



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

EXPLORE MORE

Opportunities beyond Companies Act

NAGPUR CHAPTER OF WIRC OF ICSI

E BULLETIN

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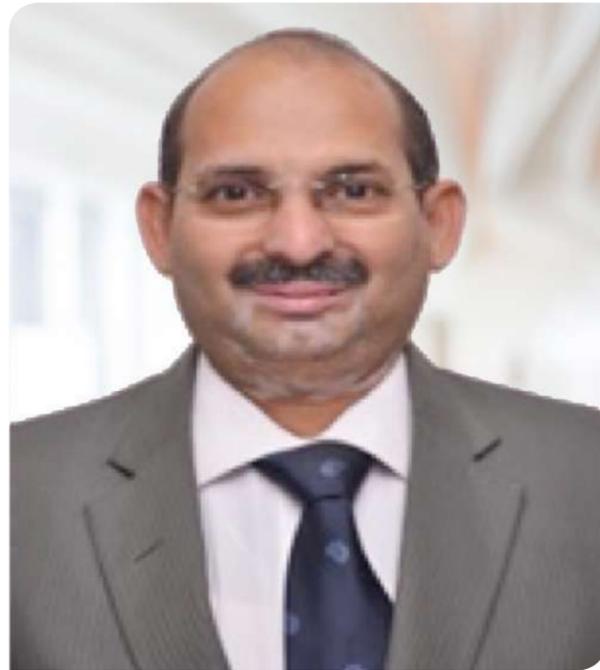
Placement drive for young members

15 days EDP

Full day conference for members

Half day conference for students

PRESIDENT MESSAGE



“The capacity to learn is a gift; The ability to learn is a skill; The willingness to learn is a choice.”

~ Brian Herbert

Company Secretaries or Governance Professionals, as we call ourselves, have in the past five decades come to play some of the most dynamic and vibrant roles as regards the Indian economy. From being Compliance Officers to taking up significant roles and occupying momentous designations of the likes of Key Managerial Personnel, the new age professional is upholding the mast of good governance in ways more than one.

With the ever increasing expectations of the stakeholders including the Regulatory Authorities, it has become the need of the hour that the spark of learning be kindled and the

fire of knowledge must remain ignited at all times. Having realized this very significance of knowledge updation and skill upgradation, the Institute has rolled out numerous capacity building initiatives. Each of these initiatives has been intended at strengthening the professionals in a manner which not only renders them capable in strengthening the corporate governance framework but play the role of frontrunner in the process of nation building.

For an Institute having pan-India presence, with Chapters in each and every State of the country nation, it is imperative that learning, training and opportunities of self-enhancement are provided to the members and students connected through these nodes in close consonance with the Regulatory and corporate needs of these locations. It is for this reason and more, that the ICSI has always been appreciative of the efforts placed and the initiatives undertaken by the Chapters at ground level.

Having visited the Nagpur Chapter recently, I truly commend the efforts being undertaken by the Chapter towards supporting the Institute in pursuing its goal of capacity building of its members and students. Be it the discussion held on the Union Budget 2021-22 to align the roles of professionals with the agenda of the nation or the Online Crash Courses and Trainee Drives being launched for the students of the profession; the Chapter with its legacy of more than 15 years has with its host of activities and initiatives played its role of facilitator of knowledge and skill enhancement to perfection.

I congratulate the Chairman of the Nagpur Chapter of WIRC of ICSI, the Management Committee as well as all the members connected therewith on the launch of this recent initiative, the e-bulletin. I hope that the members shall continue to attain greater heights in learning and develop their professional acumen as well.

Wishing you all the very best!!!

With regards,

CS Nagendra D. Rao
President
The Institute of Company Secretaries of India

VICE PRESIDENT MESSAGE



I am happy to learn that Nagpur Chapter of WIRC of Institute of Company Secretaries of India is coming up with its next issue of e-Newsletter.

I congratulate the entire Team of the Managing Committee of Nagpur Chapter for coming forward with new ideas/initiatives for the development of members and students in spite of Covid-19 Challenges. I am sure that latest updates and important topics of professional interest would be forming part of this edition of e-Newsletter.

On this occasion, I wish to convey my best wishes to all Members of the Managing Committee of Nagpur Chapter for the year ahead and I am confident that Nagpur Chapter would scale new heights of success and glory.

It was pleasure visiting Nagpur and having an interactive meet with the members of the Nagpur Chapter.

I appreciate the excellent team work of Managing Committee of Nagpur chapter of WIRC of ICSI under the leadership of CS Khushboo Pasari.

I, on behalf of the entire Council of the Institute, assure our whole-hearted support and co-operation for the development of Chapter and look forward to receive continued support and cooperation to the cause of the profession.

With best wishes

CS Devendra V Deshpande
President
Vice President, ICSI

CHAIRMAN WIRC MESSAGE



Respected Seniors, Professional Colleagues and Dearest Students of Nagpur Chapter of WIRC of ICSI,

Seasons Greetings !!!

