

BACKGROUNDER

Companies Act 2013 is divided into 29 chapters containing various provisions governing a Company. The provisions pertaining to the Board of Directors are being covered under Chapter XI, XII & XIII of the Companies Act, 2013.

Chapter XI of the Companies Act, 2013 deals with the **Appointment & Qualifications of the Directors**. It consists of various sections ranging from 149 to 172. These sections pertain to the provisions relating to Company to have Board of Directors containing the composition of the Board of Directors in a Company, manner of selection of Independent Directors and maintenance of their databank, appointment of directors elected by Small Shareholders, Appointment of Directors, Application for and allotment of Directors Identification Number and other provisions relating thereto, Appointment of Additional, alternate & Nominee Directors, No. of Directorships, Duties of Directors, Vacation of Office of Directors, Resignation and Removal of Directors, Register of Directors & Key Managerial Personnel and their shareholding and punishment in case of non compliance relating to provisions of this Chapter etc. The provisions of this Chapter of the Companies Act, 2013 are to be read with Companies (Appointment & Qualification of Directors) Rules, 2014.

Chapter XII of the Companies Act, 2013 deals with **Meetings of the Board & its Powers**. It consists of various sections ranging from 173 to 195. These sections pertain to the provisions relating to Meeting of Board, Quorum, Passing of resolution by Circulation, Audit Committee, Nomination & Remuneration Committee and Stakeholders Relationship Committee, Powers of Board, Restrictions on powers of Board, Disclosure of interest by Directors, Loan to Directors, Loan & Investment by Company, Investment of company to be held in its own name, Related party transactions, Register of contracts or arrangements in which Directors are interested, Contract of employment with managing or whole time directors, payment to directors for loss of office etc., in connection with transfer of undertaking, property or shares, restriction on non cash transactions involving directors, contract by One Person Company, prohibition on forward dealing in securities of company by director or key managerial personnel, prohibition on insider trading of securities etc. The provisions of this Chapter of the Companies Act, 2013 are to be read with Companies (Meeting of Board & its Powers), Rules, 2014.

Chapter XIII of the Companies Act, 2013 deals with **Appointment & Remuneration of Managerial Personnel**. It consists of various sections ranging from 196 to 205. These sections pertain to the provisions relating to appointment of managing Director, Whole Time Director or Manager, overall maximum remuneration or remuneration in case of absence or inadequacy of profits, calculation of profits, recovery of remuneration in certain cases, Central Government or company to fix limit with regard to remuneration, forms of and procedure in relation to certain applications, compensation for loss of office of managing or whole time director or manager, appointment of Key Managerial Personnel, Secretarial Audit for bigger companies, Function of Company Secretary etc. The provisions of this Chapter of the Companies Act, 2013 are to be read with Companies (Appointment & Remuneration of Managerial Personnel), Rules, 2014.

These provisions have been elaborately covered in the following presentation:


THE COMPANIES ACT 2013


Presentation on Critical Aspects of Chapters XI, XII, XII


By: Dr K R Chandratre


Independent Directors (ID) [S. 149]

- Companies required to have minimum number of IDs:
 - Every listed co must have at least one-third IDs.
 - Public Companies:
 - ✓ paid-up capital of Rs. 10 cr or more;
 - ✓ turnover of Rs. 100 cr or more;
 - ✓ aggregate of outstanding loans, debentures and deposits, more than Rs. 50 cr.
 - At least two IDs

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- If a higher number of IDs is required due to composition of its audit committee, the company must have such higher number.
 - A vacancy in an ID's office shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later. This rule is inconsistent with the statute which requires appointment of IDs at general meeting.
 - If a company ceases to be covered by rule 4(1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.


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- IDs not liable to retirement by rotation.
 - Tenure of office: 5 years at a time; can be reappointed by special resolution for one more term of 5 years.
 - The period before commencement of s. 149 not to be counted in 5 years
 - Maximum tenure: 2 terms of 5 years each; can be reappointed after a gap of 3 years.
 - During the interval of 3 years, ID not entitled to hold any office or place of profit.


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- Executive and nominee directors can't be appointed as IDs.
 - Every ID must fulfill the criteria stated in s. 149(6) and abide by Code of Conduct in Sch. IV.
 - Rule 5 provides: An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.




Every ID must make a declaration that he meets the criteria of independence as provided in subsection (6)-

- at the first board meeting in which he participates as a director;
- at the first board meeting in every financial year; &
- when there is any change in the circumstances which may affect his status as an independent director.


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- ID can be paid sitting fees, expense reimbursement and commission, but cannot be given ESOP. –s. 149(9).
 - But this provision is inconsistent with s. 197(6) which allows payment of remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

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- S. 149(12) provides:
Notwithstanding anything contained in this Act,—
(i) an independent director;
(ii) a non-executive director (other than promoter or KMP),
shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

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- S. 149(5) provides: Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

Note: In some books the figure and brackets '(4)' is printed as '(3)', which is an error.

- Thus, a company required to appoint IDs under s.149 must appoint IDs in accordance with s.149 within one year from 1 April 2014.


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- Till then, existing structure of the board can continue and a company will have time till 31 March 2015 to restructure the board in accordance with s.149. Till IDs are so appointed, existing IDs (who are really IDs under cl.49) can continue.
 - The company can take steps to appoint IDs at any time before 31 March 2015, so that on 1 April 2015 the restructured board with requisite number of IDs is in place. In other words, at any time before 31 March 2015, a company can appoint IDs at a general meeting or even by postal ballot.
 - The five year tenure will begin on the date of passing the resolution.

Selection of IDs and maintenance of data bank of IDs [S. 150]

- CG to maintain data bank of IDs from which companies can choose persons.
- IDs to be appointed by shareholders at general meeting.
- Selection procedure to be prescribed by CG

Woman Director [s. 149(1); Rule 3]

- At least one woman director for following companies is mandatory for:
 - (i) every listed company;
 - (ii) every other public company having—
 - (a) paid-up capital of Rs. 100 cr or more; **or**
 - (b) turnover of Rs. 300 cr or more.
- Compliance by a newly incorporated company with this provision within 6 months from the date of its incorporation.

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- A casual vacancy of a woman director must be filled-up by the Board at the earliest but before the Board meeting following the date on which vacancy arose or three months from the date of such vacancy, whichever is later.
 - The woman director may be an executive director or non-executive director or an ID or non-ID.



Appointment of Small Shareholders' Director (SSD)

- Every listed company must have one director elected by small shareholders (holding Rs 20,000 or any other prescribed worth shares). –s. 151.
- **Rule 7:** 1,000 or more small shareholders or 10% of the total number of small shareholders, whichever is lower, may give a notice to the company to have a small shareholders' director elected at a general meeting.
- But such a company may on its own (*suo motu*) appoint such director.

- Appointment of SSD is not mandatory but it is subject to election at a general meeting and it is mandatory only if an ordinary resolution is passed for his appointment.
- An SSD will be an ID if he fulfills the criteria specified in s. 149(6).
- An SSD will be subject to the same duties, responsibilities, obligations and liabilities as any other director. But
 - (a) he is not liable to retire by rotation;
 - (b) his tenure will be limited to three consecutive years; and
 - (c) he will not be eligible for re-appointment.

Appointment and Retirement of Directors [S. 152]

- First directors: Articles to name. If not named, subscribers to be first directors.
- First directors to be re-appointed at gen. meeting held after incorporation.
- Every person to be appointed as director to give a declaration before appointment that he/she is not disqualified and consent to hold office of director.
- Explanatory statement to state that a person to be appointed as ID fulfills the criteria.

Retirement of Directors by Rotation and Reappointment

- Two-thirds of the total number of directors (excluding IDs) must be directors liable to retirement who must be appointed at AGM. Remaining one-third may be appointed in any other manner stated in the articles; otherwise at general meeting.
- All other provisions of s. 152 regarding retirement and re-appointment are the same as in s. 255 and 256 of the 1956 Act.

Appointment of a person who is not a retiring directors [S. 160]

- Any member or any other person may give a 14 days' notice proposing candidature of any person for appointment as director, with a deposit of Rs 1 lakh or a higher amount prescribed to be paid.
- The deposit will be refunded, if the person proposed gets elected or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution. Else, it will be forfeited.
- Rule 13 lays down procedure.

Director Identification Number (DIN)

- Sections 153 to 159 contain provisions regarding DIN, which correspond to sections 266A, 266B, 266C, 266D, 266E, 266F and 266G of the 1956 Act.
- A person to be appointed as director must make an application for allotment of DIN to the Central Government in prescribed manner.

Additional Director [S. 161]

- Section 260, 262, 313 combined in s. 161.
- The board has been given power to appoint additional, alternate, nominee and casual vacancy director.
- Section 260 continues with one change: A person who fails to get appointed as a director in a general meeting, can't be appointed as additional director.

Alternate Director [s. 161]

- Alternate director can be appointed only for a director who is going to be out of India for 3 months or longer.
- One person can't be appointed as alternate director for two directors in the same company.
- A person who is not qualified for appointment as ID can't be appointed as an alternate director for an ID.
- Alternate director's tenure will be till the return of original to India and coterminous with the original director's tenure.

Nominee Directors [S. 149, Explanation]

- A company appoint a nominee director,
- Nominee director is defined as a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

Disqualifications for appointment of director [S. 164]

- A person suffering from any disqualifications listed in s. 164(1) shall not be eligible for appointment as a director of any company.
- A private company may include in its articles any additional grounds of disqualification

- Two more grounds have been added in the list in s. 274 of the 1956 Act:
 - (1) a person who has no DIN;
 - (2) a person who has been convicted of an offence dealing with related party transactions under s. 188 in the past 5 years.

- A person will be disqualified for appointment as director in any company (including the defaulting company) for 5 years if a company-
 - (a) has not filed financial statements or annual returns for any continuous period of 3 financial years; or
 - (b) has failed to repay the deposits or pay interest thereon or to redeem debentures on due date or pay interest thereon or pay any dividend declared for one year or more.
- Rule 14 lays down the procedure in this regard.

Maximum Number of Directorships [S. 165]

- A person can hold at a time maximum 20 directorships (including any alternate directorship).
- The maximum number of public companies in which a person can be appointed as a director shall be 10 out of 20.

- This provision would also apply to directorships in private companies (to the extent of 10 directorships).
- The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

Duties of Directors [S. 166]

A director must-

- act in accordance with the articles of the company.
- act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, its shareholders, the community and for the protection of environment.
- exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.


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- not involve in a situation of conflict of interest and duty.
- not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- not assign his office and any assignment so made shall be void.

This section would apply to all directors of all companies .

Vacation of office of director [S. 167]


- The office of a director shall become vacant if he attracts any of the 8 grounds specified in s. 167(1).
- It has been held by courts in several cases that vacation of office under this provision automatic on any of the grounds becoming applicable and no resolution is required and the concerned director cannot be excused by board or shareholders

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- This section would apply to private companies. But a private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in s. 283(1).
 - Where all the directors of a company vacate their office under this section, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.



Resignation of Director [S. 168]


- A director may resign from his office by giving a notice in writing to the company.
- The Board must take note of the same and the company must inform the Registrar about it (presumably by filing Form 32).
- The director must also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days of resignation.

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- The resignation must be noted in the next Board's Report.
 - The resignation will take effect from the date of receipt of resignation by the company or the date, if any, specified by the director in the notice, whichever is later.
 - Rule 16 requires a director resigning his office to send a copy of the resignation within 30 days to the Registrar along with reasons for the resignation in Form DIR-11.
 - If all the directors of a company resign or vacate their offices under s. 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors and they shall hold office till the directors are appointed by the company in general meeting.



Section 169. Removal of directors

- Like s. 284 of the 1956 Act, this section empowers members of a company to remove any director by ordinary resolution subject to compliance with some formalities.
- The director to be removed must be given a reasonable opportunity of being heard and make a representation against his intended removal.

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- But as held as held by the Supreme Court, any director can be removed (except director appointed by the government, court or CLB), no reasons are required to be given for removal and no judicial review of the removal is allowed.



Register & Return of directors and KMP and their shareholding and Inspection of the Register [S. 170, 171]


- Every company must keep at its registered office a register containing prescribed particulars of its directors and KMP and also details of securities held by each of them in the company, its holding, subsidiary, subsidiary of company's holding company or associate company.
- The register can be inspected by members and must be kept open for inspection at every AGM be made accessible to any person attending the meeting.


- A return containing such particulars and documents as may be prescribed, of the directors and KMP must be filed with RoC within 30 days from the date of appointment and within thirty days of any change taking place.

CHAPTER XII: MEETINGS OF BOARD AND ITS POWERS

Meetings of Board [S. 173]

- First board meeting must be held within 30 days after incorporation.
- 4 board meetings in a year with interval of maximum 120 days between two consecutive meetings.
- CG may exempt a class of companies.

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- Directors may participate in board meetings either in person or through video-conferencing or other audio-visual means, if it is capable of recording and recognising the participation of the directors and recording and storing the proceedings of meetings along with date and time and prescribed by CG.
 - But the matters prescribed by CG cannot be transacted in a meeting by video conferencing or other audio visual means. [S. 173(2)]

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- Rule 3 details procedural requirements as regards participation in board meetings through videoconference.
 - Rule 4: The following resolutions can't be passed at a meeting held through videoconference:
 - (i) approval of the annual financial statements;
 - (ii) approval of the Board's report;
 - (iii) approval of the prospectus;
 - (iv) audit committee meeting for consideration of accounts;
 - (v) approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Notice of board meeting [S. 173]


- 7 days' notice in writing to every director at his registered address (in or outside India) must be given for every board meeting.
- A notice may be sent by hand delivery or by post or by electronic means.
- A shorter notice may be given to transact urgent business, but at least one independent director, if any, must be present at the meeting. Ratification by at least one independent director will be valid.


- Failure to give notice as stated above may make every officer of the company whose duty is to give notice under this section and who fails to do so liable to a penalty of Rs. 25,000. [S. 173(4)]
- OPC, Small Company and Dormant Company can hold only one board meeting in each half of a calendar year and with a gap of not less than 90 days between two meetings. But OPC having only one director need not comply with this requirement. [S. 173(5)]

Quorum for meetings of Board [S. 174]

- One-third of total strength of the board or two, whichever is higher, will be quorum for board meetings.
- Participation of the directors by video conferencing or by other audio visual means shall also be counted for quorum.
- Any fraction in the one-third must be rounded off as one.
- Quorum must be of disinterested directors.

- If the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum. [S. 174(3)]
- Thus, at least two disinterested directors must be present when the number of interested directors is equal to two-thirds or more.

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- Thus, if a situation of only one disinterested director arises (e.g. when board considers resolution for remuneration of non-executive directors), divide the non-executive directors in two groups and pass two separate resolutions alternately so that on both occasions there will be sufficient disinterested quorum (e.g. if a company has eight non-executive directors and one executive director, place two separate resolutions, each for four non-executive directors instead of one resolution for all eight directors)





S. 174(2) provides: The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

- This means, if the number of directors reduces below the minimum number of directors required by the Act under s. 149, the continuing directors (which means at least two) may act despite any vacancy in the Board.
- But if the number of directors reduces only below the quorum fixed by the Act, one or more continuing directors may act only for increasing the number of directors up to the quorum, or for convening a general meeting.

Circular Resolution [S. 175]

- Directors can pass any resolution without a meeting except those matters which must be decided only at meetings under the Act.
- A circular resolution must be sent to all the directors at their addresses registered with the company in India, by hand delivery or by post or by courier, or through a prescribed electronic means.
- A director who stays outside India must provide address in India to which circular resolution will be sent.

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- But Articles of a company may provide that circular resolutions must be sent to the foreign directors at their overseas address.
 - A circular resolution will be passed if it is approved by a majority of the directors, who are entitled to vote on the resolution.
 - This means, for passing, a circular resolution will need approval of a majority of directors (excluding interested directors) whether they are in India or out of India.

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- If one-third or more of the directors require that the resolution circulated must be placed before the board at a meeting, the resolution cannot be passed by circulation.
 - Every circular resolution must be noted at a subsequent board meeting and made part of the minutes of such meeting.
 - These provisions also apply to circular resolution to be passed by a committee of the board.

Committees of the Board [Rule 6]


The following companies must have Audit Committee and Nomination & Remuneration Committee of the Board:

- Listed companies;
- public companies with a paid up capital of Rs. 10 cr or more;
- public companies having turnover of Rs. 100 cr or more;
- public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs. 50.

The paid up capital, turnover and outstanding loans, borrowings, debentures, deposits must be taken as per the last audited Financial Statements.

Audit Committee (AC) [S. 177]

- AC must have minimum three directors as its members with majority of independent directors.
- A majority of members of AC (including its Chairperson) shall be persons with ability to read and understand financial statements.
- Existing ACs must be reconstituted within a year after commencement of the new Act.

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- Functions of AC will be as specified in s. 177(4) and any other as delegated by the Board.
 - The auditors and KMP shall have right to be heard in the AC meeting when it considers the auditor's report; but they shall not have the right to vote.
 - Board's Report must disclose composition of AC and recommendations of AC not accepted by the board along with reasons.




Nomination and Remuneration Committee and Stakeholders Relationship Committee [S. 178]

- Every listed company and such other prescribed class or classes of companies must have these two committees.
- Functions and role of these committees has been set out in the section itself.

Powers of Board [S. 179]


- S. 291 of the 1956 Act, which confers in the Board supremacy in exercising powers (subject to provisions of the Act and shareholders' approval where required under the Act), has been retained.
- The list of items for passing resolutions at board meetings in s. 292, expanded by adding following:
 - buy-back of securities;
 - issue securities (in or outside India);
 - loans, guarantees and securities;


- approving financial statements and Board's report;
- diversifying company's business;
- amalgamation, merger, reconstruction;
- takeover of a company or acquire a controlling or substantial stake in another company;
- any other matter prescribed by CG.




The following additional matters have been prescribed by rule 8:

- to make political contributions;
- to appoint or remove key managerial personnel (KMP);
- to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- to appoint internal auditors and secretarial auditor;
- to take note of the disclosure of director's interest and shareholding;


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- to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
 - to invite or accept or renew public deposits and related matters;
 - to review or change the terms and conditions of public deposit;
 - to approve quarterly, half yearly and annual financial statements or financial results.


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- ❑ The powers under s. 179 can be taken also at board meetings held by video-conference.
 - ❑ Powers of the Board to borrow money, give loans and invest funds can be delegated by a resolution passed at a meeting, to any committee of directors, managing director, manager or any other principal officer of the company or principal officer of the branch office.



180. Powers to be exercised by Board with shareholders' approval

- S. 293 of the 1956 Act has been recast. Henceforth shareholders' approval by special resolution will be required for the following:
 - to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or one of the undertakings.

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- to invest in trust securities the amount of compensation received as a result of any merger or amalgamation;
 - to borrow money in excess of aggregate of paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business;
 - to remit, or give time for the repayment of, any debt due from a director.

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- Undertaking means an undertaking-
 - in which the investment of the company exceeds 20% of the company's net worth as per audited balance sheet of the last financial year; or
 - which generated 20% of the company's total income during the last financial year.
 - "substantially the whole of the undertaking" in any financial year means 20% or more of the value of the undertaking as per the audited balance sheet of the preceding financial year.

Contribution to charitable funds [S. 181]

- Like s. 293(1)(e) of the 1956 Act, Board is authorised to contribute to bona fide charitable and other funds.
- Prior permission of members by ordinary resolution is required for such contribution in any financial year in excess of 5% of average net profits for the three immediately preceding financial years.

Political Contributions [S. 182]


- A company, other than a Government company and a company which has been in existence for less than three financial years, may contribute in any financial year up to 7.5% of its average net profits of the three immediately preceding financial years.
- Political contributions can be made on the authority of a resolution passed at a meeting of the Board and such resolution shall be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

Disclosure of Concern or Interest by Directors [S. 184]

- Section 299 has been recast, but the new avatar badly drafted and confusing.
- Two types of disclosures are required:
 - (a) disclosure of a director's connection with bodies corporate, firms, or other association of individuals;
 - (b) disclosure of a director's concern or interest in contracts and arrangements.


Under sub-s. (1), every director must disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals (including shareholding):

- at the first meeting of the Board after his appointment;
- at the first meeting of the board in every financial year; and
- at the first board meeting held after any change in the disclosures already made.




The disclosure under s. 181(1) must be done in the following manner:


- It must be in Form MBP 1.
- It must be done at a board meeting held immediately after the date of the notice.
- All notices must be kept at the registered office shall in the custody of the company secretary or any other person authorized by the Board for the purpose, and preserved for 8 years from the end of the financial year to which they relate and



Under sub-s. (2), every director must disclose at the meeting of the board, his concern or interest in a contract or arrangement or proposed contract or arrangement entered into or to be entered into-

- (a) with a body corporate in which he holds (independently or with any other director), more than 2% shareholding of that body corporate, or is a promoter, manager, CEO of that body corporate; or
- (b) with a firm or other entity in which, he is a partner, owner or member.


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- If a director becomes concerned or interested after a contract or arrangement is entered into, he must disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.
 - Disclosure must be at the board meeting of the Board in which the contract or arrangement is discussed.
 - Interested director not to participate in such meeting.


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- Interest or concern in contracts between two companies not required to be disclosed, if any of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid-up share capital in the other company.
 - Contravention to meet with punishment by imprisonment upto one year and fine of min. Rs. 50,000 and max. Rs. One lakh, besides vacation of office.


Loans to Directors, etc [Section 185]


- Loans, guarantees and securities to or on behalf of any of the parties mentioned in the Explanation are prohibited, except loan to MD/WDR (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution.


- The section starts with 'Save as otherwise provided in this Act'. This creates an impression that a loan/guarantee/security prohibited under this section can be given under s. 186. But this interpretation is not correct as it would have the result of making s.185 a dead letter.
- Section 185 is a special provision and s.186 is a general provision; special provision overrides a general provision.

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- This section applies to loans, guarantees and securities given by a company to or on behalf of any of the parties mentioned in the Explanation.
 - But the proviso provides for two exemptions
 - (a) Loans to MD or WTD as a per a loan scheme;
 - (b) loans, guarantees or securities by a company in the ordinary course of its business, if in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

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- S. 185 doesn't apply to loans, guarantees, securities given by banking companies and NBFC companies as they do it in the ordinary course of business
 - Guarantees and securities only in connection with loans attract this section. So, guarantees and securities not in connection with do not attract this section; e.g. performance guarantee, guarantee for timely execution of a contract, letter of comfort no in the nature of guarantee, etc.

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- The parties covered by the Explanation:
 - (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
 - (b) any firm in which any such director or relative is a partner;
 - (c) any private company of which any such director is a director or member;

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- (d) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - (e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

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- The section applies to public and private companies. But it doesn't apply to loans, guarantees, securities to public companies unless cl (e) is attracted.
 - Loan to, or guarantee/security on behalf of, subsidiary by a holding company is not prohibited unless cl (e) is attracted. But there is no presumption that board of subsidiary acts according to the directions or instructions of holding company unless there is evidence to that effect.



