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CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS

Mergers and Acquisitions: Strategies and Execution

G20 भारत 2023 INDIA

THE INSTITUTE OF Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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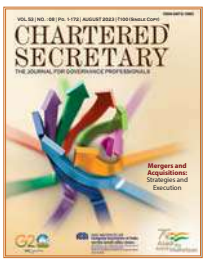

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EDITORIAL

The ICSI in its entirety of progressive objectives is relentless in its efforts to create right platforms for invigorating and thought provoking deliberations to benefit our profession and professionals and achieve its highest good.

Citing the success of the 4th National Conference of Corporate CS at Goa, the fruitful efforts put in by the Institute proved itself to be an inspiration for impeccable deliberations. It's also noteworthy that the distinguished dignitaries shared their intellectual and cognitive viewpoints providing the indicators in the right direction on how to take the profession further in reaching novel pinnacles and that too in its right earnest.

The August issue of the Journal is focusing on a major yet ubiquitously a vast area of 'Mergers and Acquisitions: Strategies and Executions' wherein, Company Secretaries play a pivotal role.

The article 'Mergers & Acquisitions – Strategies and Execution' briefs on how Mergers and Acquisitions (M&A) is a critical strategy for growth in the new economy .The article on 'Mergers & Acquisitions – the driving force behind Corporate Synergy in evolving Industries' covers various aspects of strategies involved in M&A, highlighting key aspects of their preparation and execution along with recent trends and case studies. Through the article 'M&As: Share Acquisition by Private Arrangement – The Procedural Side', the author emphasises on how M&A offers an alternative to organic growth for buyers seeking to achieve their strategic goals, while offering sellers the option to cash in or share the risks and rewards of a newly formed business.

The author through the article 'Impact of Mergers and Acquisitions on Accounting-based Performance of Firms in India explains the term "mergers and acquisitions" which pertains to the domain of corporate strategy, corporate finance, and management, encompassing activities related to the acquisition, divestiture, and consolidation of various companies. In the article 'Implementation of Merger Remedies under Indian Competition Law – Legal History of the last decade', the author makes an endeavour to highlight Merger Remedies under Indian Competition Law.

The article titled 'Merger Control Regime in India' brings an insight into the Indian merger control regime comprising of the Competition Act, 2002 ('Act') and the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 ('Combination Regulations') made by the Competition Commission of India ('CCI') in exercise of power conferred on it under section 64 of the Competition Act, 2002.

The author through the article 'Understanding Merger & Acquisitions coupled with a few case studies of recent mergers' touches upon how M & As would help the aspiring entities to expand geographically and also study some of the M&As which had happened in the last few years with reference to their reasoning and the advantages.

The article 'Impact on Listed Companies of Amendments to Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 defines the purpose of the Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The author through the article 'Sustainable Development through Extended Producer Responsibility: An Overview' brings forth how the increasing urbanization and industrialization has led to a corresponding increase in waste generation and waste management issues.

Through the Article 'Determinants of Payment Methods and Sources of Financing for Mergers and Acquisitions: Insights from Deals of Pharmaceutical Companies in India', the author attempts to present a study to determine the most used methods of payment, determinants of the choice of method of payment (such as tax, financial leverage, promoters' stake, availability of cash, deal size etc.), source of financing (internal financing or external financing) and payment structure (lump-sum or staggered) as applied by Indian Pharmaceutical Companies.

This month, the Journal also showcases an interaction with the Past President of ICSI, CS D C Jain. CS D C Jain during his term as the President of ICSI had contributed immensely towards the growth as well as recognition of the profession of Company Secretaries. A veteran and connoisseur of our profession, CS D C Jain has taught many scions of the Institute in his younger days, who eventually served the Institute as torch bearers of the Profession either as Presidents, Council Members or Past – Secretaries of the Institute in their later years .

The Journal this month attempts to bring forth the best of case scenarios that will definitely enhance the knowledge of our readers.

Wishing esteemed readers a Happy Independence Day in advance.

Happy reading !

CS Asish Mohan
(Editor - Chartered Secretary)

1-2. ICSI Delegation led by CS Manish Gupta, President, ICSI met Hon'ble Chief Minister of Madhya Pradesh, Shri Shivraj Singh Chouhan and also participated in Plantation drive at Bhopal, MP.

3. Mega Conference on Alternate Dispute Resolution organised by NIRC of ICSI in the august presence of Hon'ble Justice Rekha Palli, Judge Delhi High Court, Dr.Rajiv Mani, Addl. Secretary, Ministry of Law and Justice, Mr P K Malhotra, Former Union Law Secretary and CS Manish Gupta, President, The ICSI at Scope Complex, New Delhi.

4-5. ICSI delegation led by CS Manish Gupta, President, The ICSI met Shri Debashis Panda, IAS, Chairman, IRDAI and Ms. S. N. Rajeswari, Member Distribution, IRDAI to explore professional opportunities for Company Secretaries in Insurance Sector.

6-7. ICSI delegation led by CS Manish Gupta, President, The ICSI met Shri S V Murlidhar Rao, Executive Director, SEBI and Shri V S Sundaresan, Executive Director, SEBI to explore areas of association and mutual collaboration in the Securities Market.

8. ICSI congratulates Shri K. Rajaraman for being appointed as Chairperson, International Financial Services Centres Authority.

9. ICSI signed MoU with Directorate of Higher Education, Government of Goa, to provide academic support in Higher & Professional Education and create awareness about CS Course.

10. ICSI delegation led by CS Manish Gupta, President, The ICSI met Shri Mr. V. Balasubramaniam, MD & CEO, NSEIX.

11. ICSI delegation led by CS Manish Gupta, President, The ICSI met Mr. Tariq Khan, Registrar IAMC to explore possibilities of collaboration in the areas of Alternate Dispute Resolution with International Arbitration And Mediation Centre.

12. CS Manish Gupta, President, The ICSI, and CS Asish Mohan, Secretary, The ICSI congratulated the newly elected President, ICMAI, CMA Ashwin G. Dalwadi, at CMA Bhawan, New Delhi in the presence of CMA M. K. Anand, CCM, ICMAI.

13. 42nd AGM of NIRC of ICSI held on 22nd July, 2023 graced by CS Manish Gupta, President, The ICSI.

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14. CS Manish Gupta, President, The ICSI interacted with students and members at Hyderabad Chapter of SIRC of ICSI.
15. ICSI organised an interaction meeting with Mr. Michael DePrisco, President and CEO, IMA (Institute of Management Accounts)at Bengaluru. The meeting was presided by CS Nagendra D Rao Past President, ICSI and CS Dwarakanath C, Central Council Member, ICSI.
16. ICSI inks MoU for Academic Connect with Jagannath University, Jhajjar, Haryana on July 14, 2023.
17. ICSI inks MoU with IOF (IOlympiads LLP) for conducting ICSI Commerce Olympiad for the students of class 11th & class 12th on July 11, 2023.
18. ICSI inks MoU with Gujarat International Finance Tec-city in the presence of Sh. Tapan Ray, Former Secretary, Ministry of Corporate Affairs.
19. Interaction of Members and Students at ICSI Bhopal Chapter of WIRC of ICSI with CS Manish Gupta, President, ICSI.

धन्यः अस्मि भारतत्वेन:
(भाग्य है मेरा मैं एक भारतीय हूँ।)

Dear Professional Colleagues,

The fragrant flavours of food, the inimitable styles of clothing, the elegance of languages, the diversity of literature, the vibrance of song and dance routines, the fascinating folklore – the distinguishing factors of each city, state and community... The common struggles, the shared history, the honourable handheld sacrifices – even with polarly different ideologies.

India is not just a nation demarcated by a few territorial boundaries, but is a nation of boundless talent and intellect, hope and progress. It is the destination where history is not just respected but is treasured for thousands of years and looked upon with reverence for wisdom and guidance for every sphere of human activity. It is this nation where each ideology finds space and each thought finds acceptance.

The journey since independence may be spanning over three quarters of a century but the culture, heritage and civilizations span over thousands of years and that is what makes this country unique. From the point of view of Governance Professionals, another aspect that binds us together, is the uniform set of laws governing all the people with such varied diversities bringing about a strong sense of unity and faith in the governance systems and judiciary.

For an Institution which looks beyond borders with its vision "to be a global leader in promoting good corporate governance" and at the same time looks inwards to find its motto in the ancient scriptures, days like Independence Day are moments of reiteration – of our roles, responsibilities and accountabilities.

With this thought to serve this nation with unflinching commitment and dedication, wishing all our members, students and stakeholders a very **Happy Independence Day...** May we all undertake our designated roles to the best of our abilities and capabilities and partner in the growth journey of the Indian Economy making it the next global super power...!!!

GOA : BUILDING LIFELONG CONNECT AND MEMORIES

When the National Conference of Corporate CS was launched in the year 2020, the first edition of the event was held in the heart of business hub – Mumbai and I very well remember the discussions that had gone into launching a new National level event altogether. The impending question being the fact that will we be able to take the legacy forward with equal gusto each year or will it end up being a one-time thing. And yet, 4 years later, we shared the delight of celebrating the 4th edition of knowledge enrichment, capacity building and fostering relationships… the 4th National Conference of Corporate CS in the presence of more than 2500 delegates who connected with us physically and virtually. I am thankful to our Hon'ble Guest of Honour Shri Jaspal Singh, IPS Director General of police, Goa; our Keynote Speaker, Shri Shrinivas V. Dempo, Chairman, Dempo Group of Companies and our Distinguished Guest, Smt. Avelina D'sa E Pereira, Under Secretary (Higher Education), Government of Goa.

It is during this 2-days events that lifelong relationships with the city of Goa were fostered. It is a matter of great pride to share with all of you that the ICSI signed an MOU with the Goa Chambers of Commerce and Industry at the Inaugural Session of the Conference with the intent of bringing together the professional fraternity and the corporates based out of the city. This became the second MOU to be signed with the State after the one signed with the Department of Higher Education, Government of Goa to create awareness about the profession.

CONNECTING YOUNG MINDS: SHARING CELEBRATIONS

The completion of the Company Secretary Course with all its requirements and stipulations is no small a feat. Rather, it is an honour indeed to witness the accomplishment and be able to make oneself a part of this fraternity – one which is both respected and looked up to for the roles played and responsibilities undertaken. That said, an achievement of this sort calls for a celebration – wherein the newly enrolled professionals meet with the representatives of the Institute; and we, too, get a chance to share our set of experiences and expectations with the future torchbearers of the profession.

I feel thrilled to have met more than 200 members and awarded them certificates of membership at the first bi-annual Convocation of FY 2023-24 of Western Region at Goa. Indeed, the city has given us much more than we could ever asked for. And I hope that the way the Goa state has treasured its history while portraying modernity, we as Governance Professionals, too, excel in our existing roles while continuously looking out for new opportunities.

My heartiest congratulations to all these members !!!

CAPACITY BUILDING : A NEVER ENDING JOURNEY

As I remember distinctly having shared with you the formation of new Boards and launching Webinar Series in my last communique with you; it is both satisfying and gratifying to share that the wheels have been set in motion. Our Master Knowledge Series – EEE has conducted five Webinars on contemporary topics of professional interest. Another Webinar Series has been initiated covering the Basics and Finer aspects of Arbitration and Mediation. Heartening as it sounds, each webinar has witnessed a participation of more than 15000 members rendering each one of them a grand success.

In another endeavour towards the same goal of knowledge enrichment and to provide the members with an opportunity to fulfil the mandatory CPE requirement for the year 2022-23, the Institute had introduced a series of online Self-Assessment Modules – the ICSI Continuing Professional Education Self-Assessment Modules; in areas of expertise for the members.

For the students, the ICSI had launched its New Syllabus in 2022, aligning with the New Education Policy of the Government of India. The Executive Programme under the new syllabus was made effective from February 01, 2023 and now the Professional programme has been made effective from August 01, 2023. We are sure that the new Study Material shall connect the professionals-in-making with the needs of the corporates in a much better manner.

ICSI FEE CONCESSIONS : SERVING THOSE WHO SERVE US

The Institute of Company Secretaries of India has always held a sensitized approach and outlook towards the members of Armed forces, Paramilitary forces and members of their families. In continuation of our efforts, I feel humbled to share that the Council of the Institute has decided to support the 'AGNIPATH Scheme' of Ministry of Defence which was launched by the Central Government in 2022, by providing fees concessions. 100% concession in full Fee payable at the time of Registration to various Stages of CS Course to Candidates who are inducted as "Agniveer" under

AGNEEPATH Scheme of the Government of India and completed four years under the Scheme.

I am sure that not only will this initiative open doors of professional opportunity for these young members but will also add members with diverse backgrounds and experiences to our professional fraternity, bringing on Board greater versatility.

CS OVERSEAS CONNECT : FOSTERING RELATIONSHIPS GLOBALLY

With the theme for the year being CS: A Global Professional, the idea of having a dedicated platform for members is one that has been in our thoughts for a while. The ICSI over the last five decades, has established itself as a pioneer in promoting Corporate Governance and extended its presence overseas in Australia, Canada, Singapore, UAE, the UK, and the USA through the ICSI Overseas Centres. Taking forward the endeavour of establishing a strong commune of ICSI Stakeholders across the globe, the Institute is creating a platform for ICSI Members and Students, residing/working overseas, to connect with their alma mater and contribute to the growth and development of the Company Secretary Profession. The objective of the initiative is to update the details of our members and students residing outside India and provide them with networking opportunities. The form to share details has been communicated with our members through all our social media platforms and has also been placed in this Journal. I would urge you to kindly extend this communication with professionals who were at some point associated with the ICSI and are presently residing or working outside India and help us in fostering long-lasting global bondings.

MEETINGS AND GRATITUDE

I have always been a firm believer of the fact that no big feats can be achieved in isolation. And in that I am more than gratuitous towards all those who have played their roles in standing by our side, supporting us, motivating us, guiding us and making our dreams turn into realities. At the beginning of this small list of gratitudes, I would begin with Sh. Shivraj Singh Chouhan, Hon'ble Chief Minister, Madhya Pradesh for according us precious moments of his time to deliberate upon the MSME and Startup opportunities and Career Awareness Programmes at Government school and colleges in the State. I am hopeful that the times ahead shall see Governance Professionals guiding MSMEs and Startups in the state of Madhya Pradesh and subsequently in the entire nation. I am equally delighted with the recent meetings held to explore possibilities of collaboration in the areas of Alternate Dispute Resolution with the International Arbitration And Mediation Centre at Hyderabad. In another fruitful meeting with Shri Debashis Panda, IAS, Chairman, IRDAI and Ms. S. N. Rajeswari, Member Distribution, IRDAI professional opportunities were explored for Company Secretaries in Insurance Sector. So if I am to sum up the month gone by, I would definitely call it a month of great opportunities and endless possibilities.

BLOCK YOUR DIARY: THE CITY OF TIMELESS HISTORY CALLS

Benaras is older than history,
older than tradition,
older even than legend
and looks twice as old as all of them put together.
– Mark Twain

Kashi, Benaras or the modern-day Varanasi – call by whichever name you may, the old-world charm of the city never ceases to amaze. The city is on the bucket list of those who haven't been there even once and on the wish list of those who have. I could go on and on sharing about the city but my words would fall short in justifying as to what made the city of the Gods themselves to be perfect destination as we host the 51st edition of the National Convention of Company Secretaries – the most awaited congregation of the year. More than the Institute, I am, of my own accord, pleased to announce opening of Registrations for the 51st National Convention of Company Secretaries scheduled to be held during 2nd to 4th November, 2023 on the theme India@G20: Empowering Sustainable future through Governance & Technology at Deendayal Hastkala Sankul (Trade Centre & Craft Museum), Varanasi, Uttar Pradesh.

Without an iota of doubt, it is a wondrous opportunity to witness this mega event in one of the most ancient cities of the world that exudes spirituality, cultural richness, and historical significance, all at the same time. What better way to revisit and relearn governance than in the city of Kashi…!!!

On that note of invitation with open arms, and with the hope and anticipation of plenty more initiatives, learnings and celebrations in the months to follow…

Happy reading !!!

Yours Sincerely

CS Manish Gupta
President, ICSI

INITIATIVES UNDERTAKEN DURING THE MONTH OF JULY, 2023

INITIATIVES FOR MEMBERS

MEETINGS AND GREETINGS

During the month, ICSI delegation met with the following dignitaries *(in alphabetical order)*:

- Shri Shivraj Singh Chouhan, Hon'ble Chief Minister, Madhya Pradesh
- Shri Debashis Panda, IAS, Chairman, IRDAI
- Shri S V Murlidhar Rao, Executive Director, SEBI
- Shri V S Sundaresan, Executive Director, SEBI
- Ms. S. N. Rajeswari, Member Distribution, IRDAI
- CMA Ashwin G. Dalwadi, President, ICMAI
- Mr. Tariq Khan, Registrar, International Arbitration and Mediation Centre

4TH NATIONAL CONFERENCE OF CORPORATE CS

The Institute organized the 4th National Conference of Corporate CS in the state of Goa at Bogmallo Beach Resort during July 27-28, 2023 on the theme **"Governance for Sustainability: Curating Excellence"**. Shri Jaspal Singh, IPS, Director General of Police, Goa was the Guest of Honour and Shri Shrinivas V. Dempo, Chairman, Dempo Group of Companies presided over as the Key note Speaker at the Inaugural Session. Smt. Avelina D'sa E Pereira, Under Secretary, Dte. Of Higher Education was the Distinguished Guest. Eminent speakers from the Industry and profession shared their knowledge and practical experiences with the delegates during the Technical Sessions. The Conference was attended by around 2600 delegates present in-person and connected virtually. The releases at the occasion included:

- Conference Souvenir
- ICSI Continuing Self-Assessment Modules
- ICSI Agniveer Scheme
- Compilation of Informal Guidance by SEBI : Covering SEBI (PIT) Regulations, 2015 & SEBI (ICDR) Regulations, 2018
- One Person Company – A Referencer
- Study Material for Professional Programme under ICSI New Syllabus 2022
- Brochure and Video of 51st National Convention of Company Secretaries
- Flyer and Video of ICSI National Awards for Excellence in Corporate Governance, 2023

51ST NATIONAL CONVENTION OF COMPANY SECRETARIES: REGISTRATIONS OPEN

The 51st National Convention of Company Secretaries is scheduled to be held during November 2-3-4, 2023 on the theme **India@G20: Empowering Sustainable future through Governance & Technology** at **Deendayal Hastkala Sankul (Trade Centre & Craft Museum), Varanasi, Uttar Pradesh**. It is an opportunity to witness this mega event in one of the ancient cities of the world that exudes spirituality, cultural richness, and historical significance. The Convention will bring together professionals, experts, and policymakers from the Government, Regulators, Industry and Academia to discuss and deliberate on the role of governance and technology in achieving a sustainable future. We are delighted to call upon you to register for this mega event by visiting the weblink: https://tinyurl.com/58y3c58n

GST DAY 2023

GST Day is observed on 1st July every year to celebrate the implementation of Goods and Service Tax regime. The Institute partnering with the initiatives of the Government, each year on 1st July propagates the significance of Goods and Services Tax. Accordingly, the GST Day was celebrated on 1st July, 2023 through Regional and Chapter offices of the Institute where the members were sensitized through panel discussions, seminars, study circle meetings, webinars, etc. on the topics relating to GST.

ICSI ECSIN SPECIAL AMNESTY SCHEME - 2023

The Institute considering the difficulties faced by members in generation and rectification of eCSin due to critical maintenance activity at the ECSIN portal of the Institute, launched the eCSin Special Amnesty Scheme, 2023 effective from **July 21, 2023 to July 31, 2023** with a view to facilitate the members. All active eCSin generated from **April 28, 2023** till **July 31, 2023** were eligible for the purpose of this Scheme.

ICSI UDIN SPECIAL AMNESTY SCHEME - 2023

The Institute considering that the online services at the UDIN portal of the Institute were impacted due to critical maintenance activity and the functionalities w.r.t generation and revocation of UDIN were not available to Members leading to non-compliance of the UDIN Guidelines, introduced ICSI UDIN Special Amnesty Scheme, 2023. The Scheme was available from July 21, 2023 to July 31, 2023. All UDIN generated from **April 16, 2023** till **July 31, 2023** were eligible for the purpose of this Scheme.

ICSI CONTINUING PROFESSIONAL EDUCATION SELF-ASSESSMENT MODULES

In an effort towards Continuing Professional Education of the members and facilitating the members in fulfilling the mandatory CPE Credits requirement for the year 2022-23, the Institute conducted a series of Online Self-Assessment Modules in the areas of expertise for the members. The Self-Assessment exams were conducted between 27th July, 2023 and 31st July, 2023. Members were granted 5 Structured CPE Credits for each module qualified. The MCQ based examination were conducted in the following modules:

- Company Law
- Economic, Commercial and Intellectual Property Laws
- Good Governance & Sustainability
- Secretarial Audit, Compliance Management and Due Diligence
- Corporate Restructuring, Insolvency, Liquidation & Winding-up
- Securities Laws

MASTER KNOWLEDGE SERIES: EEE

The ICSI, with the intent of reviving, refreshing and sharpening the knowledge of its members on the Companies Act, 2013 and SEBI Regulations has launched a Master Knowledge Series: EEE: Enable, Evaluate, Excel. The capacity building initiative is an attempt to keep members abreast of the various amendments in these laws and to enable them to brush up their knowledge on the subjects. Starting July, the Knowledge Series was conducted in the form of weekly Webinars on topics of professional interest under the aegis of EEE. During the month, following webinars were conducted:

July 08, 2023	Finer Nuances of FEMA Act (Inbound-Outbound Investment and Contravention & Compounding)	CS Atul Mittal Partner, Deloitte India
July 12, 2023	Corporate Social Responsibility – Stepping beyond Rulebook	Dr. J Sridhar CS & VP, Bajaj Auto Ltd. and Former President ICSI
July 19, 2023	An Insight into Related Party Transactions	CS S Sudhaka Former VP (Corporate Secretarial) Reliance Industries Limited
July 26, 2023	Recent Amendments in SEBI (LODR) Regulations, 2015	CS Ravi Varma Assistant Company Secretary Bandhan Bank Limited

WEBINAR SERIES ON ALTERNATE DISPUTE RESOLUTION

In order to provide in-depth theoretical and practical knowledge to the Members, the ICSI-International ADR Centre jointly with the ICSI has taken initiative to equip its members in the niche area of Alternate Dispute Resolution through Webinar Series. The series was helpful for Company Secretaries desirous of consolidating their expertise and skills in related areas to position themselves as multidisciplinary professionals.

July 15, 2023	Basics of Arbitration and related provisions	Dr Pundla Bhaskara Mohan Former Judicial Member, NCLT
July 21, 2023	Basics of Mediation, Conciliation & related provisions	Mr. Krishna Grandhi Senior Advocate

VIEWS / REPRESENTATIONS / SUGGESTIONS SUBMITTED

Purpose	Authority	Date
Request to introduce Company Law Settlement Scheme and LLP Settlement Scheme	MCA	July 07, 2023
Request for amendment in section 204 and section 149(6) (e) (ii) (A) of the Companies Act, 2013	MCA	July 07, 2023
Schedule V (Part II and Section II thereto) of the Companies Act, 2013 July 07, 2023	MCA	July 07, 2023
Request to include Company Secretary in Practice under Regulation 45(3) of SEBI (LODR) Regulations, 2015	SEBI	July 17, 2023
Deactivation of Multiple User IDs created on MCA-21 portal	MCA	July 21, 2023
Suggestions on Beta version of Master Data Service (MDS) launched on MCA21 version-3	MCA	July 29, 2023

JOINT PROGRAMMES

- The ICSI joined as Associate Partner in the Joint Audit Conclave 2023 on the theme **"Internal Audit: Business Risk Mitigator"** organized by **IIA India - Calcutta Chapter** on July 21-22, 2023 at Taj Bengal, Kolkata.
- The ICSI joined as Associate Partner in the webinar on **"Tax issues of Business Acquisition and Reconstruction"** organized by **PHD Chamber** on July 25, 2023.
- The ICSI joined as Supporting partner at the **Annual Conference 2023** on the theme **Corporate Dispute Resolvers: The Role of General Counsel, Professionals & the Industry** organized by **Chartered Institute of Arbitrators** on July 15, 2023 at The Lalit, New Delhi.

ICSI WESTERN REGION CONVOCATION HELD IN GOA

The Institute organized the first bi-annual Convocation of FY 2023-24 of Western Region on July 29, 2023 at NIO Auditorium, CSIR - National Institute of Oceanography (NIO), Dona Paula, Goa for awarding certificates of membership to the Associate and Fellow members admitted during the period from 1st October, 2022 to 31st March, 2023. In all, 230 Associate members and 5 Fellow members were awarded their certificate of membership. One Associate member was awarded the PMQ Certificate and prizes/ medals were also awarded to the meritorious students on this occasion.

LAUNCH OF NEW CERTIFICATE COURSE

The Institute has launched a new Certificate Course on Financial Analysis commencing from September 01, 2023 with a view to equip the members with the necessary knowledge and skills in this area. The course will be a stepping stone towards Internationally acclaimed AICPA qualification. The Institute has also re-opened admissions to fresh batches in 2 Certificate Courses on the subjects i.e., Insolvency & Bankruptcy Code, 2016 and Valuation of Securities and Financial assets. The classes of these courses will start from August 23, 2023.

ONLINE ASSESSMENT OF CERTIFICATE & CRASH COURSES

Online assessment of Crash Course on Social Audit and 4 Certificate Courses (CSR, FEMA, GST and Securities Laws) was conducted on 14th & 15th July, 2023.

FORMATION/RENEWAL OF STUDY CIRCLES

The ICSI has been promoting the Formation/Renewal of Study Circles for creating knowledge upgradation avenues through professional discussion and deliberation. Study Circle renewed in July, 2023 for the Financial Year 2023-24 was as under:

- Reliance Industries (Corporate) Study Circle of ICSI (WIRC)
- H.T. Parekh Marg (Corporate) Study Circle of ICSI (WIRC)
- New Udhaan Bhawan (Corporate) Study Circle of ICSI (NIRC)
- Chennai South Study Circle of ICSI (SIRC)

PLACEMENT OPPORTUNITIES FOR COMPANY SECRETARIES

The ICSI stands committed to help all the associated companies and availing the services extended by the cell to conduct their recruitment drives for the position of Company Secretary/ CS Trainee in a time bound, hassle-free and mutually beneficial manner, and to help the members and students in getting the right placement offer. The Institute receives requests from various offices of the Government/ PSUs/ Banks/ Corporates regarding the positions of Company Secretary/ CS Trainee from time to time and resumes of eligible Members and Students are sent to them.

During the month, following placement opportunities were posted on the Placement Portal:

Company Secretary Trainees and Members requirement at various Government Offices/PSUs/Banks/Corporates		
S. No.	**Department / Organization**	**Designation**
1.	Dholera Industrial City Development Limited	Company Secretary
2.	ICSI	C-PACE Executives
3.	Ircon International Limited	Company Secretary
4.	Roads & Bridges Development Corporation Kerala Limited	Company Secretary
5.	TP Northern Odisha Distribution Limited	Assistant Company Secretary
6.	Bird Group	Company Secretary
7.	Blue Ocean Beverages Private Limited	Company secretary
8.	Catalyst Trusteeship Limited	Assistant Manager / Manager
9.	DMG Finance & Investments Private Limited	Assistant Company Secretary
10.	Euro Solar Power Private Limited	Company Secretary
11.	Feedback Infra Private Limited	Company Secretary
12.	HCL Technologies Limited	Company Secretary
13.	IDBI Capital Markets and Securities Limited	Manager / Senior Manager
14.	Infinium Pharmachem Limited	Company Secretary
15.	IRB Infrastructure Developers Limited	Company Secretary
16.	Jubilant Pharmova Limited	Senior Manager-Secretarial
17.	Mcwane India Private Limited	Company Secretary
18.	Mena Mani Industries Limited	Company Secretary
19.	Nesco Limited	Company Secretary
20.	Netscribes Data & Insights Private Limited	Assistant Company Secretary
21.	Oil Field Warehouse & Services Private Limited	Company Secretory
22.	Re Sustainability Limited	Deputy Manager - Secretarial
23.	Shinsung C&T India Private Limited	Company Secretary
24.	SPS Steels Rolling Mills Limited	Company Secretary
25.	Sunny Optoech India Private Limited	Company Secretary
26.	Zoho Corporation Private Limited	Company Secretary

STATUS OF REGISTRATIONS AND POSTINGS AT THE PLACEMENT PORTAL

(As on 28th July, 2023)

Registered Users			Total no. of Vacancies
Members	**Students**	**Corporates**	**Jobs/ Trainings**
61	417	69	132

CAMPUS PLACEMENT PROGRAMME

The Campus Placement Programme of the Institute provides a unique opportunity to corporates to persue the profiles of qualified young and experienced Company Secretaries, interview them and select those ones whoever suits their requirement. Campus Placement drive is a one-stop solution for corporates and members. Following Campus Placement Drives were conducted in the month of July 2023:

- Exim Bank of India
- LTIMindtree

TRAINEE DRIVE

The Trainee Drive of the Institute provides training opportunities to its students to place them in Corporates/ PCS firms to enhance their professional understanding. In the month of July 2023, CS Mega Trainee Drive was scheduled across 46 locations at pan India basis. More than 250 Companies/ PCS Firms and 650 Students had registered for the drive.

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

- **Workshops**

Date	Topic
July 7-8, 2023	Refresher on IBC
July 29, 2023	Roles and Responsibilities of IP and IRPs

- **Webinars**

Date	Topic
Every Wednesday (July 5-12-19-26, 2023)	Webinar Series on Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016

ICSI REGISTERED VALUERS ORGANISATION

- **Continuous Educational Programme (CEP)**

  The Company has conducted one Continuing Professional Education Programme (CPE) on 15th July, 2023 on the Topic of: "Brand Valuation".

- **50 Hours Online Education Course**

  ICSI RVO conducted "50 Hours Educational Programme" during July 17-23, 2023.

- **Batch-3 of Certificate Course on valuation of SFA announced**

  ICSI RVO jointly with ICSI is starting the Third batch of *"Certificate Course on Valuation of Securities or Financial Assets"* : Registrations Open.

INITIATIVES FOR EMPLOYEES

- *"Pre-Incubation Programme Cohort 2.0" by IIM Lucknow EIC.*

  Two employees of the Institute are nominated for the IIM Lucknow EIC certification-based Pre-Incubation Programme Cohort 2.0 for 4 months, to develop innovation and entrepreneurial skills.

- *Webinar on "How to Overcome Digital Stress" by Dr. Reddy's Foundation*

  A webinar was organized on 25th July, 2023 on the topic "How to Overcome Digital Stress" by Dr Reddy's Foundation for the benefit of ICSI employees and pensioners. All employees/veterans participated in the webinar presented by Ms. Shalini, Nutritionist.

INITIATIVES FOR STUDENTS

STUDENT MONTH CELEBRATED ACROSS THE NATION

The Student Month for 2023 was celebrated in the month of July garnering appreciation from the student fraternity. The Month was filled with activities aimed at not just connecting with the future professionals or generate a feeling of oneness amongst them with the Institute but to share dedicated moments with them. From various competitions and launch of special initiatives like Classes of specific subjects to online Soft skills development Programmes, from celebration of 'Samadhan Diwas"- Zero Grievance Day to Career Awareness Week, from World Nature Conservation Day to Kargil Vijay Diwas, the month witnessed a wide variety of events.

ONLINE QUIZ ON CURRENT AFFAIRS AND GENERAL KNOWLEDGE 2023

The Institute, through a novel initiative, for creating awareness about the profession is organising Online Quiz on Current Affairs & General Knowledge. There is no participation fee and the students can register in the following category:

Students pursuing 11&12 class of any stream/ Students passed 12th/ pursuing Graduation

The three rounds of quiz will be conducted - prelims, semi-final and final on different dates and the winners in each Category will be awarded with cash prizes.

The link to register is https://icsigk.azurewebsites.net/

STUDY MATERIAL OF PROFESSIONAL PROGRAMME

The study material of Professional Programme under the ICSI New Syllabus 2022 comprising fourteen papers was released at National Conference of Corporate CS at Goa held on July 27-28, 2023.

ALL INDIA COMPANY LAW QUIZ 2023

The objective of this competition is to enhance the knowledge level of students in Company Law and allied areas and to generate interest among the students for in-depth study of the subject including greater conceptual clarity. All students of the Institute having a valid registration number as on 31st May 2023, were eligible to participate in All India Company Law Quiz-2023. The Registration for the competition starts from 20th April 2023 till 31st May 2023 through online mode. Accordingly, all eligible students participated and appeared in preliminary round and it was successfully conducted via

online mode on 30th June 2023 Quarter Final Round of AICLQ was also successfully conducted on scheduled date i.e., July 14, 2023. The Schedule of Rounds of the Competition was held via Online/ Physical Mode as per the following schedule:

Preliminary Round	June 30, 2023 Online Mode (MCQ Pattern) (10 am to 5 pm)
Quarter Final Round	July 14, 2023 Online Mode (MCQ Pattern) (10 am to 5 pm)
Semi Final Round	August 1, 2023 Online Mode (MCQ Pattern) (10 am to 5 pm)
Final Round	September 16, 2023 (Physical at Nagpur)

ICSI SAMADHAN DIWAS

Samadhan Diwas was launched by the Institute on February 27, 2021 with the objective of providing "on-the-spot" resolution to issues/grievances of trainees and trainers. During the Samadhan Diwas, the officials of Directorate of Training interact with the trainees and trainers and provide them the resolution to their grievances.

The 33rd Samadhan Diwas was organized on July 19, 2023 through virtual mode in the presence of officials of all designated offices of the Institute. The purpose of the Samadhan Diwas is to facilitate the stakeholders to resolve their queries on the spot. In the Samadhan Diwas students get opportunity to present their cases and directly interact with the ICSI officials.

ICSI CLASSES AT REGIONAL/ CHAPTER OFFICES FOR DECEMBER 2023 EXAMINATIONS

Classes are being conducted by Regional/Chapter Offices for the students appearing in December 23 Examination. Details of Regional/Chapter offices conducting classes are available at the following link. https://www.icsi.edu/media/webmodules/websiteClassroom.pdf

REGISTRATION FOR CLASSES BY REGIONAL/ CHAPTER OFFICES AT THE TIME OF EXECUTIVE PROGRAMME REGISTRATION

Institute has facilitated Executive Programme students to register directly for the Executive Programme classes at the time of Executive registration. Executive Programme students can now register directly for the Executive Programme classes conducted by the Regional/Chapter Offices at the time of Executive Programme registration. This will help the students to join classes at their nearest Regional/chapter Office.

PAPER WISE EXEMPTION ON THE BASIS OF HIGHER QUALIFICATIONS

The Institute has decided that the students enrolling into the Company Secretary Course under New Syllabus, 2022 shall be eligible for paper-wise exemption (s) based on the higher qualifications acquired by them. Accordingly, necessary announcement including process of claiming paper-wise exemption has been shared through following link for information to all concerned: https://www.icsi.edu/media/webmodules/ATTENTION_STUDENTS_RECIPROCAL_EXEMPTION_NEW_SYLLABUS_2022_Updated.pdf

PROFESSIONAL PROGRAMME PASS CERTIFICATE OF ICSI IN DIGILOCKER

The Institute decided to issue Professional Programme Pass Certificate online via DIGILOCKER. The same initiative was Launched at 50th National Convention of ICSI at Kolkata with the support of the National e-Governance Division (NeGD), Ministry of Electronics and Information Technology (MeitY), Govt of India. The students who passed on or after June 2021 Session of Examination can download Professional Pass Certificate from DIGI Locker. Announcement and Communication via Bulk Mail has been sent to students for extracting their Professional Pass Certificate for June 2022 & December 2022 Session of Examination.

TRANSCRIPTS & EDUCATION VERIFICATION

It has been observed that on completion of Course the professionals are also applying for Foreign Courses/ degrees/ immigration based on CS Qualification. A total of 43 such Transcripts were issued in this line in the month of July 2023 under review.

Likewise, on request of the employer/PSU/government authorities and other Education verifier agencies, 14 education verification requests of CS students were processed in the month of July 2023.

ACTIVATION OF SWITCHOVER OPTION FOR EXECUTIVE OLD SYLLABUS (2017) STUDENTS

The Institute has notified that candidate who have registered under the CS Executive Old Syllabus (2017) can switch over to CS Executive New Syllabus (2022) comprising 7 papers. Accordingly, the portal for switchover from old syllabus (2017) to New Syllabus (2022) hasbeen activated for Executive Programme Students w.e.f., 2nd May 2023.

Till date, 2436 students have switched from the old executive syllabus (2017) to the new executive syllabus (2022).https://www.icsi.edu/media/webmodules/Declaration_to_cater_switchover_Request_of_executive_&_professional_old_ysllabus_students.pdf

REAL TIME GUIDANCE FOR STUDENTS

The Institute has prepared Frequently Asked Questions (FAQs) on the queries received from Stakeholders / Students to give more clarity on the issues and real time guidance. The FAQs are hosted on website at: https://www.icsi.edu/media/webmodules/Executive_FAQ_SW_23022023.pdf

COMPANY SECRETARY EXECUTIVE ENTRANCE TEST (CSEET)

During the month, following initiatives were taken for the CSEET students:

- ***CSEET (July 2023 session)***

  CSEET July 2023 session was held on July 30, 2023 and August 01, 2023 through remote proctored mode.

- ***CSEET classes (November 2023 session)***

  CSEET Classes are being conducted by Regional/ Chapter Offices for the students appearing in CSEET to be held in November 2023. Details of Regional/Chapter offices conducting classes are available at the following link: https://www.icsi.edu/media/webmodules/websiteClassroom.pdf

- ***Registration for CSEET Classes at the time of CSEET Registration***

  CSEET students can now register directly for the CSEET classes conducted by the Regional/Chapter Offices at the time of CSEET registration. This will help the students to join classes hassle free at their nearest location. Link to register https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx

- ***Exemption to Graduates and Post Graduates from appearing in CSEET and enabling them to take direct admission in CS Executive Programme***

  The Institute has decided to grant exemption to the following categories of students from appearing in CSEET enabling them to take direct admission in CS Executive Programme.

  Graduates (having minimum 50% marks) or Post Graduates (without any criteria of minimum % of marks) in any discipline of any recognized University or any other Institution in India or abroad recognized as equivalent thereto by the Council.

  To get exemption from CSEET on the basis of above qualification, such students shall be required to pay applicable exemption fees along with the requisite registration fees for the Executive Programme. For more details, please click https://www.icsi.edu/media/webmodules/granting_exemption_230621.pdf

- ***Paper bound CSEET Reading Material to be provided mandatorily to all students***

  The Institute has decided that the ***CSEET Guide – I*** (Business Communication, Legal Aptitude and Logical Reasoning, Economic and Business Environment) and ***CSEET Guide – II*** (Current Affairs) will be sent to all the students registering for CSEET by post, for which ₹500 will be taken at the time of registration from the students registering for CSEET in addition to ₹1000 (CSEET Registration fee).

- ***CSEET Reference Reading Material (I and II) will be provided on optional basis to all students at the time of CSEET registration***

  CSEET Reference Reading Material (I and II) will be provided optionally to all the students at the time of CSEET registration. Students are required to remit ₹1000 in addition to ₹1500. The same is available at: https://www.icsi.edu/reference-reading-material/

ACADEMIC INITIATIVES

- *Student Company Secretary, CS Foundation E-Bulletin And CSEET Communique*

  The Student Company Secretary e-journal for Executive/ Professional programme students of ICSI, CS Foundation course e-journal for Foundation programme students of ICSI and CSEET Communique covering the latest update on the subject on the CSEET have been released for the month of **July, 2023**. The journals are available on the Academic corner of the Institute's website at the link: https://www.icsi.edu/e-journals/

- *Research Tab under Academic Portal for students*

  A new research tab has been added under the Academic Portal to sensitize the students on emerging issues through research based academic outputs. As a maiden initiative, a brief research study on 'Exploring Financial Cataclysm of Silicon Valley Bank (SVB) and Analysing Credit Suisse Fiasco Tangentially' is uploaded. The Research Tab can be accessed at https://www.icsi.edu/student-n/academic-portal/research-corner/.

- *Recorded Video Lectures*

  ICSI has been recording video lectures of eminent faculties for the students of ICSI which help them to prepare for the examination. Students of the Institute can access recorded videos available on the E-learning platform by logging in to https://elearning.icsi.in

  Login credentials are sent to all registered students at email. After successful login, go to "My courses" or "My Communities" section, where you can find the recorded videos and other contents.

- *Info Capsule*

  A Daily update for members and students, covering latest amendment on various laws for benefits of members & students available at https://www.icsi.edu/infocapsule/

ICSI ACADEMIC CONNECT

- MoU signed with International Olympiad Foundation (IOLYMPIAD LLP) on July 11, 2023.

- ICSI Academic Connect MoU signed with Jagannath University, Bahadurgarh Road, Jhajjar, Haryana on July 14, 2023.

CS D. C. Jain
Former President, ICSI

CS D C Jain, Former President, The ICSI is a Graduate in Commerce and Law and also holds major Post Graduate and professional qualifications like M.I.L. (Hons), G.D.I.M., M.I.I.A., A.M.I.B.M., F.A.S.M., F.C.S. He has been closely associated with ICSI since 1971 when he registered himself in the CS course and passed the Company Secretary-ship examination in 1973. CS D C Jain is an entrepreneur and is currently the Promoter and Advisor of Akums Drugs & Pharmaceuticals Limited which is India's largest manufacturer of Pharmaceuticals formulations manufacturing 13% of the total medicines consumption in India, in over 4000 unique formulations covering 16000 brands in almost all therapeutic segments, for over 1200 elite customers. The Pharmaceutical Giant has filed 93 Patent applications; 5 Patents granted. Akums Drugs and Pharmaceuticals under the leadership of CS D C Jain was also awarded India Pharma Leader Award by Government of India, Department of Pharmaceuticals for two consecutive years 2018 & 2019.

According to Shri Jain, to serve the profession in its right earnest, it is not necessary that the person must hold some rank or position in the Institute. Even prior to becoming a member he had been involved in the Institute's activities during his student days & early professional period. He was Council member of NIRC in 1974 and held the positions of Treasurer, Secretary, Vice Chairman and became Chairman of NIRC in 1980. He also held positions of Central Council Member, Vice President and ultimately President of our august Institute in the year 1990. He was also appointed as a member of Secretarial Standards Expert Group and was associated for a continuous period of 2-3 years.

Taking us down the memory lane he mentions his humble yet critical contribution in finalizing office building for the Institute of Company Secretaries of India which was formed on 4th October 1968; with registered Office in Shastri Bhawan, New Delhi at Office of Department of Company Affairs, (now Ministry of Corporate Affairs). CS D C Jain also fondly reminisces how ICSI Headquarters at Lodi Road came into existence and shared that the office was shifted from the premises of Department of Company Affairs to 1, Rani Jhansi Road, New Delhi on 24th April 1970 and thereafter to A-1/111 Safdarjung Enclave, New Delhi. The Institute's Foundation Stone of ICSI building at Lodi Road, which is also ICSI's Headquarters, was laid by the then President of India – H.E Shri Neelam Sanjeeva Reddy in the year 1979 and the Institute started its complete operations from its Head Quarters at Lodi Road Building, New Delhi from 31st October 1981.

What opportunities will the Indian Business Sector be witnessing in the light of India's G20 Presidency? How can Company Secretaries explore these opportunities?

India's G20 priorities include - Green Development, Accelerated growth for SMEs and MSMEs, Accelerating sustainable development, Globalization, - Woman Empowerment, etc.

India offers low cost labour and is known for its highest standards of quality in all fields including I.T. and Pharmaceutical sector.

Business Opportunities to India include; showcasing of India's strengths & achievements; increase exports, bring a big boost to hospitality sector, Inflow of Foreign Direct Investments (FDIs) and Increase in cross border data flow.

The Company Secretaries can explore these opportunities by playing their advisory role in documents relating to exports & FDIs, encourage Start Ups to explore, bridge gap of Cross Border Transactions and advising on Green Development.

What is your take on the role of Company Secretaries in smoothening the creases and strengthening governance structure making boards more effective in achieving their expected results?

As we all know that the cost of non-compliance is much higher than the cost of compliance. As profession of Company Secretaries is most updated about regulatory changes; he/she understands and adheres to better governance practices; further CS is the in- house Legal Expert and Chief Advisor to the Board. Updated knowledge, understanding of governance and legal expertise of CS strengthens the governance structure of the country.

As it is rightly said about Company Secretaries amongst the professional fraternity, "The hand, that writes the minutes, rule the Board" and "Better results are off - shoots of Governance".

In 2019, Hon'ble Prime Minister, Shri Narendra Modi envisioned that India would become a $5 trillion economy by 2024-25. What role will Indian corporates and Company Secretary professionals are playing in achieving these milestones?

India's achievement of its dream to become from 3.75 to 5 trillion-dollar economy will certainly boost global confidence on India, however, it will depend on the Investor confidence who would bring investments to the country; and the Investor confidence arises from Good Governance, Ease of doing business, transparency, ethics and Accountability.

The Company Secretaries can give their advice on all stated above and be an undoubtable contributor to this dream of our country. As a Governance Professional Company Secretaries conduct and govern themselves in Transparent, Ethical & Accountable manner & with Integrity by way of Protection of stakeholders' rights, Business sustainability, Board governance, Anti-bribery policies etc.

These are some key factors for attainment of the Governance Goals and Company secretaries whether in employment or in practice can make their business entities achieve these Goals and in due course help in improving the Business environment in our country and globally.

Your Take on New areas that can be explored for Company Secretaries

The syllabus of Company Secretaries covers a gamut of subjects including Management Accounting, Taxation, GST, Forex Management, Banking, Insurance, IPR, IBC, Corporate Restructuring, Securities Laws, Capital Market Regulations etc.

I only say that their horizon should be much larger and may adopt many more new areas like Advisor on setting up joint venture / subsidiaries in India & abroad, Corporate Tax, GST, insolvency professional, IBC counsellor, advising on foreign collaboration, advisor on ESG framework, risk management & sustainability, MSME & Startups advisor and arbitration counsellor etc. A company secretary can also be a good independent director in Companies.

As a Professional what role do you think Company Secretary professionals are playing and expected to play in the future in strengthening the economy of our country

As the Hon'ble Prime Minister of India, Shri Narendra Modi has stated that India would be the Third largest economy in the world in next five years.

Aligning to attain the objective set by the Government of India , the CS professionals being placed high in the hierarchy of an organization, need to focus on the GRC theme: 'G- Governance, R- Risk Management, C- Compliances'.

The efficacious implementation of 'GRC' facilitates vital factors leading to come into force like longer sustainability, better profitability , better livelihood of the persons and Improvement in Quality of Life, Increase in GDP and higher tax earning for the Government.