Human Evolution is a great example of the deep urge we all possess, an urge of Continuous improvement. Since ages, we humans, have continuously strived to be better than what we have been and the result is advancement in every aspect, be it Medical Science, Education, Technology, Spiritual Growth, etc. How can such a growth is possible, If the focus is not on building our capabilities. In my opinion, it is just not possible.

The fact is, we have always strived to develop our capabilities, majority of the people don't like to stay where they are, every one wants to move to the next level in life. Life is, some or the other way, like a video game, it starts with an easy level and as one keeps going to the further levels, the challenges become difficult and that is exactly the fun part of it, overcoming something bigger than what one has ever done.

The above para goes well with Nagpur, wherein I am witnessing the similar enthusiasm and targeted efforts being planned by the present Committee in forthcoming months, wherein Joint program of Members and Student with WIRC and WIRC's Annual Regional PCS Conference is planned and I am particularly happy with the detailing with which the TEAM Nagpur is executing the things at Chapter level for the benefits of Members and Students of ICSI.

Further, I am sure at recent interactions, at Nagpur, of Members with the ICSI President and Vice-President must have helped all the present at that meeting to know ICSI plans and initiatives, for the predictable future, which I must say are bright and promising.

I would like to sign off with a thought that, "facts" are always limited and "Possibilities" are always "limitless". The Gap between Fact and Possibilities is often bridged by "Developing our Capabilities". Let's achieve this through concerted efforts of we all for the benefit of our profession.

With regards,

CS Pawan G Chandak
Chairman WIRC - ICSI
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CHAIRPERSON MESSAGE

Nagpur Chapter



Respected Members and my Dear Students,

I hope you are taking good care of yourselves and you near and dear ones.

We have already accepted the new normal as we continue to battle the menace of the Coronavirus. Although vaccination drives have already started in our country, none of these offer a guarantee to safeguard us against the virus. Therefore, we must take our health very seriously and continue to adopt safety measures. There is no doubt that if one is physically fit, mental fitness follows. And in the current stressful work environment, it is imperative to "be selfish" and invest some time on self-care.

Let me now share some of the key highlights for the month of February.

Firstly, we had the honour of interacting with CS Nagendra D Rao, President of The ICSI and CS Devendra Deshpande, Vice President of The ICSI. I am sure insights shared by them would benefit us all.

Secondly, we facilitated academic collaboration between Kavi Kulaguru Sanskrit University and the Institute of Company Secretaries of India. The MOU was signed on 22nd February, 2021 and I shall share more about this initiative in my forthcoming conversations.

Thirdly, we conducted 5 one-day orientation programmes for the CSEET and the foundation passed students who were briefed about ICSI, its training structure, pattern of examination and the roles and responsibilities of a Company Secretary.

Lastly, in our endeavour to create awareness about the profession of Company Secretaries among students, we have started a career awareness programme and the first CAP was conducted at KDM girls college.

In my communique of January 2021, I had mentioned about following 3 Agendas for the JFM quarter. May I take this opportunity to update you all with the steps taken on those initiatives:

1. Infrastructure:
 - President visit was scheduled to the shortlisted premises.
 - Revised proposal submitted to HQ.
 - Personally discussed about the proposal with head infrastructure/ President/ Vice President Chairman WIRC during the leadership summit at New Delhi.
 - We are conducting regular follow-ups in this matter at various levels.
 - With these steps we have marched towards our dream of enabling better infrastructure.
2. Programs to complete the structured credit hours: Programs for 4 structured credit hours were conducted. More programs will be conducted after considering the COVID-19 situation.
3. Training and placement of members and students: CS Trainee drive-2021 has been launched and first training drive is scheduled to be held in the month of March 2021. Email has been circulated to students for registration. This initiative is expected to bridge the demand and supply gap between Trainers and Trainees.

As we march together in this journey, I seek your ideas and constructive feedback to further strengthen our Institute and its initiatives. Feel free to share your thoughts through below means:

Email: chairman.nagpur@icsi.edu

Mobile no.: 9823066446

Once again wishing you all goodness of health.

Stay Safe, Stay Strong.

Yours Sincerely

CS Khushboo Pasari
Chairperson
Nagpur Chapter of ICSI



HIGHLIGHTS

MEETING WITH THE HONORABLE MINISTER OF MSME

Shri Nitin Gadkari



ICSI SIGNS MOU FOR ACADEMIC COLLABORATION

with Kavikulguru Kalidas Sanskrit University, Ramtek, Maharashtra



The Institute of Company Secretaries of India signed a Memorandum of Understanding with **Kavikulguru Kalidas Sanskrit University, Ramtek, Maharashtra** under the ICSI Academic Collaborations initiative.

The objective of the MOU is to bring together the efforts of the two institutes for imparting knowledge and honing the skills of students, academicians and professionals of both the Institutes.