Exemptions under Rule 10 :

- A loan by holding company to its wholly-owned subsidiary (WOS);
- A guarantee or security provided by a holding company in respect of any loan taken by its WOS; and
- A guarantee security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary.
- These exemptions are available subject to condition that the loan is utilised by the subsidiary for its principle business activities.

Investments, Loans, Guarantees & Securities [S. 186]

- This section corresponds to s. 372A but with changes.
- Subject to some exceptions, investment by a company through more than two layers of investment company (a company whose principal business is the acquisition of shares, debentures or other securities) is prohibited. Guarantees and securities also covered.

Sub-s. (2) of this section provides:

No company shall directly or indirectly—


- (a) give any loan to any person or other body corporate;
- (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.


The definition of 'free reserves' is given in s. 2(43):


- Only those reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.
- Exclusions: (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.


Related-party Transactions [S. 188]


- Sections 297 & 314 of the 1956 Act have been combined in s. 188. Though the requirement of CG approval dispensed with, scope of those sections expended. Following types of contracts/arrangements will attract s. 188:
 - (a) sale, purchase or supply of goods or materials;
 - (b) selling/dispersing of/buying, property of any kind;
 - (c) leasing of property of any kind;
 - (d) availing or rendering of any services;


- 
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
 - (f) related party's appointment to any office or place of profit in the company, its subsidiary company or associate company;
 - (g) underwriting the subscription of any securities or derivatives thereof, of the company.


- 
- To attract s.188, two essential conditions must be satisfied. Unless both these conditions are satisfied, this section will not apply:
 - (1) The company enters into a contract or arrangement of any one or more of the kinds specified in subs. (1);
 - (2) The other party to the contract or arrangement is a related party as defined in s. 2(76).


- 
- Since the definition of 'related party' is an exhaustive definition, no party other than those mentioned in the definition can be brought into the definition by implication or for any other reason, as it would amount to rewriting the statutory provision. Accordingly s.188 would apply only if a contract or arrangement is strictly between the company and any of the parties mentioned in s. 2(76).
 - Section 188 is not retrospective in effect; hence contracts and arrangements entered into only after 1 April 2014 will attract this section. Contracts entered into before and subsisting on 1 April 2014 will remain unaffected.

- 
- Board has to approve every contract attracting this provision, but according to the first proviso, a contract must be entered into with the prior approval of the company by a special resolution-
 - in the case of a company having a prescribed paid-up share capital; and
 - In the case of a contract of prescribed value.

- 
- A special resolution in terms of the first proviso to s.188(1) can be passed giving the board a general authority to enter into from time-to-time with related parties contracts or arrangements of the kinds specified in s.188(1) in the following manner:
 - irrespective of the amount , value or remuneration, in the case of a company having a paid-up capital of Rs. 10 cr or more; and
 - in excess of the amounts, values or remuneration specified in rule 15(3)(ii), in the case of a company having a paid-up capital of less than Rs. 10 cr.

- 
- According to rule 15(3)(i), except with the prior approval of the company by a special resolution a company having a paid-up share capital of Rs. 10 cr or more shall not enter into a contract/arrangement with any related party.
 - This means, every company having a paid-up share capital of Rs. 10 cr or more must obtain members' prior approval by special resolution to enter into any contract/arrangement covered by s. 188(1) regardless of the amount involved in the contract/arrangement.


- 
- Rule 15(3)(ii) prescribes various limits which would be relevant only for those companies which have paid-up share capital of less than Rs. 10 cr but the contract/arrangement falls within the limits laid down in rule 15(3)(ii).
 - In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company. –rule 15(4)

- 
- The second proviso to s. 188(1) provides:
Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:
 - This means the related party with whom a contract or arrangement is being entered into cannot vote on the resolution if such party is a shareholder of the company.



Exemption under third proviso:


- Third proviso to s. 188(1) states: Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.
- Though not happily worded, what this intends all contracts with related parties entered into by a company in its ordinary course of business will not attract s.188 if they are at arm's length.

- 
- Arm's length transaction means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.
 - Arm's length means the condition or fact that the parties to a transaction are independent and on an equal footing.
 - This exemption is not limited to only transactions relating to the selling of goods or services which forms part of the company's business; it can be availed of in respect of any activity relating to the company's business or necessary and useful to carry on the business.



Register of contracts or arrangements in which directors are interested [S. 189]

- Every company must keep a register giving separately the particulars of all contracts or arrangements to which s. 184(2) or section 188 applies, in the prescribed form. Rule 16 prescribes form of the register.
- The register must be placed before every board meeting and signed by all the directors present at the meeting.

- 
- Every director or KMP must, within 30 days of his appointment, or relinquishment of his office, disclose to the company particulars specified in s. 184(2) relating to his concern or interest in the other associations which are required to be included in the register under that subsection or such other information relating to himself as may be prescribed.

Contract of employment with managing or whole-time directors [S. 190]

- A copy of agreement between company and MD/WD or (if there is no written contract) a Memorandum of Terms must be kept at registered office.
- It will be open for inspection by members. Not required to be sent to shareholders.

Chapter XIII

Appointment of Managerial Personnel [S. 196]

- A company can't have MD and Manager simultaneously.
- But a company can have MD and WD or WD and Manager simultaneously.
- Maximum tenure of office at a time: 5 Years
- Re-appointment to be made not earlier than 1 year.

Disqualifications for appointment as MD/WD/Manager

- Subsection (3) states disqualifications of MD/WD/Manager.
- One of them is age. A person who is below 21 and above 70 can't be appointed as MD/WD but extension beyond 70 allowed by special resolution.
- The explanatory statement annexed to the notice for such must state the justification for appointing such person.

- Appointment to be made by Board and approved by members by ordinary resolution without govt. approval if Schedule V complied with.
- Notices of board and general meeting to disclose details of terms and conditions, remuneration and director's interest.
- A return to be filed within 60 days of appointment / re-appointment.
- If members disapprove appointment / re-appointment, acts by the appointee before the general meeting are not invalid.

Schedule V [Sch. XIII of 1956 Act]

- Part I of Sch. V contains conditions to be complied with at the time of appointment / re-appointment of any managerial person [MD/WD/Mgr].
- No approval of the CG necessary if conditions in Part I are complied with.
- Section 196 and Part I of Sch V applicable to private companies as well.

Remuneration of Directors [S. 197]

- This section and Sch V don't apply to private companies. They apply to public companies and subsidiaries of public companies.
- Private companies (which are not subsidiaries of public companies) are free to remunerate their directors and managing/whole-time directors freely without any limit and any approval of members or govt.

New Definition of 'remuneration'

- “remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961.” [S. 2(78)]
- This definition is substantially different from the definition in s. 198 of 1956 Act.
- While all components of remuneration (other than perquisites) will be taken on actual expenditure basis, perquisites will be taken as per Income Tax Act and Rules.


- The word 'equivalent' means equal in value, measure, force, effect, significance, etc.
- Thus, any perquisite, amenity, benefit or facility provided by the company to MD/WD as part of his remuneration package and which has monetary value or can be converted into money value, will amount to 'remuneration', besides any payment made in money.


Remuneration of MD / WD / Manager

- Overall ceiling on remuneration of all directors: 11% of Net Profit (NP).
- In excess of 11% can be paid with the approval of shareholders and CG.
- NP to be calculated as per s. 198 (s. 349 of the 1956 Act)
- Fees for attending board meetings over and above 11%.

Executive Directors' Remuneration when NP is adequate

- According to clause (i) of the second proviso to s.197(1), except with the approval of the company in general meeting, the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent of the net profits to all such directors and manager taken together.

- 
- The words 'except with the approval ... shall not exceed' indicate that payment of remuneration to the executive directors up to 5% or 10% of net profit will not require members' approval in general meeting, but with the members' approval a company may pay remuneration in excess of 5% or 10%.
 - However, as per s. 197 (4), remuneration payable to the directors, including executive directors, shall be determined, in accordance with and subject to the provisions of this section, in any of the modes stated below:


- 
- ✓ by the articles of the company, by an ordinary resolution or, (if the articles require), by a special resolution.
 - So, there is a conflict between the second proviso to subs. (1) and subs. (4). This conflict has to be resolved by harmonious construction of the two provisions. The only way to resolve this conflict is to ignore the word 'except' in the second proviso to subsection (1). Therefore, it is desirable to take members' approval by ordinary resolution.
 - Under Part III of Sch. V, appointment and remuneration shall be subject to approval of members in general meeting (by ordinary resolution).


Executive Directors' Remuneration when NP is inadequate or absent

- If in any financial year, a company has no profit or inadequate profit, it can pay remuneration without govt. approval but subject to and in accordance with the provisions of Section II of Part II of Sch V.
- If the company cannot to comply with Sch V provisions or wants to pay excess remuneration, previous govt. approval necessary.

Schedule V: Part II

- Part II of Sch. V contains conditions to be complied with in respect of remuneration.
- Section I of Part II provides: a company having profits in a financial year may pay remuneration to a managerial person(s) within the limits specified in s. 197, i.e. 5% or 10% of NP.

- 
- Section II of Part II contains provisions applicable in a financial year when a company has no profit or inadequate profit.
 - In such a case, remuneration can be paid to managerial person(s) without govt. approval but within the limit under Para (A) or (B) as applicable.
 - The applicable limit can be doubled if remuneration is approved by special resolution.

- 
- Section III of Part II contains provisions applicable to remuneration payable by companies having no profit or inadequate profit without govt. approval in certain special circumstances if the remuneration is in excess of the limit specified in Section II of Part II.

Remuneration of Non Executive Directors (NED)


- As per cl. (ii) of the second proviso to s.197(1), except with the approval of the company in general meeting, the remuneration payable to directors who are neither MDs nor WDs shall not exceed,—
 - (A) 1% of the net profits of the company, if there is a MD or WD or Manager;
 - (B) 3% of the net profits in any other case.
- Thus, members' approval is not required to pay remuneration upto 1% or 3%


- The words 'except with the approval of the company in general meeting' create conflict between cl. (ii) of the second and subs. (4).
- This conflict has to be resolved by harmonious construction of the two provisions. The only way to resolve this conflict is to ignore the word 'except' in the second proviso to subsection (1). Therefore, it is desirable to take members' approval by ordinary resolution.

- But unlike under s.309 of the 1956 Act, NEDs now can be paid monthly remuneration, as s.197(6) states: A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.
- But this is subject to the limits of 11% and 1% or 3%.

Remuneration for Professional Services

- As a rule, remuneration payable to NEDs in any other capacity must be included in the 11% and 1% or 3% limits. But remuneration for professional services is excluded, if-
 - (a) the services rendered are of a professional nature; and
 - (b) in the opinion of the Nomination and Remuneration Committee [if the company requires this committee under s. 178], or the Board in other cases, the director possesses the requisite qualification for the practice of the profession. [S. 197(4), Proviso]

- 
- If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the CG, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. [S. 197(9)]
 - The company shall not waive the recovery of any sum refundable to it, unless permitted by the CG. [S. 197(10)]


- 
- According to s.197(14), a managing or whole-time director of a company who is in receipt of any commission from the company can be paid any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

Sitting fees

- NEDs (including independent directors) may be paid fees for attending Board or Committee meetings.
- Fees can be paid also for any other meeting if so decided by the Board.
- Such fees are outside the 11% and other percentage limits but must be within the prescribed monetary limit.
- Different fees for different classes of companies and for independent and other directors may be prescribed.
- Rule 4 prescribes Rs. One lakh per meeting fee.

Filing and Disclosure


- A return in the prescribed form must be filed with the Registrar within 60 days of appointment of managerial person.
- The return must be accompanied by a certificate of auditor or the company's secretary or of (if the company is not required to appoint a secretary), a secretary in whole-time practice to the effect that the requirement of Sch V have been complied with.


- 
- A copy of the board resolution or agreement executed, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a MD must be filed with the RoC under s. 117.
 - Every listed company must disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed under s. 197.





Key Managerial Personnel (KMP) [S. 203]


- Every listed company (regardless of paid-up capital) and every other public company having a paid-up capital of Rs. 10 crore or more must have all the three following whole-time KMPs:
 - MD or CEO or Manager
 - If none of the above is there, then WD;
 - Company Secretary; and
 - Chief Financial Officer.

- 
- KMP must be appointed by a resolution of the Board containing the terms and conditions of the appointment including the remuneration. [S. 203(2)]. Companies already having persons holding positions need not be reappointed but only designated.
 - A KMP must not hold office in more than one company (except in its subsidiary) at the same time. However, a KMP can be a non-KMP director of any company with the permission of the Board. [S. 203(3)]

- 
- A KMP holding office in more than one company at the same time on the date of commencement of this Act, must choose, within six months from such commencement, one company, in which he wishes to continue to hold the office of key managerial personnel.

- 
- A company may appoint a person as its MD, if he is the MD or Manager of one, and of not more than one, other company. Such second appointment must be made or approved by a resolution passed at a board meeting by unanimous resolution of the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.


- 
- An individual cannot hold two positions of Chairperson and Managing Director or CEO at the same time if-
(a) the company's articles do not provides otherwise; or
(b) the company does carries on multiple businesses:
 - But the above restriction will not apply to such class of companies engaged in multiple businesses and which has appointed one or more CEO for each such business as may be notified by the Central Government.

- 
- Every KMP must be appointed by the board of the company and terms and conditions of employment and remuneration must be determined by the board.
 - If KMP's office becomes vacant, the Board must fill the vacancy within six months from the date of such vacancy.



Secretarial Audit [S. 204]


- The following companies require Secretarial Audit (SA):
 - Every listed company (regardless of amount of capital);
 - every public company having a paid-up capital of Rs. 50 cr or more;
 - every public company having a turnover of Rs. 250 cr or more.
- Secretarial Audit Report (SAR) must be annexed to the Board's Report.
- Only PCS is eligible to do SA.


- 
- The company must give all assistance and facilities to the PCS for auditing the secretarial and related records of the company.
 - The Board must fully explain in Board's Report any qualification or observation or other remarks made by the PCS in SAR.



Secretarial Audit Form- MR3

- It requires report on compliance with the provisions of the Acts and Rules/Regulations/Guidelines and also certain other matters mentioned in the form.
- There is also an item which states:
(iv) (Mention the other laws as may be applicable specifically to the company).

- 
- This clause should be interpreted restrictively and not liberally, because of the use of the word “specifically”.
 - Only those laws which are specially applicable to a company should be included and not all those laws which are generally applicable to all or most of the companies; e.g. in the case of an NBFC company, in addition to clauses (i) to (v), RBI Act and RBI Regulation/Directions will apply.

- 
- There are some special laws like Boilers Act, Insecticides Act, Drugs & Cosmetics Act, etc. Such special laws only will have to be covered in the secretarial audit and not general laws applicable to all industries, such as tax laws, labour and industrial laws, etc. Such laws will have to be identified by the company and secretarial auditor and included in the secretarial audit. If there is no special law applicable to a company, clause (iv) will have nothing to include

Liabilities of PCS in respect of secretarial audit

- Contravention of this section by a company or any officer of the company or the PCS would invite punishment of fine of minimum Rs 1 lakh and maximum Rs 5 lakhs.
- Besides, s. 143 is applicable as its sub-s. (14) provides: The provisions of this section shall *mutatis mutandis* apply to— (b) the company secretary in practice conducting secretarial audit under section 204.

Section 143 (12) provides:


- Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

Section 143(15) provides:

If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Duties of Company Secretary [S. 205]

- New provision
- Three statutory functions:
 - to report to the Board about compliance with the provisions of this Act, the rules made under the Act and other laws applicable to the company;
 - to ensure that the company complies with the applicable secretarial standards of ICSI;
 - to discharge such other duties as may be prescribed.



**Thank you and wish you good
luck for safe landing in the
turbulent weather of the
Companies Act 2013**



**User Manual on
e-Voting System
for
Issuers**

Version 1.0



Name of the document: User Manual for Issuers

Document Number : NSDL/eVoting/UM/I/01

Prepared by : e- Voting Team of NSDL

Maintained by : Mr. Nitin Ambure

Release date : August 1, 2011

Revision History

SR. NO.	DATE OF REVISION	VER	SECTION NUMBER	DESCRIPTION OF CHANGE	CHANGE REQUEST	CHANGE MADE BY



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1. Description of the Organization:

National Securities Depository Limited (NSDL) was established and commenced its operations from November 1996. NSDL has been promoted by IDBI, NSE and UTI as an initiative to curtail the drawbacks of the paper based system which prevailed before the formation of the depository system. NSDL was formed under the Companies Act, 1956 and has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992 (SEBI Act). NSDL as a depository is regulated by SEBI under the provisions of the Depositories Act, 1996 as well as under SEBI (Depositories and Participants) Regulations 1996 (SEBI Regulations).

The depository system introduced by NSDL has benefited the Indian capital market in terms of immediate transfer of securities, faster disbursement of corporate benefits, introduction of rolling settlements, pledging of securities etc.

2. Introduction to e-Voting:

The Ministry of Corporate Affairs has taken a “Green Initiative in the Corporate Governance” by allowing paperless compliances by the companies through electronic mode.

Section 192A, of the Companies Act, 1956 read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 recognises voting by electronic mode for postal ballot to increase the participation of retail investors in the decision-making process of companies.

In order to facilitate the Issuers to enable electronic voting National Securities Depository Limited (NSDL) has developed an internet based “e-Voting” platform, which will enable shareholders / stakeholders to cast their vote on the resolutions by Postal Ballot.

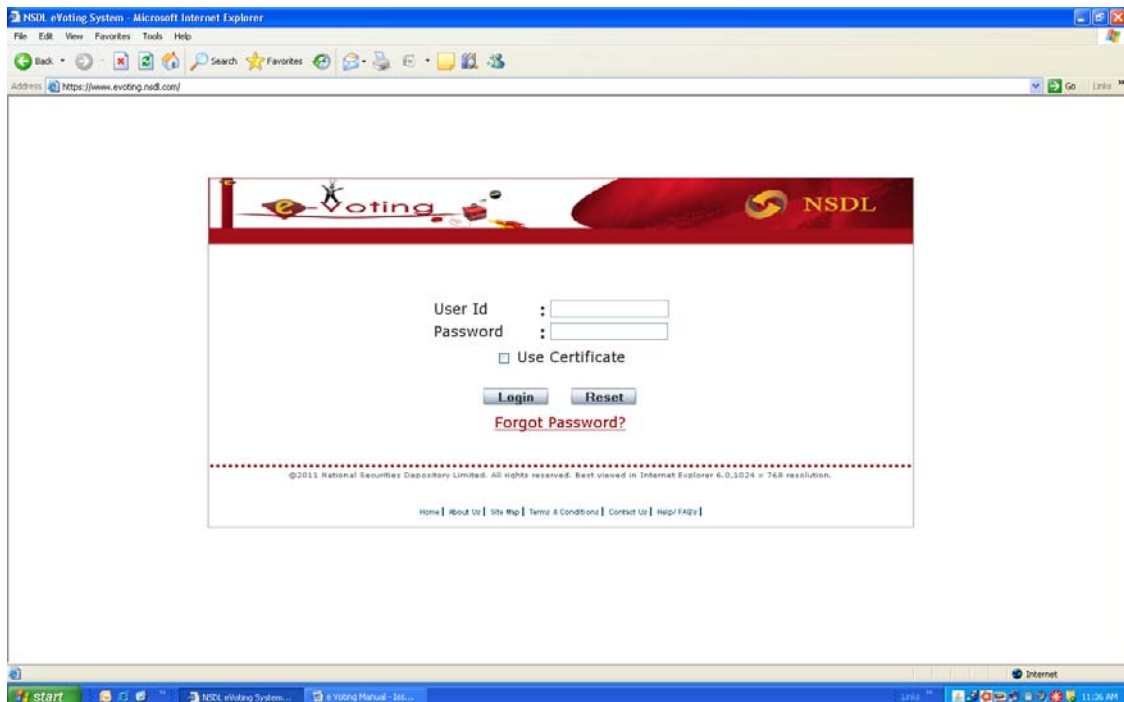


3. Login to e-Voting website (Issuers/R&T Agents):

1. Launch the Internet Browser and type the following address in the address bar **www.eVoting.nsd.com** and click on “Enter (→)”. The Home screen will be displayed. Select the **Issuer/R&T Agent “Login”** as shown below.



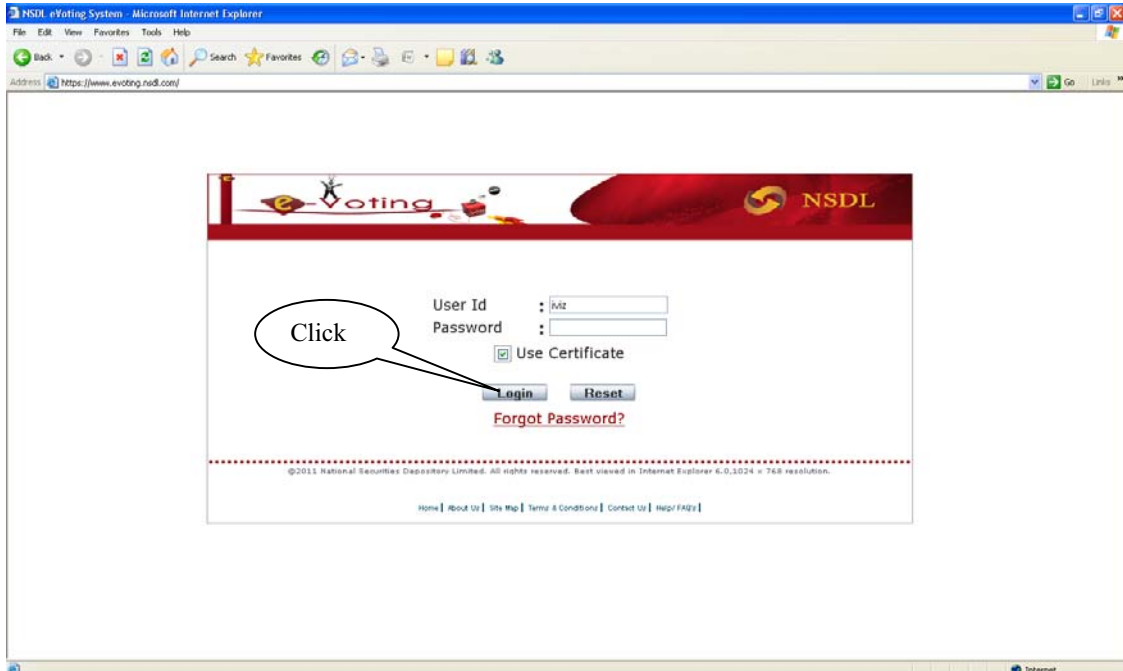
2. After selecting the Issuer/R&T Agent login the following screen would appear.