All of the above and many other allied areas that Company Secretaries will cater to, will eventually help in strengthening the economy of the country. The CS professionals ensure safeguarding the interest of all stakeholders including the foreign investor, which helps in increase in inflow of FDI in the country. A Practising Company Secretary can help foreign and Indian entities in advising the most tax efficient structure for incorporation of a company.

Your Message for Young Company Secretary Professionals?

In my view, every Company Secretary whether in employment or in practice should have three 'I' (Eyes) & three 'D's, where Three 'I's (Eyes), mean -Intelligence, Independence; & Integrity and 3 Ds mean Devotion, Dedication, Dynamism.

The profession shall always remain incomplete if any professional does not have habit of continuous reading, learning and updating; expressing right opinion without any fear & favor; positive attitude and treating each problem not as problem but as a challenge.

For those who wish to choose employment, they should not confine to writing of minutes & filing of returns, should focus on compliances & governance and should work like entrepreneur & not like an employee.

For those who are in practice, additional work is that they should emphasize in Creating Clients, Retaining Clients and Earning from clients by guiding and helping the clients and always standing for faithful reporting.

Your take on Company Secretaries as the Professionals for Mergers and Acquisitions

Mergers and Acquisitions are strong hold areas of **Company** Secretaries. The Company Secretaries can advise the Board that mergers would help the organization for lean corporate structure, reduction in related party transactions, taking benefits of business synergies, helping the corporate for efficient financial & tax planning.

Acquisitions are necessary for scaling up; fast growth, saving of time, money and energy.

The Company Secretaries are the right choice for Corporate in identifying meaningful opportunities and for procedural compliances thereof. Those who are in

practice may adopt Mergers & Acquisitions (M & A) as part of whole time practice where M & A is ubiquitously a vast subject.

How can the Company Secretaries make themselves future ready in the wake of AI?

In times to come, Artificial Intelligence (AI) would be a stimulator of human intelligence through machine and would prove to be great enabler to Company Secretary's working.AI will prove to be an advantage for the profession of Company Secretaries by providing a one touch assimilation of information on prompt outcome of extensive data in shorter time; data and statistics for directors in the meeting when required; help in distribution of documents like annual financial statements of company; assist in Automated drafting of some meeting agenda items resulting in reduced mental overload; submission of repetitive documents on due dates with lesser supervision; accounting software, forecasting tools and data security leading to lesser non-compliances and less mistakes.

Even in the wake of AI, Company Secretaries would still be required to take decisions and judgments, draft Minutes, get skilled programming done through expert programmer, innovative and creative work etc.

AI may help Company Secretaries assimilate the professional requirements but, in my view, AI would help company secretaries but shall not be replacing the professional acumen of the Company Secretaries.

Being a Promoter and Owner of a Large-scale Pharmaceutical Company, how you perceive the Role of Company Secretaries in the field of Pharmaceuticals

The role of Company Secretary in any company would mostly be the same. However, to depict his corporate legal expertise, he will be required to advise on Industry specific regulations vis- a- vis alignment of his knowledge with the systems and procedures specific to the industry. And speaking of something close to my heart, "God has given us the opportunity of serving the human beings. Zero tolerance level, Zero mistake is expected in pharmaceutical Industry".

Pharmaceutical Industry is the highest regulatory industry backed by Science. In the pharmaceutical industry most people would have pharma or science background but lack in legal knowledge.

Company Secretary being a custodian of laws should expose himself at least to certain specific regulations in Pharma like: Drug Price Control Regulations – DPCO / NPPA, Drugs & Cosmetic Laws, Drug Magic Remedies Laws, Trademarks, Copy writes & Patent Act, Pollution Control Laws, SHE (Safety, health & Environment), Food Safety Standards Act (FSSAI)

Your contribution to the profession of Company Secretaries were many even before you became the President of the Institute. How do you recall your experience at ICSI?

For serving the profession or contributions to the profession, it is not necessary that a person must hold a rank or bear a position or be a President of the Institute. I was President of ICSI in the year 1990 but my contribution to the profession had been manifold even before 1990. To recall, some contributions to the Institute and the profession, I may say:

The most important one is, with our team efforts, section 383A was inserted in the Companies Act, 1956 providing Compulsory Appointment of Company Secretaries in a Company having paid up capital of Rs. 25.00 Lakh & above. By grace of Almighty, I had the opportunity to author the first study lesson for students of ICSI, and to facilitate the students I was also able to start the first oral coaching classes at NIRC. Secondly, I was strongly associated with the examination system of our esteemed Institute in those days and was instrumental in initiating a number of innovative activities as well as reforms in the then existing examination system. An achievement that I would like to humbly quote is that the 'Complete systems for ICSI Exams were set up by me".

Thirdly, I was also instrumental with my full efforts in achieving the recognition for Practicing Company Secretaries who were accorded the recognition for Certification of Annual return under the Companies Act, 1956 with effect from 15th June 1988. I would also acknowledge Mr. B. S. Doraiswami's presence as President, ICSI at that time.

Recalling further, as President, ICSI and under the guidance of Past President - Late C.R. Shah, a 10 years ICSI prospective plan 1991 – 2000 was prepared. This was the one of first Vision document for next decade and a huge lot of exercise was done including a 'SWOT' analysis where Strengths, Weaknesses, Opportunities and Threats relating to the different departments and aspects of the Institute were identified and analyzed and accordingly the action plan for the next decade was effectively laid out for execution and implementation. A 20-point programme of the ICSI was also announced and full account of achievements was presented through Chartered Secretary.

Further adding, I was privileged to be invited to chair the Asian & Pacific forum of Company Secretaries at Singapore as a President of ICSI. That was the beginning of Company Secretaries International Association which was organized by ICSA London and was attended by Company Secretary associations of Hong Kong, Malaysia, Singapore, Australia, Pakistan and New Zealand. In this meeting The ICSA London lauded the Role of ICSI for achieving many feats in a small span of 10 years which was extraordinary. "They stated, what ICSA London was not able to achieve in 100 years, ICSI has achieved in 10 years"

Amongst many other landmarks achieved by the Institute, the First International conference was also held by the Institute in Calcutta in 1990 and was attended by Bangladesh, Pakistan & Srilanka, setting the pace for times to come on global scale.

You are of the view that one of the greatest achievements of the institute was section 383A passed by Parliament. Please share your experience with your peers

The real recognition of the profession of "Company Secretary-ship" came into existence after the insertion of Section 383A in Companies Act 1956 in 1974 and Rules framed thereafter in February 1975. Till 1975, a few Companies had appointed Company Secretaries, but appointment of a Company Secretary was neither mandatory nor any qualification was prescribed for appointment of a Company Secretary, prior to 383A. With the introduction of this section, it provided for the mandatory appointment of a whole-time secretary by Companies having a paid-up Capital of Rs. 25.00 Lakh & above. However, insertion of section 383A in the Companies Act and approval of both houses of Parliament was a herculean task and we had to go through a rough phase of strong oppositions by various Associations and contemporary professions.

By way of this interaction, I would like to thank the then Union Law Minister because of whom this section was introduced and with his earnest efforts we could prevail the section 383 A of the Companies Act 1956 in the Loksabha by referring to the minuted decision of the Parliament of 1956.

When Companies Act 1956 was passed, a question was raised in the Parliament stating that the Companies Act, 1956 being the largest piece of legislature of India and also the biggest Companies Act of the world, and was looking for professionals who would administer such a big Act? It was replied and minuted that there would be "whole time Company Secretaries" in the Companies to administer the Companies Act 1956.

The Companies Amendment 1974 was passed and section 383A for Compulsory appointment of Company Secretaries by Companies having a paid-up share capital of Rs. 25 Lakh and above was made effective in February 1975. The insertion of section 383 A in the Companies Act brought some more challenges due to less Membership Numbers.

The Years - 1975 and 1976 were more challenging and many such related issues came into force.

Amongst these challenges, I remember that New Syllabus was being drafted at that time, and study material was prepared and for the first time and I again took the opportunity to prepare the first study lesson on "Company Meetings".

We celebrate PCS day on 15th June every year. Can you throw some light as to how we got recognition for Practicing Company Secretaries?

Today we fill out a document on MCA Portal and in most cases the document is taken on record immediately. In the olden days it used to take at least 2 to 3 years for a document to be taken on record by the offices of Registrar of Companies (ROC). Important documents like appointment & resignation of directors, registration of charges remained pending for years to be taken on record.

Myself and Shri T.P Subbaraman, the then Secretary & CEO of ICSI initiated discussions on this matter with DCA (Department of Company Affairs) a number of times. We suggested the department to allow our Practicing Company Secretaries to scrutinize the documents filed with ROC in the same manner as ROC scrutinizes; and if a document is certified as correct and as per law by a Practicing Secretary, the document should be taken on record by the ROC on a Fast Track System.

After a series of discussions, Department of Company Affairs (DCA) agreed that any document / return filed by a company which is pre- certified by a Practicing Company Secretary will be taken on record by ROC.

However, the decision was under serious objections by some of the peer professionals. Ultimately on 15th June 1988, certification of Annual Return exclusively by Practicing Company Secretary was permitted by DCA. I take this privilege to say this through this interaction that this was actually the beginning of 'Practice' in Company Secretary-ship profession. The ICSI in time became a statutory body under The Company Secretaries Act, 1980 which came into effect from 1st January 1981.

4th National Conference of Corporate CS held on July 27-28, 2023 at Goa

Theme : "Governance for Sustainability: Curating Excellence"

Guest of Honour : Shri Jaspal Singh, IPS, Director General of Police, Goa

Key Note Speaker : Shri Shrinivas V. Dempo, Chairman, Dempo Group of Companies

Distinguished Guest : Smt. Avelina D'sa E Pereira, Under Secretary, Dte. Of Higher Education, Goa

INAUGURAL SESSION

SPECIAL SESSION

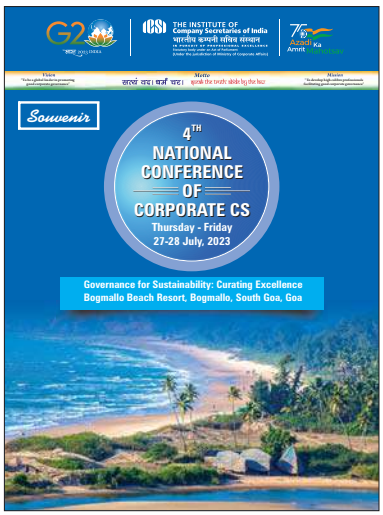
TECHNICAL SESSION - I

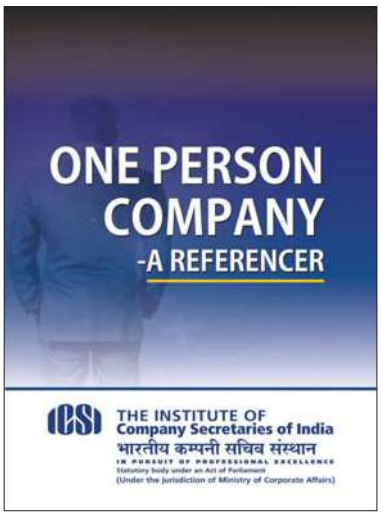
TECHNICAL SESSION - II

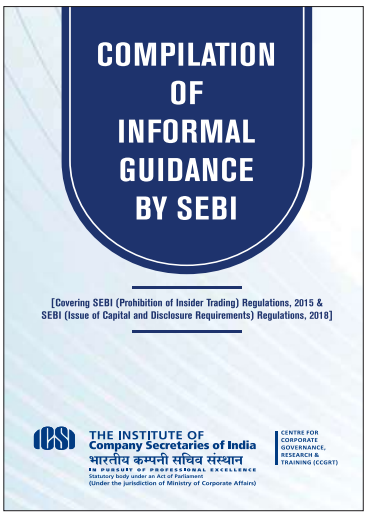
TECHNICAL SESSION - III

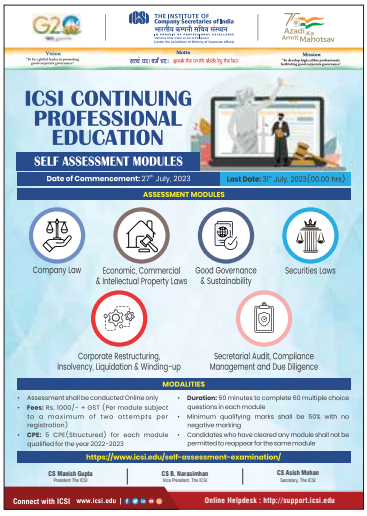
TECHNICAL SESSION - IV

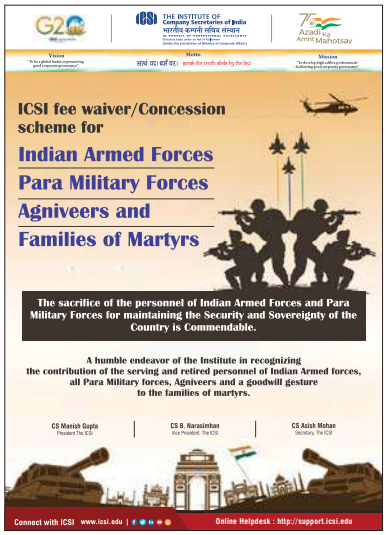
Releases at the 4th National Conference of Corporate CS











Proceedings of 4th National Conference of Corporate CS held on July 27-28, 2023 at Goa

Theme : Governance for Sustainability: Curating Excellence

The Institute organised its 4th National Conference of Corporate CS at Bogmallo Beach Resort, Goa on the theme "Governance for Sustainability: Curating Excellence" on July 27-28, 2023.The Conference witnessed the presence of over 300 delegates present in person and over 2000 delegates connected virtually from different part of the country. A galaxy of distinguished guests, invitees, speakers, professional and students made the conference a grand success.

INAUGURAL SESSION

The Conference was inaugurated by the Guest of Honour Shri. Jaspal Singh, IPS, Director General of Police, Goa. Shri Shrinivas V. Dempo, Chairman, Dempo Group of Companies presided over as Keynote Speaker and Ms. Avelena D'sa E Pereira, Under Secretary, Department of Higher Education, Goa was the Distinguished Guest at the Conference.

CS Amrita D C Nautiyal, Chairperson, WIRC of ICSI welcomed all the dignitaries and introduced the Guest of Honour, Keynote Speaker and Distinguished Guest. She emphasised that this Conference focused on providing latest updates to the professional fraternity about the contemporary transformations in the Sustainability and ESG Reporting culture.

CS Praveen Soni, Programme Director and Council Member, the ICSI welcomed all the dignitaries and delegates to the Conference. He spoke about the natural beauty of Goa and its good governance practices which makes it more beautiful. He commended the initiative taken by the Government of Goa for mandating the use of only rented electric vehicles by the tourist from January 01, 2024 onwards.

CS B Narasimhan, Vice President, The ICSI in his address introduced the theme for the Conference. He emphasised that the effective governance and its implementation relies ultimately on the pillars of openness, objectivity, fairness, transparency, accountability and integrity and ethos of the professionals delivering and monitoring governance mechanism. He briefed about the sub-themes for the Conference. He apprised about the ESG background, BRSR and ESG regulations introduced by the SEBI. He spoke about the gender diversity and importance of women at workplace and the legislative developments including POSH Act, Companies Act, 2013 and SEBI Regulations etc. He further highlighted India's initiative on women empowerment in G20 agenda and all over the world. He shed light on the legal provisions w.r.t Related Party Transactions and the role of AI for possibilities in revolutionize the corporate efficiency.

CS Manish Gupta, President, The ICSI, while giving his presidential address thanked all the dignitaries and delegates. He reiterated the thought that excellence is not a choice but a roadmap for sustainability and emphasised the importance of innovations, ecosystem of start-up and start-up age and India's position in Unicorns at International level. Reaffirming the importance of Company Secretaries in MSMEs and Start-Ups framework in India. He highlighted that ICSI has established ICSI ESG Board to provide the professionals and corporates with the best ESG compliance practices. To guide and support the MSMEs and start-ups and to explore new opportunities for Company Secretaries in this area, the Institute has also constituted a MSME Board. He shared the new developments in ICSI as establishment of ICSI Governance and Compliance Standard (GCS) Board, ICSI ADR Centre. He further added that ICSI has signed a MOU with Department of Education (DoE), Goa for capacity building & career awareness programme and establishment of study Centres in Goa. He emphasized that as ambassadors of good governance, Company Secretaries have been at the forefront of synchronizing businesses with governance and sustainability. He also mentioned that Conferences like this are an opportunity to further discuss and build capacities.

Presidential address was followed by the releases and CS Vinaykumar Prabhu, Chairman, Goa Chapter of ICSI facilitated the releases at the august hands of the Guest of Honour along with other dignitaries present on the dais.

- Souvenir of 4th National Conference of Corporate CS.
- Flyer of ICSI Continuing Self-Assessment Modules.
- ICSI Fee waiver/Concession Scheme for Indian Armed Forces Para Military Forces Agniveers and Families of Martyrs.
- Publication by ICSI CCGRT on Compilation of Informal Guidance by SEBI covering SEBI (Prohibition of Insider Trading) Regulation, 2015 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- Publication on One Person Company- A Referencer
- Study Material for Professional Programme under ICSI New Syllabus 2022
- Video and Flyer of 23rd ICSI National Awards for Excellence in Corporate Governance, 2023
- Brochure of 51st National Convention of ICSI" during the Inaugural session.

Smt. Avelena D'sa E Pereira, Distinguished Guest spoke about the MoU between the Directorate of Higher Education, Government of Goa and The ICSI. She emphasised that this MoU will open the doors of professional learning and development for the students of Goa and help them to build their capacities. She also mentioned about opening of two study centres in collaboration with the ICSI in North and South Goa.

Shri Shrinivas V. Dempo, Keynote Speaker appreciated the Institute for choosing the apt theme for the Conference as Sustainable Governance will lead India's position as the 3rd largest economy in the world as envisioned by the Hon'ble Prime Minister. He appreciated the role played by Company Secretaries in the areas of Corporate Governance, Sustainability, ESG and transparency. He stressed upon the need to embed the culture of transparency and governance and that Corporates are required to prioritise the governance principles. He suggested that Company Secretaries should encourage the companies to take ESG at centre while formulating the policies and act as a guiding mentor to the Board, other KMPs and stakeholders. He acknowledged that Company Secretaries are undertaking complex tasks and are responsible for the growing reputation and creditability of the country.

The Institute then inked an MoU with the Goa Chamber of Commerce and Industry. CS Manish Gupta, President, The ICSI exchanged the MoU signed with the Department of Education (DoE) Goa, with Ms. Avelena D'sa E Pereira, Undersecretary, Higher Education Department (HED), Goa.

Shri Jaspal Singh, IPS, Director General of Police, Goa, congratulated all Company Secretaries on their evolved role in the Corporate Sector. He mentioned that an investor perceives an investment to be safe only when the business complies with the laws of land and Company Secretaries play that dynamic role of ensuring that security to all the stakeholders. His address was focused on the duty cast upon the Company Secretaries for corporate disclosures, fair dealing, transparency and governance. He further said that Company Secretaries are the one who guide the board and enlighten them about the importance of compliance and governance culture in the organisation. He then apprised that he is also a student of Company Secretary ship Course.

CS Asish Mohan, Secretary, The ICSI while proposing the vote of thanks expressed gratitude to Guest of Honour and other dignitaries on the dais for their enthusiastic, energetic and inspiring words. He also appreciated and thanked the President, ICSI, Vice-President, ICSI and all Council Members, esteemed members, students and team ICSI from Headquarters, WIRC and Goa Chapter for successful organization of the Conference. He also conveyed his sincere thanks to the sponsors, advertisers, anchors, volunteers, media and Bogmallo Beach resort, Goa for their support. At the end he thanked one and all and wished success for the Conference.

TECHNICAL SESSION I

ESG: From Compliance to Commitment

Session Co-ordinators: CS Pawan G Chandak and CS Ashish Karodia, Council Members, ICSI

Panelist: CS Nitin Somani, Director & Founder, M/s Sundae Capital Advisors Private Limited; Ms. Sharmila Gopinath, Research Director, India Asian Corporate Governance Association; CS Manikantha AGS, Company Secretary & Compliance Officer, Infosys Limited; CS Sachin Mishra, Head Legal & Company Secretary, Tata Consulting Engineers Limited.

CS Pawan G Chandak in his introductory remarks briefed about the session theme, welcomed all the learned Panelist and invited them for sharing their views and experiences with the delegates.

CS Manikantha AGS, in his opening address, spoke about the history of Environmental, Social and Governance (ESG) where scientists, thought leaders and thinkers expressed their concern about the ESG in view of technological and scientific developments taking place throughout the world. His deliberation was focused on how 193 countries came together to achieve the UN-SDG Goals where ESG concept was formally introduced and came into the existence. He emphasised on the fact that Corporates are more into the people business and should do business in a sustainable manner.

CS Sachin Mishra highlighted about the Indian Culture of 'Pancha Yagna' and deliberated on roots of ESG in Indian Culture since the Vedic Period. He further apprised about the introduction of Corporate Social Responsibility (CSR) in India through section 135 of Companies Act, 2013, introduction of Business for Social Responsibility in 2015 and Business Responsibility and Sustainability Reporting (BRSR) in 2021 and proposed ESG norms in 2023, by SEBI and its alignment with the SDG Goals and companies should strive business as per these goals.

CS Sharmila Gopinath expressed her views from the perspective of the Institutional Investors. She highlighted the effect of ESG scores on the portfolio allocations of institutional investors. She shed light on integration of ESG factors by institutional investor which helps "foster a long-term investment mindset" and "cultivate better investment practices". She further apprised about the Global Reporting Initiative (GRI) Principles and the impact of business on society and economy as a whole. Her deliberation was focused on GRI standards, Task Force on Climate-Related Financial Disclosures (TCFD) principles, Sustainability Accounting Standards Board (SASB) principles and Sustainable Development Goals or combination of these for consideration by institutional investors while making any investment.

CS Nitin Somani addressed the need of balance between profits and ESG withing any organisation. He put emphasis that while defining the mission and vision of the organisation. The entrepreneur should consider ESG at the centre from the initial stage. He told that about $40

trillion investments has been made in global ESG assets as on 2023.

The panelist deliberated on the various issues pertaining to the topic of the session and also answered suitably to various queries which made the deliberations fruitful and interactive.

The session concluded with vote of thanks by CS Ashish Karodia and presentation of mementos to esteemed Panelist.

TECHNICAL SESSION II

Securing Workplaces: Sustaining Gender Diversity

Session Co-ordinators: CS Rupanjana De and CS Manoj Kumar Purbey, Council Members, ICSI

Panelist: CS Manoj Kapoor, Director, Kapgrow Corporate Advisory Services Private Limited; Mr. Paresh Pandharkame, Consultant, POSH and Labour Laws; CS Divija Dave, Founder- Divija Dave & Associates, Company Secretaries

CS Rupanjana De in her introductory remarks briefed about the session theme, welcomed all the learned Panelist and invited them for sharing their views and experiences with the delegates.

CS Manoj Kapoor apprised about the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) and his practical experience in handling the cases of sexual harassment at workplace. He highlighted the duty of the employer to comply in letter in spirit with the provisions of the POSH Act. He further added that organisations should provide the solution as per law and must sensitise by providing trainings to the employees on regular basis on these issues.

Mr. Paresh Pandharkame expressed his views from the perspective of HR and Industry Relation professional. He mentioned about the gender diversity in the corporates and highlighted that only 19% of the Indian corporates are having women director on the Board even after introduction of mandatory provision under Companies Act, 2013 for the appointment of women director in specified class of companies. He added that corporates need to frame policies to achieve 50-50% gender diversity and inclusion amongst the employees and should committed to achieve better combination of men and women within the organisation.

CS Divija Dave deliberated about the role of Company Secretaries in compliance with the governance provisions under POSH Act. She further added that Company Secretaries are instrumental in drafting of policies and can be the torch bearers to guide the Board in strategic decision making while constituting the Internal Committee under POSH Act. She also said that Company Secretary in Practice can be appointed as the External Member in Internal Committee as they have the legal background which is the foremost requirement under the Act. Company Secretaries can ensure more robust compliance culture since they are moving beyond compliance and moving to best governance practices.

CS Manoj Kumar Purbey opened the session for questions and answers and deliberated about the importance of gender diversity in achieving the sustainability.

The panelist deliberated on the various issues pertaining to the topic of the session and also answered suitably to various queries which made the deliberations fruitful and interactive.

The session concluded with vote of thanks by CS Rupanjana De and presentation of mementos to esteemed Panelist.

TECHNICAL SESSION III

RPTs: Balancing Conflicting Interests

Session Co-ordinators: CS Dhananjay Shukla and CS Sandeep Kejriwal, Council Members, ICSI

Panelist : CS Ranjeet Pandey, Former President, the ICSI; CS Satwinder Singh, Former Central Council Member, the ICSI, Founder & Managing Partner, Aekom Legal; CS Pankaj Tewari, Group Company Secretary, Bharti Airtel Limited; Ms. Sonal Sambhaji Pednekar, Assistant General Manager, Corporation Finance Department, Securities and Exchange Board of India

CS Dhananjay Shukla in his introductory remarks briefed about the session theme, welcomed all the learned Panelist and invited them for sharing their views and experiences with the delegates.

CS Ranjeet Pandey apprised about the fundamentals of Related Party Transactions (RPTs). He emphasised that companies should have policy on disclosures and approvals requirement on RPTs. He mentioned the role of Secretarial Auditor in RPTs and that the Auditors should independently look into the RP transactions, examine Auditor's report independently and not merely rely on representations from the management of the Company. He reiterated that a Secretarial Auditor needs to go deep into the transactions before giving judgement if those transactions would amount to RPTs or not.

CS Satwinder Singh expressed his views on the principles of RPTs and shared his practical international experience on the matter of Conflict of Interest in UK Court. He emphasised on the importance of transparency and disclosure and told that RPTs are not bad if they are entered in good faith for the interest of the entity after taking necessary approvals and disclosure and transactions are done at Arm's Length Price.

The deliberations of CS Pankaj Tewari emphasised from the perspective of investors. He said that Investors always pay close attention to how RPTs are accounted for and disclosed in the financial statements. Transparent reporting is essential to understand the impact of such transactions on Company's financial performance in long run. He commended the steps taken by the SEBI in regulation of RP and RPTs to make it more compliant and transparent.

Ms. Sonal Sambhaji Pednekar shared the perspective of the regulator in RPTs and apprised about the role of SEBI in strengthening the Corporate Governance. She highlighted various instances where corporates entered into the transaction with related parties for self-interest or for the purpose of money laundering and fraud. These instances were the triggering point for SEBI to amend the provision with regard to Related Party (RP) and RPTs to protect the interest of the stakeholders at large.

The panelist deliberated on the various issues pertaining to the topic of the session and also answered suitably to various queries which made the deliberations fruitful and interactive.

The session concluded with vote of thanks by CS Sandeep Kejriwal and presentation of mementos to esteemed Panelist.

SPECIAL SESSION

Moderator: CS Dwarakanath Chennur, Council Member, ICSI

Speaker: Shri Brahmanand Sankhwalkar, Former Captain, Indian Football Team (1983-1986), Padma Shri & Arjuna Awardee.

CS Dwarakanath Chennur welcomed the learned speaker and gave a brief introduction of the Special Guest by mentioning his achievements, awards and accomplishment during his career as a footballer. He then invited Shri Sankhwalkar to share his views and experiences with the delegates.

Shri Brahmanand Sankhwalkar in his address spoke about his journey to play football for the Indian National Football Team. He stated that football was his family passion and started his football journey since the age of three. He mentioned that his father was a goal-keeper in Portuguese football team. He also discussed about his struggle of playing football along with studies. He also said that he had worked without salary in a football club for four years to get the experience as a goal keeper.

He briefly discussed about his coach Mr. B.K. Banerjee, Dronacharya, Padma shree and Arjuna Awardee, who stood with him in his toughest time, trained and motivated him to play for the Indian Football team despite his setback due to a major arm injury. He emphasised that divine connect, spirituality and meditation is very important for the achievement of goals in the life.

After a big struggle with studies, family and health, he called in and started to play for the Indian Football Team in 1982 and became Caption of Indian Football Team in 1983.He concluded by mentioning his leanings from the football and quoted "If you fall down to get up, from criticism to get up and get up in every pain and struggle as it's not the end. Never give up".

The session concluded with vote of thanks by CS Dwarakanath Chennur and presentation of memento to the Speaker.

TECHNICAL SESSION IV

AI: The Nuances of Digital Transformation

Session Co-ordinators: CS NPS Chawla and CS Venkata Ramana R, Council Members, ICSI

Panelist: CS Kiran Chitale, Head of Legal, Barclays Global Service Centre Private Limited; CS Vivek Sadhale, Co-Founder, Legalogic Consulting LLP; Ms. Nappinai Raghavan, Director, BSR and Associates LLP

CS NPS Chawla in his introductory remarks briefed about the session theme, welcomed all the learned Panelist and invited them for sharing their views and experiences with the delegates.

CS Vivek Sadhale deliberated on the digital transformation over last decade and shed light on widespread adoption of digital technologies and practices by the businesses and organisations to improve their processes, services and overall operations. He added that past decade has seen a significant shift towards digitization in almost all industries enabling more agile and data-driven decision making to meet the stakeholder expectation and stay in competition in the digital age. In addition, he also highlighted the fact that Artificial Intelligence (AI) can never replace the human intelligence as humans are creating AI, not AI creating the humans. He emphasised to use AI to make the informed strategic decision.

The address of CS Kiran Chitale revolved around the role of Company Secretaries in Artificial Intelligence. He mentioned that Company Secretaries are responsible for maintaining accurate records, filing necessary reports with regulators and assisting with the governance matters related to technology. He said that Company Secretaries should have flexible and learning attitude in adapting new technologies, make investment to upskill their knowledge with the latest technological automated tools available in the market. He further added that Company Secretaries must have ethical considerations to data privacy to align AI practices with legal and ethical standards as data privacy regulations and laws are still in evolving stage.

Ms. Nappinai Raghavan apprised about the focused opportunities for professionals through AI. She said that Company Secretaries can use AI to make their jobs better for prompt outcomes with intellectual processes, managing routine tasks, advance research, compliance tools, preparing and filing of various returns with regulatory authorities etc. She emphasized that use of AI in time saving, increased efficiency and also mitigating the chances of human error. She further added that professionals should take due care in mitigation of risk associated with the use of AI and always ensure data privacy and confidentiality.

The panelist deliberated on the various issues pertaining to the topic of the session and also answered suitably to various queries which made the deliberations fruitful and interactive. The session concluded with vote of thanks by CS Venkata Ramana R and presentation of mementos to esteemed Panelist.

ICSI Western Region Convocation held on July 29, 2023 at Goa







Master Knowledge Series: EEE

WEBINAR ON
FINER NUANCES OF FEMA held on July 8, 2023

Speaker :

CS Atul Mittal
Partner, Deloitte India

Moderator :

CS Dhananjay Shukla
Central Council Member,
The ICSI

WEBINAR ON
CORPORATE SOCIAL RESPONSIBILITY UNDER COMPANIES ACT, 2013 held on July 12, 2023

Speaker :

Dr. J Sridhar
CS and Vice President,
Bajaj Auto Ltd.

Moderator :

CS R Venkataraman
Central Council Member,
The ICSI

WEBINAR ON
RELATED PARTY TRANSACTIONS UNDER COMPANIES ACT, 2013 held on July 19, 2023

Speaker :

CS Sudhakar Saraswatula
Former Vice President
(Corporate Secretarial)
Reliance Industries Ltd.

Moderator :

CS Pawan G Chandak
Central Council Member,
The ICSI

WEBINAR ON
SEBI (LISTING OBLIGATION AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 held on July 26, 2023

Speaker :

CS Ravi Varma
Assistant Company Secretary,
Bandhan Bank Ltd.

Moderator :

CS Rajesh Tarpara
Central Council Member,
The ICSI

WEBINAR ON
MANAGERIAL REMUNERATION & KMP held on August 2, 2023

Speaker :

CS Devendra V Deshpande
Former President, The ICSI

Moderator :

CS Suresh Pandey
Central Council Member,
The ICSI

Webinar Series on Alternate Dispute Resolution

WEBINAR ON
BASICS OF ARBITRATION AND RELATED PROVISIONS held on July 15, 2023

Speaker :

CS (Dr) Pundla Bhaskara Mohan

Advocate - High Court of Telangana and Former Member (Judicial), NCLT

Moderator :

CS NPS Chawla

Central Council Member, The ICSI

WEBINAR ON
BASICS OF MEDIATION, CONCILIATION AND RELATED PROVISIONS held on July 21, 2023

Speaker :

Mr. Krishna Grandhi

Senior Advocate

Moderator :

CS Dwarakanath Chennur

Central Council Member, The ICSI

WEBINAR ON
INTERPLAY OF VARIOUS LAWS WITH ARBITRATION PROVISIONS held on August 4, 2023

Speaker :

Mr. Chirag Balyan

Assistant Professor of Law, Maharashtra National Law University, Mumbai

Moderator :

CS Rupanjana De

Central Council Member, The ICSI

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Azadi Ka Amrit Mahotsav

Vision
"To be a global leader in promoting good corporate governance"

Motto
सत्यं वद। धर्मं चर। speak the truth, abide by the law

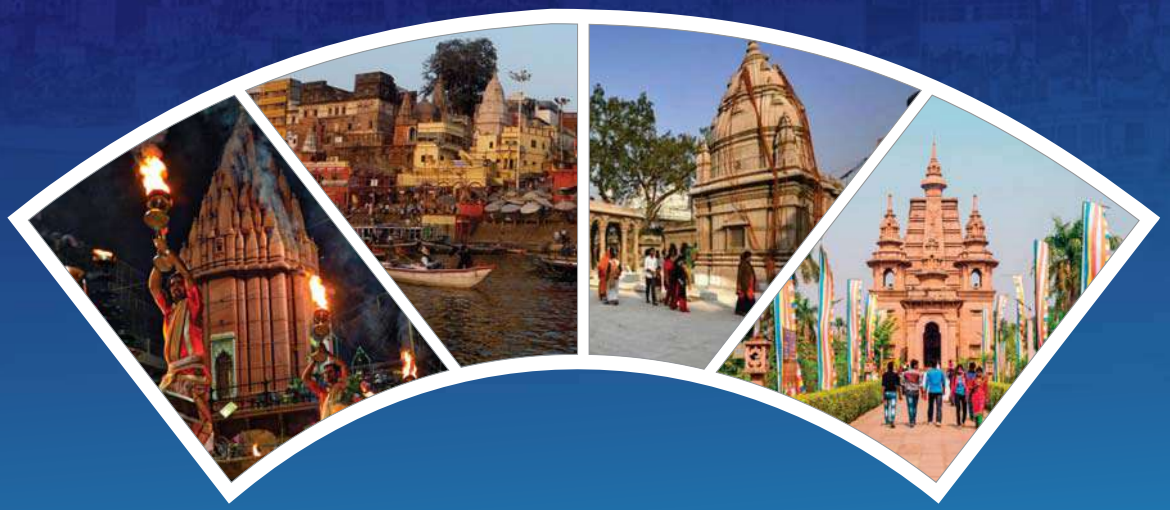
Mission
"To develop high calibre professionals facilitating good corporate governance"

51st National Convention of Company Secretaries

November 2-4, 2023 | Varanasi, Uttar Pradesh

Venue : Deendayal Hastkala Sankul (Trade Centre & Craft Museum)

Theme - India@G20: Empowering Sustainable Future through Governance & Technology



51st National Convention of Company Secretaries

Invitation

Dear Professional Colleague,

India's G20 Presidency provides a platform for the country to contribute to global efforts in empowering a sustainable future. By emphasizing upon good governance, digital transformation, financial inclusion, and skill development, India shares its experiences, policies, and initiatives to foster sustainable development globally. As India continues to play an active role in the G20, it contributes to shaping policies and actions that promote a sustainable and inclusive world for all.

In this backdrop, I am extremely delighted to invite your good self to the 51st National Convention of Company Secretaries to be held from Thursday, November 2 to Saturday, November 4, 2023 on the theme **India@G20: Empowering Sustainable future through Governance & Technology** at **Deendayal Hastkala Sankul (Trade Centre & Craft Museum), Varanasi, Uttar Pradesh,** a city that exudes spirituality, cultural richness and historical significance.

Company Secretary being a key source of advice on governance and sustainability takes into its fold everything from legal advice on diverse aspects, to the development of strategy/corporate compliance and advice on sustainability aspects. The corporate world looks upon Company Secretaries to provide the impetus, guidance and direction for strengthening governance and sustainability.

The event aims to explore the pivotal role of Company Secretaries in driving sustainable development, good governance, and technological advancements to contribute effectively to India's sustainable development agenda and its engagement with the G20. The discussions will focus upon strengthening corporate governance, technology, risk management, and stakeholder engagement strategies to ensure long-term sustainability.

The Convention will bring together professionals, experts, and policymakers from the Government, Regulators, Industry and Academia to discuss and deliberate on the role of governance and technology in achieving a sustainable future. Your kind presence will surely enable exchange of ideas, experiences and networking with your professional colleagues from all parts of the country and abroad. Your spouse, children and other guests are also welcome to the National Convention, sight-seeing, cultural programme and other attractions.

The Institute also propose to release a Souvenir containing messages of good wishes, theme articles, programme details, etc. on this significant occasion. We request you to use your good offices in obtaining advertisement and sponsorship support for this mega event.

We are delighted to call upon you to register for the 51st National Convention of Company Secretaries at Varanasi.

Looking forward to welcome you at the *City of Light!*

With best regards,

Yours' sincerely,

CS Manish Gupta
President, The ICSI

51st National Convention of Company Secretaries

India@G20: Empowering Sustainable Future through Governance & Technology

"Sustainability is not an individual effort; it requires collective action. Let us work together, across nations and sectors, to create a sustainable future for all."

- Shri Narendra Modi, Hon'ble Prime Minister

India, with its rich cultural heritage, diversity, and rapid economic growth, has emerged as a global leader in both governance and technology. The G20 platform provides an excellent opportunity for India to showcase its commitment to empowering a sustainable future, not just for its own citizens but for the entire world.

The theme **India@G20: Empowering Sustainable Future through Governance & Technology** underscores India's commitment to leveraging its expertise and experiences to collaborate with other G20 nations in shaping a sustainable future. Through this platform, it aims to share best practices, exchange ideas, and foster partnerships that will accelerate sustainable development efforts worldwide.

Good governance forms the foundation upon which societies thrive, enabling transparent and accountable decision-making processes that promote inclusivity and social change. Technology has become an essential enabler for sustainable development. India, with its rapidly growing technology sector, is at the forefront of innovation and is actively harnessing technology to drive sustainable development. India has successfully implemented transformative technological solutions that have improved the lives of millions.

The role of a Company Secretary is crucial in empowering a sustainable future. They play a vital role in integrating sustainable practices into the governance framework and facilitating the effective use of technology to achieve sustainable goals. Company Secretaries contribute in creating a business environment that is aligned with the principles of sustainability and fosters a better future for society and the environment.

As we move forward, let us remember that our actions today will determine the kind of world we leave for future generations. By empowering a sustainable future, we have the opportunity to create a world where economic prosperity, social well-being, and environmental stewardship go hand in hand.

The Convention aims at creating a platform for knowledge sharing, capacity building, and collaborative initiatives. The discussions to be held during the Technical Sessions hold great relevance and significance. The sub-themes for the Technical Sessions to be held across the span of three-day Convention shall encompass all the aspects of the theme in the professional context are as under:

Technical Session-I	Technical Session-II	Technical Session-III	Technical Session-IV	Technical Session-V	Technical Session-VI
Digital Inclusion: A catalyst for Corporate Innovation and Social Progress	Circular Economy: New Perspectives and Role of CS	Startups and MSMEs – Engines for Growth	ESG: Creating Value and Sustainability for Future	Women-led Development: Accelerated, Inclusive & Resilient Growth	Corporate Boards: Readiness for Digital Transformation & Climate Change

51st National Convention of Company Secretaries

VENUE OF THE CONVENTION

Deendayal Hastkala Sankul (Trade Centre & Craft Museum)
Bada Lalpur, Varanasi, Uttar Pradesh - 221002

Shri Narendra Modi, Hon'ble Prime Minister dedicated to the nation the Deendayal Hastkala Sankul (a trade facilitation centre for handicrafts) at Varanasi in 2017. The Sankul spans 7.93 acres, with a built-up area of 43,450 square metres. The location of the site allows its connectivity to all prominent locations within Varanasi and Sarnath.

The complex comprises of Marts-cum-Office, Convention-cum-Exhibition hall, Food Court-cum-Guest House, Shopping Arcade and Crafts Museum. The Crafts Museum in the Sankul preserves the traditional handloom/ handicrafts products of Varanasi and showcase the handloom & handicraft products. The Convention venue has capacity for around 2,000 delegates.

The complex also houses Shops, Food Kiosks, Restaurants, Bank and ATM, Foreign Currency Exchange Office, Guest Rooms, Dormitories, Stalls / Kiosks, parking facility for more than 500 cars, space for cultural and social functions, Handloom and Handicraft exhibitions along with Amphitheatre and Souvenir Shop.

ABOUT VARANASI

Varanasi, also known as Banaras and Kashi, is located on the banks of the River Ganges in Uttar Pradesh. It is one of the oldest continuously inhabited cities in the world having a rich cultural heritage that spans thousands of years. The city has been a center for art, music, dance, literature, and philosophy.

Varanasi's unique blend of spirituality, culture, and ancient traditions makes it a captivating destination for visitors seeking a deep spiritual experience and a glimpse into India's rich cultural heritage. Its historical significance, architectural marvels, and the spiritual aura of the Ganges make it a city that truly embodies the essence of India.

Kashi Vishwanath Corridor is constructed to connect the Kashi Vishwanath Temple to the ghats of the Ganga. It has been built over an area of 5,000 hectares to not only decongest but to also transform the temple complex. During Phase 1 total 23 buildings were inaugurated, including a Tourist Facilitation Centre, Mumukshu Bhavan, Bhogshala, City Museum, Viewing Gallery and Food Court. The corridor has increased the facilities for the tourists and beautified the temple premises.

Varanasi has a long-standing tradition of being an intellectual hub. The prestigious Banaras Hindu University, established in 1916, is one of India's premier educational institutions. The city has also been a center for learning and knowledge with several ancient libraries and centers of scholarship.

Varanasi is hailed as a premier centre of the finest handicrafts like silk weaving (Banarasi silk saris), wood and stone carving; bead manufacturing and metal works which makes it quite distinctive across the world.

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TOURIST ATTRACTIONS AT VARANASI

Kashi Vishwanath Temple

Kashi Vishwanath Temple is one of the most revered temples dedicated to Lord Shiva. It is considered one of the 12 Jyotirlingas (sacred abodes of Lord Shiva) in India. The temple's gold-plated spire and intricate architecture attract devotees and tourists alike.

Sankat Mochan Temple

Sankat Mochan temple is situated on the banks of River Assi in Varanasi. The deity is facing towards the idol of Lord Ram, which makes this temple distinctive from the other temples of Hanumanji. It is said that Tulsidas had a vision of Hanumanji in the same place, where thetemple stands today.

Ganga Aarti

Ganga Aarti is a magnificent, religious and spiritual ritual that is performed every evening along Dasaswamedh Ghat at Varanasi. The aarti is a mesmerizing display of lights, music, and prayers, creating an atmosphere of peace and serenity. Ganga Aarti is a must-see for anyone visiting Varanasi.

Tulsi Manas Temple

Dedicated to Lord Rama, Tulsi Manas Temple is known for its exquisite architecture and the walls adorned with verses from the Ramcharitmanas, an epic poem by the saint-poet Tulsidas.

Kal Bhairav Temple

Kal Bhairav temple is one of the oldest temples of Varanasi. Lord Kal Bhairav also known as *Kashi Ke Kotwal* gaurds the gates of Kashi. It is by his darshan only that the devotees can reap the full benefits of Kashi yatra.

Bharat Mata Mandir

Bharat Mata Mandir is located at Mahatma Gandhi Kashi Vidyapeeth Campus in Varanasi. Dedicated to Mother India, this temple has a huge map of undivided India carved in marble. This is a unique temple and a symbol of patriotism. This temple is placed in the settings of natural beauty overlooking the Ganges.

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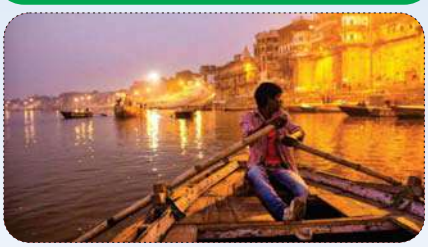
Sarnath

Located just a few kilometers from Varanasi, Sarnath is an important Buddhist pilgrimage site, where Gautama Buddha delivered his first sermon after attaining enlightenment. Visitors can explore ancient stupas, monasteries, and the Dhamek Stupa.

Banaras Ghats

Varanasi is famous for its numerous ghats along the Ganges. Apart from Dashashwamedh Ghat and Manikarnika Ghat, other notable ghats include Assi Ghat, Harishchandra Ghat, and Man Mandir Ghat.

Boat Ride on the Ganges

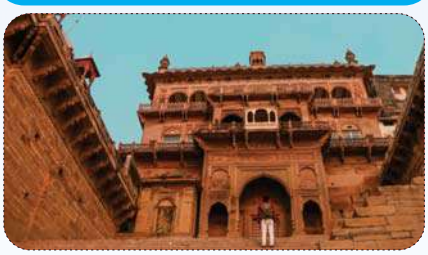


Exploring Varanasi is incomplete without a boat ride on the Ganges. It offers a unique perspective of the ghats and allows you to witness the city's daily life, rituals, and colorful sunrise or sunset views.

Banaras Hindu University (BHU)

BHU was established by Pandit Madan Mohan Malviya in 1916. The Indo-Gothic architecture and the sprawling lawns add to the beauty of the place. It played a stellar role in the independence movement. The University has a long list of notable alumni and faculty.

Ramnagar Fort



Situated on the eastern bank of the Ganges, Ramnagar Fort is a magnificent fort-palace that serves as the ancestral home of the Maharaja of Varanasi. It showcases a blend of Mughal and Hindu architectural styles and houses a museum.

Chunar Fort

Situated approximately 40 kilometers from Varanasi, Chunar Fort is an ancient fortress perched on a hill overlooking the Ganges. It has historical significance and offers panoramic views of the surrounding landscape.