Emphasising on the need for such collaborations, CS Devendra V Deshpande, Vice President ICSI, said "This MoU would enable members of ICSI working in fortune 500 companies to deliver practical session on Corporate Governance, Crisis Management in Corporate and Career Awareness.

CS Devendra V Deshpande, Vice President, The ICSI, appreciated the University's efforts for taking up this initiative that will benefit the students and members of both the Institutes

Prof. Shrinivasa Varakhedi, Vice Chancellor, Kavikulguru Kalidas Sanskrit University, Ramtek said that this MoU will not only help in developing the skills but will also build character of the students.

Prof. Vijayakumar C G, Registrar, Kavikulguru Kalidas Sanskrit University, Ramtek also graced the occasion and congratulated both the Institutes for this Academic Collaboration.

CS Khushboo Pasari, Chairperson-Nagpur Chapter, CS Rohan Mehra, Vice-Chairman – Nagpur Chapter, CS Tushar Pahade, Member - WIRC, CS Deepti Joshi, Immediate Past Chairperson – Nagpur Chapter, CS Shantanu Jog, Past Chairman - Nagpur Chapter and other delegates along with participants attended the MoU signing ceremony.

INTERACTIVE MEET WITH President & Vice President of the ICSI



INTERACTIVE MEET WITH President & Vice President of the ICSI



ORIENTATION PROGRAM FOR STUDENTS



FELICITATION OF ALL INDIA RANK HOLDERS in CS foundation from Nagpur



 Alefiya Ilyas Raja-AIR 15



 Sakshi Sharma- AIR 22

TRANSFORMING THE COMPLIANCE LANDSCAPE

From the decriminalization of LLP act to the amendments in OPCs



Ms. Vidyul Dayal
(Associate, Research and Editorial)



Mr. Shashank Shekhar Pandey
(Associate, Research and Editorial)

Abstract:

This article deals with the recent changes introduced by the Union Budget 2021-22 which impact and transform the compliance landscape of the country. These include the decriminalization of the LLP Act, 2008 and the amendments to the Companies (Incorporation) Rules, 2014 with respect to OPCs. The article attempts to explain these changes, their effect on compliance requirements and the ease of doing business.

Introduction:

The reduction of compliance burden and propagating 'ease of doing business', were the predominant themes of the Union Budget 2021-22¹. In furtherance of the same, decriminalization of the Limited Liability Partnership (LLP) Act, 2008 and amendments to certain provisions pertaining to One Person Companies (OPCs) were proposed². These changes usher in the transforming landscape of compliance in the country by focussing on relaxing regulatory restrictions, removing redundant provisions and incorporating new concepts to benefit innovators.

The Decriminalization of the Limited Liability Partnership Act, 2008:

The proposed decriminalization of the LLP Act, 2008 aims to augment entrepreneurialism and eliminate the distress caused

by criminal prosecutions for minor, procedural omissions or commissions in the course of business transactions³. This entails a two-step amendment:

- The decriminalization of compoundable offences under the Act for greater ease of doing business for law abiding LLPs⁴, and
- The introduction of certain new concepts into the Act to ease the compliance burden⁵.

A. Decriminalizing the compoundable offences -

The said decriminalization of compoundable offences under the Act is founded upon 3 principles:

- Firstly, the offences that relate to minor compliance issues involving objective determinations are suggested to be shifted to the In-house Adjudication Mechanism (IAM) framework instead of being treated as criminal offences;
- Secondly, certain offences are proposed to be omitted from the LLP Act, which would be more appropriately dealt with under other laws; and
- Lastly, the status quo would be maintained for non-compoundable offences that are very serious violations entailing an element of fraud, intent to deceive and causing injury to public interest or non-compliance with orders of statutory authorities which affect effective regulation⁶.

In line with the principles laid out above, 12 offences enumerated under Sections 7, 8, 9, 10, 13, 17, 21, 25, 34, 35, 60, 62 and 74⁷ have been proposed by the Ministry of Corporate Affairs (MoCA) to be decriminalized which would subsequently be shifted to the IAM framework, thereby de-clogging the criminal courts from routine cases. Furthermore, Section 73 of the Act entailing criminal liability has been proposed to be omitted⁸.

B. Introducing new concepts -

Furthering the cause of greater ease of doing business, the MoCA seeks to introduce new concepts into the LLP Act, 2008. Small LLPs have been proposed as a sub-category of limited liability partnerships, in line with the concept of small companies. Small LLPs, being subject to lesser compliances, lesser fee or additional fee and lesser penalties in the event of default, would incentivize unincorporated micro and small partnerships to convert into the organized structure of an LLP and derive its benefits⁹.