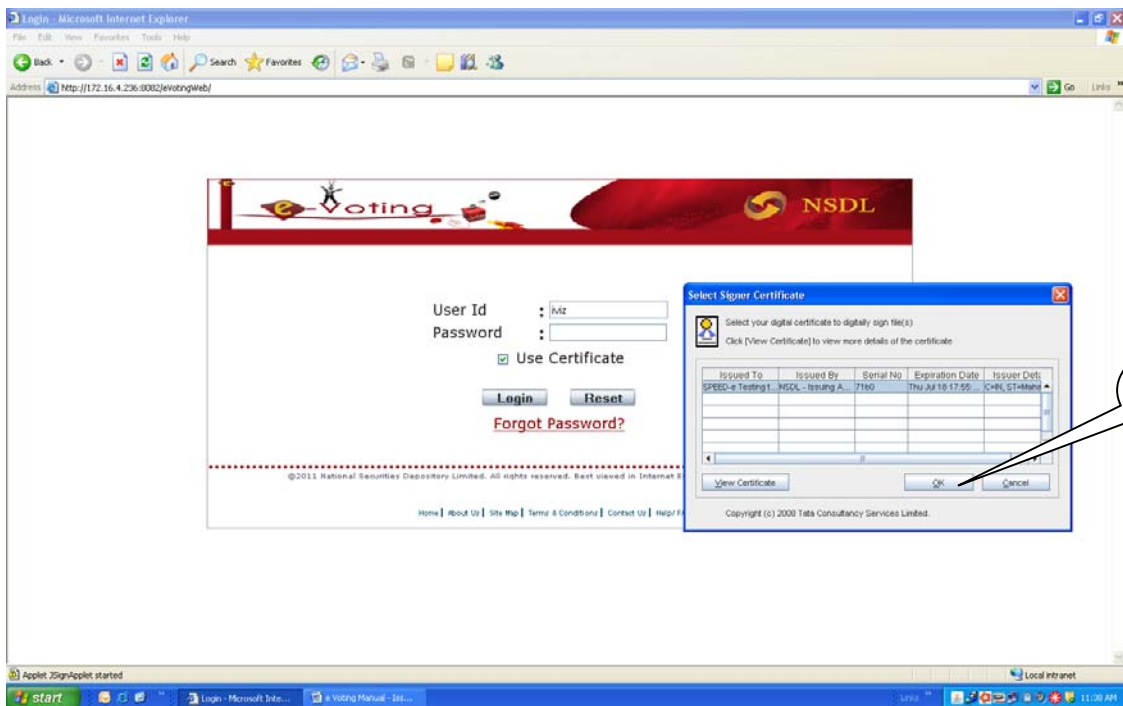


e-Voting Manual

3. Enter “**User Id**” and select the “**Use Certificate**” Check Box and click on “**Login**” Button.



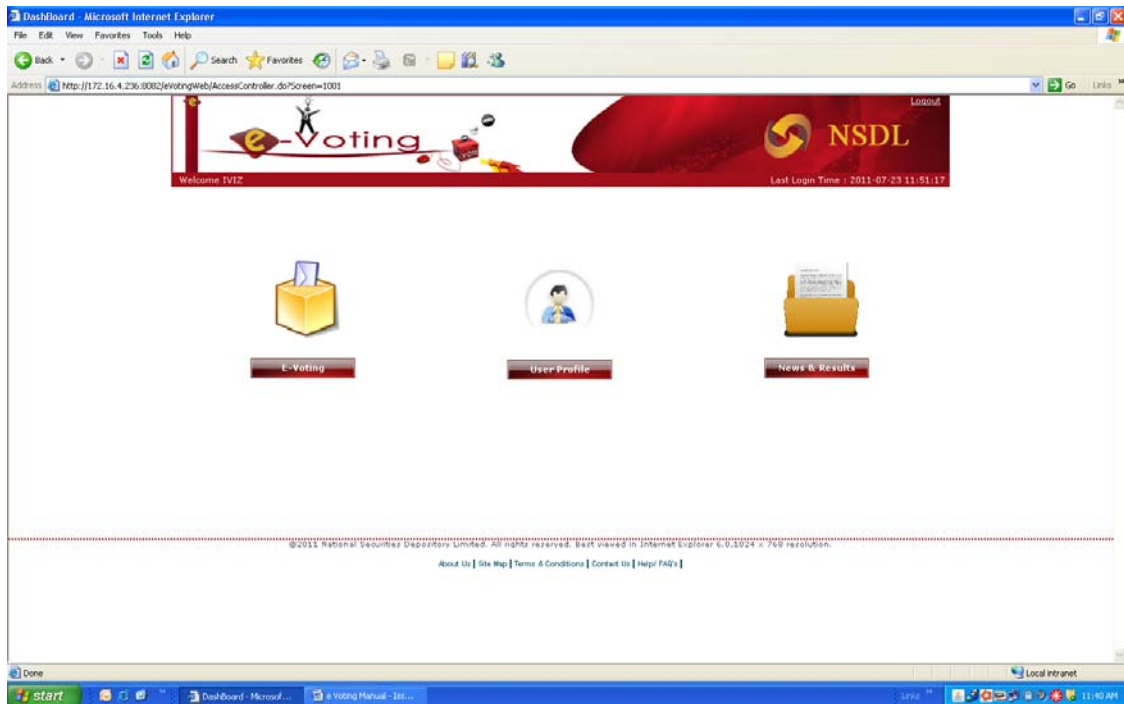
4. An option to select the DSC of the user will be displayed. Select the “**Digital Certificate**” of the user which is mapped for the e-Voting system and click on “**OK**” button.





e-Voting Manual

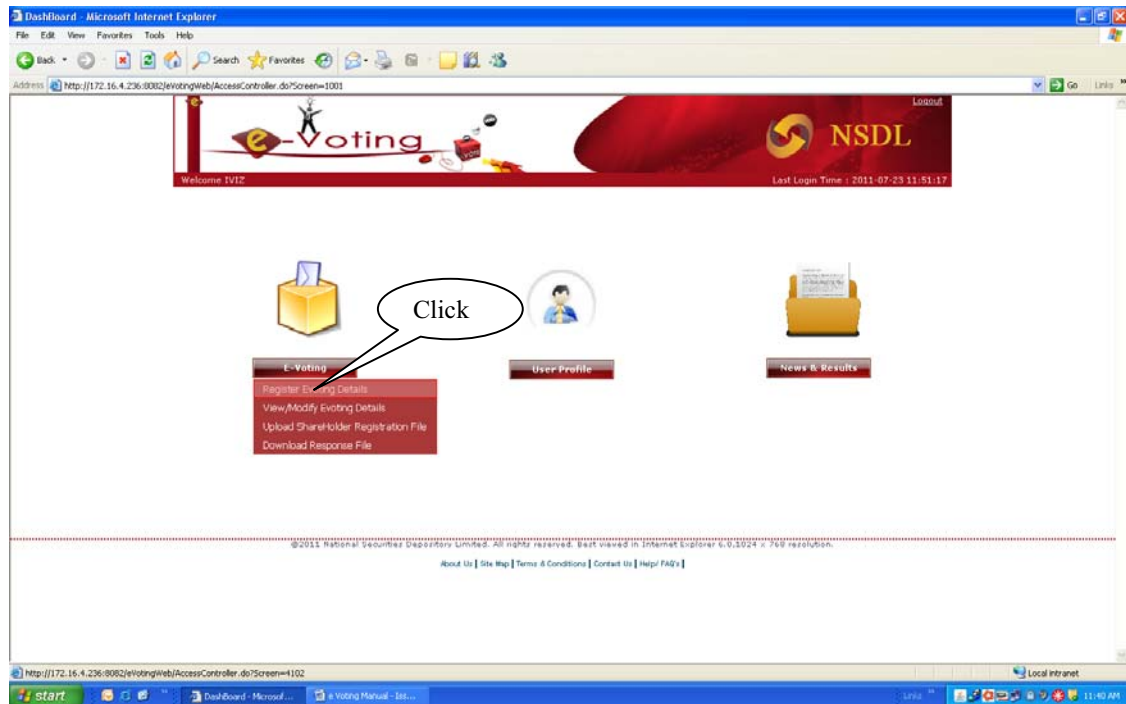
5. On successful “Login” the following screen will be displayed.



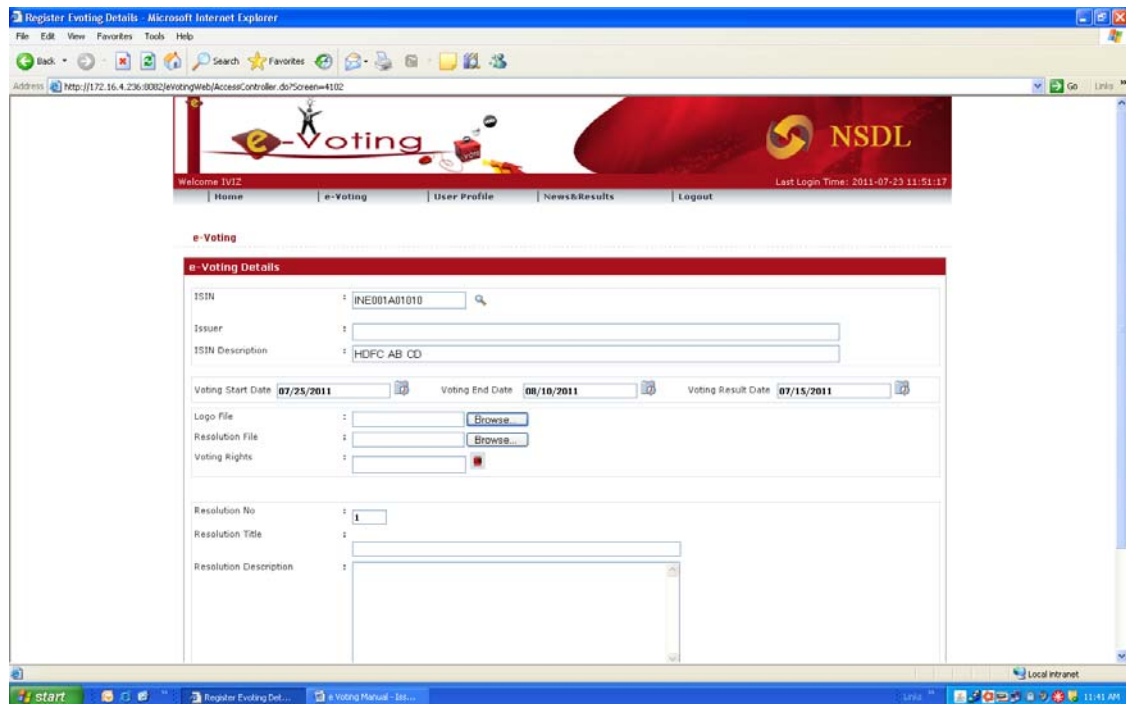


4. Registration of eVoting Details:

1. Select “E-Voting” icon and click on the “Register eVoting Details” as shown below.



2. Enter the eVoting details as shown below.





e-Voting Manual

3. Issuer/R&T Agent may upload the consolidated resolution file (viz., .pdf, .doc, etc.,) as shown below. Issuer/R&T Agent may also add single or more resolution(s) by clicking on “Add” button as shown below.

Register Evoting Details - Microsoft Internet Explorer

Address http://172.16.4.236:8082/evotingWeb/AccessController.do?Screen=4182

e-Voting

e-Voting Details

ISIN : INE001A01010

Issuer :

ISIN Description : HDFC AB CD

Voting Start Date : 07/25/2011 Voting End Date : 08/10/2011 Voting Result Date : 08/15/2011

Logo File : Browse

Resolution File : C:\Documents and Sethi\ Browse

Voting Rights : 1

Resolution No : 1

Resolution Title : Preferential Allotment as per Section 81

Resolution Description : Preferential Allotment as per Section 81

Resolution : Add Delete

Submit Reset

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4. After adding the resolution click on “Submit” button. A confirmation message shall be displayed. Click on “OK” to create an E Voting Event Number (EVEN) for the given eVoting cycle as shown below. Kindly make note of the EVEN generated for e.g. **10378** as shown in the screen below.

Register Evoting Details - Microsoft Internet Explorer

Address http://172.16.4.236:8082/evotingWeb/registerEvotingdetails.do

Welcome IVIZ | Home | e-Voting | User Profile | News&Results | Logout | Last Login Time: 2011-07-25 11:51:17

e-Voting Details

Resolution details added successfully

Evoting Cycle is generated. EVEN is 10378

(To View/Print Evoting Cycle details, click on the generated EVEN)

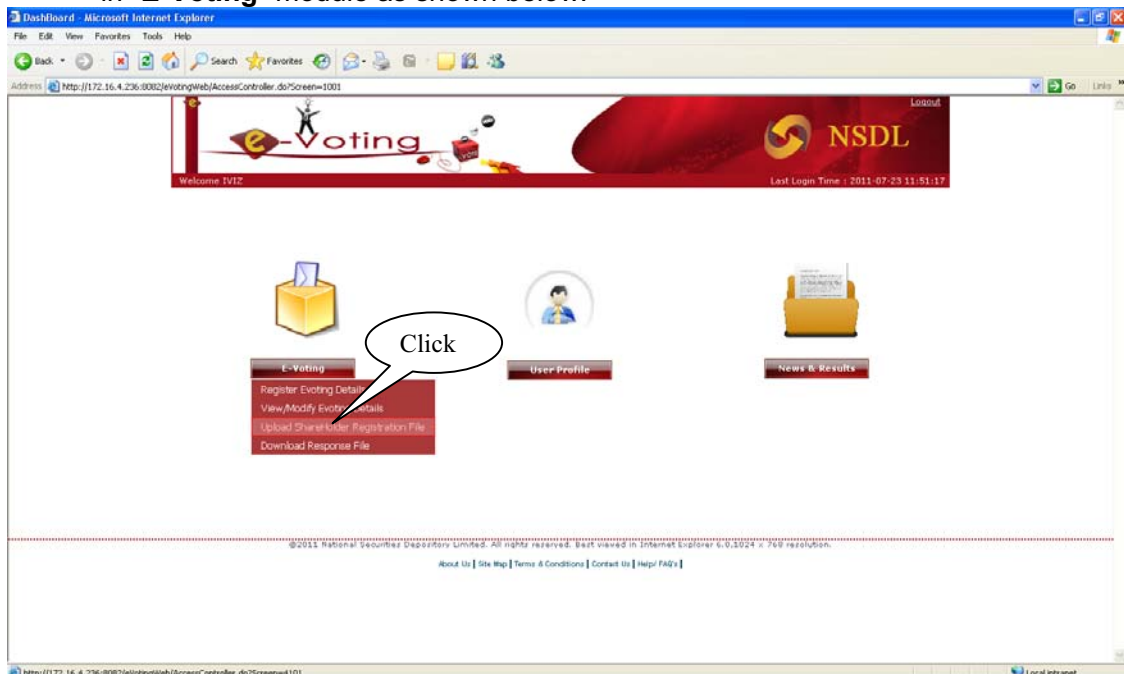
OK

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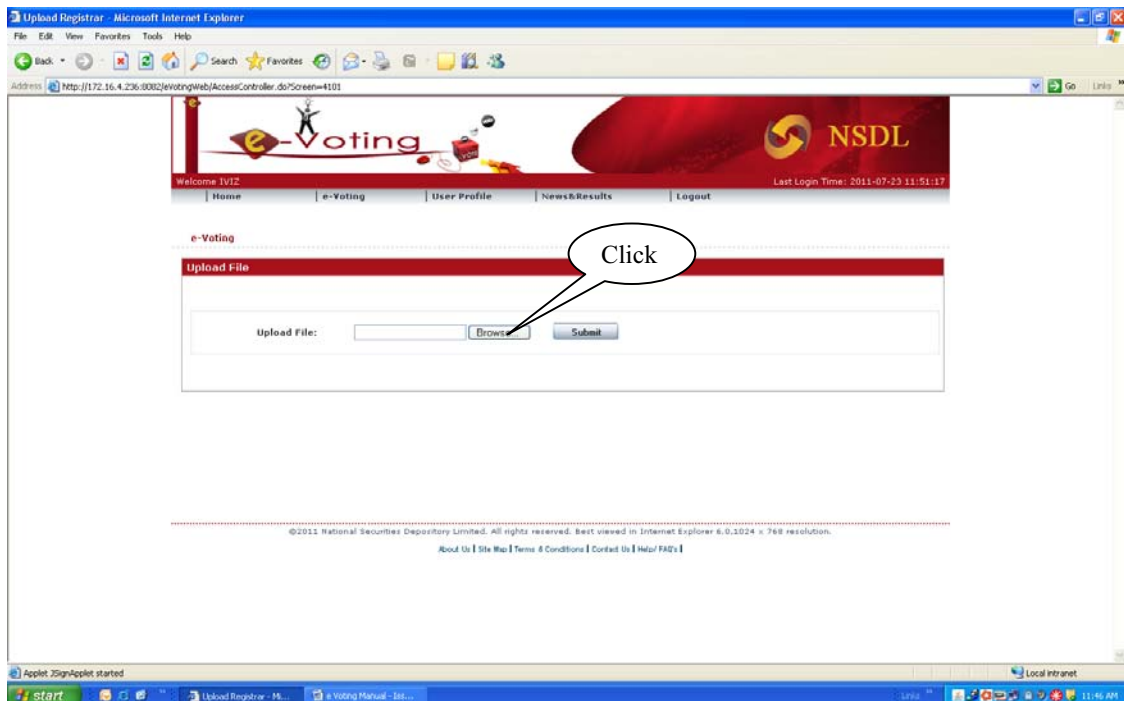


5. Upload of Shareholder Registration File:

1. After successful generation of EVEN, Issuer/R&T Agent has to upload the shareholder registration file from “**Upload Shareholder Registration File**” option in “**E-Voting**” module as shown below.

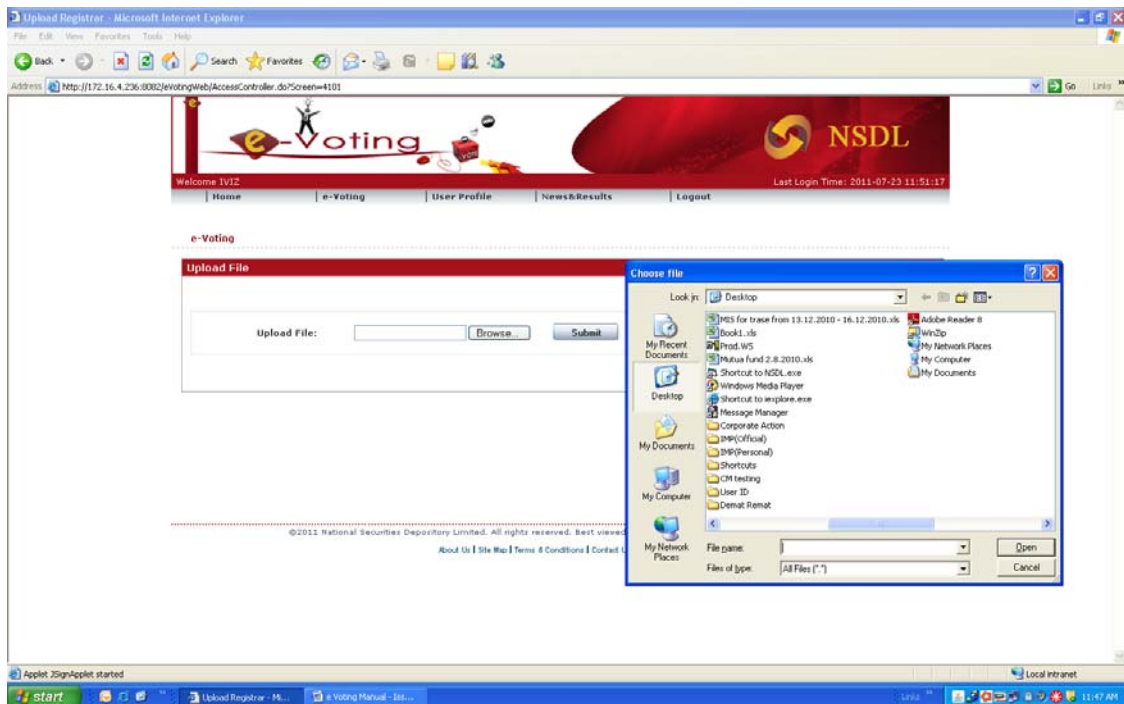


2. Click on “**Browse**” button and select the path of the file to be uploaded from your computer as shown below.

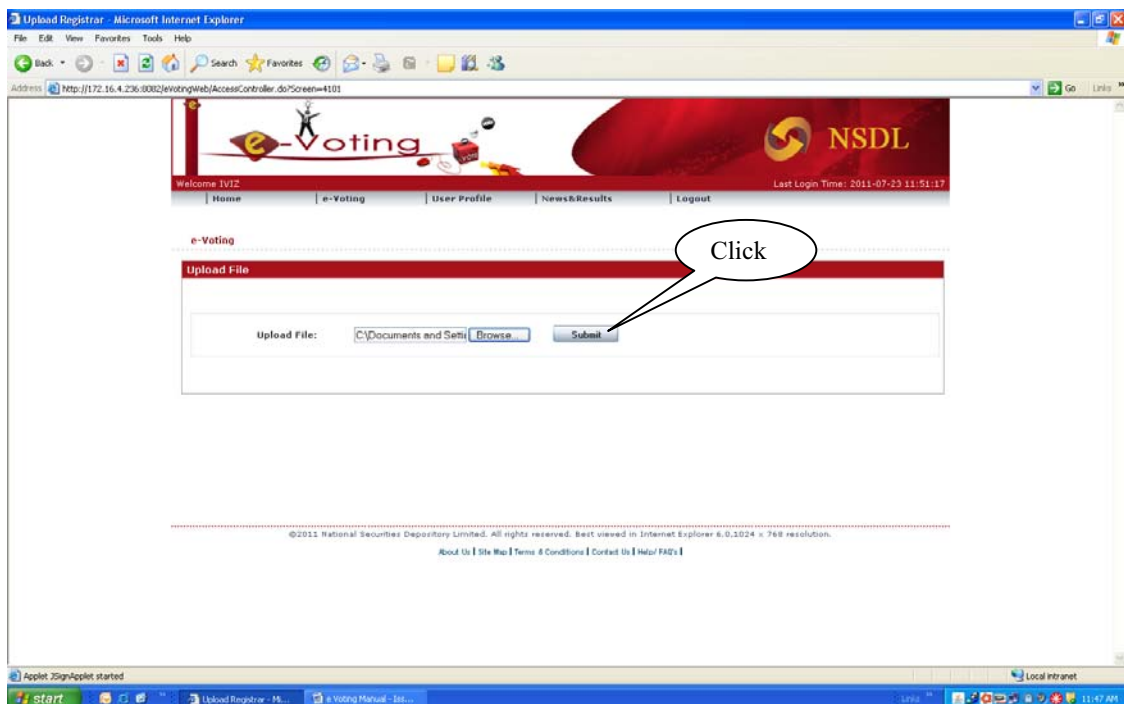




e-Voting Manual



3. Click on **“Submit”** button after selecting the particular file, this will generate a **“Process Id”** as shown below.