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TENTATIVE PROGRAMME SCHEDULE

DAY-1: THURSDAY, NOVEMBER 2, 2023

11:00 AM Onwards	Registration of Delegates
1:00 PM - 2.30 PM	Lunch
3.00 PM - 4:30 PM	Opening Plenary
4:30 PM - 5:00 PM	Tea Break & B2B Session
5:00 PM - 6:30 PM	Technical Session-I
6:30 PM - 7:30 PM	Special Session
7:30 PM Onwards	Cultural Evening & Dinner

DAY-2: FRIDAY, NOVEMBER 3, 2023

10:00 AM - 11:30 AM	Technical Session-II
11:30 AM - 12.00 Noon	Tea Break & B2B Session
12.00 Noon - 1:30 PM	Technical Session – III
1:30 PM - 2:30 PM	Lunch Break
2:30 PM - 4:00 PM	Technical Session-IV
4:00 PM - 4:30 PM	Tea Break & B2B Session
4:30 PM - 6:00 PM	Motivational / Special Session
6:00 PM - 6:30 PM	Networking
7:30 PM Onwards	Cultural Evening & Dinner

DAY-3: SATURDAY, NOVEMBER 4, 2023

10:00 AM - 11:30 AM	Technical Session-V
11:30 AM - 12:00 Noon	Tea Break & B2B Session
12:00 Noon - 1:30 PM	Technical Session-VI
1.30 PM - 2:30 PM	Open House
2:30 PM Onwards	Lunch

DELEGATE FEE & REGISTRATION PROCESS

DELEGATE REGISTRATION FEE* (NON-RESIDENTIAL)

Delegate Category	Super Early Bird Offer (From 27th July, 2023 to 26th September, 2023)	Early Bird Offer (From 27th September, 2023 to 25th October, 2023)	Delegate Fee (From 26th October, 2023 including on the spot registration)
Member of ICSI/ICAI/ICMAI	Rs.7,500	Rs.8,500	Rs.9,500
Accompanying Spouse/Child (5 years and above)/ Sr. Member (60 years and above)	Rs.6,500	Rs.7,500	Rs.8,500
Student of ICSI	Rs.5,500	Rs.6,500	Rs.7,500
Non-Member/Guest	Rs.8,000	Rs.9,000	Rs.10,000
Foreign Delegate	USD 165	USD 210	USD 260

*Exclusive of GST @18% on non-residential basis. GST is not applicable for foreign delegates.

The above fee includes Lunch (3), Dinner (2), Morning / Evening Conference Tea, Coffee, Conference Kit and Souvenir. The Delegate Fee is payable in advance and is non-refundable.

DELEGATE REGISTRATION PROCEDURE

- Delegates are requested to register for the Convention by visiting the weblink: **https://tinyurl.com/58y3c58n**
- Registration for the Convention shall be through Online Mode only.
- Please note that payments are not accepted through Demand draft, Cheque & Cash.

For any Registration related query, please contact
Mr. Niranjan Sarkar at email: niranjan.sarkar@icsi.edu , Mobile : 8920013596

51st National Convention of Company Secretaries

PROGRAMME CREDITS

- Members: 10 (Ten) Structured CPE Credits
- Students: 24 (Twenty Four) PDP Hours, if applicable

SPEAKERS

Eminent persons from the Government / Regulators and Industry, including Professional and Management Experts will address the participants and there would be brainstorming sessions and interactions.

PARTICIPANTS

Company Secretaries, Directors, Chartered Accountants, Cost and Management Accountants, Senior Executives, Senior Officers from Government, Academicians and other Professionals working in Secretarial, Financial, Legal, Management, and Academic Disciplines would be benefitted from participation in the Convention.

ACCOMPANYING GUESTS, SPOUSE AND CHILDREN

Accompanying Guests, Spouse and Children registered for the Convention will be eligible to participate in Lunch, Dinner, Sight Seeing, Cultural Evening Programme(s) and other attractions of the Convention.

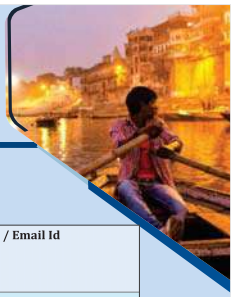
ARTICLES FOR SOUVENIR

Members who wish to contribute Articles for publication in the Souvenir are requested to send the same through email at **conference@icsi.edu** on or before **15th September, 2023.** The articles should be between 2500 - 4000 words (font size Arial 11 point – single space / single column and without any diagrams / sketches / downloaded pictures from internet). The content shall be original work of the author. Articles will be checked for Plagiarism by the Institute. The Articles Screening Committee constituted specially for the National Convention will consider the Articles received and the decision of the Committee shall be final in all respects. Member whose article is included in the Souvenir shall be granted 4 CPE Credits (Structured) and select publications of the Institute. Please send articles in MS Word giving your name, designation and organisation/firm name. Articles not complying with above specifications including length of the article shall be rejected.

HOTEL BOOKING FOR DELEGATES

1. The members/students/others (as the case may be) are required to first get themselves registered as delegate for the 51st National Convention of Company Secretaries.
2. The ICSI has taken best/ negotiated rates from some of the hotels and blocked the rooms at concessional rates for delegates of National Convention. The delegates are advised to avail this opportunity latest by September 16, 2023. The rates may be changed post this date at the discretion of the hotel.
3. **For booking of rooms in hotel, delegates may select the hotel as per their choice from the list of hotels given below. They may download the room booking form from the link given against that hotel's name at website of the Institute i.e. www.icsi.edu. They are required to fill-up details including the Delegate Registration No. in the form and after that scanned copy of this form is required to be sent by e-mail to respective hotel.**
4. All payments related to hotels are to be settled by the delegate with the hotel concerned directly.
5. **All delegates may kindly note that hotel rooms shall be booked on full occupancy basis.** The sharing of the room with the other delegate is permissible and will depend completely on the mutual understanding amongst the delegates. The details of the accompanying delegate are to be filled in the form at the time of booking of the hotel. The ICSI in no way is involved in the process and would not be suggesting any names for sharing of room.
6. Hotels have been requested to allow delegates for early check-in, if some of them are reaching before check-in time, but this facility is subject to availability of rooms at that point of time. Lunch is also being arranged to be served from 1.00 PM onwards at Convention venue to facilitate such delegates who are reaching Varanasi before check-in time of their respective hotels.
7. Delegates are free to book their stay in any hotel of their choice at their own.

51st National Convention of Company Secretaries



S. No.	Name & Address of the Hotel	Star Category	Distance from Convention Venue	Distance from Airport	Distance from Railway Station	No. of Rooms blocked for delegates	Room Tariff Room Per Night (Per Including Breakfast + WiFi)		Contact No. / Email Id
							Single Occupancy	Double Occupancy	
1	**The Clarks Varanasi,** The Mall Rd, Cantonment, Varanasi, Uttar Pradesh	5 Star	7 KM	21 KM	3 KM	40	Standard 7000 + 12% GST	Standard 7500 + 12% GST	+91 542 2501011-20 reservations@clarkshotels.com
						45	Premier 9000 + 18% GST	Premier 10000 + 18% GST	
						10	Executive / Jr. Suite 12000 + 18% GST	Executive / Jr. Suite 13000 + 18% GST	
2	**Hotel Rivatas By Ideal** The Amayaa, The Mall Rd, Cantonment, Varanasi, U.P.	4 Star	7 KM	21 KM	3 KM	40	8500 + 18% GST	8500 + 18% GST	+91 542 6666100 reservations@rivatas.com
3	**Hotel The Amayaa** The Mall Rd, Near Madin, Varanasi cantonment, Varanasi, Uttar Pradesh	4 Star	7 KM	21 KM	3 KM	40	7500 + 12% GST	7500 + 12% GST	+91 542 2503391-92 sales@theamayaa.com
4	**Hotel Hindusthan International (The HHI),** C-21/3 Maldahiya Rd, near Maldahiya Crossing, Maldahiya, Varanasi, U.P.	4 Star	9 KM	23 KM	2 KM	75	7499 + 12% GST	7499 + 12% GST	+91 542 7110756 salesvarnasi@hindusthan.com hhivaranasi@hindusthan.com
5	**Hotel India Benaras** Mint Road, Subroto Chowk, Opposite Airforce Station Varanasi	4 Star	8 KM	22 KM	2 KM	45	7000 + 12% GST	7499 + 12% GST	+91 542 2507593 sales.varanasi@theindiahotel.com
6	**Hotel Arcadia** Near Roadways, Water Tank, S17/330 E, Maldahiya, Chetganj, Varanasi, Uttar Pradesh	4 Star	8 KM	18 KM	650 Mtrs	40	6000 + 12% GST	6000 + 12% GST	+91 542 4074992 reservation@arcadiahotel.in
7	**Hotel Meradean Grand** 57 Patel Nagar, Cantt, Varanasi	3 Star	8 KM	22 KM	2 KM	25	6500 + 12% GST	7000 + 12% GST	+91 542 2509952-3-4-7-9 meradengrand@gmail.com
8	**Hotel Silk City,** The Mall Rd, Varanasi cantonment, Varanasi, Uttar Pradesh	3 Star	7 KM	21 KM	3 KM	44	5500 + 12% GST	5500 + 12% GST	+91 542 2508723-24 reservation@hotelsilkcity.in
9	**Hotel Westinn,** Nepali Kothi, The Mall, Cantonment, Varanasi	3 Star	7 KM	21 KM	3 KM	22	5500 + 12% GST	5500 + 12% GST	+91 0542 2508888-9999 info@thewestinnvns.com
10	**Hotel Rio Benaras,** S 20/53-56 Buddha Vihar Colony, Cantonment Varanasi	3 Star	7 KM	21 KM	3 KM	15	5100 + 12% GST	5100 + 12% GST	+91 8810718660-661-662 hotelriobenaras@gmail.com
11	**Hotel Costa Riviera** C21/4-A-3, Subhkamna Complex Maldahiya, Varanasi	4 Star	9 KM	23 KM	2 KM	40	5000 + 12% GST	5000 + 12% GST	+91 542 2395911-12 groupgm@costariviera.in
12	**Hotel Darohar,** Siswa, NH-56 (Near Airport Thira Varanasi) Babatpur Varanasi	3 Star	18 KM	1.5 KM	21 KM	25	4500 + 12% GST	5000 + 12% GST	+91 8932012089 info@dharoharkashi.com

For any Hotel Booking Query please contact
Mr. Ankur Aggarwal at email: ankur.aggarwal@icsi.edu , Mobile : 9015419070

HOW TO REACH VARANASI

BY AIR

Lal Bahadur Shastri International Airport at Varanasi provides both domestic and international flights connectivity to major cities in India and some international destinations.

Convention Venue is 18 Km. from the Airport.

BY TRAIN

Varanasi Junction, is a major railway station in the city. It is well-connected to various cities across India. Many trains, including express and superfast trains, run to and from Varanasi.

Convention Venue is 8 Km. from the Railway Station.

BY ROAD

Varanasi is well-connected by road. The Uttar Pradesh State Road Transport Corporation (UPSRTC) operates regular bus services from nearby cities and towns.

Convention Venue is 8 Km. from the Bus Stand

51st National Convention of Company Secretaries

SPONSORSHIP/ADVERTISEMENT TARIFF

Sl. No.	Details	Rs.
1.	**Principal Sponsor** • Advertisement in Souvenir (Back Cover) • Delegate fee exemption • Display at Convention Backdrop • Stall (6'x6') • Publicity material in delegate kits • Special Acknowledgement	**20,00,000** 4 Delegates (Residential) 6 Delegates (Non Residential)
2.	**Co-Sponsor** • Advertisement in Souvenir (Second Cover) • Delegate fee exemption • Display at Convention Backdrop • Publicity material in delegate kits • Special Acknowledgement	**15,00,000** 2 Delegates (Residential) 5 Delegates (Non Residential)
3.	**Sponsorship for Bags** • Advertisement in Souvenir (Third Cover) • Delegate fee exemption • Display at the Convention site/Convention Bag • Publicity material in delegate kits • Special Acknowledgement	**12,00,000** 2 Delegates (Residential) 4 Delegates (Non Residential)
4.	**Diamond Sponsor** • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site • Special Acknowledgement	**8,00,000** 5 Delegates (Non Residential)
5.	**Souvenir Sponsor** • Logo on the Souvenir cover page • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site • Special Acknowledgement	**6,00,000** 4 Delegates (Non Residential)
6.	**Gold Sponsor** • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site • Special Acknowledgement	**5,00,000** 3 Delegates (Non Residential)
7.	**Cultural Programme Sponsor** **Day 1 (2nd November 2023)** • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site & Cultural Programme Site • Special Acknowledgement	**5,00,000** 3 Delegates (Non Residential)
	Day 2 (3rd November 2023) • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site & Cultural Programme Site • Special Acknowledgement	**5,00,000** 3 Delegates (Non Residential)

51st National Convention of Company Secretaries

Sl. No.	Details	Rs.
8.	**Silver Sponsor** • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site • Special Acknowledgement	**3,00,000** 2 Delegates (Non Residential)
9.	**Advertisements in Souvenir** • Special Full Page (coloured printing) • Full Page (B/W) • Half Page (coloured printing) • Half Page (B/W)	 50,000 30,000 30,000 15,000
10.	**Advertisements in Souvenir (Concessional tariff for PCS)** • Special Full Page (coloured printing) • Full Page (B/W) • Half Page (coloured printing) • Half Page (B/W)	 25,000 15,000 15,000 7,500
11.	**Banner** • 8' x 3' + Spl. Full Page Advertisement (Colour) • 8' x 3' • 6' x 3'	 1,00,000 50,000 35,000
12.	**STALL** • 6' x 6' • 6' x 8' • 6' x 12'	 75,000 1,00,000 1,50,000 [2 Delegates (Non Residential)]
13.	**Distribution of Publicity Material, literature, Pen/Pad etc.**	**1,00,000**
14.	**Sponsorship of Pen/ Pad for Convention Delegates** • Logo on Pen and notepad (Cover page) • Advertisement in Notepad (Back Cover) • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Special Acknowledgement	**3,50,000** 2 Delegates (Non Residential)
15.	**Miscellaneous** • For any member who procures advertisements above Rs.2,00,000-Delegate Fee (non-residential) exemption for 2 delegates • For any member who procures advertisements above Rs.5,00,000 - Delegate Fee (non-residential) exemption for 4 delegate • 10% Incentive to the RO/Chapter for procuring any of above sponsorships / advertisements	

For any such opportunity please contact
Ms. Pooja Sharma at email: pooja.sharma@icsi.edu, Mobile – 9625655045

AT A GLANCE

Articles P - 47

Articles Part - I

Mergers and Acquisitions – Strategies and Execution 48

CS Maitri Thakkar, ACS,
CS Pratima Singh, ACS

Mergers and Acquisitions (M&A) is a critical strategy for growth in the new economy. M&A are transactions in which the ownership of companies, other business organizations or operating units are transferred or combined. As an aspect of strategic management, M&A allow enterprises to grow, shrink, and change the nature of the business or competitive position. It refers to the consolidation of two companies. The reasoning behind M&A is that two separate companies together create more value compared to being on an individual stand. With the objective of wealth maximization, companies keep evaluating different opportunities through the route of merger or acquisition. Section 232 of the Companies Act, 2013 ('the Act') deals with the mergers and amalgamation of companies and Section 234 of the Act which deals merger or amalgamation of a company with a foreign company.

Mergers & Acquisitions – The Driving Force Behind Corporate Synergy in Evolving Industries 58

CS Anang Shandilya

Mergers and Acquisitions (M&A) are fundamental corporate actions that involve a thoroughly thoughtful and conscious consolidation of companies through various strategies for synergy and symphony in operational effectiveness. These strategies aim to create long term industry footprint, increase market share, gain access to new markets, or enhance competitive advantages. Successful M&A transactions lead to immense growth and profitability. At the same time these strategical moves carry inherent risks, challenges and regulatory goof-ups. An attempt has been made to cover in this article various aspects of strategies involved in M&A, highlighting key aspects of their preparation and execution along with recent trends and case studies.

M&As: Share Acquisition by Private Arrangement– The Procedural Side 63

CS Parth Sugandhi, ACS

M&A offers an alternative to organic growth for buyers seeking to achieve their strategic goals, while offering sellers the option to cash in or share the risks and rewards of a newly formed business. A company may grow either by internal expansion or by external expansion. For internal expansion, a company grows gradually over time in the normal course of business. Acquisitions are part of corporate restructuring, or inorganic growth, so companies are looking for opportunities to grow outside rather than keep profits in-house. Indian companies have often outperformed their foreign counterparts in corporate restructuring both within and outside their borders. Mergers and acquisitions are strong indicators that the economy is strong and growing. Currently, the Companies Act, 2013, the Competition Act, 2002, the Income-tax Act, 1961, RBI and FEMA Regulations, the Indian Stamp Act, 1899, the Indian Contract Act, 1872, the Specific Relief Act, 1963, Accounting Standards, Industry Specific Laws and relevant rules and regulations made thereunder govern the Share Acquisition of the closely held companies by private arrangement in India.

Impact of Mergers and Acquisitions on Accounting-based Performance of Firms in India 68

Diwakar Kumar, Dr. M.N. Zubairi

The term «mergers and acquisitions» pertains to the domain of corporate strategy, corporate finance, and management, encompassing activities related to the acquisition, divestiture, and consolidation of various companies, which can provide assistance, financial support, or contribute to the growth of a company. This paper digs into the dynamic world of mergers and acquisitions (M&A) in Indian firms, looking at how they affect accounting-based performance. The research shows both the good and negative consequences of mergers and acquisitions. While related acquisitions show promise for finding and correcting inefficiencies in the target firm, successful banking mergers contribute to enhanced financial performance. However, the article also emphasises the hazards of hurried judgements and unskilled integration, which have caused several M&A operations to fail.

Implementation of Merger Remedies Under Indian Competition Law – Legal History of The Last Decade 73

CS Prashant Kumar, Nikita Sharma

In this article, an endeavour is made to highlight the suggestion that while the CCI characterizes the auxiliary divestments and/or behavioural conduct for endorsing any proposed combination and designates the observing agency/trustees for supervising the usage of the cures, be that as it may, in non-attendance of suitable rules and inner review component, numerous a time the merger cures are incapably upheld. In numerous cases, there have been recognizable delays within the usage of cures in India. In this situation, there lies a pressing require for the advancement of an inside component within the CCI to

screen the effective implementation and genuine impacts of the remedies within the Indian markets and create guidelines/mechanisms to preserve the practicality of the proposed cure, and address issues to preserve its financial matters, marketability, and competitiveness to create the proposed cure as to a competitive limitation within the market. In light of a few perceptions, certain conclusions have been recorded after looking at the diverse approaches and discoveries of the merger cures in India.

AT A GLANCE

Legal World P-115

- **LMJ 08:08:2023** Each of them must have a direct or indirect interest in the business of the other. The equality and degree of interest which each has in the business of the other may be different; the interest of one in the business of the other may be direct, while the interest of the latter in the business of the former may be indirect.[SC]
- **LW 52:08:2023** The convening and holding of meetings of Equity Shareholders, Secured and Unsecured Creditors of the Appellant Company RIL is dispensed with and further consent affidavits of 90% of the total value of shareholders and secured creditors and all unsecured creditors will not be necessary at this stage. [NCLAT]
- **LW 53:08:2023** We thus are satisfied that Appellant had no right to claim performance linked incentive fee and his claim having been considered and rejected by the Committee of Creditors with 91.55% vote share cannot be faulted nor it can be interfered with by the Adjudicating Authority in exercise of its jurisdiction. [NCLAT]
- **LW 54:08:2023** In view of the fact that the MSMED Act would have no applicability, the impugned references by the MSEFC, of the claims raised by the Respondent/CA Firm to arbitration are not sustainable. [Del]
- **LW 55:08:2023** In light of the provisions of the Evidence Act and the Public Notice, it is held that in order for a determination of well-known status of a trademark, affidavit by way of evidence cannot be held to be a mandatory requirement.[Del]
- **LW 56:08:2023** Appellant has been unjustifiably asked to furnish costs for unutilized electricity which, in any case should not have extended beyond the period of six months (considering 'reasonable period' to consider an application, to be so), for a period much larger thereto, rendering such action unquestionably unreasonable and arbitrary. [SC]
- **LW 57:08:2023** It is made clear that the petitioner cannot be compelled to make contribution under both the Acts for the same employee. [J&K]
- **LW 58:08:2023** We are of the view that considering the facts of the case, it will be appropriate if a sum of Rs.3 lakhs is ordered to be paid to the appellant in lieu of back wages. [SC]
- **LW 59:08:2023** Having allowed the workmen to put in regular service to its own benefit for over two decades, the management can no longer claim an indefeasible right to continue with and canvass its challenge to the Award. [SC]

From The Government P-123

- Merger of Multiple User IDs in V-2 Portal with new User ID in V-3 and deactivation of old User ID in V-2 Portal
- Online Resolution of Disputes in the Indian Securities Market
- Mandating Legal Entity Identifier (LEI) for all non – individual Foreign Portfolio Investors (FPIs)
- Investment by Mutual Fund Schemes and AMCs in units of Corporate Debt Market Development Fund
- Framework for Corporate Debt Market Development Fund (CDMDF)
- Resources for Trustees of Mutual Funds
- New category of Mutual Fund schemes for Environmental, Social and Governance ("ESG") Investing and related disclosures by Mutual Funds
- Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") – Extending framework for restricting trading by Designated Persons ("DPs") by freezing PAN at security level to all listed companies in a phased manner
- Disclosure of material events / information by listed entities under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
- BRSR Core – Framework for assurance and ESG disclosures for value chain
- Regulatory Framework for Sponsors of a Mutual Fund
- Roles and responsibilities of Trustees and board of directors of Asset Management Companies (AMCs) of Mutual Funds
- Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT
- Amendments to guidelines for preferential issue and institutional placement of units by a listed REIT
- Appointment of Director nominated by the Debenture Trustee on boards of issuers
- MASTER CIRCULAR - MANAGEMENT OF ADVANCES - UCBS
- Implementation of Section 51A of UAPA,1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 02 Entries
- Inclusion of "NongHyup Bank" in the Second Schedule of the Reserve Bank of India Act, 1934
- Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)
- Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Consolidated)

Other Highlights P-145

Call for Articles

Call for Articles for publication in Chartered Secretary Journal – September 2023

ETHICAL LEADERSHIP: THE FOUNDING BASE FOR SUSTAINABLE GOVERNANCE

Ethics and morality have been the formational structures of societies the world over. It is this concept that has been the reason for bringing legislations and legislative frameworks into being. It is the protection of morals and values that Regulatory Authorities have been put in place. And it is these concepts which have become the deciding factors for good governance. With businesses becoming global entities and stakeholders spreading across borders and boundaries, each move of a corporation and its management is looked with a fine toothed comb.

The Institute of Company Secretaries of India, even has had a dedicated subject on the matter and time and again has raised deliberations on the issue.

More recently, a Board under the aegis of Ethics and Sustainability Board has been formed to deliberate the aspects and demarcate a road ahead for the Governance Professionals.

In view of the same and more, we are pleased to inform you that the September 2023 issue of Chartered Secretary Journal will be devoted to the theme **"Ethical Leadership: The founding base for sustainable Governance"** covering inter alia the following aspects:

- Ethics: The founding pillar of good governance
- Ethics, social responsibility, and governance
- Responsible and sustainable management practices: The key to longevity
- Long term price or unethical behaviour
- Ethical dilemmas and possible solutions: Case Study analysis
- Modern day ethical challenges
- Accountability and transparency: Unlocking ethical locks
- Maintaining ethical balance: Role of technology
- GST Regime: The future ahead
- Ethical governance and Company Secretaries

And many more…

Members and other readers desirous of contributing articles may send the same latest by **Friday, August 25, 2023** at **cs.journal@icsi.edu** for **September 2023** issue of Chartered Secretary Journal.

The length of the article should ordinarily be between 2,500 - 4,000 words. However, a longer article can also be considered if the topic of discussion so demands. The articles should be forwarded in MS-Word format

All the articles are subject to plagiarism check and will be blind screened. Direct reproduction or copying from other sources is to be strictly avoided. Proper references are to be given in the article either as a footnote or at the end. The rights for selection/rejection of the article will vest with the institute without assigning any reason.

Regards,
Team ICSI

Articles in Chartered Secretary

Guidelines for Authors

1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/ argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
8. The copyright of the articles, if published in the Journal, shall vest with the Institute.
9. The Institute/the Editor of the Journal has the sole discretion to accept/reject an article for publication in the Journal or to publish it with modification and editing, as it considers appropriate.
10. The article shall be accompanied by a summary in 150 words and mailed to cs.journal@icsi.edu
11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

Declaration-cum-Undertaking

1. I, Shri/Ms./Dr./Professor..... declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
   a. the article titled"....." is my original contribution and no portion of it has been adopted from any other source;
   b. this article is an exclusive contribution for Chartered Secretary and has not been/nor would be sent elsewhere for publication; and
   c. the copyright in respect of this article, if published in Chartered Secretary, shall vest with the Institute.
   d. the views expressed in this article are not necessarily those of the Institute or the Editor of the Journal.
3. I undertake that I:
   a. comply with the guidelines for authors,
   b. shall abide by the decision of the Institute, i.e., whether this article will be published and/or will be published with modification/editing.
   c. shall be liable for any breach of this 'Declaration-cum-Undertaking'.

Signature

1 ARTICLES

Mergers and Acquisitions – Strategies and Execution

Corporate Restructuring is concerned with arranging the business activities of the Corporate as a whole so as to achieve certain pre-determined objectives at corporate level, such as enhancement of shareholders value, deployment of surplus cash from one business to finance profitable growth in another, exploiting inter-dependence among present or prospective businesses, risk reduction, development of core-competencies, to obtain tax advantages by merging a loss-making company with a profit-making company etc. One of the most popular way of Corporate Restructuring is Mergers/Acquisition and Amalgamation.

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INTRODUCTION

A business may grow over time as the utility of its products and services is recognized, but it is a long-drawn process. It may also grow through an inorganic process, symbolized by an instantaneous expansion in work force, customers, infrastructure resources and thereby an overall increase in the revenues and profits of the entity. Corporate Restructuring is such tool, it's a comprehensive process by which a company can consolidate its business operations and strengthen its position for achieving its short-term and long-term corporate objectives.

Corporate Restructuring is concerned with arranging the business activities of the Corporate as a whole so as to achieve certain pre-determined objectives at corporate level, such as enhancement of shareholders value, deployment of surplus cash from one business to finance profitable growth in another, exploiting inter-dependence among present or prospective businesses, risk reduction, development of core-competencies, to obtain tax advantages by merging a loss-making company with a profit-making company etc. One of the most popular way of Corporate Restructuring is Mergers/Acquisition and Amalgamation. Different types of Strategic Corporate Restructuring are as follows:

MERGERS/ACQUISITIONS AND AMALGAMATION:

Mergers and Acquisitions (M&A) is a critical strategy for growth in the new economy. M&A are transactions in which the ownership of companies, other business organizations or operating units are transferred or combined. As an aspect of strategic management, M&A

allow enterprises to grow, shrink and change the nature of the business or competitive position. It refers to the consolidation of two companies. The reasoning behind M&A is that two separate companies together create more value compared to being on an individual stand. With the objective of wealth maximization, companies keep evaluating different opportunities through the route of merger or acquisition. Section 232 of the Companies Act, 2013 ('the Act') deals with the mergers and amalgamation of companies and Section 234 of the Act which deals merger or amalgamation of a company with a foreign company.

DIFFERENCE BETWEEN MERGER AND ACQUISITION

In a merger, two companies form a single entity together, and this single company replaces the two previous ones, whereas, In an acquisition, one company buys another, and the buyer company retains its identity.

M&As: THE GLOBAL TRENDS

The first half of 2023 saw a robust M&A market with total deal value reaching an astounding $2.3 trillion globally, a 15% increase from the same period in 2022. A total of 8,934 deals were announced globally during this period, representing a 12% increase over 2022.

Sector Specific Trends:

- In 2023, technology, healthcare, and financial services have continued to be the leading sectors in M&A activities.
- The technology sector maintained its dominance, accounting for approximately 28% of the total deal volume, reflecting the ongoing digital transformation and increased technology adoption across various industries. There has been a 20% increase in tech M&A deals compared to 2022, with Artificial Intelligence and Cybersecurity companies leading the charge.
- The healthcare sector, accounting for 22% of the total deals, continued to see growth. The drive for consolidation, advancements in biotechnology and the increased demand for telehealth services post-pandemic were the key drivers for this uptick.
- Meanwhile, financial services accounted for 18% of the total deal volume. Fintech continues to be a hotbed of activity, reflecting the sector's rapid digital transformation.

Geographic Trends:

North America continues to dominate global M&A activity, accounting for 40% of the total deal value, driven by the US's robust economic recovery. However, the Asia-Pacific region has also shown significant growth, with China and India leading the charge, accounting for 30% of the global deal value, a 5% increase from the previous year.

M&A Structure Trends:

The year 2023 saw a rise in stock-for-stock transactions, given the elevated equity valuations. There has been a 25% increase in such deals compared to 2022, indicating that businesses are using their appreciated stock as a currency for acquisitions.

Private Equity (PE) buyouts continued their upward trajectory, accounting for 27% of the total M&A deal value, a 7% increase from 2022. This was largely driven by the significant amount of dry powder available with PE firms and their eagerness to invest in high-growth sectors like technology and healthcare.

CASE STUDY ANALYSIS OF RECENT MERGERS

The Most Popular and Major Mergers and Acquisitions of 2022-2023 have been:

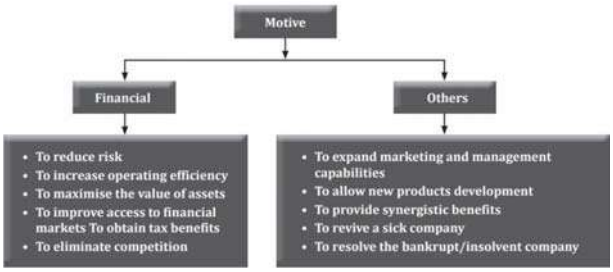
1. **Merger between Tata Group and Air India**: Tata Group acquired Air India for a value of $2.4 billion or Indian Rupees 18,000 crore, wherein INR 2,700 crore was paid upfront and INR 15,300 of debt was taken up by Tata Sons. Further, Tata Group also announced a merger between Air India and Vistara, whereby Singapore Airlines (the owner of 49% of Vistara equity) will get ownership of 25.1% of the combined merged entity.

2. **HDFC Limited – HDFC BANK Merger** – HDFC Bank and HDFC Ltd merged to create a financial services conglomerate. The merger became effective by July 01, 2023. The merger ratio is 25 HDFC shares for 42 HDFC Bank shares. The merger created a banking behemoth with a market capitalisation of Rs 14 lakh crore.
3. **Zomato – Blinkit merger** – Zomato and Blinkit have reached an agreement for a merger. The all-stock deal values Blinkit between $700 million and $750 million. Blinkit, formerly known as Grofers, has recently revamped itself to focus on an instant grocery delivery portal.

ARTICLE

SWOT ANALYSIS: THE PROS AND CONS OF JOINING HANDS AND RESOURCES

Advantages/ Pros for Mergers & Acquisitions:



Regardless of their category or structure, all mergers and acquisitions have one common goal: they are all meant to **create synergy** that makes the value of the combined companies greater than the sum of the two parts. The success of a merger or acquisition depends on whether this synergy is achieved. Synergy takes the form of revenue enhancement and cost savings. By merging, the companies hope to benefit from the following:

- **M&A is the fastest way to achieve growth:**

  There is no other form of corporate activity that can grow your company's top line as fast as a merger or acquisition.

- **Becoming bigger:**

  Many companies use M&A to grow in size and leapfrog their rivals. While it can take years or decades to double the size of a company through organic growth, this can be achieved much more rapidly through mergers or acquisitions.

- **Pre-empted competition**:

  This is a very powerful motivation for mergers and acquisitions, and is the primary reason why M&A activity occurs in distinct cycles. It eliminates competition.

- **Domination**:

  Companies also engage in M&A to dominate their sector. However, since a combination of two behemoths would result in a potential monopoly, such a transaction would have to face regulatory authorities.

- **Tax benefits:**

  Companies also use M&A for tax purposes, although this may be an implicit rather than an explicit motive.

- **Economies of scale:**

  Mergers also translate into improved economies of scale which refers to reduced costs per unit that arise from increased total output of a product.

- **Acquiring new technology:**

  To stay competitive, companies need to stay on top of technological developments and their business applications. By buying a smaller company with unique technologies, a large company can maintain or develop a competitive edge.

- **Improved market reach and industry visibility:**

  Companies buy other companies to reach new markets and grow revenues and earnings. A merger may expand two companies' marketing and distribution, giving them new sales opportunities. A merger can also improve a company's standing in the investment community: bigger firms often have an easier time raising capital than smaller ones.

- **Ultimate obtainment of Synergies:**

  Consolidation of business operations thus resulting in significant impetus to growth.

Disadvantages/ Cons for Mergers & Acquisitions

- **M&A can very easily be conducted for the wrong reasons:**

  Because of all the pros that have just been outlined, it can be simple to think of M&A as a quick win. That's one thing that it almost certainly never is. A merger or acquisition is the largest project that any company will take on, so it's not to be taken lightly.

- **M&A can distract from the daily management of a business:**

  As much as M&A can add value for a business, the main value creation that goes on in any business should be its day-to-day operations. Thus, pulling managers away from the operations of the company can be a major distraction from their performing their day-to-day tasks.

  This defeats the purpose of what M&A is for, so a good plan has to be put in place before any deal to ensure that the correct time is allocated for each manager's participation in the process.

- **M&A can destroy value as well as create it:**

  More than one company has had value destroyed because of mismanagement at some part of the M&A process. Unfortunately, if managers don't keep their eye on the ball, this can even happen when two companies appear to be a near-perfect match.

  Without the proper care at every stage of the deal - be that origination, negotiations, due diligence, deal closing, or integration - value can be destroyed without good planning and implementation.

- **M&A valuations are an inexact science:**

  More than one book on M&A has called it's a combination of 'science and art'. Another way of saying this is, even the most analytical of us can get M&A horribly wrong.

Amazon's acquisition of Whole Foods, to take one example, was seen in many quarters as a deal that would generate significant value for both companies, giving Amazon a high-end distribution chain for its grocery fulfilment efforts, and giving Whole Foods access to the world's most potent e-commerce engine.

But the deal hasn't been a roaring success, proving that even if everything is in place for a deal to be a success, it doesn't mean for sure that it will be.

- **M&A due diligence is a complex and time-consuming task:**

  There is a correlation between thorough due diligence and deal success. The most successful deals were almost always those in which the M&A lifecycle management platform was used more, by more participants, for a longer period of time.

M&A: THE STRATEGIC BENEFITS:

- In order to reduce competition.
- For the purpose of gaining a larger market share.
- For the purpose of creating a strong brand name.
- For the purpose of reducing tax liabilities.
- For Risk diversification.
- For balancing the losses of one organisation against the profit of another.

M&A: THE INITIAL HICCUPS AND THEIR RECOURSES

Merger and amalgamation are complex business transactions that involve combining two or more companies into a single entity. While these processes can have several benefits, they often come with various challenges and initial hiccups. Some of the common initial hiccups that may arise in case of a merger and amalgamation include:

1) **Cultural Integration**: Different companies often have distinct organizational cultures, work practices, and values. Merging these cultures can lead to conflicts and resistance among employees, affecting overall productivity and morale.

2) **Workforce Redundancy**: Mergers and amalgamations may result in duplicate job roles or overlapping functions, leading to potential job redundancies. Deciding which employees to retain and how to manage workforce reductions can be a difficult and sensitive process.

3) **Legal and Regulatory Challenges**: Mergers and amalgamations must comply with various legal and regulatory requirements at the local, national, and international levels. Navigating through these complexities can be time-consuming and expensive.

4) **Financial and Accounting Issues**: Combining financial statements, accounting practices, and tax

structures of two companies can be challenging. Discrepancies or differences in financial reporting may emerge, requiring adjustments and careful scrutiny.

5) **Technology Integration:** Integrating different IT systems and technologies is often a daunting task. Incompatible systems may lead to disruptions in operations and data migration problems.

6) **Customer Concerns**: Customers of both merging companies may feel uncertain about the changes, leading to questions about service quality, pricing, or product availability.

7) **Supplier and Vendor Management**: Managing relationships with suppliers and vendors may become complicated due to changes in contracts, payment terms, or preferred suppliers.

8) **Synergy Realization:** The expected synergies, such as cost savings or increased market share, may not materialize as quickly or as significantly as anticipated.

9) **Branding and Identity**: Deciding on the branding and identity of the newly merged entity can be challenging, as it needs to reflect the combined values and strengths of both companies.

10) **Communication Challenges**: Inadequate or unclear communication to employees, customers, and other stakeholders about the merger and its implications can lead to misunderstandings and resistance.

11) **Management and Leadership Changes**: Leadership roles may be restructured or merged, causing uncertainty and resistance among executives and managers.

To address these initial hiccups effectively, companies need meticulous planning, open communication, and a clear vision for the future of the merged entity. Engaging experienced consultants and professionals can also help streamline the process and ensure a smoother transition.

RECOURSES FOR INITIAL HICCUPS IN M&A

Initial hiccups in mergers and amalgamations can be challenging to handle, but there are various resources and strategies that companies can employ to address them effectively. Let's look at some common hiccups and their possible remedies:

1) **Cultural Integration**:

- HR and organizational development experts can help facilitate workshops and activities to promote cross-cultural understanding and integration.
- Encourage open communication and feedback channels to address concerns and conflicts promptly.

2) **Workforce Redundancy**:

- HR teams can conduct a thorough assessment of the workforce to identify overlapping roles and develop a fair and transparent redundancy plan.
- Offer retraining and reassignment options for affected employees where possible.

3) **Legal and Regulatory Challenges**:

- Legal advisors and experts can assist in navigating complex legal and regulatory requirements, ensuring compliance and minimizing potential risks.
- Seek pre-approval from relevant regulatory authorities to avoid delays and uncertainty.

4) **Financial and Accounting Issues**:

- Financial consultants and auditors can assist in reconciling financial statements, identifying discrepancies, and ensuring accurate reporting.
- Develop a comprehensive financial integration plan and allocate sufficient time and resources for its execution.

5) **Technology Integration:**

- IT specialists can conduct a thorough assessment of existing IT systems and devise a plan for integrating and upgrading technology.
- Implement temporary workarounds or parallel systems during the integration process to minimize disruptions.

6) **Customer Concerns**:

- Implement a proactive communication strategy to keep customers informed about the merger, its benefits, and any changes in services or products.
- Address customer feedback and concerns promptly to build confidence and trust.

7) **Supplier and Vendor Management**:

- Engage in open communication with suppliers and vendors to discuss contract modifications and any potential changes in the business relationship.
- Explore opportunities for renegotiation to align terms with the new entity's requirements.

8) **Synergy Realization**:

- Set clear goals and expectations for synergy realization and monitor progress regularly.
- Allocate resources strategically to prioritize and achieve synergy targets.

9) **Branding and Identity**:

- Work with marketing and branding experts to develop a cohesive brand strategy that reflects the combined entity's values and vision.
- Involve key stakeholders in the decision-making process to build buy-in for the new brand identity.

10) **Communication Challenges**:

- Establish a dedicated communication team to handle internal and external communications related to the merger.
- Use multiple communication channels, such as town hall meetings, emails, and intranet updates, to keep stakeholders informed.

11) **Management and Leadership Changes**:

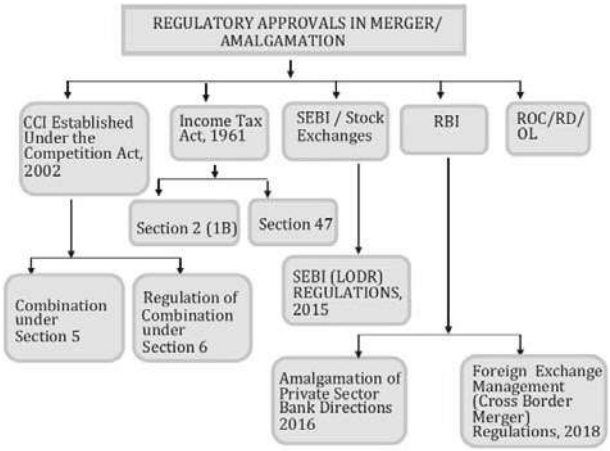
- Provide leadership training and support to help leaders adapt to their new roles and responsibilities.
- Foster a culture of collaboration and inclusivity to encourage smooth leadership transitions.

Overall, successful merger and amalgamation require a combination of effective planning, open communication, and the use of specialized expertise. By leveraging appropriate resources, companies can navigate through the initial hiccups and set a strong foundation for the merged entity's future success.

M&A: THE LEGAL ANGLE:

The legal framework applicable to Mergers and Amalgamation is primarily governed by the Companies Act, 2013, along with rules made thereunder. Other acts applicable are SEBI (LODR) Regulations, 2015 in case of listed entity, Competition Act, 2002, Income Tax Act, 1961, Indian Stamp Act, 1899, FEMA (in case of merger of companies having foreign capital), Prior approval of

RBI in case of cross-border merger and any other sectoral-regulatory approval as maybe applicable.



THE IMPACT ON BOARDS AND SUCCESSION PLANNING

"There is nothing obliging a board to buy or sell if a proposed transaction is not in the best interests of the company and its owners. To that end, the board must carefully weigh an M&A opportunity as part of its corporate oversight."

- The board has an important role to play in setting strategy, monitoring corporate performance and management, overseeing risk management, counselling the CEO on the most difficult challenges facing the business, championing good governance and offering constructive criticism on the company's operations. Many of these tasks are applicable to M&A where the board must offer oversight and governance. Though deals are typically proposed by the senior executive team, the boards of both the acquirer and target must decide whether a potential transaction can proceed beyond an initial exploratory phase.
- The board's involvement in any deal should begin well before it appears imminent and last until well after completion. For this beginning-to-end cycle to be successful, the board must adopt a holistic approach, undertaking a strategy review, risk assessment, due diligence of all varieties, deal approval and post-deal integration.
- The board should also ask management a series of questions as part of its oversight of corporate strategy, to ensure that the directors agree with how management believe M&A fits into the company's overall strategy.
- Board members must be clear on the drivers and logic of the deal, within the framework of the company's business plans and growth strategy and they must also be comfortable that the due diligence process will highlight and properly mitigate any issues that might arise.
- The board must clearly communicate its expectations about management's obligations to inform and involve the board in the M&A process.

What is succession planning?

A solid succession planning definition would be that it's the set of measures that you put in place ahead of selling your business to ensure the continuity of the company's success in the future.

"There is nothing obliging a board to buy or sell if a proposed transaction is not in the best interests of the company and its owners. To that end, the board must carefully weigh an M&A opportunity as part of its corporate oversight."

After your exit, the success of your business will have to endure without your leadership – otherwise, how can it be expected to command a good price on the M&A market? Buyers won't spend top-dollar on a business that is overly reliant on your position as CEO. The business needs to have a strategy in place that will maintain its performance after your departure – that's the purpose of succession planning.

Why is succession planning important?

The purpose of succession planning is to hand over control of your business in a way that not only ensures its continued commercial success, but provides assurances over the continuity of your business to potential buyers, helping your company command a higher price at exit.

Areas to be approached for developing an effective succession plan:

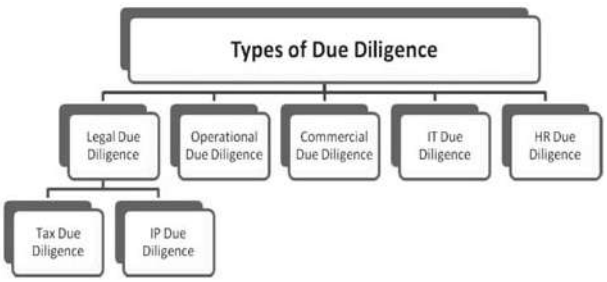
1. **Defining the role** – what are the responsibilities of your current role, and what qualities will a person need to be able to take on the role?
2. **Gauging interest** – is there a genuine appetite among your middle management team to take a step up?
3. **Assessing talent and identifying potential** – if there is interest, do the candidates at your disposal have the skills, experience and drive to take on your business? Or will you have to look beyond the walls of your company?
4. **Alternative successors** – even if you have suitable candidates within your family or your middle management team, are there other viable fits outside of your business?
5. **Developing your business through your succession plan** – once you have a vision for your succession in mind, is your business model tailored to make the transition as smooth as possible?

ARTICLE

M&A: THE PROCEDURAL SIDE

Some of steps involved in merger are mentioned in detail below:

i. Due Diligence



A due diligence is an investigation or audit of a potential investment. It seeks to confirm all material facts in regard to a sale. It is a way of preventing unnecessary harm/hassles to either party involved in a transaction. It first came into use as a result of the US Securities Act, 1933.

ii. Obtain NOC from Stock Exchange

The procedure commences with an application to stock exchange for NOC and then an application for seeking directions of the Tribunal for convening, holding and conducting meetings of creditors or class of creditors, members or class of members, as the case may be, to the stage of the Tribunal's order sanctioning the scheme of compromise or arrangement is contained in Sections 230 to 240 of the Companies Act, 2013 and rules 3-29 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

iii. Memorandum to authorise amalgamation

a. MoA under object clause of company should authorise power of amalgamation.

b. If not, then company should hold General Meeting to alter object clause by passing SR.

c. The above same process for transferor company, apart from that some other part such as increase authorised share capital of company, power to issue shares.

iv. Convening a Board Meeting of the Board of Directors of the company.

i. Board Meeting is to be convened and held to consider and approve in principle, amalgamation and appoint the registered valuer for valuation of shares to determine the share exchange ratio.

ii. After finalisation of scheme, another Board Meeting is to be held to approve the scheme.

iii. Notice to CCI, IRDA if applicable

Preparation of Valuation Report

Simultaneously, Registered Valuers are requested to prepare a Valuation Report and the swap ratio for consideration by the Boards of both the transferor and transferee companies.

v. Preparation of scheme of amalgamation or merger

All the companies, which are desirous of effecting amalgamation or merger, must interact through their company's auditors, legal advisors and Practicing Company Secretary who should report the result of their interaction to the respective Board of Directors. The Boards of the involved companies should discuss and determine details of the proposed scheme of amalgamation or merger and prepare a draft of the scheme of amalgamation or merger. The drafts of the scheme finally prepared by the Boards of both the companies should be exchanged and discussed in their respective Board Meetings. After such meetings a final draft scheme will emerge. The scheme must define the "effective date" from which it shall take effect subject to the approval of the Tribunal.

vi. Application to Tribunal seeking direction to hold meetings

Pursuant to Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Application made to NCLT for an order directing convening of Meeting of creditors or member or any class of them.

vii. Obtaining order of the Tribunal for holding class meeting

On receiving application, NCLT the Tribunal may order meeting(s) of the members/creditors to be called, held and conducted in such manner as the court directs. Once the ordered meetings are duly convened, held and conducted and the scheme is approved by the prescribed majority in value of the members/creditors, *the Tribunal is bound to sanction the scheme*.

