to be provided.
 - iii. Transaction statement shall be required to be provided for the quarter in which the account became a zero balance account.
 - b. **Holding Statement:**
 - i. One annual physical statement of holding shall be sent to the stated address of the BO in respect of accounts with no transaction and nil balance.
 - ii. One annual statement of holding shall be sent in respect of remaining accounts in physical or electronic form as opted for by the BO.
 - c. **Charges for statements:** Electronic statements shall be provided free of cost. In case of physical statements, the DP shall provide at least two statements free of cost during the billing cycle. Additional physical statement may be charged at a fee not exceeding Rs.25/- per statement.
 - d. All BOs opting for the facility of BSDA, shall register their mobile number for availing the SMS alert facility for debit transactions.
 - e. At least Two Delivery Instruction Slips (DIS) shall be issued at the time of account opening.
 - f. All other conditions as applicable to regular demat accounts, other than the ones mentioned in this circular shall continue to apply to basic services demat account.
6. **Rationalisation of services with respect to regular**



accounts.

In partial modification of the earlier directions, the following rationalisation measures shall be available for regular demat accounts:

- a. **Accounts with zero balance and nil transactions during the year:** The DPs shall send one physical statement of holding annually to such BOs and shall resume sending the transaction statement as and when there is a transaction in the account.
 - b. **Accounts which become zero balance during the year:** For such accounts, no transaction statement may be sent for the duration when the balance remains nil. However, an annual statement of holding shall be sent to the BO.
 - c. **Accounts with credit balance:** For accounts with credit balance but no transactions during the year, one statement of holding for the year shall be sent to the BO.
7. The circular shall be applicable with effect from October 01, 2012.
 8. The Depositories are advised to:-
 - a) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be applicable/necessary ;
 - b) bring the provisions of this circular to the notice of their DPs and also to disseminate the same on their website; and
 - c) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.
 9. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 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

16 Rationalization of process relating to surrender of registration by sub-brokers

[Issued by the Securities and Exchange Board of India vide CIR/MIRSD/10/2012 dated 27.08.2012.]

1. Please refer to SEBI Circular MIRSD-DR1/SRP/Cir-43/28408/04 dated December 15, 2004 regarding, inter-alia, surrender of certificate of registration of sub-brokers.
2. Considering the present role of sub-broker where he is not permitted to deal with funds and securities of the

investors, in consultation with the major stock exchanges and stock brokers' associations, it has been decided to rationalize the procedure for surrender of sub-broker registration, as follows.

- (i) The affiliating stock broker shall issue a public advertisement in a local newspaper with wide circulation where the sub-broker's place of work is situated, informing the investors/general public about the surrender of registration of his sub-broker and not to deal with such sub-broker.
 - (ii) Further, in case of transition from sub broker to Authorized Person (AP) (where the sub broker surrenders registration while seeking approval as AP) with the same stock broker and the same stock exchange, issue of advertisement in newspaper regarding surrender of sub broker registration shall not be required. However, the affiliating stock broker shall furnish an undertaking/ confirmation to the stock exchanges at the time of surrender of sub broker registration that he has sent communication to the clients of the sub broker individually about the surrender of sub brokership and also the fact of approval as AP.
 - (iii) The affiliating stock broker and/or stock exchange shall publish the details of sub-brokers whose registration has been surrendered or their new status as AP, as the case may be on their respective websites for the information of the investors.
3. The aforesaid SEBI circular shall stand modified to the extent of the above changes.
 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. The circular is available on SEBI website (www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".

Ruchi Chojer
Deputy General Manager

17 The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2012

[Published in the Gazette of India, Extraordinary Part-III, Section 4 vide Notification No. LAD-NRO/GN/2012-13/12/18951 dated 24.08.2012.]

In exercise of the powers conferred by section 30 of the



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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 (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:—

1. These Regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third 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 (Issue of Capital and Disclosure Requirements) Regulations, 2009—
 - (i) in regulation 14, -
 - (1) in sub-regulation (1), for the full stop, the symbol ":" shall be substituted;
 - (2) after sub-regulation (1), the following proviso shall be inserted, namely,-
 "Provided that in the case of an initial public offer, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957." ;
 - (3) sub-regulation (4) shall be substituted with the following, namely-
 "Nothing contained in this regulation, except the requirement relating to allotment of minimum number of specified securities, shall apply to offer for sale of specified securities."
 - (ii) in regulation 41, -
 - (1) in sub-regulation (1), the symbol and number "(1)" shall be omitted;
 - (2) sub-regulation (2) shall be omitted;
 - (3) explanation shall be omitted.
 - (iii) in regulation 91G, sub-regulation (1) shall be substituted with the following, namely,-
 "(1) The promoter or promoter group shall not make institutional placement programme if the promoter or any person who is part of the promoter group has purchased or sold the eligible securities during the twelve weeks period prior to the date of the programme and they shall not purchase or sell the eligible securities during the twelve weeks period after the date of the programme:

Provided that such promoter or promoter group may , within the period provided in sub-regulation (1), offer eligible securities held by them through institutional

placement programme or offer for sale through stock exchange mechanism specified by the Board, subject to the condition that there shall be a gap of minimum two weeks between the two successive offer(s) and /or programme(s). "

U.K. SINHA
Chairman

18 Filing Offer Documents under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

[Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/9/2012 dated 22.08.2012.]

1. Please refer to circular No. SEBI CIR/CFD/DIL/5/2012 dated May 03, 2012 on the captioned subject.
2. In partial modification of the above referred circular, it is hereby informed that the jurisdiction of Eastern Regional Office of SEBI includes the state of Sikkim and the Union Territory of Andaman & Nicobar Islands. The revised Jurisdiction of Eastern Region is as indicated below:-

Sl. No.	Region in which registered office of the issuer falls	Jurisdictions covered in this region	Name and address of the office of the Board where draft offer document / offer document is required to be filed
Estimated issue size of upto ₹ 500 crore			
i.	Eastern Region	Assam, Bihar, Manipur, Meghalaya, Nagaland, Orissa, West Bengal, Tripura, Arunachal Pradesh, Mizoram, Jharkhand, Andaman & Nicobar Islands and Sikkim	SEBI Eastern Regional Office, 3rd Floor, L & T Chambers, 16 Camac Street, Kolkata - 700 017

3. The amendments made vide this circular shall come into effect for all draft offer documents for issues which are filed with SEBI on or after August 27, 2012.
4. The above are specified in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

Harini Balaji
Deputy General Manager



19 Notification regarding Establishment of Local Office of the Board at Bengaluru

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2012-13/10/18461 dated 17.08.2012.]

In exercise of the powers conferred by sub-section (4) of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board has established its Local Office at Bengaluru under the administrative control of its Southern Regional Office at Chennai. The Local Office so established shall look after the regulatory aspects of investor protection, investor education and such other functions as may be delegated from time to time, and its role and responsibility shall extend to the areas falling under the territorial jurisdiction of the State of Karnataka.

U.K. SINHA
Chairman

20 Notification regarding Establishment of Local Office of the Board at Jaipur

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2012-13/08/0308 dated 03.08.2012.]

In exercise of the powers conferred by sub-section (4) of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board has established its Local Office at Jaipur under the administrative control of its Western Regional Office at Ahmedabad. The Local Office so established shall look after the regulatory aspects of investor protection, investor education and such other functions as may be delegated from time to time, and its role and responsibility shall extend to the areas falling under the territorial jurisdiction of the State of Rajasthan.

U. K. Sinha
Chairman

21 Redressal of investor grievances against listed companies in SEBI Complaints Redress System (SCORES).

[Issued by the Securities and Exchange Board of India vide CIR/OIAE/1/2012 dated 13.08.2012.]

SEBI had issued Circular No.CIR/OIAE/2/2011 dated June

3, 2011 regarding commencement of SEBI Complaints Redress System (SCORES) and advising all companies whose securities are listed on various stock exchanges to comply with the provisions of the said circular.

1. In this regard, all companies whose securities are listed on stock exchanges, are hereby advised to obtain SCORES authentication by September 14, 2012 in terms of the aforesaid circular.
2. All companies against whom complaints are pending on SCORES, shall take appropriate necessary steps within 7 days of receipt of complaint by the concerned company through SCORES, so as to resolve the complaint within 30 days of receipt of complaint and also keep the complainant duly informed of the action taken thereon.
3. In case of failure to comply with the above, SEBI would be constrained to initiate enforcement actions as per the law as may be deemed appropriate.
4. The Stock Exchanges are accordingly advised to bring the provisions of this Circular to the notice of all the companies whose securities are listed in the exchange and also to disseminate the same on the website.
5. 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.
6. This Circular is available on SEBI website at www.sebi.gov.in.

Gyan Bhushan
Chief General Manager

22 Manner of Dealing with Audit Reports filed by Listed companies

[Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/7/2012 dated 13.08.2012.]

1. Clause 31(a) of Equity Listing Agreement, *inter-alia*, requires listed companies to submit six copies of annual reports containing audited annual financial statements to the stock exchanges.
2. SEBI, in its continuous endeavor to enhance the quality of financial reporting being done by listed companies, has now decided to put in place a system to monitor the audit qualifications contained in the audit report accompanying the audited annual financial statements submitted by listed companies. The exact text of amendments to Equity Listing Agreement in this regard is given in the Annexure to this circular.
3. Accordingly, listed companies shall now be required to submit the following forms, as may be applicable, along



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with copies of annual reports submitted to stock exchanges:

- Form A: Unqualified/ Matter of Emphasis Report
- Form B: Qualified/ Subject To/ Except For Audit Report

4. The format of Form A and Form B is given in the Annexure to this circular as part of the amendments to Equity Listing Agreement. These forms shall be signed by the a) Chief Executive Officer / Managing Director, b) Chief Financial Officer, c) Auditor and d) Chairman of the Audit Committee. The information submitted as per these forms shall also draw attention to relevant notes in the annual financial statements, management's response to qualifications in the Directors report and comments of the Board/ Chair of the Audit Committee.
5. Stock exchanges shall adopt the following procedure to process the audit reports accompanying audited annual financial statements submitted by listed companies along with Form B:
 - (a) Stock exchanges shall carry out preliminary scrutiny of reports accompanied by Form B including seeking necessary explanation from the listed company concerned and consider the same based on materiality of the qualifications. The parameters for ascertaining the materiality of audit qualifications shall be, the impact of these qualifications on the profit and loss, financial position and corporate governance of the listed company. For the purpose of uniformity, stock exchanges shall consult one other for deciding the criteria for preliminary scrutiny. Further, stock exchanges shall also consult one other for distributing the work in case shares of the listed company concerned are listed on more than one stock exchange.
 - (b) Upon examining the audit reports based on the above parameters, stock exchanges shall refer those cases, which, in their opinion, need further examination, to SEBI.
 - (c) SEBI has constituted the 'Qualified Audit Review Committee' (QARC) with representatives from Institute of Chartered Accountants of India (ICAI), stock exchanges, etc. The QARC shall review the cases received from the stock exchanges and guide SEBI in processing the qualified annual audit reports referred to by the stock exchanges.
 - (d) After analyzing the qualifications in audit reports, QARC may make following recommendations:
 - (i) If, *prima facie*, QARC is of the view that an audit qualification is not significant, it may suggest steps for rectification of such qualification;
 - (ii) If, *prima facie*, QARC is of the view that an audit qualification is significant and the explanation

given by the listed company concerned / its Audit Committee is unsatisfactory, the case may be referred to the Financial Reporting Review Board of ICAI (ICAI-FRRB) for their opinion on whether the qualification is justified or requires restatement of the books of accounts of the listed company;

- (iii) If an audit qualification is not quantifiable, QARC may suggest rectification of the same within a stipulated period.

- (e) If ICAI-FRRB opines that an audit qualification is justified, SEBI may ask the listed company concerned to restate its books of accounts in compliance with the statutory requirements and inform its shareholders about the same by making an announcement to the stock exchanges.

SEBI may also direct the listed company concerned to reflect the effect of these restatement adjustments in the annual report of the subsequent financial year.

- (f) If ICAI-FRRB is of the view that an audit qualification is not justified, ICAI may ask the statutory auditor of the listed company concerned to provide necessary clarifications and may take appropriate action.
- (g) The scrutiny of all audit reports filed as per Form B shall be carried out twice a year based on the reports received up to half year ending on June and December of every year and for this purpose, the following timelines are prescribed:

Activity	To be completed by
Filing of annual audit reports by the listed companies	As per the provisions of the Listing Agreement
Preliminary scrutiny of the reports received during the half year (Jan - Jun and Jul -Dec each year) by stock exchanges and referring applicable cases to SEBI	One month from the end of half year ending on June and December each year.
Review of the cases by QARC	One month from the date of receipt of report from the Stock Exchanges.
Referring applicable cases to ICAI-FRRB	Fifteen days from the date of decision of the QARC
Receipt of reply from ICAI-FRRB	One month from the date of referral by QARC
Communication of decision on the case to the listed company concerned and the stock exchanges. This also includes reports received directly from ICAI-FRRB with a recommendation of restatement.	Fifteen days from the date of receipt of reply from ICAI-FRRB



Publication of restated financial results by the listed company concerned.	Within two months from the date of letter of communication to the concerned entity.
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- (h) SEBI may, at any stage, in the interest of investors, take necessary action as it deems fit, including mandating restatement of books of accounts.
- (i) Stock exchanges shall display the list of companies which have filed their audit reports along with Form B.
6. This circular is issued in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.
7. All stock exchanges are advised to ensure compliance with this circular. This circular is applicable to all annual audited financial results submitted for the period ending on or after December 31, 2012.
8. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

Sunil Kadam
General Manager

ANNEXURE Amendments to Equity Listing Agreement

1. In Clause 31 of Equity Listing Agreement, in sub-clause (a), after the term ".....Directors' Annual Reports", the following shall be inserted, viz.,:-
"along with Form A or Form B, as applicable, the proforma for which shall be as under:-"

FORM A

Format of covering letter of the annual audit report to be filed with the stock exchanges

1. Name of the Company:	XYZ Ltd.
2. Annual financial statements for the year ended	31st March...
3. Type of Audit observation	Un-qualified / Matter of Emphasis
4. Frequency of observation	Whether appeared first time ... / repetitive ... / since how long period
5. To be signed by- ● CEO/Managing Director ● CFO ● Auditor of the company ● Audit Committee Chairman	

FORM B

Format of covering letter of the annual audit report to be filed with the stock exchanges

1. Name of the Company:	XYZ Ltd
2. Annual financial statements for the year ended	31st March
3. Type of Audit qualification	Qualified.... / Subject to / Except for....

4. Frequency of qualification	Whether appeared first time / repetitive / since how long period
5. Draw attention to relevant notes in the annual financial statements and management response to the qualification in the directors report:	May give gist of qualifications / headings (Refer page numbers in the annual report) and management's response
6. Additional comments from the board/audit committee chair:	This may relate to nature of the qualification including materiality, agreement/disagreement on the qualification, steps taken to resolve the qualification, etc.
7. To be signed by- ● CEO/Managing Director ● CFO ● Auditor of the company ● Audit Committee Chairman"	

2. After Clause 31, a new Clause 31A shall be inserted, viz.,
:- "31A. The issuer agrees to restate its books of accounts on the directions issued by SEBI or by any other statutory authority, as per the provisions of the extant regulatory framework".

23 Aadhaar Letter as Proof of Address for Know Your Client (KYC) norms.

[Issued by the Securities and Exchange Board of India vide CIR/MIRSD/09/2012 dated 13.08.2012.]

1. Please refer to SEBI circular no. CIR/MIRSD/16/2011 dated August 22, 2011, MIRSD/SE/Cir-21/2011 dated October 5, 2011, on uniform KYC requirements and the list of documents admissible as Proof of Address.
2. In consultation with Unique Identification Authority of India (UIDAI), Government of India, it has now been decided that the Aadhaar Letter issued by UIDAI shall be admissible as Proof of Address in addition to its presently being recognized as Proof of Identity.
3. In partial modification, in point 9. d of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011, the date shall be read as 'January 31, 2000' instead of 'January 3, 2000' and in point 4 of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011, the date shall be read as 'February 1, 2012' instead of 'February 1, 2011'.
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 markets.

A. S. Mithwani
Deputy General Manager



From the Government

24 Business Responsibility Reports

[Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/8/2012 dated 13.08.2012.]

1. At a time and age when enterprises are increasingly seen as critical components of the social system, they are accountable not merely to their shareholders from a revenue and profitability perspective but also to the larger society which is also its stakeholder. Hence, adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance. This is all the more relevant for listed entities which, considering the fact that they have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive continuous disclosures on a regular basis.
2. Ministry of Corporate Affairs, Government of India, in July 2011, came out with the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business'. These guidelines contain comprehensive principles to be adopted by companies as part of their business practices and a structured business responsibility reporting format requiring certain specified disclosures, demonstrating the steps taken by companies to implement the said principles.
3. In line with the above Guidelines and considering the larger interest of public disclosure regarding steps taken by listed entities from a Environmental, Social and Governance ("ESG") perspective, it has been decided to mandate inclusion of Business Responsibility Reports ("BR reports") as part of the Annual Reports for listed entities. Therefore, in line with the objective to enhance the quality of disclosures made by listed entities, certain listing conditions are hereby specified by way of inserting Clause 55 in the equity Listing Agreement as given in Annexure-1.
4. Certain key principles to assess the fulfillment of listed entities and a description of the core elements under these principles are detailed at Annexure-2.
5. **Applicability**
 - a. The requirement to include BR Reports as part of the Annual Reports shall be mandatory for top 100 listed entities based on market capitalisation at BSE and NSE as on March 31, 2012. BSE and NSE shall independently draw up a list of listed entities to whom

the circular would be applicable based on the said criteria and disseminate the same in their websites respectively. Other listed entities may voluntarily disclose BR Reports as part of their Annual Reports. Those listed entities which have been submitting sustainability reports to overseas regulatory agencies/stakeholders based on internationally accepted reporting frameworks need not prepare a separate report for the purpose of these guidelines but only furnish the same to their stakeholders along with the details of the framework under which their BR Report has been prepared and a mapping of the principles contained in these guidelines to the disclosures made in their sustainability reports.

- b. The provisions of this circular shall be applicable with effect from financial year ending on or after December 31, 2012. However, listed entities who are yet to submit their Annual Reports for financial year ended on March 31, 2012 may also include BR Reports as part of their Annual Reports on a voluntary basis
6. The above listing conditions are specified in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992. The said listing conditions should form part of the existing Listing Agreement of the stock exchange.
7. All stock exchanges are advised to ensure compliance with this circular and carry out the amendments in their Listing Agreement as per the Annexure to this circular.
8. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

Sunil Kadam
General Manager

Annexure-1

Amendments to Listing Agreement

1. A new Clause 55 shall be inserted to read as under, viz.,
'Listed entities shall submit, as part of their Annual Reports, Business Responsibility Reports, describing the initiatives taken by them from an environmental, social and governance perspective, in the format suggested as under:

Business Responsibility Report - Suggested Framework

Section A: General Information about the Company

1. Corporate Identity Number (CIN) of the Company



2. Name of the Company
3. Registered address
4. Website
5. E-mail id
6. Financial Year reported
7. Sector(s) that the Company is engaged in (industrial activity code-wise)
8. List three key products/services that the Company manufactures/provides (as in balance sheet)
9. Total number of locations where business activity is undertaken by the Company
 - i. Number of International Locations (Provide details of major 5)
 - ii. Number of National Locations
10. Markets served by the Company - Local/State/ National/International/

Section B: Financial Details of the Company

1. Paid up Capital (INR)
2. Total Turnover (INR)
3. Total profit after taxes (INR)
4. Total Spending on Corporate Social Responsibility (CSR) as percentage of profit after tax (%)
5. List of activities in which expenditure in 4 above has been incurred:-
 - a.
 - b.
 - c.

Section C: Other Details

1. Does the Company have any Subsidiary Company/ Companies?
2. Do the Subsidiary Company/Companies participate in the BR Initiatives of the parent company? If yes, then indicate the number of such subsidiary company(s)
3. Do any other entity/entities (e.g. suppliers, distributors etc.) that the Company does business with, participate in the BR initiatives of the Company? If yes, then indicate the percentage of such entity/entities? [Less than 30%, 30-60%, More than 60%]

Section D: BR Information

1. Details of Director/Directors responsible for BR
 - a) Details of the Director/Director responsible for implementation of the BR policy/policies
 - DIN Number
 - Name
 - Designation
 - b) Details of the BR head

S.No.	Particulars	Details
1.	DIN Number (if applicable)	
2.	Name	
3.	Designation	
4.	Telephone number	
5.	e-mail id	

2. Principle-wise (as per NVGs) BR Policy/policies (Reply in Y/N)

S.No.	Questions	P1	P2	P3	P4	P5	P6	P7	P8	P9
1.	Do you have a policy/policies for....									
2.	Has the policy being formulated in consultation with the relevant stakeholders?									
3.	Does the policy conform to any national / international standards? If yes, specify? (50 words)									
4.	Has the policy being approved by the Board? If yes, has it been signed by MD/owner/CEO/ appropriate Board Director?									
5.	Does the company have a specified committee of the Board/ Director/Official to oversee the implementation of the policy?									
6.	Indicate the link for the policy to be viewed online?									
7.	Has the policy been formally communicated to all relevant internal and external stakeholders?									
8.	Does the company have in-house structure to implement the policy/policies.									
9.	Does the Company have a grievance redressal mechanism related to the policy/policies to address stakeholders' grievances related to the policy/policies?									
10.	Has the company carried out independent audit/ evaluation of the working of this policy by an internal or external agency?									

2a. If answer to S.No. 1 against any principle, is 'No', please explain why: (Tick up to 2 options)

S.No.	Questions	P1	P2	P3	P4	P5	P6	P7	P8	P9
1.	The company has not understood the Principles									
2.	The company is not at a stage where it finds									



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	itself in a position to formulate and implement the policies on specified principles								
3.	The company does not have financial or manpower resources available for the task								
4.	It is planned to be done within next 6 months								
5.	It is planned to be done within the next 1 year								
6.	Any other reason (please specify)								

3. Governance related to BR

- Indicate the frequency with which the Board of Directors, Committee of the Board or CEO to assess the BR performance of the Company. Within 3 months, 3-6 months, Annually, More than 1 year
- Does the Company publish a BR or a Sustainability Report? What is the hyperlink for viewing this report? How frequently it is published?

Section E: Principle-wise performance

Principle 1

1. Does the policy relating to ethics, bribery and corruption cover only the company? Yes/ No. Does it extend to the Group/Joint Ventures/ Suppliers/Contractors/NGOs /Others?
2. How many stakeholder complaints have been received in the past financial year and what percentage was satisfactorily resolved by the management? *If so, provide details thereof, in about 50 words or so.*

Principle 2

1. List up to 3 of your products or services whose design has incorporated social or environmental concerns, risks and/or opportunities.
 - i.
 - ii.
 - iii.
2. For each such product, provide the following details in respect of resource use (energy, water, raw material etc.) per unit of product(optional):
 - i. Reduction during sourcing/production/ distribution achieved since the previous year throughout the value chain?
 - ii. Reduction during usage by consumers (energy, water) has been achieved since the previous year?
3. Does the company have procedures in place for sustainable sourcing (including transportation)?
 - i. If yes, what percentage of your inputs was sourced sustainably? Also, provide details thereof, in about 50 words or so.

4. Has the company taken any steps to procure goods and services from local & small producers, including communities surrounding their place of work?

If yes, what steps have been taken to improve their capacity and capability of local and small vendors?
5. Does the company have a mechanism to recycle products and waste? If yes what is the percentage of recycling of products and waste (separately as <5%, 5-10%, >10%). Also, provide details thereof, in about 50 words or so.

Principle 3

1. Please indicate the Total number of employees.
2. Please indicate the Total number of employees hired on temporary/contractual/casual basis.
3. Please indicate the Number of permanent women employees.
4. Please indicate the Number of permanent employees with disabilities
5. Do you have an employee association that is recognized by management.
6. What percentage of your permanent employees is members of this recognized employee association?
7. Please indicate the Number of complaints relating to child labour, forced labour, involuntary labour, sexual harassment in the last financial year and pending, as on the end of the financial year.

S.No.	Category	No of complaints filed during the financial year	No of complaints pending as on end of the financial year
1.	Child labour/forced labour/involuntary labour		
2.	Sexual harassment		
3.	Discriminatory employment		

8. What percentage of your under mentioned employees were given safety & skill up-gradation training in the last year?
 - Permanent Employees
 - Permanent Women Employees
 - Casual/Temporary/Contractual Employees
 - Employees with Disabilities

Principle 4

1. Has the company mapped its internal and external stakeholders? Yes/No
2. Out of the above, has the company identified the disadvantaged, vulnerable & marginalized stakeholders.
3. Are there any special initiatives taken by the company to engage with the disadvantaged, vulnerable and marginalized stakeholders. If so, provide details thereof, in about 50 words or so.



Principle 5

1. Does the policy of the company on human rights cover only the company or extend to the Group/Joint Ventures/Suppliers/Contractors/NGOs/Others?
2. How many stakeholder complaints have been received in the past financial year and what percent was satisfactorily resolved by the management?

Principle 6

1. Does the policy related to Principle 6 cover only the company or extends to the Group/Joint Ventures/Suppliers/Contractors/NGOs/others.
2. Does the company have strategies/ initiatives to address global environmental issues such as climate change, global warming, etc? Y/N. If yes, please give hyperlink for webpage etc.
3. Does the company identify and assess potential environmental risks? Y/N
4. Does the company have any project related to Clean Development Mechanism? If so, provide details thereof, in about 50 words or so. Also, if Yes, whether any environmental compliance report is filed?
5. Has the company undertaken any other initiatives on – clean technology, energy efficiency, renewable energy, etc. Y/N. If yes, please give hyperlink for web page etc.
6. Are the Emissions/Waste generated by the company within the permissible limits given by CPCB/SPCB for the financial year being reported?
7. Number of show cause/ legal notices received from CPCB/SPCB which are pending (i.e. not resolved to satisfaction) as on end of Financial Year.

Principle 7

1. Is your company a member of any trade and chamber or association? If Yes, Name only those major ones that your business deals with:
 - a.
 - b.
 - c.
 - d.
2. Have you advocated/lobbied through above associations for the advancement or improvement of public good? Yes/No; if yes specify the broad areas (drop box: Governance and Administration, Economic Reforms, Inclusive Development Policies, Energy security, Water, Food Security, Sustainable Business Principles, Others)

Principle 8

1. Does the company have specified programmes/initiatives/projects in pursuit of the policy related to Principle 8? If yes details thereof.
2. Are the programmes/projects undertaken through in-house team/own foundation/external NGO/government structures/any other organization?