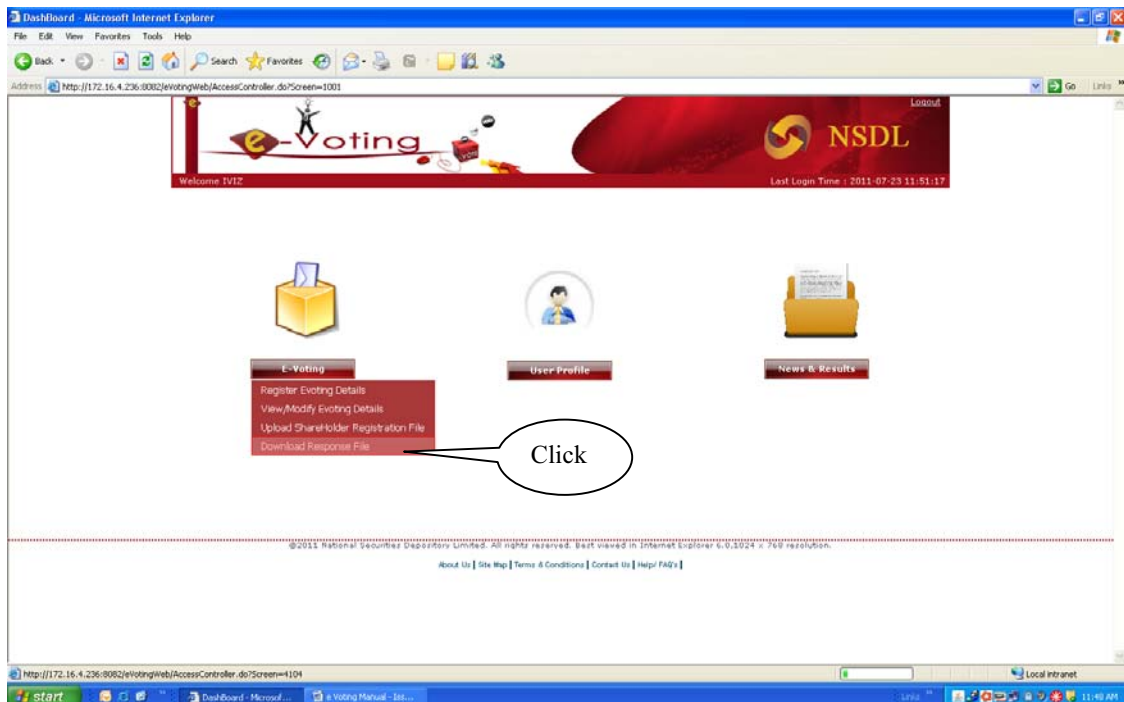


e-Voting Manual

- The **“Process Id”** is generated after successful upload of file (for e.g. 1111298) as shown below.



- Download the response file of the file uploaded by using the process id generated by selecting **“Download Response File”** in **“E-Voting”** module as shown below.





e-Voting Manual

6. Select the file to be downloaded by clicking on the same as shown in the screen below.

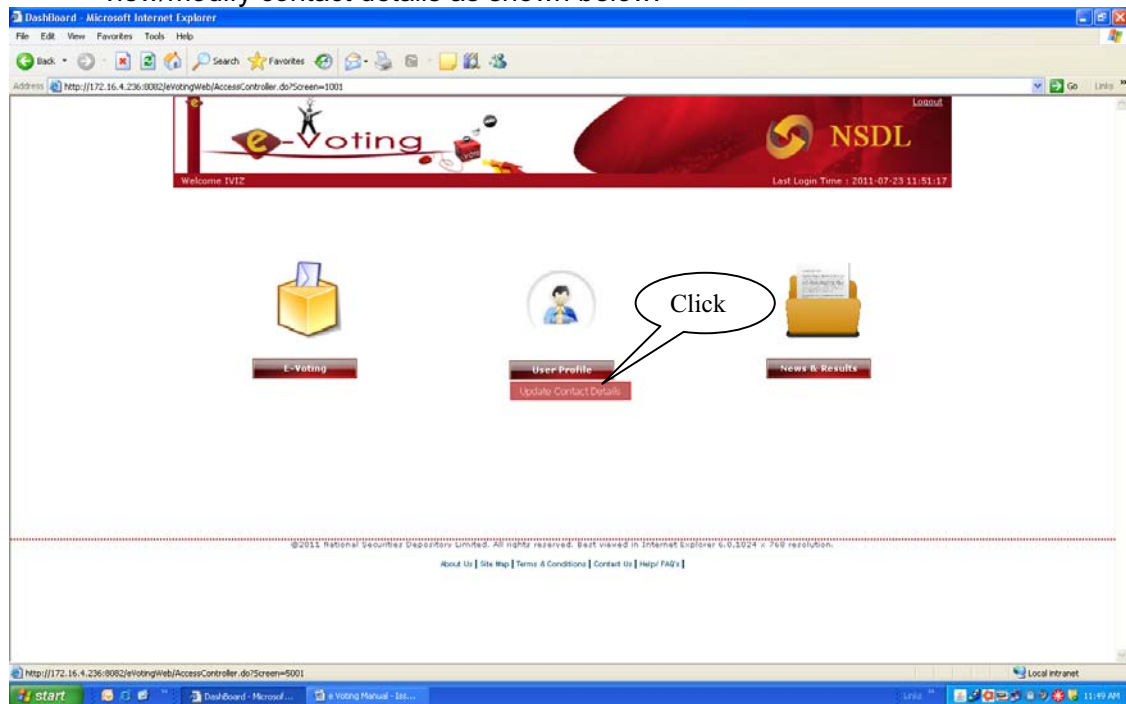
The screenshot shows the e-Voting web application interface. At the top, there is a header with the NSDL logo and the text "Welcome IVIZ". Below the header, there is a navigation menu with links for Home, e-Voting, User Profile, News&Results, and Logout. The main content area displays a table titled "e-Voting" with the following columns: Batch Id, Processid, User Id, No Of Records, Process Date, Error File Name, and Out File Name. The table contains 20 rows of data. A callout bubble with the text "Click" points to the "Out File Name" column of the 10th row, which contains the file name "IVIZ_1234567890_out.txt".

Batch Id	Processid	User Id	No Of Records	Process Date	Error File Name	Out File Name
19	1111126	IVIZ	4	2011-06-04		
20	1111127	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt
39	1111132	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt
49	1111123	IVIZ	4	2011-06-04		
56	1111120	IVIZ	4	2011-06-03		
57	1111121	IVIZ	4	2011-06-03		
59	1111122	IVIZ	4	2011-06-03		
69	1111134	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt
78	1111119	IVIZ	4	2011-06-03		
79	1111124	IVIZ	4	2011-06-04		
88	1111110	IVIZ	4	2011-06-01		
91	1111111	IVIZ	4	2011-05-27	error.txt	test.txt
92	1111112	IVIZ	4	2011-05-30		
94	1111113	IVIZ	4	2011-05-30		
95	1111114	IVIZ	4	2011-05-30		
96	1111115	IVIZ	4	2011-05-30		
97	1111117	IVIZ	4	2011-05-30		
98	1111116	IVIZ	4	2011-05-30		
99	1111129	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt
115	1111126	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt
116	1111128	IVIZ	4	2011-06-06	IVIZ_1234567891_err.txt	IVIZ_1234567891_out.txt
117	1111121	IVIZ	4	2011-06-06	IVIZ_1234567891_err.txt	IVIZ_1234567891_out.txt
128	1111133	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt
126	1111148	IVIZ	4	2011-06-07	IVIZ_10089_err.txt	IVIZ_10089_out.txt
139	1111139	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt
140	1111186	IVIZ	1	2011-06-08		
141	1111187	IVIZ	1	2011-06-08		
142	1111188	IVIZ	4	2011-06-09	IVIZ_1234567890_1111188_err.txt	IVIZ_1234567890_1111188_out.txt
149	1111138	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt
156	1111263	IVIZ	4	2011-06-14	IVIZ_1234567890_1111263_err.txt	IVIZ_1234567890_1111263_out.txt
159	1111137	IVIZ	4	2011-06-06	IVIZ_1234567890_err.txt	IVIZ_1234567890_out.txt

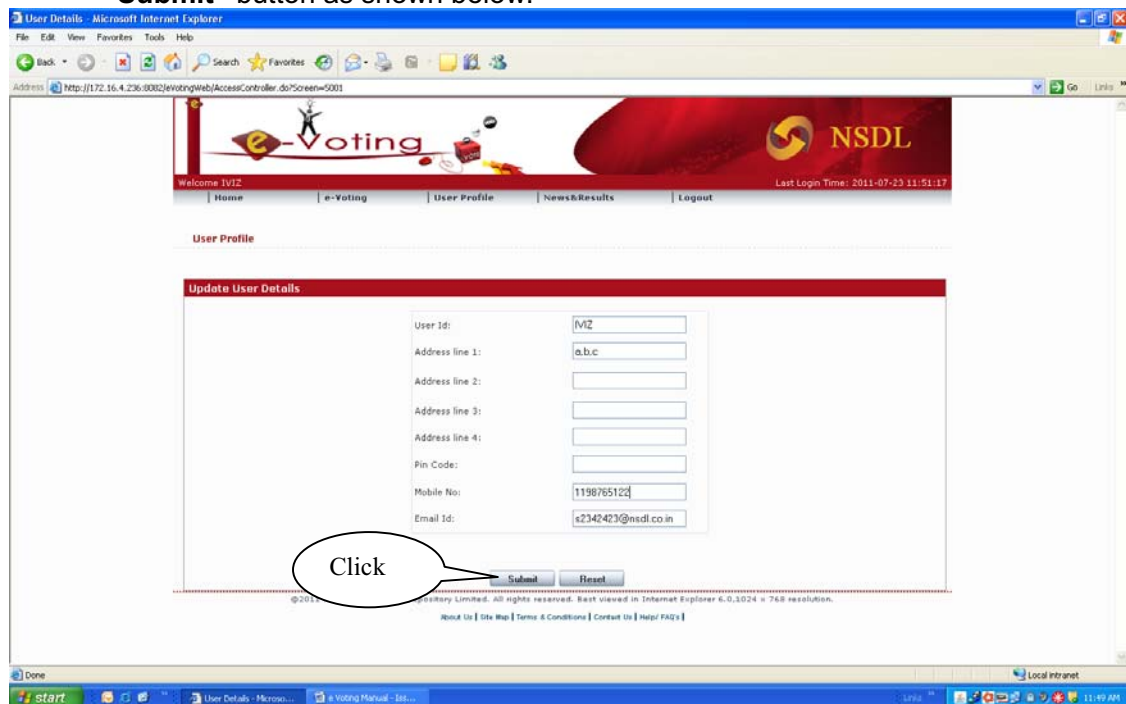


6. User Profile:

1. Select “**User Profile**” icon and click on the “**Update Contact Details**” to view/modify contact details as shown below.



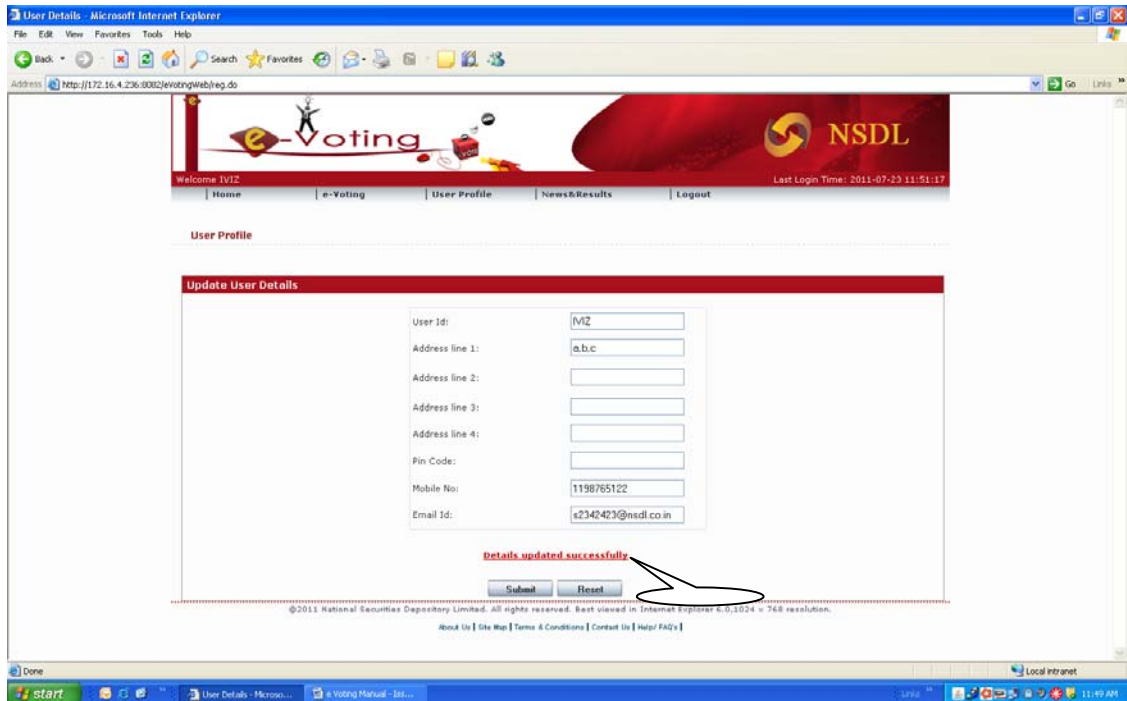
2. The following screen will be displayed. Enter the contact details i.e. **Mobile Number or Email ID** which Issuer/R&T Agent wishes to modify and click on the “**Submit**” button as shown below.





e-Voting Manual

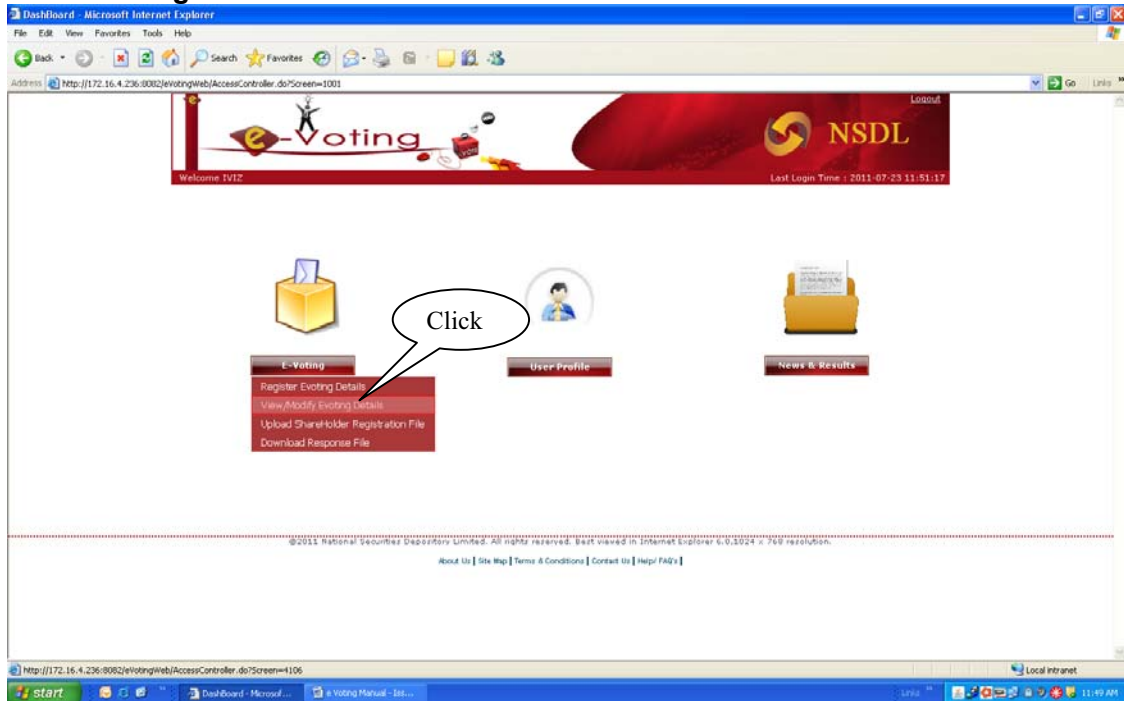
- The following screen is displayed “**Details updated successfully**” on successful updation.



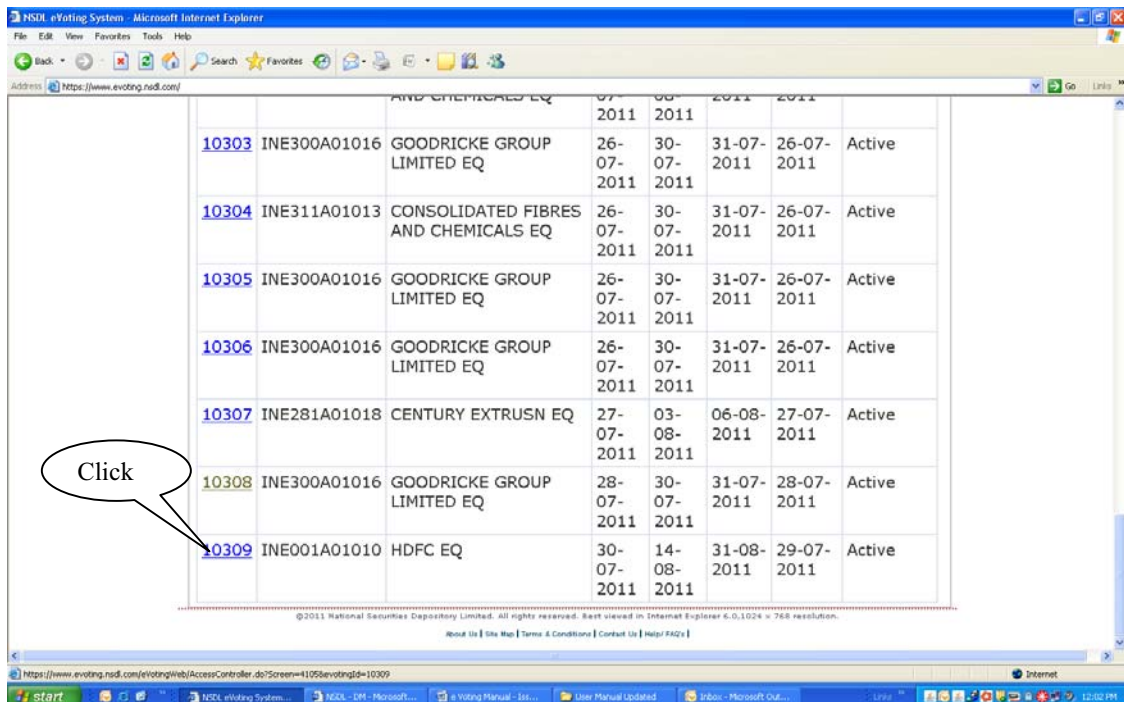


7. View/Modify eVoting Details:

1. To view/modify eVoting details click on “**View/Modify E-Voting Details**” in “**e-Voting**” icon as shown below.



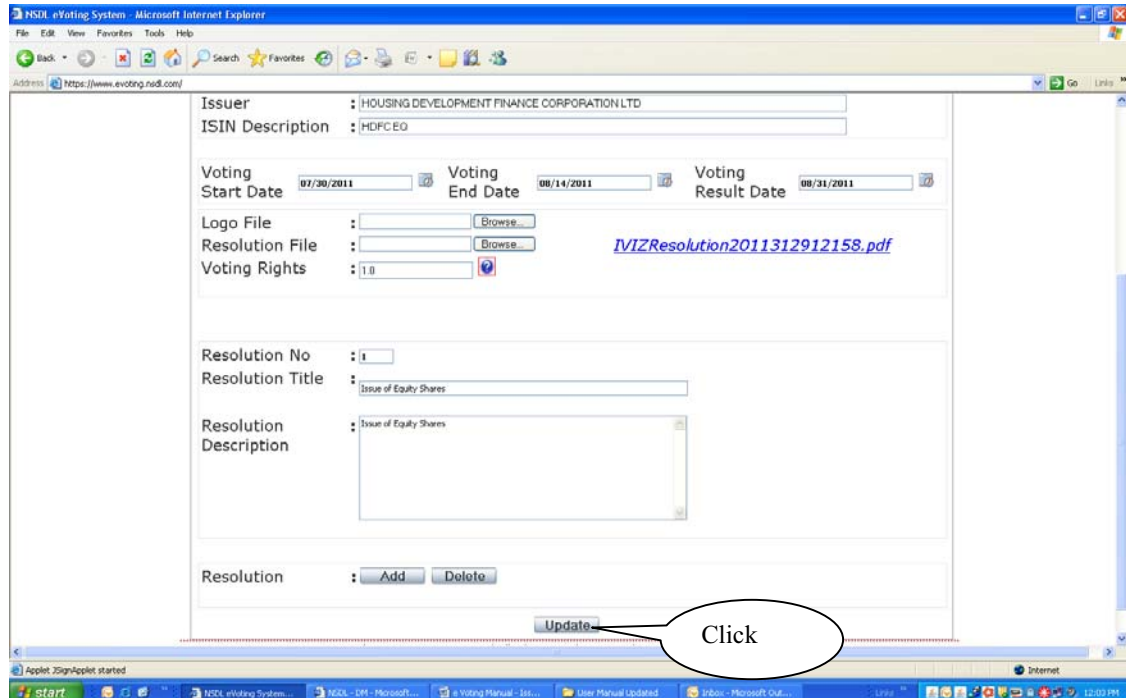
2. The following screen will be displayed. Select the “**EVEN**” which Issuer/R&T wishes to view/modify as shown below.



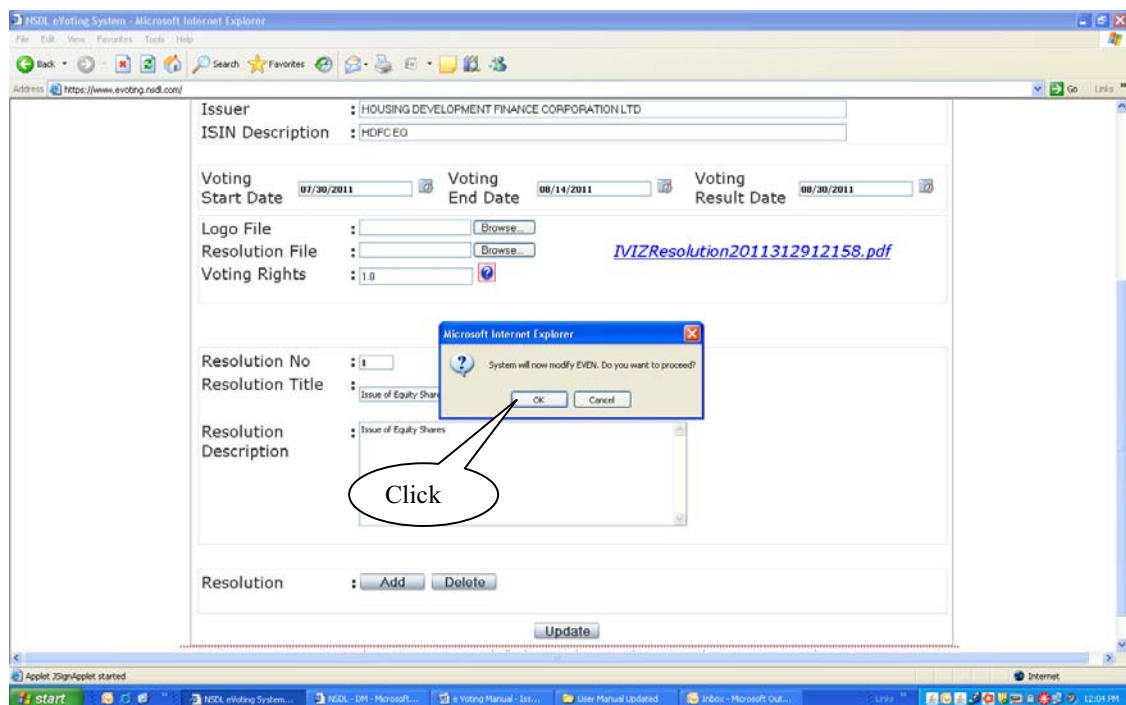


e-Voting Manual

3. Issuer/R&T Agent can view/modify “**e-Voting Details**” of an EVEN before the “**Voting Start Date**” as shown below. Enter the details which Issuer/R&T Agent wishes to modify and click on “**Update button**” as shown below.