Note: The Tribunal looks into the fairness of the scheme before ordering a meeting because it would be no use putting before the meeting, a scheme containing illegal proposals which are not capable of being implemented. At that stage, the Tribunal may refuse to pass order for the convening of the meeting.

viii. Draft Notice:

a. Explanatory statement under Section 230 of the Companies Act, 2013 and form of proxy are required to be filed and settled by the concerned Tribunal before they can be printed and dispatched to the shareholders.

i. Generally, this meeting is called by company under section 230 but creditor or a member or a class of creditors or a class of members may make application to tribunal to hold meeting under section 230(1).

b. After obtaining the Tribunal's order containing directions to hold meeting(s) of members/creditors,

the company should make arrangement for the issue of notice(s) under form CAA-2 of the meeting(s).

i. The notice should be in Form No. CAA- 2 of the said Rules and must be sent by the person authorised by the Tribunal in this behalf.

ii. *Generally, the Tribunal directs that the notice of meeting of the creditors and members or any class of them be given through newspaper advertisements also.* In such case, such notices are required to be given in the prescribed Form and published once in an English newspaper and once in the regional language of the State in which the registered office of the company is situated

iii. Tribunal also appoints Scrutinizer for holding voting through postal ballot and e-voting.

ix. Convening of General Meeting

a. At the General Meeting convened by the Tribunal, resolution will be passed approving the scheme of amalgamation with such modification as may be proposed and agreed to at the meeting.

i. The Extraordinary General Meeting of the Company for the purpose of amendment of Object Clause, consequent change in Articles and issue of shares can be convened on the same day either before or after conclusion of the meeting convened by the Tribunal for the purpose of approving the amalgamation.

ii. Following points of difference relating to the holding and conducting of the meeting convened by the Tribunal may be noted:

1. Proxies are counted for the purpose of quorum;

2. Proxies are allowed to speak;

3. The vote must be put on poll or by voting through electronic means.

iii. The minutes of the meeting should be finalized in consultation with the Chairman of the meeting and should be signed by him once it is finalised and approved. Copies of such minutes are required to be furnished to the Stock Exchange in terms of the listing requirements.

x. Reporting of the Results

a. The chairman of the meeting will submit a report of the meeting indicating the results to the concerned Tribunal in Form No.CAA-4 of the said Rules within the time fixed by the Tribunal, or where no time has been fixed, within three days after the conclusion of the meeting.

i. The number of creditors or class of creditors or the number of members or class of members, as the case may be, who were present at the meeting;

ii. The number of creditors or class of creditors or the number of members or class of members, as the case may be, who voted at the meeting either in person or by proxy;

iii. Their individual values; and

iv. The way they voted.

xi. Petition to Tribunal for confirmation of scheme

a. A petition must be made to the Tribunal for confirmation of the scheme of compromise or arrangement. The petition must be made by the company.

i. The petition is required to be made in Form No. CAA-5.

ii. On hearing the petition the Tribunal shall fix the date of hearing and shall direct that a notice of the hearing shall be published in the same newspapers in which the notice of the meeting was advertised.

xii. Obtaining order of the Tribunal sanctioning the scheme

a. An order of the Tribunal on summons for directions should be obtained which will be in Form No. CAA. 6.

xiii. Filing of copy of NCLT order with ROC

a. Certified copy of the order passed by the Tribunal required to be filed with INC-28 as prescribed in the Companies Act, 2013 within a period of 30 days of the receipt of the order.

xiv. Other Important points:

a. Section 2393 provides that the books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

b. In case of Banking company different procedure will be applicable as prescribed by RBI.

M&A: THE TRIGGER POINTS FOR COMPETITION LAW

Fair Competition for Greater Good

Following statutory provisions apply to mergers, amalgamations and acquisitions from competition law perspective:

- The Competition Act, 2002
- The Competition Commission of India (Procedure in regard to the

transaction of business relating to combinations) Regulations, 2011

- The Competition Commission of India (General) Regulations, 2009
- Notifications issued by Competition Commission of India from time to time.

CCI Approval:

Section 5 provides the financial thresholds and all combinations exceeding these financial thresholds are required to be mandatorily approved by the Commission.

Combination means...

Combinations as envisaged under section 5(a), 5(b) and 5(c) were explained by the Supreme Court in *Competition Commission of India v. Thomas Cook (India) Ltd. & Anr. (Civil Appeal No.13578 of 2015)* in the following manner:

- Under section 5(a), a combination is formed if the acquisition by one person or enterprise of control, shares, voting rights or assets of another person or enterprise subject to certain threshold requirement that is minimum asset valuation or turn over within or outside India.
- Under Section 5(b) of the Act the combination is formed if the acquisition of control by a person over enterprise when such person has already acquired direct or indirect control over another enterprise engaged in the production, distribution or payment of a similar or identical or substitutable good provided that the exigencies provided in section 5(b) in terms of asset or turnover are met.
- Under section 5(c) merger and amalgamation are also within the ambit of combination. The enterprise remaining after merger or amalgamation subject to a minimum threshold requirement in terms of assets or turnover is covered within the purview of section 5(c).

Threshold:

Under section 5:

Section 5 is applicable when the combined assets of the parties or the group to which the target entity would belong after the acquisition.

THRESHOLDS FOR FILING NOTICE				
		Assets		Turnover
Enterprise Level	India	> ₹2000 crore	OR	> ₹6000 crore
	Worldwide with India leg	> US$ 1 bn With at least Rs.1000 crore in India		> US$ 3 bn With at least Rs.3000 crore in India
OR				
Group Level	India	> Rs.8000 crore	OR	> Rs.24000 crore
	Worldwide with India leg	> US$ 4 bn With at least Rs.1000 crore in India		> US$ 12 bn With at least Rs.3000 crore in India

***De Minimis* Exemption**:

THRESHOLDS FOR AVAILING OF *DE MINIMIS* EXEMPTION				
		Assets		Turnover
Target Enterprise	In India	< ₹350 crore	OR	< ₹1000 crore

According to Notification No.S.O.988(E) dated March 27, 2017, all forms of combinations involving assets of not more than Rs.350 crore in India or turnover of not more than Rs.1,000 crore in India, are exempt from Section 5 of the Act for a period of 5 years.

Under section 6:

Section 6 of the Competition Act, 2002 prohibits any person or enterprise from entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be *void*. Section 6 read as under:

Regulation of combinations

- No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within thirty days of—
  - approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
  - execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.
- The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

  Section 54(a) of the Act provides Exemption to Banking Sector and Oil and Gas Sector.

M&A: ROLE OF GOVERNANCE PROFESSIONALS

We can understand that how different regulators and professionals ensure the governance and their responsibilities in case of M&A Transactions. With the growing economy, the corporates would grow at much larger pace and would also take the benefits of corporate restructuring techniques permitted in law. With all this, law makers and regulators will ensure to have a better governed economy and governance level will keep on rising. In future many new sectors will get evolved and more sectoral regulators would get involved in M&A Transactions approvals, as each sectoral regulator will need to ensure the interest of its stakeholders, hence,

> Governance is no longer the luxury of Compliance, it's an expectation of the regulator and the stakeholders of the Company.

governance level in M&A Transactions will keep on rising in coming future. Although governance is important in M&A Transactions, but timing of completion of M&A Transactions is also very important. Members would have approved the scheme based on valuation derived as on a particular date. In today's dynamic world, there are innumerable factors which can affect the valuation within a short span of time. If the entire process of M&A takes 7-8 months or even a year or more, then the whole rationale of undertaking the M&A Transaction may get defeated and the valuation, which would have been the basis of the scheme, may not remain relevant at all. As due diligence is wholesome exercise that require specialized knowledge, expertise & experience to complete the task in time bound & effective manner. The role of governance professionals is much crucial in the following pre-requisite arenas for Merger and Amalgamation.

Prerequisites of Merger and Acquisition:

1) **Due Diligence**: It refers to the investigating effort made to gather all relevant facts and information that can influence a decision to enter into a transaction or not. Exercising due diligence is not a privilege but an unsaid duty of every party to the transaction. For instance, while purchasing a food item, a buyer must act with due diligence by checking the expiry date, the price, the packaging condition, etc. before paying for the product. It is not the duty of the seller to ask every buyer every time to check the necessary details. M&A due diligence helps to avoid legal hassles due to insufficient knowledge of important information.

2) **Business Valuation:** Business valuation or assessment is the first step of merger and acquisition. This step includes examination and evaluation of both the present and future market value of the target company. A thorough research is done on the history of the company with regards to capital gains, organizational structure, market share, distribution channel, corporate culture, specific business strengths, and credibility in the market. There are many other aspects that should be considered to ensure if a proposed company is right or not for a successful merger.

3) **Planning Exit**: When a company decides to sell its operations, it has to undergo the stage of exit planning. The company has to take firm decision as to when and how to make the exit in an organized and profitable manner. In the process the management has to evaluate all financial and other business issues like taking a decision of full sale or partial sale along with evaluating on various options of reinvestments.

4) **Structuring Business Deal**: After finalizing the merger and the exit plans, the new entity or the take-over company or target company has to take initiatives for marketing and creating innovative strategies to enhance business and its credibility. The entire phase emphasize on structuring of the business deal.

5) **Stage of Integration**: This stage includes both the company coming together with their own parameters. It includes the entire process of preparing the document, signing the agreement, and negotiating the deal. It also defines the parameters of the future relationship between the two.

CONCLUSION

As we navigate through 2023, it's evident that M&A activity continues to play a critical role in shaping the global business landscape. The dynamic and resilient nature of M&A activity is highlighted by the trends we've seen this year. With the continual advancement in technology, ongoing economic recovery, and abundance of capital available for investments, it seems likely that M&A activity will continue to flourish in the foreseeable future. Corporations and investors should stay agile and attentive to the changing trends and opportunities within the M&A landscape. Rapid strategic change is a necessity for most companies in these days of globalization, hyper competition, and accelerated technological change.

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ARTICLE

Mergers & Acquisitions – The Driving Force Behind Corporate Synergy in Evolving Industries

Environmental, Social, and Governance (ESG) factors are increasingly influencing M&A decisions. Companies are now taking into account sustainability, social impact and ethical practices when evaluating potential targets. Investors and stakeholders are emphasizing responsible and sustainable business practices, leading to ESG becoming a critical aspect of due diligence and integration planning.

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INTRODUCTION

Mergers and Acquisitions (M&A) are fundamental corporate actions that involve a thoroughly thoughtful and conscious consolidation of companies through various strategies for synergy and symphony in operational effectiveness. These strategies aim to create long term industry footprint, increase market share, gain access to new markets or enhance competitive advantages. Successful M&A transactions lead to immense growth and profitability. At the same time these strategical moves carry inherent risks, challenges and regulatory goof-ups. An attempt has been made to cover in this article various aspects of strategies involved in M&A, highlighting key aspects of their preparation and execution along with recent trends and case studies.

RECENT GLOBAL TRENDS

Mergers and Acquisitions (M&As) have been significant drivers of corporate growth and restructuring on a global scale. Overseas deals in the form of cross-border mergers and acquisitions result into Corporate integration which opens up the industries towards global economic integration and at the same time contribute towards GDP growth in terms of foreign exchange earnings.

1. **Cross-Border Deals on the Rise**

   One prominent trend in recent years is the increasing number of cross-border M&A deals. Companies are seeking to expand their global footprint by acquiring or merging with businesses in new markets. Cross-border deals offer access to a broader customer base, new technologies and untapped growth opportunities.

2. **Technology-Driven M&A**

   The digital revolution has significantly changed the pattern in the M&A landscape, with technology-driven deals becoming more prevalent. Companies are investing in technology-focused M&A to enhance their digital capabilities, acquire innovative start-ups and stay ahead of the competition. Technological advancements, such as artificial intelligence, cloud computing and the Internet of Things have spurred a wave of transformative M&A activity across various industries.

3. **Healthcare and Pharmaceutical Sector Consolidation**

   The healthcare and pharmaceutical sectors have witnessed a surge in M&A activity due to multiple factors. Aging populations, increased healthcare spending and the demand for specialized treatments have encouraged companies to consolidate and leverage synergies. Moreover, advancements in biotechnology and the race for COVID-19 vaccines have driven many strategic partnerships and acquisitions in the healthcare space.

4. **Private Equity Involvement**

   Private equity firms have become major players in the M&A landscape. These firms have substantial capital and are actively seeking investment opportunities in both established companies and high-growth start-ups. Private equity involvement in M&A transactions has fuelled competition for deals, leading to higher valuations and more sophisticated investment strategies.

5. **Increasing weightage of ESG in M&A Deals**

   Environmental, Social and Governance (ESG) factors are increasingly influencing M&A decisions. Companies are now taking into account sustainability,

social impact, and ethical practices when evaluating potential targets. Investors and stakeholders are emphasizing responsible and sustainable business practices, leading to ESG becoming a critical aspect of due diligence and integration planning.

When companies decide to join hands and pool their resources through mergers, acquisitions or strategic partnerships, they embark on a path that can yield significant benefits and opportunities, but also presents challenges and potential risks. A SWOT analysis can help to evaluate the strengths, weaknesses, opportunities and threats associated with such collaborations. Combining resources can create a stronger market presence, increased market share, and enhanced pricing power, allowing the newly formed entity to compete more effectively. Collaborations can offer diversification across markets, products and services, reducing dependence on specific segments and enhancing overall business resilience supplemented with access to New Markets.

In addition to the various positives, there are scenarios where merging organizations with different corporate cultures can lead to complexities of operations, slow decision making, clashes and resistance, potentially affecting productivity and employee morale.

M&As: THE STRATEGIC BENEFITS

Mergers and Acquisitions (M&As) offer a wide range of strategic benefits for companies seeking to grow, enhance competitiveness and to achieve their business objectives. The strategic benefits of M&As can vary depending on the specific goals and circumstances of each transaction, but some common advantages include:

Market Expansion and Increased Market Share:

M&As provide companies with an opportunity to expand into new markets, regions, or customer segments. By acquiring or merging with another company, the combined entity can access a larger customer base and increase its market share, solidifying its position as a market leader.

Economies of Scale and Cost Savings:

Through M&As, companies can achieve economies of scale by combining resources, streamlining operations, and eliminating redundancies. This leads to cost savings in areas such as procurement, production, and distribution, improving overall operational efficiency.

Access to New Technologies and Innovation:

M&A transactions can provide access to cutting-edge technologies and innovations that may be difficult or time-consuming to develop in-house. Acquiring innovative start-ups or partnering with technology-focused companies can accelerate research and development efforts and enhance the competitive advantage.

Diversification and Risk Mitigation:

Diversification is a key strategic benefit of M&As. By expanding into different industries or product lines, companies can reduce their reliance on a single market or product, mitigating risks associated with market fluctuations or changes in consumer preferences.

ARTICLE

Exit Strategy and Business Transformation:

For companies seeking an exit strategy, M&As can provide an opportunity for shareholders to realize value through a sale or merger. Additionally, M&As can facilitate business transformation and repositioning for companies facing challenges in their current market or industry.

M&As: THE INITIAL HICCUPS AND THEIR RESOURCES

Mergers and Acquisitions (M&As) are complex and multifaceted transactions that often encounter initial hiccups and challenges. Some common initial hiccups and the resources required to address them are:

1. **Cultural Integration:** Challenge: Differences in corporate cultures between the merging entities can lead to conflicts, resistance to change, and reduced productivity. Resource: HR and Organizational Development Teams - These teams play a vital role in facilitating cultural integration.

2. **Communication and Stakeholder Management:** Challenge: Inadequate communication during the pre- and post-merger stages can create uncertainty among employees, customers, investors and other stakeholders. Resource: Corporate Communications Team - A well-planned communication strategy is crucial.

3. **IT and Technology Integration:** Challenge: Integrating different IT systems, infrastructure, and data can be complex and time-consuming, leading to disruptions in operations and customer service. Resource: IT and Technology Integration Specialists - These experts play a pivotal role in mapping out the integration process, migrating data and ensuring seamless interoperability of IT systems.

4. **Legal and Regulatory Compliance: Challenge:** M&A transactions are subject to various legal and regulatory requirements and non-compliance can result in legal consequences and delays. Resource: Legal and Regulatory Compliance Experts - Having experienced legal professionals ensures adherence to all legal and regulatory requirements, obtaining necessary approvals, and minimizing legal risks.

5. **Financial and Accounting Consolidation:** Challenge: Integrating financial systems, reporting, and accounting standards can be challenging and may affect financial reporting accuracy. Resource: Finance and Accounting Teams - These teams should work together to align financial processes, consolidate accounts and ensure compliance with reporting standards.

> The digital revolution has significantly changed the pattern in the M&A landscape, with technology-driven deals becoming more prevalent. Companies are investing in technology-focused M&A to enhance their digital capabilities, acquire innovative start-ups and stay ahead of the competition.

M & As: THE LEGAL & REGULATORY ASPECTS

Mergers and Acquisitions (M&As) are complex business transactions that involve a wide array of legal considerations and implications. Various legal aspects require careful attention throughout the M&A process, from pre-transaction planning to post-closing integration.

Apart from various legal and regulatory requirements of regular feature like moving first motion petition, stakeholders' (creditors / members) approval, regulatory approvals (Sectoral Regulators / Ministry of Corporate Affairs / Income Tax Department approvals, etc.), moving second motion application, sanction of Scheme by Hon'ble National Company Law Tribunal (NCLT), I have tried to highlight certain legal aspects involved in M&A deals having utmost importance and needs attention as per below points:

a. **Confidentiality and Non-Disclosure Agreements (NDAs):**

During the initial stages of M&As, parties often exchange sensitive information. NDAs are crucial legal agreements that protect the confidentiality of this information and prevent its unauthorized disclosure to third parties.

b. **Letter of Intent (LOI) and Term Sheet:**

The LOI or term sheet outlines the preliminary agreement between the parties to pursue the M&A transaction. It sets forth the key terms, conditions, and intentions of the deal, such as the purchase price, payment structure and exclusivity period for negotiations.

c. **Due Diligence:**

Legal due diligence is a thorough investigation of the target company's legal affairs, contracts, intellectual property, compliance with regulations, pending litigations and any other potential legal risks. This process helps the acquiring party assess the target's legal health and identify areas of concern.

d. **Purchase Agreement:**

The purchase agreement is the primary legal document that governs the terms and conditions of the M&A transaction. It includes details of the purchase price, payment terms, representations and warranties, covenants, closing conditions and post closing obligations.

e. **Regulatory Approvals and Compliance:**

M&A transactions often require approvals from government authorities, antitrust regulators and industry-specific governing bodies. Compliance with applicable laws, regulations and competition rules is crucial to ensure a smooth and lawful merger.

f. **Employee and Labor Law Considerations:**

M&A transactions can have significant implications for employees, including changes in employment contracts, benefits, and redundancies. Complying with labor laws and addressing employee rights and concerns are vital in the integration process.

g. **Intellectual Property (IP) Rights:**

Assessing and protecting intellectual property rights is critical in M&As, especially in technology-driven industries. Companies must conduct IP due diligence to ensure they have proper ownership and rights to use the target company's IP assets.

h. **Tax Implications:**

M&A transactions can have substantial tax implications for both parties. Companies need to consider tax planning strategies, such as structuring the deal to optimize tax benefits and minimize potential tax liabilities.

i. **Shareholder and Board Approvals:**

M&A deals often require approvals from shareholders and boards of both the acquiring and target companies. Compliance with corporate governance rules and regulations is essential in obtaining these approvals.

j. **Post-Merger Integration:**

After the deal is closed, post-merger integration involves combining the operations, assets and human resources of the merged entities. Legal considerations in this phase include managing contracts, resolving any disputes, and ensuring regulatory compliance.

ANALYSIS OF RECENT LANDMARK MERGERS

Mergers are complex corporate transactions that have the potential to transform industries and reshape the competitive landscape.

Case 1: TechCo Inc. and InnovateTech Ltd. Merger

Overview: TechCo Inc., a leading technology company, announced its merger with InnovateTech Ltd., a fast-growing start-up known for its innovative software solutions. The deal was valued at $1.5 billion and aimed to strengthen TechCo's position in the cloud computing market and expand its service offerings.

Integration Challenges: The integration process faced several challenges, including:

1. Cultural Differences: TechCo Inc. had a well-established corporate culture, while InnovateTech Ltd. had a dynamic and entrepreneurial culture. Integrating these diverse cultures required careful management to retain key talent and foster collaboration.

2. Technology Integration: Integrating the software platforms and systems of the two companies proved to be complex. Ensuring seamless interoperability and maintaining high service quality during the integration process was crucial to avoid customer disruptions.

3. Customer Retention: The merger raised concerns among InnovateTech's existing customers about potential changes in product offerings and customer support. Transparent communication and personalized attention were essential to retain their loyalty.

Impact: Despite the challenges, the merger proved successful in achieving its strategic goals. The combined entity emerged as a dominant player in the cloud computing market, with an expanded customer base and increased revenue. The acquisition of InnovateTech's technology also bolstered TechCo's R&D capabilities, leading to further product innovations.

Case 2: PharmaCorp Ltd. and Biotech Solutions Inc. Merger

Overview: PharmaCorp Ltd., a global pharmaceutical company, acquired Biotech Solutions Inc., a biotechnology firm specializing in rare disease treatments. The $2.2 billion deal aimed to diversify PharmaCorp's product portfolio and leverage Biotech Solutions' expertise in precision medicine.

Integration Challenges: The merger faced several integration challenges, including:

1. Regulatory Approval: The pharmaceutical and biotechnology industries are heavily regulated, and obtaining the necessary approvals from various health authorities took longer than anticipated, delaying the integration process.

2. Intellectual Property Protection: Integrating Biotech Solutions' proprietary technologies and intellectual

property while ensuring protection from potential patent infringement claims required meticulous legal coordination.

3. Talent Retention: Biotech Solutions' key researchers and scientists were critical to the success of the merger. Offering attractive incentives and career growth opportunities was essential to retain top talent.

Impact: The merger enabled PharmaCorp to diversify its product portfolio and enter the high-potential biotechnology market. Biotech Solutions' research capabilities accelerated PharmaCorp's R&D efforts, resulting in the development of several promising treatments for rare diseases. The merger also provided PharmaCorp with a competitive edge in precision medicine, driving revenue growth and enhancing its reputation in the healthcare industry.

M & As: ROLE OF GOVERNANCE PROFESSIONALS

In Mergers and Acquisitions (M&As), governance professionals play a crucial role in managing various aspects of the transaction and ensuring that the deal complies with legal, regulatory and ethical standards. The role of governance professionals in M&As includes:

1. **Due Diligence and Compliance:** Governance, Compliance and Corporate Professionals are responsible for conducting due diligence, which involves a comprehensive review of the target company's legal, financial, operational and regulatory aspects.

2. **Drafting of Scheme:** The scheme of any Merger and Acquisiton Transaction is its most important document and it is the duty of the Governance Professional to draft the scheme so as to make the same compliant with all applicable laws of the Land and at the same time the Scheme should be able to achieve the objectives of the proposed Merger and acquisition.

3. **Regulatory and Legal Compliance:** M&A transactions often involve obtaining regulatory approvals from various sectoral regulators viz. Ministry of Corporate Affairs, Income Tax Department, other government agencies as applicable, Competition Commission of India and industry-specific regulators. Governance professionals manage the regulatory approval process and ensure that the deal complies with all relevant laws and regulations.

4. **Drafting Legal Documentation:** Governance professionals work with legal teams to draft critical legal documents, including the Letter of Intent (LOI), Purchase Agreement, and other contracts, petitions, affidavits, etc. They ensure that these documents accurately reflect the terms negotiated by both parties and protect the interests of the companies involved.

5. **Corporate Governance and Board Management:** Governance professionals advise the board of directors on governance matters related to the M&A. They play a key role in facilitating board discussions, obtaining board approvals and ensuring that the board fulfills its fiduciary duties during the transaction.

6. **Shareholder Communications:** Governance professionals manage shareholder communications throughout the M&A process. They ensure that shareholders are adequately informed about the transaction, its benefits, and potential impacts on the company.

CONCLUSION

The driving idea behind an M&A deal is the strategic rationale that motivates companies to pursue the transaction. Whether it is to achieve synergy, expand market presence, access new technologies, or diversify the business, M&As are undertaken with the aim of creating value and driving growth for the combined entity and its stakeholders.

Recent time has witnessed phenomenal growth in the M&A landscape and that opens up various professional opportunities for compliance and governance professionals like Company Secretaries. In order to grab the professional opportunity in this field, the Company Secretaries need to be well equipped with knowledge and skill of drafting of the scheme, presenting abilities before sectoral regulators, National Company Law Tribunal at the same time the Compliance & Governance Professionals need to have an expert knowledge towards explaining the stakeholders for a long term collaborative advantage to be achieved through Mergers and Acquisitions.

M&As: Share Acquisition by Private Arrangement– The Procedural Side

Mergers and Acquisitions ("M&A") is marquee term that refers to the combination of two or more businesses. M&A are transactions in which the ownership of companies, other business organizations or operating units are transferred or combined. The terms "Mergers" and "Acquisitions" are frequently used interchangeably, but their meanings differ. Chapter XV (Compromises, Arrangements and Amalgamations) Sections 230 to 240 of the Companies Act, 2013 ("Act") read in conjunction with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, govern the Mergers and Acquisitions procedure in India. However, the term "Merger" is not defined under the Act or under Income Tax Act, 1961 ("ITA 1961").

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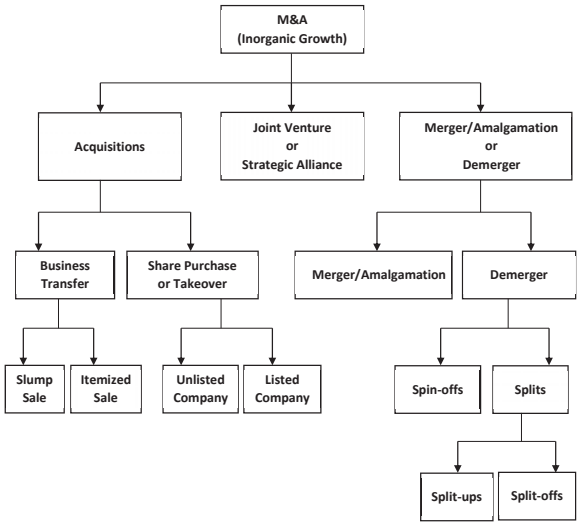
INTRODUCTION

Mergers and Acquisitions ("M&A") is marquee term that refers to the combination of two or more businesses. M&A are transactions in which the ownership of companies, other business organizations or operating units are transferred or combined. The terms "Mergers" and "Acquisitions" are frequently used interchangeably, but their meanings differ. Chapter XV (Compromises, Arrangements and Amalgamations) Sections 230 to 240 of the Companies Act, 2013 ("Act") read in conjunction with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, govern the Mergers and Acquisitions procedure in India. However, the term "Merger" is not defined under the Act or under Income Tax Act, 1961 ("ITA 1961"). It mainly refers to the consolidation of two or more companies. The ITA 1961 does however define the similar term "Amalgamation" as the merger of one or more companies with another company, or the merger of two or more companies to form one company. On the other hand, acquisition occurs when one company acquires the shares or assets of another company. In general, it is a purchase by one company of controlling interest in the share capital of another existing company where there is a change in the management but companies retain their separate legal identity. M&A include a number of different structures which can be presented in the following manner:



The choice of structure is driven by various factors, including:

- Purpose of the deal;
- Nature of the target;
- Negotiation between the parties;
- Time and costs involved with each structure;
- Business Requirement;
- Tax efficiency;
- Comfort with court process;
- Commercial objectives;
- Funding considerations (i.e. cash or non-cash); and
- Administrative efficiency.

If anyone proposes of buying or selling a closely held company, the most common way to do it is through Share acquisition by private arrangement. In India, this still

remain the most preferred and usual mode of acquisition of closely held companies, because it is a much simpler and faster mode of acquisition in comparison to the other modes. The owners may change but the Company stays the same and the business activity will continue as normal, with employees, contracts and property remaining in place.

NON-APPLICABILITY OF SECTION 230 ON SHARE ACQUISITION BY PRIVATE ARRANGEMENT

Section 230 of the Act provides for arrangements between a company and its creditors or members or any class of them, specifying the procedure to be followed for compromise or arrangement. Sections 230 (11) and 230 (12) of the Act and Rules 3 (5) and 3 (6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("CAA Rules") were notified by the Central Government with effect from 03.02.2020 and 07.02.2020 respectively. Section 230 (11) of the Act states that in the case of unlisted companies any compromise or arrangement may include a takeover offer made in the prescribed manner and Section 230 (12) of the Act permits a party aggrieved by the takeover offer to make an application to NCLT to raise the grievance. Accordingly Sub rules 5 and 6 have been added to Rule 3 of the CAA Rules, and Rule 80A has been inserted in the NCLT Rules, detailing with procedure in which the applications may be made under Sections 230 (11) and 230 (12), respectively. It is however pertinent to note that, these rules are not applicable to any transfer of shares through a contract or arrangement thereby making it more attractive route of acquisition as approval of NCLT is not required.

PROCESS INVOLVED IN SHARE ACQUISITION OF UNLISTED COMPANY BY PRIVATE ARRANGEMENT

1. **Planning and execution of Strategy:** Strategies play an integral role when it comes to acquisition. A sound strategy is important to ensure success and fulfilling the expected desires. The first thing that both the parties do is to strategize on how they will pursue an acquisition and to define what they hope to accomplish by the proposed transaction. Every company has different culture and follows different strategies to define their acquisition. There are various strategic reasons for companies to consider making an acquisition. A successful acquisition can help companies achieve their strategic objectives as well as increase cost effectiveness within the business. Current market conditions, financial position, and future projections among others are considered while formulating the strategy. Thereafter, identification and finalisation of parties is done in two ways wherein either the buyer contacts seller, or seller contacts buyer. Several meetings are conducted to negotiate the initial terms and parties learn more about each other's intents, needs, and proposed offerings.

2. **Memorandum of Understanding:** This is the first stage where both the parties enter into a formal contract and define the broad outlines of an agreement that both of them have reached. Memorandum of understanding ("MoU") is executed between the parties to outline the terms and details of an understanding, including each party's requirements and responsibilities. It does not involve the exchange of money but explicitly expresses the interest of parties in pursuing acquisition and provides a summary of the proposed deal.

   MOU differs according to the level of particularity and the type of deal. The document usually addresses below points;

   - Details and intent of the parties;
   - Details of proposed transaction;
   - Estimated purchase consideration or manner of ascertaining purchase consideration;
   - Method of payment;
   - Scope of Due diligence;
   - Confidentiality or Non-disclosure clause;
   - Time frames and deadlines for consummation of the proposed transaction;
   - List of Definitive Agreements and material terms thereunder (if any);
   - Agreement to cooperate and perform necessary acts; and
   - Exclusivity, Representations and Warranties, Indemnity and others.

3. **Due Diligence:** A crucial step in an acquisition transaction is due diligence, which examines the pertinent corporate documents and other collected information of the target company to assess the risks associated with the transaction and to arrive at some decision about the potential transaction. The main purpose here is to make buyer aware about the target company, which ensures that the appropriate safety measures are implemented when negotiating the transaction. One of the biggest expenses in an acquisition deal is the cost of due diligence. The cost of due diligence can be significantly lowered if the company's departments are well-organized, well-documented, and compliant with the law.

   Normally, buyer performs the due diligence using own resources at their own expense and risk. The buyer may also appoint consultants, specialists, etc. to conduct due diligence through external resources. In this process the financial and non-financial information of the target company is collected and analysed in order to assess the nitty-gritty of the transaction and to conclude whether to opt for or opt out of the deal.

During the due diligence process the following points are worth consideration:

- Constitute a due diligence team and assign task to each of the member.
- Nominate senior level officer to supervise the co-ordination among members.
- Data collection and various checks on the target company's financial, operational, commercial, technical, legal, ethical, environmental, information security, human resource, regulatory and tax aspects. Normally the due diligence process should incorporate the following areas;

  a) Industry, Management, Financial, Manufacturing, Marketing and Sales Analysis.

  b) Corporate Records, Charter documents, Policies, Permits and Licenses.

  c) Material Contracts, Arrangements and Requirement of 3rd party consents.

  d) Loans, Charges, Insurances, Guarantees and Indemnities.

  e) Ownerships, Leases, Movable and Immovable properties and IPR.

  f) Compliance and Litigations.

  g) Returns, Taxes and Filings.

The buyer, after analysing above, shall be in a position;

a) to gather data that will be helpful in determining the deal's value;

b) to decide the milestones of payment schedule and the earn-out ratio;

c) to determine and fix the handholding period (if required);

d) to identify SWOT;

e) to spot any flaws and prevent a disastrous business deal (if any);

f) to decide the conditions precedent and conditions subsequent for SPA;

g) to identify areas where representations and warranties are required;

h) to bridge the gap between existing and expected; and

i) to take informed decision.

4. **Pricing:** After having done the due diligence process, the next step is to value the target company for the purpose of deciding the purchase consideration. Both companies involved on either side of the deal will value the target company differently. The seller will obviously try to value the Target Company at the highest price possible, while the buyer will attempt to buy it for the lowest price possible. Fortunately, a company can be objectively valued by studying comparable companies in an industry, and by relying on the Due Diligence Report, EBITDA, EBIT, PBT, PAT, various ratios and after considering certain principles relating to Time Value of Money, Risk and Return, Substitution, Alternatives, Expectation and Reasonableness.

> If anyone proposes of buying or selling a closely held company, the most common way to do it is through Share acquisition by private arrangement. In India, this still remain the most preferred and usual mode of acquisition of closely held companies, because it is a much simpler and faster mode of acquisition in comparison to the other modes. The owners may change but the Company stays the same and the business activity will continue as normal, with employees, contracts and property remaining in place.

5. **Share Purchase Agreement:** A Share Purchase Agreement (SPA) is the main contract used in the private sale of shares. It is an agreement entered into between the buyer and seller of shares of a target company. Usually SPA entail that the buyer would be taking over whole or significantly whole of the Company. The terms of acquisitions of shares are usually documented in SPA. In addition, the shareholders of companies enter into a shareholders' agreement for governing their rights and obligations post acquisition. Sometimes parties may mutually combine the agreements into a single 'share purchase and shareholders' agreement'. Phases of SPA are divided into 3 i.e. Pre-contract phase, Contract phase and Post-contract phase, where Pre-contract phase relates to the parties negotiating heads of terms, exchange certain legal documents such as confidentiality and exclusivity agreements, carrying out due diligence and preparation of SPA. While Contract phase deals with final negotiation and execution of SPA and Post-contract phase is when the formalities for the acquisition are completed.

The findings of the due diligence would be addressed under the Share Purchase Agreement. Any action that needs to be taken by the Company or the Seller would be listed. Similarly, any potential liabilities that are foreseen would be listed out and the seller would provide an indemnity against the same. The main purpose is to set out the deal terms in writing, specify any conditions to the sale, allocate risk, and protect

the buyer by limiting the seller's ability to set up a competing business.

Prior to drafting a SPA, the parties should negotiate and address the key terms of the SPA. This, in turn, would help in drafting and finalising the SPA as all the material terms would already be agreed to between the parties. Some of the main terms/clauses of a SPA are as follows;

- **Parties:** The name of the buyer and the seller will be mentioned at the beginning of the SPA, together with their Corporate Identification Number (CIN), Registered offices addresses and details of Authorised Representative who would be signing the SPA on their behalf. Sometimes Target Company, Group Company or any other parties can also be made a party signing SPA.

- **Definitions**: Defining general and specific terms up-front in the SPA helps avoid future disputes. There are certain words or phrases contained in an SPA that are frequently used, ambiguous or have a precise legal implication. This simplifies the document as well as providing clarification, for example, what is meant by "Material Adverse Change", "Group Companies", "Confidential Information" and much more.

- **Sale and Purchase of Shares:** The heart and soul of the SPA is the agreement that the seller will sell and the buyer will purchase the shares of the Target Company. Complete description of the Shares is given here along with the mode of transfer (i.e. Physical or Electronic) and Bank details of the seller. It is agreed by the seller that the sale shares shall be free from any encumbrances which means that the shares are not subject to any third-party rights or restrictions.

- **Price**: This clause of SPA specifies the purchase consideration for the sale shares. It further details the manner in which payment would be made as well as the timeline for the payment which may or may not include the earn-out and holding clause. This is important because generally there are obligations (commonly referred to as pre-closing obligations) that the parties need to fulfil before the shares can be transferred. Therefore, the payment and transfer of shares usually does not take place on the same date when the SPA is entered into as it is concluded on the closing date upon fulfilment of the pre-closing obligations (Conditions Precedent).

- **Pre-closing Obligations or Conditions Precedent (CPs)**: These are the conditions that shall be completed by the respective parties and are necessary for consummation of the transaction. Generally the buyer list out certain points which are necessary to be carried out before the transfer of shares actually takes place and certain flaws which shall be rectified or taken care of by the respective parties before the purchase of shares. Therefore, there will be a gap in the execution date and transaction completion date of the transaction so as to satisfy the CPs. Below is just a general summation of CPs and would actually depend on a case to case basis upon the due diligence carried out;

  a) Corporate Authorisations.

  b) Clearing the title of Movable and Immovable property of the Target Company.

  c) Intimations to concerned authorities about the proposed transfer.

  d) Consents, Approval and NOCs from authorities for the proposed transfer.

  e) Clearing certain outstanding dues, fees and penalties.

A long-stop date is fixed by which the conditions precedent must either be fulfilled or waived by the respective parties.

- **Closing Date**: This is the date by which all the conditions precedents are either fulfilled or waived of by the respective parties and the transaction is completed upon fulfilment of certain duties as specified by the parties in the SPA. Below is the inclusive list of activities that can be generally agreed to be performed on the closing date;

  a) Payment of Purchase Consideration.

  b) Transfer of sale shares.

  c) Conducting Board Meeting of the Target Company for approval of certain matters viz. approval and take note of the transfer

of shares, resignation of existing directors/ officers representing seller and appointment of new directors/officers representing buyer etc.

d) Updating the Statutory registers of the Target Company.

e) Handover of original records and all documents which are in possession of Seller.

- **Representations, Warranties and Indemnities:** This clause protects the buyer if unexpected liabilities or issues arises after the Company is sold and transaction is consummated. It also includes the statements, promises and justifications given by the seller and Target Company at the time of due diligence process which in turn protects the buyer in case the buyer suffers any loss due to misrepresentation or misleading statement of the seller or Target Company. The seller give indemnities to the buyer by an indemnification clause which specifies the liability for losses incurred by buyer due to breach of any representation and warranty, covenant or obligation under the agreement by the seller or vice versa. This means that both the parties are on the hook for any losses they incur if the representation and warranty is breached by either of them. Usually agreements provide for general indemnity clauses, however, based on the due diligence findings, specific indemnities can also be sought by buyer from the seller.

- **Post-closing Obligations:** Even after the sale of shares is completed, there may still be actions which would be required to be carried out based on the agreement between parties. All of these actions are mentioned in the post-closing obligations clause and the same can only be achieved once the transfer of shares is completed successfully. The buyer and seller agrees to perform such actions and includes that in this clause in order to carry them out post closing.

- **Non-compete and non-solicitation clause:** This clause restricts a seller from competing with the buyer after the sale and prevents the buyer from operating in the same sector or geographical area or prevents the seller from approaching the buyer's employees, customers or suppliers to do business with them. This clause has to be carefully drafted so as to put only a reasonable restriction upon the seller to make the SPA more constitutionally valid.

6. **Post-acquisition Integration:** Post-acquisition integration of business and operations is the crucial part and many points require attention on this issue. These may be listed out as under;

- Formulation of Annual Action Plan.
- Assessment of future projections and cash flow in order to have organic growth.
- Integration of the policies, accounting software and various other software.
- Customer retention and acquisition of new customers.
- Retaining of the talent and new talent acquisition.
- Satisfaction of the human resources.

CONCLUSION

M&A offers an alternative to organic growth for buyers seeking to achieve their strategic goals, while offering sellers the option to cash in or share the risks and rewards of a newly formed business. A company may grow either by internal expansion or by external expansion. For internal expansion, a company grows gradually over time in the normal course of business. Acquisitions are part of corporate restructuring, or inorganic growth, so companies are looking for opportunities to grow outside rather than keep profits in-house. Indian companies have often outperformed their foreign counterparts in corporate restructuring both within and outside their borders. Mergers and acquisitions are strong indicators that the economy is strong and growing. Currently, the Companies Act, 2013, the Competition Act, 2002, the Income-tax Act, 1961, RBI and FEMA Regulations, the Indian Stamp Act, 1899, the Indian Contract Act, 1872, the Specific Relief Act, 1963, Accounting Standards, Industry Specific Laws and relevant rules and regulations made thereunder govern the Share Acquisition of the closely held companies by private arrangement in India. Here the recommendations of the JJ Irani Report are of particular significance that recommended legal recognition to mergers without the intervention of the court can go a long way in eliminating the obstructions to mergers in India.

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ARTICLE

Impact of Mergers and Acquisitions on Accounting-based Performance of Firms in India

In a particular industry, experiencing rapid growth can be achieved without the necessity of establishing a new business entity. In the fields of business or economics, a merger refers to the consolidation of two separate companies into a single entity of larger scale. These actions typically involve voluntary participation and entail either a stock exchange or a monetary transaction with the target entity.

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INTRODUCTION

The term "mergers and acquisitions" pertains to the domain of corporate strategy, corporate finance, and management, encompassing activities related to the acquisition, divestiture, and consolidation of various companies, which can provide assistance, financial support, or contribute to the growth of a company.

In a particular industry, experiencing rapid growth can be achieved without the necessity of establishing a new business entity. In the fields of business or economics, a merger refers to the consolidation of two separate companies into a single entity of larger scale. These actions typically involve voluntary participation and entail either a stock exchange or a monetary transaction with the target entity. The utilization of stock swap is frequently employed due to its capacity to enable the shareholders of both entities to collectively assume the risks associated with the transaction. A merger may bear similarities to a takeover, but it typically leads to the establishment of a new company name, often formed by combining the names of the original companies, as well as the implementation of new branding strategies. In certain instances, the decision to label the integration as a "merger" rather than an acquisition is solely driven by political or marketing considerations. Mergers can be categorized into horizontal mergers, which occur when two or more merging companies operate within the same industry and produce similar products. (ii) Vertical mergers refer to the consolidation of two or more companies operating in distinct stages of the manufacturing process for a common product. (iii) Conglomerate mergers refer to the scenario in which two or more merging entities are engaged in distinct industries.

The term "acquisition," alternatively referred to as a takeover or a buyout, denotes the act of one company (referred to as the "target") being purchased by another. An acquisition can be categorized as either amicable or adversarial. In the first scenario, the companies engage in collaborative negotiations, while in the second scenario, the acquisition target exhibits resistance towards being purchased or the target's board is unaware of the offer beforehand. Acquisition typically denotes the act of a larger company procuring a smaller company through a purchase.

Occasionally, a smaller firm may assume managerial authority over a larger or more established company and opt to retain the latter's name for the merged organization. This phenomenon is commonly referred to as a reverse takeover. An additional form of acquisition is the reverse merger, which facilitates the expeditious transition of a privately held company into a publicly traded entity. A reverse merger is a transaction in which a privately held company, possessing promising prospects and a desire to secure funding, acquires a publicly traded shell company, typically lacking operational activities and possessing minimal assets.

OBJECTIVE

The primary aim of this article is to conduct an analysis of the mergers and acquisitions carried out by companies in India, with a specific focus on examining their impact on accounting-based performance metrics.

POSITIVE IMPACT ON POST-ACQUISITION PERFORMANCE

"Numerous studies in the existing literature have observed the favourable influence of M&A on the accounting performance of the acquiring organization. Several studies have made a distinction between acquisitions that are related and those that are unrelated. According to Hambrick and Canella (1993) and Walsh (1988), the findings of these studies suggest that acquisitions conducted by a related acquirer have a high probability of resulting in the acquiring firm's managers identifying and mitigating inefficiencies in the target company. This is attributed to their prior experience in managing similar lines of businesses. Our study does not differentiate between these categories. In the contemporary global business environment, companies often engage in unrelated acquisitions as a strategic approach to enhance their product offerings or achieve diversification. These unrelated acquisitions can be evaluated using similar criteria as those applied to related mergers.

The banking sector has been extensively studied by researchers in order to examine the effects of mergers on the financial performance of the acquiring bank. This phenomenon can be attributed to the prevalence of M&A within the banking sector.

In their study, Cornett and Tehranian (1992) examined the post-acquisition performance of major mergers within the banking industry. Their findings indicated that banks experienced improved performance following mergers, which could be attributed to enhanced capabilities in attracting loans and deposits, as well as increased employee productivity. In a study conducted by Vennet (1996), a sample of 494 takeover events occurring between 1988 and 1993 was examined. The findings of the study revealed that the performance of the merged bank was enhanced as a result of the mergers.

Additionally, he observed enhancements in cost efficiency pertaining to cross-border acquisitions. Fraser and Zhang (2009) conducted a study on a sample of mergers that occurred between the years 1980 and 2001, specifically focusing on non-US banking organizations. It has been discovered that cross-border acquisitions result in enhanced performance of the target entity. According to Trivedi (2013), M&A offer banks a pathway to achieve rapid progress. Financial institutions leverage the advantages of economies of scale, scope, and size, resulting in enhanced profitability and revenue generation. According to Trivedi's (2013) findings, M&A in the banking sector yield numerous qualitative synergistic advantages. The banking industry is characterized by

various merger motives, such as geographical expansion, among others. Additionally, it operates within the regulatory framework specific to the banking sector of a particular country. The present study examines the phenomenon of non-banking acquisitions and extends its scope to encompass various sectors beyond the banking industry.

A variety of research have been conducted to investigate the influence of mergers on the financial performance of the acquiring organization. Course, the time of study and the field of study vary. Healy, Palepu, and Ruback (1992) investigated acquiring corporations' post-merger cash flow performance. Their sample includes the 50 biggest mergers in the United States between 1979 and 1984. According to their findings, the amalgamated firm has significant gains in asset productivity, resulting in greater operational cash flow returns. The gains were found to be particularly substantial for enterprises in overlapping operations. Healy et al. (1997) classified mergers into two types: strategic and financial, and found that strategic takeovers resulted in significant profits for acquirers. At best, financial transactions were profitable. Capron (1999) examined data from 253 acquisitions completed by European and American enterprises in the manufacturing industry between 1988 and 1992. According to the findings of this research, both asset disposal and resource redeployment may improve acquisition success. Heron and Lie (2002) examined a large sample of acquisitions between 1985 and 1997 and discovered that after acquisitions, acquiring firms outperform their respective industry counterparts and significantly outperform control firms with comparable pre-event operating performance. Karim, Sarkar, and Zhang (2016) discovered that when the mechanism of payment is acquirer's stock, acquiring businesses control profits around mergers, but there is no such evidence when the method of payment is cash. Rahman and Limmack (2004) used Malaysian data to investigate the operational cash flows of the amalgamated enterprises between 1988 and 1992. They determined that, in the long run, operational cash flows improved after the takeover, and that, as a consequence, shareholder wealth grew following the merger. Some research, such as Rahman and Limmack (2004), have divided post-merger performance into two

categories: long run and short run. The bulk of these studies show that the performance of the combined entity has improved in the long run as compared to the short run.