3. Have you done any impact assessment of your initiative?
4. What is your company's direct contribution to community development projects- Amount in INR and the details of the projects undertaken.
5. Have you taken steps to ensure that this community development initiative is successfully adopted by the community? Please explain in 50 words, or so.

Principle 9

1. What percentage of customer complaints/consumer cases are pending as on the end of financial year.
2. Does the company display product information on the product label, over and above what is mandated as per local laws? Yes/No/N.A. /Remarks(additional information)
3. Is there any case filed by any stakeholder against the company regarding unfair trade practices, irresponsible advertising and/or anti-competitive behaviour during the last five years and pending as on end of financial year. If so, provide details thereof, in about 50 words or so.
4. Did your company carry out any consumer survey/ consumer satisfaction trends?

Annexure-2

Principles to assess compliance with Environmental, Social and Governance norms

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability

1. Businesses should develop governance structures, procedures and practices that ensure ethical conduct at all levels; and promote the adoption of this principle across its value chain. Businesses should communicate transparently and assure access to information about their decisions that impact relevant stakeholders.
2. Businesses should not engage in practices that are abusive, corrupt, or anti-competition.
3. Businesses should truthfully discharge their responsibility on financial and other mandatory disclosures.
4. Businesses should report on the status of their adoption of these Guidelines as suggested in the reporting framework in this document.
5. Businesses should avoid complicity with the actions of any third party that violates any of the principles contained in these Guidelines

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle

1. Businesses should assure safety and optimal resource use over the life-cycle of the product – from design to disposal – and ensure that everyone connected with it-



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designers, producers, value chain members, customers and recyclers are aware of their responsibilities.

2. Businesses should raise the consumer's awareness of their rights through education, product labelling, appropriate and helpful marketing communication, full details of contents and composition and promotion of safe usage and disposal of their products and services.
3. In designing the product, businesses should ensure that the manufacturing processes and technologies required to produce it are resource efficient and sustainable.
4. Businesses should regularly review and improve upon the process of new technology development, deployment and commercialization, incorporating social, ethical, and environmental considerations.
5. Businesses should recognize and respect the rights of people who may be owners of traditional knowledge, and other forms of intellectual property.
6. Businesses should recognize that over-consumption results in unsustainable exploitation of our planet's resources, and should therefore promote sustainable consumption, including recycling of resources.

Principle 3: Businesses should promote the wellbeing of all employees

1. Businesses should respect the right to freedom of association, participation, collective bargaining, and provide access to appropriate grievance Redressal mechanisms.
2. Businesses should provide and maintain equal opportunities at the time of recruitment as well as during the course of employment irrespective of caste, creed, gender, race, religion, disability or sexual orientation.
3. Businesses should not use child labour, forced labour or any form of involuntary labour, paid or unpaid.
4. Businesses should take cognizance of the work-life balance of its employees, especially that of women.
5. Businesses should provide facilities for the wellbeing of its employees including those with special needs. They should ensure timely payment of fair living wages to meet basic needs and economic security of the employees.
6. Businesses should provide a workplace environment that is safe, hygienic humane, and which upholds the dignity of the employees. Business should communicate this provision to their employees and train them on a regular basis.
7. Businesses should ensure continuous skill and competence upgrading of all employees by providing access to necessary learning opportunities, on an equal and non-discriminatory basis. They should promote employee morale and career development through enlightened human resource interventions.
8. Businesses should create systems and practices to ensure a harassment free workplace where employees

feel safe and secure in discharging their responsibilities.

Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

1. Businesses should systematically identify their stakeholders, understand their concerns, define purpose and scope of engagement, and commit to engaging with them.
2. Businesses should acknowledge, assume responsibility and be transparent about the impact of their policies, decisions, product & services and associated operations on the stakeholders.
3. Businesses should give special attention to stakeholders in areas that are underdeveloped.
4. Businesses should resolve differences with stakeholders in a just, fair and equitable manner.

Principle 5: Businesses should respect and promote human rights

1. Businesses should understand the human rights content of the Constitution of India, national laws and policies and the content of International Bill of Human Rights. Businesses should appreciate that human rights are inherent, universal, indivisible and interdependent in nature.
2. Businesses should integrate respect for human rights in management systems, in particular through assessing and managing human rights impacts of operations, and ensuring all individuals impacted by the business have access to grievance mechanisms.
3. Businesses should recognize and respect the human rights of all relevant stakeholders and groups within and beyond the workplace, including that of communities, consumers and vulnerable and marginalized groups.
4. Businesses should, within their sphere of influence, promote the awareness and realization of human rights across their value chain.
5. Businesses should not be complicit with human rights abuses by a third party.

Principle 6: Business should respect, protect, and make efforts to restore the environment

1. Businesses should utilize natural and manmade resources in an optimal and responsible manner and ensure the sustainability of resources by reducing, reusing, recycling and managing waste.
2. Businesses should take measures to check and prevent pollution. They should assess the environmental damage and bear the cost of pollution abatement with due regard to public interest.



3. Businesses should ensure that benefits arising out of access and commercialization of biological and other natural resources and associated traditional knowledge are shared equitably.
4. Businesses should continuously seek to improve their environmental performance by adopting cleaner production methods, promoting use of energy efficient and environment friendly technologies and use of renewable energy.
5. Businesses should develop Environment Management Systems (EMS) and contingency plans and processes that help them in preventing, mitigating and controlling environmental damages and disasters, which may be caused due to their operations or that of a member of its value chain.
6. Businesses should report their environmental performance, including the assessment of potential environmental risks associated with their operations, to the stakeholders in a fair and transparent manner.
7. Businesses should proactively persuade and support its value chain to adopt this principle.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner

1. Businesses, while pursuing policy advocacy, must ensure that their advocacy positions are consistent with the Principles and Core Elements contained in these Guidelines.
2. To the extent possible, businesses should utilize the trade and industry chambers and associations and other such collective platforms to undertake such policy advocacy.

Principle 8: Businesses should support inclusive growth and equitable development

1. Businesses should understand their impact on social and economic development, and respond through appropriate action to minimise the negative impacts.
2. Businesses should innovate and invest in products, technologies and processes that promote the wellbeing of society.
3. Businesses should make efforts to complement and support the development priorities at local and national levels, and assure appropriate resettlement and rehabilitation of communities who have been displaced owing to their business operations.
4. Businesses operating in regions that are underdeveloped should be especially sensitive to local concerns.

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner

1. Businesses, while serving the needs of their customers, should take into account the overall well-being of the customers and that of society.
2. Businesses should ensure that they do not restrict the freedom of choice and free competition in any manner while designing, promoting and selling their products.
3. Businesses should disclose all information truthfully and factually, through labelling and other means, including the risks to the individual, to society and to the planet from the use of the products, so that the customers can exercise their freedom to consume in a responsible manner. Where required, businesses should also educate their customers on the safe and responsible usage of their products and services.
4. Businesses should promote and advertise their products in ways that do not mislead or confuse the consumers or violate any of the principles in these Guidelines.
5. Businesses should exercise due care and caution while providing goods and services that result in over exploitation of natural resources or lead to excessive conspicuous consumption.
6. Businesses should provide adequate grievance handling mechanisms to address customer concerns and feedback.

25 Direct Market Access - Clarification

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/20/2012 dated 02.08.2012.]

1. SEBI, vide circular no. MRD/DoP/SE/Cir-7/2008 dated April 03, 2008 introduced Direct Market Access (hereinafter referred to as "DMA"). Further, SEBI vide circular no. MRD/DoP/SE/Cir-03/2009 dated February 20, 2009 permitted institutional investors to use DMA through the Investment Managers.
2. In light of the feedback received from the market participants and the several measures prescribed by SEBI to simplify and rationalize the "Trading Account Opening Process", the abovementioned SEBI circulars on DMA stands modified to the following extent:
 - a. The facility of DMA provided by the stock broker shall be used by the client or an investment manager of the client. A SEBI registered entity shall be permitted to act as an investment manager on behalf of institutional clients. In case the facility of DMA is used by the client through an investment manager, the investment manager may execute the necessary documents on behalf of the client(s).
 - b. The point 3 on **Client Authorization and Broker Client Agreement** of the SEBI circular no.



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MRD/DoP/SE/Cir-7/2008 dated April 03, 2008 shall be deleted.

- c. In order to bring uniformity on the requirement of documentation for trading account opening process, in view of the SEBI circular no CIR/MIRSD/16/2011 dated August 22, 2011, the specific **Broker – Client Agreement** for the purpose of DMA shall be replaced with the “Terms and Condition” document as specified at **Annexure I**. The “Terms and Conditions” shall be provided to the client or investment manager acting on behalf of a client (s) for availing the DMA facility. In case the DMA facility provided by the stock broker is used by the client the paragraphs one to eighteen of **Part A of Annexure-I** shall be applicable. In case the DMA facility provided by the stock broker is used by the client through an investment manager the paragraphs one to eighteen of **Part B of Annexure-I** shall be applicable and additionally, the investment manager shall provide to the stock broker the details as specified at **Annexure-II**.
- d. Exchange shall specify from time to time the categories of investors to whom the DMA facility can be extended. Currently, this facility is available for institutional clients. Brokers shall specifically authorize clients or investment managers acting on behalf of clients for providing DMA facility, after fulfilling Know Your Client requirements and carrying out necessary due diligence. The broker shall maintain proper records of such due diligence.
- e. The para 2 (a) and 2 (b) of SEBI circular no MRD/DoP/SE/Cir-03/2009 dated February 20, 2009 shall be deleted.
- f. The other provision specified in SEBI circular no MRD/DoP/SE/Cir-7/2008 dated April 03, 2008 and SEBI circular no. MRD/DoP/SE/Cir-03/2009 dated February 20, 2009 shall remain applicable.
3. Stock Exchanges are advised to:
 - a. take necessary steps and put in place necessary systems for implementation of the above.
 - b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
 - c. bring the provisions of this circular to the notice of the member of the stock exchange and also to disseminate the same on the website.
 - d. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.
4. 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.

Harini Balaji

Deputy General Manager

ANNEXURE I – TERMS AND CONDITIONS

PART – A: DMA FACILITY USED BY THE CLIENT

1. The client is expected to be fully aware of the risks associated with the market and the financial instruments being traded on stock exchanges through DMA. The client shall be responsible for complying with laws, rules, regulations, notifications etc issued by regulatory authorities as may be applicable from time to time.
2. The client shall ensure that DMA facility provided by the Broker is used only to execute the trades of the client and shall not be used for transactions on behalf of any other person / entity.
3. The client shall be responsible for ensuring that, only persons authorized by it shall access and use the DMA facility provided by the Broker. All orders originating from such facility / system shall be deemed to be authorized by the client.
4. Where the client accesses or proposes to access the Broker's DMA platform through external applications, including but not restricted to services of third party service provider(s), own application(s), etc., the client shall ensure that such applications have adequate security features including but not limited to access controls, password protection etc; and that appropriate agreement(s) with such third party service provider(s) etc. for ensuring secured access and communication has been executed and are in place.
5. The client shall ensure that no person authorized by them to place orders through DMA facility provided by the broker has been / is involved in any adverse action by any regulatory authorities in any jurisdiction.
6. The client shall provide the names of authorized individual users to the broker prior to placing DMA orders.
7. The client shall not use or allow the use of DMA facility to engage in any form of market misconduct including insider trading and market manipulation or conduct that is otherwise in breach of applicable laws, rules and regulation.
8. The client is aware that Algorithmic trading i.e. generation of orders using automated execution logic is governed by Algorithmic trading guidelines issued by SEBI and Exchanges and requires prior approval of the exchanges. The client shall ensure that new algorithms and changes to existing approved algorithms are not used through the DMA facility without prior approval of concerned stock exchanges. The client shall ensure that it has necessary checks and balances, in place to identify and control dysfunctional algorithms and the Broker shall have the



right to shut down the DMA facility and remove any outstanding client orders in case of any suspected dysfunctional algo.

9. The client is aware that authentication technologies and strict security measures are required for routing orders through DMA facility and undertakes to ensure that the password of the client and/or his representative are not revealed to any third party.
10. The client acknowledges that all DMA orders placed by them through the DMA facility would be validated by the risk management system of the broker. The Broker has the right to accept or reject any DMA order placed by the client at its sole discretion.
11. The client shall be solely responsible for all acts or omissions of any person using a DMA facility and shall be bound to accept and settle all transactions executed through the DMA facility provided by the Broker notwithstanding that such order(s) may have been submitted erroneously or by an unauthorized user, or that its data is inaccurate or incomplete when submitted, or the client subsequently determines for whatever reason that the order should not have been submitted.
12. The client shall notify the Broker in the event of DMA facility being compromised. Upon receipt of this notice, client's DMA facility shall be promptly disabled but the client shall continue to be responsible for any misuse of the DMA facility or any orders placed through the DMA facility as a result of the compromise of the DMA facility at their end. The Broker shall not be liable for any loss, liability or cost whatsoever arising as a result of any unauthorized use of DMA facility at the client's end.
13. In the event of winding-up or insolvency of the client or his otherwise becoming incapable of settling their DMA obligation, broker may close out the transaction of the client as permissible under bye-laws, rules, regulations of the exchanges. The client shall continue to be liable for any losses, costs, damages arising thereof.
14. The client is fully aware of the risks of transmitting DMA orders to the Broker's DMA facility through vendor systems or service providers and the Broker is not responsible for such risks.
15. The client should be aware of the fact that neither the DMA facility will be uninterrupted nor error free nor the results that may be obtained from the use of the service or as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service or transaction provided through DMA. The DMA service is provided on an "as is", "as available" basis without warranties of any kind, either express or implied, including, but not limited to, those of information access, order execution, merchantability and fitness for a particular purpose. The Broker shall not be liable for any loss, damage or injury including but not limited to direct lost profits or trading losses or any consequential, special,

incidental, indirect, or similar damages from the use or inability to use the service or any part thereof.

16. The Broker shall have the right to withdraw the DMA facility in case of:-
 - Breach of the limits imposed by the broker or any regulatory authority.
 - On account of any misuse of the DMA facility by the client or on instructions from SEBI/Exchanges.
 - Any other reason, at the discretion of the broker
 Broker shall endeavor to give reasonable notice to the client in such instances.
17. The Broker shall not be liable or responsible for non-execution of the DMA orders of the client due to any link/system failure at the client/ Broker/ exchange(s) end.
18. This document shall not be altered, amended and /or modified by the parties in a manner that shall be in contravention of any other provisions of this document. Any additional terms and conditions should not be in contravention with rules / regulations /bye-laws/circulars, of the relevant authorities including applicable stock exchanges as amended from time to time.

PART – B: DMA FACILITY USED BY THE CLIENT THROUGH AN INVESTMENT MANAGER

1. The client shall be solely responsible for all acts or omissions of any person using a DMA facility and shall be bound to accept and settle all transactions executed through the DMA facility provided by the Broker to the investment manager acting on behalf of the client, notwithstanding that such order(s) may have been submitted erroneously or by an unauthorized user, or that its data is inaccurate or incomplete when submitted, or the client subsequently determines for whatever reason that the order should not have been submitted.
2. The investment manager is expected to be fully aware of the risks associated with the market and the financial instruments being traded on stock exchanges through DMA. The investment manager shall be responsible for complying with laws, rules, regulations, notifications etc issued by regulatory authorities as may be applicable from time to time.
3. Where the DMA facility provided by the Broker is used to execute trade on behalf of one or more clients, by the investment manager, then it is represented and warranted that, at each time an order is placed by such investment manager through the DMA facility of the Broker -
 - a) The investment manager has due authority to deal on behalf of the client(s) through the Broker, specifying the roles and responsibilities of the investment manager in execution of transactions on behalf of the client(s).
 - b) The investment manager shall comply with any applicable laws, rules and regulations affecting or



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relating to trading operations.

- c) The investment manager and the client(s) are bound by the terms and conditions hereof;
 - d) The investment manager using the DMA facility for routing client(s) orders shall not cross trades of their client(s) with each other. Accordingly, all orders should be offered in the market.
 - e) The stock exchange or SEBI may at any time call for any information from a client(s) or an investment manager acting on behalf of the client(s) with respect to any matter relating to the activity of the investment manager. The investment manager shall also furnish any information specifying the roles and responsibilities of the investment manager in execution of transactions on behalf of the client(s), as and when required by the exchanges or SEBI.
4. The investment manager shall be responsible for ensuring that, only persons authorized by it shall access and use the DMA facility provided by the Broker. All orders originating from such facility / system shall be deemed to be authorized by the client.
 5. Where the investment manager accesses or proposes to access the Broker's DMA platform through external applications, including but not restricted to services of third party service provider(s), own application(s), etc., the investment manager shall ensure that such applications have adequate security features including but not limited to access controls, password protection etc; and that appropriate agreement(s) with such third party service provider(s) etc. for ensuring secured access and communication has been executed and are in place.
 6. The investment manager shall ensure that no person authorized by them to place orders through DMA facility provided by the broker has been / is involved in any adverse action by any regulatory authorities in any jurisdiction.
 7. The investment manager shall provide the names of authorized individual users to the broker prior to placing DMA orders.
 8. The investment manager shall not use or allow the use of DMA facility to engage in any form of market misconduct including insider trading and market manipulation or conduct that is otherwise in breach of applicable laws, rules and regulation.
 9. The investment manager is aware that Algorithmic trading i.e. generation of orders using automated execution logic is governed by Algorithmic trading guidelines issued by SEBI and Exchanges and requires prior approval of the exchanges. The investment manager shall ensure that new algorithms and changes to existing approved algorithms are not used through the DMA facility without prior approval of concerned stock exchanges. The investment manager shall ensure that it has necessary checks and balances, in place to identify and control dysfunctional algorithms and the Broker shall have the right to shut down the DMA facility and remove any outstanding client orders in case of any suspected dysfunctional algo.
 10. The investment manager is aware that authentication technologies and strict security measures are required for routing orders through DMA facility and undertakes to ensure that the password of the investment manager and/or his representative are not revealed to any third party.
 11. The investment manager acknowledges that all DMA orders placed by them through the DMA facility would be validated by the risk management system of the broker. The Broker has the right to accept or reject any DMA order placed by the investment manager at its sole discretion.
 12. The investment manager shall notify the Broker in the event of DMA facility being compromised. Upon receipt of this notice, client's DMA facility shall be promptly disabled but the client shall continue to be responsible for any misuse of the DMA facility or any orders placed through the DMA facility as a result of the compromise of the DMA facility at their end. The Broker shall not be liable for any loss, liability or cost whatsoever arising as a result of any unauthorized use of DMA facility at the client's end.
 13. In the event of winding-up or insolvency of the client or his otherwise becoming incapable of honoring their DMA obligation, broker may close out the transaction of the client as permissible under bye-laws, rules, regulations of the exchanges. The client shall continue to be liable for any losses, costs, damages arising thereof.
 14. The investment manager is fully aware of the risks of transmitting DMA orders to the Broker's DMA facility through vendor systems or service providers and the Broker is not responsible for such risks.
 15. The investment manager should be aware of the fact that neither the DMA facility will be uninterrupted nor error free nor the results that may be obtained from the use of the service or as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service or transaction provided through DMA. The DMA service is provided on an "as is", "as available" basis without warranties of any kind, either express or implied, including, but not limited to, those of information access, order execution, merchantability and fitness for a particular purpose. The Broker shall not be liable for any loss, damage or injury including but not limited to direct lost profits or trading losses or any consequential, special, incidental, indirect, or similar damages from the use or inability to use the service or any part thereof.
 16. The Broker shall have the right to withdraw the DMA facility in case of:-
 - Breach of the limits imposed by the broker or any



- regulatory authority.
 - On account of any misuse of the DMA facility by the client/ investment manager or on instructions from SEBI/Exchanges.
 - Any other reason, at the discretion of the broker Broker shall endeavor to give reasonable notice to the client in such instances.
17. The Broker shall not be liable or responsible for non-execution of the DMA orders of the client due to any link/system failure at the client/ Broker/ exchange(s) end.
18. This document shall not be altered, amended and /or modified by the parties in a manner that shall be in contravention of any other provisions of this document. Any additional terms and conditions should not be in contravention with rules / regulations /bye-laws/circulars, of the relevant authorities including applicable stock exchanges as amended from time to time.

Annexure II

On the letter head of the Investment manager

PART A

DETAILS OF THE INVESTMENT MANAGER:

NAME OF THE
INVESTMENT MANAGER:
NAME OF THE HOME
REGULATOR

COUNTRY OF
JURISDICTION OF HOME
REGULATOR

REGISTERED/
REGULATED IN HOME
JURISDICTION AS:

SEBI REGISTRATION
NUMBER:

PART B

CLIENT(s) DETAILS:

S. No.	NAME OF THE ENTITY	NAME OF THE REGULATOR	REGULATED IN INDIA AS	REGISTRATION NUMBER	PAN

26 Activation of ISIN in case of additional issue of shares/ securities

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/21/2012 dated 02.08.2012.]

1. Please refer to SEBI circular No SEBI/MRD/DEP/Cir-2/06 dated January 19, 2006.
2. In addition to the above circular, it has now been decided that in case of IPO for debt securities the ISINs shall be activated only on the date of commencement of trading on the stock exchange.
3. Further, in order to curtail the transfer of additional issue of shares/securities viz. further public offerings, rights issue, preferential allotment and bonus issue of the listed company, prior to receipt of final listing/ trading approval , it has been decided that the depositories shall devise a mechanism so that such new securities created shall be frozen till the time final listing/ trading permission is granted by the exchange.
4. In order to achieve the above, the Depositories are advised to allot such additional shares/securities under a new temporary ISIN which shall be kept frozen. Upon receipt of the final listing/ trading permission from the exchange for such additional shares/ securities, the shares/securities credited in the new temporary ISIN shall be debited and the same would get credited in the preexisting ISIN for the said security. Thereafter, the additional securities shall be available for trading.
5. The exchanges are advised to provide the details to the depositories whenever final listing/trading permission is given to securities.
6. The Depositories are advised to:-
 - a) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be applicable/necessary ;
 - b) bring the provisions of this circular to the notice of their DPs and also to disseminate the same on their website; and
7. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Harini Balaji

Deputy General Manager

27 System for Making Application to Public issue of Debt Securities

[Issued by the Securities and Exchange Board of India vide CIR/IMD/DF-1/20/2012 dated 27.07.2012.]

1. Regulation 10 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (the "SEBI Debt Regulations") provides that:
"An issuer proposing to issue debt securities to the public



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through the on-line system of the designated stock exchange shall comply with the relevant applicable requirements as may be specified by the Board.”

2. Regulation 31(2) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 provides that:-
*“In particular, and without prejudice to the generality of the foregoing power and provisions of these regulations, such orders or circulars may provide for all or any of the following matters, namely:
 Electronic issuances and other issue procedures including the procedure for price discovery....”*
3. In view of the above, in order to facilitate a system for making online applications for public issue of debt securities and to reduce the timelines of the issue process for public issue of debt securities, it has been decided to:
 - a. Extend ASBA facility to public issues of debt securities; and
 - b. Provide option for subscribing to debt securities through an online internet interface with a facility to make online payment.
 - c. Apply the timelines for the issue process as provided in SEBI Circular CIR/CFD/DIL/1/2011 dated April 29, 2011 or as notified by SEBI from time to time.
4. The detailed procedure for providing the above facilities is laid out in Annexure to this circular. The circular shall be applicable with immediate effect subject to putting in place necessary systems and infrastructure by the stock exchanges.
5. Recognized Stock Exchanges are directed to:
 - a. Comply with the conditions laid down in this circular
 - b. Put in place necessary systems and infrastructure for implementation of this circular.
 - c. Make consequential changes, if any, to the bye-laws of the Exchange as may be applicable and necessary.
 - d. Communicate to member brokers/ sub-brokers and create awareness amongst them about their roles and responsibilities in such issues.
6. Depositories, Merchant Bankers and Registrars are directed to:
 - a. Comply with the conditions laid down in this circular
 - b. Put in place necessary systems and infrastructure for implementation of this circular.
 - c. Create awareness among issuers and investors about the various modes available for making applications
7. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 31(2) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
8. This circular is available on SEBI website at www.sebi.gov.in under the category “Legal Framework” and under the drop down “Corp Debt Market”.

Maninder Cheema
Deputy General Manager

ANNEXURE

- 1. Method of Application:** Issuers shall provide the following options for making application to public issues of debt securities:
 - 1.1. Direct Applications by using online interface to be provided by Stock Exchanges with Online Payment Facility
 - 1.2. Applications through Lead Managers/Syndicate Members/ Sub Syndicate Members / Trading Member of stock exchange(s) using ASBA facility
 - 1.3. Applications through Banks using ASBA facility
 - 1.4. Application through Lead Manager/Syndicate Member/ Sub Syndicate Member / Trading Member of stock exchange(s) without use of ASBA facility.
 - 1.5. Application through Lead Manager/Syndicate Member/ Sub Syndicate Member/ Trading Member of stock exchange(s) for applicants who intend to hold debt securities in physical form.
- 2. Procedure:** The procedure to be followed for the above options shall be as detailed below:
 - 2.1. Direct Applications by using online interface through stock exchange(s) with Online Payment Facility**
 - 2.1.1. Issuer shall provide, through a recognized stock exchange which offers such facility, an online interface enabling direct application by investors to the public issue.
 - 2.1.2. The online interface shall provide an online payment facility and ensure compliance with the requirements as specified in this section.
 - 2.1.3. Only investors with demat account shall be permitted to make an application using the online interface.
 - 2.1.4. The investor shall be required to log on to the stock exchange platform and provide requisite information as per the application form.
 - 2.1.5. For compliance with KYC requirements, the interface shall rely on the Depository Participant ID, Beneficiary Owner Account No which shall be validated online from the Depositories.
 - 2.1.6. The investor shall make payment for the debt securities through the payment gateway provided by the online interface. The exchange shall arrange to send SMS/ email confirmation regarding receipt of funds to the investor.
 - 2.1.7. On successful submission of the application form, a unique acknowledgement number shall be generated.
 - 2.1.8. Investors shall be able to cancel their application based upon the unique acknowledgement number. This unique acknowledgement number shall be quoted by the applicant for their grievances, if any.
 - 2.1.9. All online payments shall be routed to the Escrow Account of the issuer.
 - 2.1.10. Upon allotment, the Registrar shall credit securities to the demat account of the applicant and in case of



refund, the refund amount shall be credited directly to the investor's bank account.

- 2.1.11. Optional facility may be provided to the applicant for selecting broker name and broker code, if any, of the broker who referred the issue to the applicant.
- 2.1.12. As the application shall be made online, there shall no movement of any document from the Stock Exchange(s) to the Registrar.