Moreover, in a bid to facilitate raising of capital and financing operations thereby enhancing the capitalization of LLPs, they have been allowed to raise capital through issue of fully secured Non-Convertible Debentures (NCDs) from investors who are regulated by SEBI or RBI¹⁰. Lastly, the MoCA has also proposed to amend Section 69 of the Act with a view to reduce the additional fee of Rs. 100 per day which is presently applicable for the delayed filing of forms, documents. This move aims to incentivize smooth filing of records and returns of LLPs, thereby resulting in an updated registry for proper regulation and policy making¹¹.

One Person Companies: Amendments:

The proposals to amend certain provisions of the Companies (Incorporation) Rules, 2014 pertaining to OPCs were made in the Budget with a view to incentivize their incorporation and benefit start-ups and innovators¹². These amendments, which will materialize w.e.f April 01, 2021¹³ will especially aid the suppliers of products and services on e-commerce platforms and bring in more unincorporated businesses into the organized corporate sector. They include:

1. No restrictions on paid up capital and turnover which were contained in Rule 7 of the Companies (Incorporation) Rules, 2014;
2. Conversion into any other type of company at any time upon substitution of Rule 6;
3. Reduction of the residency limit for an Indian citizen to set up an OPC by amendment of Explanation 1 to Rule 3(1); and
4. Incorporation of OPCs in India by Non-Resident Indians (NRIs) by amending Rule 3(1).

A. Removing the limitations of paid up capital and turnover -

The OPCs have been subject to the limitations of paid-up share capital and average annual turnover, being Rs. 50,00,000 and Rs. 2,00,00,000 respectively¹⁴. Presently, the MoCA has proposed

to remove these restrictions in order to facilitate unhindered growth of OPCs¹⁵.

B. Converting into any other type of company at any time -

The omission of the rule relating to voluntary conversion unless OPC has completed two years from the date of incorporation has been proposed. Moreover, in a move granting unprecedented relaxation, the conversion of OPC into a public company or a private company will be permitted anytime. However, it is pertinent to note that an OPC may be converted into a private or public company other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or minimum of seven members and three directors as the case may be¹⁶.

C. Reducing the residency limit -

The MoCA has proposed to reduce the residency limit for NRIs to be considered as a resident in India. The residency period, which earlier stood at 182 days for NRIs, has now been reduced to 120 days¹⁷.

D. NRIs incorporating OPCs in India -

The current regime does not warrant the incorporation of OPCs by NRIs. Nevertheless, now, the amendment allows any natural person, who is an Indian citizen, irrespective of the fact whether resident in India or otherwise, to form an OPC¹⁸.

Analysis:

The above elucidated changes sincerely impact the prevailing compliance structure in the country in line with furthering the cause of ease of doing business. The decriminalization of compoundable offences under the LLP Act, 2008 eliminates distress which may be caused by criminal prosecutions for minor, procedural omissions or commissions in the course of business transactions. Thus, this decriminalization of 12 offences and omission of 1 offence from the Act and their shifting to the IAM framework instead will help unplug the judicial system¹⁹.

The introduction of new concepts like small LLPs along the lines of small companies, propagates ease of doing businesses for smaller entities who are now relieved from the heavy compliance burden which they would otherwise have to fulfil. The reduction of fees and penalties and the facilitation of an up-to-date registry for efficient regulation and policy making with respect to LLPs incentivises ease of doing business²⁰.

In respect of the amendments to Companies (Incorporation) Rules, 2014, the restrictions on paid up capital and turnover have been relaxed for OPCs, they can convert into any other type of company at any given time and their incorporation by Non-Resident Indians in India have been allowed. This simplified regime lessens compliance and incentivizes start-ups and entrepreneurs in the country, including the suppliers of products and services on e-commerce platforms, to conduct their business under a corporate foundation in an organized manner²¹.

VALUATION –

An Overview



CA Varun Parakh
MD, Kreo Capital Private Limited

Background:

Keeping in view the growing relevance and importance of valuation in business and investment decisions as well as for regulatory compliance, the development of practice of valuation as a discipline and profession has become a necessity. With growing shareholder activism, importance of independent valuations is arising all over the world including India. Valuation of Securities or Financial Assets is critical for strategic business decisions including fund raising, M&A, Sale of businesses, Strategic business decisions, Voluntary value assessment or to comply with certain regulatory or accounting requirements in India under RBI, Income Tax, Companies Act, SEBI Laws etc.

Purpose of Valuation:

Valuations can and should be used as a powerful driver of how you manage your business. The purpose of a valuation is to track the effectiveness of your strategic decision-making process and provide the ability to track performance in terms of estimated change in value, not just in revenue.

This helps you to take a holistic look at your business and make decisions that are highly impactful for your bottom line. It allows you to understand the subtle dynamics of your business and avoid unforeseen consequences of seemingly insignificant decisions.

Importance of Valuation:

We're often asked the question "Why do I need a valuation, especially if I have no intention of selling the business any time soon?" We always respond that knowing the baseline value of your business is the starting point for owners who want to effectively build a business with transferable value. Quite simply, valuations can be instrumental when it comes to accomplishing your objectives, and knowing the value of your business (throughout its life cycle) can be a helpful and effective management tool. Following, are several reasons why valuations are essential as your business continues to grow and evolve.