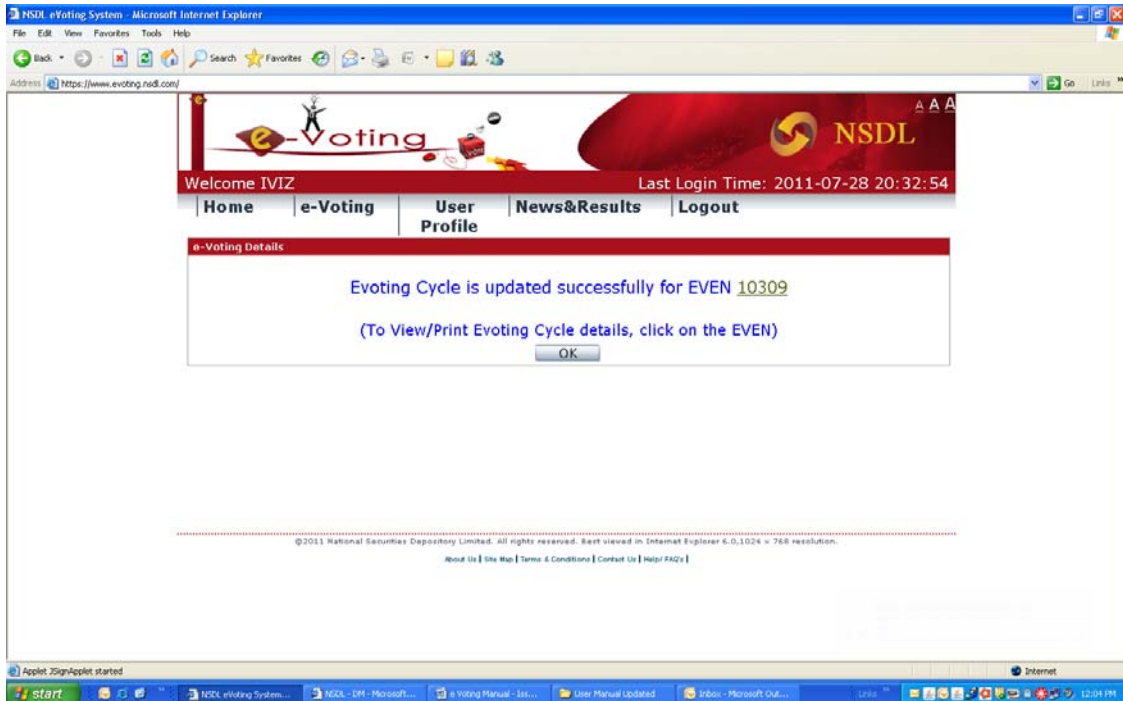


4. Click on “**OK**” button to confirm the modification of EVEN as shown below.





5. Upon confirmation, the message “**Evoting Cycle is updated successfully**” will be displayed as shown below.





8. News & Results:

1. Select “**News & Results**” icon to view News & Results if any, details as shown below.





**User Manual on
e-Voting System
for
Shareholders**

Version 1.0



Name of the document: User Manual for Shareholders

Document Number : NSDL/eVoting/UM/S/01

Prepared by : e- Voting Team of NSDL

Maintained by : Mr. Nitin Ambure

Release date : August 1, 2011

Revision History

SR. NO.	DATE OF REVISION	VER	SECTION NUMBER	DESCRIPTION OF CHANGE	CHANGE REQUEST	CHANGE MADE BY



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3	Login to e-Voting Website	5
4	Process of Voting	7
5	User Profile	10
6	News & Results	16



1. Description of the Organization:

National Securities Depository Limited (NSDL) was established and commenced its operations from November 1996. NSDL has been promoted by IDBI, NSE and UTI as an initiative to curtail the drawbacks of the paper based system which prevailed before the formation of the depository system. NSDL was formed under the Companies Act, 1956 and has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992 (SEBI Act). NSDL as a depository is regulated by SEBI under the provisions of the Depositories Act, 1996 as well as under SEBI (Depositories and Participants) Regulations 1996 (SEBI Regulations).

The depository system introduced by NSDL has benefited the Indian capital market in terms of immediate transfer of securities, faster disbursement of corporate benefits, introduction of rolling settlements, pledging of securities etc.

2. Introduction to e-Voting:

The Ministry of Corporate Affairs has in its efforts for “Green Initiative in the Corporate Governance” has permitted paperless compliances by the companies through electronic mode.

Section 192A, of the Companies Act, 1956 read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 recognises voting by electronic mode for postal ballot to increase the participation of retail investors in the decision-making process of companies. The Postal Ballot Rules, 2001 were Superseded by Postal Ballot Rules, 2011, which prescribed the appropriate mechanism for e-Voting.

In order to facilitate the Issuers to enable electronic voting National Securities Depository Limited (NSDL) has developed an internet based “e-Voting” platform, which will enable shareholders / stakeholders to cast their vote on the resolutions proposed by the companies by Postal Ballot.



3. Login to e-Voting website (Shareholders):

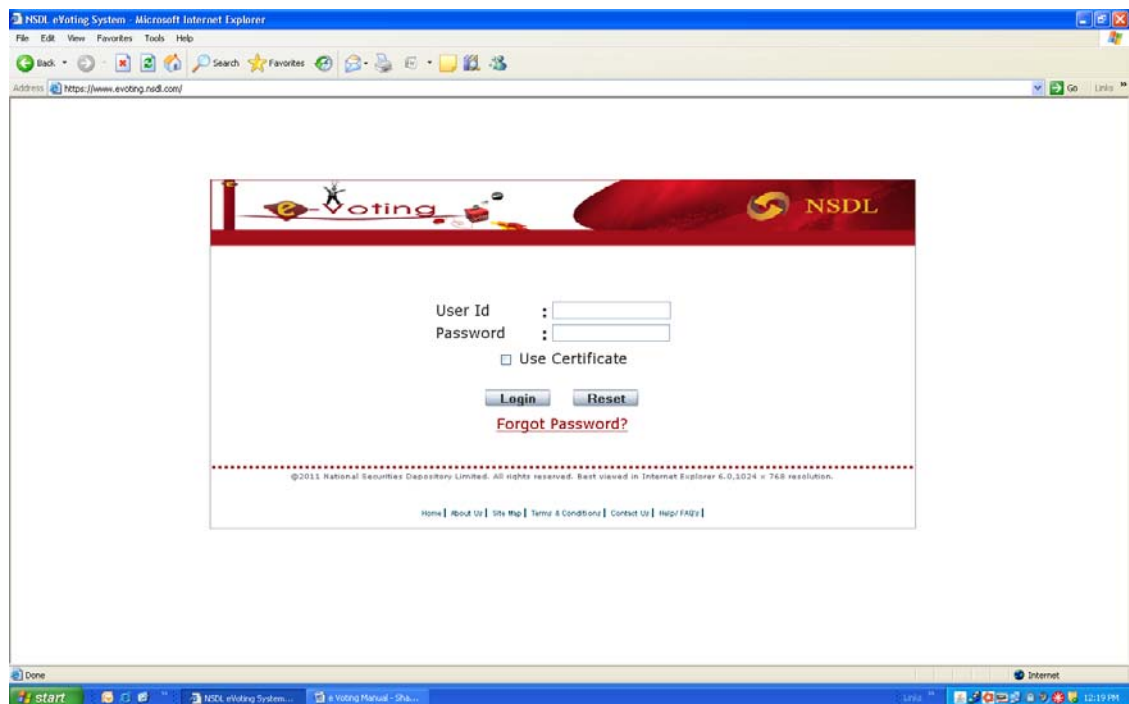
- I. Launch the Internet Browser and type the following URL in the address bar **www.eVoting.nsdl.com** and click on “Enter (→)”. The Home screen will be displayed. Select the **Shareholder “Login”** as shown below.



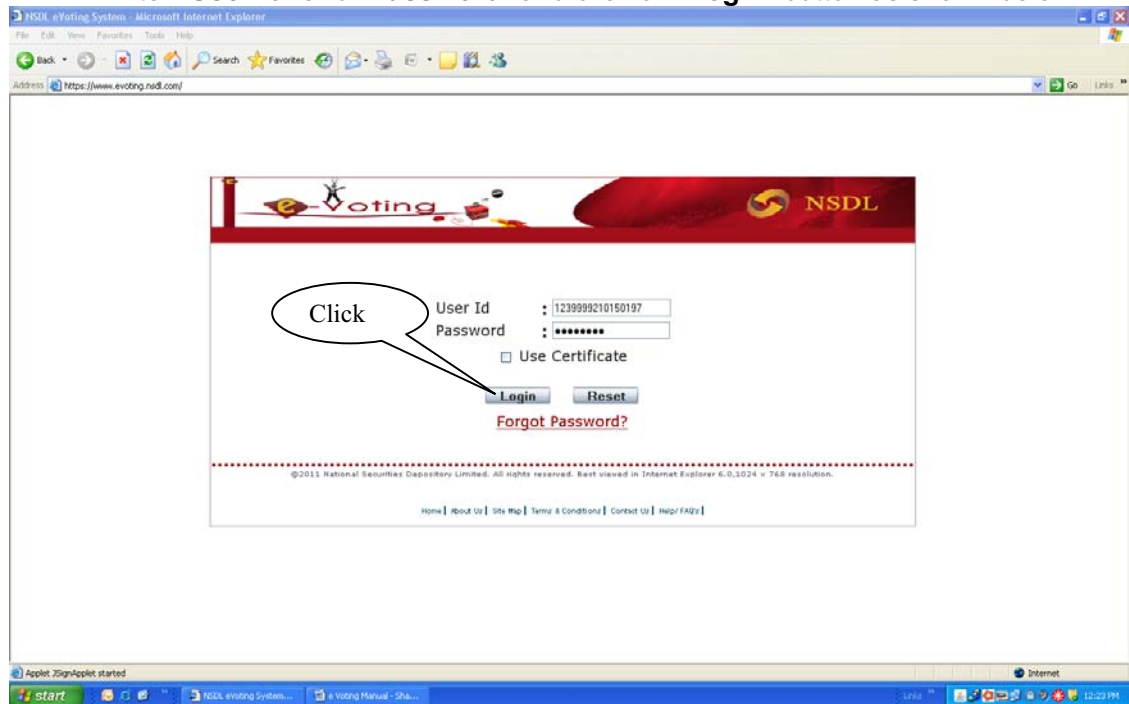
- II. After selecting the Shareholder login as shown above the following screen would appear.



e-Voting Manual



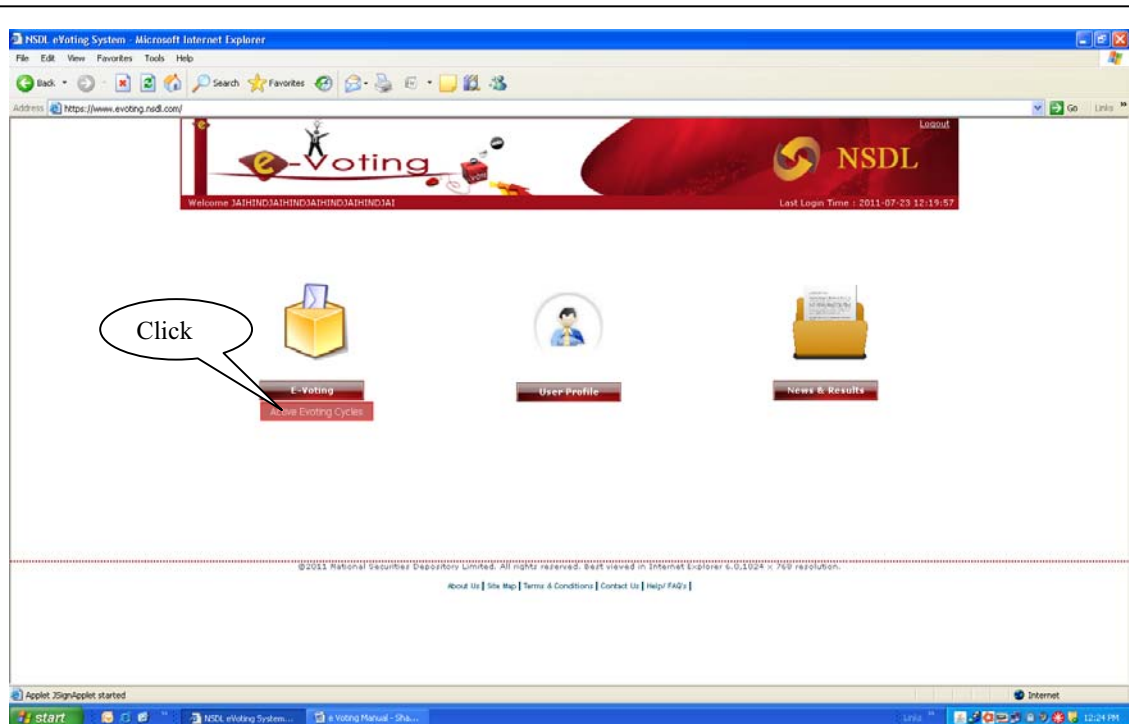
III. Enter “User Id” and “Password” and click on “Login” button as shown below.



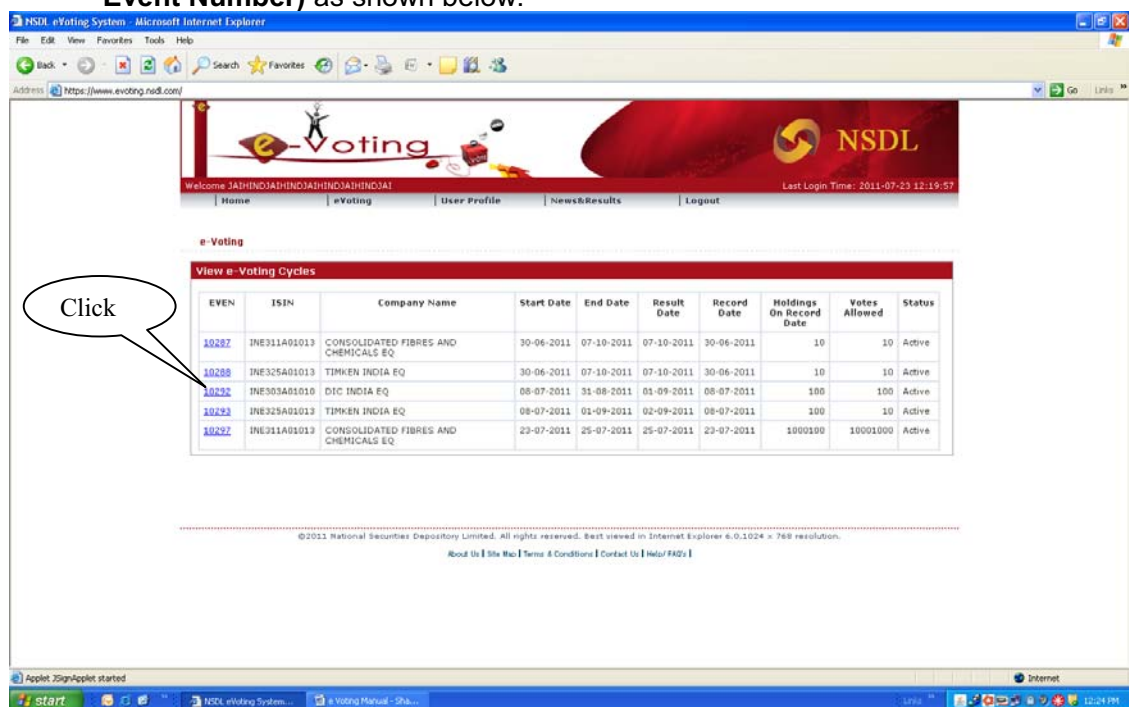
IV. On successful login the following screen will be displayed. The system will prompt the User to change password on first login. Further, User shall select the “Security Question” from the drop down list and enter the answer in “Answer” field. This security question shall be used in case user forgets the password. An email shall be sent to the email id registered with the evoting platform. User may also modify the Mobile Number and Email ID and click on “Confirm” button as shown below.



e-Voting Manual



- II. The following screen will be displayed with active evoting cycles. User may select the evoting cycle for voting by clicking on the hyperlink of “**EVEN**” (**E Voting Event Number**) as shown below.

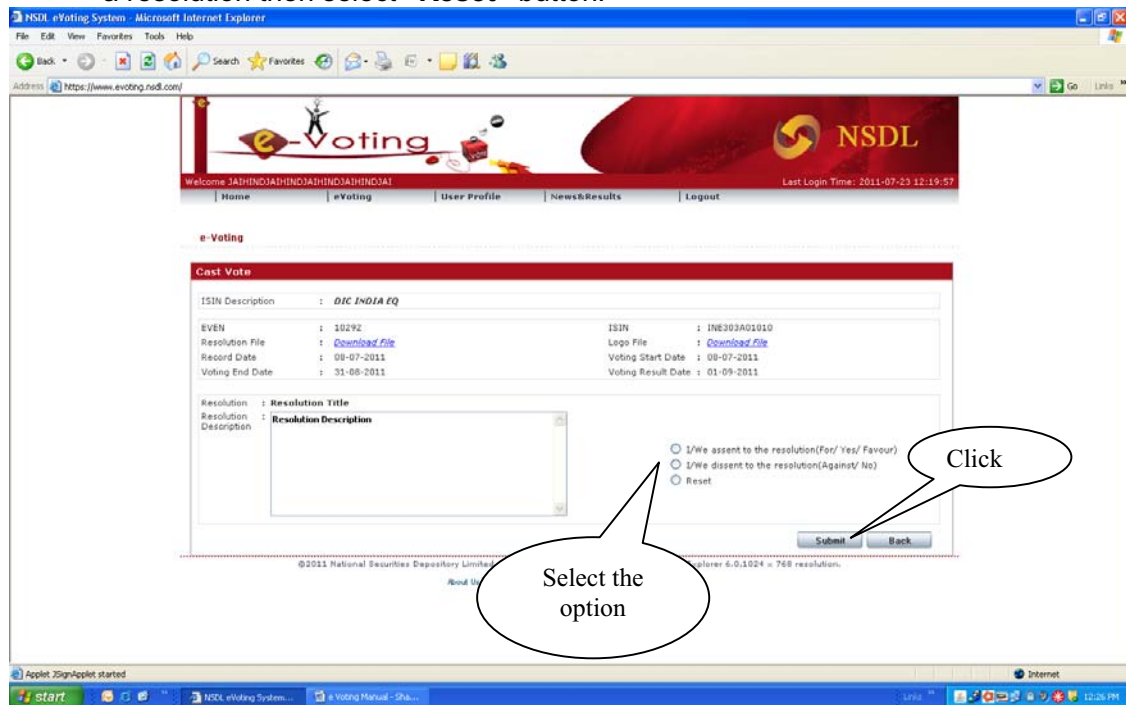


- III. After selecting the EVEN, the details of the EVEN shall be displayed. The user has an option to vote a resolution during the voting start and end date. The user shall cast the vote for a resolution of the EVEN by selecting the option for/against as shown below and click on submit. (The system shall then prompt for

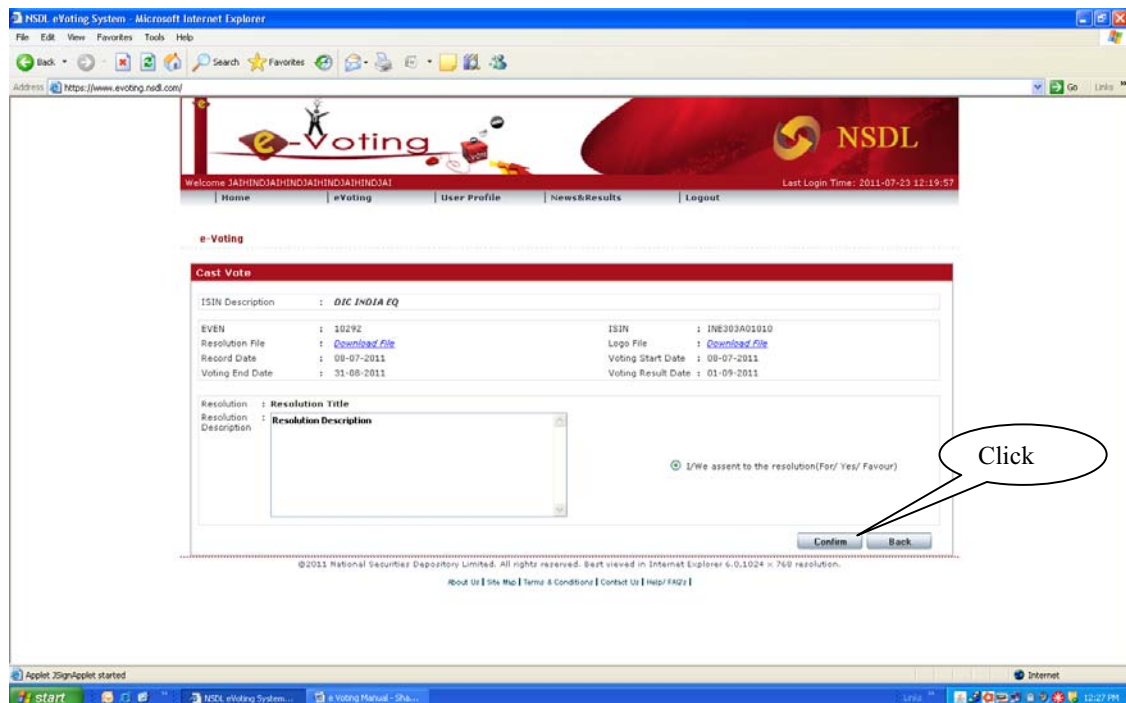


e-Voting Manual

confirmation on the screen as shown below). In case vote is not to be casted for a resolution then select “Reset” button.