2.2. Applications through Lead Manager/Syndicate Member/ Sub Syndicate Member / Trading Member of stock exchange(s) using ASBA facility and Applications through Banks using ASBA facility

- 2.2.1. Issuers shall offer ASBA mechanism as an alternative method for making an application for public issue of debt securities. However, it shall not be compulsory to make application through ASBA.
- 2.2.2. In respect of ASBA applications, all existing rules, regulations and procedures as notified by SEBI from time to time shall be followed.
- 2.2.3. In addition, application for debt securities using ASBA facility may also be offered by Trading Member(s) of Stock Exchange(s) who are not empanelled as Syndicate /Sub-syndicate Members. All rules, regulations and procedures applicable to Lead Manager / Syndicate/Sub syndicate members shall *mutatis mutandis* be applicable to such Trading Member(s) of Stock Exchange(s).

2.3. Applications through Lead Manager/Syndicate / Sub Syndicate Member / Trading Member through Collecting Banks without using ASBA facility

- 2.3.1. Facility for making online applications through Lead Manager/Syndicate/Sub-syndicate Member/ Trading Member using normal cheque payment method shall also be available.
- 2.3.2. Only investors with demat account shall be permitted to make such applications.
- 2.3.3. For such applications, the Lead Manager/Syndicate/Sub-syndicate Member/ Trading Member shall upload details of applications on the online platform of the stock exchanges.
- 2.3.4. Lead Manager/Syndicate / Sub-syndicate Member / Trading Member shall also download the forms from stock exchanges platforms or use physical application forms and submit these forms along with cheques/drafts/payment instrument to the Collecting Banks.
- 2.3.5. The Collecting Banks shall realize the payments for these applications in the Escrow Account of the issuer and shall give details of the same to the Registrar. These application forms shall be forwarded to Registrar for procurement analysis and resolution of investor grievances as per procedure followed in equity securities issuances.
- 2.3.6. The Registrar shall match the application details

captured in the electronic book as obtained from the stock exchanges and the payment received for the purpose of allotment and reconciliations of funds received.

- 2.3.7. The Registrar shall credit the securities in the demat account of successful allottees.
- 2.3.8. The Registrar shall give refund amount or excess application amount to the investor directly as per bank account details provided in the demat account of the applicant.

2.4. Applications for allotment in physical form through Lead Manager/Syndicate / Sub Syndicate Member or Trading Member

- 2.4.1. Issuer may also provide facility for making applications in physical form for investors who do not have demat accounts.
- 2.4.2. For allotment in physical mode, the applicant shall be required to comply with KYC norms specified by SEBI by submitting documents for identity and address proof.
- 2.4.3. Such applications shall be collected by the Lead Manager, Syndicate/Sub Syndicate member or Trading member who shall
 - 2.4.3.1. verify and check required KYC documents submitted by the investor along with the application
 - 2.4.3.2. upload application details required for allotment on the stock exchange platform.
 - 2.4.3.3. provide acknowledgment of the application to the investor.
- 2.4.4. The application along with payment instrument favoring the Escrow Account of the issuer shall be submitted by the Lead Manager, Syndicate/Sub Syndicate member or Trading member to the Collecting Bank.
- 2.4.5. The Collecting Bank shall realize the payment instrument and shall send details of such applications forms, along with KYC documents to the Registrar.
- 2.4.6. The Registrar shall match the application details with the application details received from Stock Exchanges, and carry out necessary checks and validations and reconciliation of funds received from the Collecting Banks.
- 2.4.7. The Registrar shall dispatch the physical certificate to the applicant as per address provided in the application. In case KYC documents are not proper, Registrar shall hold back physical certificate pending receipt of complete KYC documents from investor.
- 2.4.8. The Registrar shall send the refund amount or excess application amount to the applicant as per the bank account details provided in the application.

3. Roles and Responsibilities: While providing the options



From the Government

for making applications as detailed above, the obligations and responsibilities of various intermediaries shall be as under:

3.1. Issuer

- 3.1.1. The issuer shall use an on-line platform provided by stock exchange(s) for receiving applications in public issue of debt securities.
- 3.1.2. For this purpose, the issuer shall enter into an agreement with the stock exchange(s) which offer such system.
- 3.1.3. The agreement shall specify *inter-alia*, the *inter se* rights, duties, responsibilities and obligations of the issuer and stock exchange(s).
- 3.1.4. The agreement shall also provide for a dispute resolution mechanism between the issuer and the stock exchange(s).
- 3.1.5. The issuer shall maintain a single escrow account for collecting application money through all the methods.

3.2. Registrar

- 3.2.1. The registrar shall have an online or system driven interface with the Stock Exchange platform to get updated information pertaining to issues.
- 3.2.2. The Registrar shall collect aggregate applications details from the stock exchanges platform to decide the eligible applications and process the allotment as per applicable SEBI Regulations.
- 3.2.3. Where the issuer has signed agreements with multiple stock-exchanges, the Registrar shall ensure that the allotment is done on date time priority.
- 3.2.4. An application without valid application amount shall be treated as invalid application by the Registrar.
- 3.2.5. The Registrar shall credit securities/dispatch certificates to all valid allottees.
- 3.2.6. The Registrar shall ensure refund of application amount or excess application amount in the bank account of the applicant as stated in its demat account.

3.3. Stock Exchange

- 3.3.1. Stock Exchanges shall provide a platform for making applications through
 - 3.3.1.1. Syndicate Member/ Sub Syndicate Member/ Trading Member of stock exchange(s)
 - 3.3.1.2. Web-enabled direct applications from investors with Online Payment Facility
- 3.3.2. The on-line web enabled platform shall provide
 - 3.3.2.1. all appropriate fields, required for public issue of debt securities, as per SEBI Cir No. IMD/DF-1/19/2012 dated July 25, 2012.
 - 3.3.2.2. issue opening/ closing date.
 - 3.3.2.3. facility for generation of acknowledgement number.
 - 3.3.2.4. validation of DP ID, Client ID and PAN entered in the online system with the

Depositories database.

- 3.3.2.5. generate an issue specific code from the on-line platform, so that participants on the online platform do not face any problem in segregating the ASBA issue-wise.
 - 3.3.2.6. providing facilities of online payment by the investor through payment gateway or any other mechanism
 - 3.3.3. The Stock Exchanges shall be responsible for
 - 3.3.3.1. accurate, timely and secured transmission of the electronic application file uploaded by all participants on the online platform, to the registrar.
 - 3.3.3.2. providing the necessary payment gateway interface for receipt of funds for direct interface to investors.
 - 3.3.3.3. ensuring smooth movement of funds to the Escrow account of the issuer.
 - 3.3.3.4. disseminating the issue information on Exchange web site on a real time basis across all categories and types of options.
 - 3.3.3.5. ensuring that any Trading Member does not levy a service fee on his clients/investors in lieu of his services in this regard.
 - 3.3.4. Notwithstanding the responsibility of the Lead Managers/ Syndicate Members as laid down in SEBI regulations, the Stock Exchange shall be responsible for addressing investor grievances arising from applications submitted online through the stock exchange platform or through their Trading Members.
- ## 3.4. Lead Manager/Syndicate Member / Sub – syndicate Member / Trading Member
- 3.4.1. The Lead Manager /Syndicate/Sub-syndicate Member or Trading Member shall be responsible for addressing any investor grievances arising from the applications uploaded by them in respect of quantity, price or any other data entry or other errors made by them.
 - 3.4.2. If the Lead Manager / Syndicate/Sub-syndicate member or Trading Member has not entered any details correctly on the stock exchanges platform and it results on the mismatch with the data obtained by the Registrar from the Depositories, the Lead Manager / Syndicate/subsyndicate member or Trading Member shall be responsible for rejection of such applications.

3.5. Collecting Banks

- 3.5.1. The Collecting Bank shall be responsible for addressing any investor grievances arising from non confirmation of funds to the Registrar despite successful realization of the payment instrument in favour of the issuer's Escrow Account, or any delay or operational lapse by the Collecting Bank in sending the forms to the Registrar.



Economic Laws

28 Review of the Foreign Direct Investment policy - permitting investments from Pakistan

[Issued by the DIPP, Ministry of Commerce & Industry vide Press note No. 3 (2012 Series) dated 01.08.2012.]

1.0 Present Position:

1.1 As per paragraph 3.1.1 of Circular 1 of 2012-Consolidated FDI Policy', effective from 10.04.2012, investment from a citizen of Pakistan or an entity incorporated in Pakistan is not permitted.

2.0 Revised Position:

2.1 The Government of India has reviewed the policy, as

contained in paragraph 3.1.1 of the circular *ibid* and decided to permit a citizen of Pakistan or an entity incorporated in Pakistan to make investments in India, under the Government route, in sectors/activities other than defence, space and atomic energy.

3.0 Amendment to paragraph 3.1.1:

3.1 Accordingly, Paragraph 3.1.1 of Circular 1 of 2012-Consolidated FDI Policy', effective from 10.4.2012, is amended to read as below:

"3.1.1 A non-resident entity can invest in India, subject to the FDI Policy. A citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. A citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space and atomic energy."

4.0 The above decision will take immediate effect.

Anjali Prasad

Joint Secretary



Institute News

CONGRATULATIONS



SHRI SUTANU SINHA, FCS, on his assuming the office of Chief Executive Designate of the Institute of Company Secretaries of India w.e.f. 31.08.2012. Earlier he was Sr. Director (Academics & Professional Development) of the Institute.

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* Admitted on 20th July, 31st July, 2012 and 13th August, 2012

* Admitted on 20th July, 31st July, 2012 and 13th August, 2012



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14.	Sh. Anil Anand	ACS - 10328	NIRC
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16.	Sh. V Ganesh	ACS - 9912	SIRC

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34	Ms. Niti Saraf	ACS - 27427	11066	EIRC
35	Mr. Adnan Abdullah Ginwala	ACS - 28749	11067	WIRC
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39	Mr. Vinod Chandra Mamgai	ACS - 30118	11071	NIRC
40	Mr. Ankit Jain	ACS - 30154	11072	NIRC
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43	Mrs. Radhika Beria	ACS - 28963	11075	EIRC
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45	Ms. Khyati Sharad Bhai Mehta	ACS - 30529	11077	WIRC

* Restored from 21st July 2012 to 20th August, 2012

** During the month of July, 2012



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50	Mr. Ananda Rao Ravada	ACS - 28459	11083	SIRC	96	Ms. Seema Chowdhury EIRC	ACS - 21224	11129	
51	Sh. N. Ramanathan	FCS - 6665	11084	SIRC	97	Sh Sandeep Kumar	ACS - 21471	11130	NIRC
52	Ms. Vrushali Deepak Solanki	ACS - 30468	11085	WIRC	98	Sh. B K Dhingra	ACS - 5788	11131	NIRC
53	Sh. Khan Nisar Ahmed Sattar	ACS - 29338	11086	WIRC	99	Sh Shyam Narayan Singh	ACS - 20048	11132	EIRC
54	Ms. Sneha Mahajan	ACS - 23530	11087	NIRC	100	Ms. Himani Gupta	ACS - 30175	11133	NIRC
55	Sh. Ajay Kumar Jain	FCS - 5826	11088	NIRC	101	Ms. Vallari Rashmikant Patel	ACS - 27244	11134	WIRC
56	Sh. Ankit Dinesh Sethi	ACS - 25415	11089	WIRC	102	Ms. Mansi Goel	ACS - 27044	11135	NIRC
57	Ms. Manisha Gupta	ACS - 15928	11090	NIRC	103	Ms. Mithali Gupta	ACS - 27058	11136	NIRC
58	Mr. Baburao Maruti Tupare	ACS - 30195	11091	WIRC	104	Ms. Shradha Poddar	ACS - 22254	11137	EIRC
59	Mr. Girish Prakash Bhandare	ACS - 30505	11092	WIRC	105	Sh. Govindaraddi Kurtakoti	ACS - 23141	11138	SIRC
60	Ms. Neha Shyam Lal Gupta	ACS - 30523	11093	WIRC	106	Sh. Punit Santosh Kumar Lath	ACS - 26238	11139	WIRC
61	Ms. Pornima Chandrakant Vidyasagar	ACS - 30506	11094	WIRC	107	Ms. Reena Gupta	ACS - 9851	11140	NIRC
62	Ms. Renuka Bhura	ACS - 29664	11095	WIRC	108	Mr. Rahul Dattatraya Chandratre	ACS - 30607	11141	WIRC
63	Ms. Latika Chawla	ACS - 30554	11096	NIRC	109	Sh. Surya Prakash Perumalla	ACS - 18803	11142	SIRC
64	Sh. Sandeep Kumar	ACS - 30423	11097	NIRC	110	Ms. Kajal Himatlal Mehta	ACS - 30460	11143	WIRC
65	Ms. Vandana Gupta	ACS - 26748	11098	NIRC	111	Ms. Reena Prakash Jain	ACS - 24646	11144	WIRC
66	Ms. Kavita Pamnani	FCS - 6288	11099	NIRC	112	Ms Poornima Mahadev Moole	ACS - 19990	11145	SIRC
67	Mr. Tarlok Chand Sharma	ACS - 30332	11100	WIRC	113	Sh. Dinesh Kumar	FCS - 4726	11146	NIRC
68	Ms. Priyanka Saraf	ACS - 26836	11101	WIRC	114	Ms. Manisha Singhania	ACS - 28461	11147	NIRC
69	Ms. Anjali Tomar	ACS - 26875	11102	NIRC	115	Sh. N V Thanigaimani	FCS - 2959	11148	SIRC
70	Mr. Rafeeulla Shariff	ACS - 28890	11103	SIRC	116	Sh. Hemant Rajnikant Kothari	ACS - 20872	11149	WIRC
71	Sh. M Ramamoorthy	FCS - 4814	11104	SIRC	117	Mrs. Silpi Sureka	ACS - 21972	11150	EIRC
72	Ms. Vibhavari Vijay Dalvi	ACS - 29957	11105	WIRC	118	Ms. Bishakha Chakraborty	ACS - 30435	11151	WIRC
73	Mr. Ajay Kumar	ACS - 30343	11106	NIRC	CANCELLED*				
74	Ms. Deepali Kaushik	ACS - 28761	11107	NIRC	1.	Ms. Kanika Sukhija	ACS - 23832	8615	NIRC
75	Ms. Anu R Nair	ACS - 30525	11108	WIRC	2.	Ms. Ashwini Sharadkumar Shah	ACS - 26104	10392	WIRC
76	Ms. Jyoti Ramkishan Prajapati	ACS - 29215	11109	WIRC	3.	Ms. Vidhi Vijay Doshi	ACS - 22006	8122	WIRC
77	Mr. Manoj Kumar Saxena	ACS - 29643	11110	NIRC	4.	Ms. Arpita Bisaria	ACS - 21324	10672	NIRC
78	Ms. Khushaliben Narendrakumar Shah	ACS - 30401	11111	WIRC	5.	Sh. Parminder Singh Bakshi	ACS - 25383	9139	NIRC
79	Sh. Srikant Mohan	FCS - 6177	11112	SIRC	6.	Ms Chhama Goel	ACS - 20274	7410	NIRC
80	Sh. Srikanth Sangai	ACS - 20906	11113	SIRC	7.	Ms. Priyanka Makar	ACS - 29679	10698	NIRC
81	Sh. Rupesh Kumar Jain	ACS - 12059	11114	WIRC	8.	Mr. Rajnish Chahal	ACS - 27694	10299	NIRC
82	Mr. Manisha Saboo	ACS - 22148	11115	EIRC	9.	Mr. Jitesh Bansal	ACS - 29149	11014	EIRC
83	Sh. Majeti Muniyya	ACS - 8288	11116	EIRC					
84	Ms. Meeta Dogra	ACS - 20861	11117	NIRC					
85	Ms. Seema Sharma	ACS - 25258	11118	EIRC					
86	Sh. Harish Kumar Sharma	ACS - 6557	11119	NIRC					
87	Ms. Neha Gupta	ACS - 26325	11120	NIRC					
88	Ms. Pragya Saxena	ACS - 30366	11121	NIRC					
89	Sh. V Ramanujam	FCS - 2433	11122	SIRC					
90	Sh. Ajay Kumar Siwach	FCS - 6479	11123	NIRC					
91	Mr. Diponkar Banerjee	ACS - 28181	11124	EIRC					

* During the month of July, 2012



News from the Institute

10.	Sh. Bharatsinh C Parmar	ACS - 20704	9116	WIRC
11.	Ms. Mamta Gupta	ACS - 28794	10426	NIRC
12.	Sh. K T Mayuranathan	FCS - 3547	10386	SIRC
13.	Ms. Divya Prasad	ACS - 27915	10171	SIRC
14.	Ms. Meenu Jain	ACS - 28777	10382	NIRC
15.	Mr. Atul Vyas	ACS - 27425	10304	NIRC
16.	Sh. Jayesh Gopal Damle	ACS - 24869	9027	WIRC
17.	Mr. Sumit Kumar Gururani	ACS - 22421	10905	NIRC
18.	Ms. Manisha Arora	ACS - 13687	9864	NIRC
19.	Ms. Suchi Gupta	ACS - 26066	9461	NIRC
20.	Ms. Urvashi Gupta	ACS - 25186	9019	SIRC
21.	Ms. Sarita Bhatt	ACS - 30115	10920	NIRC
22.	Ms. Pragya Jain	ACS - 20549	9469	WIRC
23.	Sh. Maneck Jal Kotwal	FCS - 814	11007	WIRC
24.	Ms. Neha Parbhakar	ACS - 26382	9718	NIRC
25.	Sh. Anil Kumar Chaddha	FCS - 2869	3658	NIRC
26.	Ms. Rekha Goenka	ACS - 17805	6105	EIRC
27.	Sh. Avanish Dwivedi	ACS - 13983	10491	WIRC
28.	Ms. Disha Mukesh Paleja	ACS - 28433	10209	WIRC
29.	Sh. Nitin Misra	ACS - 24286	10476	NIRC

LICENTIATE ICSI

Sl. No.	Name	Licentiate No.	Region
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ADMITTED**

1.	Sh. Azim Naeem Khan	6390	WEST
2.	Ms. Deepti Datta	6391	WEST
3.	Sh. Somil Agarwal	6392	NORTH
4.	Sh. Ratishkumar Chandubhai Patel	6393	WEST
5.	Ms. Minal B Mittal	6394	WEST
6.	Ms. Mudra Sitaram Dadhich	6395	WEST
7.	Sh. Balkrishan Agarwal	6396	EAST
8.	Sh. Piyush Sharma	6397	WEST
9.	Sh. Dushyanth Kumar Modhi	6398	SOUTH
10.	Ms. Priya R S	6399	SOUTH
11.	Sh. Milind Dineshkumar Kotak	6400	WEST
12.	Sh. Rutul Hareshbhai Kansara	6401	WEST
13.	Sh. George Thomas Kallarackal	6402	SOUTH
14.	Sh. Vijay Raj Singh Rathore	6403	NORTH
15.	Sriram C	6404	SOUTH
16.	A J Vaidyanathan	6405	EAST

** During the period 01st July 2012 to 31st July, 2012

ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEES FOR 2012-13

The Status of payment of Annual Membership and Certificate of Practice fees has been hosted on the web-site of the Institute. Members who have paid their Annual Membership and Certificate of Practice fee for the year 2012-13 are requested to kindly check their status on the web-site and inform the Institute about discrepancy, if any. In case the members find that inspite of having paid the fee, their records have not been updated, they may kindly send a copy of acknowledgement issued by the Institute or the particulars of the Demand Draft/Cheque amount paid and the name of the bank for proper coordination. The information can also be provided to Meenakshi Gupta, Joint Director, D.D. Garg, Desk Officer or Vanitha Dhanesh, Senior Assistant on telephone nos. 45341047/62/64 or over mobile no. 9868128682 or through e-mail at e-mail id's meenakshi.gupta@icsi.edu, dd.garg@icsi.edu or vanitha.dhanesh@icsi.edu.

The names of the 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 however pay the fee and get their names restored by making an application in Form 'BB' together with entrance fee of Rs. 1500/- and Rs.1000/- towards Associates and Fellow Membership respectively and restoration fee of Rs. 250/-. Form BB is available on the web-site of the Institute and also published else where in this issue.

In accordance with regulation 11(1)(d) as amended by the Company Secretaries (Amendment) Regulations, 2010, the members may remit the Certificate of Practice fee for the year 2012-13 on or before 30th September, 2012. If the Certificate of practice fee is not paid by the said date, the Certificate will stand cancelled w.e.f. 1st October, 2012.

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.in 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-site (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)

Place:

Encl.

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, asamended 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



List of Companies Registered for Imparting Training During the Month of July 2012

Region	Training Period	Stipend (Rs.)
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Eastern

Siemens Syntex Pvt. Ltd. P-11 Chitpur Spur Kolkata 700007 <i>indian21@vsnl.com</i>	15 Months Training	3500/-
Indostar Capital Finance Pvt. Ltd. Room no.6, 4th Floor Commerce House 2a Ganesh Chandra Avenue Kolkata 700013	15 Months Training	3500/-
Gee Pee Infotech Pvt. Ltd. Gee Pee House 34/10 Ballygunge Circular Road Kolkata 700019 <i>info@geepee.co.in</i>	15 Months Training	3500/-
Bhubnesh Commercial Pvt. Ltd. P-11 Chitpur Spur, Kolkata 700007	15 Months Training	3500/-
Apollo Gleneagles Hospital Ltd. 58 Canal Circular Road Kolkata 700054 <i>hospital@apollogleneagles.in</i>	15 Months Training	5000/-
Apex Auto Limited M-1,2,3,20 Phase VII Industrial Area, Adityapur Jamshedpur-832109	15 Months Training	3500/-
Shree Hari Agro Industries Limited 45a Addya Sradhya Ghat Road 3rd Floor, Room No. 1 Kolkata, West bengal 700007	15 Months Training	3500/-
Company law board Kolkata Bennch 9 Old Post Office Street 6th Floor Kolkata-700 001 <i>bo.kol.clb@nic.in</i>	15 Months Training	3500/-
Shree Sidhi Binayak Holdings Pvt. Ltd. 115, College Street, 3rd Floor Kolkata 700012	15 Months Training	3500/-

P. K. Credits Pvt. Ltd. 115, College Street 3rd Floor, Kolkata 70001	15 Months & 3 months Practical Training	3500/-
Ganesham Securities Pvt. Ltd. 9, India Exchange Place 8th Floor, Kolkata 700001	15 Months Training	3500/-
Bhuvneshwari Vypaar Pvt. Ltd. 7a, Be Ntick Street Kolkata 700001	15 Months Training	3500/-
Aristro Capital Markets Pvt. Ltd. Bells House 21 Camac Street, 9th floor Kolkata - 700016 <i>info@aristrocapital.com</i>	15 Months Training	3500/-

Northern

Perfetti Van Melle India Pvt. Ltd. Global Business Park Tower A 1st floor Mehrauli Gurgaon -122002	15 Months Training	3500/-
Astrum Value Homes Pvt. Ltd. Unit no. 1003, 10th floor Vatika city point M.g.road, gurgaon 122002 <i>contactus@astrumhomes.com</i>	15 Months Training	3500/-
Pearl Global Industries Limited 446 UD, Gurgaon- 122016 <i>sandeep.sabharwal@houseofpearl.com</i>	15 Months Training	3500/-
Varaha Infra limited Umesh Smriti 6 Jalam Vilas Scheme Paota 'B' Road Jodhpur 342006 <i>vccjodhpur@gmail.com</i>	15 Months Training	3500/-
Man Powergroup Sevices India Pvt. Ltd. Global Business Park Tower A 6th Floor M.G. Road, Gurgaon 122002	15 Months Training	7000/-
Raindrop Financial Services Pvt. Ltd. 308, Lusa Tower, Azadpur Delhi -110033	15 Months Training	3500/-
Arcelor Mittal India Limited Uppal M-6 Plaza, unit C to F Jasola District Centre New Delhi 110025 <i>lalit.satija@arcelormittal.com</i>	15 Months Training	3500/-
Honda Motor India Pvt Ltd. Plot no. A-1, Sector 40/41 Surajpur Kasna Road, Greater Noida Distt. Gautam Budh Nagar U.P. 201306	15 Months Training	3500/-



News from the Institute

Zamil Infra Pvt Ltd. 002 & 003, BPTB Park Centra Gurgaon 122001 Haryana	15 Months Training	3500/-	Arise India Limited B 38 Jain Chowk Main Road Palam, New Delhi-110045 <i>marketing@ariseindia.com</i>	15 Months Training	3500/-
Qutro FPO Solutions Pvt. Ltd. 267 udyog vihar, Phase-II Gurgaon, Haryana-122015 <i>vineeta.gupta@qutro.com</i>	15 Months Training	3500/-	Gee EL Woolens Limited H 35 Sainik Farms New Delhi-110062 <i>glwdel@gmail.com</i>	15 Months Training	3500/-
Wital See Marketing Limited Sco No.224-225, 1st Floor Sector 40 D, Chandigarh 160036 <i>info@witalsee.com</i>	15 Months Training	3500/-	Prints Industries Limited 123 A DDA Office Complex Cycle Market Jhandelwala Extn. New Delhi-110055 <i>galoreprints@gmail.com</i>	15 Months Training	3500/-
Vatika Limited Vatika Triangle, 7th Floor Sushant Lok, phase - I M. G. Road, Gurgaon - 122002 <i>info@vatikagroup.com</i>	15 Months Training	3500/-	India Yamaha Motor Pvt Ltd. 1st Floor The Great Eastern Centre 70 Nehru Place New Delhi-110019	15 Months Training	3500/-
Karnani Solvex Pvt. Ltd. M-8 Mahesh Colony, Tonk Phatak, Jaipur-302015 <i>karnanisolvexipr@gmail.com</i>	15 Months Training	3500/-	B P F Industries Limited Village bhamain kalan Taipur road, Ludhiana - 141011 <i>bbfl@bbfgroup.com</i>	15 Months Training	4000/-
GMR Airports Limited New udaan bhawan Opp terminal 3 Indira gandhi international airport New delhi 110037 <i>vivek.kumar2@gmrgroup.in</i>	15 Months & 3 Months Practical Training	3500/-	Hindustan Insecticides Limited Scope Complex Code 6 2nd Floor 7 Lodi Road New Delhi-110003 <i>hilhq@nde.vesnl.net.in</i>	15 Months Training	3500/-
Vatika Hotels Pvt. Ltd. Vatika Triangle, 7th floor Sushant Lok, Phase I, Block A, Mehrauli Gurgaon Road, Gurgaon 122002	15 Months Training	3500/-	General Motors India Pvt. Ltd. Plot no 15, Sec 32 Institutional Area Gurgaon -122001	15 Months & 3 Months Practical Training	3500/-
National Skill Development Corporation D-4, Clarion Collection Shaheed Jeet Singh Marg. New Delhi-110016	15 Months & 3 Months Practical Training	3500/-	Neelam Portfolio Ltd. 801-802, Vishwa Sadan Building District Centre, Janakpuri New Delhi -110058 <i>cs25@yahoo.com</i>	15 Months Training	3500/-
Vikas WSP Limited B-86/87 Udyog Vihar RIICO Industrial Area, Sriganganagar 335002 <i>vikasvegan@yahoo.com</i>	15 Months Training	4000/-	Nec HCL System Technologies Ltd. 4th Floor, Tower 'B' Logix Tecno Park, Plot No. 5, Sec-127 Noida -201301 <i>www.nechcist.in</i>	15 Months Training	3500/-
Jointeca Education Solutions Ltd. 1014, Jointeca Campus, Chowki Bagh Bahadur Colony, Near SBI Crossing, Mathura -281001	15 Months Training	2500/-	Katra Phytochem (India) Pvt Ltd. 1134, First Floor, 100 FT.Road, Hal 2nd Stage, Bangalore 560008 <i>info@katraphyto.com</i>	15 Months Training	3500/-
Alchemist limited Alchemist House Building No.23 Nehru Place New Delhi-110019	15 Months Training	10000/-	Company Law Board Chennai Bench Corporate Bhawan (Uti Building) 3rd Floor No.29 Rajaji Salari Chennai-600001 <i>bol1.chen.clb@nic.in</i>	15 Months Training	3500/-