1. Valuation provide a baseline
2. Valuations help chart the course for the future
3. Valuation measure progress
4. Valuations can identify gaps
5. Valuations help you manage your business
6. Valuations create accountability
7. Valuation provides a benchmark
8. Valuations provide a perspective on price

Process, reporting and documentation of Valuation:

Business valuation is a process that follows a number of key steps starting with the definition of the task at hand and leading to the business value conclusion. The five steps are:

1. Planning and preparation
2. Adjusting the financial statements
3. Choosing the business valuation methods
4. Applying the selected valuation methods
5. Reaching the business value conclusion

Valuation Report exercise is based on the observation, inspection, analysis, and calculation. During this process, the valuer goes through various documents, records his observation, makes relevant calculation and records these calculations and analyses results. In this process, many documents are generated which forms the basis of his conclusion on the valuation of the subject matter.

Methodologies of Valuation:

Valuation of the enterprise or its equity shares is not an exact science and ultimately depends upon what it is worth to a serious investor or buyer who may be even prepared to pay goodwill. There are many techniques used to determine value. An analyst placing a value on a company looks at the company's

management, the composition of its capital structure, the prospect of future earnings and market value of assets.

a) Discounted Cash Flow Method

The DCF method uses the future cash flows of the company discounted by the cost of capital of the company to arrive at the present value. In general, the DCF method is a strong and widely accepted valuation tool, as it concentrates on cash generation potential of a business considering that this model is based on future potential and is widely accepted.

b) Net Asset Value Method

Net asset value method is the value of a Company's assets minus any outside liabilities. The NAV (on a per-share basis)

represents the price at which an investor can buy or sell shares of the Company.

c) Market Price Method

The market price of an equity share as quoted on a stock exchange is normally considered as the fair value of the equity shares of that company where such quotations are arising from the shares being regularly and freely traded in, subject to the element of speculative support that may be inbuilt in the value of the shares.

d) Comparable Transaction Method

The Comparable Transaction Method is a relative valuation method, wherein the details of recent transactions of similar business/ companies are considered to estimate the business/ company value.

Requirement of Valuation Report

a) Under Companies Act, 2013:

| Sr.no | Relevant Section | Particulars |
|-------|------------------|---|
| 1. | 62(1)(c) | Further Issue of Share Capital |
| 2. | 192(2) | Restriction on non-cash transactions involving directors |
| 3. | 230(2) | Power to compromise or make arrangements with creditors and members |
| 4. | 232 | Merger and Amalgamation of Companies |
| 5. | 281(1)(a) | Submission of report by Company Liquidator |

b) Under Income Tax Act, 1961:

| Sr.no | Relevant Section | Particulars |
|-------|------------------|---|
| 1. | 56 (2)(vii)(a) | Transfer of shares (redundant post April, 2017) |
| 2. | 56 (2)(vii)(b) | Issue of Shares |
| 3. | 56 (2)(x) | Transfer of movable property (including shares) |

c) Under the Insolvency and Bankruptcy Code, 2016:

| Sr.no | Relevant Section | Particulars |
|-------|------------------|--|
| 1. | 59 (3)(b)(ii) | Voluntary Liquidation of Corporate Persons |

d) Under Securities and Exchange Board of India Regulations:

| Sr.no | Regulation | Regulation Name | Particulars |
|-------|------------|---|--------------------------------|
| 1. | 28 | SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 | Pricing in Public Issue |
| 2. | 15 | SEBI (Delisting of Equity Shares) Regulation, 2009 | Offer Price |
| 3. | 7 | SEBI (Issue of Sweat Equity) Regulation, 2002 | Pricing of Sweat Equity Shares |
| 4. | 8 | SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 | Offer Price |

Thus, valuations are required for different circumstances and the purposes such as investment analysis, capital budgeting, merger and acquisition transactions, financial reporting, taxable events to determine the proper tax liability for which the valuation is intended.

Better Corporate Governance is also leading to requirement of independent Valuations. Credible valuations are critical to the efficient working of the capital markets, businesses, government and all its stakeholders.

Unquestionably, valuations serve many purposes and go well beyond "what someone would pay for your business". Used properly, valuations allow you to see the inner-workings of what's really going on in your business. That insight puts you in a competitive position as you strive to strengthen and increase the value and overall performance of the business.

ARBITRATION – Opportunities Beyond Companies Act

“At all events, arbitration is more rational, just and humane than the resort to the sword.”



CS Shraddha Kabra
B. Com, CS & CMA

Arbitration is the buzz word in the present day business contracts. The law bestows a choice upon the parties to enter commercial transactions knowing well that in case, of a dispute, they will refer their dispute to this simple, quick, convenient and cost - effective process saving them from tedious and complicated procedures of a court.