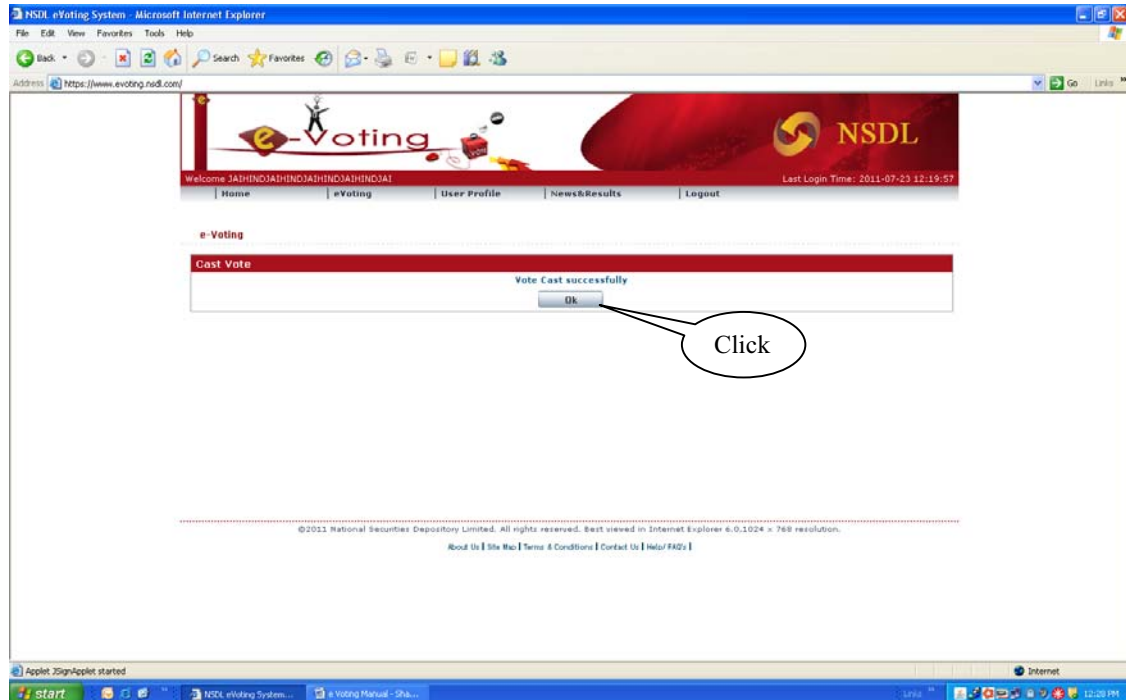


IV. Click on “Confirm” button to confirm the caste of vote as shown below





- V. Upon confirmation, the message **“Vote cast successfully”** will be displayed as shown below.



5. User Profile:

'User Profile' is the user interface which provides the following facilities to the user

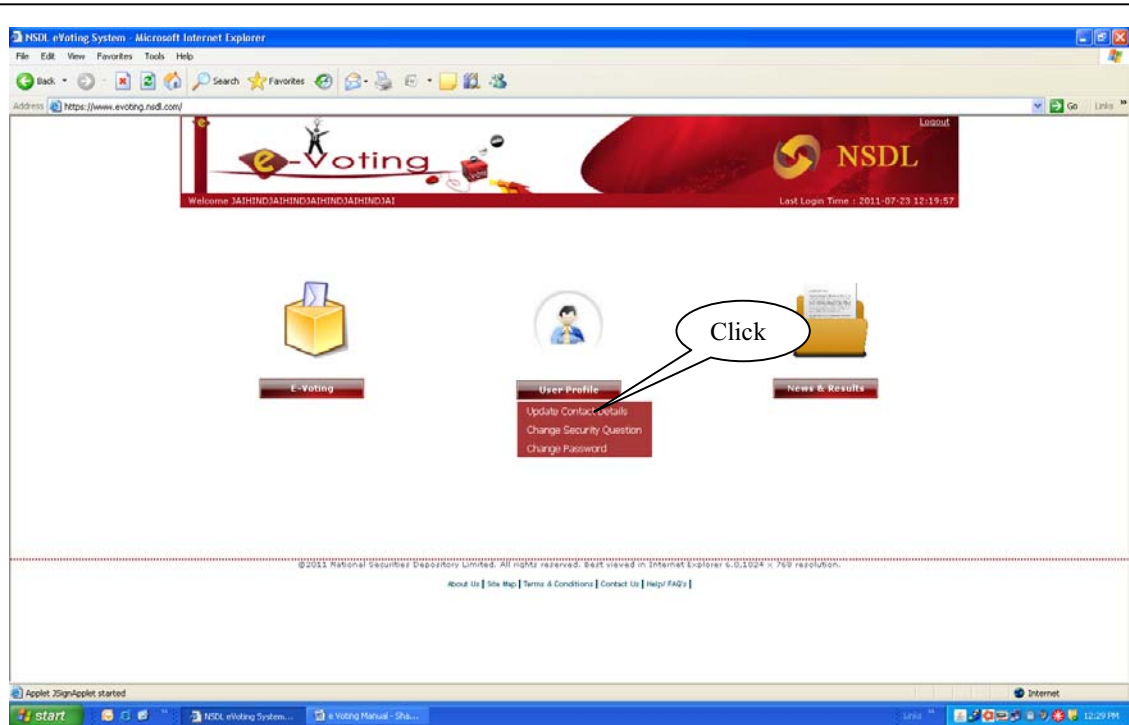
- View/Update Contact details
- Change Security question
- Change Password

5.1 View/Update Contact details

- I. Go to **“User Profile”** icon as shown below and click on the **“Update Contact Details”** to view contact details i.e. Mobile No. and Email ID, as available on the website.



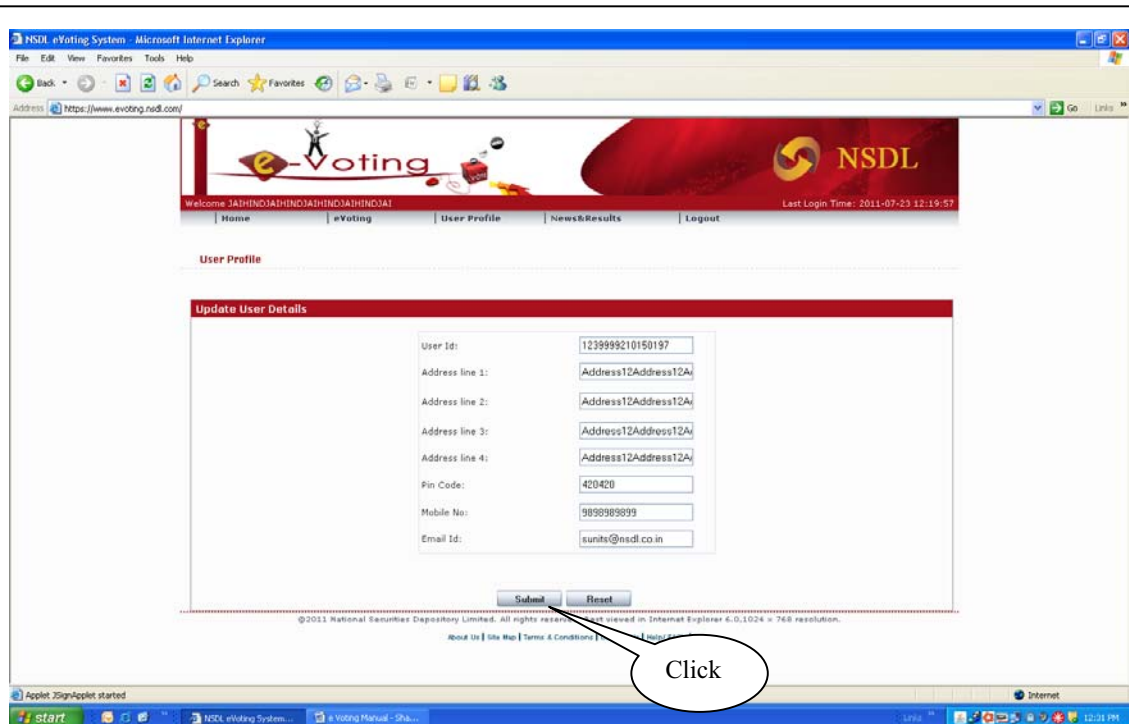
e-Voting Manual



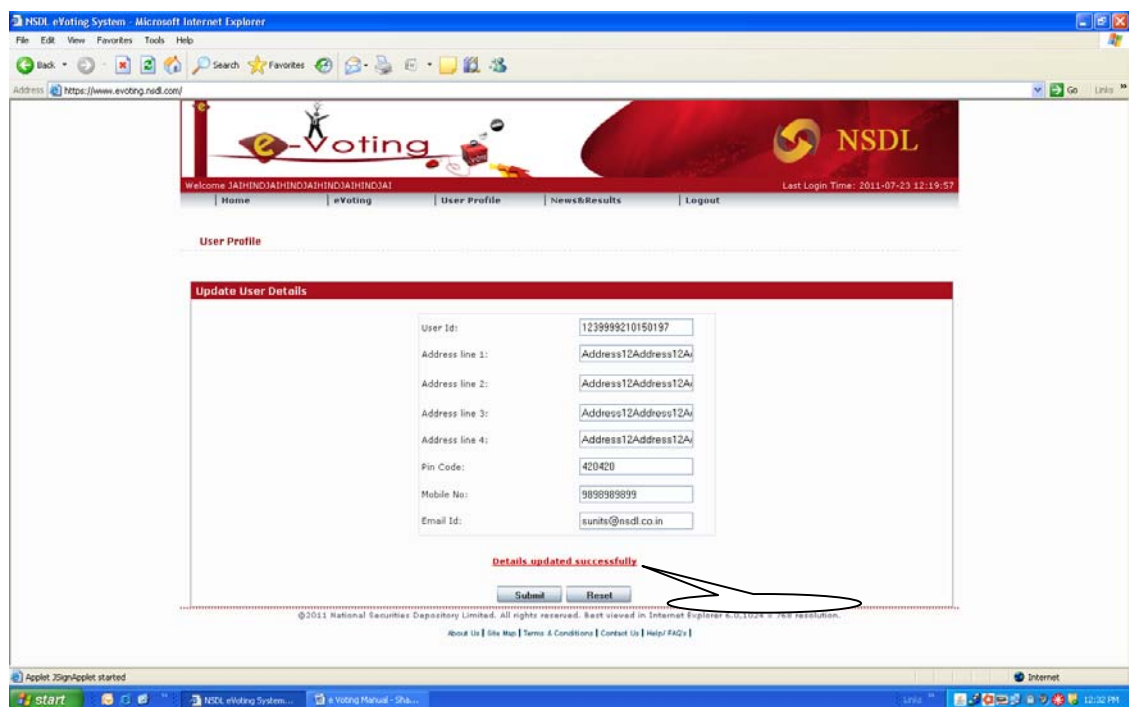
- II. To modify the aforesaid contact details click on “**Submit**” after modifying the contact details, it will display Details updated successfully as shown below.



e-Voting Manual



- III. A confirmation dialogue will be displayed "**Details updated successfully**" as shown below.

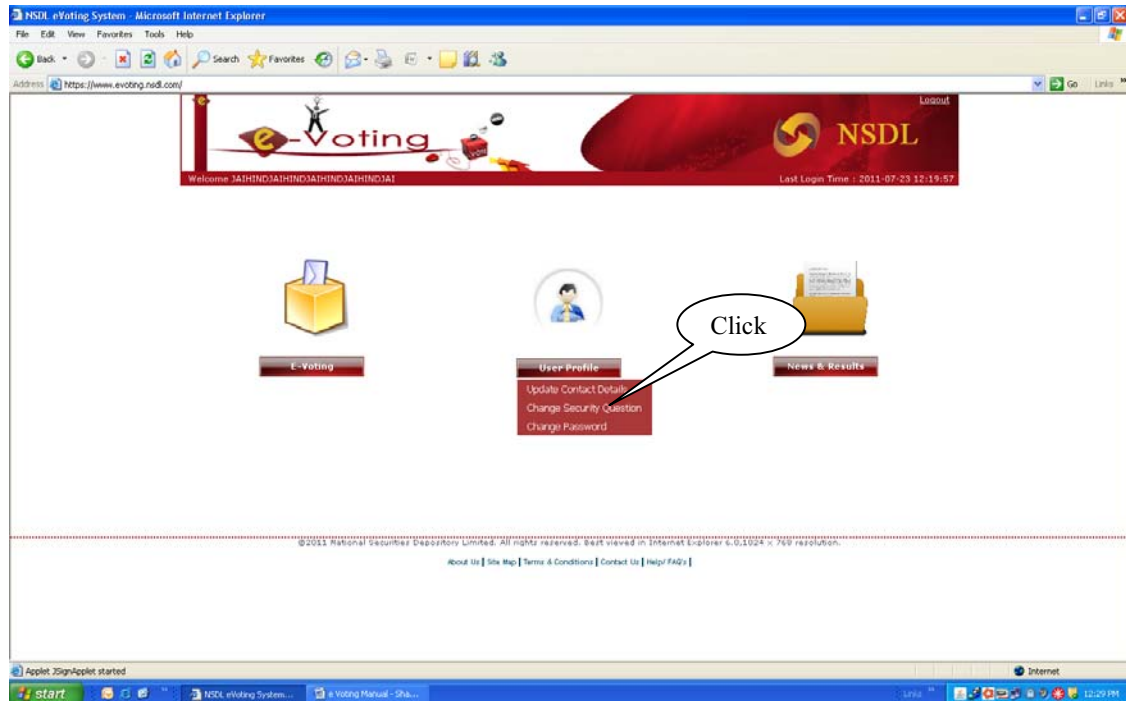


5.2 Change Security question

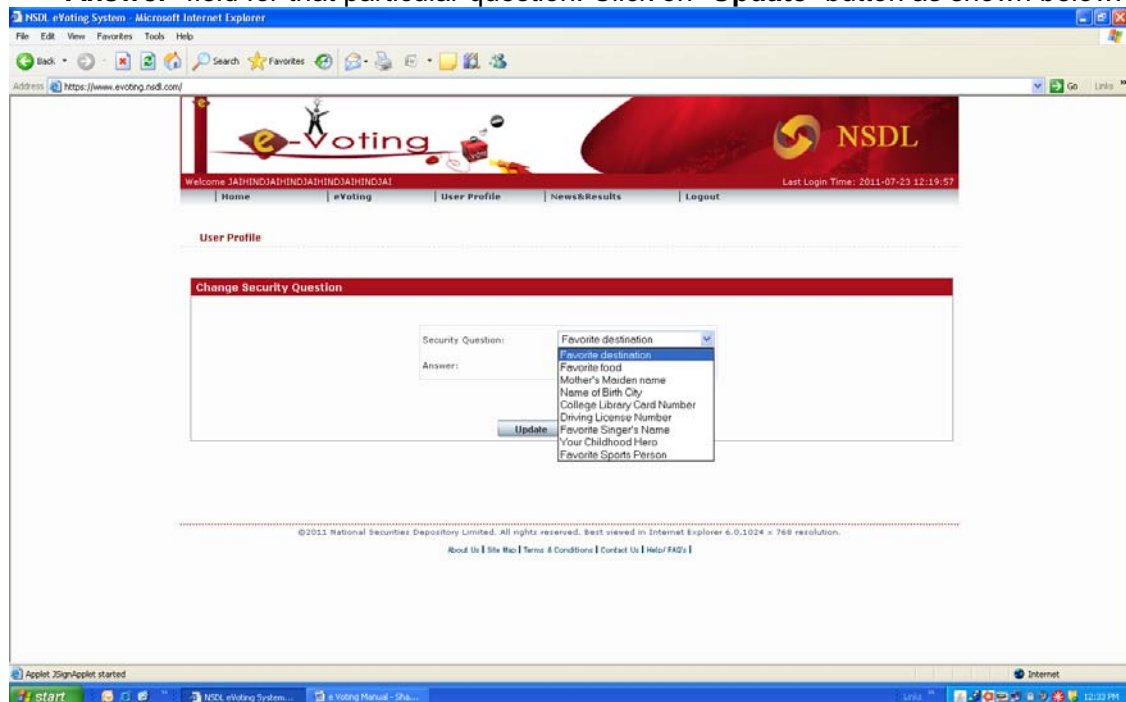


e-Voting Manual

- I. Go to **“User Profile”** icon and click on the **“Change Security Question”** to change the security question which will be prompted in the instance of Forgot password as shown below.

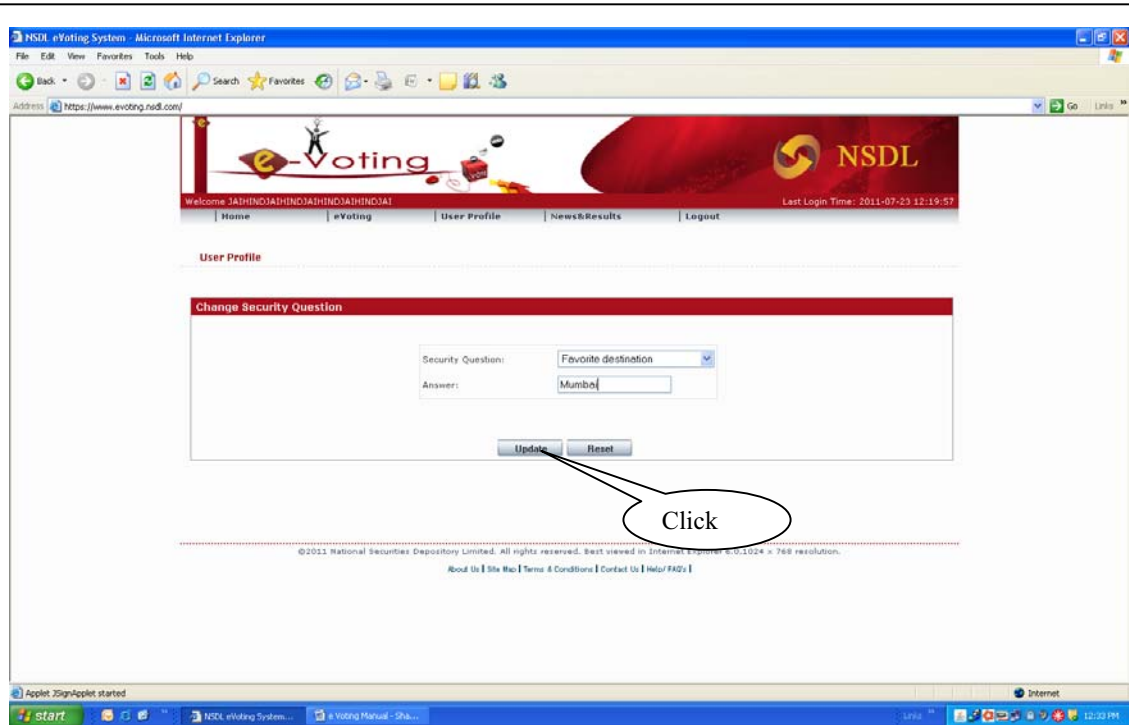


- II. Select the **“Security Question”** from the drop down and enter the answer in the **“Answer”** field for that particular question. Click on **“Update”** button as shown below.

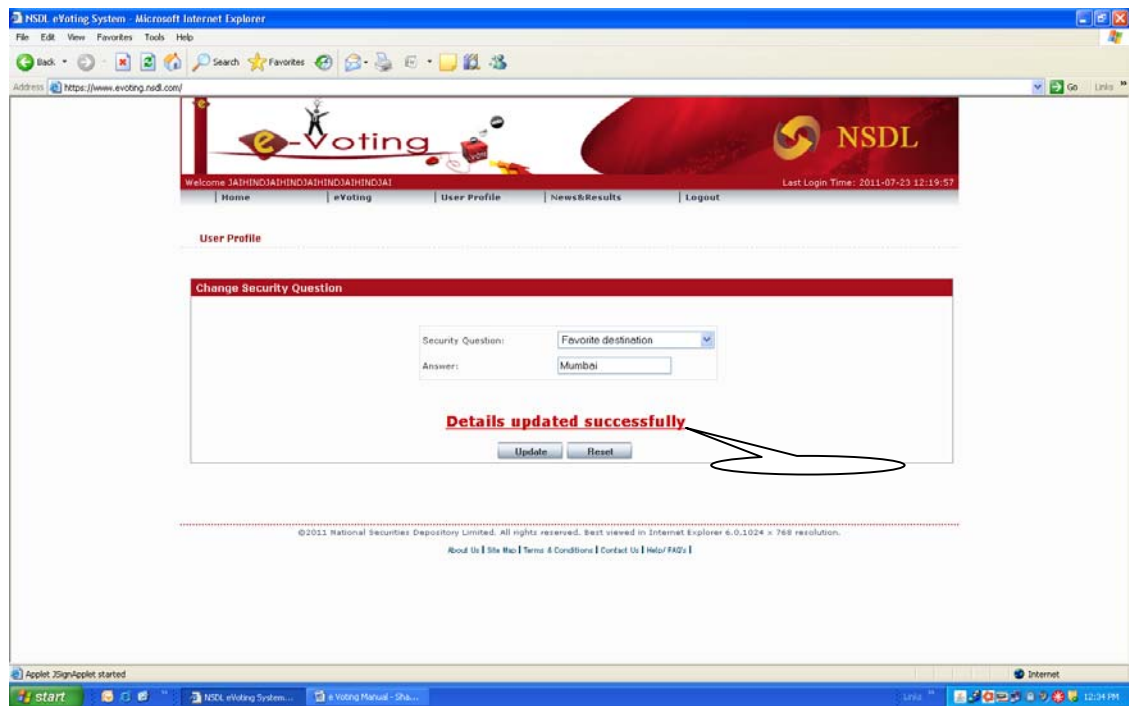




e-Voting Manual



III. A confirmation dialogue will be displayed “**Details updated successfully**” as shown below.



5.3 Change Password



6. News & Results:

Go to “**News & Results**” icon to view News & Results if any, details as shown below.



e-Voting Manual



**e-Voting
User Manual
for
Custodians**

Version 1.0



Name of the document: User Manual for Custodians

Document Number : NSDL/eVoting/UM/C/01

Prepared by : e- Voting Team of NSDL

Maintained by : Mr. Nitin Ambure

Release date : September 11, 2012

Revision History

SR. NO.	DATE OF REVISION	VER	SECTION NUMBER	DESCRIPTION OF CHANGE	CHANGE REQUEST	CHANGE MADE BY



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1. Description of the Organization:

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Section 192A, of the Companies Act, 1956 read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 recognises voting by electronic mode for postal ballot to increase the participation of retail investors in the decision-making process of companies. The Postal Ballot Rules, 2001 has been superceded by Postal Ballot Rules, 2011 which has also prescribed the appropriate mechanism for electronic voting.

In order to facilitate the Issuers to enable electronic voting National Securities Depository Limited (NSDL) has developed an internet based “e-Voting” platform, which will enable shareholders / stakeholders to cast their vote on the resolutions by Postal Ballot.



3. Login to e-Voting website (Custodians):

1. Launch the Internet Browser and type the following address in the address bar **www.eVoting.nsd.com** and click on “Enter (→)”. The Home screen will be displayed. Select the Custodian “Login” as shown below.