Southern



KMC Speciality Hospital (I) Ltd. 6 Royal Road Trichy 620001 <i>info@kmcspecialityhospital.in</i>	15 Months Training	5000/-	Lesha Industries Limited 7th Floor, Ashoka Chambers Mithakhali Six Roads, Ahmedabad <i>info@lesha.in</i>	15 Months Training	3500/-
Gradiente Infotainment Limited 306, 3rd Floor, Mayfair Gardens Banjara Hills , Road No.12 Hyderabad 500034 <i>info@gradientinfotainment.com</i>	15 Months Training	3500/-	Vakksh Commodities Company Pvt Ltd. 145 Mittal Tower C Wing, Nariman Point Mumbai 400021 <i>vakksh.commodities@gmail.com</i>	15 Months Training	3500/-
Hospira Healthcare India Pvt.Ltd. 9th Floor, Orchid Towers, 313, Valluvar Kottam High Road, Nungambakkam Chennai 600034	15 Months Training	5000/-	In-Solutions Global Pvt. Ltd. Suite #21 1st Floor, Rna Arcade Lokhandwala Andheri(W) Mumbai 400053 <i>info@insolutionsglobal.com</i>	15 Months Training	3500/-
Stanadyne Amalgamations Pvt. Ltd. No.96, Aranvoyal Village, Thiruvallur Taluk Thiruvallur, Tamil Nadu <i>svenkataavaman@stanadyne.com</i>	15 Months Training	5000/-	Shrikrishna Devecon Limited Umarji House, 2nd Floor 202 Teli Gally Andheri East Mumbai 400069 <i>info@shrikrishnadevconlimited.com</i>	15 Months Training	3500/-
Rane (Madras) Limited Maithri, 132 Cathedral Road Chennai 600086	3 Months Practical Training	3500/-	Power Build Limited Anand Anand Sojitra Road, Vallabh Vidyanagar - 388120 Gujarat. <i>infopbl@pbl.elecon.com</i>	15 Months Training	3500/-
Biocon Limited 20th Km Hosur Road Electronics City Bangalore Bangalore -560100 <i>ashok_bhandarkar@biocon.com</i>	3 Months Practical Training	3500/-	Shri C.V. Sajeevan, B.O. Company Law Board Mumbai Bench N.T.C. House 2nd Floor, 15 Narottam Morarjee Marg Ballard Estate Mumbai-400038 <i>bo.mum.clb@nic.in</i>	15 Months Training	3500/-
Western			Destimoney Securities Pvt. Ltd. Tech Web Center, 6th Floor, New Link Road, Oshiwara, Behram Baug, Jogeshwari(West) Mumbai 400102	15 Months Training	3500/-
The Fourcee Port & Terminal Pvt. Ltd. 329, Laxmi Industrial Estate New Link Road, Andheri (W) Mumbai 400053	15 Months & 3 Months Practical Training	3500/-	Pramerica Asset Managers Pvt. Ltd. 2nd Floor, Nirlon House, Dr. A.B.Road, Worli Mumbai 400030 <i>harisha.shah@pramerica.com</i>	15 Months Training	3500/-
M Power Micro Finance Pvt Ltd. 3, 1st Floor, Sai Santosh Complex Hari Nagar, Gotri Road, Vadodara 390021 <i>contact@mpowermicro.com</i>	15 Months Training	3500/-	Ramkrishna Electricals Limited N-5 , M.I.D.C. Nagpur 440016 <i>ramkrishna.e@rediffmail.com</i>	15 Months & 3 Months Practical Training	3500/-
Facor Steels Limited 46 A & B Midc Industrial Estate Hingna Road, Nagpur 440028 <i>info@facorsteel.com</i>	15 Months Training	3500/-			
Sunteck Wealthmax Capital Pvt.Ltd. 5th Floor, Sunteck Centre 37-40 Subhash Road, Vile Parle (East) Mumbai 400057 <i>contact@sunteckwealthmax.com</i>	15 Months Training	3500/-			



News from the Institute

Obero Realty Limited
Commerz, 3rd Floor, International
Business Park,
Oberoi Garden City,
Off Western Express Highway,
Goregaon (East)
Mumbai-400 063

15 Months &
3 Months
Practical Training

3500/-

Meghmani Organics Limited
Meghmani House,
Shree Nivas Society, Paldi,
Ahmedabad 380007
exports@meghmani.com

15 Months
Training

3500/-

Central Cables Ltd
5 Temple Road, Civil Lines
Nagpur -440001
companylawreply@gmail.com

15 Months &
3 Months
Practical Training

3500/-

MS. SUJATHA DEVINENI

Company Secretary In Practice
Flat No. 3, 1st Floor
Master Sai Apartments
Sangeethnagar
Somajiguda, Hyderabad
Andhra Pradesh -500 082

PCSA -3041

MR. V.K. SHANKARARAMANN

Company Secretary In Practice
Flat Ff2/First Floor, No 95/5 Avm Colony
3rd Street, Virugambakkam
Chennai -600 092

PCSA -3042

MS. NISHA UCHIL

Company Secretary In Practice
Shop No. -4b, Harshvardan Chs
Ghanshyam Gupte Road
3rd Cross Lane
Dombivli (West) 421 202

PCSA -3043

MR. MANISH RAKESH

Company Secretary In Practice
Dg -3, 3rd Floor
212, Vikash Puri
New Delhi -110 018

PCSA -3044

MR. CHANDI PRASANNA JENA

Company Secretary In Practice
24, Chowringhee Road, 1st Floor
Kolkata - 700 087

PCSA -3045

MS. SMITA JHAWAR

Company Secretary In Practice
1/1, Raja Rajendralal Mitra Road
Suit DF-LC, Kolkata - 700 085

PCSA -3046

MS. SWATI SINGHAL

Company Secretary In Practice
B-591, Weavers Colony
Ashok Vihar, Phase- IV
New Delhi -110 052

PCSA -3047

MR. PIYUSH ASHOK KUMAR GOHIL

Company Secretary In Practice
Room No. -2
House No. - 2, 1st Floor
Near Little Flower Hhigh School
Kamgar Road
Andheri (East)
Mumbai- 400 069

PCSA -3048

MR. VIVEK KUMAR

Company Secretary In Practice
34/68, D, 2nd Floor
Gladson Center
NH Bye Pass
Edapally, Ernakulam
Kerala- 682 024

PCSA -3049

List of Practising Members Registered for the Purpose of Imparting Training During the Month of July, 2012



MR. TRILOK CHAND GARG
Company Secretary In Practice
Rz-108, Indra Park, Uttam Nagar East
Delhi -110 059

PCSA -3036

MS. MEENAKSHI SUDAN
Company Secretary In Practice
14/6, L.G. Floor, Kalkaji
Near Deshbandhu College
New Delhi -110 019

PCSA -3037

MS. PRIYANKA GOEL
Company Secretary In Practice
F-31/32, Sadh Nagar, Gali No.-8,
Palam Colony, New Delhi -110 045

PCSA -3038

MS. MONIKA SINGHAL
Company Secretary In Practice
20, Road No.-23, East Punjabi Marg
New Delhi -110 026

PCSA -3039

MS. ABHA MEHTA
Company Secretary In Practice
309, Lucky Plaza
Malviya Nagar
Bhopal -462 003

PCSA -3040



MR. P.V. SUBRAMANIAN Company Secretary In Practice "Sampri", 3rd Floor 81/8, Regent Estate Kolkata - 700 092	PCSA -3050	MR. DINESHKUMAR GOVINDBHAI BHIMANI Company Secretary In Practice 207, Nathvani Chambers, Sardar Gunj Nr. Patel Market Anand -388 001	PCSA -3061
MS. SUPRIYA SETHIA Company Secretary In Practice 18, Giri Babu Lane, 1st Floor Kolkata -700 012	PCSA -3051	MS. ANKITA JAIN Company Secretary In Practice 605, Udai Path Vivek Vihar Shyam Nagar, Sodala Jaipur -302 019	PCSA -3062
MR. ASHWINI KOHLI Company Secretary In Practice A-84, Vivek Vihar - 1, Delhi -110 095	PCSA -3052	MS. KIRTI GUPTA Company Secretary In Practice B-34, Tagore Road Adarsh Nagar Delhi -110 033	PCSA -3063
MR. VIVEK SHARMA Company Secretary In Practice G-30/392, Sector -3 Rohini , Delhi -110 085	PCSA -3053	MS. NEHA JAIN Company Secretary In Practice 53/10/3, Bon Behari Bose Road 1st Floor, Howrah -711 101	PCSA -3064
MR. HRISHIKESH RAJHANSA Company Secretary In Practice Flat No-9, Navshantiban Apartments 1134 / 2, Off. F.C. Road Shivaji Nagar, Pune - 411 016	PCSA -3054	MS. BHAVNA V. DEDHIA Company Secretary In Practice 5, Gayatri Krupa N.S. Road, Opp. Police Stn. Mulund (W), Mumbai -400 080	PCSA -3065
MR. RABINDRA DUGAR Company Secretary In Practice 66/1, Arabinda Road Salkia, Howrah - 711 106	PCSA -3055	MS. LABDHI H. SHAH Company Secretary In Practice C/O Mehul Agency, Paiga Street, Khatriwad, Navsari - 396 445	PCSA -3066
MS. ANJALI KABRA Company Secretary In Practice 414, Manas Bhawan Extension 11, R.N.T.Marg Indore -452 001	PCSA -3056	MR. VINOD CHANDRA MAMGAI Company Secretary In Practice Office No-201, 48 West Guru Angad Nagar Gurudwara Road, Laxmi Nagar New Delhi -110 092	PCSA -3067
MR. K.M.A.NARAYANA SWAMI Company Secretary In Practice #28-10-3/2, 2nd Floor, Nagamali Paradise Suryabagh Visakhapatnam - 530 020	PCSA -3057	MR. PRAVIN KUMAR CHHAJER Company Secretary In Practice 204, Haribal Roy Market Nr. Saraf Buuilding A.T. Road, Guwahati -781 001	PCSA -3068
MS. NEETU GARKHEL Company Secretary In Practice Wig -043, Wellington Dcf Phase - V Gurgaon -122 009	PCSA -3058	MR. SULEMAN DAUD BARGIR Company Secretary In Practice 2/26, Blossom Chs Military Road Marol Andheri (E) Mumbai -400 059	PCSA -3069
MS. MEENAL HEMANT ABHYANKAR Company Secretary In Practice Plot No. -3, 101, Parag Apt., Padmarekha Soc, Karvenagar Pune -411 052	PCSA -3059		
MR. KASHIF ALI Company Secretary In Practice Ngc,M-79, 1st Floor M-Block Market, Greater Kailash -Ii New Delhi -110 048	PCSA -3060		



Company Secretaries Benevolent Fund

MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS
OF THE COMPANY SECRETARIES BENEVOLENT FUND*



Sl. No.	LM No.	Name	Mem No.	City	Sl. No.	LM No.	Name	Mem No.	City
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NIRC

1	9800	Sh. Anubhav Lamba	ACS - 21973	JAIPUR
2	9801	Sh. Vishal Mehan	ACS - 23913	DELHI
3	9804	Mr. Nitin Rawat	ACS - 28809	FARIDABAD
4	9812	Ms. Meenakshi Anchlia	ACS - 30545	BHILWARA
5	9814	Mr. Deepak Mangal	ACS - 30380	NEEM KA THANA

SIRC

6	9802	Mr. Suryanarayanan S	ACS - 30587	TIRUMANGALAM
7	9803	Sh. S Venkat Ramana Reddy	ACS - 14143	SECUNDERABAD

8	9805	Ms. G Haritha	FCS - 5521	BANGALORE
9	9807	Ms. Varsha Patil	ACS - 30472	HYDERABAD
10	9808	Sh. Rajeeva Prakash Narayanan	ACS - 7329	CHENNAI
11	9809	Mr. Muthukrishnan Ganesan	ACS - 30618	CHENNAI
12	9811	Mr. Narain Ka Raamkumar	ACS - 30593	CHENNAI

WIRC

13	9806	Sh. Shripad Ramchandra Halbe	FCS - 633	MUMBAI
14	9810	Sh. Himanshu Laxmikant Nadiyana	ACS - 26939	JUNAGADH
15	9813	Ms. Kala Anand Agarwal	FCS - 5976	MUMBAI

* During the period 21st July 2012 to 20th August 2012



News from the Institute & Regions

News From the Regions

Eastern India Regional Council

32nd AGM

On the occasion of the 32nd Annual General Meeting of the EIRC of the ICSI, CS Ranjeet Kanodia, Chairman, ICSI EIRC put forward before the members the following agenda item 'to consider the Income & Expenditure Account for the year ended 31st March, 2012 and the Balance Sheet as on that date together with the Auditors' Report and the Annual Report of ICSI-EIRC for the year and also to appoint Auditors for the year 2012-2013 and to fix their remuneration.' The resolution was passed unanimously. Chairman, ICSI EIRC thereafter briefed the members about the various programmes/meetings organised and other activities undertaken by the ICSI-EIRC during the last six months. He also highlighted the new initiatives taken by the ICSI-EIRC and its future plan. The Chairman also urged upon the members to take part in EIRC's activities and provide support in its endeavours. The members present appreciated the initiatives taken by EIRC and thanked Chairman, Vice-Chairperson and Secretary for their unstinted efforts to make all the events successful.

Independence Day Celebration

On 15.8.2012 the EIRC of the ICSI celebrated the Independence Day at its Building. CS Ranjeet Kanodia, Chairman, ICSI-EIRC hoisted the National Flag followed by National Anthem in the presence of, EIRC Council Members, Members of the Institute, Students and EIRO officials.

CS Ranjeet Kanodia said that freedom has come at a huge cost and it is our ardent duty that everyone should put in their bit and work hard unitedly and untiringly for the cause of Country's growth and development. A colorful cultural programme comprising patriotic songs and dance were performed by a professional troupe.

Foundation Day Celebration

On 31.7.2012 the EIRC of the ICSI celebrated its Foundation Day. The programme was attended by dignitaries and eminent members of the Institute. B.L. Mittal, Chairman & Managing Director of Microsec, was the Chief Guest on the occasion. B.L. Mittal in his presentation focused on various topics like green initiative, stress management, creation of business ideas and other motivational thoughts.

Members and students also presented a short cultural programme

including classical dance, live drama, modern dance etc., which was appreciated by all. CS Ranjeet Kr. Kanodia in his address appreciated the efforts given by all the participants in such a short span of time. Kanodia also stated that he is looking forward to organize such kind of cultural session in future to encourage members and students at large. The participants were presented by a memento for their participation.

Career Awareness Programme

A career awareness programme was conducted at Kendriya Vidyalaya Kharagpur 2, by S.Sreejesh, Desk Officer (Career Awareness) where he gave an insight to the class XII students on "Career as a Company Secretary". The programmes were also held Gokhale Memorial School, Sailendra Sircar Vidyalaya, A K Ghosh Sr. Sec. School, Deshapran Birendra Nath Institution (Boys), Milangarh Balika Vidyalaya, Tollygunge Ashok Nagar Vidyapith, Khalsa English High School, La Martiniere Boys School, St. Joseph and Mary's School where a presentation was given on "Career as a Company Secretary" and the AV clip on the Company secretary course was also shown to the students of the respective schools. The speakers were informed about the ICSI Students Education Fund, the fee concession to reserved classes, ICSI E-Learning and the flexibility of the CS course to study wherever a student wants to. The students and the teachers of the school were inquisitive about the CS course like the time period of the course, the fee structure, the contents, the opportunities after becoming a CS professional, etc.

BHUBANESWAR CHAPTER Full day Seminar

On 28.6.2012, Bhubaneswar Chapter of EIRC of the ICSI jointly with Department of Public Enterprise, Govt. of Odisha organized a full day seminar for the Directors of State PSUs at Bhubaneswar. P.C. Ghadai, Hon'ble Minister Finance & P.E., Odisha inaugurated the seminar. While Jugal Kishore Mohapatra, IAS, Principal Secretary to Govt., Department of Finance and A.K. Tripathy, IAS, Principal Secretary, Department of P.E & Tourism, Odisha and CS N.K. Jain, Secretary & CEO, the ICSI attended the seminar as the Guest of Honour. CS Sutanu Sinha, Senior Director, the ICSI, CS Vijaya Batth, Practising CA & CS Prashant Panda, Company Secretary & Legal Head, Aircel, Bhubaneswar addressed the seminar as the speakers of the programme.

CS N.K. Jain made a live presentation during the inaugural session of the programme, CS Sutanu Sinha, CS Vijaya Batth, Practising CA & CS Prashant Panda made presentations during the technical sessions of the programme. Earlier, CS J.B. Das, Chapter Chairman presented key note address of the programme.

P.C. Ghadai, J.K. Mohapatra and A.K. Tripathy applauded the efforts of the ICSI, Bhubaneswar Chapter for its initiative in organizing such a programme which is second programme by both the ICSI & Deptt. of P.E, Odisha and hoped that this seminar will definitely provide impetus and qualitative training to the Directors of all the PSUs in Odisha while discharging various responsibilities in their organisations. They also assured the ICSI for providing support to the students of Odisha pursuing the CS course and that the Govt. of Odisha will provide support to the ICSI as and when required. They



also sought suggestion from the ICSI for further improvement in the Corporate Governance Manual of the Govt. of Odisha in near future. Chairman, Managing Directors, other Directors of about 20 State PSUs and Senior Officers of P.E. & Finance Department, Govt. of Odisha and other Sectors attended the programme. After the conclusion of the programme most of the delegates gave feedback for organizing such programmes in every six months for updation.

Interactive session

On 28.6.2012, the Chapter arranged an interactive meeting of the Secretary & CEO, the ICSI with P.C. Ghadai, Hon'ble Minister, Finance, Odisha at Bhubaneswar. J.K. Mohapatra, IAS, Principal Secretary, Finance, Odisha was also present on the occasion. CS N.K. Jain, Secretary & CEO, the ICSI apprised the Hon'ble Minister and the Principal Secretary, Finance, Odisha about the ICSI and its role & function. Further he apprised the role played by the members both in employment and in practice. He also apprised about appearance of members of the ICSI before the various State VAT laws and sought support from both the dignitaries as well as the Govt. of Odisha for recognition of the Company Secretaries for appearing before Odisha VAT laws. CS Sutanu Sinha, Senior Director, the ICSI was also present during the interactive session.

Evening talk on GST, Goods & Service Tax and Companies Bill, 2011

On 1.8.2012 the Chapter organized an evening talk on Goods & Service Tax and Companies Bill, 2011 wherein CS Jyoti Bhusan Das, Secretary, the Odisha Mining Corporation and CS Prashant Panda, Head (Secretarial), AIRCEL, Bhubaneswar addressed the members of the Chapter.

CS Jyoti Bhusan Das stated that GST is in the evolving stage & is expected to be fine tuned in the Parliament once it is put to motion. However, this tax when implemented will go a long way in rationalizing the system and reduced burden on the consumer besides uniform tax regime across the country.

In his address, CS Prashant Panda pointed out the important provisions of the Bill and role of Company Secretary professionals. The speakers made PowerPoint presentations.

Members present raised a number of queries on the topics which were ably replied by the speakers. Around 50 members of the Chapter attended the programme.

Donation to Bhubaneswar Chapter

On 02.8.2012, the Odisha Mining Corporation Limited (A Gold category State PSUs), Bhubaneswar donated a sum of Rs. 30.00 lakhs to the Bhubaneswar Chapter for construction of 3rd floor of its Building. The cheque was handed over to the Chairman of the Chapter. The Managing Committee of the Chapter places on record the contribution and support received from M/s. the OMC Ltd, Bhubaneswar.

Celebration of 66th Independence Day of the Nation

On 15.08.2012, Bhubaneswar Chapter celebrated 66th

Independence Day of the Nation at its office premises amidst the presence of the Office Bearers of the Managing Committee, Members of the Chapter, Faculty of Oral tuition classes, students, others and staff members.

CS J.B. Das, Chapter Chairman unfurled the tri-colour followed by rendition of National Song and National Anthem. Members, faculties, students present on the occasion addressed during the programme.

HOOGHLY CHAPTER Half-day Workshop

On 21.7.2012 the Hooghly Chapter of EIRC of the ICSI organized a half-day Workshop on e-Voting & Recent Changes in Company Law at Silver Jet Cruise on Hooghly River. This was first ever workshop organized on cruise running on deep waters of Hooghly River. Dr Navrang Saini, Regional Director (Eastern Region), Ministry of Corporate Affairs graced the occasion as Chief Guest. He in his interactive and lively session with the delegates discussed the recent changes in the Company Law.

Moloy Biswas (Manager) and Rudra Prasad Dutta, Asst. Manager, Central Depository Services (I) Limited discussed the importance and use of e-Voting. Biswas said that e-voting facilitates voting on resolutions of companies in a fair and transparent manner for all classes of security/stakeholders. It enables the security holders to vote at a time and place of their convenience. Prashant Jha, Executive-IPF of Bombay Stock Exchange Limited discussed the SME Exchange. CS Manisha Saraf, Chapter Secretary coordinated the programme. Around 90 delegates attended the programme. The delegates enjoyed the session and the ride on cruise, both.

Career Awareness Programmes

On 30.7.2012 two sessions of Career Awareness were organized at the Agrasen Balika Siksha Sadan, Liluah. In a discussion with the students of Class XI and XII, CS Gautam Dugar, Chapter Chairman stated the prospects of the profession. Alok Kumar, Chapter Official informed the students about the fee structure and examination pattern. The students present showed keen interest in the CS course and raised many pertinent queries which were ably replied by CS Dugar.

On 7.8.2012 two sessions of Career Awareness were organized at the Rishra Swatantra Vidyalaya at Rishra and a session was held at Mahesh Shri Ram Krishna Ashram Vidyalaya at Rishra. Alok Kumar discussed the role and prospect of the profession of CS, fee structure and examination pattern with the students present.

NORTH EASTERN CHAPTER Annual General Meeting

On 27.7.2012 the Annual General Meeting of NE Chapter of EIRC of the ICSI for the year 2012 was held at Guwahati. Twenty Members participated in the Annual General Meeting. The AGM adopted the Audited Accounts along with the Auditor's Report and Annual Report of NE Chapter for the Financial year ended 31.3.2012. the AGM also unanimously decided to re-appoint



News from the Institute & Regions

'Vikash Jain & Associates Chartered Accountants' as Statutory Auditors of North Eastern Chapter of EIRC of ICSI for the Financial year 2012-13 and to re-appoint 'Sandeep S. Sharma & Co.', Chartered Accountants, as Internal Auditors of North Eastern Chapter of EIRC of ICSI for all the quarters of Financial Year 2012-13 (subject to the approval of EIRC of the ICSI).

Career Awareness Programmes

The North Eastern Chapter of EIRC of the ICSI organized two Career Awareness Programmes in the month of July 2012. On 6.7.2012 the Career Awareness Programme was held at Moran Commerce College, Dibrugarh Dist, Assam. The speakers were CS Amit Kr. Periwal and S. Baruah, Principal of Moran Commerce College. Forty students attended the programme.

On 7.7.2012 the Career Awareness Programme was held at Moran Commerce College, Sivsagar Dist, Assam. The speakers were CS Amit Kr. Periwal and A.K. Saikia, Principal of Moran Commerce College. Fifty-five students attended the programme.

Study Circle Meeting

On 27.7.2012 the Chapter conducted a Study Circle Meeting cum Professional Development programme at Guwahati on Critical Analysis on NEIIPP Policy. The Chief Guest and Speaker was CA Vivek Jalan, Practising Chartered Accountant, Guwahati. Jalan explained the gathering with power point presentation the benefits under North East Industrial Investment Promotion Policy (NEIIPP), 2007 to new and existing industries. He explained in detail the types of subsidies, the key points for claiming subsidy under NEIIPP Policy 2007, the excise benefits to industries in the Region, the Fiscal Benefits under Industrial State Policy. He also highlights the State Policy regarding Power Subsidy, Subsidy on Quality Certification, Subsidy on drawal of Power Line, VAT Exemption and Special Incentives for Mega Projects.

During the Question-Answers session that followed, several participants raised various queries pertaining to 'NEIIPP Policy 2007' which were satisfactorily replied by the speaker and the Office Bearers of NE Chapter. The interactions were marked with overwhelming response. Around seventy members including students attended the study circle meeting. ■

Northern India Regional Council

Independence Day Celebration- Flag Hoisting & Plantation of Saplings and Inauguration of newly renovated Library Reading Room

On 15.8.2012 the regional Council organised Independence Day

Celebration - Flag Hoisting & Plantation of Saplings and Inauguration of newly renovated Library Reading Room. CS Nesar Ahmad, President, the ICSI was the Chief Guest.

Two Day Capacity Building Workshop for Practising Company Secretaries

On 18 and 19.8.2012 a Two Day Capacity Building Workshop for Practising Company Secretaries was organised by the Regional Council. The speakers were CS Nesar Ahmad, CS Rajiv Bajaj, CS Ajay Garg, Ravindra Vadali, CS Harish K. Vaid, CS Atul H. Mehta and CS Vikas Khare.