Arbitration is distinct from mediation in which parties negotiate to reach a voluntary settlement, and decisions are not binding unless all parties agree to them.

ARBITRATION LAW IN INDIA

Arbitration law in India has always been trending since its inception, in 1940. The present date arbitration law is a formation of several promulgations and ordinances passed by the government of India to meet the economic reforms taking place in the country from time to time.

Arbitration Law in India, is primary contained in the Arbitration and Conciliation Act, 1996. In an attempt to make arbitration a preferred mode of settlement of commercial disputes and making India a hub of international commercial arbitration some major amendments were introduced in the year to 2015 and 2019. The current law is a composition of several such amendments with the latest amendments being introduced in 2019.

ADVANTAGES

- Allows the parties to choose their own tribunal. This is especially useful when the subject matter of the dispute is highly technical: arbitrators with an appropriate degree of expertise (for example, quantity surveying expertise, in the

case of a construction dispute, or expertise in commercial property law, in the case of a real estate dispute) can be chose.

- Faster than litigation in court
- Arbitral proceedings and an arbitral award are generally non-public, and can be made confidential

HOW ARBITRATION WORKS ?

As arbitration is a contract-based dispute resolution mechanism, there may be steps set out in the contract which have to be followed before you can start arbitration. These can include holding meetings between senior people in the two organisations to attempt to resolve the dispute or mediation.

At first, a Tribunal is formally constituted; if there are to be three arbitrators in a two party dispute, each party will typically select one arbitrator. The nominees or the arbitral institution will select a third arbitrator to act as chair. Where there is to be one arbitrator and/or more than two parties, the agreement or the arbitral institution's rules will usually set out the appropriate approach to selecting the tribunal.

After the constitution of Tribunal the issues are determined, the issues can be issues of fact, law or quantum.

The process and the time table must be decided and then arbitration is proceeded in accordance.

It is likely to include each party producing written submissions. Typically, these will be supported by written witness statements and reports of technical experts, where appropriate.

Arbitrations usually involve one or more hearings before the tribunal, where the parties' lawyers put forward arguments

and question the other party's witnesses and experts. After the hearing, the tribunal will produce its award. This will set out the decisions it has reached on the issues between the parties. Unless the award is challenged, it determines the rights and obligations of the parties.

ARBITRAL AWARD

An award is the passing of the conclusive reasoning to the questions, issues forming the disputes that are put forward before the arbitral tribunal to decipher. The award is passed after reasonable opportunity has been granted to all parties to present their case and produced the evidence.

An arbitral award is similar to a judgment given by a court of law. In other words, an arbitral award is given by the arbitral tribunal as a decision on various issues in a matter which the parties had placed before the arbitral tribunal.

No appeal lies against an arbitral award, however, an arbitral award can only be set aside if the said award suffers from as invalid arbitration agreement, party's incapacity to enter into an agreement, independence and impartiality of an arbitrator, unfair procedure, etc. The necessary requirements are:

- Must be a decision by the majority
- Must be made in writing, signed and dated
- Must be reasoned
- Capable of being performed

ROLE OF CS IN ARBITRATION

Company secretaries are not only corporate legal experts but due to the very nature of profession, their knowledge is far superior in respect of commercial understanding. They have an edge in the sense that they understand the underlying commercial transaction or the legal framework in a more effective manner. Since they are exposed to various facets of law and the management, they can formulate a better strategy in arbitral proceedings while advising to the client. Accordingly, company secretaries in practice can act as strategist and authorized representative in arbitral proceedings.

The 2019 Amendment Act has introduced schedule Eight which specifically provides that company secretaries with 10 years of experience are eligible to be accredited as an arbitrator.

In my opinion Arbitration is an emerging area of practice available to company secretaries. In the changing circumstances, it is necessary to carve out a niche area for ourselves. For this, we need to recognise our talents and our capacity and capability, and we should be ready to accept the challenges.

FACELESS INTERFACE – A Paradigm Shift in the Indian Tax Regime



Krishna Garg
(Associate, Research & Editorial)



Risha Sharma
(Associate, Research & Editorial)

Abstract:

This article ventures to highlight the recent proposals made by the Honourable Finance Minister, Srimati Nirmala Sitharaman on February 01, 2021 in her budget speech, on a digitally driven and faceless income tax regime for a corruption free future of the nation. This article also attempts to reflect upon the legislative activities undertaken by the Government of India prior to the Budget speech, to shed light upon the trajectory the government has taken towards achieving the ambition of a digital tax regime.

Introduction:

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (Act) passed on September 29, 2020, gives the Central Government of India the power to bring out relaxations in the Income Tax regimeⁱ. The Act proposes to bring out relaxations in facets such as assessment, appeals and penalties by incorporating a faceless, transparent and efficient framework with technological and digital means. In pursuance of this objective, the Central Government notified the Faceless Assessment Scheme in 2019, the Faceless Appeals Scheme in 2020 and the Faceless Penalties Scheme in 2021ⁱⁱ.