Contact Us
 e-Voting
 National Securities Depository Limited,
 TradeWorld, A Wing,
 4th Floor,
 Kamala Mills Compound,
 Senapati Bapat Marg,
 Lower Parel, MUMBAI 400 013
 Tel : (022) 24994200
 Fax : 022-24994972
 022-24976355
 E-Mail : evoting@nsdl.co.in

News & Updates
 start stop
 availed the services of NSDL e-Voting system and voting on resolutions has also been completed.
 6]SEBI vide its circular No. CIR/CFD/DIL/6/2012 dated July 13, 2012 has made e-Voting mandatory for top 500 listed entities listed at NSE and BSE based on market capitalization.----- Dated : July 14, 2012.

Shareholder
 e-voting is a common Internet Infrastructure that enables the investors to vote electronically on resolution of companies.
 Login

Issuer/R&T Agent
 Issuer/R&T Agent can create ,modify eVoting Event Number(EVEN) along with registration of investors with EVEN.
 Login

Scrutinizer
 e-Voting is a facility which enables the scrutinizer to view/authorize EVEN results
 Login

Custodian
 e-voting is a common Internet Infrastructure that enables the investors to vote electronically on resolution of company.
 Login

2. After selecting the Custodian login the following screen would appear.

Login

User Id :

Password :

Use Certificate

Verification Code :

(Enter Text from Image)

Use Virtual Keyboard(For Password)

I hereby agree to all [Terms and Conditions](#)

[Forgot Password?](#)

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e-Voting User Manual

3. Enter “**User ID**” and select the “**Use Certificate**” Check Box and click on “**Login**” Button.

User Id : cst1

Password :

Use Certificate

Verification Code : 6t2DZi

I hereby agree to all [Terms and Conditions](#)

[Forgot Password?](#)

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4. An option to select the DSC of the user will be displayed. Select the “**Digital Certificate**” of the user which is mapped for the e-Voting system and click on “**OK**” button.

User Id : cst1

Password :

Use Certificate

Verification Code : 6t2DZi

I hereby agree to all [Terms and Conditions](#)

[Forgot Password?](#)

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Select Signer Certificate

Select your digital certificate to digitally sign file(s)

Click [View Certificate] to view more details of the certificate

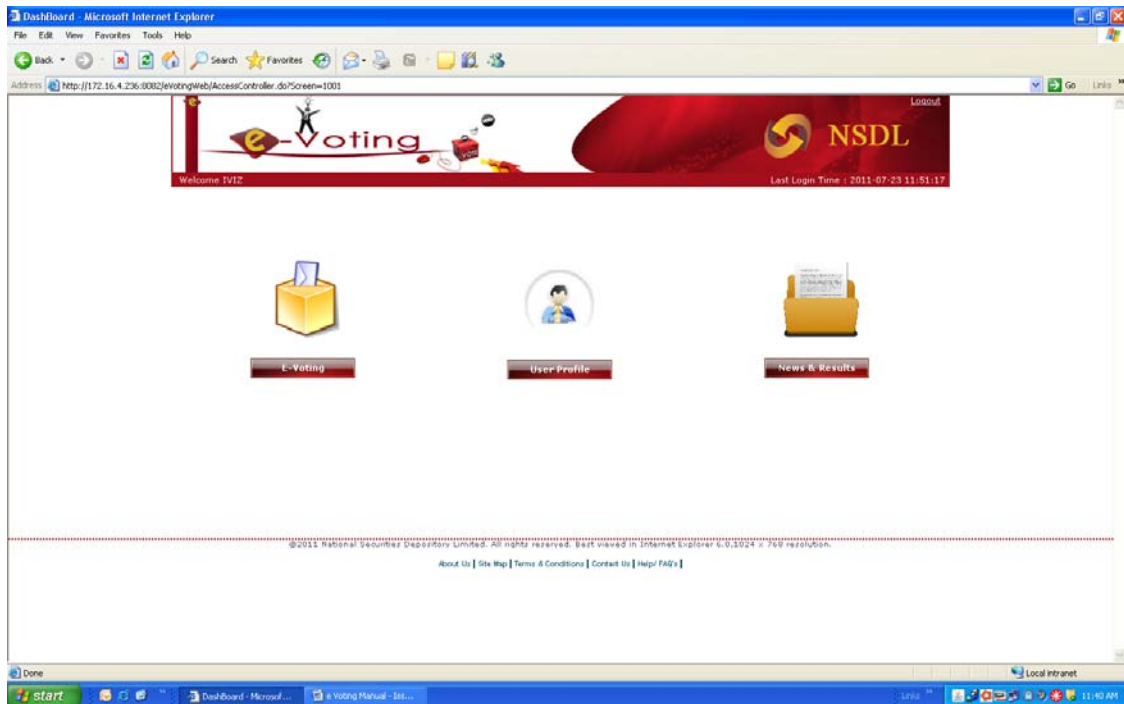
Issued To	Issued By	Serial No	Expiration Date	Issuer D
Test Organization...	TCS sub-CA for T...	7327d50fb...	Fri Nov 30 11:21:...	CN=TCS sub-C
SPEED-e Testing t...	NSDL - Issuing A...	71b0	Thu Jul 18 17:55:...	C=IN, ST=Mahar
Demo Company	TCS CA 2011	7126fa1aa...	Tue Nov 27 15:31:...	CN=TCS CA 20
subjects	NSDL - Issuing A...	7088	Sat Jun 28 17:23:...	C=IN, ST=Mahar
Chetan Angane	NSDL - Issuing A...	6c89	Sat Apr 19 14:27:...	C=IN, ST=Mahar
eVoting	NSDL - Issuing A...	71af	Thu Jul 18 17:55:...	C=IN, ST=Mahar

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e-Voting User Manual

5. On successful “Login” the following screen will be displayed.



4. **Upload of Custodian Registration File:**

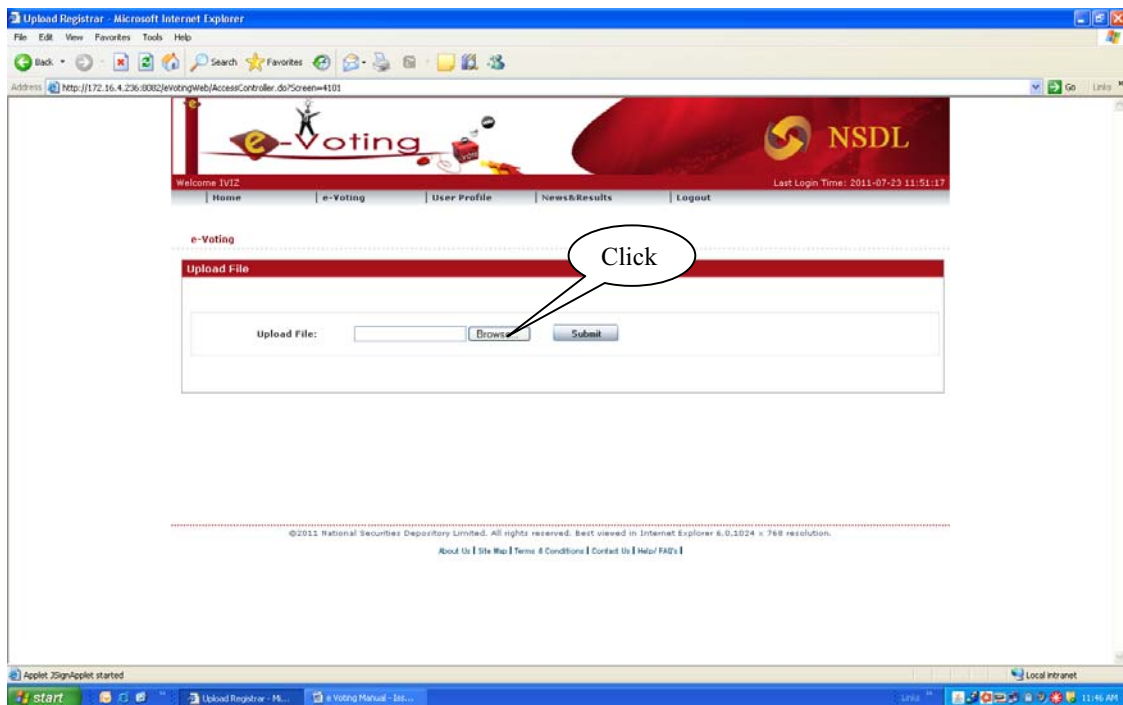


e-Voting User Manual

1. Select **“e-Voting”** icon and click on the **“Upload Custodian Registration File”** as shown below.

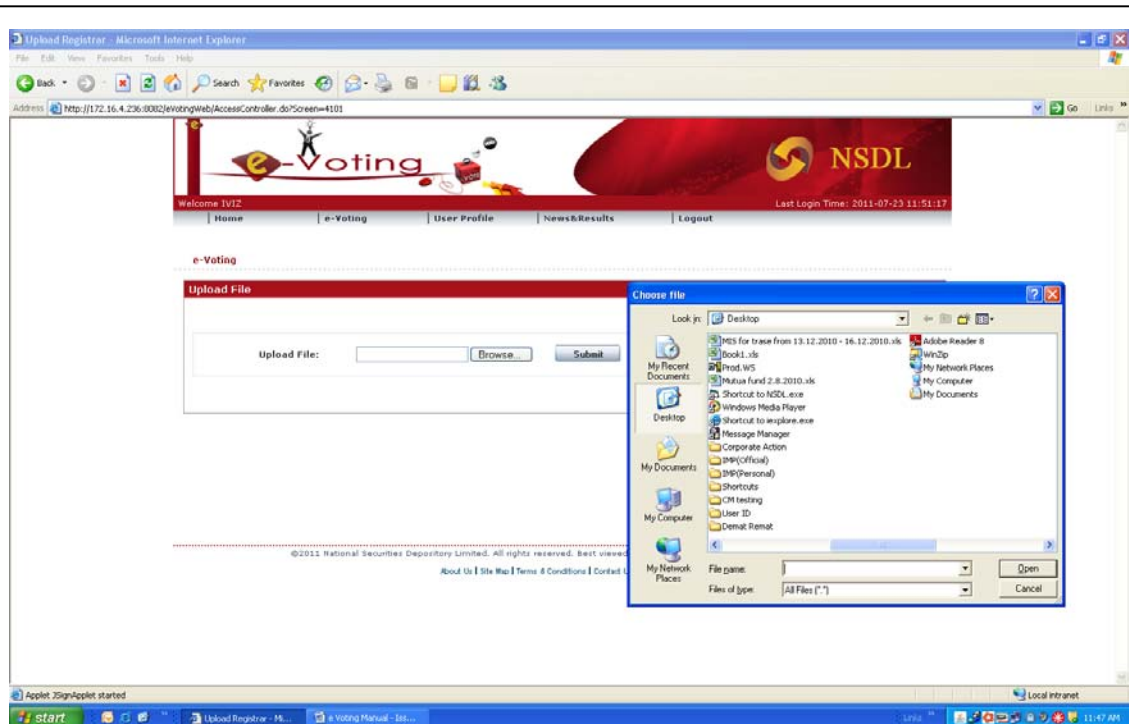


2. Click on **“Browse”** button and select the path of the file to be uploaded from your computer as shown below.

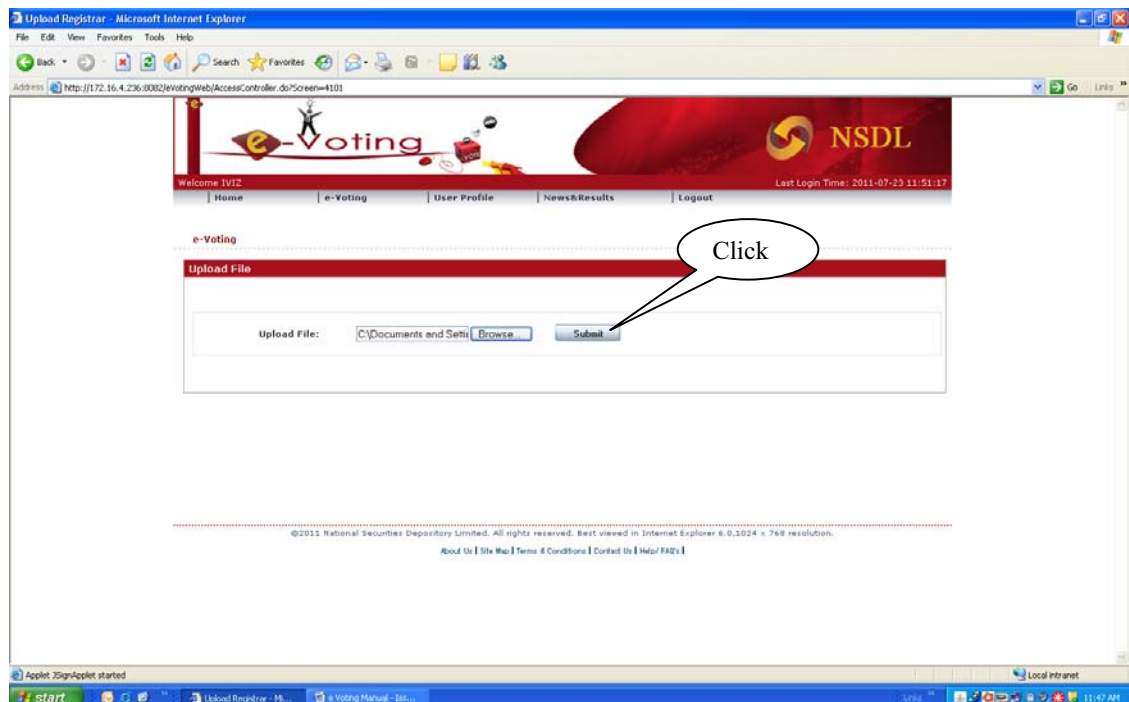




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3. Click on **"Submit"** button after selecting the particular file, this will generate a **"Process ID"** as shown below.



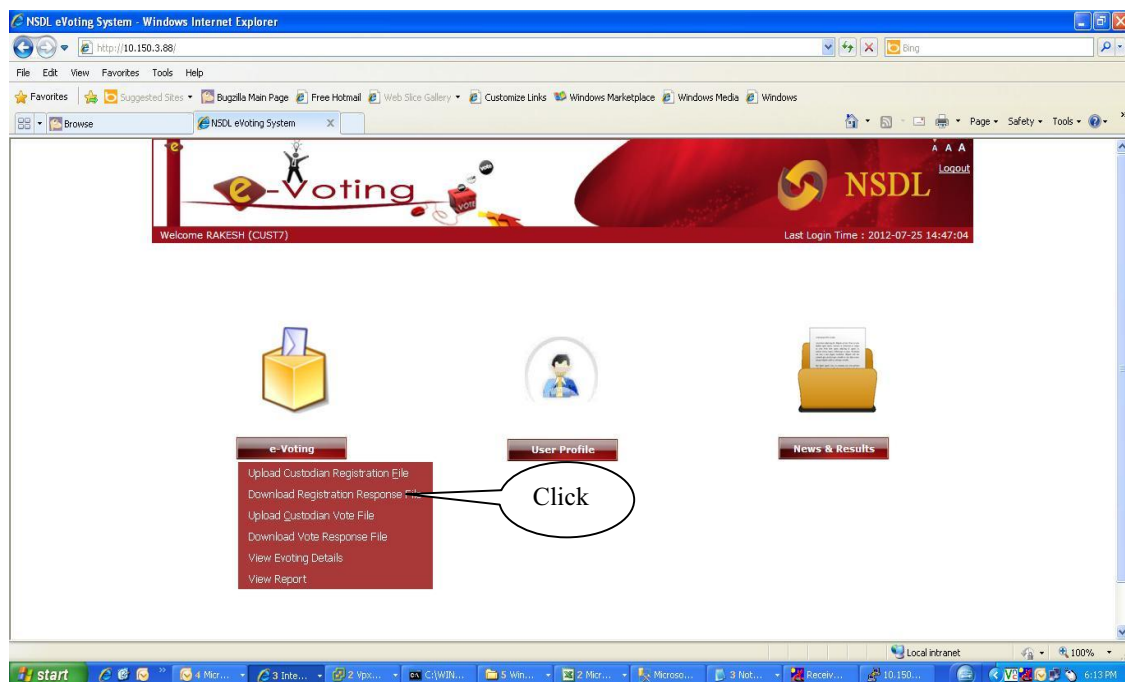


e-Voting User Manual

4. The **“Process ID”** is generated after successful upload of file (for e.g. 7000143) as shown below.



5. Download the response file of the file uploaded by using the process ID generated by selecting **“Download Registration Response File”** in **“E-Voting”** module as shown below.





e-Voting User Manual

6. Select the file to be downloaded by clicking on the same as shown in the screen below.

The screenshot shows the NSDL e-Voting System interface in a Windows Internet Explorer browser. The page displays a table of records with the following columns: Batch Id, ProcessId, User Id, No Of Records, Process Date, Error File Name, and Out File Name. A callout bubble with the text "Click" points to the file name "CST1_7000002_err.txt" in the Error File Name column of the second row.

Batch Id	ProcessId	User Id	No Of Records	Process Date	Error File Name	Out File Name
1	7000001	CST1	2	2012-02-09	CST1_7000001_err.txt	CST1_7000001_out.txt
2	7000002	CST1	2	2012-02-09	CST1_7000002_err.txt	CST1_7000002_out.txt
24	7000120	CST1	10000	2012-07-17		CST1_7000120_out.txt
25	7000122	CST1	10000	2012-07-18		CST1_7000122_out.txt
26	7000123	CST1	10000	2012-07-18		CST1_7000123_out.txt
104	7000019	CST1	2	2012-02-23	CST1_7000019_err.txt	CST1_7000019_out.txt
106	7000019	CST1	2	2012-02-24		
110	7000020	CST1	2	2012-02-23	CST1_7000020_err.txt	CST1_7000020_out.txt
111	7000021	CST1	4	2012-02-26	CST1_7000021_err.txt	CST1_7000021_out.txt
123	7000124	CST1	1	2012-07-23		CST1_7000124_out.txt
1123	7000140	CST1	2	2012-08-07	CST1_7000140_err.txt	CST1_7000140_out.txt
1399	7000041	CST1	3	2012-03-22	CST1_7000041_err.txt	CST1_7000041_out.txt
2131	7000038	CST1	2	2012-03-21		
2362	7000079	CST1	1	2012-05-09	CST1_7000079_err.txt	CST1_7000079_out.txt
2363	7000080	CST1	1	2012-05-09	CST1_7000080_err.txt	CST1_7000080_out.txt
2364	7000081	CST1	2	2012-05-10	CST1_7000081_err.txt	CST1_7000081_out.txt
2369	7000093	CST1	1	2012-05-15		
2371	7000095	CST1	2	2012-05-15	CST1_7000095_err.txt	CST1_7000095_out.txt
2373	7000096	CST1	2	2012-05-15	CST1_7000096_err.txt	CST1_7000096_out.txt
2374	7000097	CST1	2	2012-05-15	CST1_7000097_err.txt	CST1_7000097_out.txt
2375	7000098	CST1	2	2012-05-15	CST1_7000098_err.txt	CST1_7000098_out.txt
6399	7000039	CST1	3	2012-03-22	CST1_7000039_err.txt	CST1_7000039_out.txt
7399	7000043	CST1	3	2012-03-27	CST1_7000043_err.txt	CST1_7000043_out.txt
8789	7000031	CST1	1	2012-03-20		