Vaishali Study Circle Meeting

On 14.7.2012 the Regional Council organized Vaishali Study Circle Meeting on Recent Developments in Limited Liability Partnership Act and its Administration. B. Srikumar, Assistant Registrar, LLP was the speaker.

South Zone Study Group Meeting on Service Tax under Negative List Regime

On 20.7.2012 the Regional Council organized the South Zone Study Group Meeting on Service Tax under Negative List Regime. CA Vikas Khandelwal, Partner, Vikas Khandelwal & Company, Chartered Accountants was the speaker.

West Zone Study Group Meeting on Key IPO Regulations

On 21.7.2012 NIRC organized West Zone Study Group Meeting on Key IPO Regulations. Manoj Kumar, ABV Corporate Professional was the speaker.

North Zone Study Group Meeting on XBRL- Future Challenges

On 22.7.2012 the Regional Council organised North Zone Study Group Meeting on XBRL- Future Challenges. Ankit Varshney, Webtel Electrosoft Ltd. was the speaker.

165th Management Skills Orientation Programme (MSOP)

On 12.7.2012 the Inauguration of 165th Management Skills Orientation Programme (MSOP) conducted by the Regional Council was organized. CS Anoop Kapoor, Finance Coordinator cum Company Secretary, BHP Billiton India was the speaker.

On 29.7.2012 at the valedictory session CS O P Dani, Past President was the Chief Guest who in his address gave certain tips to be followed for becoming successful in life. He also informed the students about Sri Aurobindo Foundation for Integral Management (SAFIM) & its activities. The MSOP completion Certificates were issued by the Chief Guest and President, the ICSI.

Sports Meet for Members

On 22.7.2012 the NIRC-ICSI organised a Sports Meet for Members at Chilla Sports Complex, New Delhi. Activities like Carrom, Chess,



Badminton, Table Tennis, etc. were arranged during the sports meet. Drawing competition for children of different age groups and also Tambola & Musical Chair for ladies & other members were the special attraction of the event. Around 50 members present on the occasion enjoyed the Meet thoroughly. The team comprising CS Rakesh Arora and CS Rohit Kashyap were adjudged as the winners team in Badminton and CS Rajesh Rath and CS Vinod Sharma were adjudged as the Runners Up team.

Foundation Day Celebration

On 23.7.2012 the NIRC-ICSI inaugurated its 41st Foundation Day Celebrations and also the newly renovated NIRC Office. CS Sanjay Kumar Jain, IPS, Deputy Commissioner Police, Delhi was the Chief Guest on the occasion. The dignitaries present including the Chief Guest, Chairman, Immediate Past Chairman, Treasurer of the Regional Council, other Members of the regional council, etc. inaugurated the Foundation Day Celebrations. CS Rajiv Bajaj, in his welcome address said that Foundation Day is a special day for everybody. He intimated various programmes being organised by NIRC during the celebrations and invited all to participate in the programmes.

CS Sanjay Kumar Jain in his address said that Foundation Day is the right occasion to recall the pledges made by all of us. He mentioned that the success of any profession depends upon the quality of services being rendered by its members. Lot of openings and responsibilities are on the shoulder of a professional. He gave few suggestions to be successful viz. positive attitude, impartiality, etc. Lastly he mentioned about the responsibility of paying back to the society at large and also offered his best wishes.

After the inaugural session saplings were planted in the NIRC premises by the Chief Guest & dignitaries present on the occasion. The newly renovated NIRC office was also inaugurated by the Chief Guest, Chairman & other dignitaries present.

Thereafter a Motivational Talk for the students was organized by NIRC-ICSI. Ravish Bhateja, Corporate Trainer & Faculty Member was the Guest Speaker and the talk was attended by around 75 students.

Meeting with Corporate Mentors of NIRC

On 24.7.2012, NIRC-ICSI organized a Meeting with Corporate Mentors of NIRC at India International Centre, New Delhi. The senior members present gave very valuable suggestions which were suitably noted by the Chairman.

Members' Quiz on Corporate Laws

On 25.7.2012 NIRC-ICSI organized Members' Quiz on Corporate Laws at its premises. CS S Koley, CS Vishal Arora and CS Vishal Lochan Aggarwal were the judges of the Quiz and the Quiz was conducted by CS Nishat Rab and CS Parul Kapoor. The team comprising Sumit Dhawan and Gagan Goel were adjudged as the winner of the Quiz and the team consisting of Sangeeta Harplani and Anjna Makhija were adjudged as the Runners Up team of the competition.

Study Circle Meeting

On 27.7.2012 the NIRC-ICSI organized a Study Circle Meeting on Legal Metrology & Packaged Commodity Rules at New Delhi. CS Devinder Kumar Jain, Company Secretary, McDonalds was the Guest Speaker on the occasion. Around 70 members attended the meeting.

Seminar on Corporate Financial Restructuring - Innovations and Opportunities

On 28.7.2012 NIRC-ICSI organised a seminar on Corporate Financial Restructuring - Innovations & Opportunities at New Delhi. Y K Gaiha, IRS, Member, BIFR was the Chief Guest. S P Arora, Managing Director, IFCI Venture Capital Funds Ltd. was the Guest of Honour. Around 350 members were present on the occasion.

Inaugural Session: CS NPS Chawla, Treasurer of the Regional Council anchored the inaugural session of the seminar. He in his welcome address mentioned that various big corporate houses have been through financial sickness and they all come out because of financial restructuring. He gave the theme introduction of the seminar and briefly informed the entire coverage of the seminar.

CS Rajiv Bajaj, Chairman, Regional Council while giving his welcome address mentioned that at the time of coining the theme of the seminar after a big debate it was decided to hold a seminar on Corporate Financial Restructuring and try to cover the untouched areas like funding, sources of funding, Corporate Debt Restructuring, One Time Settlement etc. where opportunities can be explored by our professionals.

Ashok Chordia, Mentor Capital Services Pvt. Ltd. Presented the Key-note address. While addressing the gathering he mentioned about the reasons of Financial Stress viz. bad management, external sources, internal sources, policy etc. some of these may require restructuring and some may not. The need for Financial Restructuring is very important for sustenance of the corporates. He informed that Reserve Bank of India formed a mechanism of Corporate Debt Restructuring which is one of the ways of Financial Restructuring. Equity Restructuring, Business Restructuring are the other ways of Financial Restructuring.

CS S P Arora while addressing the gathering mentioned that these days banks have become proactive. Earlier in case of delayed payments no action was taken but now India has adopted International laws and now if the payment is not received in 90 days it will be declared as Non Performing Asset. As per RBI Guidelines & Basel III norms increase in NPAs affect the Balance Sheet of any bank. He also mentioned that approaching BIFR is too late as at that time company is almost dead. He mentioned that when the finances are taken from different banks then formulation of consensus is very difficult. He explained the reasons of NPAs.

Y K Gaiha, while addressing the gathering expressed his gratitude



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for inviting him. He said that the topic of the seminar is very relevant in the present scenario of the Country and mentioned that the deliberations of the seminar will bring some solution to the problems being faced by the corporates. Topic of the seminar is a comprehensive subject and is a buzz word of the corporate sector. He said that there are occasions when corporates find themselves in financial difficulties because of factors beyond their control and also due to certain internal reasons. For the revival of such corporates as well as for the safety of the money lent by the banks and financial institutions, timely support through restructuring of genuine cases is called for. However, delay in agreement amongst different lending institutions often comes in the way of such endeavours. Based on the experience in countries like the UK, Thailand, Korea, Malaysia, etc. of putting in place an institutional mechanism for restructuring of corporate debt and need for a similar mechanism in India, a Corporate Debt Restructuring System was evolved and detailed guidelines were issued by Reserve Bank of India on August 23, 2001 for implementation by financial institutions and banks. At the end he mentioned the role of Company Secretary in the Corporate Financial Restructuring process.

The best participants & best presenters of the 164th MSOP were recognised & awarded by the Chief Guest.

First Technical Session: CS Ranjeet Pandey, Immediate Past Chairman, NIRC-ICSI anchored the First Technical Session of the seminar.

Y.S Jain, General Manager, Corporation Bank Ltd. Chaired the First Technical Session. He gave the background of the Corporate Debt Restructuring Mechanism and what it envisages. He also informed about the authorities BIFR and DRTs involved in the CDR mechanism. He mentioned that CDR mechanism helps in avoiding accumulation of NPAs by the Banks. It is a recovery process and mentioned that Company Secretaries can help in this process. He assured full support on behalf of the Corporation Bank.

A D Paliwal, CEO, UV Asset Reconstruction Company Ltd. spoke on Debt Recast - Structuring & Negotiation. While addressing the gathering he dealt with the basic pre-requisites of negotiation. He also discussed about Corporate Debt Anatomy and mentioned that corporate debt is an important financial source for the corporates. It is an integral part of the financial management of the company. He said that the management of the debt is very important. He discussed the difference between the financial disaster and financial stress. He mentioned about the commitments to be followed for avoiding the situation of the financial stress. He suggested for following the system of complete transparency as it helps in sustained development.

R K Arora, DGM, Bank of Baroda spoke on CDR Mechanism-Procedure & Practice. While addressing the gathering he explained the important points to be kept in mind while dealing in CDR mechanism viz. eligibility criteria, legal base and financial viability criteria. He discussed the entire procedure to be followed in the CDR mechanism.

Dr. Ashwani Gupta, Director, State Bank of Patiala spoke on One Time Settlement - Concept & Practicalities (case studies). He explained the concept of One Time Settlement and mentioned that Banking system in India has grown exponentially and achieved a status parallel to International system. He mentioned the definition of NPA and said that OTS is one of the remedy to NPA. He discussed the applicability of OTS, basic factors governing compromise and settlement and the various processes involved in the OTS.

Second Technical Session: CS Ashu Gupta, Regional Council Member, NIRC-ICSI anchored the Second Technical Session.

CS Satwinder Singh, Past Chairman, NIRC-ICSI spoke on Fund Raising through Foreign Investments - Regulatory Considerations (Case Studies). While addressing the gathering, he discussed various entry routes available in India for foreign investors viz. Foreign Direct Investment, Foreign Institutional Investor and Foreign Venture Capital Investment Route, etc. He also discussed various types of instruments available for investment in all the three entry routes. He discussed in detail about Foreign Direct Investment and Fund raising through External Commercial Borrowings. He also informed about the role of Company Secretaries in these transactions.

Divya Sekhri, AVP, India Infoline spoke on Private Equity Deals - Challenges & Learning. She mentioned that Private Equity is an angel equity. She discussed the Private Equity structure, the cost of forward contracts v. Currency Futures. She also discussed the difference between the forward market and futures market.

Narendra Kumbhat, Founder Director and Principal Consultant, Virtual CFO Partners Pvt. Ltd. spoke on Avenues of Raising Funds. While addressing the gathering he gave brief introduction of the financial instruments, security, financial markets viz. money market & capital market, sources of funds in Indian capital market etc. He discussed the structure of the Indian Debt market and mentioned the Regulators & the various debt instruments available in the market. He also discussed about the various other sources of finance viz. FDI, Venture Capital, Private Equity Placement, GDRs, ADRs, FCCBs, QIP Placement and Alternate Investment Market, etc.

Annual General Meeting

On 28.7.2012 NIRC-ICSI organized its Annual General Meeting at New Delhi. Managing Committee Members, Council Member, Statutory Auditors & about 200 members were present on the occasion. There was active participation of the members in the various activities and professional development programmes of NIRC. Members present came out with a lot of suggestions which were very well taken and noted by Chairman. NIRC recognized & acknowledged the members/professionals who offered honorary services in MSOP, SIP, EDP, career awareness programmes and Investor Awareness Programmes organized by NIRC-ICSI.

Cultural Evening

On 29.7.2012 the NIRC-ICSI organized a Cultural Evening for members & their families at Manekshaw Centre Auditorium, New



Delhi. Dilip Rao Sahib Deshmukh, Chairman, Company Law Board was the Chief Guest. Regional Council Members and around 600 members and their families attended the Cultural Evening. The main attraction of the Cultural Evening was the performances by CS Members and Students of the Institute selected through a unique concept of "Talent Hunt". At the end of the Cultural Evening the participation Certificates were issued to the performers and also the Certificates were issued to the Volunteers for their support in successful staging of the Cultural Evening.

Meeting of Company Secretaries in Practice - Interactive session with Regulators

On 30.7.2012, NIRC-ICSI organized a Meeting of Company Secretaries in Practice - Interactive session with Regulators at ICSI-NIRC Building, New Delhi. CS Santosh Kumar of Ministry of Corporate Affairs was the Guest Speaker. Around 70 members attended the meeting. The meeting was very lively and interactive. Members raised a good number of queries which were suitably replied by the Guest Speaker.

Blood Donation Camp and Health Check Up

On 31.7.2012 NIRC-ICSI organized a Blood Donation Camp and Health Check-up for the Members & Students at ICSI-NIRC Building. Teams from Fortis Group of Hospitals and Red Cross Society were invited for the same. Around 50 Members and Students donated blood.

CHANDIGARH CHAPTER Recent Changes in Customs Act

On 30.7.2012, Chandigarh Chapter of NIRC of the ICSI organized a Study Circle Meeting to discuss Recent Changes in Customs Act. Ajay Sharma, Associate Professor, GGDSD College, Chandigarh was the key speaker. He made an elaborate power point presentation on various concepts of the recent changes in the Customs Act. Prof. Ajay Sharma covered notified, specified and prohibited Goods, Valuation Rules and Recent Changes in Customs Act in his presentation. The members actively participated in the discussion with the speaker. The speaker then replied the queries raised by the members. The study circle meeting was well attended by members and students. CS G.S.Sarin, Chapter Secretary coordinated the meeting.

Study Circle Meeting on Latest Updation in VAT

On 22.6.2012 the Chandigarh Chapter of NIRC of The ICSI organized a Study Circle Meeting on the above topic. CA Alok Krishan, former Chairman, Chandigarh Branch of ICAI, was the key speaker. He made an elaborate power-point presentation on various concepts of latest Updation in VAT. The members actively participated in the discussion with the speaker. The speaker then replied the queries raised by the members. The Study Circle

Meeting was well attended by more than 34 members and students. CS G.S.Sarin, Chapter Secretary co-ordinated the meeting.

GURGAON CHAPTER Valedictory Session of 7th MSOP

The Gurgaon Chapter of NIRC of the ICSI successfully organized the valedictory session of the 7th MSOP. A wide coverage of the valedictory session was given in the leading newspapers Punjab Kesari and Aaj Samaj.

JAIPUR CHAPTER Full Day Seminar on XBRL

On 11.08.2012 a full day seminar on XBRL was organized by the Chapter at its premises. In his welcome address, Vimal Gupta, Chapter Chairman, informed about the forthcoming Chapter activities of members and students and shared the need of such kind of seminar due to recent changes of MCA. He said that the challenges are steep, the opportunities are immense but we need to multiply our endeavors and struggle smilingly.

Shyam Agarwal, Secretary, NIRC introduced the theme, faculties and dire need of the seminar particularly for the practising members.

In the Introductory session Awadesh Kumar Khandelwal elaborated the subject with practical examples and solved the queries of the participants on XBRL.

In the Second & Third Technical Sessions, representatives of M/s Seg Infotech Limited gave live demo on XBRL filing. In the presentation the concept of XBRL, impact of XBRL in Financial matter were explained.

In the Fourth Session, Ashu Agarwal, Manager, NSE India Limited, explained the role of BSE-SME exchange, obligations, recent circulars issued by SEBI, ICDR, additional responsibilities of Merchant Bankers in SME Exchange and other allied issues. The program was coordinated by Girish Goyal.

Independence Day Celebration

On 15.08.2012 Jaipur Chapter of ICSI celebrated the 66th Independence Day of the Nation by hoisting the National Flag at the Chapter premises. Chapter Chairman Vimal Gupta along with other Managing Committee members and dignitaries hoisted the National Flag. Rajeev Arora, Vice President, Pradesh Congress Committee, Rajasthan and Rajasthan Foundation, was the Chief Guest of the function. CS R.N. Goyal was the Guest of Honour.

In his address Rajiv Arora touched upon the economic scenario of the country and role of professionals in the present era and stressed upon the participation of professional in socio-economic development of the country. In the welcome address, Vimal Gupta, Chairman, Jaipur Chapter briefed the need for updation in terms of changing regulatory ambience and understanding the contemporary development and honing professional, personal, social, technical and academic skills which is important to keep one miles ahead in all situations particularly at the time when India is



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entering into the 66th year of Independence. A large number of members and students participated in the programme with full patriotism and enthusiasm.

MODINAGAR CHAPTER

Independence Day Celebration

On 15.8.2012 the Chapter celebrated Independence Day at its premises. The programme was attended by Managing Committee Members, Students and faculties by hoisting the tri-colour. ■

Southern India Regional Council

Study Circle meeting on GAAR (General Anti Avoidance Rules)

On 10.8.2012 CA Aravindanayagi V G, Head, Business Taxation, Deloitte Haskins & Sells, Chennai was the speaker for the study circle meeting on GAAR.

The speaker observed that internationally, tax avoidance is recognized as an area of concern and several countries expressed concern over tax evasion and avoidance. Hence, many nations are legislating the doctrine of GAAR in their tax code. In India, Direct Tax Code 2010 addressed this, by bringing in GAAR in addition to other specific Special Anti-Avoidance provisions (SAAR). The speaker further narrated the important amendments which have been proposed in the GAAR provisions like, to remove the onus of proof from tax-payers to Revenue before any action can be initiated under GAAR and to introduce an independent member from the Ministry of Law, in the GAAR approving panel to ensure objectivity and transparency.

The meeting was lively with the members actively interacting with the speaker.

Half-day seminar on Service Tax - Recent Developments

On 31.7.2012 the ICSI - SIRC organized a half day seminar on Service Tax - Recent Developments. The speaker was CS Sathyanarayanan, Advocate, Chennai. Sathyanarayanan explained the members in detail about the recent developments in the Service Tax. He elaborated the members on Sections 66B, 66D, 66C and 66E, etc. The speaker also narrated what are the items included under the terms 'service' and 'not a service'. Sathyanarayanan explained the members on the negative list of services, declared services, valuation, reverse charge, bundled services, etc. He advised the members about the various opportunities available to the CS in the areas of indirect taxes and in particular in the area of service tax. The members actively participated in the discussion.

Foundation Day Lecture

On 31.7.2012 the Foundation Day Lecture of the ICSI - SIRC was delivered by T S Krishnamurthy, former Chief Election Commissioner of India. T S Krishnamurthy highlighted the growing and important role of Company Secretaries in the company's management. He also shared his experience on being the Secretary of the erstwhile Ministry of Company Affairs. Krishnamurthy also observed that the professionals can perform more than what they are doing now. He also fittingly quoted that Lord Hanuman does not know his power unless someone tells him about it. He also quoted that the role of CS is not only to ensure fair corporate governance but in other areas also.

The speaker further said that the CS is the custodian of investors' interest. He suggested that the CS should articulate their views and suggestions without any fear and within the framework of applicable laws, and by following these qualities a CS can stand above the ordinary. He also advised the CS to do courses on law, IPR, etc. in order to explore the various opportunities in the diversified areas.

Half-day Seminar on Revised Schedule VI

On 14.7.2012 a half-day seminar on Revised Schedule VI was organized. The speakers were CA Chinnsamy Ganesan, Director, BSR & Co, Chartered Accountants, Chennai and CS Dhanapal S, Company Secretary in Practice, Chennai.

CA Chinnsamy Ganesan spoke on the accounting aspects of Revised Schedule VI. He observed that this Revised Schedule is applicable to all companies, whether listed or unlisted, except, certain specific companies. He also informed that this is not applicable to insurance, banking companies, etc. Chinnsamy further told that the requirements of the Act / Accounting Standards will prevail over the revised Schedule VI and there will be no more "Schedules" instead only "Notes" has to be given. The speaker briefed the members that the horizontal format of financial statements has been dispensed with Schedules Notes.

CS Dhanapal S spoke on the theoretical and legal aspects of the Revised Schedule VI. The speaker observed that the Revised Schedule VI necessitates that if compliance with the requirements of the Act and/or accounting standards requires a change in the treatment or disclosure in the financial statements, the requirements of the Act and/or accounting standards will prevail over Schedule VI. CS Dhanapal also made comparison between current and non-current assets. The members actively interacted with the speakers after which, CS Dr. Baiju Ramachandran, Secretary, ICSI - SIRC summed up the proceedings of the seminar.

BANGALORE CHAPTER

Chickballapur Udyoga Mela 2012

On 14 and 15.7.2012 a Udyog Mela was organized at S.J.C. Institute of Technology, Chickballapur and was inaugurated by Dr. M. Veerappa Moily, Hon'ble Union Minister of Corporate Affairs, Government of India. Recruiters from multiple industries like Dairy, Agriculture, Manufacturing, Retail, Hospitality, Automobile, IT,



KPOs, BPOs, BFSI IT, ITES/BPO, Finance, Banking/Insurance, Telecom, Engineering, Hospitality and Construction had participated in the Mela and overall 19,000 students registered for this Career Development Fair.

The Bangalore Chapter of the ICSI also participated in the Udyog Mela to disseminate information about the CS Course among the aspirants who visited the fair. CS Gopalakrishna Hegde, Central Council Member, The ICSI; CS Manjunatha Reddy, Vice-Chairman; CS H.M Dattatri, Treasurer of Bangalore Chapter, Sangeetha Flora, Assistant Director; Noor Sumayya, AEO and other staff of the Bangalore Chapter were present to guide the prospective students. 10 Student Volunteers also contributed their efforts to make the event a grand success.

Scroller Standby and Mounted Posters/ banners about the CS course in English and Kannada were also displayed. The prospectus/handbook explaining the CS course was also available for sale.

About 1000 students visited the CS stall at the Mela. Information about the CS course, the Career Opportunities for a Company Secretary were shared with those who visited the stall. Their queries about the CS course were also replied by the staff and students present. Detailed brochures in both English and Kannada were circulated among the visitors. The Udyog Mela was fruitful in creating awareness about the Company Secretary Course and the Profession.

Indoor/ Outdoor Games

On 22.7.2012 the Chapter to commemorate its Annual Day celebrations organised various programmes for the Members and the Students.

In this regard, the Chapter organised the following competitions: Table Tennis, Shuttle, Chess and Carrom at the Karnataka Badminton Association and Chess and Carrom at Chapter Premises for the students and the members. Around 15 members and 25 students and their families participated in the competitions. On 29.7.2012, the Chapter organised Cricket match at Indian Boys High School Grounds, St. Josephs Composite PU College, Bangalore for the students and the members of the Institute. Around 60 members and students were present for the match.

Interaction with Chairman, CLB

On 30.7.2012 the Chapter organised an Interaction with Hon'ble Justice D.R. Deshmukh, Chairman, CLB at Bangalore. CS Gopalakrishna Hegde, Member, Central Council, the ICSI in his opening remarks informed the gathering that a representation had been made to the Ministry of Corporate Affairs requesting for the setting up of a Company Law Board Bench at Bangalore to cater to the needs of the States of Karnataka and Kerala and in order to ascertain the feasibility and the infrastructure available for the same the Chairman, Company Law Board was visiting Bangalore.

The Chairman, CLB in his address stated that the Company Law Board prior to setting up of a Bench follows a summary of procedures to ensure the availability of adequate infrastructure and other amenities to ensure the smooth functioning of a Bench and also said

that his purpose of visit was to locate and ensure availability of such infrastructure facilities and other resources before finally passing the recommendation for setting up of CLB Bench.

The Members raised various queries, shared certain concerns and suggestions which were suitably replied, deliberated upon and noted by the speaker and the programme was well attended by over 60 Members.

Career Awareness Programmes

The Bangalore Chapter of the ICSI conducted 4 (four) Career Awareness Programmes during the month of July, 2012 as under: On 23.7.2012 the Career Awareness Programme on Career as a Company Secretary was held at Kristu Jayanti College for 1st year B.Com Students.

On 25.7.2012 the Career Awareness Programme on Career as a Company Secretary was held at Christ University for First and Second Year B.Com Students. On 31.7.2012 the Career Awareness Programme on Career as a Company Secretary was held at Jain University for First Year B.Com Students.

A total of three hundred students attended the above programmes. Sangeeta Flora, Assistant Director, Bangalore Chapter of the ICSI was the speaker who explained in detail the course offered by the Institute, eligibility criteria for the course, examination, requirements of training etc., the role of Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. She also highlighted the opportunities available to anyone who has completed the Company Secretary ship course. She further enumerated the emerging areas of practice and the changing role of a Company Secretary. She focused on what would be the mindset and preparation required from a student who wanted to pursue the Company Secretary ship Course. Brochures explaining Company Secretary ship Course were distributed to the students.

COCHIN CHAPTER Professional Development Programme

On 14.07.2012 the ICSI-Kochi Chapter organized a one day professional development programme on what's new in New Companies Bill and Revised Schedule VI at Kochi. The programme was inaugurated by CS N Balasubramanian, Chapter Chairman. The speaker for the First Session was CS Asish Mohan, Director, Arts Management Consultants Pvt. Ltd. who explained in detail the implications of the provisions in the New Bill.

Post Lunch, the Second Session was headed by CA Pramod, who spoke on the topic Amended Schedule VI of the Companies Act, 1956. He explained the implications of the new changes in the Revised Schedule VI. There was an interactive session at the end. Both the sessions were well attended.

Half- day Joint Programme on Service Tax

On 31.07.2012 the Kochi Chapter of the ICSI in association with



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Kochi Branch of ICAI organized a half-day seminar on Service Tax at Kochi. K.C. Johny, Additional Commissioner, Central Excise & Service Tax inaugurated the event and in his address explained briefly about the new changes in Service Tax.

Jose Jacob, Senior advisor, indirect Tax services, Kochi who has a rich experience of more than 15 years addressed on the topic during the session. He made a lively presentation on the subject and explained with case laws the practical solutions. The seminar dealt extensively with the service tax provisions, the recent updates and amendments of its sections especially after the Union Budget 2012-2013. The seminar also dealt with the negative listed items, mega exemption notifications, declared services and the new reverse charge.

COIMBATORE CHAPTER **Bhoomi Pooja and Foundation Stone** **Laying Ceremony**

On 3.7.2012 on the special occasion of laying the foundation stone and the Bhoomi Pooja for the new building of Coimbatore Chapter, at 556, Mettupalayam Road, Coimbatore, was performed. The event was honored by the presence of Dr.M.Veerappa Moily, Hon'ble Union Minister of Corporate Affairs, Government of India. Other eminent personalities present on the occasion included Nesar Ahmad, President, S.N.Ananthasubramanian, Vice-President, N.K.Jain, Secretary & CEO, the ICSI, G.Ramasamy, Past President, the ICAI, M.Gopalakrishnan, President, ICWAI, Mahesh Kuvadia, Regional Director, Chennai, Manuneethi Cholan, ROC, Coimbatore, R.Sridharan, Chairman, ICSI-Coimbatore Infrastructure Committee, S.S.Marathi, Chairman, SIRC, Chennai, Baiju Ramachandran, Secretary, SIRC, Chennai, Ramasubramaniam C, Member, SIRC and Management Committee Members, ICSI Coimbatore Chapter and Chapter students. More than 250 participants including members and students graced the occasion and cherished the Bhoomi Pooja and laying of Foundation stone event.