Kumar and Rajib (2007) investigated the post-merger operational performance of 57 enterprises between 1995 and 2002. They have divided their conclusion into two sections. It is discovered that following a merger, corporate performance based on book value of assets and sales model increases, but the model based on market value of assets does not support this perspective. Kumar and Bansal (2008) determined that the financial performance of the businesses increases after the merger. Mantravadi and Reddy (2008) examined a sample of Indian mergers that occurred between 1991 and 2003. Their research found that there are minimal differences in the effect of mergers on operational performance across sectors in India. Sinha, Kaushik, and Chaudhary (2010) examined mergers between 2000 and 2008 and found that in the long term, there is a substantial association between financial success and the M&A transaction, and the acquiring organizations were able to build value. The Hong Kong market has also shown that mergers have assisted combined enterprises in increasing their market strength and market share (Lee, 2005).

Alhenawi and Stilwell (2017) get similar results, demonstrating that M&A transactions generate value in the long term, with the gain consistent with the acquirer's previous performance and the target's pre-acquisition worth. They examined purchases from the United States from 1998 to 2010".

NEGATIVE IMPACT ON POST-ACQUISITION PERFORMANCE

"Not all research has indicated that mergers and acquisitions are a successful instrument for inorganic development. Many studies have revealed that the acquiring firm's post-merger performance has decreased. The anticipated advantages of synergy were not realized. Dickerson, Gibson, and Tsakalotos (1997) found no evidence that acquisition improves business performance as assessed by profitability. On the contrary, they discovered that acquisitions had a consistent negative influence on business performance. Ghosh (2001) evaluated the operational cash flows before and after the purchase. He found no indication of an improvement in operational performance after the transaction. Langhe and Ooghe (2001) investigated the performance of small unquoted enterprises and found no substantial increase in operational performance following the merger. Sharma and Ho (2002) examined 36 Australian purchases made between 1986 and 1991. According to their findings, corporate acquisitions did not result in substantial post-acquisition improvements in corporate operational performance. Andre, Kooli, and L'Her (2004) investigated the long-term performance of 267 Canadian mergers and acquisitions that occurred between 1980 and 2000. They discovered that Canadian acquirers severely underperform in the three years after acquisition. They also discovered that cross-border transactions perform badly in the long term. Pazarskis, Vogiatzogloy, and Christodoulou (2006) analyzed mergers and acquisitions from 1998 to 2002 and found substantial evidence that a firm's profitability declined following the merger/acquisition event. Singh and Mogla (2008) examined a sample of 56 Indian enterprises that combined between 1994 and 2002 and found that profitability dropped considerably following the mergers".

Table 1: Industry-wise Trends and Progress of M&As in India (in Rs. Cr.)

INDUSTRY	2001	2002	2003	2004	2005	2006	2007	TOTAL
Food & Beverages	2183	1219	1430	1432	2385	3348	1233	123230
Textiles	517	348	279	934	1476	873	1163	5590
Chemicals	23241	6410	4176	7594	19088	12772	29006	81287
Non-Metallic Mineral Products	909	435	563	1861	4089	7236	9536	24629
Metals	1627	1993	735	628	2138	2862	3903	13886
Machinery (Electric, Non-Electric)	3067	3126	3966	6486	5382	1729	4508	28261
Automobiles & Ancillaries	743	1400	1355	957	6167	2026	7251	19866
Miscellaneous Manufacturing	1131	122	589	596	469	469	2640	6016
Diversified	2169	1114	247	574	466	125	51	4746
Electricity & Mining	2911	2208	395	12756	5260	9569	5730	38829
Manufacturing Sector Total	**17498**	**18372**	**13702**	**33818**	**46920**	**41009**	**65021**	**236340**
Computer software & Telecom	1812	1536	2614	4320	7506	15536	2987	63184
Financial Services	1375	4346	2348	4968	17175	15767	17205	36311
Other Services	6769	10546	3892	16897	32278	35830	111057	217269
Service Sector Total	**9956**	**16428**	**8854**	**26185**	**56959**	**67133**	**131249**	**316764**
Grand Total (Manfc. & service)	**27454**	**34800**	**22556**	**60003**	**103879**	**108142**	**196270**	**553104**

Source: Compile from various issues of CMIE Reports.

Table 2. Growth of Mergers and Acquisitions in India in the Last Two Decades

Year	No. of Mergers and Acquisitions	Change (%)
1998–1999	99	---
1999–2000	324	69.44444
2000–2001	554	41.51625
2001–2002	401	−38.1546
2002–2003	419	4.295943
2003–2004	500	16.2
2004–2005	556	10.07194
2005–2006	1005	44.67662
2006–2007	944	−6.46186
2007–2008	950	0.631579
2008–2009	958	0.835073
2009–2010	918	−4.3573
2010-2011	870	-5.51724
2011-2012	726	-19.8347
2012-2013	746	2.680965
2013-2014	574	-29.9652
2014-2015	774	25.83979
2015-2016	885	12.54237
2016-2017	914	3.172867
2017-2018	1026	10.91618

Source: *Ace equity.*

Table 2 depicts the growth in the number of deals involving mergers and acquisitions in India during the previous two decades. Table 1 also demonstrates that M&A transactions grew till 2005-2006. Following the competition from offshore corporations arriving to India after liberalization, Indian firms prepared for large-scale restructuring. Ease into it "Government laws also aided the corporations' mergers and acquisitions. Many businesses considered it necessary to combine with comparable divisions in order to save money and enhance productivity. With increased competitiveness and the economy moving toward globalization, M&A is projected to take place on a much greater scale than in the

past (Kumar & Bansal, 2008), as it did in the first few years till 2005-2006.

Following this time, M&A transactions began to decline significantly. This was not due to M&A not being a viable instrument for corporate restructuring, but rather to Indian enterprises lacking the necessary knowledge to reap the full advantages of acquisitions. They embarked into M&A transactions in order to outperform the competition and generate synergies in a short period of time, without considering the obstacles of M&A. According to the literature, several organizations experienced losses upon purchase. It took time for Indian enterprises to agree on the parameters of a successful M&A. From 2006-2007 to 2013-2014, fewer M&A agreements were announced, but the bulk of them were able to profit from the consequent synergies, reaping the advantages of acquisitions." The article's period of investigation is between this era and reveals that acquisitions had a favourable influence on the accounting performance of the acquired enterprises. Since Indian enterprises seem to have become more mature and experienced in order to benefit from M&A synergies, we observe an upward trend in M&A agreements from 2014 to 2015.

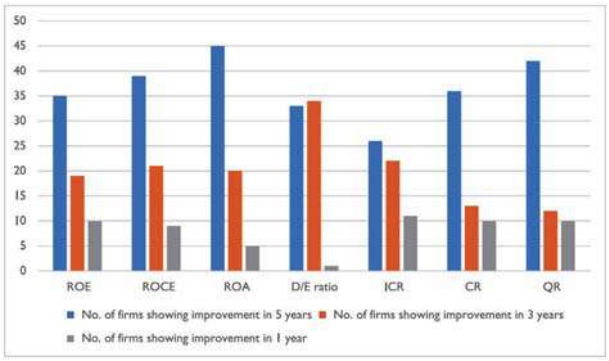

Figure 1. Number of Firms Showing Improvement in Different Financial Parameters in Short Term, Medium Term and Long Term

"According to Figure 1, it is evident that there has been a significant increase in the number of firms that have demonstrated improvement in key financial metrics such as ROA, ROE, ROCE, CR, and QR over a span of 1-, 3-, and 5-years following mergers. This implies that the majority of companies can enjoy the advantages of a merger in the long run."

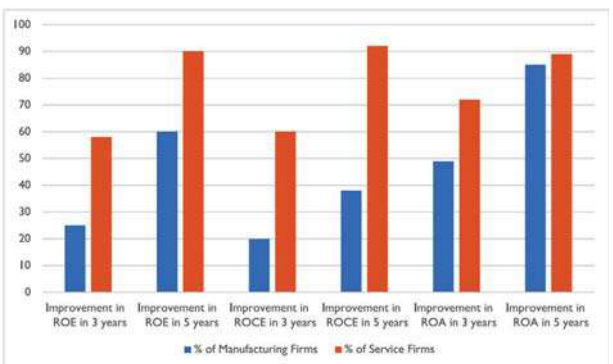

Figure 2. Percentage of Manufacturing and Service Firms Showing Improvement in 3 and 5 Years of Acquisition

> The study examines two decades of patterns to highlight India's trajectory from development to maturity in M&A transactions. Despite volatility, Indian enterprises are now better prepared to capitalise on acquisition opportunities. The article illustrates how well-executed M&A strategies unleash development, crafting a better future for Indian firms across many sectors, with patience and smart preparation.

"According to Figure 2, it can be observed that a significant number of manufacturing firms did not experience any improvement in profitability over a span of three years following their acquisition. Many companies are experiencing delays in achieving synergies and reaping the benefits of mergers. Although some manufacturing firms have demonstrated an increase in profitability over a span of three years, the majority of manufacturing firms typically require a longer timeframe of five years following acquisition in order to achieve a significant boost in profitability.

However, when examining the graph of service sector firms, it becomes apparent that a majority of these firms have begun to experience the advantages of acquisition within a three-year timeframe. The three profitability ratios have shown improvement over the course of three years following the acquisition for the majority of the firms. In 5 years, it is expected that a majority of firms will experience a positive impact on their profitability. The researcher also applied a paired sample 't' test to determine the significance of the increase in profitability ratios for manufacturing and service sector firms".

CONCLUSION

The findings of the analysis indicate that mergers and acquisitions possess the capacity to exert a positive impact on the accounting performance of acquiring organizations. The findings of this study suggest that acquisitions that are closely related to the target company have a tendency to uncover and address inefficiencies within the organization, ultimately resulting in improved performance. Furthermore, it has been observed that mergers within the banking industry have yielded positive outcomes in terms of enhanced financial performance. These outcomes encompass a notable improvement in the ability to attract loans and deposits, as well as a heightened level of cost efficiency.

Nevertheless, it is important to note that not all mergers and acquisitions transactions result in desirable consequences. Several empirical studies have reported a decline in post-merger performance, suggesting that the anticipated synergistic effects may not materialize

as expected. The negative impacts on performance in M&A transactions can be attributed to various factors, including the absence of sufficient experience and hasty decision-making.

The data additionally illuminates the patterns observed in M&A endeavours within the Indian market throughout the preceding two decades. The period leading up to 2005-2006 witnessed significant expansion in the field of M&A. However, in the subsequent period, there was a notable decline in M&A activity. This decline can be attributed to the learning curve experienced by companies and the intricate nature of achieving successful integration following M&A transactions. In recent years, there has been an observable upward trend in the number of mergers and acquisitions agreements among Indian enterprises. This can be attributed to the increasing maturity and experience of these enterprises in effectively harnessing the advantages associated with acquisitions.

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Implementation of Merger Remedies Under Indian Competition Law – Legal History of The Last Decade

The CCI has affirmed all the combinations without any remedies/modifications and in twenty-two (22) cases as it were, the CCI has endorsed the combinations with remedies/modifications within the prima facie arrange (Stage I) or, after making a point by point examination (Stage II)[1]. The CCI has been accepting the remedies proposed by the parties advertising intentional divestments/ commitments during the Stage I survey and has conducted an in-depth Stage II examination including open discussion in more than half of the cases. Amid the Stage I request, where the CCI opines that the competition concerns may be unravelled with the basic divestments and/or Behavioural cures based on maintaining a strategic distance from spill over impacts, stage separation, get to showcase and Formwork, data trade, strife of intrigued and shopper assurance.

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INTRODUCTION

The Competition Commission of India (hereinafter alluded to as the "CCI") has affirmed more than 900 combinations, since its beginning in differing segments of the economy, included but not limited to money related markets, pharmaceuticals, healthcare, retail, advanced markets etc. and has not up to this point disavowed any combination, but the later Amazon/Future Coupon arrangement of the CCI putting the combination in suppression and required the parties to refile the take note in Form II, maintained by the National Company Law Appellate Tribunal (NCLAT).

Whereas concluding the finality of any proposed combination, the CCI gets to the ex-ante impacts of any proposed combination based on showcased forecasts, information accessible on record, the conclusion of the CCI was thereof based on the components provided under Section 20(4) of the Act[1], instead of the genuine results of any combination within the market. In PVR/ DLF combination order[2], the CCI stated that "the idea behind the ex-ante review of combinations is to restrain those combinations, which, if allowed to go forward, would be likely to adversely affect competition (AAEC) in the relevant market. Combinations by their very nature can eliminate any competition that exists between the parties and reduce the number of firms competing in the relevant market. Where this reduction is likely to cause adverse effects on Competition (AAEC), the market will be less oriented to consumer and efficiency goals such as lower prices, better quality, more consumer choice, and innovation (even in the absence of any violations

1. *Section 20 (4) of the Competition Act, 2002 - For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:— (a) actual and potential level of competition through imports in the market; (b) extent of barriers to entry into the market; (c) level of combination in the market; (d) degree of countervailing power in the market; (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins; (f) extent of effective competition likely to sustain in a market; (g) extent to which substitutes are available or arc likely to be available in the market; (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination; (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market; (j) nature and extent of vertical integration in the market; (k) possibility of a failing business; (l) nature and extent of innovation; (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition; (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.*

2. *Combination No. C/2015/07/288, Order dated 04 May 2016.*

of competition law). In short, the ex-ante review aims to avert structural changes that would damage the incentives to compete."

The CCI has affirmed all the combinations without any remedies/modifications and in twenty-two (22) cases as it were, the CCI has endorsed the combinations with remedies/modifications within the prima facie arrange (Stage I) or, after making a point by point examination (Stage II)[3]. The CCI has been accepting the remedies proposed by the parties advertising intentional divestments/commitments during the Stage I survey and has conducted an in-depth Stage II examination including open discussion in more than half of the cases. Amid the Stage I request, where the CCI opines that the competition concerns may be unravelled with the basic divestments and/or Behavioural cures based on maintaining a strategic distance from spill over impacts, stage separation, get to showcase and Formwork, data trade, strife of intrigued and shopper assurance.

In forty-six (46) combination cases, the CCI has penalized the merging parties for disappointment in recording the notice (gun-jumping, Section 43A of the Act[4]), with three (3) cases where the CCI has fined (from Rs. 50 lacks – Rs. 1 crore) for recording deluding data or exclusion in recording correct/true data within the notice (under Section 44 and 45 of the Competition Act, 2002). In cases of recording misleading/omission in recording correct and true information within the notice under Section 44 and 45 of the Competition Act, the CCI has put the particular combination in suspension/abeyance and requested the individual parties to refile the notice under Form II (long-form) for the reassessment of the CCI. In the arrangement against Amazon/Future Coupons (FCPL)[5], the CCI forced a penalty of INR 202 Crore for Amazon's failure to reveal inter-connected exchanges to its proposed combination with FCPL.

The CCI jotted down different concerns relating to deluding filings (data at Singapore Universal Discretion Centre (SIAC) being distinctive from data recorded at the CCI) and non-disclosure of subtle elements of the shareholder's agreement requiring Amazon's earlier composed assent for FCPL to choose any matter relating to its relate company (Future Retail Constrained (FRL)). Such understanding, as portion of Amazon's securing of FCPL, has been considered inter-connected exchanges by CCI, and Amazon's disappointment to inform such understanding driven to the imposition of a heavy punishment on Amazon and required it to refile the notice with CCI in Form II (Long Form)[6]. The deal was put in suspension for which Amazon has challenged the CCI order in NCLAT. Recently, the NCLAT has taken note of the discoveries of the CCI and has not obstructed with the arrangement of the CCI[7].

The CCI has affirmed various proposed combinations which are more than fifty (50) combinations under the green channel course. This Green channel course is once more a self-assessment and trust-based course where the parties are at risk to ascertain the impacts of the combination on the Indian showcase. With the addition of the Green Channel endorsement course in 2019 as a course for regarded endorsement for any proposed combination, right now, each fifth exchange is recorded under the green channel course. The CCI has continuously required the consolidating parties to fill form/s only when fully reasonable, and genuine divulgences of all interconnected exchanges embraced in any combination. The parties must deliver data relating to all person except when they may be excluded under different exclusions given under the Competition Act[8]. A case of inter-connected transactions, exchanges can be related to procurement made by any auxiliaries of the combining parties or any understanding between undertakings for future acquisitions. In combination arrangement of *Betaine B.V/ Hinduja Worldwide Arrangements Limited*[9], the CCI has watched that "as competition assessment of a combination is an ex-ante, forward-looking exercise, any other combination envisaged by the parties, whether inter-connected to the proposed combination or not, which is likely to change the market position of the parties going forward, also has to be notified to CCI. Thus, if parties envisage another merger and acquisition, unless it is too speculative, whether or not inter-connected to the proposed combination, which is likely to change the market position of the parties going forward, competition assessment must cover the impact of that merger and acquisition".

The CCI has been looking into the total chain of possession, control and the concerned exercises of the parent company (particularly of the acquirer conjointly the acquired/target undertaking) of the parties to the combination. The ownership/control/activities of parent companies if working within the same or related pertinent markets ought to be reasonably uncovered and has been a major calculate considered within the competition evaluation. In terms of control, the CCI has been famous that in case an undertaking obtains fabric influence (which is the beginning limit of control) over another substance, the full of the financials of the target undertaking would be taken into consideration for Section 5 of the Act. It was famous that as long as control over the operations of a finance is procured in a support

3. *Available at https://globalcompetitionreview.com/guide/the-guide-merger-remedies/fourthedition/article/india*

4. *Section 43A of the Competition Act, 2002 —If any person or enterprise fails to give notice to the CCI under Section 6 (2), the CCI shall impose on such person or enterprise a penalty which may extend to one percent (1%) of the total turnover or the assets, whichever is higher, of such a combination.*

5. *Proceedings against Amazon.com NV Investment Holdings LLC under Sections 43A, 44 and 45 of the Competition Act, 2002. Order dated 17 December 2021, available at https://www.cci.gov.in/sites/default/files/Notice_order_document/Order-688.pdf.*

6. *Supra at 5.*

7. *Amazon vs CCI & Ors, Competition Appeal (AT) No. 01 of 2022, along with No. 02 of 2022 and No. 03 of 2022, NCLAT, Principal Bench.*

8. *Regulations 9(4) and 9(5) and Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.*

9. *Combination Registration No. C-2021/09/870. Proposed Combination related to Betaine BV's India Business Transfer Agreement and execution of the Master Framework Agreement with Hinduja Global Solutions Limited.*

administration course of action, where the extreme recipients have given specialist to the venture director to appreciate control over the administration of the support, the resources and turnover of the total financials of the target venture would be inferable and not as it were to the degree of shareholding and control over the given target entity[10]. In penalty order of Investcorp India Resource Directors Pvt. Ltd. under Section 43A of the Competition Act, 2002[11], the CCI has noted that the securing of control is one of the shapes of combination under Section 5 of the Act and a notice under Section 6(2) of the Act is required to be given to the CCI, indeed in cases when after the securing the useful intrigued is vested in people other than the acquirer.

The products/services given by the parties are classified within the limit and wide pertinent showcase. The CCI moreover inclines toward depiction of the Narrowest Relevant Segment - 1 and 2. The evaluation of vertical and complementary connections amplifies to coordinate and backhanded connections and the common- sense competitive effect of the combination within the showcase. The CCI has endorsed numerous combinations of cures to moderate the potential competition issues emerging from non-compete commitments concurred between the parties. In any case, as of late, the CCI has chosen to remain absent from investigating and passing a conclusion on, non-compete clauses as portion of its merger control survey where parties are not required to lock in in a nitty gritty defence of these contracts. By and large, the CCI has been focusing on making a culture of intentional compliance in India and empowering parties to reveal all significant data relating to the combination.

TRENDS IN APPROVING REMEDIES

Upon accepting the combination notice in either Form I/II, the CCI gets to any proposed combination Under Section 31 of the Competition Act, 2002 that comprises of two (2) stages of request - Stage I and Stage II request. After exploring the proposed combination within the Stage I organize, when the CCI makes a prima facie conclusion that such proposed combination may genuinely hurt the competition (AAEC) in Indian markets, it may favour the combination with remedies/modifications or continue with its request in Stage II arrangement. Stage II request are favoured when there exist genuine competition and showcase twisting concerns as the impacts of the proposed combination after the combination are culminated and operational. Such cures/ adjustments to the combinations point at protecting and re-establishing the state of competition because it existed recently. After completing the Stage II request, the CCI favours the combination with cures/ alterations to put commitments on the consolidating parties to deconcentrate the common markets. The CCI may acknowledge remedies/ modifications to any proposed combination in Form of Basic and/or Behavioural cures.

Basic cures are certain divestiture of commerce/ commitment to offer an auxiliary etc., Behavioural cures on the other hand may be in Form of giving get to Formwork, innovation, or mental property rights (IPR) or end of select supply or dissemination understandings etc.[12]. Amid the introductory requirement a long time, the CCI has focused receiving the auxiliary cures (divestments of trade and exchange of licenses etc.) more than Behavioural cures. Worldwide best practices recommend that within the nonattendance of an appropriate basic remedy, as when divestiture isn't conceivable, Behavioural cures may be an elective. The reason of cures is to protect to the degree conceivable the pre-combination level of competition by reproducing as far as conceivable the competitive status quo within the influenced markets. Within the PVR-DLF[13] combination arrangement, the CCI stated that "Structural remedies, as they straightforwardly address the cause of competitive hurt emerging from the end of a overwhelming competitor and have a tough affect by way of making an compelling competitor to the combined substance, are favoured to behavioural cures for flat combinations on the EU and US[14] ". It was famous that basic cure (divestiture) would not require progressing oversight, which isn't within the case of Behavioural cures. Assist, it was famous that "Behavioural remedies (such as price caps and quality commitments) would be akin to an undertaking by the Acquirer not to abuse the dominant position being created in the relevant market as a result of the Proposed Combination, with the requirement that the CCI monitor the same on an ongoing basis and not adequately replicate the outcomes of a competitive market. It was noted that "the behavioural commitments would not effectively alleviate the competition concerns in the relevant market, apart from the fact that behavioural remedies would be difficult to formulate, implement, monitor and also pose a risk of creating market distortions".

However, with developing jurisprudence, the CCI has moved towards endorsing the proposed combinations with half breed cures – a blend of Auxiliary and Behavioural cures. Indeed, numerous times, the CCI has received Behavioural cures over basic cures in favouring any proposed combination. The CCI too has been receiving half breed cures where basic cures coupled with auxiliary behavioural cures have been favoured by the CCI. By and large, the CCI has cleared most of the cases in Stage I inquiry within a normal time of 4-8 weeks. As it were a modest bunch of cases, a add up to of twenty-two (22) in number have gone to Stage II request and have been cleared with modifications/remedies and has taken 1-2 a long time to reach conclusions, with encourage 1-2 a long time to actualize the remedies[15].

10. *Investcorp India Asset Managers Private Limited order under Section 43A of the Competition Act, 2002. Order dated 17.12.2021.*

11. *Supra at 8.*

12. *Available at http://competitionlawblog.kluwercompetitionlaw.com/2019/04/01/merger-remedies-in-india-having-an-upper-hand/*

13. *Supra at 3*

14. *EC Notice on remedies under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004; Statement of the Bureau of Competition of the Federal Trade Commission (2012); Antitrust Division Policy Guide to Merger Remedies (2011) and ICN, Merger Remedies Review Project (2005).*

15. *Supra at 4*

Table: List of 22 (twenty-two) combinations approved with modifications/remedies -

No.	Case No. [Date of Order]	Parties Name	Sector/Industry	Nature of Remedies
1	C-2014/04/164 [29.09.2014]	Mumbai International Airport Pvt. Ltd. and Mumbai Aviation Fuel Farm Facility Ltd. Indian Oil, Bharat Petroleum[1]	Airlines fuel/ airport infrastructure facilities	Behavioural/Voluntary commitments
2	C-2014/05/170 [05.12.2014]	Sun Pharmaceutical Industries Limited and Ranbaxy Laboratories Limited[2]	Pharma/Medicines	Hybrid – Structural divestments and behavioural commitments
3	C-2014/07/190 [30.03.2015]	Holcim Ltd., Switzerland and Lafarge S.A[3]	Cement	Structural/Divestments
4	C-2015/07/288 [04.05.2016]	PVR Ltd. and DLF DT[4]	Films exhibition/ Theatre	Hybrid - Structural divestments and Behavioural commitments
5	C-2016/05/400 [08.06.2017]	The Dow Chemical Company (ii) E. I. Pont DE Nemours and Company (iii) DowDuPont Inc. (iv) Diamond Merger Sub Inc [5]	Agro Seeds, chemicals/ protection & R&D	Hybrid – Structural divestments and behavioural commitments
6	C-2016/08/418 [13.12.2016]	Abbott Laboratories, St. Jude Medical, Inc[6]	Healthcare products	Structural/Divestments
7	C-2016/08/424 [16.05.2017]	China National Agrochemical Corporation and Syngenta AG[7]	Crop protection products	Hybrid – Structural divestments and behavioural commitments
8	C-2016/10/443 [27.10.2017]	Agrium Inc. (ii) Potash Corporation of Saskatchewan Inc[8]	Potash/Fertilizer Chemicals	Structural divestments
9	C-2016/12/463 [04.05.2017]	Dish TV India Ltd. and Videocon D2H Limited[9]	DTH/Cable TV Licensees	Behavioural commitments
10	C-2016/11/459 [29.06.2017]	Nippon Yusen Kabushiki Kaisha Ltd./ Mitsui O.S.K. Lines Ltd. and Kawasaki Kisen Kaisha[10]	Shipping services/ Fright logistics	Behavioural commitments
11	C-2017/06/519 [18.09.2017]	FMC Corporation Company and E.I. du Pont de Nemours and Company[11]	Agro Products and Chemicals/ Crop protection R&D activities.	Hybrid – Structural divestments and behavioural commitments
12	C-2017/08/523 [14.06.2018]	Bayer Aktiengesellschatt, Germany and Monsanto Company[12]	Agro products, Hybrid seeds/non-selective herbicides	Hybrid – Structural divestments and behavioural commitments
13	C-2018/01/545 [06.09.2018]	Linde Aktiengesellschaft and Praxair, Inc[13]	Industrial chemicals/ helium retail market	Structural/Divestments
14	C-2018/07/586 [18.04.2019]	Schneider Electric India Private Limited and MacRitchie Investments Pte. Limited[14]	Electrical components	Hybrid – Structural divestment and Behavioural commitments
15	C-2018/09/601 [14.02.2020]	Northern TK Venture Pte. Ltd./ Fortis Healthcare Limited[15]	Healthcare/Super -specialty Hospitals	Behavioural/Voluntary commitments
16	C-2018/10/609 [21.01.2019]	Jio Futuristic Digital Holdings Pvt. Ltd; Jio Digital Distribution Holdings Pvt. Ltd.; Jio Television Distribution Holdings Pvt. Ltd. and Den Networks Ltd[16]	Broadband/DTH	Behavioural/Voluntary commitments
17	C-2018/10/610 [21.01.2019]	Jio Content Distribution Holdings Private Limited, Jio Internet Distribution Holdings Private Limited, Jio Cable and Broadband Holdings Private Limited and Hathway Cable and Datacom Limited[17]	Broadband/DTH	Behavioural/Voluntary commitments
18	C-2019/07/676 [01.10.2019]	TRIL Urban Transport Private Limited, Valkyrie Investment Pte. Ltd., Solis Capital (Singapore) Pte. Ltd. And GMR Airports Limited[18]	Airports and air transport facilities/ premises services	Behavioural/Voluntary commitments

19	C-2019/09/682 [30.10.2019]	Hyundai Motor Company and Kia Motor Company[19]	Automakers-radio taxi platform marketplace	Behavioural/Voluntary commitments
20	C-2019/11/703 [14.02.2020]	ZF Friedrichshafen AG and WABCO Holdings Inc[20]	Auto components	Hybrid - Structural and Behavioural remedies/ Voluntary commitments
21	C-2020/04/741 [30.04.2020]	Canary Investments Limited, Link Investment Trust II and Intas Pharmaceuticals Limited	Pharma	Behavioural remedies/ Voluntary commitments
22	C-020/03/735[18.06.2020]	Outotec Oyj and Metso Oyj[21]	Mineral Processing Equipment	Structural divestments/ Voluntary commitments

Note: *An investigation of the sort of cures acknowledged by the CCI shows that the CCI has acknowledged Basic cures relating to divestments in five (5) cases [22.7%], Behavioural cures with deliberate commitments in nine (9) cases [40.9%] and Crossover cures with both auxiliary and behavioural cures in eight (8) cases [36.4%].*

DELHI HIGH COURT OBSERVATIONS ON IMPLEMENTATION OF PROPOSED REMEDIES

The Hon'ble Delhi High Court (DHC) in **Eaton Control Quality Ltd vs CCI & Ors**[16] stated different procedural imperfections at the CCI in receiving the rules of the guideline of normal equity and delays in executing cures. The Hon'ble High Court rejected the Endorsement arrangement and the Audit Arrange passed by the CCI under Section 38 of the Act of 2002 wherein the CCI endorsed the interest and confirmation of Eaton, one of the bidder/purchasers within the offered prepare, expects to permit more extensive support within the offered prepare and afterward reviewed the Endorsement arrange through the Survey Arrange coordinating preclusion of Eaton from the usage prepare. The Delhi High Court stated that as both of the CCI's orders were adjudicatory/ quasi-judicial in nature and considerably influenced the rights of the parties, such orders are exterior the locale of the CCI and were procedurally defective. The CCI needs the statutory control of Survey, which was explicitly taken absent by the Governing body vide the Competition (Alteration) Act of 2007 under Section 37 of the Competition Act.

In this case, a combination notice was given to the CCI by Schneider Electric India Private Limited (Schneider) for the securing of the electrical and mechanization trade of Larsen & Toubro Limited (L&T) and the securing of 35% shareholding in Schneider by MacRitchie Ventures Pvt. Ltd. The CCI in the year 2019 allowed conditional endorsement to the proposed combination and forced certain behavioural cures considering the generally showcase for moo voltage (LV) switch gears in India where Schneider and L&T were the topmost advertise shareholders within the E&A trade. The CCI shaped a prima facie conclusion that the proposed combination will likely hurt Competition within the LV Switchgear trade in India and based on its a preparatory evaluation of the showcase position of the combining parties, showcase share, concentration levels (HHI), section conditions, nature of dispersion organize and advancement, etc., the CCI stripped 15 item markets that were exceedingly concentrated and where the combined showcase offers of the parties were on a normal of 30%. At the cluster level, 6 products were distinguished where the combined showcase offers of the parties were within the run of 55-60%

> Since the beginning of Competition laws in India, the CCI has been able to get to different markets, majorly in cement, genuine bequest, pharma, telecom, amusement, etc., a wide diagram of Indian markets from 2011 to 2023 appears that numerous markets/sectors have gone major combinations, taking off as it were a number of major players within the advertise.

The CCI after making a point by point Stage II request into the proposed combination advertised certain cures be that as it may, afterward acknowledged the behavioural commitments/remedies advertised by the parties as elective cure bundles. The CCI acknowledged white naming of certain items as a satisfactory cure to address the competitive imperatives within the pertinent market. This White Naming could be a handle by which Schneider's competitors would be reinforced, to empower them to compete more successfully within the Indian showcase. White labelling/brand labelling[17] as a cure equalizes the products from the overwhelming combined substance, with the items sold by different other substances within the pertinent showcase, guaranteeing no unequal showcase share position for the combined substance. The CCI imposed the following remedies –

16. *Eaton vs CCI, W.P.(C) 6797/2020 & CM APPL. 23544/200 (DHC), dated 10.09.2021.*

17. *White Labelling' is a unique arrangement wherein the products are manufactured by one manufacturer and are passed on to another manufacturer/distributor without a brand or a logo on it. The latter manufacturer/distributor can then affix its own brand and logo and sell the said product, as its own. This mechanism ensures, purportedly, that the product of the same quality is being made available to the consumer from two different sources i.e., the manufacturer of the product and the second entity (latter manufacturer/ distributor), which is selling the product – so as to provide for the same level of competition.*

1. Sharing of books, accounts, administration staff, offices, information, secret data;
2. Send out commitments concerning a rate of the introduced capacity of the items in address;
3. Alterations to Schneider's Distributorship Assertions and Commercial Arrangement to evacuate any obstructions which energize de facto exclusivity;
4. Estimating cures under which, a cap was settled on the net offering cost of the items in address for 5 a long time from the date of closing;
5. Allotment of least Investigate and Improvement Reserves for 5 a long time, to be went through in India within the final 3 a long time some time recently Closing;
6. Keep up steady Investigate and Improvement headcount, in line with the existing headcount as of the date of Closing, of L&T in India;
7. Ban on supplanting or expanding the number of wholesalers;
8. Non-rationalization of L&T's LV switchgear items for 5 a long time from the date of Closing, within the Indian showcase;
9. Allowing of non-exclusive innovation exchange permit for 5 a long time from the expiry of the White Naming period to a single third-party;
10. Not make any commercial offer or lock in in a managing concerning any or all of the LV switchgear items that have the impact of weakening the impact and /or goals of the adjustments advertised by the Acquirers.

To monitor and oversee the effective implementation of the proposed corrective actions under CCI's overall oversight, CCI appointed Moore Shingi Advisors LLP (MS Advisors) as its oversight body and invited various parties to express interest. Eaton (the plaintiff in this case) was excluded from the bidding process after a technical error prevented it from submitting the relevant documents within the specified deadline.

The Delhi High Court authorized Eaton to participate in the first round of the White Label Agreement and directed Schneider to conclude and implement the White Label Agreement by September 30, 2021, provided that Eaton's participation will not affect the completed agreement and ongoing negotiations. In addition, Delhi High Court has instructed CCI to initiate a second round of Expressions of Interest (EOI) for the remaining capacity once one of the white label contracts is completed by September 30, 2021. The oversight authority and the Chamber of Commerce will have sought to finalize the White Label Agreement by December 31, 2021, in particular to ensured that negotiations do not continue indefinitely after the merger is completed.

The Delhi High Court was majorly concerned with the two of the cures proposed by the CCI - White Naming and the exchange of considerable non-exclusive innovation exchange licenses to the bidder/purchaser. The White Naming Courses of action for five years, coupled with an

innovation exchange permit understanding with at least one party, who would have profited of the White Naming cure for any of the five items and would have executed the White Naming Course of action for three ceaseless a long time, would fortify competitors profiting services and with quality items of L&T and get to a more extensive conveyance organize, the recipients of the white naming course of action may build up its brand within the showcase. With the execution of the White Naming Understandings, the items made would be provided by Schneider to the third-party producers, at a settled cost for five years.

After five years, Schneider would ought to enter into a non-transferable, non-sub licensable, non-exclusive technology transfers permit understanding for the following five a long time. The technology transfer permit understanding will empower the bidder to secure capabilities in regard of the most recent innovation and the implementation thereof, inside its fabricating plant. The proposed cures required steady observing for more than ten (10) years and suffered from consistent delays.

OBSERVATIONS & CONCLUSIONS

Since the beginning of Competition laws in India, the CCI has been able to get to different markets, majorly in cement, genuine bequest, pharma, telecom, amusement, etc., a wide diagram of Indian markets from 2011 to 2023 appears that numerous markets/sectors have gone major combinations, taking off as it were a number of major players within the advertise. For Illustration, the Indian Telecom segment has seen major solidifications with 10-12 players working in India in 2010 to as it were 3-4 major players operational presently. The section of the huge player – Reliance Jio has moreover changed in general Indian telecom. Within the cement division, major solidifications were affirmed by the CCI and with the passage of a major player – Adani Group and the recent exit of Holcim from the Indian markets offering its stake in ACC and Ambuja to Adani Group, the Indian cement division has seen a same past as the telecom segment.

CCI's decisional practices appear that the CCI has been endeavouring to neutralize the antagonistic impacts on competition and boost the competition. Be that as it may, the CCI is more versatile in talking about conceivable cures in most cases and acknowledges the elective cures advertised by the parties (tolerating deliberate or elective cures in most cases). The CCI has as it were taken a modest bunch of 5% - 6% of cases within the add up to of 900 cases where the CCI has gotten to the combination and conducted a nitty gritty request into the proposed combination (under Stage II and Stage I). Rest 94% of combinations endorsed in Stage I (Form I) without any remedy/modifications. In this 6% of the combinations endorsed with cures, the CCI designate an outside autonomous Checking Agency[18] to execute and supervise the working of the combination under the supervision of the CCI and yield its report upon completion of the combination and alteration/ cures. In any case, it has been seen that whereas conducting the point by point request, the CCI numerous times don't take after the guideline of common equity and choices are articulated without managing openings for hearing to parties.

A diagram of the universal best practices appears that universally competition specialists have created directing standards and ponders for building up different procedural contemplations whereas planning basic and behavioural cures, their viable execution and observing, making strict timelines, and taking an occasional audit of combinations pre- and post-consummation to bring straightforwardness and consistency. Such rules diminish the dangers related with successful execution of the proposed cure and circumstances where consolidating parties intentioned chose a powerless buyer and delay the method to dodge the development of competitive limitations within the showcase.

For auxiliary cures, competition specialists guarantee that the proposed divestiture must incorporate all resources essential for the buyer to be a viable, long-term competitor within the showcase. Competition specialists tend to lean toward the divestiture of an existing standalone trade and divestiture of more than an existing standalone trade may be required when it is vital to protect competition. Assist, a resource carve-out comprising of less than an existing standalone trade has been considered in constrained circumstances.

Competition specialists are actively involved in recognizing the correct buyer for the divestiture and deciding the terms of the divestiture deal. It is seen that fruitful divestiture does not depend on the cost paid for the divestiture resources.

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Merger Control Regime in India

Merger has become a commonly used strategy for enhancing growth, expanding markets, and achieving synergies by the corporations across the globe. Mergers may result in creation of dominant corporations which can limit competition and harm consumers' interest. Merger Control is the mechanism for ensuring healthy competition and promoting market efficiency.

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INTRODUCTION

Merger has become a commonly used strategy for enhancing growth, expanding markets, and achieving synergies by the corporations across the globe. Mergers may result in creation of dominant corporations which can limit competition and harm consumers' interest. Merger Control is the mechanism for ensuring healthy competition and promoting market efficiency. Merger Control ensures that mergers do not result in the concentration of market power that hampers fair competition and makes an adverse impact on the other market players. It aims at identifying and addressing anti-competitive practices that may arise from creation of a dominant market player. It plays an important role in protecting the interests of consumers by ensuring competitive markets which give a wide range of good quality products and services at lower costs. Merger control encourages market efficiency such as economies of scale and synergies. It ensures that mergers make a contribution to the overall economic welfare and contributes in promoting a level playing field for all types of market players. Merger control authorities thoroughly scrutinize the mergers in order to strike a balance between protecting competition and permitting merger.

LEGAL FRAMEWORK

The Indian merger control regime comprises of the Competition Act, 2002 ('Act') and the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 ('Combination Regulations') made by the Competition Commission of India ('CCI') in exercise of power conferred on it under section 64 of the Competition Act, 2002. Under section 5 of the Competition Act, 2002, any acquisition of one or more enterprises or any merger or amalgamation of enterprises exceeding the threshold limits prescribed therein shall be a 'Combination' for the purposes of the Act. These threshold limits, based on assets and turnover of the parties, are revised from time to time on the basis of changes in Wholesale Price Index or fluctuations in the exchange rates of currencies. The parties to combination are mandatorily required to notify the combination to the CCI where the threshold limits are triggered for approval of combination and exemptions are not available. The requirement of notification within thirty days of triggering of threshold has been removed by the Central Government. Now, the transaction are required to be notified before completion of combination.

The Combination Regulations provide that in case of acquisition or hostile takeover, it is the responsibility of the acquirer to notify and in case of a merger or an amalgamation, a joint notice has to be filed by merging or amalgamating parties. However, in case of joint venture, it is the responsibility of all the parties to file a notice.

The Central Government, on 27th March 2017, by a notification exempted any acquisition, merger or amalgamation, if the enterprise being acquired, taken control of, merged or amalgamated has assets less than ₹ 350 crore or turnover less than ₹ 1000 crore. This exemption was valid for five years from date of notification. On 16th March 2022, the Central Government has extended *de-minimis* for a further period of five years.

The CCI regulates such combinations in order to prevent appreciable adverse effect on competition within the relevant market in India. The CCI has to give due regard to the factors listed under section 20(4) of the Act while determining whether a combination would have an appreciable adverse effect on competition in the relevant market. These factors include actual and potential level of competition through imports in the market, extent of barriers to entry into the market, level of combination in the market, degree of countervailing power in the markets etc.

The CCI has power to direct modification of a combination to ensure that the combination does not result in an appreciable adverse effect on competition within the relevant market in India. While exercising the powers, the CCI can propose both behavioural and structural modifications whereby appreciable adverse effect on competition can be eliminated by suitable modification to the proposed combination. The orders issued by the CCI available on its website show that the CCI has mostly approved the combinations and on certain occasions, it has approved with modifications. Certain enterprises are exempted from filing merger control notification in India such as public financing institution, public sector bank etc. The CCI has extra-territorial jurisdiction under section 32 of the Act by virtue of which it can review global transactions as well.

As far as the procedure for investigation of combination is concerned, within 30 days from the receipt of notice, the CCI has to form a *prima facie* opinion as to whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market in India. If the CCI forms a *prima facie* opinion that the combination would not cause an appreciable adverse effect on competition in the relevant market in India, then it approves the combination. If the CCI is of the *prima facie* opinion that a combination has caused or is likely to cause adverse effect on competition in India, then it shall issue a show cause notice to the parties as to why investigation in respect of such combination should not be conducted. After receiving response from the parties, the CCI shall deal with the notice as per the provisions of the Act. The CCI has been empowered to call for additional information from the parties to deal with the proposed combination. It may require the parties to accept modifications for forming its *prima facie* order.

MERGER CONTROL AUTHORITY IN INDIA

The CCI has played a significant role in facilitating the mergers in India in spite of concerns relating to delays in the process of merger. After enforcement of merger control in India, the CCI has approved 859 merger applications till March 2022 as per their Annual Reports by using analytical tools. By removal of filing timeline, the merger control regime was aligned with international best practices. The CCI introduced 'Green Channel' keeping in view the needs of the market and the best practices in other jurisdiction. Green Channel allows automatic system of approval for combinations and reduces the burden on parties to transactions which have no effect on competition and needs notification only for technical reasons. Following the global best practices, CCI allows an informal and verbal consultation with the Officers of CCI prior to filing of the notice to proposed combination by the parties. Parties can make a request for a pre-filing consultation to seek informal

guidance on (a) determining filing related requirements, (b) information required in the notice for proposed combination and (c) Green Channel. Parties use these consultations to clarify their doubts and seek guidance from CCI. CCI has ensured that the merger control regime in India does not lead to abuse of market power, adversely affect the competition and harm the interest of consumers. It has facilitated the growth of a dynamic and efficient economy in India.

THE COMPETITION (AMENDMENT) ACT, 2023

Recently, on 18th May 2023, Ministry of Corporate Affairs (MCA) notified enforcement of certain provisions of the Competition (Amendment) Act, 2023 ('Amendment Act') including the provisions relating to combinations. With the aforesaid notification, the new threshold limits for filing notice has also been introduced in the Competition Act, 2002. These revised limits are significantly higher than earlier limits. In addition to revising threshold limits, the Amendment Act has also introduced a new criterion for determining notifiability of a combination. Under the new criterion, the CCI has to be notified regarding the combination where the value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds ₹ 2000 crore. However, the enterprise which is a party to the transaction should have substantial business operations in India as may be specified by the regulations.

Table No.1

Threshold Limits for Filing Notice				
		Asset		Turnover
Enterprise	India	More than ₹ 2000 crore	OR	More than ₹ 6000 crore
	Worldwide with India	More than US$1 billion with at least more than ₹ 1000 crore in India		More than US$3 billion with at least more than ₹ 3000 crore in India
Group	India	More than ₹ 8000 crore	OR	More than ₹ 24000 crore
	Worldwide with India	More than US$4 billion with at least more than ₹ 1000 crore in India		More than US$12 billion with at least more than ₹ 3000 crore in India

The Amendment Act has given statutory recognition to the *de-minimis* exemption which was earlier provided through a notification. The provision states that "where either the value

of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as may be prescribed, such acquisition, control, merger or amalgamation, shall not constitute a combination under section 5". However, the *de-minimis* exemption shall not be applicable to combinations notifiable on the newly added basis of deal value threshold. The requirement of substantial business operations in India shall work as *de-minimis* for such combinations.

Table No.2

Threshold Limit for *de minimis* exemption for acquisitions			
Target Enterprise (In India)	**Assets**		**Turnover**
	Not more than ₹ 350 crore in India	OR	Not more than ₹ 1000 crore in India

With the objective of clarifying the scope of turnover to be considered for the purpose of ascertaining whether the transaction meets the financial thresholds, the Amendment Act has provided methodology for computation of turnover.

The Amendment Act has also given statutory recognition to 'Green Channel' which was introduced in August 2019 by CCI, through regulations, for automatic approval of combinations in the spirit of promoting trust based regulation. 'Green Channel' is a unique system, wherein deemed approval is automatically granted to the transactions on the day of filing notice. 'Green Channel' is presently available to those parties that do not exhibit overlap of anykind.

The Amendment Act has also modified the definition of 'control' to include 'the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions'. The definition of 'group' has been amended to 'two or more enterprises where one enterprise is directly or indirectly, in a position to exercise twenty-six per cent or such other higher percentage as may be prescribed, of the voting rights in the other enterprise'.

Further, the Amendment Act has introduced section 6A as an enabling provision to allow open market transactions on stock exchanges to be undertaken as an exception to standstill obligations. Under this new framework, parties can conduct market purchase without a prior notification to the CCI. However, parties are required to give notice of such purchase to the CCI within the specified time. Moreover, parties are prohibited from exercising any ownership or beneficial rights or interest in such shares until the CCI approves the combination, except as specified by the regulations.

> The CCI has played a significant role in facilitating the mergers in India in spite of concerns relating to delays in the process of merger. After enforcement of merger control in India, the CCI has approved 859 merger applications till March 2022 as per their Annual Reports by using analytical tools. By removal of filing timeline, the merger control regime was aligned with international best practices.

The Amendment Act has also reduced the time limit for review of combinations from 210 days to 150 days. It has also introduced the timelines for prima facie opinion. Now, CCI is required to form prima facie opinion within thirty days of receipt of notice. If the CCI cannot form prima facie opinion within the thirty days period, then the combination shall be deemed to have been approved.