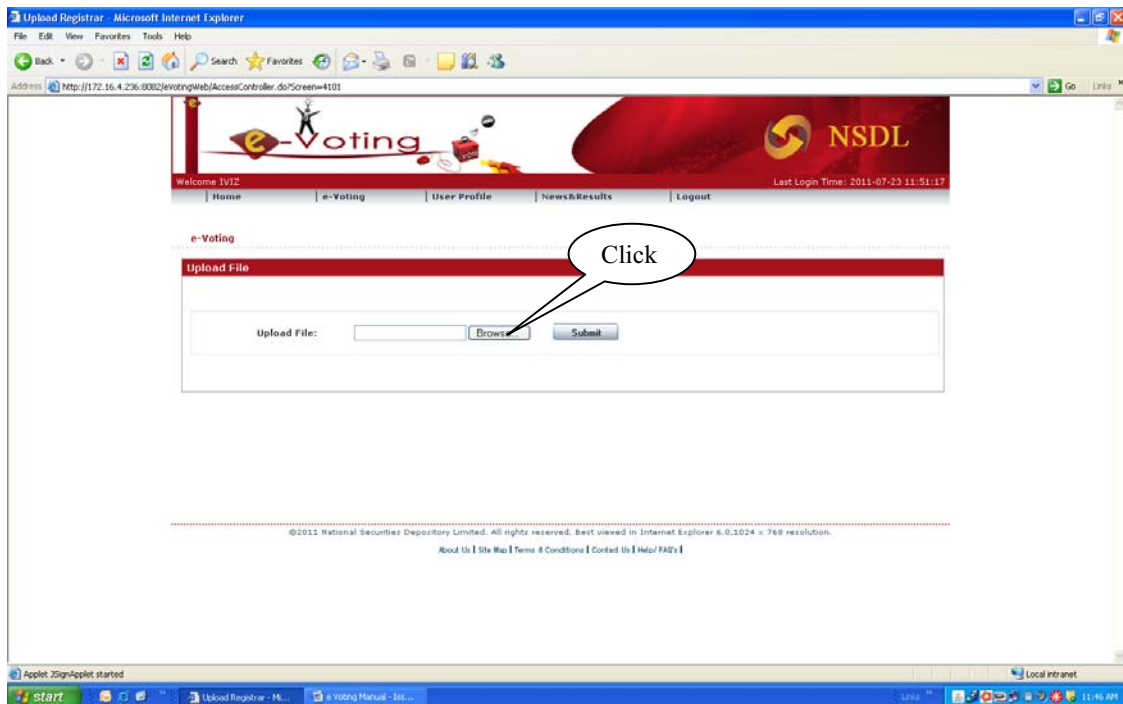


5. Upload of Custodian Vote File:

1. Select “e-Voting” icon and click on the “Upload Custodian Vote File” as shown below.

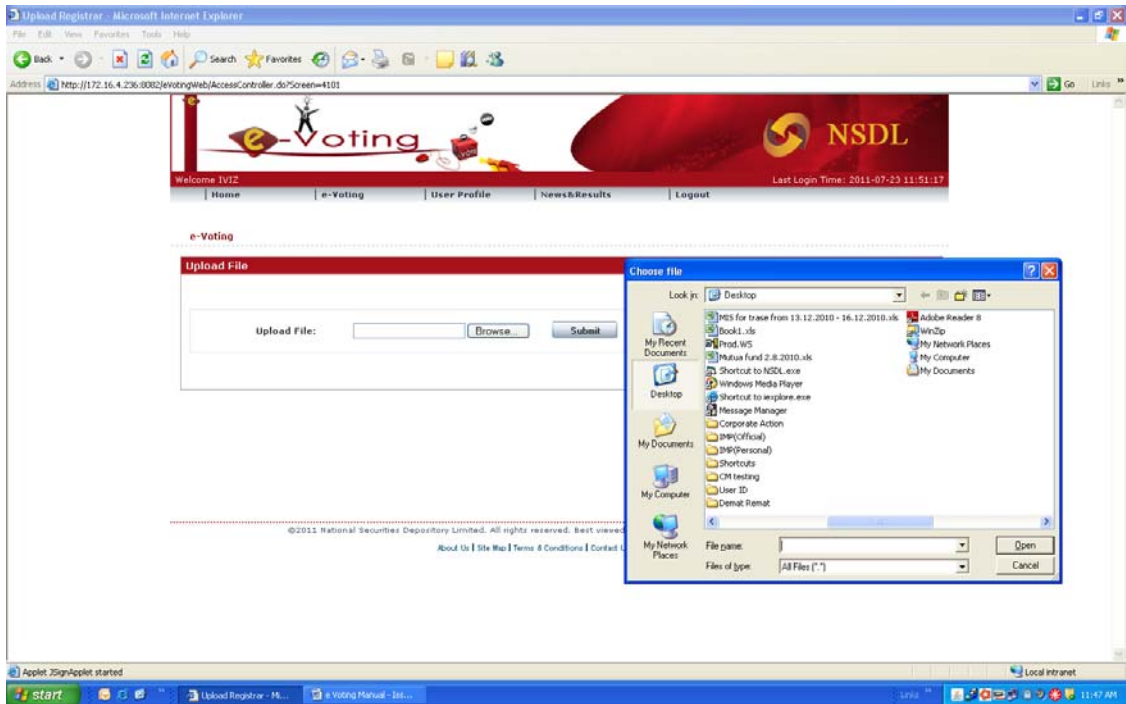


2. Click on “Browse” button and select the path of the file to be uploaded from your computer as shown below.

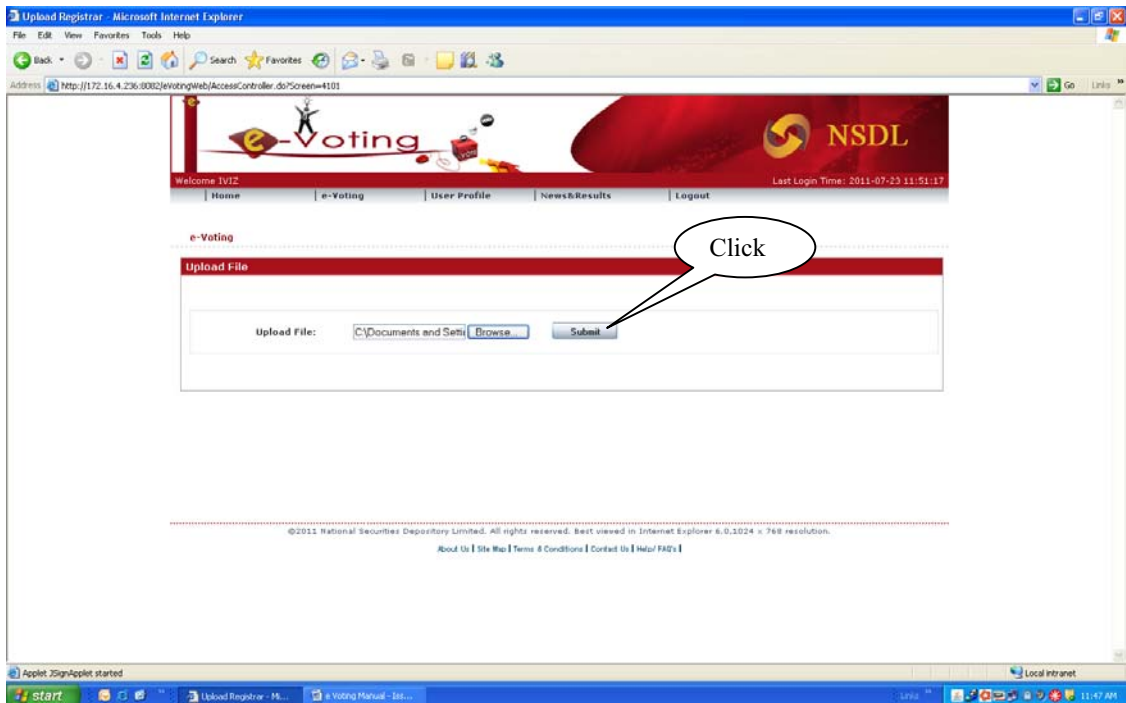




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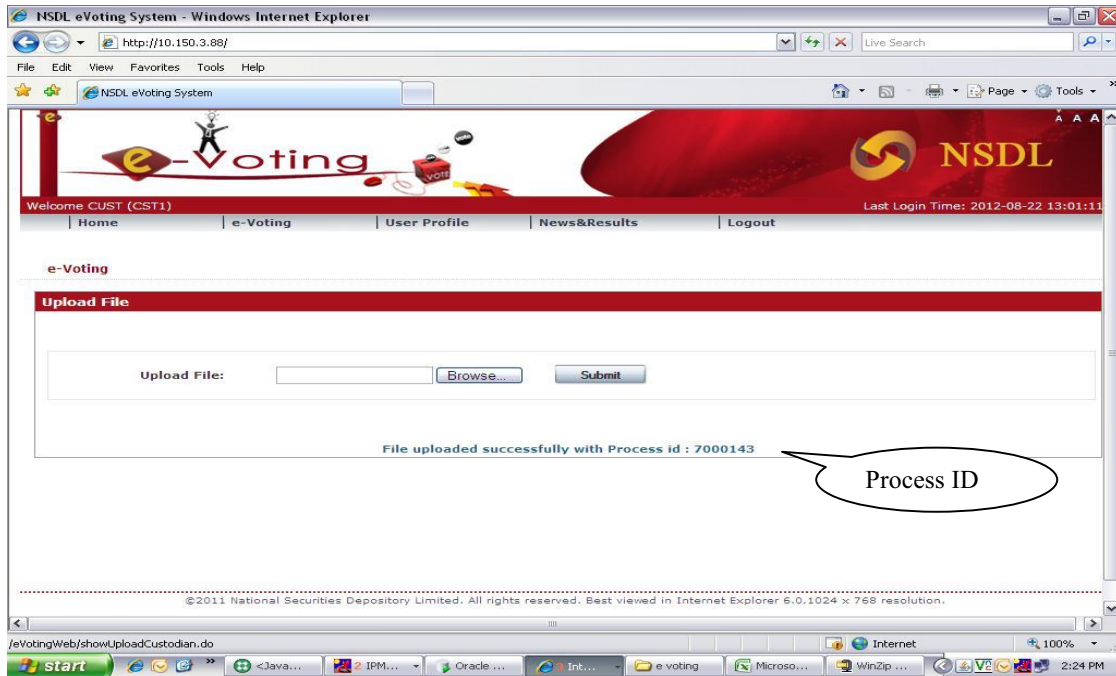
3. Click on **“Submit”** button after selecting the particular file, this will generate a **“Process ID”** as shown below.





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4. The **“Process ID”** is generated after successful upload of file (for e.g. 7000143) as shown below.



5. Download the response file of the file uploaded by using the process ID generated by selecting **“Download Vote Response File”** in **“e-Voting”** module as shown below.





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6. Select the file to be downloaded by clicking on the same as shown in the screen below.

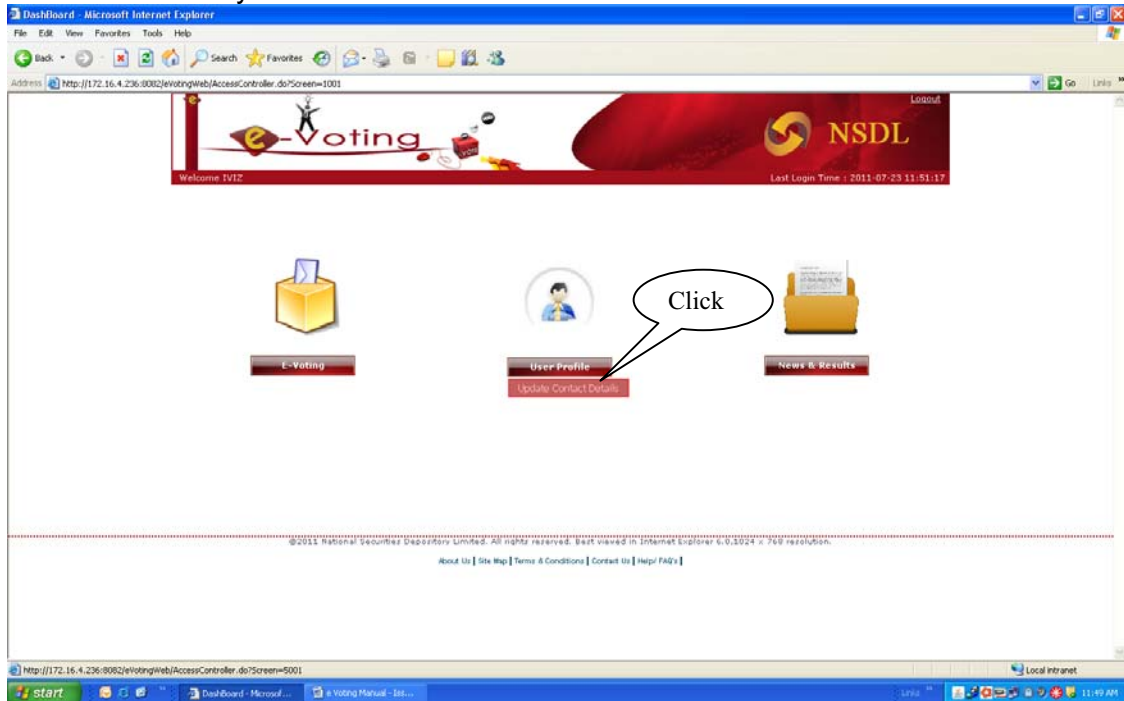
The screenshot displays the NSDL e-Voting System interface in a Windows Internet Explorer browser. The page title is "NSDL e-Voting System" and the URL is "http://10.150.3.88/". The interface includes a navigation menu with "Home", "e-Voting", "User Profile", "News&Results", and "Logout". The main content area is titled "e-Voting" and contains a table with the following columns: Batch Id, ProcessId, User Id, No Of Records, Process Date, Error File Name, and Out File Name. A callout bubble with the text "Click" points to the "Error File Name" column of the first row.

Batch Id	ProcessId	User Id	No Of Records	Process Date	Error File Name	Out File Name
1	7000001	CST1	2	2012-02-09	CST1_7000001_err.txt	CST1_7000001_out.txt
2	7000002	CST1	2	2012-02-09	CST1_7000002_err.txt	CST1_7000002_out.txt
24	7000120	CST1	10000	2012-07-17		CST1_7000120_out.txt
25	7000122	CST1	10000	2012-07-18		CST1_7000122_out.txt
26	7000123	CST1	10000	2012-07-18		CST1_7000123_out.txt
104	7000019	CST1	2	2012-02-23	CST1_7000019_err.txt	CST1_7000019_out.txt
106	7000019	CST1	2	2012-02-24		
110	7000020	CST1	2	2012-02-23	CST1_7000020_err.txt	CST1_7000020_out.txt
111	7000021	CST1	4	2012-02-26	CST1_7000021_err.txt	CST1_7000021_out.txt
123	7000124	CST1	1	2012-07-23		CST1_7000124_out.txt
1123	7000140	CST1	2	2012-08-07	CST1_7000140_err.txt	CST1_7000140_out.txt
1399	7000041	CST1	3	2012-03-22	CST1_7000041_err.txt	CST1_7000041_out.txt
2131	7000038	CST1	2	2012-03-21		
2362	7000079	CST1	1	2012-05-09	CST1_7000079_err.txt	CST1_7000079_out.txt
2363	7000080	CST1	1	2012-05-09	CST1_7000080_err.txt	CST1_7000080_out.txt
2364	7000081	CST1	2	2012-05-10	CST1_7000081_err.txt	CST1_7000081_out.txt
2369	7000093	CST1	1	2012-05-15		
2371	7000095	CST1	2	2012-05-15	CST1_7000095_err.txt	CST1_7000095_out.txt
2373	7000096	CST1	2	2012-05-15	CST1_7000096_err.txt	CST1_7000096_out.txt
2374	7000097	CST1	2	2012-05-15	CST1_7000097_err.txt	CST1_7000097_out.txt
2375	7000098	CST1	2	2012-05-15	CST1_7000098_err.txt	CST1_7000098_out.txt
6399	7000039	CST1	3	2012-03-22	CST1_7000039_err.txt	CST1_7000039_out.txt
7399	7000043	CST1	3	2012-03-27	CST1_7000043_err.txt	CST1_7000043_out.txt
8789	7000031	CST1	1	2012-03-20		

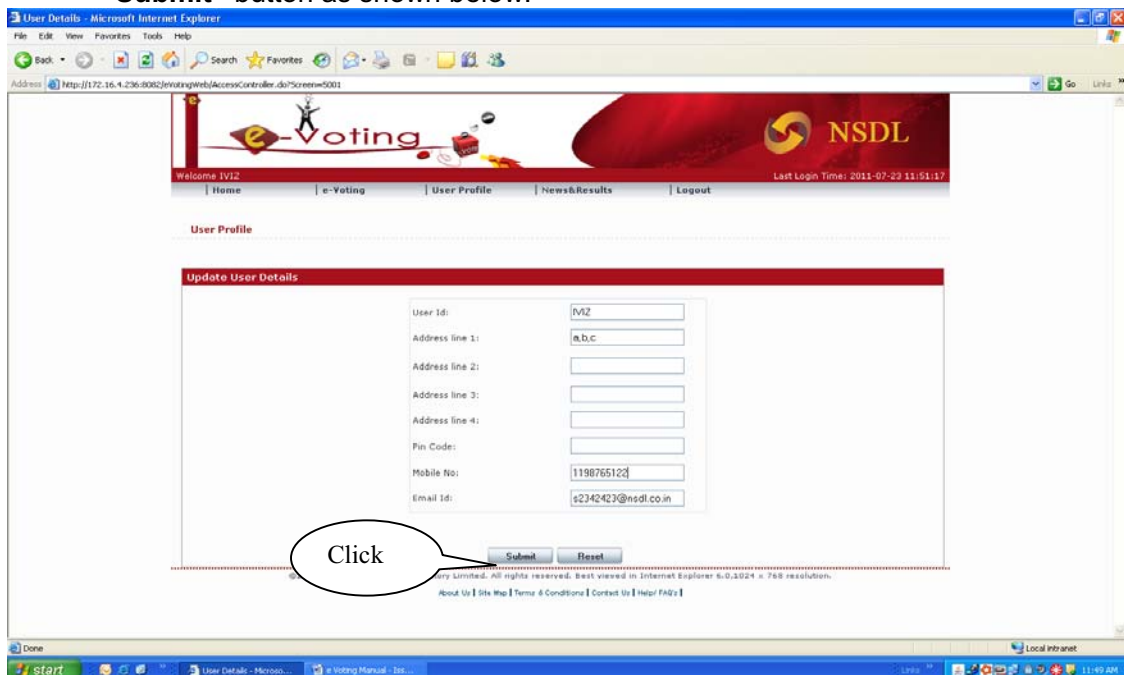


6. User Profile:

1. Select “**User Profile**” icon and click on the “**Update Contact Details**” to view/modify contact details as shown below.



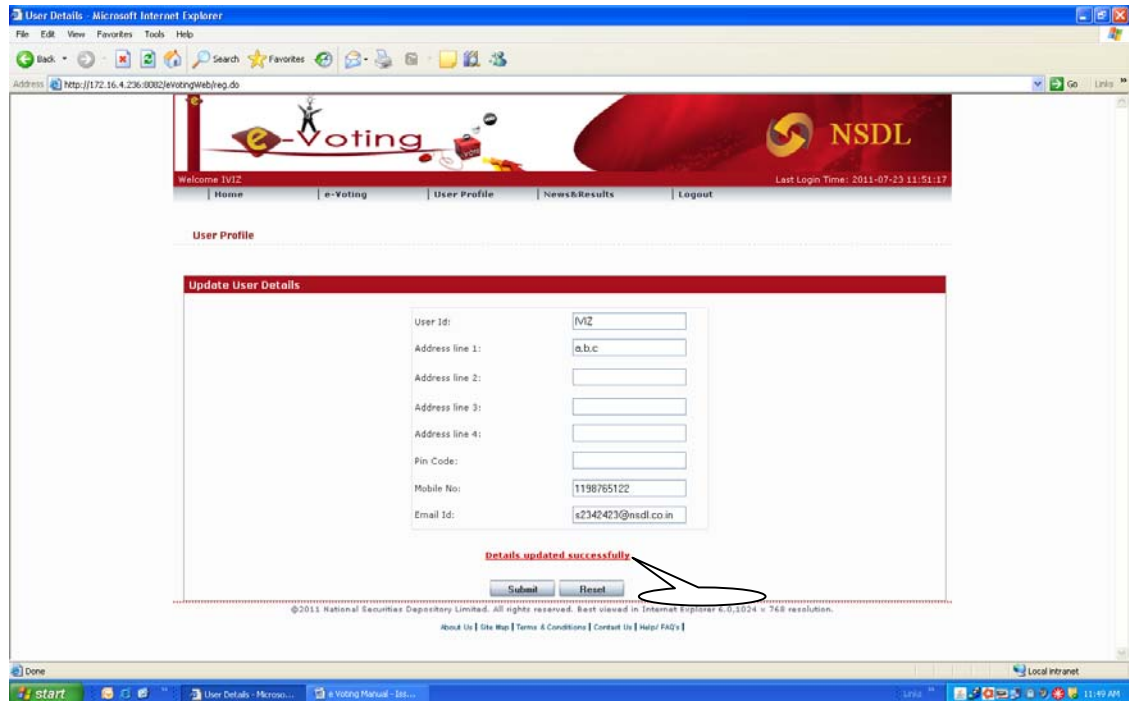
2. The following screen will be displayed. Enter the contact details i.e. **Mobile Number or e-mail ID** which Custodian wishes to modify and click on the “**Submit**” button as shown below.





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- The following screen is displayed “**Details updated successfully**” on successful updation.



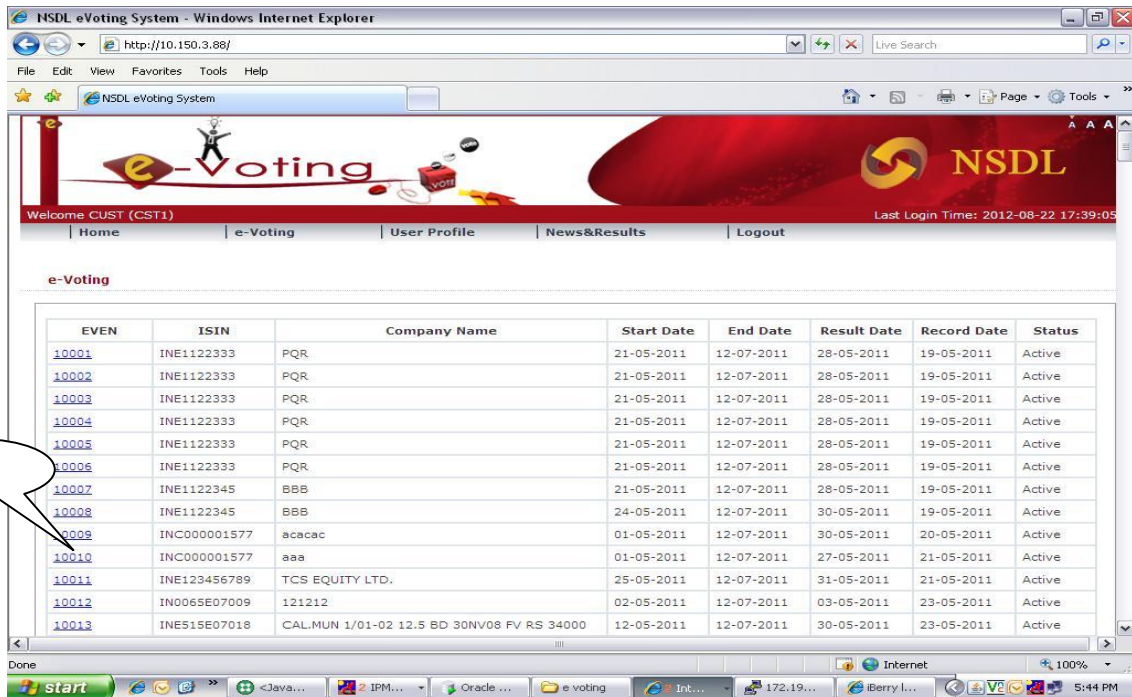


7. View e-Voting Details:

1. To view e-Voting details click on “View e-Voting Details” in “e-Voting” icon as shown below.



2. The following screen will be displayed. Select the “EVEN” which Custodian wishes to view as shown below.





3. On clicking the “EVEN” the following screen will be displayed.

The screenshot displays the 'View e-Voting Details' page in the NSDL e-Voting system. The page header includes the NSDL logo and the text 'Welcome CUST (CST1)'. The navigation menu contains 'Home', 'e-Voting', 'User Profile', 'News&Results', and 'Logout'. The 'Last Login Time' is shown as '2012-09-05 14:40:27'. The main content area is titled 'View e-Voting Details' and contains the following information:

EVEN	:	10277
ISIN	:	INC124578138
Issuer	:	NCDEX JICS LOGISTICS MUMBAI
ISIN Description	:	NCDEX JICS LOGISTICS MUMBAI test test dfsfs4

Voting Start Date: 08/23/2012 Voting End Date: 08/24/2012 Voting Result Date: 08/25/2012

Logo File	:	<input type="text"/> Browse...	IVZLogo2012342315167.txt
Resolution File	:	<input type="text"/> Browse...	IVZResolution2012342315167.txt
Voting Rights	:	1.0	<input type="checkbox"/>

Resolution No: 1

Resolution Title: Test1

Resolution Description: Testing



8. View e-Voting report:

1. To view e-Voting report click on “View e-Voting Report” in “e-Voting” icon as shown below.



2. The following screen will be displayed. Select the “EVEN” which Custodian wishes to view as shown below.





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3. On clicking the “**EVEN**” the following screen will be displayed.

NSDL eVoting System - Windows Internet Explorer

http://10.150.3.88/

NSDL eVoting System

Welcome CUST (CST1) | Home | e-Voting | User Profile | News&Results | Logout | Last Login Time: 2012-08-22 17:39:05

e-Voting

View Custodian Report

User ID	Shareholder Name	Resolution Id	Resolution Name	Option Id	Option Name	No Of Shares held	No Of Votes Cast	EVEN
10274AC45647521	xyz	1	test 1	1	I/We assent to the resolution(For/ Yes/ Favour)	50	10	10274

submit

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start | Java... | IPM... | Oracle... | e voting | Int... | 172.19... | Berry I... | 5:45 PM



8. News & Results:

1. Select “**News & Results**” icon to view News & Results if any, details as shown below.