Career Awareness Programmes

On 4.7.2012 the Chapter as part of its Career Awareness drive aimed educating the student community on the benefits of Corporate Secretaries course organized a Career Awareness Programme at Krishnammal College for Women, Peelamedu, Coimbatore. CS P.Eswaramoorthy, Vice Chairman of the Chapter addressed more than 300 students. He was assisted by Nawaz Ahmed, Chapter Official in organizing the programme.

On 9.7.2012 the Career Awareness Programme was held at GRD College of Arts & Science, Peelamedu, Coimbatore. CS.G.Ayyasamy, Member of Coimbatore Chapter addressed more than 350 students. He was assisted by Samuel Arthur, Chapter official in organizing the programme. On 10.7.2012 at Krishnammal College for Women, Peelamedu, Coimbatore. CS S.Venkatesh, Chapter Treasurer addressed more than 300 students. He was

assisted by Nawaz Ahmed. On 11.7.2012 at GRD College of Arts & Science, Peelamedu, Coimbatore. CS R.Hariram, Management Committee Member of Coimbatore Chapter and Shyama Vijayaraghavan, Assistant Education Officer addressed more than 80 students. On 16.7.2012 at Erode Arts College, Vellalar College, Kongu Arts & Science College, Erode. CS. C. Thirumurthy, Member Coimbatore Chapter addressed more than 750 students. Samuel Arthur accompanied and assisted him for the programme. On 17.7.2012 at GRD College of Arts & Science, Peelamedu, Coimbatore. CS R. Hariram, Management Committee Member of Coimbatore Chapter and Shyama Vijayaraghavan, Assistant Education Officer addressed more than 200 students. On 20.7.2012 at Krishnammal College for Women, Peelamedu, Coimbatore. CS.R.Hariram addressed more than 300 students. He was assisted by Nawaz Ahmed in organizing the programme. On 24.7.2012 at Karappagam University, Coimbatore. CS P.Eswaramoorthy addressed more than 300 students. On 25.7.2012 at Dr. NGP Arts & Science College, Coimbatore. CS R.Hariram, addressed more than 400 students. On 26.7.2012 at PSG College of Arts and science, Coimbatore. Shyama Vijayaraghavan addressed more than 60 students.

On 27.7.2012 at PSG College of Arts and science, Coimbatore. Shyama Vijayaraghavan addressed more than 60 students.

HYDERABAD CHAPTER **Study Circle Meeting on Cartels** **under Competition Law -** **Need for Governance**

On 14.7.2012 the Chapter organized a Study Circle Meeting on Cartels under Competition Law - Need for Governance, an initiative to encourage emerging Company Secretaries to lead and gain expertise on emerging issues to be the leaders of the future. The Speakers for the said subject were CS Rahul Jain, Partner, RANJ & Associates, Company Secretaries and CS Tulsi Agarwal, Company Secretary, Basai Steels & Power Private Limited.

CS Shujath Bin Ali, Chapter Chairman, welcomed the gathering and informed the members about its new Thought Leadership Platform. To start with, CS Tulsi Agarwal quickly touched upon the evolution of the Competition Act, 2002 with provisions with respect to Anti-competitive Agreements, Abuse of Dominance and Combinations citing certain prominent cases. Thereafter, in the wake of the recent judgment by the Competition Commission of India slapping Rs. 6,300 crores penalty on 11 cement companies in India for their involvement in Cartel formation resulting into appreciable adverse effect on Competition, CS Rahul Jain covered the aspects related to Cartels, its characteristics and its impact on Competition and various stakeholders.

The speakers highlighted the emerging role Company Secretaries in Employment as a Compliance Officer under Competition Act and advisory facet of Practising members in respect of strategizing Combinations, drafting of various agreements which may attract Competition issues, guiding in case of remedy for violations of Competition Act while citing various judicial pronouncements. PVS



Jagan Mohan Rao, the Past President of the ICSI congratulated the efforts of speakers with his delightful Sanskrit Slokas. The Chairman also applauded the speakers for enlightening the members on the upcoming competition policies in India.

Talk on Brand CS & Brand You - Opportunities Unlimited

On 23.7.2012 the Chapter organized a Talk on Brand CS & Brand You - Opportunities Unlimited at Taj Mahal Hotel. CS Shujath Bin Ali, Chapter Chairman in his welcome address highlighted the concept of Brand and importance of the Brand CS. CS Pavan Kumar Vijay, Past President, the ICSI & MD, Corporate Professionals Capital Pvt. Ltd. was the speaker who explained the importance of Brand CS, Personal brand. He stressed on attributes like passion, self-vision, dare to dream, opportunities galore, and enhancing value and opined that CS professionals need to look beyond the conventional areas considering the wide knowledge CS professionals possess. Members actively participated in the Interactive session.

MADURAI CHAPTER Annual General Meeting

On 21.6.2012 the Annual General Meeting of Madurai Chapter was held. S.Kumararajan, Chairman took the chair. The Secretary read the Annual Report and Treasurer presented the Accounts for the year ended 31.3.2012. After the discussions Annual Report and Audited Accounts were passed unanimously. Members were suggesting ways and means to improve the Chapter activities. The Chairman thanked them and accepted their valuable suggestions and assured to implement wherever possible.

Career Awareness Programme

On 10.7.2012 the Madurai Chapter Organised Career Awareness Programmes at Sivakasi at Sri Kaliswari College and at Ayya Nadar Janaki Ammal College.

S.Kumararajan, Chapter Chairman addressed about the institute, course and opportunities. R.K.Bapulal, Practising Company Secretary in his address explained about opportunities of CS course in Whole-time Practice and informed the students to join the course in view of the benefits available. T.Raja, Chapter Office in charge distributed brochures and clarified the doubts of the students. HOD of Department of Corporate Secretaryship and other lecturers participated in the programme. On 11.7.2012 the Programme was held at Madurai Lady Doak College. Head of the Department of Commerce Nagammai welcomed the gathering. S.Kumararajan, Chapter Chairman explained about the institute, course and opportunities and advised the students to join the CS course immediately along with their regular curriculum to enjoy the benefits of CS course without loss of time. T.Raja, Chapter Office in Charge explained the purpose of oral coaching, how to write the examination and to come out successfully. Around 46 students joined the course. On 19.7.2012 at Ilyangudi Dr.Zahir Husian College and On 2.8.2012 at Nadar Saraswathi College, Theni. S.Kumararajan, Chapter Chairman explained about the institute,

Course and Opportunities. T.Raja, Chapter Office Incharge clarified queries of the students and also distributed brochures explaining the CS course to them.

One Day Seminar on Revised Schedule VI and XBRL and CARR & CARO (Cost Accountants' Role).

On 28.7.2012 the Madurai Chapter Successfully organised a one day seminar on Revised Schedule VI and XBRL and CARR & CARO (Cost Accountants' Role) at Madurai. B.T.Bangera, Managing Director of M/s. Hi-tech Arai (P) Ltd, Madurai inaugurated the seminar. In his address he expressed the need for the companies to reduce cost to maintain the profit as now a days the buyers are determining the price and the sellers has to compete in the market. The Speaker of the Topic of Revised Schedule VI was S.Saraskumar, Practising Company Secretary, Chennai and for the topic Cost Accountants' Role in CARR Dr.I. Asok, Chairman, Madurai Chapter of ICAI. ■

Western India Regional Council

Annual Regional Conference 2012

On 14 and 15.7.2012 the Regional Council organised its Annual Regional Conference at Indore. Ashish Chauhan, Interim CEO, BSE was the Chief Guest of the inaugural Session. The other dignitaries and faculty members were N Ravichandran, Director, IIM, Indore, Nesar Ahmad, President, S.N. Ananthasubramanian, Vice President, Umesh Ved, Central Council Member, Atul Mehta, Central Council Member, N.K. Jain, Secretary & CEO, the ICSI, Mahavir Lunawat, Chairman, Ragini Chokshi, Secretary, Ashish Garg, Treasurer, ICSI-WIRC, Ritesh Gupta, Chairman, Ashish Karodia, Secretary, Indore Chapter, Deepak Sharma, Director & CEO, Sarthi Advisors, V.S. Sundaresan, Chief General Manager, SEBI, Susanta Kumar Das, AGM, SEBI, Santosh Kumar, LLP Registrar, Varun Gupta, Professional Teacher, Hitesh Buch, Vice Chairman, ICSI-WIRC, Hon'ble Justice Mool Chand Garg, MP High Court, Indore Bench, Indore. Around 450 delegates attended the Conference.

AHMEDABAD CHAPTER Independence Day Celebration

On 15.8.2012 the Ahmedabad Chapter of WIRC of the ICSI organized the Flag hoisting ceremony on the occasion of Independence Day at its premises.

The Indian Flag and ICSI Flag were unfurled by the Chairman - Rajesh Parekh and Secretary - Chetan Patel. The National Anthem was sung during the flag hoisting ceremony. The dignitaries like past Chairmen, WIRC Members, Managing Committee Members,



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Members of Ahmedabad and Staff were present on the occasion.

Full Day National Seminar on Capital Market, Corporate Governance and Credit Rating

On 28.7.2012 as a part of ICSI - ICRA Joint Chain Programmes, the Ahmedabad Chapter of WIRC of the ICSI organized a Full Day National Seminar on Capital Market, Corporate Governance and Credit Rating at Ahmedabad.

More than 170 Members of the Institute attended the seminar wherein 04 PCH was granted to the attendees. There were four sessions of one and a half hour each. The seminar began with the inaugural address by Rajesh Tarpara - PDC Committee Chairman of Ahmedabad Chapter and by Ashish Doshi - WIRC Member of the ICSI. The faculties were introduced and were welcomed with "Good Luck" plants to retain the concept of "ICSI - Go Green".

First and Second Session: The sessions were addressed by Ankit Patel - Senior Analyst from ICRA on topic - Credit Rating (Overview of Rating Process, Credit Rating of SMEs and Rating of Bank lines of Credit and other products). Patel spoke on Credit Risk Assessment, Rating Agency Perspective, Relative Scales to classify the companies, uses of Credit Rating for Investors, issuers, intermediaries and regulators. He said that key success factors for rating are credible and independent structure and procedures, reliance on market mechanism, creation of active debt market etc. He spoke on rating approach, rating methodology, long term and short term rating scale and regulatory requirements for credit rating. The session ended with interactive case studies. Animesh Bhabhalia - Senior Business Development Head from ICRA also gave his gracious presence.

Third Session: Ashish Chauhan - Interim CEO - BSE took the Third Session on the topic SME Listing. Chauhan started his session with the beginning of concept of Derivatives in Financial Market. He quoted various examples and stories on the options. He spoke on the importance of SMEs in today's world. He said that SMEs play an important role in removing a portion of unemployment in the market by opening various prospective professions. He said that SMEs and CS are related because Company Secretary advises SMEs on compliances and benefits of a company to get listed with SMEs.

Fourth Session: The Fourth Session was on SEBI Stock Brokers Audit by Rajiv Desai - Practicing Chartered Accountant, Ahmedabad. The speaker elaborated the guidelines of internal audit of stock brokers, client registration and anti money laundering compliance, order management and risk management system, contract notes, margin details and statement of accounts, how to deal with client funds and securities, banking and demat account operations, terminal operation, investors grievance handling, maintenance of books of accounts, system and procedures pertaining to PLMA 2002, transfer of trades, margin trading, internal trading and execution of power of attorney and SEBI and Exchange Communications vide circular with point wise references.

NASHIK CHAPTER

Half-day seminar on routine Company Law Compliances

On 7.7.2012 the Chapter in association with the Nasik Ojhar Chapter of Cost Accountants organised a half-day Seminar on routine Company Law Compliances. Salim Raja ACS, FCA was the faculty who enlightened the participants on the topic and the seminar was well attended by the professionals and students in and around Nashik.

Recent Changes in Service Tax

Due to recent changes in Service Tax and introduction of Negative List and change of reverse charge mechanism in certain services a necessity was felt by Nashik Chapter of the ICSI and Nasik Ojhar Chapter of Cost Accountants to have a seminar on Recent Changes in Service Tax. The speakers were R K Deodhar - Leading consultant of Excise and Service tax who talked in detail about Negative List and Exempted services with general changes taken place in Service Taxes. A B Nawal guided the gathering on Reverse Charge and Bundled services and also explained about Declared Services. N K Nimkar - FCMA from Pune spoke on Place of Provision of services and Abatement. The session was participative and concluded with the question-answer session wherein the faculty members replied the queries raised by the participants. Pradnya Chandorker - CMA coordinated the programme.

PUNE CHAPTER

Full day seminar on Listing of SME and ICRA Corporate Governance Rating

On 7.7.2012, Pune Chapter organized a full day Seminar on SME and ICRA Corporate Governance Rating at Pune. In all 62 delegates were present at the seminar. Haresh Hinduja, VP Linkintime India Pvt. Ltd and Anjan Deb Ghosh, Senior Group VP, ICRA were the eminent faculties for the seminar. The Programme received an overwhelming response from the Members and other participants. All the sessions were very informative and well appreciated by the gathering.

Two days Conference on Mergers & Amalgamation - Creating Growth Opportunities

On 27 and 28.7.2012 the Pune Chapter organized a two-days Conference on Mergers & Amalgamation - Creating Growth Opportunities at Hotel Le Meridian. In all 216 delegates attended the workshop. CS Vivek Sadhale, Vishwas Mahajan, Entrepreneur - Compulink, Lekha Nair, VP Corporate Finance Enam Securities Pvt. Ltd., S Sundareswaran from Morgan Stanley, Anil Patwardhan -CFO KPIT Cummins, CA Parag Ved, Saumil Shah, Partner, M&A KPMG, Adv Alhad were the eminent faculty members for the programme. The programme received an overwhelming response from the Members and other participants. All the sessions were very informative and well appreciated by the gathering. ■



ICSI - CCGRT

Full Day Programme on FEMA, Anti-Money Laundering and KYC Guidelines

On 18.8.2012, ICSI-CCGRT organized a Full Day Programme on FEMA, Anti Money Laundering and KYC Guidelines at its premises in Navi Mumbai. Speakers like Attha Omar Basheer, General Manager, Foreign Exchange Department (FED), RBI covered the topic of FEMA Reporting Compliances; Anand Mehta, Senior Partner, Khaitan & Company threw light on FDI Sectoral Policy and Recent Changes along with the Forex Risk Management; Sudha G. Bhusan, Associate Director, International Tax and Regulatory Services - Taxpert Professionals covered the subject of Outbound Investments and Raj Tripathi, Ex-Head - Compliance and Team Member, Standard Chartered Bank, had discussions on Anti Money Laundering & KYC Guidelines. The programme was well attended and the queries raised by the participants were discussed and clarified by the speakers.

Attah Omar Basheer, spoke on reporting and various compliances under FEMA. He first explained the Current Account and Capital Account Transactions under FEMA followed by investments via different routes i.e. Automatic Route or Approval Route by which a Foreign Exchange Transaction can be made. He then enlightened the participants about the reporting mechanism of ODIs and FDIs to RBI under various situations viz. entry routes, eligibility, pricing guidelines, sectoral policy, issuance of shares or ADR/GDR, transfer of shares, FII-PIS transactions, ECB returns and Trade Credits etc. He illustrated the framework for reporting and also highlighted the consequences of non-compliances within a particular timeframe under FEMA.

Anand Mehta, Senior Partner, Khaitan & Co., discussed the recent changes which have been incorporated under FDI Sectoral Policy. He gave thorough insights into the changes and its impact, especially in case of the most discussed topic in recent days - FDI in Retail Sector. He also briefed about the origin and the history of Retail Trade in India in 90's. In his presentation to the participants, he covered the conditions involved in Cash & Carry Wholesale Trading, Multi Brand Retail Trade, their current position, recent changes, various challenges involved in the much hyped 100% retail under FDI and recent changes in Brown Field Investments and Construction & Development Sector. Moving on to Forex Risk Management, he elucidated the various hedging tools and methodologies to cover the risk involved in Forex. He concluded by saying that even though Forex Risk Management focuses on the negative word 'Risk', the aim is not to raise the obstacles to the transaction, but to facilitate transaction by identifying various risks using Hedging Strategies and Modern Risk Management Policies.

Sudha G. Bhusan discussed various legislations relating to the Outbound Transactions such as FEMA Act, 1999, Customs Act, Transfer Pricing Regulations, IFRS, DTAA, Companies Act, 1956 etc. She also discussed Individual Remittances, Borrowing and

Lending and the various needs for the Growth of the Indian Economy. She said that India is ranked 2nd globally for consumer base. Her presentation was very lively and impressive. She concluded the session by elucidating the ways in which Foreign Exchange can flow to India, the ways by which investments can be refunded and the regulatory provisions which needs to be complied thereupon.

Thereafter, Raj Tripathi made a presentation on 'Anti Money Laundering (AML) Measures & KYC Guidelines'. He commenced his session by throwing light on the KPMG India Anti-Money Laundering Survey 2012. He said that after becoming the 34th country member of Financial Action Task Force (FATF), India's focus on Anti Money Laundering (AML) measures has increased. He then highlighted the key areas in AML compliance - KYC norms, client screening, transaction filtering and monitoring, reporting mechanism, AML awareness creation and the cost of compliance. He expressed his concern about the fact that no stringent amendments have been made in the Prevention of Money Laundering Act (PMLA), 2002 after India became a member of FATF. In conclusion, he discussed the obligations of Banking Companies, FIIs and various intermediaries of Security Markets w.r.t. maintenance of proper records and furnishing of information within a particular timeframe. The programme was widely appreciated by the participants.

Programme on Working ' Capital Finance

On 12.8.2012 ICSI-CCGRT, in co-ordination with SEIS College of Management Studies organized a full day programme on Working Capital Finance at SIES College of Arts, Science and Commerce, Jain Society, Sion (W). The programme was well attended by students and members.

The speakers for the programme were G Subramaniam, Former President Treasury & Funding, Reliance Petroleum Ltd., Govind Subbanna, DGM & Relationship Manager, State Bank of India and S Sivakumar, Deputy Vice President, Product Head - Dealer Finance.

G Subramaniam initiated the discussion by giving an overview of working capital management, credit appraisal practices, credit rating and pricing. Initially, he shared his experiences of dealing with people around the globe. He then discussed the various obstacles he had faced while managing the working capital of one of the India's largest private sector players. This made the session very encouraging. He also explained the concept of suppliers' credit along with the effects of rupee depreciation on working capital management and precautions to be taken while managing working capital. He then made a presentation on working capital management. Citing some examples, he said that issue of FCCB by Essar Gujarat and buying of crude oil from Venezuela and Iran are classic cases of working capital management. In managing working capital, drafting of the documents should be in a simple manner as it requires less interpretation.



Govind Subbanaa and S Sivakumar conducted a session on Emerging Trends in Working Capital Finances - Large Companies and SMEs. After sharing their experiences on the subject, the speakers had a panel discussion with the participants. Many queries were raised by the participants on the conceptual understanding of working capital components viz. what are the meanings of open account sales, working capital term loan, non-fund based facilities, packaging credit?, what are the considerations taken into account before lending money to a company under CDR scheme etc. All the queries of the participants were well addressed by the speakers.

Two Days Residential Programme on Labour Laws and Compliances

On 21 and 22.7.2012 the ICSI-CCGRT conducted a two days residential programme on Labour Laws and Compliances at its premises, Navi Mumbai. The programme was attended by members of the Institute, students and other professionals.

Dr Rajan Tungare, Director, Maharashtra Institute of Labour Studies inaugurated the programme. The speakers for the programme were Manohar Gajare, Retired Joint Labour Commissioner, Government of Maharashtra; R Balakrishnan, Company Secretary, Pune; Lancy Desouza, Advocate Bombay High Court; P G Murthy, Advisor (Labour Laws) and Ramesh Soni, Proprietor, RL Soni & Associates. Dr Tungare gave a general overview of existing scenario on labour laws. He explained the working of International Labour organisation (ILO) and the initiatives taken by it to improve labour conditions. While explaining the case of Maruti Suzuki, he said that it is a good example of lack of communication and how the labour management relations should not be. Dr Tungare explained the evolution of labour laws and explained its significance in the lives of employees. He said that labour laws are applicable to all the employees of the company irrespective of the hierarchy.

The next session for the day was conducted by Gajare, who gave a brief overview of the Factories Act 1948. He quoted the case of Bhikusa Yamasa Kshatriya (P) Ltd. v. UOI in which the apex court had adjudged the scope of the Act. He also briefed the participants about the welfare measures, penal provisions, safety measures required to be taken under the said Act. Gajare then explained the meaning of Inspection as "supervision of protective laws and supervision over standard fixed". He also discussed the evolution of labour laws. First welfare measure was taken in UK for preservation of the health and morale of apprentices and others employed in cotton mills in 1802. First law relating to protecting child workers in mills and factories was adopted in France on March 22, 1841. Gajare then explained the role of ILO. ILO has served as a model for most National Laws and Regulations creating modern inspection services. The purpose of inspection was a) to secure enforcement of the legal provisions relating to conditions of work viz. Hours, Wages, Safety, Health and Welfare, Employment of children and young persons etc. b) to supply technical information and advice to employers and workers concerned, the most effective means of complying with the legal provisions and c) to bring to the notice of the Competent Authorities, defects or abuses not specifically covered by the existing

legal provisions. Sharing his experience, he said that whenever an inspector comes for inspection at the factory, the company's representative should ask for his identity card. This is in order to confirm the identity of the inspector. He also highlighted the fact that the Factory Inspector can always find the non-compliant provisions. R Balakrishnan had a discussion on the returns and registers to be maintained under certain important labour legislation. Beginning with the Factories Act 1948, he enumerated the various registers and returns to be filed under Contract Labour (Regulation & Abolition) Act 1971, Minimum Wages Act 1936, Payment of Wages Act 1936, Payment of Gratuity Act 1972, Payment of Bonus Act 1965, Equal Remuneration Act 1976, Industrial Employment (Standing Orders) Act 1946, Shops & Establishments Act, National & Festival Holidays Act, Professional Tax Act, Employees State Insurance Act 1948, Employees Provident Fund and Miscellaneous Provisions Act 1952, Maternity Benefit Act 1961 and Employment Exchange (Compulsory Notification of Vacancies) Act 1959. He then gave a detailed list of registers, forms, records, registers to be maintained and the specific requirements relating to rest rooms, safety measures etc. to be complied with under the Factories Act 1948. He highlighted the fact that all these measures are to be implemented with a view to give better working environment to employees. He then explained the role of company secretary under the Factories Act 1948.

On the 2nd day, P G Murthy conducted a session on Compliances under Bombay Shops & Establishment Act, Gratuity Act and Employment Exchange Act. He explained in detail the compliances to be ensured under the acts and also gave certain case laws on the subject. He suggested that it is always advisable to follow the bare Acts for knowing the provisions of any Act.

Lancy Desouza covered the compliances under Payment of Wages Act 1936, Minimum Wages Act and Contract Labour (Regulation & Abolition) Act 1970. The speaker listed out the registers to be maintained and returns to be filed under these acts and shared his experience on the subject with the participants. Replying to a query raised on the labour law notices and inspection, Desouza said that while replying to the notices of revenue authorities one should base their replies by quoting case laws, if any. If there is a Supreme Court or any High Court judgment on the query raised, then one can suffix the reply by quoting the judgment. Elaborating further on this, the speaker said that the Commissioner would not dare to contradict the decision of the judicial authority. Lancy Desouza then threw light on the cases of Rajendra Deva v. Hari Fertilizers - Section 10 of the Bonus Act; R C Agarwala v. Payment of Wages Inspector MP - Whether directors of company are personally liable for payment of wages to workmen during his interactions. The session was quite interactive.

Ramesh Soni then discussed the Maharashtra Profession Tax Act, Workmen's Compensation Act, Payment of Bonus Act, Employees State Insurance Corporation Act and Mumbai Labour Welfare Fund Act. He explained the various concepts from the Act and comprehensively enumerated the compliances and returns to be filed. After explaining each and every Act in brief, he took a recap by asking queries to the participants. This kept the session very lively. ■



**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)

PCH-12



In collaboration with

INDIAN INSTITUTE OF BANKING & FINANCE
(AN ISO 9001:2008 ORGANISATION)

PDP-24

Organises

Three days Workshop on "Risk, Regulation and Compliance" (With special focus on Banking)

Background	<p>Rapid innovations in financial markets, globalisation & deregulation have not only changed the functioning of the banks but exposed them to various types of risks. The ever increasing regulations, increasing complexities involved in handling financial crimes, complex products and higher geographical reaches make it necessary for more effective risk management and compliance function. Compliance is one of the core areas on which banks need to and are increasing their focus on efforts to address existing and potential risks.</p> <p>In order to provide the Company Secretaries and others dealing with Risk & Regulation, the practical insights into Banking and equip them with the requisite mindset to discharge the Compliance function in banks, ICSI-CCGRT is organizing this three days workshop on 'Risk, Regulation and Compliance' (with special focus on Banking) in collaboration with Indian Institute of Banking and Finance (IIBF).</p>
Day, Date & Timing	Thursday, September 27 to Saturday, September 29, 2012 09.30a.m. – 05.30 p.m. with lunch and reading material
Venue	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614
Proposed Coverage	<ul style="list-style-type: none"> ■ Professional Overview of Banking and Indian Banking System ■ Banking Regulatory Framework ■ Credit Risk, Operational Risk, Market Risk and its Management ■ Risk Management and NPA, with particular reference to RBI Master Circular ■ Statutory Compliances in Banking Sector including the methodology of compliances and sources of information ■ Understanding Compliance vis-à-vis Risk
Speakers include	Speakers from IIBF with exposure to the subject will address the participants.
Participant Mix	Company Secretaries, Banking Professionals, Compliance Officers / Company Secretaries of Banks.
Fees for all 3 days (Inclusive of Service Tax)	<p>Members ₹ 8,000/- per Member</p> <p>Students ₹ 7,500/- per Student</p> <p>Others ₹ 10,000/- per participant</p> <p>to cover the cost of workshop kit, lunch and other organizational expenses</p>

Participation restricted to ensure effectiveness; hence limited registration on First Come First Serve Basis

Participants attending the workshop on all days are entitled to participation certificate

Registration : The Fees may be drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to The Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614. Ph. : 022-27577814, 4102 1506 e-mail : ccgrt@icsi.edu

For clarification please contact CS Priya P Iyer, Program Co-ordinator, ICSI-CCGRT.