CONCLUSION

The mandatory notification has provided a mechanism for CCI to ensure that there shall be no violation of the Competition Act, 2002 at the time of merger. The merger control is an effective and efficient mechanism to check the control the abuse of concentration of powers through merger. In this regard, CCI has played a proactive role in granting approvals to the combination since merger control regime came into force in India. As per annual reports of CCI, the average number of working days for disposal of merger filing increased from 16 days in 2011-2012 to 29 working days in 2016-17 and from there it has come down to 17 working days in 2021-22. However, there are issues relating to streamlining of process in order to reduce the time taken to clear merger filings. It is expected that the competition regulator will continue to balance the requirements of an efficient merger control regime with the need to promote and sustain competition while protecting consumers interest and ensuring freedom of trade in the markets in India. Further the new amendments with significant higher threshold limits, extension of *de-minimis* exemption and Green Channel are welcome steps to meet the practical challenges in merger control.

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ARTICLE

Understanding Merger & Acquisitions Coupled with a Few Case Studies of Recent Mergers

Merged business also get the advantage of improved economic scale, lower labour cost, increased market share, more financial resources and enhanced distribution capacities. M & As could also fail at times due to variety of reasons such as integration issue, cultural differences, overpayment and such other reasons. The companies before merging need to have a thorough study on this and understand the advantages and disadvantages and structure the merger arrangement in such a way, the merged entity gets the best advantage and able achieve the desired goals.

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INTRODUCTION

M & As help the aspiring entities to expand geographically and assists them to reach the greater height and become market leaders. Also M & As would increase the entity's ability to distribute goods or services on a wider scale which allows the entity to reach a wider market of consumers. This also helps to expand brand recognition and increase sales. The consumer also gets competitive products with improved technology. This article attempts to understand, the concept of M & As as well as study on some of the M & As which have happened in the last few years with reference to their reasoning and the advantages.

MERGERS AND ACQUISITIONS (M & As)

The terms M & As is a term for company consolidation when two or more companies merge into one entity is called a merger. When we refer the term acquisition, it means to the purchase of one entity by another and in this case, instead of starting a new company, one company becomes part of another company. Mergers and acquisitions are an important part of strategic management that is included in corporate finance. This topic deals with the purchase, sale, spin off and merger of different companies. we could also say that it is a type of restructuring of the company with the aim of growing rapidly thereby increasing the profitability and also gaining more market share

TYPES OF MERGERS

There are three types of mergers as stated below:-

Types of Mergers			
Sr. No	**Merger type**	**Brief details**	**Example**
1	Horizontal Merger	This type of merger happens when both companies are in the same line of business.	Disney bought Lucas firm and both companies were involved in production of film and running the TV shows.
2	Vertical Merger	This type of merger happens when both companies are in the same line of production but sage of production is different.	Microsoft bought Nokia to support it's software and provide hardware necessary for the smartphone.
3	Conglomerate Merger	This type of merger happens when both companies are in totally different line of business. This kind of merger mostly takes place in order to diversify and spread risk, in case of current business stops yielding adequate profits.	Berkshire Hathway acquired Lubrizol.

EFFECT ON COMPANY DUE TO M & As

Any corporate merger or acquisition can have a profound effect on the growth of a company and its prospects when we take a long term look. However M & As come with significant and greater amount of risk though the arrangements that could transform the company literally overnight. There can be failures in M & As besides many successful mergers. However, due to merger and acquisitions companies get the benefits of long term growth, to face the competition strongly coupled with

synergies and becoming a dominant player in the market associated with tax benefits, all leading to achieving the economies of scale, consolidation, eliminating or avoiding duplicate resources by combination of similar business. Quite a good amount of saving the resources in terms of maintain regional offices, manufacturing facilities, research and development activities and many other things. Ultimately, every rupee of fraction of rupee thereof saves goes straight to the bottom line of the company leading to boost the earning per share and making the Merger and Acquisitions accretive one.

REASONS FOR FAILURE OF M & As AT TIMES

The following major reasons could be attributed for the failures of M & As at times.

Reasons for failure of M & As		
Sr. No	**Heading**	**Brief details**
1	Integration risk	In many cases, seen practically, integrating the operations of two companies proves to be a much more difficult task which could result in the combined company being unable to reach the desired targets in terms of cost savings from synergies and economies of scale.
2	Overpayment	If company A is unduly bullish about company B's prospects—and wants to forestall a possible bid for B from a rival—it may offer a very substantial premium price for B. Once it has acquired company B, the best-case scenario that A had anticipated may fail to materialize. Such overpayment could be a major drag on future financial performance of the company.
3	Culture clash	M&A transactions sometimes fail because the different cultures followed by the corporate which are so dissimilar. The cultural adjustments between the merging company and the merged company needs to be addressed.

GOVERNING LAW ON M & As

M & As are governed by the current Companies Act 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

RECORD LEVELS OF MERGER ACQUISITION IN YEAR 2022

Our country witnessed a record level of M & As in the year 2022, as companies sought to consolidate positions, and enter new segments, leading to some of the largest-ever transactions in sectors such as banking, cement and aviation. As per the statistics available, the total value of M&As deals in the year 2022 in our country stood at $152 billion in 2022 as compared to $107 billion in the year 2021, according to the Managing Director and Chief Executive Officer for investment banking at JM Financial. Readers may be interested in knowing the top five M & As which happened in the year 2022 which are indicated in the below given table.

Major M & As in the year 2022				
Sr. No	**Target company**	**Acquirer**	**Details**	**value (in $ billion)**
1	HDFC Bank	HDFC Ltd	Deal type	40
2	Air India	Vistara	Domestic	8.9
3	Spring energy (Actis)	Shell Plc	Merger	1.55
4	Bharati Airtel	Google	Inbound	0.7

SOME OF MERGER CASES

We shall go through some of the merger cases which happened in the recent past in order to understand the reason, strength, structure and deal details to have a better understanding on this subject which happened in the last one decade. In order to have a better understanding as to why mergers are taking place, its reasoning and its benefits etc., we shall go through some of the mergers that took place in the last few years in different sectors such as FMCG, Telecom, Banking etc.

CONSOLIDATION OF TATA GROUP AIR INDIA AND VISTARA – 2022 (AIRLINE BUSINESS)

In the year 2022, the Tata group consolidated its airlines, Vistara and Air India and with this consolidation, Air India has become India's leading domestic and international carrier with a combined fleet of 233 aircraft, making it India's largest international carrier and second largest domestic carrier. The consolidation is done keeping in mind the following aspects:-

(a) The consolidation would give Air India scale and heft with a fleet of around 233 aircraft and lead to a reduction in operational costs with the airline synergies.

(b) The consolidation also would give Air India more bargaining power in its dealings with original equipment manufacturers such as aircraft and engine makers.

Though it is long past of Tata's glory days, Air India definitely will have its advantages, like the prime time slots, it has across domestic and international airports. The Tata group is known for its focus on flight safety, focus on full services model than low cost, more focus on passenger safety, passenger lounge and inflight services and above all they would also have more focus on optimizing operating cost by controlling

maintenance cost using in house maintenance & repair facilities, saving on Forex reserves and elimination of middleman.

ZOMATO ACQUISITION OF UBER EATS – 2020 (FOOD MARKETING INDUSTRY)

Zomato acquired Uber Eats for an all-stock acquisition deal during the year 2020. The acquisition deal provided great discounts to customers and it was the most beneficial to the customer during the Covid pandemic time. The stock deal was done by the companies operating in the same line of business. Which resulted Zomato becoming number one in food marketing and food supply. In other words Zomato became the megastar of the food business and in turn Uber Eats could invest their money in other growing business. The brief reasons for Zomato's acquisition was as under:-

(a) Uber Eats being a smaller company, the acquisition provided speedy and efficient services at a lower cost by Zomato since Zomato being a larger organisation than Uber Eats and both operated in the same line of business but Uber was not able to influence the market.

(b) The acquisition helped Zomato to gain competitive benefits from Swiggy as the combination of Zomato with Uber Eats helped to a greater extent in increasing its market share to more than 50 per cent of the market, pulling it ahead of Swiggy.

(c) Zomato also gained greater negotiating power with restaurants which resulted into reduce the losses.

(d) Prosus Ventures backed Swiggy, as per the industry, is considered to be the top food delivery business in our country and Zomato's main aim was to become the Food Tech or Food Hub in the food market.

One could conclude, that Zomato was doing well being a larger organization than Uber Eats and after the acquisition, Zomato could achieve its goal to a greater extent and the food consumer gained due to competitive pricing, quick delivery at the convenient time etc. All said and done, after the exit of Uber Eats from the food delivery business, the local food delivery market a duopoly between Swiggy and Zomato

INDIABULLS HOUSING FINANCE AND LAKSHMI VILAS BANK MERGER - 2019 (BANKING)

Indiabulls Housing Finance Limited and Indiabulls Commercial Credit Limited entered into merger arrangement with Lakshmi Vilas Bank Limited in the

year 2019 after obtaining the necessary approval from the Competition Commission of India. Upon the merger, the merged entity would be known as Indiabulls Lakshmi Vilas Bank which is to be the top eight private banks by size and profitability as per the Indiabulls Housing Finance.

Lakshmi Vilas Bank is a popular bank in southern part of the county with 569 branches and 1,046 ATMs across 19 states and one Union territory while Indiabulls Housing Finance is involved in providing home loans, loan against property to retail customer including MSMEs and businesses, lease-rental discounting and construction finance through a network of branches spread across 18 states and three Union territories. This merger had happened due to the following reasons:

(a) That the merger wold unlock significant value through synergies and create a diverse retail loan book.

(b) The merger would be beneficial for both organizations creating value through its various synergies that exist exclusively but in unison, create a large and healthy diverse retail asset book, high capital base for strong growth, huge opportunity to foray into newer businesses that may increase the risk free income base of amalgamated entity such as wealth management, asset management and securities.

(c) The merger would increase the geographic presence of the merged entity as Indiabulls has a strong presence in northern and western part of the countries while Lakshmi Vilas Bank has a strong presence in the southern part of the country.

(d) After the merger, there would be access to low-cost deposits and an expanded distribution franchise and merger also would help housing finance to grow loan book through a suite of consumer loan products, and give it access to new fee generation opportunities. The Lakshmi Vilas Bank's shorter tenor loans coupled with Indiabulls longer maturity book would ensure asset liability mismatch optimization. Diversified loan book would lead to evenly distributed risk profile.

One can conclude in considering the risks associated on this merger, if the planned synergies work out well, it could improve visibility of the entity's long-term growth trajectory considering both the entity's good track record of India bull managing loans and good recovery, the banking platform after the merger could bring synergies in the medium to long-term.

VODAFONE INDIA AND IDEA CELLULAR MERGER - 2018 – (TELECOM SECTOR)

A new company was created on 31st August 2018 by the merger of Vodafone India and Idea Cellular, to form a new entity name Vodafone Idea. The merger deal was worth of $ 23 billion. This merger had happened in order to fight the competitive pricing policy taken by the other major player Reliance Jio and the most beneficial was the consumer because of this merger. Now all the telecom industry players in the market would try to bring in the best technology at the best possible price and with increaser

> Due to merger and acquisitions companies get the benefits of long term growth, to face the competition strongly coupled with synergies and becoming a dominant player in the market associated with tax benefits, all leading to achieving the economies of scale, consolidation, eliminating or avoiding duplicate resources by combination of similar business. Quite a good amount of saving the resources in terms of maintaining regional offices, manufacturing facilities, research and development activities and many other things.

better customer service in order to maintain the customer loyalty and increase its market share. This acquisition had happened due to the following reasons:

(a) With both companies merging together, they have gained immensely as this was a horizontal merger between the two larger players in the telecom industry.

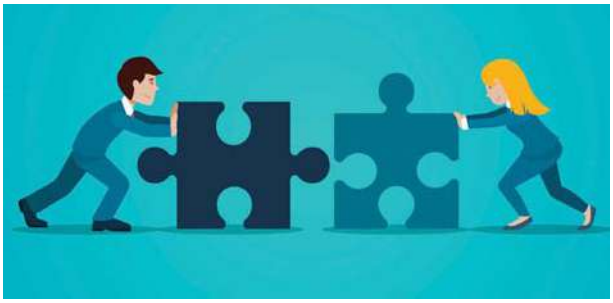
(b) Rationale behind this merger was that the synergy would be extremely cost effective and it was expected there would be enormous annual cost savings upon merger and the saving would be in the form of capital and as well as on the operating costs.

(c) Both the companies ENITDA (earnings before interest, tax, depreciation, and amortization) were around the margin of 30% which was comparatively lower than that of the other two major players in the market (i.e., Bharti Airtel and Reliance Jio Infocom Ltd) which the company expected to improve upon after merger by achieving the economies of scale / cost savings.

(d) Upon the merger, the combined entity gained around 400 million subscribers amounting to a market share of 35% and also a revenue market share of 40%.

(e) For both companies, due to lower spectrum individually, it was difficult for them to compete in the industry with the other two major players who were enjoying the higher spectrum and upon merger the merged entity with higher spectrum would help them effectively competing in the industry and the merged company would be ranked as number one or two in the market place.

The deal of merger was an all-share merger which later moved on to the deconsolidation of Vodafone operations in India and the deal excluded Vodafone's 43% share in the Indus Towers. The promoters of both companies had equal rights on important matters. Both the companies had joint control over the appointment of the Chief Operating



Officer and the Chief Executive Officer. The merger of Vodafone India and Idea Cellular increased their reach by providing collectively 4G services to a wider range with the combined assets of both the companies by providing a better services, airwaves, and workforce. The merger also benefited the customer with better quality of network and expansion of the same across the country.

One could conclude in saying that the merger had helped in creating competitive pricing policy taken up by Reliance Jio and at the end of the day the consumer is the most beneficial because of this merger as consumer would get the best technology coupled with best price and with better customer service since all telecom players would like to maintain customer loyalty.

MYNTRA ACQUISITION BY FLIPKART - 2014 (FMCG COMPANY)

In the year 2014, Flipkart acquired Myntra in a deal valuing at Rs. 2000 crore (US$ 250 million) and the acquisition was influenced by two large common shareholders Tigar Global and Accel partners. This acquisition had happened due to the following reasons:

(a) This acquisition allowed Flipkart to venture into fashion space which was untapped market by Flipkart before the merger enabling Flipkart to exploit the market which was unavailable for them earlier.

(b) Flipkart had the diversification plan with them into the fashion industry, and this merger helped them to achieve the goal of diversification which was crucial for their presence in the fashion industry.

(c) The merger of acquisition of Myntra was cost effective for Flipkart rather than building the new business from the scratch – since they were able to acquire already established state-of-art industry.

(d) This one was an attractive buy for Flipkart since Myntra was very successful in fashion industry and due to its competitive edge over Amazon and Snapdeal.

With the merger, both entities were able to consolidate their strength due to 24 hours delivery system by Myntra coupled with schemes and discounts and they were able to earn the customer trust, with excellent service with inflow of investment. This deal enable to take advantage of both entities mutual synergies i.e., superior era of Flipkart market management of Myntra to facilitate every other's increase and no doubt, this deal furnished a possibility for style and era to painting collectively and make contribution to every other's increase thereby making it a win-win state of affairs for each of the parties.

CONCLUSION

While Merger & Acquisitions and consolidation are prevalent in almost all the industries, only selected few of them turn out to be successful and we discussed the reasons for the failure of M & As in the beginning which could vary from industry to industry. It is also seen, most of the M & As are predatory and take place when the entities are doing well. In order to avoid the failures / disastrous situation, the companies should take extra precautions before entering into M & As in order to ensure they are taking on an asset and not just a liability.

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Impact on Listed Companies of Amendments to Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

According to Regulation 30(1), every listed entity shall make disclosures of any events or information which, in the opinion of the Board of Directors of the listed company, is material. The word 'material' is not used in the sense in which it is used in the provisions relating to material related party transaction or material subsidiary.

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INTRODUCTION

By the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023, SEBI has amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations') w.e.f. 14.7.2023, by inserting certain provisions in Regulation 30 and its appendices, namely Part A of Schedule III.

Regulation 30, entitled **Disclosure of events or information,** inter alia, provides as follows:

"(1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4)."

According to Regulation 30(4), the listed entity shall consider the following criteria for determination of materiality of events/ information:

(a) The omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

(b) The omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date; or

(c) The omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following:

  (1) Two percent of turnover, as per the last audited consolidated financial statements of the listed entity;

  (2) Two percent of net worth, as per the last audited consolidated financial statements of the listed entity, except in case the arithmetic value of the net worth is negative;

  (3) Five percent of the average of absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the listed entity;

(d) In case where the criteria specified in sub-clauses (a), (b) and (c) is not applicable, an event or information may be treated as being material if in the opinion of the board of directors of the listed entity, the event or information is considered material…"

The key criteria under Regulation 30(4) are-(a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly, or (b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date.

The amended Regulation 30(6)[1] provides as follows:

"The listed entity shall first disclose to the stock exchange(s) all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:

(i) thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;

(ii) twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;

(iii) twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity:

Provided that disclosure with respect to events for which timelines have been specified in Part A of Schedule III shall be made within such timelines:

Provided further that in case the disclosure is made after the timelines specified under this regulation, the listed entity shall, along with such disclosure provide the explanation for the delay."

1. *Substituted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 w.e.f. 14.7.2023. Prior to the substitution, the sub-regulation read as follows:*

"(6) The listed entity shall first disclose to stock exchange(s) of all event, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:

Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:

Provided further that disclosure with respect to events specked in sub pars 4 of Para A of Part A of Schedule III shall be made within the timelines specified therein."

As noted above, according to Regulation 30(1), every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material. The word 'material' is not used in the sense in which it is used in the provisions relating to material related party transaction or material subsidiary. The question what is material is always a difficult question to answer with precision though it is often used in statutes, rules or regulations. The literal meaning of this word is 'important and needing to be considered when making a decision'; of substantial or crucial importance; of substantial import; of much consequence; relevant to or having significant bearing upon; likely to influence the determination of a case; having real importance or great consequences. The *Black's Law Dictionary*, 9th edition, defines it as a "representation relating to matter which is so substantial and important as to influence party to whom made is material".

Regulation 30 of LODR Regulations corresponds to Clause 36 of the erstwhile Listing Agreement, which required, among other things, disclosure of "all the events, which will have bearing on the performance/ operations of the company as well as price sensitive information."

In its Circular No. CIR/CFD/DIL/2/2013 dated 3 January 2013 SEBI had emphasized the need for disclosures under Clause 36 as follows:

"It is … reiterated that all the events or material information which will have a bearing on the performance/ operations of the company as well as price sensitive information shall be first disseminated to the stock exchanges as required under Clause 36 of the Listing Agreement

The rationale of Regulation 30 (like Clause 36 of the erstwhile Listing Agreement) is that when an event having bearing on the performance/operations of the company or price of the share of a listed company occurs, the investors must be made aware of it so that they can take informed decisions about investment in the company's shares. In addition, timely disclosure of such information helps to avoid insider trading by those who are connected with the company. It also ensures transparency in respect of affairs of the company.

In *Suzlon Energy Ltd. v. SEBI,* Appeal No. 201 of 2018, Order dated 3 May 2021, the Securities Appellate Tribunal held that, the words material / materiality means anything which is likely to impact an investor's investment decision and depends on the facts of each case. The objective of Clause 36 of the Listing Agreement is to enable the shareholders and the public to appraise position of the Company and enable investors to take an informed decision.

In *ICICI Bank Limited vs Securities and Exchange Board of India* (Appeal No. 583 of 2019 decided on July 8, 2020) the Tribunal while considering Clause 36 of the Listing Agreement (which contained a similar requirement which now contains in Regulation 30 of LODR Regulations) held:

"… Clause 36 is sweeping in nature as it mandates all disclosures to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. It also mandates that the Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. Sub clause 7 further mandates disclosure of any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to the specified events. Under 7(ii) comes merger, amalgamation etc. Price sensitive information as defined under PIT Regulation 2(ha) "means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company."

According to clause (13) now inserted in Regulation 30 is restricted to only those matters which are required to be disclosed under Regulation 30 read with Para A and Para B of Part A of Schedule III of the LODR Regulations. In other words, if a company is disclosing to the stock exchange any matter falling within the ambit of Regulation 30 read with Para A and Para B of Part A of Schedule III and in connection with that the company has received communication from any regulatory, statutory, enforcement or judicial authority, the same must be disclosed in the letter making to the stock exchange the disclosure, unless disclosure of such communication is prohibited by such authority.

> The question what is material is always a difficult question to answer with precision thought it is often used in statutes. The literal meaning of this word is 'important and needing to be considered when making a decision'; of substantial or crucial importance; of substantial import; of much consequence; relevant to or having significant bearing upon; likely to influence the determination of a case; having real importance or great consequences.

Clause (13) of Regulation 30 reads as follows:

"(13) In case an event or information is required to be disclosed by the listed entity in terms of the provisions of this regulation, pursuant to the receipt of a communication from any regulatory, statutory, enforcement or judicial authority, the listed entity shall disclose such communication, along with the event or information, unless disclosure of such communication is prohibited by such authority.

The scope of sub-regulation (13) should be understood having regard to the purport and object of Regulation 30 of the LODR Regulations as such. It may be recalled that under Regulation 30, every listed entity is required make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

Insertion of Item (20) in Para A of Part A of Schedule III,

Schedule III, Part A contains "Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30)".

According to Part A, the specified events/information, upon occurrence of which a listed entity shall make disclosure to stock exchange(s). It is mandatory for every listed entity to inform the stock exchange(s) of any events or information which is material.

The amending notification has inserted in Part A of Schedule III Item 20, which reads as follows:

20. Action(s) taken or orders passed by any regulatory, statutory, enforcement authority or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary, in relation to the listed entity, in respect of the following:

(a) suspension;

(b) imposition of fine or penalty;

(c) settlement of proceedings;

(d) debarment;

(e) disqualification;

(f) closure of operations;

(g) sanctions imposed;

(h) warning or caution; or

(i) any other similar action(s) by whatever name called;

along with the following details pertaining to the actions(s) initiated, taken or orders passed:

i. name of the authority;

ii. nature and details of the action(s) taken, initiated or order(s) passed;

iii. date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority;

iv. details of the violation(s)/contravention(s) committed or alleged to be committed;

v. impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible."

The timeline stipulated in sub-regulation (6) of Regulation 30 must be carefully noted. Every the listed entity shall first disclose to stock exchange(s) of all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following: (i) thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken; (ii) twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity; (iii) twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity. Further, the disclosure with respect to events for which timelines have been specified in Part A of Schedule III shall be made within such timelines. Further, in case the disclosure is made after the timelines specified under this regulation, the listed entity shall, along with such disclosure provide the explanation for the delay.

The words "as soon as reasonably possible" emphasize the requirement of making disclosure immediately on the happening of an event that requires disclosure and the word "reasonably" contemplates a time in a fair and moderate degree which might not make it possible to make the disclosure immediately on the happening of an event. The outer time limit is 24 hours from the happening of an event.

According to Item 20 of Para A of Part A of Schedule III, action(s) taken or orders passed by any regulatory, statutory, enforcement authority or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary, in relation to the listed entity, in respect of the matters specified at (a) to (i) mentioned above.

This disclosure is limited to an order of any regulatory, statutory, enforcement authority or judicial body, such as MCA, SEBI, Stock Exchange, Tribunal or Court, Income Tax or other Tax authority, Enforcement Directorate, CBI, Serious Fraud Office, etc. The words "action(s) taken or orders passed" should be applicable only if its result is any of the matters specified at sub-items (a) to (h) and such action or order results in completion of the matter when a final order is passed by the authority.

The word "suspension" seems to have been used to refer a sort of "cease and desist" order. For example, if the company or any other person specified (directors, key managerial personnel, senior management, promoter or subsidiary) is suspended by SEBI from dealing in securities or accessing the stock market; or penalty is imposed by any court, tribunal or adjudicating authority, it will attract Item 20. Likewise, if a director of a company is disqualified under section 164 of the Companies Act 2013 or any other provision of the Companies Act or any other law or by an order of any court or tribunal having such authority, it will attract Item 20. A closure of operations by the company of any of its business or unit or division or a subsidiary company should also be disclosed.

Item 20(i) "any other similar action(s) by whatever name called" would cover any action taken or order passed by any authority which is not specifically of the kind mentioned at (a) to (h) but which is similar, akin or analogous to any of them. For example, if the Enforcement of Directorate seizes or impounds any property of the company or a tax authority confiscates goods of the company or a court has restrained the company from transferring its property or a creating a third-party interest, such action may fall within the ambit of Item 20. If a court or tribunal passes an order temporarily superseding the company's Board, it will also attract Item 20.

An action or order of the kind mentioned in Item 20 must be disclosed even if the company or person concerned has challenged the action or order by way of appeal or review, along with the statement of such appeal or review.

Insertion of Item (8) in Para B of Part A of Schedule III

Schedule III, Para B of Part A specifies "events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30)"

The amending notification has inserted Item 8 in Para B of Part A of Schedule III. It reads as follows:

"8. Pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on the listed entity."

Disclosure under this Item will be required if either of the following two conditions is satisfied:

- First, some litigation (suit, petition, application, appeal, compounding application, etc) filed by or against the company is pending in any court, tribunal or other authority, is likely to have an impact on the listed entity; or
- Second, the outcome of such litigation, i.e. order passed, is likely to have an impact on the listed entity.

For example, if a demand for tax payment raised by a tax authority is pending in a litigation which is going to have any financial impact on the listed entity, it must be disclosed.

Unfortunately, Item 8 does not specify any threshold monetary limit to trigger the disclosure in this regard; so every petty demand or disputed liability is covered. The SEBI may probably consider making Item 8 applicable only in relation of litigation involving an amount above a certain limit. There may also be cases where there is no direct financial liability involved but which may severely affect the company's business or its very existence; such as winding up petition, an application under Insolvency & Bankruptcy Code or closure of a unit under environment protection law. Merger, demerger or other scheme of compromise or arrangement, takeover, transfer of undertaking, transfer of significant number of shares by the promoter, etc.

It is impossible to contemplate or provide a complete list of matters which would fall within the ambit of Item 8, but a decision will have to be taken in each case having regard to the purpose and object of Regulation 30 and the criteria of materiality. The heading of Part B specifically provides that "the guidelines for materiality referred sub-regulation (4) of regulation (30)" should be taken into account while deciding the requirement of disclosure of pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on the listed entity.

Paragraph B of Annexure 18 to SEBI Circular No. SEBI/HO/CFD/PoD2/CIR/P/2023/120 (Master Circular) dated 11 July 2023 provides guidance regarding disclosure to be made with respect to Item 8 of Para B of Part A of Schedule III. It corresponds to the now rescinded SEBI Circular No. CIR/CFD/CMD/4/2015 dated 9 September 2015. Relevant portion of Annexure 18 reads as under:

DETAILS TO BE PROVIDED WHILE DISCLOSING EVENTS GIVEN IN PART A OF SCHEDULE III OF THE LODR REGULATIONS

B. Details which a listed entity need to disclose for events on which the listed entity may apply materiality in terms of Para B of Part A of Schedule III of LODR Regulations of LODR Regulations

8. Litigation(s) / dispute(s) / regulatory action(s) with impact: The listed entity shall notify the stock exchange(s) upon it or its key management personnel or its promoter or ultimate person in control becoming party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication, arbitration or dispute including any ad-interim or interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact.

8.1. At the time of becoming the party:

a) brief details of litigation viz. name(s) of the opposing party, court/ tribunal/agency where litigation is filed, brief details of dispute/litigation;

b) expected financial implications, if any, due to compensation, penalty etc;

c) quantum of claims, if any;

8.2. Regularly till the litigation is concluded or dispute is resolved:

a) the details of any change in the status and / or any development in relation to such proceedings;

b) in the case of litigation against key management personnel or its promoter or ultimate person in control, regularly provide details of any change in the status and / or any development in relation to such proceedings;

c) in the event of settlement of the proceedings, details of such settlement including - terms of the settlement, compensation/penalty paid (if any) and impact of such settlement on the financial position of the listed entity.

While considering whether to disclose or not, it is advisable to take a cautious and conservative view and adopt the "disclose rather than avoid/hide" approach, keeping in view the purpose and object of Regulation 30 and consequences of non-compliance as discussed earlier in this Opinion.

ARTICLE

Sustainable Development Through Extended Producer Responsibility: an Overview

Increasing urbanization and industrialization has led to a corresponding increase in the waste generation and waste management issues. This has also given to a rise in the negative effects of the waste disposal on the human and natural environment. Recognizing this issue, the global world has introduced the concept of Extended Producer Responsibility (EPR). EPR is a tool whereby the producer of the goods, which affect the environment at the end-of-life of the products, is expected to bear responsibility for the disposal of the goods.

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INTRODUCTION

When the industrial revolution took place in the 18th century, it was also the start of challenges associated with the revolution, mainly its effect on the surrounding environment. The rapid technological development resulted in growth of large-scale factories, which in turn resulted in unprecedented increase in air pollution as well as water pollution resulting from chemical discharges. As an effect of this, the environmental protection laws started developing in the 19th century, the main purpose of the same being control of pollution caused by the rapidly developing industries. This gradually led to the development of the Polluter Pays Principle.

The Organization for Economic Co-operation and Development in its Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies adopted on 26th May 1972, recognized the fact of scarcity of resources and the need for better allocation of such scarce resources by ensuring that the price of goods and services reflect the cost of scarce environmental resources[1]. The Polluter Pays Principle as envisaged in the Guiding Principles meant that the polluter should bear the cost of prevention and control of pollution caused by his activities, to ensure that the environment is in an 'acceptable state'. The term 'acceptable state' meant the level of acceptable pollutants as may be decided by the governmental authorities[2]. Thus, the Polluter Pays Principle was adopted by the Organization for Economic Co-operation and Development as an economic principle to ensure that cost of pollution is allocated to the polluter. The purpose of the principle was not to pass on all the public expenditure to the polluter[3], but to ensure that the financial burden was placed on the polluter, who would be best placed to effect technological and other changes resulting in prevention of pollution[4]. Thereafter, since 1990, the Polluter Pays Principle was considered as a general principle of international law which was evidenced by the incorporation of the said principle in environmental laws of various nations.

In India, the "National Conservation Strategy and the Policy Statement on Environment & Development, 1992" issued by Ministry of Environment & Forests, Government of India, on 26th February 1992, emphasizes pollution prevention / abatement, and promotion of cleaner technologies to reduce industrial pollutants[5]. The Policy Statement for Abatement of Pollution 1992 issued by the Ministry of Environment & Forests has, in its directions for way forward, pointed out that steps must be taken to ensure that polluter pays for the pollution and control arrangements[6].

It indicates the intention of the government to have a long-term perspective in environmental policy making with a mix of instruments being used like regulations, incentives, voluntary agreements, educational programmes and awareness campaigns, with an increased focus on regulations and financial incentives. The policy recognises the need to seek a balance between economic development and environmental concerns.

EPR AS A POLICY TOOL

The Polluter Pays Principle was intended to promote efficient allocation of resources to ensure protection of the environment. However, the Polluter Pays Principle resulted in the focus of the public authorities on control of pollution at the production process level and on end-of-the-process controls. Over a period of time, it was found

that the Polluter Pays Principle and related production facility-centric policies had failed to create incentives for producers to look at the entire product life-cycle and create an environmental impact through raw material choices and product design. This led to the development of the concept of Extended Producer Responsibility (EPR). The concept of EPR was first introduced by Thomas Lindquist in his report to the Government of Sweden[7]. EPR requirements thus appeared on the policy landscape of European countries.

EPR as a policy approach was soon recognized by nations as well as the Organization for Economic Co-operation and Development. The Organization for Economic Co-operation and Development (OECD) started work on the concept of EPR in 1994 through three phases. The first phase consisted of research on the legal aspects of the concept, the second phase involved a study of the already implemented EPR programmes for packaging and the third and final phase was information sharing and discussion on policy design issues with stakeholders[8]. Post completion of the final phase, the OECD published a guidance manual by the name of Extended Producer Responsibility: A Guidance Manual for Governments in 2001. OECD in its EPR Guidance Manual defines EPR and its features as under:

"EPR is an environmental policy approach in which a producer's responsibility, physical and/or financial, for a product is extended to the post-consumer stage of a product's life cycle. There are two related features of EPR policy: (1) the shifting of responsibility (physically and/or economically; fully or partially) upstream to the producer and away from municipalities, and (2) to provide incentives to producers to incorporate environmental considerations in the design of their products."[9]

While EPR appeared initially in the European Region, as of today, it has spread widely as a policy tool for environmental regulation. Its spread has been wide in terms of the products covered as well as the geographical coverage. In 2015, Daniel Kaffine and Patrick O'Reilly, conducted a survey of EPR literature, to find out the learnings in respect of EPR in the past decade.[10]. Out of the 369 EPR policies surveyed, over 70% of the policies had been implemented since the year 2000, indicating an increase in the use of EPR as a policy tool for environmental protection in the recent times.

EPR DEVELOPMENT IN INDIA

In India, the law related to environment is governed by an umbrella legislation, the Environment Protection Act 1986 ("EPA 1986") and the rules made thereunder. As the Preamble to the EPA 1986 states, pursuant to the United Nations Conference on the Human Environment held at Stockholm in 1972, where India was a participant, appropriate steps needed to be taken for protection of environment. Post the Stockholm conference, the EPA 1986 was passed to protect and improve the environment and other related matters. The EPA 1986, in Sections 6 and 25, empowers the Central Government to pass rules in respect of all or any of the matters covered under Section 3 which specifies the powers of the Central Government under the EPA 1986.[11]

On the EPR front, the first introduction to the concept of EPR was made through the notification of the Batteries (Management and Handling) Rules 2001 ("BMHR Rules 2001"). The BMHR Rules 2001 clearly defined the responsibilities of the manufacturer, importer, assembler, and re-conditioner to ensure that used lead acid batteries are collected and sent back to registered recyclers. Though the term EPR was not used or defined in the BMHR Rules 2001, the ideology of EPR was clearly incorporated in the said rules.

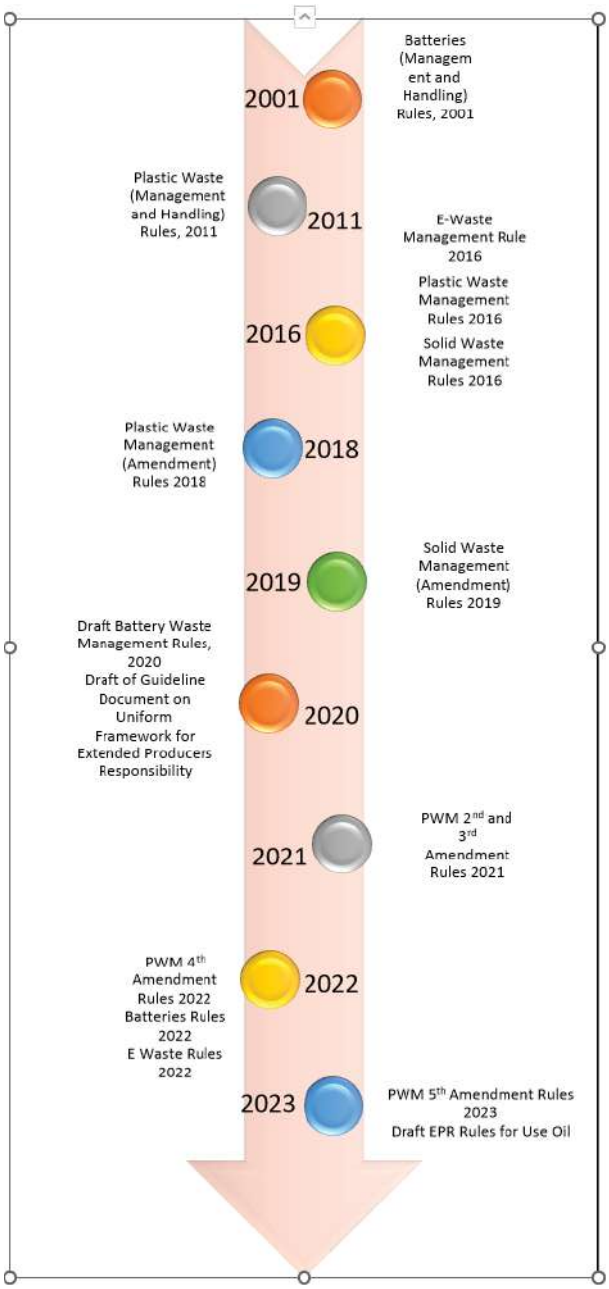
Thereafter, the first attempt to incorporate the concept of EPR was made in the year 2005, when a private member's bill was introduced in the Rajya Sabha titled "The Electronic Waste (Handling and Disposal) Bill 2005". The Bill attempted to provide for proper handling and disposal of electronic waste generated in the country and was introduced by Shri Vijay Darda.[12] However, the Bill lapsed in 2010 and thereafter, the E-Waste Management Rules 2011 were introduced, where the term 'extended producer responsibility' was first defined.

Thereafter, under this delegated legislation, the Central Government has notified the rules for management and handling of different types of wastes. The different types of wastes are managed through the rules issued under the EPA 1986 as per the table given below:

Sr. No.	Type of Waste	Rules currently governing the waste management
1.	Lead Acid Batteries	Batteries Waste Management Rules 2022 ("BWM Rules 2022")
2.	Electronic waste	E-Waste Management Rules 2022 ("EWM Rules 2022").
3.	Plastic and plastic packaging	Plastic Waste Management Rules 2016 ("PWM Rules 2016")
4.	Solid waste	Solid Waste Management Rules 2016 ("SWM Rules 2016").
5.	Hazardous waste including Waste Tyres and Used Oil	Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016** ** Schedule IX (Extended Producer Responsibility for Waste Tyre) under these Rules issued by Ministry of Environment, Forest and Climate Change on 21st July 2022. Draft notification for EPR for Used Oil through Hazardous and Other Wastes (Management and Transboundary Movement) Amendment Rules, 2023 issued on 2nd May 2023.
6.	Construction & Debris waste	Construction and Demolition Waste Management Rules 2016.
7.	Bio-medical waste	Bio-Medical Waste Management Rules 2016.

The concept of Extended Producer Responsibility is relevant in the case of waste streams where the generation

of waste is at the customer end, and hence more difficult to control. Hence, the rules relating to E-Waste, Plastic Waste, Batteries, Solid Waste, Waste Tyres and Used Oil incorporate the concept EPR. An overview of how the EPR legal framework has developed over a period of time in India is given below:



The development of EPR rules in India underwent a major overhaul in the year 2016, during which time there was an introduction in the rules in terms of EPR liability of various stakeholders. Further, there are lots of developments taking place in the EPR regulatory front during 2022 and 2023, which is evident from the fast development in rules relating to plastic waste, waste batteries, waste tyres as well as e-waste.

> In India, the "National Conservation Strategy and the Policy Statement on Environment & Development, 1992" issued by Ministry of Environment & Forests, Government of India, on 26th February 1992, emphasizes pollution prevention / abatement, and promotion of cleaner technologies to reduce industrial pollutants[iii]. The Policy Statement for Abatement of Pollution 1992 issued by the Ministry of Environment & Forests has, in its directions for way forward, pointed out that steps must be taken to ensure that polluter pays for the pollution and control arrangements.

MAIN FEATURES OF THE EPR RULES

A table on the main features of the EPR rules in the Indian legal framework applicable to different waste product streams is given in *Appendix 1.*

IMPLEMENTATION OF EPR RULES AND REPORTING

The concept of sustainable development is embedded in the concept of EPR. It is one of the most important compliance points which needs to be implemented by a corporate professional, considering that non-compliance would not only affect the stakeholders (due to repercussions of non-compliance of law) but also affect the environment at large, which is harmful from a longer-term perspective. That is the reason, the mechanism for implementation of EPR rules, for different waste streams is very critical. Some of the broad steps for compliance of the EPR rules are as under:

A) Registration on CPCB Central Portal – the CPCB has portals for different waste streams, which form the central mechanism through which registration is to be applied for with the relevant authorities like CPCB / SPCBs / PCCs.

B) Tie-up with Waste Management / Collection Agencies / PROs – Implementation of EPR Rules involves substantial amount of reverse logistics, which is impractical for each individual producer to establish. Hence, there are Waste Management / Collection Agencies and Producer Responsibility Organisations (PROs), which undertake implementation of EPR responsibility on behalf of the Producer. A tie-up with such an agency ensures that there is an agency on the ground which can ensure collection and such agency also ties up with registered recyclers to ensure recycling of the waste product in an environmentally sound manner.

C) Filing of periodic returns as required under the waste management rules – all the registered entities are required to file the relevant details in the annual / periodic returns to be filed in the CPCB portal. The purpose of these returns is proper inventorization of waste product stream as well as monitoring of targets and their achievement.

D) Buy EPR Certificates (issued to the Recycler / Refurbisher) to meet the EPR target – Once the producers know the targets for their EPR obligation, the producers can (for most waste streams) buy EPR Certificates issued to the Recyclers / Refurbishers, to ensure that their EPR target is met.

Today, most of the stakeholders apart from monitoring the bottom line of the company, are also conscious about the responsible conduct of business by such company. Therefore, corporates very rightly focus on sustainable development and environmentally sound business management, which is also reflected in the reporting obligations for listed companies. Apart from compliance with the provisions of the Waste Management Rules, EPR is also a part of the reporting requirement of SEBI to be stated in the Business Responsibility & Sustainability Report prescribed by SEBI vide its circular no. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 dated July 12, 2023. The BRSR Core for reasonable assurance contains a set of Key Performance Indicators for disclosures relating to different waste streams like plastic waste, e-waste, bio-medical waste, construction and demolition waste, battery waste, radio-active waste and other hazardous waste. Further the Business Responsibility & Sustainability Reporting Format also requires entities to comment on the applicability of EPR to its business activities and steps taken to address such responsibility.

WAY FORWARD

Taking into account the changes in business environment of the country, the EPR legal framework in India is likely to develop further in the forthcoming years. The rules relating to Waste Tyres and Batteries, which have been issued recently (year 2022) to cover new products, would need further development to resolve the practical challenges in implementation faced by the actors in the waste management value chain. Similarly, the Government of India / Central Pollution Control Board (CPCB) has been proactive in addressing the difficulties in implementation of the different EPR rules from time to time.

The concept of Environmental Compensation, as a policy tool for environmental protection has also been gaining ground in India since 2018 and Central Pollution Control Board (CPCB) has started levying penalties based on the formula for computing Environmental Compensation[13].

Apart from India, globally too, countries have realized the importance of tackling waste. In March 2022, in a historic resolution at the UN Environment Assembly, the UN Member States agreed to enter into an internationally binding legal agreement by the year 2024. Towards this purpose an Intergovernmental Negotiating Committee has been formed, which has commenced its work from the year 2022 and will target to reach a draft agreement acceptable to all member states by the year 2024[14]. The resolution recognizes the growing problem of plastic pollution and recognizes that a shift to circular economy can result in a reduction in plastic pollution flowing into the oceans and reduction of greenhouse gas emissions associated with plastic production.

The importance of EPR legal framework cannot be overstated and today, globally, most of the countries are considering the concept of Circular Economy which will encourage improvement in resource efficiency and a look at the entire life-cycle of the product, from designing to disposal.

Perhaps, as a way forward, the policy makers in India could consider further development of the EPR policy for different products, with the goal of encouraging product

design from an environmental perspective to make sure that an attempt is made towards making the economy truly circular in nature. This will result in a well- rounded achievement of the objectives of the concept of Extended Producer Responsibility, as envisaged during the original development of the concept.

Appendix 1

Product Coverage	All types of Batteries or components thereof except used in equipment for military purpose or sent into space[15] [16]	Electrical and electronic equipment including solar photo-voltaic modules/panels/ cells, whole or in part	Plastic Waste including packaging waste[17]	Solid waste - all kinds of waste generated[18]	Waste Tyres [19]	Used Oil [20]
Applicable Rules	BWM Rules 2022	EWM Rules 2022	PWM Rules 2016 (as amended upto 2023)	SWM Rules 2016	Schedule IX of HWM Rules 2016	Schedule X of HWM Rules 2016
Effective date	22nd August 2022	1st April 2023	18th March 2016	8th April 2016	21st July 2022	2nd May 2023
Stakeholder Coverage	Producer, dealer, consumer and other entities involved in collection, segregation, transportation, re-furbishment and recycling	Manufacturer, producer, refurbisher, dismantler and recycler	Every waste generator, local body, Gram Panchayat, manufacturer, Importers and producer	Every domestic, commercial, industrial and other waste generator and urban local bodies SEZ, Central State Govt organisations, etc. in all areas	Producer (manufacturer and importer) and Recycler of Waste Tyres	Producers, Collection Agents, Recyclers, Used Oil importers
Process Coverage	Manufacture, sale and import of Batteries	Manufacture, sale, transfer, purchase, refurbishing, dismantling, recycling and processing of e-waste	Manufacture, import, stocking, distribution, sale and use	Segregation and disposal of segregated waste	Manufacture and import of new / waste tyres	Manufacture, sale and import of base oil or lubrication oil
Exceptions to applicability	Battery used in equipment intended for military purpose of designed for being sent into space	Micro units, Waste Batteries, Packaging Plastics, Radio Active Wastes	EoUs / SEZ units, MSME units	Industrial waste, bio-medical waste and e-waste, battery waste, radio-active waste (governed by separate rules)	--	--
Responsibility	Collection of Waste Batteries and its recycling through Registered Recyclers	Collection of E-Waste & Channelisation to Registered Refurbishers / Recyclers	Collection of plastic waste generated and channelisation to Registered Recyclers	Waste seggregation at source and utilisation/treatment	Recycling of Waste Tyres as a % of manufacture or import of new / waste tyres through purchase of EPR certificates	Managing of used oil in the following order of priority: (i) Producing re-refined base oil or lubrication oil (ii) Energy Recovery
Targets	Targets are in terms of collection of waste batteries, minimum use of recycling material and minimum recovery of Battery material, for different types of batteries	Targets based on % of quantity of EEE placed in the market	Targets in terms of collection of plastic waste, recycling and use of recycled plastic in packaging	No Targets set	Targets based on % of tyre in weight (for manufacturer / importer of new tyres)	Targets based on Base Oil or Lubrication Oil sold or imported

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51st National Convention of Company Secretaries

Call for Articles for publication in the Souvenir

Dear Professional Colleague,

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- Digital Inclusion: A catalyst for Corporate Innovation and Social Progress
- Circular Economy: New Perspectives and Role of CS
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- ESG: Creating Value and Sustainability for Future
- Women-led development: Accelerated, Inclusive & Resilient Growth
- Corporate Boards: Readiness for Digital Transformation & Climate Change

To commemorate this mega event, a Souvenir containing messages of dignitaries, programme details, articles on the abovementioned theme and sub-themes, etc. is proposed for release by the Institute.