The Central Government derives its powers from the Act above, to introduce schemes for executing the intent of a faceless and digital tax regime. The Act provides relaxing procedures under the Income Tax Act, 1961 such as, collecting information digitally for tax purposesⁱⁱⁱ, faceless valuation and inquiries by income tax authorities^{iv}, faceless assessments^v, faceless income escaping assessment^{vi}, faceless revision of orders^{vii} and collection and recovery of tax^{viii} etc. to the Central Government. The Budget of 2021-2022 proposed the digitisation and faceless mechanism of the Income Tax Appellate Tribunal, which in itself is furthering

the intent laid down in Section 231 of the above stated Act, to optimise resources for transparency and accountability in the appeals filed to the Income Tax Appellate Tribunal^{ix}.

Overview of the existing schemes:

Before discussing the highlights of the proposals made in the new Finance Bill, 2021 it is pertinent to discuss the already existing schemes enacted by the Government of India to further the policy of a faceless tax regime.

The Faceless Assessment Scheme of 2019, passed by the Central Government, already provides establishment of a National Faceless Assessment Centre (NFAC), which shall be attributed as a nodal point for all communications between the Income Tax Authorities and the Assessee for assessment purposes^x. This NFAC works in co-operation with Regional Faceless Assessment Centres (RFAC), through automated allocation systems^{xi} and all the activities and functions pursuant to income tax assessment such as obtaining information, documents or evidence from the assessee or any other person, conducting enquiry or verification, technical assistance from the technical unit etc. are done by close co-operation between the NFAC and RFAC so established under the Scheme^{xii}. These communications between the RFAC and the NFAC as well as between the income tax authorities and the assessee are already being conducted in electronic mode in a faceless manner^{xiii}. This Faceless Assessment scheme, 2019 proposes no physical appearance in the Centres or the units so established under the scheme, neither personally or through an authorised representative^{xiv} which is in line with recent proposals made by the Finance Minister in the Finance Bill, 2021^{xv}.

In addition to the Faceless Assessment Scheme, 2019 the Central Government had already passed the Faceless

Appeals Scheme 2020, in pursuance of the Act to provide establishment of National Faceless Appeal Centres which will facilitate the conduct of e-appeals in a centralised manner, and shall co-ordinate with the Regional Faceless Appeal Centres established under the same, simultaneously for facilitating the smooth conduct of e-appeal proceedings^{xvi}. On similar lines as that of the Faceless Assessment Schemes 2019, the Faceless Appeals Scheme 2020 too provides for contactless digital appearances^{xvii}. Video conferencing is included in the use of telecommunications application software and is used to carry out this contactless appeal procedure, creating ease and convenience for the assessee and authorities alike^{xviii}.

Further, Faceless Penalty Scheme, 2021 passed by the Central Government establishes National Faceless Penalty Centres and Regional Faceless Penalty Centres^{xix}. Similarly, as the above two schemes, the Faceless Penalty Scheme too establishes a co-ordinated approach between the National and Regional centres as well as the penalty review units^{xx}.

Highlights:

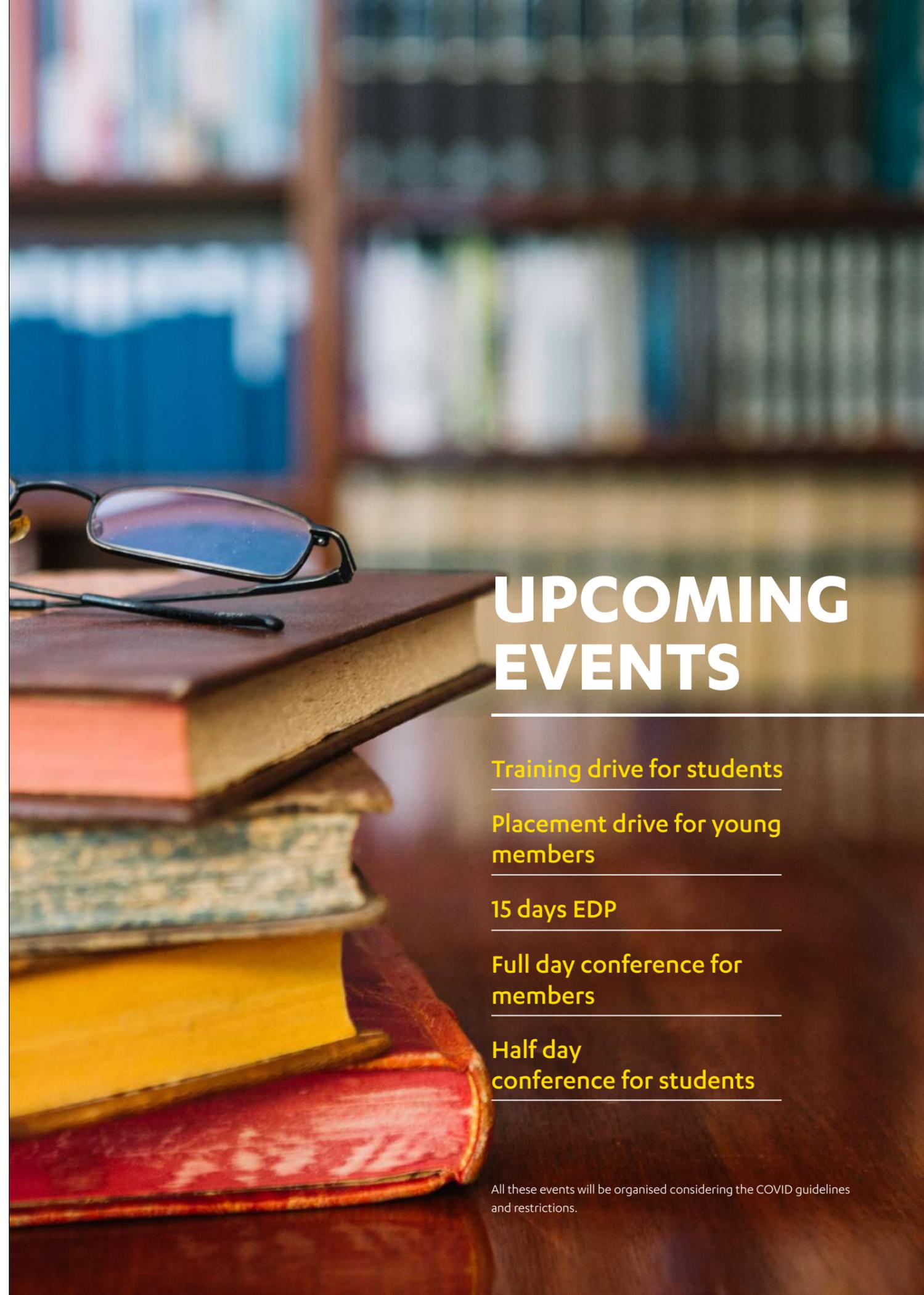
After perusing the above schemes that are already constructing a faceless framework of income tax assessment, appeal and penalties in India, it becomes important to highlight the three new proposals made in the Budget 2021-2022, cementing the layer of a faceless income tax structure in India.

1. Clause 40 of the recently proposed Finance Bill, 2021 seeks to amend Section 151A of the Income-Tax Act, 1961 for a faceless income escape assessment. It has been proposed to amend the said section so as to provide a faceless and digital mechanism for enquiry procedures or show-cause notice issues or passing orders under Section 148A of the Income-tax Act, 1961. It shall take effect from April 01, 2021. This new proposal can be seen to adding more teeth to the

proceedings conducted by the income tax officers in the faceless regime^{xxi}.

2. Clause 78 of the proposed Finance Bill, 2021 seeks to amend the Section 255 of the Income Tax Act, 1961 which deals with the procedure of the Appellate Tribunal, for the purpose of disposing appeals by the Income Tax Appellate Tribunal in a digital manner^{xxii}. This proposes to impart greater efficiency, and accountability by eliminating the human interface between the Appellate Tribunals and the parties and endeavours to bring out a seamless experience to everyone. Thus, features such as dynamic jurisdiction and technologically feasible appeal proceedings are proposed in the new Income Tax Appellate Tribunal framework, which shall catalyse the application of Faceless Appeals Scheme 2020 in its reach and extent.
3. Clause 66 of the proposed Finance Bill, 2021 seeks to insert a new chapter in the Income Tax Act, 1961 after Chapter XIX-A with effect from April 01, 2021. The new chapter intends to establish a Dispute Resolution Committee for resolving disputes between the specified classes of persons, in a faceless manner^{xxiii}. The new Dispute Resolution Committee too shall have dynamic jurisdiction powers of the likes already existing in Centres and Authorities established by under the Faceless policy. The Dispute Resolution Committee will also possess penalty imposing powers on anyone with a taxable income up to 50 lakh and disputed income up to 10 lakhs who is eligible to approach the Committee, creating greater efficiency, transparency and accountability in dispute resolution proceedings to the extent digitally feasible^{xxiv}. The new Dispute Resolution Committee shall replace the Income Tax Settlement Commission. The Income Tax Settlement Commission shall cease to operate on or after the 1st day of February 2021^{xxv}.

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Valuation Service Offerings

1

DCF Valuation Method

2

NAV Valuation Method

3

Other Business Valuations

IMPORTANCE OF VALUATION

Pursuant to Section 56 (2)(viib) of Income Tax Act, 1961, the FMV for issue of shares by a company other than a company in which public are substantially interested to any resident person shall be calculated as per Rule 11UA of the said Act.

It is important to note that if valuation is done by Discounted Cash Flow Method (as per Income Tax Act), the fair market value of unquoted equity shares shall be determined only by **SEBI Registered Category-I Merchant Banker**

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