***Prior registration desirable**

Memoranda of understanding

Memorandum of understanding between Stock Exchange Investors' Protection Fund (BSE-IPF) and the ICSI

The Institute entered into an MOU with Stock Exchange Investors' Protection Fund, a recognised Public Trust established by BSE Limited.

The areas of collaboration under MOU include:

- ◆ Conducting investor awareness programmes on Micro, Small & Medium Enterprises (MSMEs) across India.
- ◆ Conducting programmes for creating awareness about International Financial Reporting Standards (IFRS) across India.
- ◆ Training and education programmes in financial market interface with corporate laws, secretarial practices and corporate governance.
- ◆ Webcasts of panel discussion and presentation of experts on various aspects of financial markets and corporate governance and creating useful web contents for corporates.
- ◆ Conducting Investor Awareness and Education Programmes related to capital market.
- ◆ Supporting ICSI initiative to help its students to understand better about capital market.
- ◆ Participation of BSE senior management as panelists at conferences/ seminars organized by the ICSI across India or vice versa.
- ◆ Research in Capital Market through regular exchange of resources.

Memorandum of understanding between National Stock Exchange of India Ltd. (NSE) and the ICSI

The Institute entered into an MOU with National Stock Exchange of India Ltd.

The areas of collaboration under MOU include:

- ◆ Fee concession to the students of ICSI, in NSE's Certification in Financial Markets (NCFM) modules, being conducted by NSE i.e.

For Foundation Passed Students
Financial Markets : A 'Beginners' Module

For Executive Passed Students
Financial Markets : Securities Market Module

For Professional Passed Students
Financial Markets : Capital Markets Module
- ◆ Visits of Students and Members of ICSI to NSE through ICSI Centre for Corporate Governance-Research and Training (ICSI-CCGRT), Navi Mumbai.
- ◆ Training to Company Secretaries in securities markets and corporate governance.
- ◆ Joint organisation of Investor Awareness Programmes.
- ◆ Joint compliance seminars for the trading members of NSE and Compliance Officers of the listed companies.
- ◆ Regular exchange of resources of mutual interest and Exchange of faculty (ies).
- ◆ Co-operation in developing curriculum of academic and continuing education programmes and developing new certification modules.

KIND ATTENTION MEMBERS!

On the advise of the Editorial Advisory Board of Chartered Secretary, it has been decided to commence a new column by the name Company Secretaries' Diary wherein concerns of company secretaries with hands on experience as company secretary/practising company secretary will be featured. Members having such experience may narrate the same through this column.

All such narratives/write-ups/articles be forwarded to the Editor, Chartered Secretary for consideration by the Board for publication in the journal.

READERS' WRITE

The erstwhile **PONITS OF VIEW** column of Chartered Secretary has been re-captioned as **READERS' WRITE**. Members are invited to send in their queries and views for consideration for publication in this column for soliciting views/comments from other members of the Institute.

40TH NATIONAL CONVENTION OF COMPANY SECRETARIES

Days & Dates :
Thursday-Friday-Saturday,
October 4-5-6, 2012

Venue :
Aamby Valley, Mumbai

THEME

VISION 2020 : TRANSFORM, CONFORM AND PERFORM

Every moment, the world is in transition, so the change is a constant and dynamic process. What is more important in today's context is the speed of change in all spheres of human endeavour. Change becomes value driven only when the determination to bring change is defined and well versed. Change cannot result in value added proposition unless it is driven in a right perspective.

The vision to bring change commences with a tiny step and such vision is called "to transform". The transformation - a radical change that catapults one into another dimension of existence, possibly the one that is not feasible without being transformed. Every paradigm needs a defined vision to stir the imagination and creativity with motivation and determination leading to transformation.

Vision 2020 in its broader perspective is metamorphic in nature requiring to transform from the nascent stage to a level where the whole structure is redefined not only in confirmation to the present but in conformation to future. Vision 2020 is to lay foundation for proactive changes igniting minds to create niche.

One may find the similar connotations for the terms 'transform' and 'conform' when viewed and applied in the context of corporate environment, which has seen an array of reforms in terms of enactment of new legislations, mobilisation of capital market, inflow of foreign capital, growth in number of MNCs etc. and has opened new opportunities for professionals like Company Secretaries.

These opportunities could be realised into value added propositions only when there is transformation and conformation to the expectations of change that would lead to performance enactment for a sustainable competitive advantage. It is not a one time exercise. As the change is constant and dynamic, the efforts should also be proportionately constant and dynamic.

It is in this backdrop, the theme of the 40th National Convention has been devised as VISION 2020 - TRANSFORM, CONFORM AND PERFORM to be deliberated in the following four technical sessions:

1. Economic Volatility and Risk Management
2. CS - Whistle Blower or Conscience Keeper
3. Financial Markets - Engine for Economic Growth
4. Challenges and Opportunities for SME Sector

First Technical Session: Economic Volatility and Risk Management

Volatility is variability. Over the past few years, the World economy has become much more volatile; that is, the swings from boom to bust have been greatly increased. Despite several growth drivers like improved technology, better monetary policy; researchers have found little consensus on why such volatility exists despite such favorable initiatives. In the context of recent trend, such economic volatility in India can be attributed to the rupee depreciation and the downgrade of the Sovereign rating.

Volatility and risk are go getter in the sense that the risk is inherent in volatility. As the economies are facing volatile conditions, they are operating in a risk filled environment, such risk may be large or small and closed or open. It is not that risk is a bad phenomenon often it is considered as efficient measure to growth of the economy but at the same time, risk needs to be managed. In this current economic milieu, risk can be from both expected and unexpected sources and economies need to respond proactively, taking the proper steps to assess, prioritize and manage all risks in a strategic, effective and efficient manner.

In this context, the first technical session has been designed to deliberate upon the factors associated to sovereign downgrade resulting in economic volatility thereby,

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reasoning out the ways to mitigate the risk inherent in volatile economic conditions.

Second Technical Session: Panel Discussion CS - Whistle Blower or Conscience Keeper

Whistle Blower or Conscience Keeper! Though, *prima facie* both the words may sound synonymous, there is a thin line of demarcation between the two. Whistle blowing is about speaking out on malpractice, misconduct, corruption, or mismanagement; whereas, conscience is an inner voice viewed as acting as a guide to the righteous behaviour.

The line of demarcation is that while whistle blowing pertains to the situation after the wrong is done or about to be done the conscience of a person stops one from committing the wrong. These are two sides of the boat, where keeping inside the boat is as important as keeping outside.

Economic volatility, global competition, growing risk appetite demands the governance professionals, the Company Secretaries to priorities their role as Conscience Keeper and Whistle Blower.

In this backdrop, the second technical session is devised to deliberate as to how the Company Secretaries should priorities their role as conscience keeper and Whistle Blower.

Third Technical Session: Financial Markets - Engine for Economic Growth

In recent years, an increasing amount of attention has been devoted to the connection between financial markets and economic development. One of the most enduring debate is "whether financial development adds to economic growth or increased economic activities results in financial development."

Indian economy has grown at an unprecedented pace over a period of time attracting foreign investment, expansion of capital market, greater interface of domestic businesses with global counterparts. This growth is attributed to open market policies enabling regulatory environment and infrastructure development.

Financial sector reforms being one of the factors for driving growth of an economy, this technical session has been devised to deliberate on the measures that have been taken by the Government to improve the growth of the economy *via* financial markets.

Fourth Technical Session - Panel Discussion Challenges and Opportunities for SME Sector

SMEs are universally acknowledged as major contributors of economic growth process and even larger contributors to exports and employment. In the Indian context, the critical role and place of the SME sector cannot be over-emphasized in employment generation, exports and inclusive growth.

SME sector is facing new challenges in the wake of increasing globalization and there is a pressing need for this sector to reinvent itself by enhancing its efficiency and productivity in order to remain competitive, both domestically as well as internationally. It is in that context the Government has accorded priority to this sector in order to achieve balanced, sustainable and more equitable economic growth.

The next level of growth in the Indian economy will have to necessarily come from the SME sector. In order to transform India into a major manufacturing hub, the Indian SMEs must embrace change so that they can find a place for themselves in the global competitive environment.

This technical session has been structured to deliberate upon the challenges of SME sector, government initiatives and the role of professionals to provide the SMEs an enabling environment for a visible and sustained growth.

Tentative Programme

DAY 1 - Thursday, October 4, 2012	
1.00 PM onwards	Registration of Delegates
3.00 PM to 4.30 PM	OPENING PLENARY
4.30 PM to 5.00 PM	Tea
5.00 PM to 6.30 PM	FIRST TECHNICAL SESSION
7.30 PM onwards	Cultural Programme and Dinner
DAY 2- Friday, October 5, 2012	
9.30 AM to 11.00 AM	SECOND TECHNICAL SESSION - Panel Discussion
11.00 AM to 11.30 AM	Tea
11.30 AM to 1.00 PM	THIRD TECHNICAL SESSION
1.00 PM - 2.00 PM	Lunch
2.00 PM to 3.30 PM	FOURTH TECHNICAL SESSION Panel Discussion
3.30 PM	Tea
7.30 PM onwards	Cultural Programme and Dinner

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DAY 3 - Saturday, October 6, 2012

9.00 AM to 11.00 AM	INTERACTIVE SESSION (For Members of The ICSI only)
11.00 AM to 11.30 AM	Tea
11.30 AM to 1.00 PM	CLOSING PLENARY
1.00 PM onwards	Lunch

Participants

Corporate Directors, Secretaries and other Senior Management Executives in the Corporate and Financial Services Sector, Practising Professionals in Secretarial, Financial, Legal and Management Disciplines, Researchers and Academicians would benefit from participation in the Convention.

Faculty

Eminent persons from the Government and industry, including professionals, management experts, academicians will address the participants and there would be brainstorming sessions and interactions.

Papers for Discussion

Members who wish to contribute papers for publication in the souvenir or for circulation at the Convention are requested to send the same preferably through email in word format [sudhir.dixit@icsi.edu] with the caption 'Paper for National Convention' with one hard copy to Dr. S K Dixit, Director (Academics), The Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi 110 003 on or before **August 31, 2012**. The paper should not normally exceed 15 typed pages. The Articles Screening Committee will consider the articles so received and the decision of the Institute based on the recommendations of the Screening Committee will be final in all respects. An honorarium of Rs. 2,500 will be paid by the Institute for each paper selected for publication in the souvenir or circulation at the Convention.

REGISTRATION PROCEDURE

The 40th National Convention is being organized on residential basis and the delegates are required to remit the Delegate Fee as well as the Hotel Accommodation Charges for registration as delegate. Delegates opting for non-residential basis may register only by remitting delegate fees.

A. DELEGATE FEES

	EARLY BIRDS (PAYMENT RECEIVED UPTO 30.08.2012) (Rs.) INCLUSIVE OF SERVICE TAX	OTHERS(PAYMENT RECEIVED AFTER 30.08.2012) (Rs.) INCLUSIVE OF SERVICE TAX
Members of ICSI/ICAI/ICWAI	6180	6740
Non-Members	6740	7300
Company Secretary in Practice	5620	6180
Senior Members (60 years & above)	5620	6180
Students	5060	5620
Spouse	5060	5620
Accompanying Children (above 5 and below 18 years)	4050	4050
Foreign Delegates	US\$112	US\$169

B. ACCOMMODATION AT AAMBY VALLEY

The accommodation has been arranged at the venue i.e. Aamby Valley. Aamby Valley is independent India's first planned, self-contained aspirational city, remarkable for its unsurpassed grandeur and plush signature features. In a league of its own, Aamby Valley City is being developed to be among the top five Destination cities in the world. The City, in the cusp of pristine nature, aesthetically combines the all-encompassing facets of luxurious living, business conveniences, leisure and recreation. A highly conducive weather, misty mountain peaks, luxuriant foliage, the enchanting gardens, Fountains of ecstasy, the exotic wilds, serene lascivious lakes, the gentle balmy mountain breeze, redolence of mountain blooms add to the mystique and grandeur of Aamby Valley City. For details, please visit the website of the Aamby Valley City viz. www.aambyvalleycity.com



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Type / No. of Rooms available	Accommodation Charges for Two Nights (Check in from 12 Noon of 4th October, 2012 and Checkout by 10 AM of 6th October, 2012) (in Rs. all inclusive)			
	Twin Sharing Basis (Two Delegates in One Room, Charges Per Delegate)	Single Occupancy Basis (Only One Delegate in One Room)	Double Occupancy Basis (Delegates with Spouse or Any other Delegate)	Triple Occupancy (Three Delegates in One Room subject to pairing by delegates themselves. The entire payment/ settlement has to be made/ arranged by the concerned delegate who shall be booking the accommodation on behalf of other two delegates.)
Supreme/Pyramid Cottage (80)	Rs.7500	Rs.13000	Rs.15000	Rs.17000
Town Plaza Cottage (50)	Rs.8000	Rs.14000	Rs.16000	Rs.18000
Aussie Chalet Room (195)	Rs.9000	Rs.16000	Rs.18000	Rs.20000

* for payment in US Dollars, the exchange rate on the date of booking will be applicable.

Note :

- Delegates are required to remit an additional amount of Rs.4050/- inclusive of Service Tax in respect of accompanying children above 5 years but below 18 years towards extra bed with breakfast.
- If the accommodation is not available in the preferred category, the accommodation will be arranged in the available categories. Accordingly, if the accommodation is arranged in higher category, the delegates will be required to remit the balance amount before checkin. Conversely, if the accommodation is arranged in the lower category, the excess amount will be refunded directly to the delegates by the Institute.
- Aamby Valley will provide accommodation for Drivers and charge @Rs.1500/- per day + Service Tax inclusive of meals in the service area. The payment has to be made directly to Aamby Valley only while availing the service.
- Transport facility within the Aamby Valley City will be provided by the Aamby Valley.
- Delegates coming in their own vehicle will be provided car parking sticker, without which vehicles will not be allowed to enter Aamby Valley.
- Delegates are requested to park their vehicles in specified parking area earmarked by Aamby Valley.
- Delegates are requested to carry delegate badge while going out of Aamby Valley.
- Delegates may please refer to Welcome letter, Facilities available at Aamby valley with rate cards for Spa, Golf Massage, Angling, etc to be put up in individual rooms.
- Delegates opting for accommodation other than Aamby Valley will have to pay extra for the Breakfast, if availed from Aamby Valley.

Residential Package in Aamby Valley includes stay from 04.10.2012 (12 Noon) to 06.10.2012 (10 AM), Breakfast(2), Lunch (3), Dinner(2), Morning /Evening Tea/ Coffee with cookies , Convention Bag & Kit, Cultural Programme on two evenings, Traditional Welcome, Welcome drink on arrival, 1 round Cookies

and Biscuits in the Room, Tea/Coffee Machine in the Room, 2 bottles of packed drinking water per day per person in the room, Complimentary use of swimming pool at the Mini Club & Lagoon Complex, Wave Pool at Lagoon Complex, Usage of Gym & Pontoon Boat Rides, Internal transport i.e. within Aamby Valley City only. Children below 5 years sharing the room with parents without extra bed complimentary, 25% discount will be given on laundry, telephones, and internet, 15% discount on room service and all other services available at Aamby Valley city(Discounts are not applicable at the Sahara unique, Gundecha Jewels, The Stuff, Baskin Robbins, The transport department & Golf Course pro shop).

Contact details of Aamby Valley	Distances from
Aamby Valley District Pune -410401 Tel. : 020-22900000 Fax : 020-22965040 Website : www.aambyvalleycity.com	Mumbai : 132 Kms. Pune : 110 Kms. Lonavala : 22 Kms.

HOW TO REACH AAMBY VALLEY

From Mumbai & Pune, delegates may reach Aamby Valley via Expressway to Lonavala and then take the route past Bushi Dam to the valley.

IMPORTANT :

- Checkin time is 12 Noon (4th October, 2012) and Checkout time is 10 AM (6th October, 2012). Early Checkin/ Late Checkouts will be subject to availability of rooms. Delegates may please recheck with the hotel regarding applicability of extra charges before availing the early checkin/ late checkout facilities.
- Interested delegates may send their requests alongwith the requisite tariff in full (non-refundable) for booking their accommodation in the aforesaid hotel.
- Delegates have to pay for their other expenses including overstay (subject to availability of rooms) to the Hotel directly at the time of service.
- No separate room-wise bill will be issued by the Hotel and the delegates may remit the balance amount, if any, after adjusting the advance amount remitted to the Institute and obtain receipt for the same.
- Rooms will be allotted on First-Come-First-Served Basis on receipt of requisite payment in the Institute subject to availability. If rooms are not available at the time of receipt of payment, the delegates will be kept in the waiting list or the payment received will be refunded.
- Rooms will only be booked / confirmed on receipt of actual payment in the Institute. Merely sending the request through E-Mail/ Phone without the requisite payment is not sufficient for booking the accommodation.
- The delegate fee and hotel accommodation charges are non-refundable.

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8. Delegate Fee and Hotel Accommodation Charges are to be remitted in advance alongwith the Delegate Registration Form duly filled up and signed.
9. Delegates may please collect separate Lunch and Dinner Coupons for themselves, Accompanying Spouse, Children (above 5 years but below 18 years) and the coupons are essentially required to be handed over to the catering staff at the food counters.
10. Delegates/ Sponsoring Organisations desirous of making payments through Electronic Transfer may please refer to the NEFT Mandate. The details regarding the remittance through NEFT mode is required to be sent to the Institute for verifying the receipt of the payment.
11. Early Bird Discount on Delegate Fee is subject to receipt of the payment in the Institute on or before 30th August, 2012.
12. For any query pertaining to Delegate Registration/ accommodation in Aamby Valley, please contact Mr. Sohan Lal, Director / Mr. K P Sasi, Desk Officer at Tel. No. 0120-4522014 or at E-Mail id sohan.lal@icsi.edu

The Delegate Fee, Accommodation Fee, etc. is payable in advance and is not refundable once the nomination is received. The registration form duly completed along with a crossed payable at par cheque / demand draft drawn in favour of **The Institute of Company Secretaries of India** payable at **New Delhi** may please be sent to **The Institute of Company Secretaries of India, C-37, Sector-62, Noida - 201 309**. The delegate registration form is attached herewith.

C. OTHER HOTELS (AT LONAVALA)

A list of some other Hotels located at Lonavala is also published elsewhere in this journal alongwith their tariff and other details for convenience of the delegates. Interested delegates who desire hotel accommodation in these hotels may directly book the accommodation at a hotel of their preference. The tariff and other details has been obtained from the hotels through various sources and no formal agreement has been entered into with them. There may be variation in the tariff and other benefits offered by the hotels and the delegates, if so desired, may negotiate with the hotels directly. As the booking in such hotels will be made by the delegates directly, they may not send the hotel accommodation charges to the Institute.

D. TRANSPORTATION ARRANGEMENTS FROM MUMBAI, PUNE & LONAVALA TO AMBY VALLEY

Special transportation arrangements are being made from Pune and Mumbai to Aamby Valley in the morning hours of 4th October, 2012 at pre-fixed timings. Members desirous of availing the said facility may send their option to the Institute.

FROM	PICK UP POINT	BUSES WILL DEPART DURING
MUMBAI	Airport	7:30 AM - 9:00 AM
	Dadar Railway station	7:30 AM - 9:00 AM
	CCGRT, Belapur	8:30 AM - 10:00 AM
Pune	Airport / Railway Station	7:00 AM - 9:00 AM
Lonavala	Railway Station	9:00 AM - 12:00 Noon

IMPORTANT :

1. Delegates are requested to provide their option for availing the transport facility with the details of the pick up point and time of their choice.
2. The Institute will try to accommodate all requests received upto 25th September, 2012.
3. Delegates who will be reaching the pick up point without prior intimation may be considered subject to availability of seats.
4. The Institute will not be taking any responsibility if delegates fail to report at the respective pickup points at the pre-defined timings. In such a scenario, they will have to make their own arrangements for travelling to Aamby Valley.
5. Delegates who fail to report before time, may be considered to be accommodated in the next bus subject to availability of seats.
6. The timings are subject to change depending upon the availability of delegates.
7. Packed breakfasts/ snacks will be served in the buses.

NATIONAL ELECTRONIC FUNDS TRANSFER (NEFT) (For NEFT Mandate Please visit www.icsi.edu)

Programme Credit Hours

Members of the Institute will be entitled to 10 (ten) Programme Credit Hours.

Students attending National Convention would be deemed to have complied with the requirement of attending 25 (Twenty Five) hours of Professional Development Programme (PDP).

Background Papers

A soft copy of the Backgrounder & Pilot Papers will be sent in advance to delegates whose nominations are received on or before August 31, 2012.

Accompanying Spouse and Children

Accompanying spouse and children registered for the Convention will be eligible to participate in Lunch, Dinner, Cultural Evening and other attractions of the Convention.

Venue of the Convention

Aamby Valley

District Pune -410401

Tel. : 020-22900000

Fax : 020-22965040

Website : www.aambyvalleycity.com

40TH NATIONAL CONVENTION OF COMPANY SECRETARIES

DELEGATE REGISTRATION FORM

The Secretary & Chief Executive Officer

The Institute of Company Secretaries of India,
C-37, Sector - 62, Institutional Area, Noida - 201 309

FOR OFFICE USE

Date of Receipt	
Delegate Registration No.	

Dear Sir,

Please register Mr./ Ms. as a delegate for attending the 40th National Convention of Company Secretaries to be held during October 4-6, 2012 at Aamby Valley, Mumbai. The particulars of the delegate are as under :-

1.	Name of the Delegate			
2.	Designation			
3.	Name and Address of the Organization (Professional Address) (may attach Visiting Card)		Address of the Delegate (for correspondence pertaining to 40th National Convention)	
4.	E-Mail		Mobile No.	
5.	Telephone Numbers(incl. STD Code)		Fax Numbers	
6.	If Senior Citizen, Date of Birth		option for transport Facility to Amby Valley (please refer Para D)	Pickup point Time
7.	a) ACS/FCS NO.,	b) CP NO.	c) Student Regn. No.	d) ICAI/ ICWAI Membership No.
8.	Name of Accompanying Spouse / Guest			Non.Veg Veg.
9.	Details of Payment		Rs.	
(i)	Delegate Fee (Member of ICSI, ICAI or ICWAI/ Non-Member/ Student/ CP Holder/ Member above 60 Years/ Foreign Delegate)			
(ii)	Accompanying Spouse Fee			
(iii)	Amount for Hotel Booking from 4.10.2012 (Check in 12:00 Noon) to 6.10.2012 (Checkout 10:00 AM) TTick whichever is applicable) at Aamby Vally			
	Occupancy Basis	Category of Room' (please tick whichever is applicable)	Supreme/ Pyramid Cottage Town Plaza Cottage Aussie Chalet Room	
	• Twin Sharing Basis			
	• Single Occupancy Basis		Rs.	
	• Double Occupancy Basis		Rs.	
	• Triple Occupancy Basis (consolidated payment for all three delegates to be remitted) (* Name of Other Two Delegates / Guests		Rs.	
	1.	2.		
	• Additional Charges in respect of Accompanying Children		Rs.	
	Total Amount		Rs.	
10.	Details of Payment			
	Bank Draft/ Payable At Par Cheque bearing No. dated..... for Rs. favouring "The Institute of Company Secretaries of India" payable at New Delhi OR Fee Acknowledgement bearing No. dated for Rs. is attached. Amount transferred to Institute's Bank Account through NEFT Mode on vide Transaction Number			

Yours faithfully,
(Signature of the Sponsoring Authority/ Delegate)

Notes :

- Kindly mention your E-Mail Id / Mobile Number in this form legibly. Delegate Registration Letter / Confirmation of Hotel Accommodation will be sent by E-Mail.
- In view of limited availability of hotel accommodation, even after remitting the requisite fee, kindly DO NOT treat the booking as confirmed until a formal confirmation is received by you from the Institute.

40TH NATIONAL CONVENTION OF COMPANY SECRETARIES

Sponsorship/Advertisement Tariff

1. Principal Sponsor	2100000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	15 delegates
- Display at Convention Backdrop	
- Special acknowledgement	
2. Co-Sponsor	1100000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	10 Delegates
- Display at Convention Backdrop	
- Special acknowledgement	
3. Sponsorship for Bags	1000000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	8 delegates
- Display at the Convention Backdrop	
- Acknowledging Support	
4. Sponsorship for Dinner	1200000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	9 Delegates
- Display at Convention and Dinner site	
- Special acknowledgement	
5. Sponsorship for Lunch	1000000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	9 Delegates
- Display at Convention and Lunch site	
- Special acknowledgement	
6. Sponsorship for High Tea	500000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	3 Delegates
- Display at the Site of High Tea	
- Acknowledging Support	
7. Platinum Sponsor	400000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	3 Delegates
- Display at Convention Site	
- Acknowledging Support	
8. Golden Sponsor	300,000
- One special full page advertisement	

	in the Souvenir	
- Delegate fee(non-residential) exemption		2 Delegates
- Display at Convention Site		
- Acknowledging Support		
9. Silver Sponsor		200,000
- One special full page advertisement in the Souvenir		1 Delegate
- Display at Convention Site		
- Acknowledging Support		
10. Souvenir Sponsor		500000
11. Cultural Programme Sponsor		500000
12. ADVERTISEMENTS IN SOUVENIR		
	Back Cover (Display of one banner)	100,000
	Third Cover (Display of one banner)	75,000
	Second Cover(Display of one banner)	75,000
	Special F.Page (coloured printing)	50,000
	Full Page (B/W)	25,000
	Half Page	15,000
13. Banner		
	(I) 8' x 3' + Spl. Full Page Advertisement (Colour)	1,00,000
	(I) 8' x 3'	50,000
	(II) 6' X 3'	35000
14. Stall	6' X 6'	50,000
15. Distribution of Publicity Material, literature, Pen/Pad etc.		100,000
16. Sponsorship of Pen/ Pad		100,000
17. MISCELLANEOUS		
	1. For any member who procures advertisements above Rs. 2,00,000 ● Delegate fee (non-residential) exemption for 2 delegates	
	2. For any member who procures advertisements above Rs. 1,00,000 ● Delegate fee (non-residential) exemption for 1 delegate	
	3. 10% Incentive to the Chapter for procuring any of above sponsorships / advertisements	

40TH NATIONAL CONVENTION OF COMPANY SECRETARIES

SPONSORSHIP/ADVERTISEMENT FORM

The Secretary & Chief Executive Officer
The Institute of Company Secretaries of India
ICSI House, 22, Institutional Area,
Lodi Road, New Delhi - 110 003

We are pleased to sponsor the following activities at the 40th National Convention of Company Secretaries

Dates : October 4-6, 2012

Venue : Aamby Valley, Mumbai

- Principal Sponsor ☐
- Co-Sponsor ☐
- Sponsorship for Dinner ☐
- Sponsorship for Bags ☐
- Sponsorship for Lunch ☐
- Sponsorship for High Tea ☐
- Souvenir Sponsor ☐
- Cultural Programme Sponsor ☐
- Platinum Sponsor ☐
- Golden Sponsor ☐
- Silver Sponsor ☐
- Advertisements in Souvenir ☐
 - ☐ Back Cover ☐ Second Cover ☐ Third Cover
 - ☐ Special Full Page (colour printing)
- ☐ Full Page (B&W) ☐ Half Page (B&W)
- 11. Advertisements in Backgrounder
 - ☐ Back Cover ☐ Second Cover ☐ Third Cover
- 12. Banner ☐
- 13. Stall ☐
- 14. Distribution of Publicity Material, Literature, Pen/Pad etc. ☐

We are forwarding herewith draft /cheque for Rs. ____ drawn in favour of **"The Institute of Company Secretaries of India"** payable at New Delhi.