Members who wish to contribute article for publication in the Souvenir are requested to send the same through email at **conference@icsi.edu** on or before **15th September, 2023.** The article should be between 2,500 – 4,000 words (font size Arial 11 point – single space / single column and without any diagrams / sketches / downloaded pictures from internet). The content shall be original work of the author. Articles will be checked for plagiarism by the Institute. The Articles Screening Committee constituted specially for the 51st National Convention will consider the Articles received and the decision of the Committee will be final in all respects.

Member whose article is published in the Souvenir shall be granted 4 (FOUR) CPE Credits (Structured) and select publications of the Institute in recognition of his/her efforts. Please send article in the MS Word mentioning your name, designation, organisation/firm name. Articles not complying with above specifications including length of the article shall be rejected.

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With best regards,

CS Manish Gupta
President, The ICSI

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CS Manish Gupta
President, The ICSI

CS B. Narasimhan
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We invite Research papers/ Manuscripts to publish in 'Chartered Secretary' with the objective of creating proclivity towards research among its members both in employment and practice. As research is an integral part the of scientific approach towards an issue for arriving at concrete solutions, in view of this it is essential to ensconce the research-oriented approach. Further, research is pervasive, i.e., it is not restricted to a particular field. Whether it is engineering, management, law, medicine, etc. without proper research, it is almost next to impossible to ascertain the solution of a problem.

Contributions may be sent on topics like Secretarial Practice, Auditing Standards, Company Law, Mercantile Law, Industrial Law, Labour Relations, Business Administration, Accounting, CG & CSR, Legal Discipline, and Digital Transformation & Artificial Intelligence or on any other subject and topic of professional interest.

Participants are requested to send their articles/ research papers with the following terms:

- The article/research papers should be original and exclusive for Chartered Secretary.
- It should be ensured that the article has not been/will not be sent elsewhere for publication.
- Article/ research papers should include a concise Title, Abstract name of the author(s) and address.

Members and other readers desirous of contributing articles may send the same latest by **Friday, August 25, 2023** for the **September 2023** issue of Chartered Secretary Journal at **cs.journal@icsi.edu.**

The length of the research paper should ordinarily be between 2,500 - 4,000 words. The research paper should be forwarded in MS Word format.

We look forward to your co-operation in making this initiative of the Institute a success.

Regards,

Team ICSI

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RESEARCH CORNER

- DETERMINANTS OF PAYMENT METHODS AND SOURCES OF FINANCING FOR MERGERS AND ACQUISITIONS: INSIGHTS FROM M&A DEALS OF PHARMACEUTICAL COMPANIES IN INDIA

Determinants of Payment Methods and Sources of Financing for Mergers and Acquisitions: Insights from M&A Deals of Pharmaceutical Companies in India

Since the late 1800s, M&A has occurred on a small or large scale, and with rising globalization and competition, it has found widespread use in all industries. A merger in the pharmaceutical industry refers to consolidating two or more pharmaceutical companies into a single entity, usually to increase market share, expand product portfolios, and achieve operational efficiencies. In pharmaceutical sector, the companies involved may combine their research and development (R&D) capabilities, manufacturing facilities, sales and marketing teams, and other resources to create a larger and more competitive organization. In case of acquisition, acquirer takes ownership of the target company's assets, including R&D programs, patents, manufacturing facilities, and commercial operations.

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INTRODUCTION

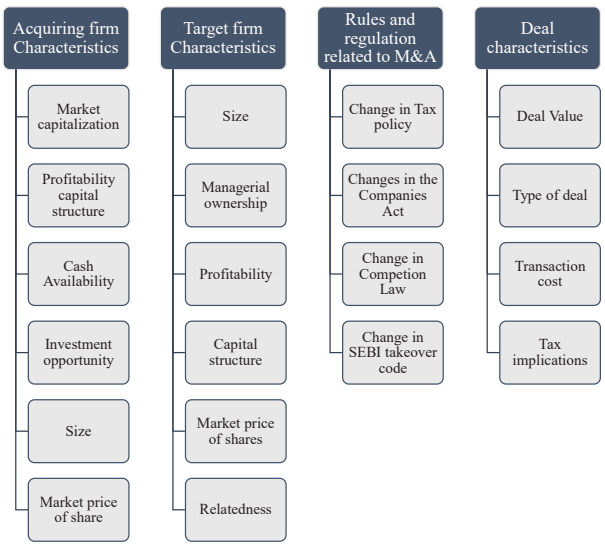
Since the late 1800s, M&A has occurred on a small or large scale, and with rising globalization and competition, it has found widespread use in all industries. A merger in the pharmaceutical industry refers to consolidating two or more pharmaceutical companies into a single entity, usually to increase market share, expand product portfolios, and achieve operational efficiencies. In pharmaceutical sector, the companies involved may combine their research and development (R&D) capabilities, manufacturing facilities, sales and marketing teams, and other resources to create a larger and more competitive organization. In case of acquisition, acquirer takes ownership of the target company's assets, including R&D programs, patents, manufacturing facilities, and commercial operations. Regulatory framework involves provisions of the Companies Act with reference to approval of the board of directors, shareholders and creditors, information to the Stock Exchanges, compliance of the provisions of the Competition Act, compliance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations for specified companies, compliance with the provisions of the Foreign Exchange Management Act, and the Foreign Direct Investment Policy of India for cross-border deals, and compliance with the provisions of the Income Tax Act.

Methods of payment in M&A and their *pros and cons*:- Mainly 'Cash', 'Stock', 'Debt', or 'Mixed' methods of payment are involved in M&A deals. In case, 'Cash' is opted as method of payment then the acquiring company pays the shareholders of the target company in cash for their shares. The cash payment can be made upfront, at the closing of the transaction, or in instalments over a period. This provides liquidity to the target company's shareholders but they lose the right to participate in the future growth or success of the merged entity. A Cash-rich company or the company having access to affordable debt financing, is likely to opt for this. It may leave acquirer with a weaker balance sheet. Even if target entity is bigger one then acquirers opt for debt financing for the deal. This definitely limits acquirer's ability to

invest in other growth opportunities or dividend paying capacity. It has tax implications for acquirer as well target company owners. If 'Stock' is opted then the acquiring company issues its own shares to the shareholders of the target company in exchange for their shares. Stock deals may be attractive to both parties if they believe that the combined company's stock will perform well in the future. It may be tax-efficient for both the acquiring company and the shareholders of the target company, as it may allow them to defer capital gains taxes. Target company's shareholders can benefit due to the future growth or success of the merged entity, and *vice versa.* Stock payment may result in dilution of the ownership of the acquiring company's existing shareholders. Regulatory hurdles, e.g., approval from Security market regulator, legal and accounting considerations are of paramount importance. It also entails integration risk for acquirer. If 'Debt' is used then the acquiring company borrows money to finance the transaction and pays off the debt over time thereby involving financial risk. Debt financing can be an attractive option for acquiring companies with a strong credit rating, as it allows them to leverage their balance sheet and preserve own cash and cash equivalents. In case of 'Leveraged Buyouts', acquirers opt for heavy use of debt. Alternatively, a 'mixed' method may be opted for when any combination of 'cash', 'stock', 'debt', or 'preference shares' is involved. Mixed method provides flexibility on the basis of its financial situation and objectives, thereby allowing the acquirer to balance the risk and reward between cash and share payment, offering both immediate liquidity and potential long-term benefits. But due to complexity, it may increase the transaction costs and delay the closing of the deal. Integration risk may also pose challenges, in addition to financial risk.

Determinants of the Method of Payment:- Asymmetric Information, a situation where one party in a transaction has more information than the other party, is a key determinant. If the acquiring company has asymmetric information and believes that the target company's value is overestimated by the market, it may prefer to use cash to mitigate the risk of overpaying. Asymmetric information can increase the chances of staggered method of payment to mitigate risk associated with deal due to limited information about the target. Second key determinant is 'managerial ownership', percentage of equity held by managers and insiders in the acquiring and target firms. It is often observed that greater the promoter's shareholding in acquiring company, more likely the cash financing is adopted as it does not dilute their existing control after the acquisition. Third major determinant is relative size of the transaction. Bigger the relative size of the target to the acquirer, the more likely the M&A to be financed with shares or mixed method of payment but not by cash. Fourth determinant is 'taxation implications'. Stock financing allows the acquiring company to postpone tax liabilities that would arise from a cash transaction. The acquiring company can defer taxes until the shares are sold in the future. Fifth major determinant is 'Liquidity' as more cash availability with the acquiring firm refers to making use of cash financing as the medium of exchange through internal financing. Lastly, financial leverage, i.e., reliance on debt to finance a company's operations and investments, is a key determinant. High financial leverage of acquiring company does not favour cash as medium of exchange as it may already have significant outstanding debt or debt servicing obligations. Taking on additional debt to finance an acquisition could increase its overall debt burden and potentially strain its financial position.

Figure 1:- Other determinants of the method of payment in M&A



Source: Own compilation of authors based on existing studies as referred in Literature Review

Literature Review:- Zhang, P. (2001) analyzed a sample of UK acquisitions from 1990 to 1999 to understand factors influencing payment method selection in M&A transactions. The study concluded that frequency of utilising stock for financing increased as the target's size increased but cash bids were preferred when the acquirer had larger dividend payments and return on equity. Ownership characteristics were discovered to be insignificant in payment method selection. Rossi, S. and Volpin (2004) conducted a study on 49 deals in UK and US. They observed that better investor protection is connected with increased usage of stock as a means of remuneration and higher takeover premiums where acquirers have higher investor protection over the target. Beena S. (2006) conducted a study on 64 mergers and 63 acquisitions to find out the nature and structure of M&A. Ismail, A. and Andreas K. (2010) suggested that choice of method of payment can have a substantial impact on the completion of the transaction successfully. The study was conducted by taking a group of variables and their impact on method of payment into consideration which includes investment characteristics, taxation (size of capital gain and tax liabilities), asymmetric information, budget constraints, managerial entrenchment, control variables (such as the premium paid as ratio of deal value and market capitalization). Zhang, J. and Y. Zhang (2011) investigated the impact of payment method selection in M&A on the choice of financing methods.

Srivastava, R. and Ajai P. (2013) investigated 30 cross-border M&A deals for value addition through accounting and shareholder return measures of the acquirer firm. Boatenga, A. and X. Bib (2013) compared equity-financed and cash-financed acquisitions to examine the long-term pre-bid and post-bid returns of Chinese acquirers. They concluded that after M&A transactions, there was no substantial difference between cash-financed and equity-financed purchases. Payment method selection by Chinese acquirers was impacted by factors such as acquirer market value, Tobin's Q, state ownership, and leverage. Hansen, Robert G. (2014) provided theoretical model for choice of exchange medium in M&A. The study explored bargaining under asymmetric information in M&A. Taxes and asymmetric information can both impact the decision between cash and shares. When both parties have information asymmetry, a signalling equilibrium occurs in which the target utilises the exchange medium and stock offer amount as indications of the acquirer's worth. Boone, Audra L. and E. L. Y. Liu (2014) used a sample size of 25,000 deals from the SDC database and developed and tested several hypotheses which revealed a significant increase in the use of mixed payment methods in M&A, rising from 10% before the year 2000 to 30% in the new century. Meanwhile, the proportions of pure cash and stock acquisitions shifted in opposing directions, with stock deals dropping from more than 60% to less than 20% and cash deals more than tripling from about 25% to more than 50% pointing to the shift in preferences of M&A payment strategies over time. The study also revealed that Acquirers with higher return volatility are less likely to employ cash, preferring all-stock or partial-stock offers. The probability of cash payment decreases with high capital gain tax compared to stock payment. Fischer, M. (2017) summarized the source of finance as credit, stock issue, debt issue, and internal funds for 610 sample size. Findings suggest that 25% of takeovers have used bank loans as sole source of financing in use of common stock or debt issue. Credit finance takeovers occur due to the relative size of the target and acquirer. Firms are more likely to seek bank funding in the form of loans when their pre-merger cash position is poor as bank loans prevent managers from wasting free cash flows for deal benefits because they limit free cash flows by additional interest and future repayment. V., Krishna Prasad and Sahay, M. (2018) explored the rationale and advantages of Corporate M&As. Shah, Hetanshi (2018) provided a detailed assessment of considerable changes in M&A trends that occurred following the 1990s reforms, with a particular emphasis on the pharmaceutical business. Sankar, B. P. Bijay and N. M. Leepsa (2018) summarized the findings based on various payment methods and determinants after review the recent literature on M&A payment methods. Shah, Shivani (2019) analyzed financial measures of acquiring firms, especially effect on total wealth and shareholder profitability.

Need for the study, Objectives of the Study and Research Methodology:- Existing studies show the gap which the present study tries to bridge. The study has following objectives:-

1) To identify the most commonly used method of payment in M&A deals as applied by Pharmaceutical companies in India;

2) To identify the manner of payment, i.e., upfront payment or staggered payment ;

3) To identify the source of finance for the payment i.e., internal, or external financing to fund the transaction;

4) To identify the determinants of payment method such as liquidity, promoters' holding, financial leverage, the relative size of acquirer and target firms, tax, etc.

To fulfil these objectives, extensive data was collected on the company profile, type of corporate restructuring, method of payment, synergies, and objective of M&A of the Indian pharmaceutical companies for the period of 15 years, i.e., from 2007 to 2022 and those deals were include where acquirer was listed, transaction involved US 100 mn, acquirer acquired either a 100% stake or a specific business unit and assets of the target, source of funding was disclosed through press releases, and acquisition has been completed and status is known.

Following thirteen (13) M&A deals are part of this study:-

1. Jubilant Pharmova Ltd - Draxis Health Inc. (2008)
2. Abbott Laboratories - Piramal Healthcare Solution Limited (2010)
3. Torrent Pharmaceutical Ltd. - Elder Pharmaceuticals Domestic Portfolio (2014)
4. Aurobindo Pharma Limited - Natrol Llc (2014)
5. Sun Pharmaceuticals Industries Limited - Ranbaxy Laboratories Limited (2015)
6. Cipla Ltd - Invagen Pharmaceuticals Inc (2016)
7. Dr. Reddy's Laboratories (DRL) - Teva Pharmaceutical Industries Ltd Anda Portfolio (2016)
8. Lupin Ltd - Gavis Pharmaceutical Llc (2016)
9. Piramal Healthcare Limited - Mallinckrodt Pain Portfolio (2017)
10. Torrent Pharmaceuticals - Unichem Laboratories (2017)
11. Lupin Limited - Symbiomix Therapeutics LLC (2017)
12. DRL - Wockhardt Limited (2020)
13. Biocon Biologics - Viatris Inc Global Biosimilar Business (2022)

Out of 13 deals, 10 deals were cross-border M&A while 3 were domestic. Out of cross-border deals, 1 acquisition was inbound while the rest were outbound. Out of all the deals analysed, one was the merger with the highest transaction value of US $4 billion by Sun Pharmaceuticals Ltd., while the rest of the deals were acquisitions.

The data was collected from annual reports, websites of prominent business dailies, press releases of respective companies, quarterly investor presentations, websites of the Securities and Exchange Board of India (SEBI) and the Competition Commission of India (CCI). Time period, reliance on publicly available sources of information, size of the deals, the number of deals, non availability of annual report of two firms, formed the limitations of the study.

DATA ANALYSIS AND INTERPRETATION

Table 1:- M&A Deals – Companies Involved, Deal Value, Valuation, Mode of Payment, Financing Structure, Payment Structure, and Tax on Capital Gain

Companies Involved (Acquirer & Target)	Deal Value (US $)	Valuation (Enterprise Value/Sales)	Mode of Payment	Financing Structure	Manner of Payment	Tax on Capital Gain
Jubilant Pharmova and Draxis Health	$255 mn (Rs. 1,020 Cr.)	3.2x	Cash	Cash from Internal Accruals and Debt	Lumpsum	N.A.
Abbott Labs. and Piramal Healthcare	$3.7 bn (Rs. 17,500 Cr.)	8.8x	Cash	Cash from Internal Accruals	Staggered Including Upfront – $2.12 Bn and deferred Payment of $400 Mn for each year in next 4 Years (2011 to 2014)	$818.4 Mn
Torrent Pharma -Elder Pharma.	$ 3.23 Mn	4.9x	Cash	Cash from Internal Accruals and Debt	Lumpsum	N.A.
Aurobindo Pharma -Natrol LLC	$ 132.5 Mn (Rs. 8,344 mn)	1.7x	Cash	Cash from Internal Accruals and Debt (Bank Borrowings)	Lumpsum	N.A.
Sun Pharma. - Ranbaxy Labs	$ 4.0 Bn	2.2x	US $3.2 Bn in Stock Transfer and US $800 Mn as Debt		Stock Transfer (Swap Ratio: 0.8) as 80% Payment	N.A.
Cipla - Invagen Pharma.	$ 500 Mn	2.4x	Cash	Debt (Bridge Loan taken)	Lumpsum	N.A.
DRL -Teva Pharma.	US $ 350 Mn	N.A.	Cash	Cash from Internal Accruals and Debt (Bank Borrowings)	Lumpsum	N.A.
Lupin - Gavis Pharma.	US $ 880 Mn	9.2x and 16x of EBITA	Cash	Cash from Internal Accruals and Debt	Lumpsum	N.A.
Piramal Enterprises - Mallinckrodt Pharma.	US $ 203 Mn	3.8x	Cash	Debt	Staggered Including Upfront, partly after one year, and partly contingent on the financial performance of acquired assets over 3 years	N.A.
Torrent Pharma. -Unichem Labs	US $ 558 Mn	4.3x	Cash	Cash from Internal Accruals and Debt	Lumpsum	N.A.
Lupin Limited-Symbiomix Therapeutics LLC	US $ 150 Mn	N.A.	Cash	Cash from Internal Accruals	Staggered Including Upfront – US 50 Mn and deferred Payment of US $100 Million	N.A.
DRL -Wockhardt Limited	US $260 Mn (Rs 1850 Cr)	N.A.	Cash	Cash from Internal Accruals	Staggered including Upfront payment of Rs. 1,483 Cr., Holdback Payment of Rs. 300 Cr. and Escrow Payment of Rs. 67 Cr.	N.A.
Biocon Biologics-Viatris Inc	US $ 3.34 Bn	3.8x-3x	Cash, Debt and Equity	Cash from Accruals, Debt and Equity Shares	Upfront Payment of $ 2 Bn and CCPS worth US $ 1 Bn	$ 254 Mn

Source: *Compiled from annual reports of respective companies, press releases, and business dailies*

Additional Details:- Annual report of Jubilant Pharmova for the FY2008 was not available so financial determinants of the method of payment could not be observed. But acquirer opted for choosing cash probably due to low deal value. In all cases, whole business was not acquired. For example, in June 2016, DRL completed the acquisition of portfolio of eight Abbreviated New Drug Applications (ANDA) applications from Teva Pharma, with deal value of $350 Mn in cash. Similarly, in Torrent Pharma - Unichem deal, the transaction expanded Torrent Pharma's portfolio by a brand worth Rs.200 crore and three brands worth over Rs.50 crore. In February 2020, DRL had entered into a definitive agreement with Wockhardt to acquire select divisions of its branded generics business in India and a few other international territories of Nepal, Sri Lanka, Bhutan and Maldives for a consideration of Rs. 1,850 Cr. In November 2022, Biocon Biologics (subsidiary of Biocon) completed the acquisition of global biosimilar business of Viatris which was expected to generate over US $ 1 Bn in revenue in calendar year 2023.

In Piramal Enterprises - Mallinckrodt Pharma, deal, total deal value was US $ 203 million, including fixed consideration of $171 million and $32 million as contingent consideration. Out of $203 million, 10% of fixed consideration i.e., $17 million paid initially and $154 million upfront payment after one year of deal closing and remaining amount of up to $32 million was contingent upon performance of the Gablofen product in 2018 and 2019.

Indian pharmaceutical companies mainly acquired brands or therapeutic segments rather than full-fledged acquisition of a firm. This led to small deal value as compared to global M&A deals of MNCs. Small deal value can be funded through cash generated internally or through external financing. 11firms (84.62% of total) chose cash as payment mode. One company chose primarily shares, and one company chose mixed . Apart from other determinants on payment mode, the additional determinant was the debt position of the target firm. Target firms such as Viatris Inc., Elder Pharma., and Natrol LLC used the cash received through the acquisition to pay their debts making cash as the first choice.

61.54% (8 out of 13) acquirers chose a lumpsum payment over staggered payments, due to reasons such as simplicity, less time to complete, and sufficient funds at disposal. A staggered payment structure provides financial flexibility to the acquiring firms. Piramal Healthcare preferred a staggered payment structure to bridge the valuation gap and aligned the financial outcomes of the deal with the actual performance of the acquired firm. Similarly, DRL used contingent consideration in the form of a "Holdback payment" of Rs. 300 crores with a condition that if the revenue from the sales of the acquired product exceeds Rs. 4,800 crores, the acquirer would pay an amount to Wockhardt equal to twice the amount by which the revenue exceeds Rs. 4,800 crores.

Majority (53.85%) of the acquirers used both external financing and internal financing to fund the acquisition. Whereas 23.08% acquirers opted for Internal Financing, and same number of acquirers resorted to External Financing. In certain cases, e.g., Cipla had taken short-term loans to fund the acquisition, while Torrent Pharma had funded the acquisition through long-term borrowings. Most of the acquirers did not have sufficient cash at their disposal, necessitating the need for external financing. The reason behind using both financing structures together allows companies to execute M&A deal, and at the same time, helps in preserving their cash reserves for working capital needs, operational expenses, and future investments. External financing in terms of debt, bridge loan, or otherwise helped acquirers to make a lumpsum payments.

Table 2:- Source of finance applied in Pharma M&A deals

Deal	Internal Financing	External financing		
	Retained revenue	Equity financing	Debt financing	
			Bond Payment	Debt and Leveraged Buyout
Jubilant- Draxis Health	✓			✓
Abbott - Piramal	✓			
Torrent - Elder	✓			✓
Aurobindo - Natrol	✓			✓
Sun Pharma - Ranbaxy		✓		
Cipla Ltd - Invagen				✓
Dr. Reddy's -Teva Pharma	✓			✓
Lupin - Gavis Pharma	✓			✓
Piramal -Mallinckrodt				✓
Torrent Pharma -Unichem	✓			✓
Lupin- Symbiomix	✓			
Dr. Reddy's -Wockhardt	✓			
Biologics - Viatris	✓	✓		✓

Determinants of manner of Payment:- Liquidity Measure

For liquidity measures, cash and cash equivalents, working capital, and free cash flows of acquirer were observed.

Table 3:- Liquidity Measure for M&A deals under the Study

Abbott Laboratories (Amount in US $ Mn)		
	Dec. 31, 2010	**Dec. 31, 2009**
Cash and Cash equivalents	3,648	8,809
Working Capital	5,100	10,300
Free cash flow	6.9	7.6
Promoters' holding in Target (in %)	49.24%	49.24%
Torrent Pharma (Amount in Rs. Cr.)		
	March 31, 2015	**March 31, 2014**
Cash and Cash equivalents	69.68	218.49
Working Capital	1,405.75	1,505.39
Free cash flow	967.21	1,052.87
Promoters' holding in Acquirer (%)	71.25%	71.51%
Promoters' holding in Target (in %)	N/A	34.40%
Aurobindo Pharma (Amt. in Rs. Mn.)		
	March 31, 2015	**March 31, 2014**
Cash And Cash Equivalents	4505.6	1480.2
Working Capital	21642	14111.4
Free Cash Flow	24847.6	18412
Promoters' holding in Acquirer (%)	54.61%	53.97%
Promoters' holding in Target (in %)	N/A	N/A
Sun Pharma (Amount in Rs. Bn)		
	March 31, 2016	**March 31, 2015**
Cash And Cash Equivalents	139	109
Working Capital	176	127
Free Cash Flow	77	75
Promoters' holding in Acquirer (%)	54.97	63.56
Promoters' holding in Target (in %)	N/A	63.41
Cipla Ltd (Amount in Rs. Cr.)		
	March 31, 2016	**March 31, 2015**
Cash And Cash Equivalents	871.41	564.26
Working Capital	3382.7	2992.24
Free Cash Flow	2047.82	1837.12
Promoters' holding in Acquirer (%)	36.78%	36.80%
Promoters' holding in Target (in %)	N/A	N/A
Dr. Reddy's Labs (Amount in Rs. Millions)		
	March 31, 2017	**March 31, 2016**
Cash And Cash Equivalents	3,778	4,921
Working Capital	53,178	54,584
Free Cash Flow	25,641	37,977
Promoters' holding in Acquirer (%)	26.79%	25.58%
Promoters' holding in Target (in %)	N/A	N/A
Lupin Limited (Amount in Rs. Millions)		
	March 31, 2016	**March 31, 2015**
Cash And Cash Equivalents	8,399	21,372
Working Capital	43,917.9	41,031.2
Free Cash Flow	38,846.6	38,452.2
Promoters' holding in Acquirer (%)	46.34%	46.45%
Promoters' holding in Target (in %)	N/A	N/A
Piramal Healthcare (Amount in Rs. Cr.)		
	March 31, 2017	**March 31, 2016**
Cash And Cash Equivalents	1364	226.57
Working Capital	-9798	-5887.33
Free Cash Flow	2027.82	1837.12
Promoters' holding in Acquirer (%)	51.43%	51.43%
Promoters' holding in Target (in %)	N/A	N/A
Torrent Pharma (Rs. in Millions)		
	March 31, 2018	**March 31, 2017**
Cash And Cash Equivalents	702.07	1067.57
Working Capital	60.12	2141
Free Cash Flow	1328.51	13795.01
Promoters' holding in Acquirer (%)	71.25%	71.25%
Promoters' holding in Target (in %)	50.1%	50.1%

Lupin (Amount in Rs. Millions)		
	March 31, 2018	**March 31, 2017**
Cash And Cash Equivalents	16512.9	27994.7
Working Capital	71140	138324
Free Cash Flow	16137	44628
Promoters' holding in Acquirer (%)	47.1%	46.7%
Promoters' holding in Target (in %)	N/A	N/A
DRL (Amount in Rs. Millions)		
	March 31, 2018	**March 31, 2017**
Cash And Cash Equivalents	14829	2053
Working Capital	64465	53580
Free Cash Flow	39966	29556
Promoters' holding in Acquirer (%)	24.88%	24.88%
Promoters' holding in Target (in %)	N/A	N/A
Biocon Biologics (Amount in Rs. Cr.)		
	March 31, 2023	**March 31, 2022**
Cash And Cash Equivalents	1,324	663
Working Capital	3,825	4,554
Promoters' holding in Acquirer (%)	N.A.	60%
Promoters' holding in Target (in %)	N.A.	N.A.

Source: *Compiled from Annual Reports of respective companies for relevant years*

Annual report of Jubilant Pharmova for the FY2008 was not available so liquidity measures could not be observed. Even though cash and cash equivalents, Working capital, and free cash flow declined by 65.9%, 50.48%, and 9.2% respectively for Abbott Labs, balances remained positive. Cash and cash equivalents declined (by 68%), but working capital and free cash flow remained close to previous levels even when Torrent Pharma spent Rs. 2,162 crores. For Aurobindo Pharma, Cash and cash equivalents, working capital and free cash flows increased by 204%, 53%, and 34% respectively post-acquisition. For Cipla, Cash and cash equivalents, working capital and free cash flows increased by 54%, 13%, and 11% respectively post-acquisition. As evident from above table, in other deals, i.e., Torrent Pharma and Unichem, Lupin – Symbiomix, DRL – Wockhardt, Biocon Biologics – Viatris, liquidity position was quite favourable for executing deal through use of cash. In DRL-Teva Pharma deal, Cash and cash equivalents, working and free cash flows have shown decline of 23%, 2%, and 32% respectively post-acquisition. This demonstrates the use of cash for partial payment. In Lupin-Gravis deal, liquidity of acquirer got affected negatively after acquisition as Cash and cash equivalents declined by 60%. No change in free cash flow and marginal increase of 7% in working capital demonstrates the capability to partially pay for the acquisition in cash. In Piramal – Mallinckrodt deal, Cash and cash equivalents, and free cash flow balance post acquisition are positive but working capital is negative thereby depicting less liquidity.

Promoters' Holding as a key determinant in manner of Payment:- It has been observed that companies (acquirers) in which promoters had significant/majority holding, and they wanted to retain the control, cash was chosen as a medium of payment. In Torrent Pharma, promoters' stake was almost 71% before acquisition, in Aurobindo Pharma, promoters' stake was 54.61% before acquisition, in Sun Pharma, promoters' stake stood at 63.56%, and there was marginal decline on settlement through share swap. In Cipla, promoters' stake was comparatively lower at 35.78% before acquisition, so cash payment is understandable. Same was the case of DRL where promoter holding was 26.79% before acquisition. In Lupin, it was 46.34%, in Piramal Healthcare, promoter holding remained intact even after acquisition. Same was the case for Torrent Pharma. In Lupin, promoter stake marginally went up. In DRL, promoter holding remained at 24.88% post-acquisition, and in Biocon Biologics, it stood at 60%. It can be concluded that there was inclination to retain existing control and its' influence on cash payment in M&A deal. Additionally, target firms needed the cash so as to conduct a buyback, an acquisition of a hospital and debt repayment, suggesting mixed payment or cash payment in M&A deal.

Table 4:- Leverage Measure as a determinant for Method of Payment in M&A deals

Abbott Labs (Amount in US $ Mn)		
	Dec. 31, 2010	**Dec. 31, 2009**
Long term debt	12.5	11.2
Torrent Pharma (for deal with Elder Pharma) (Amount in Rs. Cr.)		
	March 31, 2015	**March 31, 2014**
Long term debt	2,185.22	744.46
Debt - Equity Ratio	0.84	0.41
Aurobindo Pharma (Amt. in Rs. Mn.)		
	March 31, 2015	**March 31, 2014**
Long Term Debt	13614.7	12793.6
Short Term Debt	25020	23545
Debt - Equity Ratio	1.4	1.5
Sun Pharma (for deal with Ranbaxy Labs) (Amount in Rs. Bn)		
	March 31, 2016	**March 31, 2015**
Long Term Borrowings	31	13
Debt - Equity Ratio	0.5	0.8

Cipla (Amount in Rs. Cr.)		
	March 31, 2016	**March 31, 2015**
Short Term Borrowings	4969.51	1392.48
Debt - Equity Ratio	0.09	0.12
DRL (for Teva Pharma deal) (Amount in Rs. Millions)		
	March 31, 2017	**March 31, 2016**
Short-Term And Long-Term Borrowings	43,626	22,781
Debt - Equity Ratio	0.35	0.26
Lupin (for Gavis Pharma deal) (Amount in Rs. Millions)		
	March 31, 2016	**March 31, 2015**
Long Term Borrowings	53,739	1,018.3
Short Term Borrowings	17,454.1	3,691.5
Debt - Equity Ratio	0.64	0.05
Piramal Healthcare (for Mallinckrodt Pharma deal) (Amount in Rs. Cr.)		
	March 31, 2017	**March 31, 2016**
Long Term Debt	14495.69	7474
Short Term Debt	12079.48	6828.93
Debt - Equity Ratio	1.7	1.1
Torrent Pharm (for Unichem Labs) (Rs. in Millions)		
	March 31, 2018	**March 31, 2017**
Long Term Borrowings	4111.46	2240.83
Debt - Equity Ratio	1.9	1.0
Lupin (for Symbiomix deal) (Amount in Rs. Millions)		
	March 31, 2018	**March 31, 2017**
Long Term Borrowings	829	765
Debt - Equity Ratio	0.5	0.5
DRL (for Wockhardt deal) (Amount in Rs. Millions)		
	March 31, 2018	**March 31, 2017**
Long Term Borrowings	508	745
Long Term Debt - Equity Ratio	0.03	0.04
Biocon Biologics (Amount in Rs. Cr.)		
	March 31, 2023	**March 31, 2022**
Long Term Borrowings	15,291	3,999
D/E (x)	0.79	0.51

> Mainly 'Cash', 'Stock', 'Debt', or 'Mixed' methods of payment are involved in M&A deals. In case, 'Cash' is opted as method of payment then the acquiring company pays the shareholders of the target company in cash for their shares. The cash payment can be made upfront, at the closing of the transaction, or in instalments over a period. This provides liquidity to the target company's shareholders but they lose the right to participate in the future growth or success of the merged entity.

Increase in debt of Abbott Labs, Sun Pharma (in 2 deals), Aurobindo, Cipla, DRL (in 2017), Lupin, and Biocon Biologics indicated reliance on debt financing. In Torrent Pharma (in 2 deals), Lupin, Piramal Healthcare, and Biocon Biologics, Debt-Equity ratio also got affected negatively. This indicated that these companies had low financial leverage before acquisition and were able to arrange fund through external financing for acquisition, or opted for cash in settlement of M&A deal by using borrowed funds. In Aurobindo Pharma, overall debt increased but debt-equity ratio improved, so willingness for external finance is understandable. In Cipla, short-term borrowings had gone up substantially to ensure liquidity. In case of Lupin – Gavis deal (2015 and 2016), short-term and long-term borrowings increased substantially besides increase in debt-equity ratio which reflected use of external financing to fund the acquisition whereas in Lupin – Symbiomix deal (2017 and 2018), there was no significant change in borrowings and Debt-Equity ratio suggested that internal financing was sufficient to opt for cash to the settle the deal value.

RELATIVE SIZE OF ACQUIRER AND TARGET FIRMS AS A DETERMINANT FOR METHOD OF PAYMENT

Table 5:- Relative Size of Acquirer and Target Firms in terms of Revenue, Assets and Net Income

Abbott Labs – Piramal Healthcare deal		
As on Dec. 31, 2010	**Abbott Labs**	**Piramal Healthcare**
Revenue	$35,166 Mn	Rs. 34,802 Mn
Total Assets	$59,426 Mn	Rs. 30,366.3 Mn
Net Income	$4,626.2 Mn	Rs. 4,800 Mn
Torrent Pharma and Elder Pharma deal (Amount in Rs. Cr.)		
As on March 31, 2015	**Torrent Pharma**	**Elder Pharma**
Revenue	Rs. 3,781 Cr	Rs. 483 Cr
Total Assets	Rs. 6,509 Cr	N/A
Net Income	Rs. 623.18 Cr	N/A

Aurobindo Pharma and Natrol LLC deal (Amt. in Rs. Mn.)		
As on March 31, 2015	**Aurobindo Pharma**	**Natrol**
Revenue	Rs. 81213.5 Mn	N/A
Net assets	Rs. 40123 Mn	N/A
Net Income	Rs. 11728 Mn	N/A
Sun Pharma and Ranbaxy Labs deal (Amount in Rs. Bn)		
As on March 31, 2016	**Sun Pharma**	**Ranbaxy Labs**
Revenue	Rs. 160 Bn	Rs. 76 Bn
Net Assets	Rs. 11 Bn	N/A
Net Income	Rs. 166 Bn	N/A
Cipla and Invagen Pharma deal		
As on March 31, 2016	**Cipla**	**Invagen Pharma**
Revenue	Rs. 10224 Cr	US $230 Mn
Net assets	Rs. 11090 Cr	N/A
Net Income	Rs. 1181 Cr	N/A
DRL and Teva Pharma deal		
As on March 31, 2017	**DRL**	**Teva Pharma**
Revenue	Rs. 106168 Mn	US $19652 Mn
Net Assets	Rs. 116006 Mn	US $29927 Mn
Net Income	Rs. 13743 Mn	US $1597 Mn
Lupin and Gavis Pharma deal		
As on March 31, 2016	**Lupin**	**Gavis Pharma**
Revenue	Rs. 128635 Mn	N/A
Net Assets	Rs. 115926 Mn	US $31339 Mn
Net Income	Rs. 23973 Mn	N/A
Piramal Healthcare and Mallinckrodt Pharma deal		
As on March 31, 2017	**Piramal Healthcare**	**Mallinckrodt**
Revenue	Rs. 8547 Crores	N/A
Net Assets	Rs. 48239 Crore	N/A
Net Income	Rs 4166 Crores	N/A
Torrent Pharma and Unichem Labs		
As on March 31, 2018	**Torrent Pharma**	**Unichem Labs**
Revenue	Rs. 6080 Cr	Rs. 1258 Cr
Net Assets	Rs. 498.6 Cr	Rs. 20 Cr
Net Income	Rs. 678 Cr	Rs. 124 Cr

Lupin and Symbiomix deal (Amount in Rs. Millions)		
As on March 31, 2018	**Lupin**	**Symbiomix**
Revenue	Rs. 176008 Mn	N/A
Net Assets	Rs. 115926 Mn	N/A
Net Income	Rs. 25574 Mn	N/A
DRL and Wockhardt deal		
As on March 31, 2018	**Dr. Reddy's Labs**	**Wockhardt**
Revenue	Rs. 176400 Mn	Rs. 3325 Cr
Net Assets	Rs. 151919 Mn	N/A
Net Income	Rs. 19498 Mn	N/A
Biocon Biologics and Viatris Inc deal		
As on March 31, 2023	**Biocon Biologics**	**Viatris Inc.**
Revenue	Rs. 8,397 Mn	$16.26 B
Net Assets	Rs. 165,660 Mn	N/A
Net Income	Rs. 6484 Mn	N/A

Source: *Compiled from annual reports, press releases of respective companies*

Inference:- In case of Abbott Labs, Torrent Pharma (both deals), Aurobindo, Sun Pharma, Cipla, DRL (both deals), Lupin (both deals), Piramal Healthcare, and Biocon Biologics, their size in terms of revenue, net assets and net income was bigger than their target companies. In certain cases, information was not available. Even when Target Company was bigger, acquisition of part portfolio was comparatively smaller than size of acquirer, e.g., in Natrol case, selective brands and portfolio acquisition took place, and not a full-fledged acquisition. Hence, it favoured utilization of strong financial position to provide a cash offer to the target firms. In Piramal Healthcare - Mallinckrodt Pharma deal, it was not full-fledged acquisition, and there were less synergy claimed making cash a preferred choice. Further, it included acquisition of assets such as Galofen, which could be the underlying reasons for selecting deferred payment in order to mitigate risk of poor performance of the brand. This also helped in cash flow management.

Deal Size as a determinant for Method of Payment:- Deal size is a key determinant for method of payment. Deal size was small in case of Aurobindo – Natrol deal, Cipla-Invagen, DRL – Teva Pharma, Piramal Healthcare – Mallinckrodt Pharma, Lupin – Symbiomix, and Biocon Biologics – Viatris, so preference for cash is understandable for a cash rich company. Higher deal value also suggested stock and mixed payment as method of choice. Out of all the deals, only three (03) deals crossed the deal value above US $ 1 Billion.

Table 6:- Top Three Deals with Highest Deal Value

Acquirer	Target	Deal Type	Deal Value (USD Bn)	Mode of payment
Sun Pharmaceuticals Ltd.	Ranbaxy Laboratories Ltd.	Merger	4	Share exchange
Abbott Laboratories	Piramal Healthcare Solutions Ltd	Acquisition	3.7	Pure Cash
Biocon Biologics	Viatris Inc	Acquisition	3.34	Mixed

Source: *Compiled from facts regarding respective deals*

Inference:- This reflects that the high deal value does have an impact on the choice of exchange medium, while also depending on the needs of the acquirer and payment conditions. Though Abbott chose cash for settling the transaction, the payment was staggered, with US $2.2 billion made as an upfront payment and the rest paid as deferred payments of $400 million annually for 4 years. The relative size of Viatris was greater compared to Biocon Biologics, making shares the choice. But Viatris was in need of money to fund another acquisition of an eye care hospital, conduct a buyback, and make payments to creditors. This made cash as the preferred choice of payment method, as it would provide immediate liquidity to the target. Other determinants of Methods of Payment in Pharma M&A deals included amount of tax payable by acquirer or target firm, e.g., Abbott Labs paid 22% of the total deal value as the tax. Target firm's preference matters as evident from the deals when target firm was financially struggling, and through cash transaction, it is able to utilize cash for settling dues of creditors, repayment of debts, etc.

CONCLUSION

Absolute financial factors act as determinants of the methods of payment in case of M&A deals. These factors include Liquidity measures such as cash and cash equivalents, working capital, and free cash flow and Leverage measures such as long-term and short-term borrowings as well as the debt-to-equity ratio. Deal size also acts as a major determinant, as cash is a preferred mode in case the company has adequate liquidity, and low financial leverage. Shares are preferred when the deal size is bigger. When promoters do not want to dilute their control then cash payment is preferred as reflected in M&A deals of pharmaceutical companies.

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3

LEGAL WORLD

- FLASH LABORATORIES LTD v. COLLECTOR OF CENTRAL EXCISE [SC]
- RELIANCE INDUSTRIES LIMITED v. ROC [NCLAT]
- RAVINDRA KUMAR GOYAL v. COMMITTEE OF CREDITORS OF YASAHASVI YARNS LTD& ANR [NCLAT]
- PR. COMMISSIONER OF INCOME TAX v. MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL & ORS [DEL]
- KAMDHENU LTD vs THE REGISTRAR OF TRADEMARKS [Del]
- THE MADRAS ALUMINIUM CO. LTD. v. THE TAMIL NADU ELECTRICITY BOARD [SC]
- DELTON INFRA PVT LTD v. STATE OF J&K & Anr [J&K]
- RAMESH CHAND v. MANAGEMENT OF DELHI TRANSPORT CORPORATION [SC]
- WORKMEN THROUGH THE JOINT SECRETARY v. FOOD CORPORATION OF INDIA & ANR [SC]

Corporate Laws

Landmark Judgement

LMJ 08:08:2023

FLASH LABORATORIES LTD v. COLLECTOR OF CENTRAL EXCISE [SC]

Appeal (civil) 5619 of 1994 & Appeal (Civil) 7216 of 2000

M.B. Shah, K.G. Balakrishnan & D.M. Dharmadhikari, JJ. [Decided on 20/12/2002]

Equivalent citations: (2003) 121 Comp Cas 577

Related person- holding and subsidiary company- how to interpret with respect to excise law - SC explains.

Brief facts:

Flash Laboratories Limited (FLL), has been selling its products (Prudent toothpaste) to their holding company, Parle Products Limited (PPL), which is a subsidiary company of Messrs. Parle Biscuits Limited (PBL). The appellant was found paying duty at the price at which the goods were being sold to the holding company PPL. A show cause notice was issued to the appellant company alleging that PPL and PBL were "related persons" and were purchasing goods at lower prices and selling the same at higher prices and that the appellant had not filed the price list in Part IV for the sale to a related person, rather they filed the price list in Part I. The Revenue raised a demand of Rs.11,30,570 as differential duty. On appeal the Tribunal confirmed the demand. Aggrieved , appellant filed the present appeal before the Supreme Court.

The core issue settled in this case is the interpretation of the term "related person" with respect to holding and subsidiary company under the Excise Law.

Decision: Appeals dismissed.

Reason:

The definition of "related person" shows that when an assessee is so closely associated with another person, directly or indirectly, in the business, then it could be said that they are "related persons". The definition further shows that the holding company and subsidiary company have got special significance.

In Union of India & Ors. Vs. Atic Industries Limited (1984) 3 SCC 575, while dismissing the appeal, this Court explained the circumstances under which two concerns could be treated as "related persons".

"What the first part of the definition requires is that the person who is sought to be branded as a 'related person' must be a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other. It is not enough that the assessee has an interest, direct or indirect, in the business of the person alleged to be a related person nor is it enough that the person alleged to be a related person has an interest, direct or indirect, in the business of the assessee. It is essential to attract the applicability of the first part of the definition that the assessee and the person alleged to be a related person must have interest, direct or indirect, in the business of each other. Each of them must have a direct or indirect interest in the business of the other. The equality and degree of interest which each has in the business of the other may be different; the interest of one in the business of the other may be direct, while the interest of the latter in the business of the former may be indirect."

Having regard to the above decision and the plain meaning of the definition of "related person", it is to be noticed that the appellant is a subsidiary company of PPL and PBL is also a subsidiary company of PPL. Therefore, the relationship between the appellant and PBL, though indirect, they have mutual interest in the business of each other. The facts and circumstances of the case show that there is mutuality of interest between the three companies as sixty per cent of the products of the appellant are sold to PPL and the remaining forty per cent of the total product of toothpaste is being sold to PBL. Moreover, PPL is incurring the expenses for sales promotion and advertisement for the sale of the appellant's product, namely, "Prudent toothpaste".

Having regard to the facts and circumstances of the case, we do not find any reason to disagree with the views expressed by the Tribunal. No other materials are placed before us to show that the finding of the Tribunal is not correct. We are also told that the appellant had paid the excise duty pursuant to these notices and the same must have been passed on to the consumers. In that view of the matter, the appellant is not entitled to seek any relief. Both the appeals are dismissed. There will be no order as to costs.

LW 52:08:2023

RELIANCE INDUSTRIES LIMITED v. ROC [NCLAT]

Company Appeal (AT) No. 109 of 2023

Rakesh Kumar & Alok Srivastava. [Decided on 14/07/2023]

Companies Act,2013-sections 230 and 232- amalgamation of companies- dispensation of class meetings- whether consent affidavits of 90% creditors and shareholders is mandatory-Held, No.

Brief facts:

A proposed Scheme of Arrangement between Reliance Projects & Property Management Services Limited ("RPPMSL") which is the "Demerged Company" and its shareholders and creditors, and Reliance Industries Ltd ["RIL"] which is the "Resulting Company" and its shareholders and creditors under sections 230 to 232 and other relevant provisions of the Companies Act,2013 was put before the NCLT for sanction with a prayer to dispense with the meetings of creditors and shareholders. However, NCLT refused to dispense with the meetings unless consent of 90% of the creditors and shareholders, by way of an affidavit, is filed. Aggrieved RIL is before the NCLAT.

Decision: **Allowed.**

Reason:

It is seen from the averments and pleadings of the Appellant made as Applicant before NCLT, which is also noted in the Impugned Order, that RPPMSL is a wholly owned subsidiary of the RIL and further that no shares are required to be issued or allotted as consideration after implementation of the proposed Scheme. Also, admittedly the rights of the shareholders of RIL will not be affected after implementation of the Scheme, as no new shares are proposed to be issued in consideration neither there is any reorganization of the shareholding structure of the RIL.

We note that in Section 232(1) of the Companies Act it is left to the discretion of the Tribunal, as the word used is "may", regarding the holding of meeting of the creditors or class of creditors or members or class of members in the manner directed by the Tribunal.

This discretion given in section 232(1) to the Tribunal has been interpreted by Hon'ble Bombay High Court in the matter of Mahaamba Investments Limited (supra) and Eurokids India Pvt. Ltd. (supra) and also by this Tribunal in the matter of Patel Hydro Power Private Limited (supra) that if the Transferor Company is wholly owned subsidiary of the Transferee Company and there is no reorganization of the share capital of Transferee Company and the creditors and shareholders of the Transferee Company are not affected by the implementation of the Scheme as the assets of the Transferee Company and the Transferor Company far exceed their liabilities, the requirement for holding meetings of the shareholders, secured and unsecured may be dispensed with.