* The advertisement Matter / Art Work / Bromide / CD is / are enclosed / being sent separately.

Yours sincerely,

(Signature)
Sponsoring Authority

Date

Name of the Organisation
.....
Address
.....
..... PIN.....
Tel./Mobile No.

40TH NATIONAL CONVENTION OF COMPANY SECRETARIES

HOTEL TARIFFS & DISTANCE FROM VENUE/ RAILWAY STATION/ AIRPORT, ETC.

SL NO.	HOTEL	INDICATIVE TARIFF/ RENT (PER ROOM/ NIGHT IN RS.)	OTHER FACILITIES/ COMPLIMENTARIES	DISTANCES FROM HOTEL (KMS.)		
				Venue	Airport (Pune)	Rly. Stn. (Lonavala)
1	HOTEL SAPPHIRE PLOT NO. 75/11/12, NEAR L&T TRAINING CENTRE, GOLD VALLEY ROAD, NEW TUNGARLI, LONAVALA Tel. : 02114-324048/ 323350 Fax : 02114-279507 <i>E-Mail : hotelsapphire@gmail.com</i> <i>Website : www.hotelsapphire.co.in</i>	4000 on SO 5000 on DO (without Lunch & Dinner) 4500 on SO 6000 on DO (with Lunch & Dinner)	<ul style="list-style-type: none"> Standard Rooms Checkin & Checkout Time : 10 A.M. Checkouts beyond 11 AM full day tariff applicable Children below 10 years free. Above that Rs. 1000 per night. Swimming Pool, Indoor Games, Gym, etc. 	20	70	10 minutes drive
2	COSSET-A BOUTIQUE HOTEL, MUMBAI-PUNE ROAD, LONAVALA TEL. : 9823138381, 02114-271425/ 275425 <i>E-Mail : rahulsethi321@yahoo.com</i>	3500+ Taxes	<ul style="list-style-type: none"> Checkin 12 Noon & Checkout 11 AM Extra Bed : Rs.750 per night Lunch/ Dinner : Approx Rs.350 (per pax) Welcome Drink Tea/ Coffee Makers in the Room 10% special discount at Hotel's premium Chikki Outlet Net cricket - subject to the car park condition Karaoke (only for groups) 	25	60	1.5
3	LAGOONA RESORT, S. NO. 55, TUNGARLI VILLAGE LONAVALA TEL. : 02114-279786 FAX. : 02114-273818 <i>E-Mail : info@thelagoonresort.com</i> <i>Website : www.thelagoonresort.com</i>	5500 on SO; 6000 on DO (without Lunch & Dinner) 6500 on SO & 7000 on DO (with Lunch & Dinner)	<ul style="list-style-type: none"> Welcome Drink Tea/ Coffee Makers in the room Cookies/ Fruits in the room 20% discount on room service, laundry, telephone, etc. Iron Box on request Checkin 12 Noon & Checkout 11 AM Extra Bed : Rs.2000 per night For Children : Rs. 1500 per night 	25	60	1
4	BIJI'S HOTEL, OFF MUMBAI-PUNE HIGHWAY, NEW TUNGARLI ROAD, LONAVALA TEL. : 02114-279654/5 FAX : 02114-279656 <i>E-Mail : bijishotelonavl@gmail.com</i> <i>Website : www.bijishotel.com</i>	5000 + taxes on SO; 6000 + taxes on DO	<ul style="list-style-type: none"> Welcome Drink Tea/ Coffee Makers in the rooms Cookies/ Fruits in the room Early Checkin subject to availability Extra bed : Rs.1500 per person Children upto 5 years : Complimentary 5-12 years : Rs.1000 per night, : 12-18 years Rs.1500 per night. Spa, Steam, Sauna, Jacuzzi on Chargeable basis 	16	45	1.5

40TH NATIONAL CONVENTION OF COMPANY SECRETARIES

HOTEL TARIFFS & DISTANCE FROM VENUE/ RAILWAY STATION/ AIRPORT, ETC.

SL NO.	HOTEL	INDICATIVE TARIFF/ RENT (PER ROOM/ NIGHT IN RS.)	OTHER FACILITIES/ COMPLIMENTARIES	DISTANCES FROM HOTEL (KMS.)		
				Venue	Airport (Pune)	Rly. Stn. (Lonavala)
5	CLOUD 9 RESORTS, AMBEY VALLEY ROAD, VILLAGE: JAMBULENE, TAL. MULSHI, LONAVALA TEL. : 9833350566 E-Mail : cloud9hillresort@gmail.com Website : www.colud9lonavala.com	5250 - 8750 on DO depending upon the type of room inclusive of all meals and taxes	<ul style="list-style-type: none"> • Welcome Drink • Deluxe Cottage/ Hill Top Deluxe Cottage/ Super Deluxe/ Hill Top Luxury Suite, etc. • Checkin : 12 Noon and Checkout 10 AM • Indoor games like Carrom, Chess, etc. • Children upto 5 years complimentary; above 5 years, Rs.1500 per child including all meal and taxes 	6	115 (Mumbai)	16
6	REVENIR HOLIDAYS, PLOT NO.5, OPP. LAGOONA RESORT TUNGARLI LONAVALA TEL. : 02114-277592/ 272190 E-Mail : info@revenirholidays.com Website : www.revenirholidays.com	3750 + taxes on SO/ DO/ TO	<ul style="list-style-type: none"> • Welcome Drink • Cookies/ Fruits in the room • Swimming Pool • Children below 12 years complimentary with breakfast; Above 12 years will be chargeable. 	30	65 (Pune)	3
7	THE RETREAT RESORT, PLOT NO. 20 (PT.) + 21, NEAR GURUKUL SCHOOL, TUNGARLI, LONAVALA TEL. : 02114-270448 E-Mail : theretreatresorts@gmail.com Website : www.theretreatresorts.com	2750 on SO, 5000 on DO, 6600 on TO	<ul style="list-style-type: none"> • Luxury/ Deluxe/ Suit Rooms • Welcome Drink • Tea/ Coffee Makers in the rooms • Early Checkin subject to availability • Children upto 8 years - Rs.1500 extra per child • Indoor Games like Carrom, Table Tennis, etc. 	23	70	1
8	SAI MORESHWAR RESORT, PLOT NO. 5, S.NO.1764/4, FARIYAS HOTEL TURN, LONAVALA TEL. : 02114-277381/ 277361 E-Mail : saimoreshwar@gmail.com Website : www.saimoreshwarhotels.com	2583 - 4110 on SO/ DO depending upon the type of room	<ul style="list-style-type: none"> • Standard/ Deluxe/ Suit Rooms • Welcome Drink • Tea/ Coffee Makers in room • Iron Box on request • Early Checkin subject to availability • Extra Bed : Rs.1000 per person • Lunch/ Dinner : Rs.850 per person per day • Children upto 12 years complimentary, Above 12 years fully chargeable • Indoor Games, Swimming Pool • Sauna, Steam, Jacuzzi, etc. on chargeable basis 	25	70	1.5

40TH NATIONAL CONVENTION OF COMPANY SECRETARIES

HOTEL TARIFFS & DISTANCE FROM VENUE/ RAILWAY STATION/ AIRPORT, ETC.

SL NO.	HOTEL	INDICATIVE TARIFF/ RENT (PER ROOM/ NIGHT IN RS.)	OTHER FACILITIES/ COMPLIMENTARIES	DISTANCES FROM HOTEL (KMS.)		
				Venue	Airport (Pune)	Rly. Stn. (Lonavala)
9	FERIYAS RESORT, FRICHEY HILLS , TUNGARLI, LONAVALA TEL. : 02114-273852/4/5 Fax : 02114 272080 E-Mail : lonavlasales@fariyas.com Website : www.fariyas.com	7000 + taxes on SO 8000 + taxes on TO Inclusive of all meals	<ul style="list-style-type: none"> Welcome Drink Tea/ Coffee Makers in the room Sauna, Steam, Jacuzzi, etc. on chargeable basis Early Checkin subject to availability on chargeable basis Extra Bed : Rs.3500 + taxes Children upto 5 years complimentary, 5-12 years : Rs.2000, 12-18 years : Rs.3000 Indoor Games like Carrom, Swimming Pool, Water Park, Gym & Pool Side Games, etc. 	--	95 (Mumbai) 65 (Pune)	3

Lonavala STD Code : 02114 SO/ DO/ TO : Single/ Double/ Triple Occupancy Basis

IMPORTANT INSTRUCTIONS :

1. Delegates may book their accommodation directly with these hotels and they may not send any amount on account of hotel accommodation to the Institute. They are also requested to settle their bills at the time of Checkout at the hotel itself.
2. There are different types of rooms in each hotel with varying tariff.
3. Delegates may negotiate with these hotels for better rates.
4. The rates/ taxes are indicative and subject to change without notice.
5. Refund of hotel accommodation charges once paid by the delegate to the hotels would depend purely on the policy of the Hotel. The Institute will not be responsible in any way for the refund of advance payment made to these hotels.



ATTENTION MEMBERS !

IDENTITY CARDS FOR MEMBERS

Members who are yet to get the Identity Card issued from the Institute are requested to apply for the same along with their latest two coloured passport size photographs in the format given below (indicating on the reverse the Name and Membership Number) to the Membership Section of the Institute at ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003. For queries, if any, contact on -

Phone No. 011 45341061

Mobile No. + 91 9868128682

Email Ids member@icsi.edu / acs@icsi.edu

Request for issue of Member's Identity Card

Please send latest two coloured passport size photographs mentioning your name & membership no. on the reverse of the photograph alongwith the following details:

Membership No. ACS/FCS

Name

(in block letters)

(First Name)

(Middle Name)

(Surname)

Date of birth

Phone: Office: Residence:

Mobile No.

E-mail address

Passport
size coloured
photograph

Signature with date

1227

CHARTERED SECRETARY



September
2012



Online Services available to Members

Attention Members !

Members of the Institute are informed that online services are already available to members for making applications/requests for Membership and other related issues. The process of ACS/FCS admissions/Issue of Certificate of Practice/Renewal of Certificate of Practice have since been made online and the members can generate their letter of admission of ACS/FCS/issue of certificate of practice/Renewal of Certificate of Practice on their own through Institute's portal www.icsi.in. The details of the same are given below:

A) Facility for making Online applications/requests on the following through Institute's portal www.icsi.in:

- ◆ Admission as an ACS/FCS
- ◆ Issue of Certificate of Practice
- ◆ Change of Address
- ◆ Duplicate I-Card for Members
- ◆ Request for Issue of Chartered Secretary
- ◆ Restoration/Cancellation of Membership
- ◆ Renewal/Restoration/Cancellation of Certificate of Practice
- ◆ Approval of Proprietorship Concern/Partnership Firm Name of Company Secretaries in Practice
- ◆ Enrolment as Life Member of CSBF
- ◆ Issue of Transcripts

B) Facility for acceptance of payment online from the Members is available through Institute's portal www.icsi.in

- ◆ Annual Membership fee
- ◆ Certificate of Practice fee
- ◆ Restoration fee and Entrance Fee
- ◆ CSBF subscription.

C) Online change of address by the members on their own through Institute's portal www.icsi.in

The members can change their professional/residential address/contact details through Institute's portal www.icsi.in by following the steps given below:

- i. Login to portal www.icsi.in
- ii. Login to self profile by entering the membership number and password
- iii. Once logged in, the member has to click on the Link 'Change of Address'
- iv. A window will be displayed with the buttons 'Professional' and 'Residential'
- v. Click on the relevant Button i.e. Professional or Residential and change the details and click on 'go' button
- vi. A screen will be displayed with the options 'Existing details as per records' and 'Enter change details'
- vii. Change the details as required and press on 'submit' button
- viii. The details will be automatically updated once authenticated by Membership Section

D) Automation of ACS/ FCS Admission letters and Issue of Certificate of Practice letters/Renewal of Certificate of Practice Letters.

The newly admitted ACS/FCS members and Certificate of Practice Holders can generate their letter of admission confirming their ACS/FCS number and date of admission and letter confirming their issue of Certificate of Practice number/Renewal of Certificate of Practice by creating/resetting their password at Institute's portal www.icsi.in by following the steps given below:

- i. Login to portal www.icsi.in
- ii. Login to your profile by entering the membership number and password
- iii. Once logged in, the member has to click on the Link 'Letters'
- iv. A window will be displayed with the dropdown list 'ACS/FCS Letter/Issue of Certificate of Practice Letter'
- v. Click on the relevant option i.e. 'ACS/FCS Letter/Issue of Certificate of Practice Letter/Renewal of Certificate of Practice Letter' and press on 'Submit' button
- vi. Letter in PDF format will be displayed (Make sure that pop up blocker is not on in Internet Explorer Browser)

Members are requested to utilize the aforesaid online services available on Institute's portal www.icsi.in for availing realtime services and provide their feedback on the same to Mrs. Meenakshi Gupta, Joint Director at email id meenakshi.gupta@icsi.edu or Mr. Santosh kumar Jha, Programmer at email id santosh.jha@icsi.edu. In case of any difficulty in availing the online services, please contact the said officials on telephone numbers 011-45341048/62/24636467.

Guidelines for Identifying Star/Icon Members of the Institute

The Institute of Company Secretaries of India (ICSI) has decided to identify the Icon/ Star members of the Institute so as to enable them to experience belongingness to the Institute as also avail of their expertise from time to time. The Council has laid down the following guidelines to identify Star / Icon members of the Institute:-

1. "Star/Icon member" means any member who brings repute to the profession or the Institute either by his high profiled position in employment either in Central / State Government or in public sector undertaking or private organisation / Corporates or Regulatory Authorities or in the opinion of the Council has made significant contribution in the regulation and development of the profession of Company Secretaries or in the development of the Institute or of its Regional Offices / Chapters.
2. In order to identify Star / Icon members, the following criteria shall be followed:-
 - (i) A Member of the Institute who had been or has been holding under the Central or State Government a post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India for atleast one year.
 - (ii) A Member of the Institute who had been / or has been a member of the Indian Legal Service and had /has held a post in Grade I of the service for at least one year.
 - (iii) A Member of the Institute who had held or holding the position of MD/ Director/ Company Secretary/ CEO/ CFO/President/Vice President of group companies or equivalent position in PSUs/ Banks /Multinational Corporations and Corporate houses or in a Body Corporate having Annual Turnover of rupees hundred crores or more for a period of atleast one year.
 - (iv) A Member of the Institute holding office of the Presiding Officer of Judicial/ Quasi Judicial authorities / Tribunals / Boards for a period of more than one year.
 - (v) A Member of the Institute who in the opinion of the Council had/has made significant contribution in the regulation and development of the profession of Company Secretaries or in the development of the Institute.

(vi) A Member of the Institute considered by the Council on the recommendation of the concerned Regional Council / Chapter having made significant contribution in the regulation and development of the profession of Company Secretaries or in the development of the Institute.

(vii) A Member who had/ has published research work of repute related to the profession of Company Secretaries.

(viii) A Member of eminence having outstanding achievement in the field of law, business, economics, finance, commerce, accountancy or any other field as may be deemed appropriate by the Council.

In case the profile of any member or his contribution to the profession or achievement does not fall under the aforesaid guidelines, the request for considering him/ her as star/ icon member shall be referred to the Council for deciding his status as Icon / Star member of the Institute.

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.



COMPANY SECRETARIES BENEVOLENT FUND

DONATIONS RECEIVED FOR THE FAMILY OF LATE RAVI GOUR, ACS-29682

Sl. No.	Name of the Donor	Membership No.	Amount Rs.
1	CS Sanjay Grover	FCS - 4223	50,000
2	CS Dhiraj Kumar Arora	ACS - 28079	12,000
3	CS Sanjay Mitra	ACS - 12625	10,000
4	CS Surya Kant Gupta	ACS - 29849	5,100
5	CS Vineet Chaudhary	FCS - 5327	5,100
6	CS Robin Garg	ACS - 24448	5,000
7	CS T P Subbaraman	FCS - 141	5,000
8	CS Devesh Kumar Vasisht	ACS - 22901	4,500
9	CS Aditya Rungta	ACS - 26517	3,500
10	CS Kalpana Rakhecha	ACS - 22608	3,100
11	CS Gagan Aggarwal	ACS - 22443	3,000
12	CS Anjali Yadav	FCS - 6628	2,500
13	CS P S Samson	ACS - 17521	2,500
14	M/s. Chandrasekaran Associates		2,500
15	CS Anju Jain	FCS - 5282	2,100
16	CS Anshul Agarwal	ACS - 23403	2,100
17	CS Deepika Bangia	ACS - 28661	2,100
18	CS Mohit Maheshwari	ACS - 16914	2,100
19	CS Dharmendra B. Ganatra	FCS - 4472	1,750
20	CS Neha Malik	ACS - 20175	1,500
21	CS Supreet Kaur	ACS - 29545	1,500
22	CS Vineet Malhotra	ACS - 28833	1,500
23	CS A Ganesan	ACS - 1503	1,001
24	CS Amit Jain	ACS - 14633	1,000
25	CS Anil Sharma	ACS - 22227	1,000
26	CS Ankit Kumar Jain	ACS - 21893	1,000
27	CS Ashok Saxena	FCS - 4313	1,000
28	CS Ashwani Rajput	FCS - 4580	1,000
29	CS Gopichand Rohra	FCS - 974	1,000
30	CS Jatin Chadha	ACS - 29896	1,000
31	M/s. Jitendra Kumar & Associates		1,000
32	CS Kamal Nath Thakur	ACS - 14406	1,000
33	CS Rahul Chadha	ACS - 20819	1,000
34	CS Ved Prakash Gupta	ACS - 4467	1,000
35	CS Yogesh Saluja	ACS - 21916	1,000
36	CS Richa Sharma	ACS - 26832	500

DONATIONS RECEIVED FOR THE FAMILY OF LATE BRIJESH NANDINI RAGHAV, ACS-19178

1	CS Naresh Verma	FCS-5403	20,000
2	CS Nidhi		20,000
3	CS N P S Chawla	ACS - 20415	15,000
4	CS Harish K Vaid	FCS - 1431	11,000
5	CS K K Singh	FCS - 4092	11,000
6	M/s. Deep Charitable Institution		11,000
7	CS G P Sahi	FCS - 2990	10,000
8	CS Jitesh Gupta	FCS - 3978	10,000
9	CS Preeti Malhotra	FCS - 3680	10,000
10	CS Rajesh Lakhnarpal	FCS - 5679	10,000
11	CS Sanjay Mitra	ACS - 12625	10,000
12	CS Satwinder Singh	FCS - 2752	10,000
13	CS Vanita Taneja	ACS - 25052	10,000
14	CS Manish Tully	ACS - 13433	5,500
15	CS Amit Vinayak	FCS - 5119	5,100
16	CS Shikha Jain	ACS - 23326	5,100
17	CS Aarthi G. Krishna	FCS - 5706	5,000
18	CS Arvind Kumar Chauhan	ACS - 16387	5,000
19	CS Devika Khandelwal	ACS - 25056	5,000
20	CS G. Ramarathnam	FCS - 1021	5,000

21	CS Harvinder Singh	FCS - 5385	5,000
22	CS Jayant Sood	FCS - 4482	5,000
23	CS L R Puri	FCS - 27	5,000
24	CS Lalit Jain	FCS - 2370	5,000
25	CS Pawan Kumar Rustagi	FCS - 3815	5,000
26	CS Rajiv Bajaj	FCS - 3662	5,000
27	CS Ranjeet Pandey	FCS - 5922	5,000
28	CS Saket Sharma	FCS - 4229	5,000
29	CS Seema Thapar	FCS - 6690	5,000
30	CS Sooraj Kapoor	FCS - 623	5,000
31	CS Sudhir A Bidkar	FCS - 3889	5,000
32	Undisclosed		5,000
33	CS Kalpana Rakhecha	ACS - 22608	3,100
34	M/s. Chandrasekaran Associates		2,500
35	CS Anjali Yadav	FCS - 6628	2,500
36	CS K N Shridhar	FCS - 3882	2,500
37	CS P S Samson	ACS - 17521	2,500
38	CS Parveen Sharma	ACS - 20911	2,500
39	CS Suman Kumar	FCS - 6127	2,500
40	CS Anju Jain	FCS - 5282	2,100
41	CS Anshul Agarwal	ACS - 23403	2,100
42	CS B S Goyal	FCS - 4204	2,100
43	CS Rajendra Kumar Mangal	ACS - 9877	2,100
44	CS S S Sharma	FCS - 1650	2,100
45	CS Sonia Niranjana Das	ACS - 14269	2,100
46	CS Awanish K Dwivedi	ACS - 25435	2,000
47	CS C.S. Gugliani	FCS - 4301	2,000
48	CS Maya Gupta	FCS - 6854	2,000
49	CS Navneet Kumar	ACS - 19481	2,000
50	CS Sachin Gupta	ACS - 14536	2,000
51	CS Saurabh Khanna	ACS - 20160	2,000
52	CS Sonali Singh	ACS - 26585	2,000
53	CS Tarun Kumar Chaurasia	ACS - 21141	2,000
54	CS Dharmendra B. Ganatra	FCS - 4472	1,750
55	CS Amit Kaushal	FCS - 6230	1,500
56	CS Bhupesh Gupta	FCS - 4590	1,100
57	CS Jyoti Gera	ACS - 19941	1,100
58	CS Niraj Kumar Bansal	ACS - 20120	1,100
59	CS Nitin Sharma	ACS - 21191	1,100
60	CS Raju Aggarwal	ACS - 27287	1,100
61	CS Raju Singh Tomar	FCS - 5617	1,100
62	CS Sonika Jain	ACS - 14266	1,100
63	CS A Ganesan	ACS - 1503	1,001
64	CS Abhay Kumar Sharma	ACS - 20939	1,000
65	CS Akansha Kapoor	ACS - 24477	1,000
66	CS Amit Jain	ACS - 14633	1,000
67	CS Deepak Gupta	FCS - 4615	1,000
68	CS Garima Tripathi	ACS - 20486	1,000
69	CS Gopichand Rohra	FCS - 974	1,000
70	CS Manish Kumar	FCS - 6663	1,000
71	CS Pankaj Goel	ACS - 21766	1,000
72	CS Rahul Chadha	ACS - 20819	1,000
73	CS Richa Sharma	ACS - 26832	1,000
74	CS Sujit Kumar Singh	FCS - 6417	1,000
75	CS Ved Prakash Gupta	ACS - 4467	1,000
76	Shri K K Maheshwari	Regn No. 520330921	1,000
77	Shri Raj Kumar	Regn No. 220786486	1,000
78	CS Gunjan Saluja	ACS - 27677	500

DONATIONS RECEIVED FOR THE FAMILY OF LATE DINESH TOMAR, ACS-10300

1	CS Navin K. Pahwa	FCS - 2908	25,000
2	CS Bal Kishan Sharma	FCS - 3499	7,500
3	CS G Ramasubramanian	ACS - 4510	3,000

DONATIONS RECEIVED IN THE FUND DURING THE PERIOD 01-04-2012 TO 31-08-2012

1	CS D P Gupta	FCS - 2411	2,100
2	CS A Rengarajan	FCS - 6725	1,000



Our Members

CONGRATULATIONS

Shri Nesar Ahmad, FCS

President, The ICSI on his being admitted as Distinguished Fellow of Institute of Directors, New Delhi.



Shri Anil Agrawal, FCS

on his being appointed as Part-time Non-official Director on the Board of Small Industries Development Bank of India (SIDBI) for a period of three years with effect from 14.6.2012 (the date of the notification) or until further orders, whichever is earlier.

ELEVATION

Shri Sajal Ghosh, FCS,

on his being appointed as Whole-time Director of MCC PTA India Corporation Private Limited, Kolkata. Earlier he was working as Executive Vice President (HR & Administration) & Company Secretary of the Company.

OBITUARIES

“Chartered Secretary” deeply regrets to record the sad demise of the following members:

SHRI A LAKSHMANAN, ACS

(22.12.1958 - 12.06.2012), an Associate Member of the Institute from Chennai.

MS. AMRUTA KHADILKAR, ACS

(08.07.1985 - 23.03.2012), an Associate Member of the Institute from Thane.

SHRI ANUJ MALIK, ACS

(27.12.1959 - 30.06.2012), an Associate Member of the Institute from New Delhi.

SHRI P S MUTHUSWAMY, ACS

(19.09.1933 - 13.08.2012), an Associate Member of the Institute from Coimbatore.

SHRI PABITRA SENGUPTA, ACS

(04.10.1927 - 06.04.2012), an Associate Member of the Institute from Kolkata.

SHRI PRAMOD KUMAR NAGPAL, FCS

(03.07.1956 - 15.06.2012), a Fellow Member of the Institute from New Delhi.

SHRI RAMMOHAN RACHAMALLA, ACS

(22.08.1977 - 02.07.2012), an Associate Member of the Institute from Hyderabad.

SHRI SHREE LALL DWARKANI, ACS

(11.11.1945 - 22.11.2011) an Associate Member of the Institute from Faridabad.

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

May the Departed Souls rest in peace.

CS QUIZ

Prize query

The holding of the promoters of a company increased consequent to the buy-back of shares by the company. Does this call for a public announcement under the Takeover Regulations?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th October, 2012.
- 3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors will be published in the journal.
- 4] The envelope should be superscribed '**Prize Query September, 2012 Issue**' and addressed by name to :

N. K. Jain, Editor

The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110003.

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