In the light of the detailed aforenoted discussion, and the facts of this case wherein the transfer of EPC Undertaking from the wholly-owned subsidiary RPPMSL (of RIL) into the parent/ transferee company RIL by way of demerger is akin to merger of wholly owned subsidiary with the parent company RIL, and noting the judgments of Hon'ble Bombay High Court in Mahaamba Private Limited (supra) and this Tribunal in the matter of Patel Hydro Power Private Limited [CA (AT) No.137 of 2021], we set aside the Impugned Order dated 11.5.2023 and direct that the convening and holding of meetings of Equity Shareholders, Secured and Unsecured Creditors of the Appellant Company RIL is dispensed with and further consent affidavits of 90% of the total value of shareholders and secured creditors and all unsecured creditors will not be necessary at this stage.

LW 53:08:2023

RAVINDRA KUMAR GOYAL v. COMMITTEE OF CREDITORS OF YASAHASVI YARNS LTD& ANR [NCLAT]

Company Appeal (AT) (Insolvency) No. 809 of 2023

Ashok Bhushan & Barun Mitra. [Decided on 14/07/2023]

Insolvency and Bankruptcy Act,2016- CIRP- payment of performance incentive fee to RP- CoC rejected the fee claim- NCLT affirmed the rejection- whether tenable-Held, Yes.

Brief facts:

The CoC of the Corporate Debtor rejected the claim of performance incentive fee as claimed by the Appellant-Resolution Professional. The RP filed an IA before the Adjudicating Authority [NCLT] seeking direction to be issued to the CoC for the grant of performance incentive, which was rejected by the Adjudicating Authority. Hence the appeal before the NCLAT.

Decision: **Dismissed.**

Reason:

The Appellant in the Application has claimed incentive fee of Rs. 21,33,000/- as performance linked incentive fee for timely resolution and Rs. 11,64,256/- as performance linked incentive fee for value maximization.

From the facts which have been brought on record and the Order of the Adjudicating Authority it is clear that the claim of incentive fee of the Appellant came to be considered by the CoC in its meeting dated 01.12.2022 and was not approved with 91.55% voting.

What is the nature of power and jurisdiction of the Committee of Creditors to grant performance linked incentive fee and whether the Resolution Professional is entitled to receive the performance linked incentive fee on timely resolution and value maximization is the question which needs to be answered in the present case?

Sub-Regulation 4 of Regulation 34B provides for *"that the committee may decide, in its discretion, to pay performance linked incentive fee".* The use of two expressions "*may*" and "*in its discretion*" makes it clear that the provision is enabling provision which vests discretion in the Committee of Creditors to pay performance linked incentive fee.

The decision of the CoC dated 01.12.2022 as noted above is a business decision of the CoC while approving the Resolution Plan including the payments which have to be made to the various creditors, stakeholders as well as to the Insolvency Professional Cost, which have to be deliberated and voted upon by the Committee of Creditors. The payment of Performance Linked Incentive Fee in event it is paid to the Resolution Professional shall be part of the Insolvency Resolution Cost which affects the entitlement of stakeholders when the Insolvency Resolution Cost is increased by adding performance linked incentive fee it is bound to reduce the payment which is to be received by the various stakeholders under the Resolution Plan, since the amount which is proposed in the Resolution Plan is a fixed amount. The decision of the CoC dated 01.12.2022 by approving the Resolution Plan which also contains consideration of resolution regarding performance linked incentive fee is a commercial decision of the Committee of Creditors. The law is well settled that the commercial decision of the CoC has to be given due credence and the Adjudicating Authority or the Appellate Authority is not to interfere in the commercial decision of the CoC unless it does not fulfil the requirement of Section 30 of the Code.

Hon'ble Supreme Court in (2021) 10 SCC 401, *Kalpraj Dharamshi Vs. Kotak Investment Advisors Ltd.* reiterated that limited judicial review which is available to the Adjudicating Authority and Appellate Authority can in no circumstances entitle to review the business decision arrived at by the majority of the CoC.

The decision taken by the CoC in not approving the payment of performance linked incentive fee to the Appellant thus cannot be faulted and is in accord with the discretionary power vested with the CoC under Regulation 34B. Appellant at best was entitled for consideration of his claim under statutory scheme. When claim is considered and not approved, Appellant has no right to claim that he was mandatorily entitled for payment of performance linked incentive fee.

We thus are satisfied that Appellant had no right to claim performance linked incentive fee and his claim having been considered and rejected by the Committee of Creditors with 91.55% vote share cannot be faulted nor it can be interfered with by the Adjudicating Authority in exercise of its jurisdiction.

General Laws

LW 54:08:2023

PR. COMMISSIONER OF INCOME TAX v. MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL & ORS [DEL]

W.P.(C).No 13754 of 2019 with connected petitions

Prathiba M. Singh , J. [Decided on 06/07/2023]

Micro Small and Medium enterprises Development Act read with Income Tax Act- engagement of CA firm for special audit- CA firm a micro/small enterprise- dispute as to non-payment of audit fee- Referred to arbitration by Micro Small Enterprise Facilitation Council- whether maintainable- Held, No.

Brief facts:

The Respondent No.2 chartered accountant firm was engaged by the Petitioner to conduct certain special audit. The audit fee was paid as per the rules & policy of the Income-tax department. The CA firm w3as a micro/small enterprise registered under the MSMED Act. The CA firm disputed the audit fee and claimed excess fee and sought to recover the same by filing a complaint before the Respondent No.1 who in turn referred the dispute to the arbitration. The Petitioner challenged this reference on the ground that MSMED Act is not applicable to the auditors engaged to do special audits under the Income tax Act.

Decision: Allowed.

Reason:

The issues raised are three-fold.

- That the MSMED Act has no applicability in the present case as there is no relationship of buyer and seller between the parties.
- Second, that Section 293 of the IT Act bars any other proceedings in respect of any orders passed under the said Act.
- In addition, the Respondent no.2 has raised issues relating to Maintainability, apart from addressing the merits.

Decision: Allowed.

Reason:

The nature of the Audit and the manner in which remuneration is to be determined would require domain expertise and knowledge which the MSEFC cannot possess. Moreover, the function which is in effect delegated to the Audit firm is one which is exercised under the Income Tax Act and would be purely governed by the said statute. Payment of remuneration is also based on the factors prescribed in the Rules as discussed above.

The nature of the assessment is not commercial but is a statutory nomination for the assistance of the AO and in effect the IT Department. The IT Department cannot be termed as a 'buyer' when it is nominating the accountant for conducting a Special Audit and neither can the CA Firm be termed as a 'supplier'. The remuneration payable to the accountant cannot also be termed as 'consideration' as the Special Audit is a statutory duty being performed by the accountant for and on behalf of the AO.

The invocation of the provisions of the MSMED Act under such circumstances, in respect of Special Audit remuneration under Section 142(2D) of the IT Act, would, therefore, not be tenable and is completely misplaced.

The MSMED Act has no applicability to the nature of the assignment which has been given to the Respondent/CA Firm. The CA Firm may be registered as a Micro or Small enterprise and may be entitled to invocation of the jurisdiction of the MSMED Act for other purposes. Insofar as the assignment is one which is emanating from a statute i.e., under Section 142(2A) of the IT Act, the determination of the remuneration is solely the prerogative of the Commissioner or the Chief Commissioner.

The same would not be liable to be called into question either in a civil court or in a commercial suit or civil suit as one of recovery of money. The nomination as a Special Auditor for the conduct of Special Audit is governed purely by the provisions of the Income Tax Act and Rules. This would, however, not bar the remedy of filing of a writ petition.

The present is a case where there is a clear lack of jurisdiction in the MSEFC, which even failed to consider as to whether the MSMED Act would itself be applicable or not. Insofar as Audits under Section 142(2A) are concerned, the IT Act would have to be reckoned as the Special Act and the MSMED Act as the general Act dealing with MSME disputes. Thus, in the facts and circumstances as discussed above, the Income Tax Act would thus prevail over the provisions of the MSMED Act.

In view of the fact that the MSMED Act would have no applicability, the impugned references by the MSEFC, of the claims raised by the Respondent/CA Firm to arbitration are not sustainable. The same are, accordingly, set aside. The remedies of the CA Firm, if any, to challenge the orders

passed by the IT Department in respect of determination of remuneration, are left open.

LW 55:08:2023

KAMDHENU LTD vs THE REGISTRAR OF TRADEMARKS [Del]

C.A.(COMM.IPD-TM) No. 66 of 2021

Prathiba M. Singh, J. [Decided on 06/07/2023]

Trademarks Act- registration of well-known trademark- applicant filed documents as evidence – evidence affidavit not filed- application rejected- whether filing of evidence affidavit is mandatory- Held, No.

Brief facts:

By the impugned order, the application filed by the Appellant, seeking inclusion of the trademark 'KAMDHENU' in the List of Well-Known Trademarks, was rejected by the Registrar. The primary reason given by the Registrar for rejecting the grant of the Application is that the Appellant failed to provide evidence of the well- known status of the mark by way of an affidavit. Aggrieved by the said decision, the appellant was before the High Court in challenge.

Decision: **Allowed.**

Reason:

The question that arises in the present case is what is the nature of the evidence, and the documents which are to be filed by an Applicant for determination as a well-known trademark under Section 11 of the 1999 Act read with Rule 124 of the 2017 Rules.

The evidence would have to be substantially documentary in nature, which would establish contemporaneous and continuous use, reputation, and goodwill. Considering the above provision in the Evidence Act, the nature of the determination by the Registrar would in any event entail filing of the documentary evidence, as mere affidavits by way of evidence without supporting documents may not even be sufficient to establish the well- known status of the mark.

On the other hand, documentary evidence without an affidavit can still establish well-known status of the mark as the statement of case would be setting out the relevant description of the documents. Some documents could even be publicly acknowledged and verifiable documents. These documents may not require an affidavit to verify authenticity or genuinity. Some facts could be of such a nature that they could be placed only by way of an affidavit, and no documents may exist to support such facts. For example, reasons for adoption of a mark, manner of coining of mark, family history of use etc. Thus, there can be no hard and fast rule that an affidavit is mandatory. Even the Public Notice does not specifically mention the requirement of an affidavit.

Considering the above legal position, especially in light of the provisions of the Evidence Act and the Public Notice, it is held that in order for a determination of well-known status of a trademark, affidavit by way of evidence cannot be held to be a mandatory requirement for grant of well- known status under the 1999 Act and the 2017 Rules. However, documentary evidence would be required.

In the present case, the Appellant has filed documents on record in support of its claim for well-known status. It has also filed Court orders recognising the trademark proprietorship or ownership. Under such circumstances, the Trademark Registry ought to have, if it was of the opinion that an affidavit was required, given an opportunity to the Petitioner to file such an affidavit without going through the statement of case, the materials and the documents which were filed with the Application. Non-filing of the affidavit could not have resulted in the dismissal of the Application itself.

Accordingly, the Appellant is given an opportunity to file a supporting affidavit, and any further documents in support of its Application for grant of well-known status for its mark 'KAMDHENU'. These documents shall be filed before the Registrar of Trademarks within 8 weeks. Thereafter, the Registrar shall afford a hearing to the Appellant, and decide the said application in accordance with law. All remedies, if any, are left open.

LW 56:08:2023

THE MADRAS ALUMINIUM CO. LTD. v. THE TAMIL NADU ELECTRICITY BOARD [SC]

Civil Appeal Nos.7224-7226 of 2009

B.R.Gavai & Sanjay Karol,JJ. [Decided on 06/07/2023]

Electricity Act- petitioner requesting reduction in load from 23000 KVA to 10000 KVA- Respondent took more than two and half years to sanction the reduction- but raised the bill for 23000 KVA load- petitioner paid the demand under protest and challenged- High Court dismissed the writ- whether the delay at the end of TNEB was reasonable-Held, No. Whether petitioner is entitled for the refund of the demand paid under protest-Held, Yes.

Brief facts:

The Petitioner initially had a contract with the Respondent for the supply of 63,000 KVA of electricity and this was reduced to 23,000 KVA in the year 1994 and further reduced to 10,000 KVA in the year 2004. Inspite of the reduction from 23,000 KVA to 10,000 KVA, the Respondent billed the Petitioner for 23, 000 KVA , which amounted to Rs.78 lakhs. The petitioner paid the demand under protest and challenged this demand before the High court which was dismissed. Aggrieved the Petitioner approached the Supreme Court.

Decision: **Allowed.**

Reason:

This case hinges on what would be construed to be 'reasonable time' to consider any application for reduction in maximum demand, by the authorities. A Three-Judge Bench of this Court in *Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari (2019) 5 SCC 90* has observed that:

"...There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc...."

In *Mansaram v. S.P. Pathak & Ors (1984) 1 SCC 125* this Court has observed that when a power exists to effectuate a purpose it must be exercised within a reasonable time. It has been observed that this is all too well-settled principle to require buttressing precedent. Nonetheless, the Court refers to *State of Gujarat v. Patel Raghav Natha (1969) 2 SCC 187* wherein the period of one year was found to be too long for the Commissioner to exercise revisional jurisdiction under Section 211 of the Bombay Land Revenue Code. The principle of reasonable time as mentioned herein was followed recently by a Two- Judge Bench in *Securities and Exchange Board of India v. Sunil Krishna Khaitan & Ors. (2023) 2 SCC 643.*

Keeping in view the above-stated well established principles that State action irrespective of being in the contractual realm must abide by Article 14, and that a) after passage of a considerable period of time, in July, 2004 the reduction to 10000 KVA was agreed to and a new agreement to that effect was entered into; b) irrespective of the amount of reduction in KVA sought other applications were considered within a reasonable period of time; c) no reason has been put forth for keeping such application pending; d) that the Appellant duly and repeatedly followed up with the authorities to effectuate such reduction; and e) the Appellant has been unjustifiably asked to furnish costs for unutilized electricity which, in any case should not have extended beyond the period of six months (considering 'reasonable period' to consider an application, to be so), for a period much larger thereto, rendering such action unquestionably unreasonable and arbitrary.

In view of the factual narrative, it would not be open for the Respondents to contend that the petitioner is not liable for the refund of the amount deposited under protest towards the bills so generated taking the maximum load to be 23000 KVA. Particularly, when at no point in time, the Appellant neither sought for nor consumed the electricity more than the maximum demand of 10000 KVA.

Acknowledging the financial health of the Appellant, in the 1999 agreement, the Respondent ought to have taken a decision on the Appellant request with a reasonable dispatch and terms which ought to have been withing a period latest by six months and not two and a half years as was so eventually done.

For the aforesaid reasons, the appeals are allowed. Judgment dated 15th December 2008 in WA 3806-3807 & 3808 of 2003 passed by the High Court of Madras is set aside. We direct the Respondent namely The Tamil Nadu Electricity Board to return the amount as may be calculated and verified, paid by the Appellant to it for 13000 KVA, in excess to its request of maximum sanctioned demand of 10000 KVA (23000-10000 = 13000 KVA).

Industrial & Labour Laws

LW 57:08:2023

DELTON INFRA PVT LTD v. STATE OF J&K & Anr [J&K]

OWP No. 112/2015(O&M)

Rajnesh Oswal, J. [Decided on 16/06/2023]

Central Employees Provident Fund Act read with J&K State Employees Provident Fund Act- Petitioner registered under the Central Act and paying the contributions - State EPF office demanded registration and payment of contribution under the State Act -Whether tenable-Held, No.

Brief facts:

The petitioner-company was registered under the Central Employees Provident Fund Act and Miscellaneous Provisions Act 1952 and have been regularly depositing the Employee Provident Fund (EPF) in respect of all its 107 employees including 54 working in the erstwhile State of Jammu and Kashmir in connection with maintenance and operation of Vodafone sites. The Respondent No. 2, EPFO under the J&K EPF Act,1961 directed the petitioner to get registered under the J&K act also and to deposit the EPF. Aggrieved by the direction, the petitioner was before the High Court.

Decision: **Allowed.**

Reason:

The first contention raised by the petitioner is that once the petitioner is making contribution under the Central Act in respect of all of its employees including those working in the erstwhile State of Jammu and Kashmir, the issuance of communications impugned amount to doubling the liability. A perusal of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act) reveals that at the relevant point of time, the same was applicable to whole of India except the erstwhile State of Jammu and Kashmir, whereas the Jammu and Kashmir Employees Provident Funds (and Miscellaneous Provisions) Act, 1961 was applicable in the erstwhile State of Jammu and Kashmir. The purpose of both the Acts is to provide for the institution of Provident Funds for employees in the factories and other establishments. Only the area of the operation of these Acts is different. There is a substance in the contention raised by the petitioner that once the petitioner is making contribution under the Central Act, then the petitioner-company cannot be compelled to contribute for same employee under the State Act of 1961.This Court is of the considered view that once the employer is contributing EPF for a particular employee

under either of the Acts, then the employer cannot be compelled to make contribution under the other Act, as the employer would then make contribution twice for the same employee.

The second contention raised by the petitioner is that the services rendered by the petitioner-company do not fall within the purview of the State Act. This contention becomes irrelevant in view of the fact that the petitioner-company has already registered itself under the State Act as admitted by the petitioner itself in paragraph 4 of the petition.

The third contention raised by the petitioner is that without holding proper enquiry, the communications impugned have been issued by the respondents. A perusal of the record reveals that notice dated 06.11.2013 was issued and admittedly received by the petitioner-company, whereby the petitioner was directed to implement the Provident Fund scheme by deducting the Provident Fund contributions from its employees. The petitioner responded to this communication and specifically stated that at the relevant point of time, the petitioner was having 107 employees including 54 employees working in the erstwhile State of Jammu and Kashmir and further, the petitioner had been depositing the Provident Fund with the State Bank of India, Employees Provident Fund Organization Delhi in the combined challan in respect of all its 107 employees. The details of 54 employees working with the petitioner-company at the time of erstwhile State of Jammu and Kashmir were also submitted along with reply dated 10.12.2013. The respondents have not denied the averments made in paragraph 4 of the petition wherein a specific stand was taken by the petitioner-company that the reply was submitted to the respondents.

It would be appropriate to take note of section 8-A (1) of the Jammu and Kashmir Employees Provident Funds (and Miscellaneous Provisions) Act, 1961 reveals that the officer duly authorized by the Government can determine the amount due from an employer and for that purpose, may conduct an enquiry. In the present case, no such enquiry was conducted by the respondents as by virtue of notice dated 06.11.2013, the petitioner was directed to implement the Provident Fund Scheme by deducting the Provident Fund contributions from its employees and thereafter, even after the receipt of the reply from the petitioner-company along with relevant documents, no such enquiry was conducted by the respondents and straightway communications impugned were issued. The petitioner-company is right in submitting before this Court, that the petitioner has been condemned unheard.

In view of all what has been said and discussed above, this Court deems it proper to quash both the impugned communications dated 17.01.2015 and are hereby quashed. The respondents shall pass fresh order after taking note of the contributions made by the petitioner under the Central Act. The respondents shall take note of the documents placed on record along with the writ petition by the petitioner-company and in case, the respondents require any additional information, the petitioner shall provide the same to the respondents. It is made clear that the petitioner cannot be compelled to make contribution under both the Acts for the same employee.

LW 58:08:2023

RAMESH CHAND v. MANAGEMENT OF DELHI TRANSPORT CORPORATION [SC]

Civil Appeal No. 4208 of 2023 (@ SLP (C) No. 7137of 2016)

Abhay S. Oka & Sanjay Karol ,JJ. [Decided on 05/07/2023]

Industrial Disputes Act- award in favour of workman for reinstatement without back wages- whether denial of back wages correct- SC allows payment of a fixed sum in lieu of back wages.

Brief facts:

The appellant was employed as a conductor by the respondent and he was served with a charge sheet alleging that he collected the fare of the tickets but dis nit issue the tickets. After the inquiry the petitioner was dismissed from the services. The Petitioner raised industrial dispute and an award was passed, by the Tribunal, in his favour that he should be reinstated without back-wages.

The respondent accepted the Award of the Labour Court. Being aggrieved by the denial of the back wages, the appellant filed a writ petition before the learned Single Judge of Delhi High Court. The writ petition was dismissed. Being aggrieved by the dismissal of the writ petition, the appellant filed an appeal before the Division Bench of the Delhi High Court. By the impugned judgment the denial of back wages has been upheld by the Division Bench.

Decision: Partly allowed.

Reason:

The only question before us is whether the Labour Court was justified in denying relief of back wages. In the case of *National Gandhi Museum v. Sudhir Sharma (2021) 12 SCC 439 Civil Appeal @ S.L.P. (C) No.7137 of 2016*, this Court held that the fact whether an employee after dismissal from service was gainfully employed is something which is within his special knowledge. Considering the principle incorporated in Section 106 of the Indian Evidence Act, 1872, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden. However, in what manner the employee can discharge the said burden will depend upon on peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since, it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer.

Now, coming to the facts of the case, we find that in the statement of claim filed by the appellant before the Labour Court on 8th August 1997, which is duly signed and verified by him, a specific contention was raised that he was still unemployed and has been rendered jobless. Therefore, a contention was raised in paragraph 9 of the statement that the appellant was entitled to back wages. Therefore, at least as on 8th August 1997, there is a specific case made out by the appellant that he was not gainfully employed. The appellant filed an affidavit on 18th July 2008 before the Labour Court in which he contended that he was unemployed from the date of

termination and was facing acute financial hardship. However, the said affidavit was withdrawn and a fresh affidavit of evidence was filed by the appellant on 4 th September 2008 in which a specific assertion regarding the failure to get employment was not incorporated. However, he was cross examined on this aspect before the Labour Court by the advocate for the management by giving a suggestion that the appellant was earning a sufficient amount to support his family. However, the appellant denied the correctness of the said suggestion. Therefore, in the statement of claim filed thirteen months after termination, a specific assertion was made by the appellant that he was unemployed. Neither any material has been placed by the respondent on record to show that the appellant had a source of income nor anything material has been elicited by the respondent while cross examining the respondent.

The law is very well settled. Even if Court passes an order of reinstatement in service, an order of payment of back wages is not automatic. It all depends on the facts and circumstances of the case. It is true that affidavit filed by the appellant on 18th July 2008 before the Labour Court making a categorical statement on oath that he was not employed from the date of termination was withdrawn and in the fresh affidavit filed by way of evidence, such a specific contention was not raised. But there are two factors in favour of the appellant. In the statement of claim, it is specifically asserted that till August 1997 when the statement of claim was filed, the appellant found it difficult to get employment and in fact he was unemployed. The second aspect is that there is a cross examination of the appellant on this issue by the Advocate for the respondent and in the cross examination, the appellant denied that he had a sufficient source of income to look after his family. However, considering the conduct of the appellant of withdrawing the affidavit filed earlier and not raising the contention of unemployment in the fresh affidavit, the appellant cannot be granted the benefit of back wages for the entire period from the date of termination till reinstatement. It is not possible to accept that for the entire period of thirteen years, the appellant had no source of income. However, the respondent has not come out with the case that from the date of his removal from service, the appellant had another source of income. Thus, the appellant discharged the burden on him by establishing that he was unemployed at least till August 1997. From the chart submitted on record by the learned counsel appearing for the respondent, we find that the gross salary of the appellant on the date of reinstatement was Rs.18,830/. On the date of removal, his salary was approximately Rs.4,000/ per month.

We are of the view that considering the facts of the case, it will be appropriate if a sum of Rs.3 lakhs is ordered to be paid to the appellant in lieu of back wages. To that extent, the appeal must succeed.

LW 59:08:2023

WORKMEN THROUGH THE JOINT SECRETARY v. FOOD CORPORATION OF INDIA & ANR [SC]

Civil Appeal No. 4152 of 2023 (@ SLP (C) No. 3656 of 2021) with connected appeal of the Management

Krishna Murari & Sanjay Kumar,JJ. [Decided on 03/07/2023]

Industrial Disputes Act- retrenchment of casual workers- award passed in favour of workers for reinstatement, regularisation and with 75% of back wages- whether restricting back wages to 75% correct-Held, No.

Brief facts:

The Respondent management retrenched 21 workmen who were casual labourers. They raised an industrial dispute through the union. The Tribunal held their retrenchment to be void and directed to regularise them with 75% of back-wages. Thereafter the issue went to the High Court and the Division Bench, which quashed the Award to the extent that it directed regularization of the services of the workmen. This modification was made on the ground that such relief could not be sustained when there was no term of regularization in the reference of the industrial dispute. The Division Bench left untouched the direction to pay 75% of the back wages.

Both sides are in appeal before this Court against the judgment of the Division Bench.

Decision: Workmen's appeal allowed while Management's appeal dismissed.

Reason:

In the case on hand, the management of FCI filed a writ petition challenging the Award passed by the Tribunal but having secured conditional interim relief therein, the management chose to implement the impugned Award though it was under no compulsion to do so. As pointed out hereinbefore, the management did not stop short at just reinstating the workmen in service but went further and absorbed them in regular service. Such absorption in service was not at all required under the interim order dated 05.08.1999 and was, therefore, squarely attributable to the will and volition of the management of FCI itself. In effect, the management of FCI, be it for whatever reason, chose to acquiesce with and accept the Award in its entirety, though it made such compliance subject to the result of the writ petition. Its somnolence, thereafter, in taking timely measures for expeditious disposal of the writ petition compounded the matter further, leading to the passing of 18 long years, which conclusively weighed with the learned Judge and, in our considered opinion, rightly so. A party to a proceeding cannot be permitted to challenge the same but thereafter abide by it out of its own free will; garner benefit from it; get the opposite party to effectively alter its position; and then press its challenge after the passage of a considerable length of time.

Having allowed the workmen to put in regular service to its own benefit for over two decades, the management can no longer claim an indefeasible right to continue with and canvass its challenge to the Award, merely because it made its compliance with the Award conditional long ago. In the light of their absorption in regular service, these workmen, who may have otherwise opted for employment opportunities elsewhere, altered their position and remained with the FCI. Having placed them in that position, it is no longer open to the management of FCI to seek to turn back the clock. Unfortunately, these crucial aspects were lost sight of by the Division Bench, while dealing with the management's appeal. In that view of the matter, we are not inclined to alter the position obtaining for over two decades, by accepting the legally weighty but essentially pedantic view taken by the Division Bench, ignoring the factual position.

The appeal filed by the Executive Staff Union of FCI, on behalf of the workmen, is accordingly allowed and the appeal filed by the management of FCI is dismissed.

4

FROM THE GOVERNMENT

- MERGER OF MULTIPLE USER IDS IN V-2 PORTAL WITH NEW USER ID IN V-3 AND DEACTIVATION OF OLD USER ID IN V-2 PORTAL
- ONLINE RESOLUTION OF DISPUTES IN THE INDIAN SECURITIES MARKET
- MANDATING LEGAL ENTITY IDENTIFIER (LEI) FOR ALL NON – INDIVIDUAL FOREIGN PORTFOLIO INVESTORS (FPIs)
- INVESTMENT BY MUTUAL FUND SCHEMES AND AMCS IN UNITS OF CORPORATE DEBT MARKET DEVELOPMENT FUND
- FRAMEWORK FOR CORPORATE DEBT MARKET DEVELOPMENT FUND (CDMDF)
- RESOURCES FOR TRUSTEES OF MUTUAL FUNDS
- NEW CATEGORY OF MUTUAL FUND SCHEMES FOR ENVIRONMENTAL, SOCIAL AND GOVERNANCE ("ESG") INVESTING AND RELATED DISCLOSURES BY MUTUAL FUNDS
- TRADING WINDOW CLOSURE PERIOD UNDER CLAUSE 4 OF SCHEDULE B READ WITH REGULATION 9 OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015 ("PIT REGULATIONS") – EXTENDING FRAMEWORK FOR RESTRICTING TRADING BY DESIGNATED PERSONS ("DPS") BY FREEZING PAN AT SECURITY LEVEL TO ALL LISTED COMPANIES IN A PHASED MANNER
- DISCLOSURE OF MATERIAL EVENTS / INFORMATION BY LISTED ENTITIES UNDER REGULATIONS 30 AND 30A OF SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015
- BRSR CORE – FRAMEWORK FOR ASSURANCE AND ESG DISCLOSURES FOR VALUE CHAIN
- REGULATORY FRAMEWORK FOR SPONSORS OF A MUTUAL FUND
- ROLES AND RESPONSIBILITIES OF TRUSTEES AND BOARD OF DIRECTORS OF ASSET MANAGEMENT COMPANIES (AMCs) OF MUTUAL FUNDS
- AMENDMENTS TO GUIDELINES FOR PREFERENTIAL ISSUE AND INSTITUTIONAL PLACEMENT OF UNITS BY A LISTED INVIT
- AMENDMENTS TO GUIDELINES FOR PREFERENTIAL ISSUE AND INSTITUTIONAL PLACEMENT OF UNITS BY A LISTED REIT
- APPOINTMENT OF DIRECTOR NOMINATED BY THE DEBENTURE TRUSTEE ON BOARDS OF ISSUERS
- MASTER CIRCULAR - MANAGEMENT OF ADVANCES - UCBs
- IMPLEMENTATION OF SECTION 51A OF UAPA,1967: UPDATES TO UNSC'S 1267/ 1989 ISIL (DA'ESH) & AL-QAIDA SANCTIONS LIST: AMENDMENTS IN 02 ENTRIES
- INCLUSION OF "NONGHYUP BANK" IN THE SECOND SCHEDULE OF THE RESERVE BANK OF INDIA ACT, 1934
- IMPLEMENTATION OF SECTION 12A OF THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005: DESIGNATED LIST (AMENDMENTS)
- IMPLEMENTATION OF SECTION 12A OF THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005: DESIGNATED LIST (CONSOLIDATED)

Corporate Laws

01 Merger of Multiple User IDs in V-2 Portal with new User ID in V-3 and deactivation of old User ID in V-2 Portal

[Issued by the Ministry of Corporate Affairs [File No. EGov-04/10/2021-0/o Director (e-Gov)-MCA] dated 12.07.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (1)]

It has come to the notice of this Ministry that many members of the three institutes viz. Institute of Chartered Accountants of India, Institute of Cost Accountants of India and Institute of Company Secretaries of India have created multiple user IDs while transacting on existing MCA21 V2 portal. Further many members are not able to create user ID in the new MCA21 V3 portal due to an existing ID about which either they do not have any knowledge, or they do not remember that such an ID has been or was created in existing V2 portal.

It has been decided that all such members may approach the respective institutes with their credentials and the institute shall make recommendations for merging multiple existing user IDs with the ID created in V3 portal or for deactivation of the old user IDs in V2, to enable desirous members to create a new ID in V3 portal. The necessary changes in the user ID in V3 portal in such cases shall be done based on recommendations forwarded by the President or Vice-president of the institute to ddegov@mca.qov.in.

This issues with the approval of the Competent Authority

B. SRIKUMAR
Joint Director

02 Online Resolution of Disputes in the Indian Securities Market

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/131 dated 31.07.2023]

1. After extensive public consultations and in furtherance of the interests of investors and consequent to the gazette notification (dated July 3, 2023) of the SEBI (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023 the existing dispute resolution mechanism in the Indian securities market is being streamlined under the aegis of Stock Exchanges and Depositories (collectively referred to as Market Infrastructure Institutions (MIIs)),1 by expanding their scope and by establishing a common Online Dispute Resolution Portal ("ODR Portal") which harnesses online conciliation and online arbitration for resolution of disputes arising in the Indian Securities Market.

Investors and Listed Companies / Specified Intermediaries / Regulated entities under the ambit of ODR

2. Disputes between Investors/Clients and listed companies (including their registrar and share transfer agents) or any of the specified intermediaries / regulated entities in securities market (as specified in Schedule A) arising out of latter's activities in the 1 presently excluding Clearing Corporations and its constituents securities market, will be resolved in accordance with this circular and by harnessing online conciliation and/or online arbitration as specified in this circular. Listed companies/ specified intermediaries / regulated entities OR their clients/ investors (or holders on ccount of nominations or transmission being given effect to) may also refer any unresolved issue of any service requests / service related complaints2 for due resolution by harnessing online conciliation and/or online arbitration as specified in this circular.

3. Disputes between institutional or corporate clients and specified intermediaries / regulated entities in securities market as specified in Schedule B can be resolved, at the option of the institutional or corporate clients:

   a. in accordance with this circular and by harnessing online conciliation and/or online arbitration as specified in this circular; OR

   b. by harnessing any independent institutional mediation, conciliation and/or online arbitration institution in India.

   For existing and continuing contractual arrangements between institutional or corporate clients and specified intermediaries / regulated entities in the securities market as specified in Schedule B, such option should be exercised within a period of six months, failing which option as specified in (a) above will be deemed to have been exercised. For all new contractual arrangements, such choice should be exercised at the time of entering into such arrangements.

4. Disputes between MII and its constituents which are contractual in nature shall be included in the framework at a future date as may be specified3 while expressly excluding disputes/appeals/ reviews/challenges pertaining to the regulatory, enforcement role and roles of similar nature played by MIIs.

S. MANJESH ROY
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

03 Mandating Legal Entity Identifier (LEI) for all non – individual Foreign Portfolio Investors (FPIs)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/ AFD/ AFD– PoD–2/ CIR/ P/ 2023/ 0127 dated 27.07.2023]

1. The Legal Entity Identifier (LEI) code is a unique global 20-character code to identify legally distinct entities that engage in financial transactions. LEI is conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis. RBI directions, inter alia, mandate non-individual borrowers having aggregate exposure of above Rs. 25 crore, to obtain LEI code.

2. Presently, FPIs are required to provide their LEI details in the Common Application Form ("CAF"), used for registration, KYC and account opening of FPIs on a voluntary basis. It has now been decided to mandate the requirement of providing LEI details for all non-individual FPIs. Depositories shall carry out the necessary modifications to the CAF in their Portals.

3. All existing FPIs (including those applying for renewal) that have not already provided their LEIs to their DDPs shall do so within 180 days from the date of issuance of this circular, failing which their account shall be blocked for further purchases until LEI is provided to their DDPs.

4. All fresh registration, subsequent to issuance of this circular, shall be carried out upon receipt of the FPIs' respective LEI details.

5. FPIs are required to ensure that their LEI is active at all times. Accounts of FPIs whose LEI code has expired / lapsed shall be blocked for further purchases in the securities market till the time the LEI code is renewed by such FPIs.

6. This circular shall come into force with immediate effect.

7. This Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulations 3 (2), 22 (1) (j) and 44 of SEBI (FPI) Regulations, 2019, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

8. This Circular is available at www.sebi.gov.in under the link "Legal Circulars".

VIKASH NARNOLI
Deputy General Manager

04 Investment by Mutual Fund Schemes and AMCs in units of Corporate Debt Market Development Fund

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/PoD2/P/CIR/2023/129 dated 27.07.2023]

1. With the objective of development of the corporate debt market from the perspective of Mutual Funds, the Mutual Fund Advisory Committee (MFAC) of SEBI had constituted a Working Group consisting of representatives of various Mutual Funds, Clearing Corporation of India Limited (CCIL) and AMFI for detailed deliberation. The Working Group inter-alia recommended creation of an entity to buy corporate debt securities from MF schemes with support from Government of India.

2. Based on consultation with various stakeholders and as proposed as part of the Union Budget 2021-22, Chapter III-C has been inserted in SEBI (Alternative Investment Funds) Regulations, 2012 vide Gazette notification no. SEBI/LAD-NRO/GN/2023/132 dated June 15, 2023 and regulation 43A has been inserted in SEBI (Mutual Funds) Regulations, 1996 vide Gazette notification no. SEBI/LAD-NRO/GN/2023/134 dated June 26, 2023 to facilitate constitution of Corporate Debt Market Development Fund ("CDMDF" or "the fund"), as a backstop facility for purchase of investment grade corporate debt securities, to instil confidence amongst the participants in the Corporate Debt Market during times of stress and to generally enhance secondary market liquidity by creating a permanent institutional framework for activation in times of market stress. Further, Guarantee Scheme for Corporate Debt (GSCD) was notified by Ministry of Finance vide notification no. G.S.R. 559(E) dated July 26, 2023, which includes the Framework for Corporate Debt Market Development Fund.

3. CDMDF shall be launched as a close ended scheme with an initial tenure of 15 years (extendable) from the date of its initial closing (date on which contribution from all AMCs and specified schemes is received by CDMDF).

LAKSHAYA CHAWLA
Deputy General Manager

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05 Framework for Corporate Debt Market Development Fund (CDMDF)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/PoD2/P/CIR/2023/128 dated 27.07.2023]

1. Chapter III-C has been inserted vide amendments to SEBI (Alternative Investment Funds) Regulations, 2012 vide Gazette notification no. SEBI/LAD-NRO/GN/2023/132 dated June 15, 2023 in order to facilitate constitution of an Alternative Investment Fund namely, Corporate Debt Market Development

Fund ("CDMDF" or "the Fund"), to act as a Backstop Facility for purchase of investment grade corporate debt securities, to instil confidence amongst the participants in the Corporate Debt Market during times of stress and to generally enhance secondary market liquidity by creating a permanent institutional framework for activation in times of market stress.

2. CDMDF shall comply with the Guarantee Scheme for Corporate Debt (GSCD) as notified by Ministry of Finance vide notification no. G.S.R. 559(E) dated July 26, 2023, which includes the Framework for Corporate Debt Market Development Fund.

3. In addition to the abovementioned scheme as mentioned at para 2 above, CDMDF shall comply with following:

   3.1. The fund shall deal only in following securities during normal times:

   - Low duration Government Securities
   - Treasury bills
   - Tri-party Repo on G-sec
   - Guaranteed corporate bond repo with maturity not exceeding 7 days.

   3.2. The fees and expenses of the Fund shall be as follows:

   - During Normal times: (0.15% + tax) of the Portfolio Value charged on daily pro-rata basis.
   - During Market stress: (0.20% + tax) of the Portfolio Value charged on daily pro-rata basis.
   - "Portfolio Value" means the aggregate amount of portfolio of investments including cash balance without netting off of leverage undertaken by the Fund.

LAKSHAYA CHAWLA
Deputy General Manager

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06 Resources for Trustees of Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-I –PoD1/P/CIR/2023/126 dated 26.07.2023]

1. As per para 6.8.2 of the Master Circular on Mutual Funds No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/74 dated May 19, 2023 ("Master Circular"), the Trustees shall have standing arrangements with independent firms for special purpose audit and/or to seek legal advice in case of any requirement as identified and whenever considered necessary.

2. Since the aforesaid standing arrangement with independent firms has to be available on a continuous basis, a confirmation to this effect shall be provided by Trustees in the Half Yearly Trustee Reports submitted to SEBI. Accordingly, the format for Half Yearly Trustee Report, as provided under Chapter 2 of Formats in the Master Circular, shall stand modified as under:

   "72. Compliance with the requirement of standing arrangements with independent firms for special purpose audit and/or to seek legal advice.

   73. Any other matter the trustees would like to report to SEBI."

3. The provisions of this circular shall be applicable with immediate effect.

4. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interest of investors in securities market and to promote the development of, and to regulate the securities market.

5. The circular is available on SEBI website at www.sebi.gov.in.

PETER MARDI
Deputy General Manager

07 New category of Mutual Fund schemes for Environmental, Social and Governance ("ESG") Investing and related disclosures by Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-I –PoD1/P/CIR/2023/125 dated 20.07.2023]

1. Under the extant regulatory requirements, Mutual Funds are permitted to launch only one scheme with ESG investing under the thematic category for Equity schemes. In view of the industry representations for allowing multiple schemes with different ESG strategies and considering the increasing need for green financing, it has been decided to permit launch of multiple ESG schemes with different strategies by Mutual Funds.

2. The concept of ESG investments is emerging and therefore consistent, comparable, and decision-useful scheme disclosures is desirable to enable investors to make informed investment decision and to prevent greenwashing. In this regard, SEBI, vide letters dated February 08, 2022 and June 21, 2022 to AMFI, had prescribed disclosure norms for ESG schemes of Mutual Funds, as available under the 'Policy related letters/Emails issued by SEBI' in the Master Circular on Mutual Funds No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/74 dated May 19, 2023.

3. In order to suggest further measures to improve transparency, with a particular focus on mitigation of risks of mis-selling and greenwashing, an ESG Advisory Committee was set up by SEBI which

provided recommendations for expanding the disclosure norms for ESG funds. Considering the recommendations of the ESG Advisory Committee and pursuant to public consultation on the matter, the provisions of the SEBI (Mutual Funds) Regulations, 1996 were amended on June 27, 2023 (link) to inter-alia specify that the funds under ESG schemes shall be invested in the manner as specified by SEBI from time to time.

4. Accordingly, it has been decided to implement the following measures to facilitate green financing with thrust on enhanced disclosures and mitigation of green washing risk.

PETER MARDI
Deputy General Manager

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08 Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") – Extending framework for restricting trading by Designated Persons ("DPs") by freezing PAN at security level to all listed companies in a phased manner

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ISD/ISD-PoD-2/P/CIR/2023/124 dated 19.07.2023]

1. Clause 4 (1) of Schedule B read with Regulation 9 of PIT Regulations, inter-alia, states that "Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring the trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of UPSI. Such closure shall be imposed in relation to such securities to which such UPSI relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed".

2. One of the instances of closure of trading window is provided in Clause 4 (2) of Schedule B read with Regulation 9 of PIT Regulations, which inter-alia states that "trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results…...".

3. In order to rationalize the compliance requirement under Clause 4 of Schedule B read with Regulation 9 of PIT Regulations, to improve ease of doing business and to prevent inadvertent non-compliances of provisions of PIT Regulations by DPs, SEBI issued Circular SEBI/HO/ISD/ISD-SEC-4/P/CIR/2022/107 dated August 05, 2022, laying down a framework for developing a system to restrict the trading by Designated Persons (DPs) by way of freezing the PAN at security level during Trading Window closure period.

4. Accordingly, a system has been developed and framework put in place by the Depositories and the Stock Exchanges. The framework was initially made applicable for those listed companies that were part of benchmark indices i.e. NIFTY 50 and SENSEX. The aforesaid Circular was rescinded and superseded vide section 3.4.2 of Master Circular on Surveillance of Securities Market SEBI/HO/ISD/ISD-PoD-2/P/CIR/2023/039 dated March 23, 2023.

5. Considering the satisfactory implementation of the framework for the listed companies forming part of benchmark indices and the consultations held with the Stock Exchanges and Depositories, the above framework is hereby extended to all the listed companies.

A VIJAYAN
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

09 Disclosure of material events / information by listed entities under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123 dated 13.07.2023]

1. SEBI vide circular no. CIR/CFD/CMD/4/2015 dated September 9, 2015 specified the details that need to be provided while disclosing events given in Part A of Schedule III of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") and guidance on when an event / information can be said to have occurred. The aforesaid circular has now become part of Section V-A of Chapter V of Master Circular issued vide circular no. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated July 11, 2023 ("Master Circular").

2. In order to bring more transparency and to ensure timely disclosure of material events / information by listed entities, the proposal to amend LODR Regulations was deliberated by the Primary Market Advisory Committee (PMAC) of SEBI and subsequently placed for public consultation for comment. Based on the above, pursuant to approval by the Board, amendments to the LODR Regulations were notified (link).

3. Accordingly, this circular consists of four annexures with respect to disclosure requirements under regulations 30 and 30A (inserted by the aforesaid amendment) of the LODR Regulations which are given below:

   i. ANNEXURE I specifies the details that need to be provided while disclosing events given in Part A of Schedule III (Annexure 18 to the Master Circular).

ii. ANNEXURE II specifies the timeline for disclosing events given in Part A of Schedule III.

iii. ANNEXURE III provides guidance on when an event / information can be said to have occurred (Annexure 19 to the Master Circular).

iv. ANNEXURE IV provides guidance on the criteria for determination of materiality of events / information.

4. The Master Circular stands partially modified by this circular as specified in sub-paragraph (i) and (iii) of paragraph 3 above.

5. This circular shall come into force from July 15, 2023.

6. The Stock Exchanges are advised to bring the contents of this circular to the notice of their listed entities and ensure its compliance.

7. This circular is issued in exercise of the powers conferred under Section 11(1) and 11A of the Securities and Exchange Board of India Act, 1992 read with regulation 101 of LODR Regulations.

8. This circular is available on SEBI website at www.sebi.gov.in under the category: 'Legal → Circulars'.

RAJ KUMAR DAS
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

10 BRSR Core – Framework for assurance and ESG disclosures for value chain

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 dated 12.07.2023]

1. SEBI vide Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated May 10, 2021 had prescribed the Business Responsibility and Sustainability Report (BRSR) which was subsequently incorporated in the Master Circular No. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated July 11, 2023. Based on the recommendations of the ESG Advisory Committee and pursuant to public consultation, the Board decided to introduce the BRSR Core for assurance by listed entities. The Board further decided to introduce disclosures and assurance for the value chain of listed entities, as per the BRSR Core.

2. The provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") in this regard, have been amended vide Gazette notification no. SEBI/LAD-NRO/GN/2023/131 dated June 14, 2023.

3. BRSR Core and Updated BRSR

3.1 The BRSR Core is a sub-set of the BRSR, consisting of a set of Key Performance Indicators (KPIs) / metrics under 9 ESG attributes. Keeping in view the relevance to the Indian / Emerging market context, few new KPIs have been identified for assurance such as job creation in small towns, open-ness of business, gross wages paid to women etc. Further, for better global comparability intensity ratios based on revenue adjusted for Purchasing Power Parity (PPP) have been included. The format of BRSR Core for reasonable assurance is placed at Annexure I. The BRSR format after incorporating new KPIs of BRSR Core is placed as Annexure II. Accordingly, the BRSR format as prescribed in Annexure 16 of the aforementioned Master Circular stands revised.

3.2 In order to facilitate the verification process, the BRSR Core specifies the data and approach for reporting and assurance. It is however clarified that the approach specified is only a base methodology. Any changes or industry specific adjustments / estimations shall be disclosed.

3.3 For ease of reference, the BRSR Core contains a cross-reference to the disclosures contained in the BRSR.

3.4 Applicability

3.4.1 From FY 2023 – 2024, the top 1000 listed entities (by market capitalization) shall make disclosures as per the updated BRSR format, as part of their Annual Reports.

3.4.2 Listed entities shall mandatorily undertake reasonable assurance of the BRSR Core, as per the glide path specified in the following table:

Financial Year	Applicability of BRSR Core to top listed entities (by market capitalization)
2023 – 24	Top 150 listed entities
2024 – 25	Top 250 listed entities
2025 – 26	Top 500 listed entities
2026 – 27	Top 1000 listed entities

SURABHI GUPTA
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

11 Regulatory Framework for Sponsors of a Mutual Fund

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-PoD-2/P/CIR/2023/118 dated 07.07.2023]

1. In order to enhance the penetration of the Mutual Fund industry, and to facilitate new types of players to act as sponsors of Mutual Funds, an alternative set of eligibility criteria is introduced. This is with the objective of facilitating fresh flow of capital into the industry, fostering innovation, encouraging competition, providing ease of consolidation and easing exit for existing sponsors.

2. In this regard, a Working Group was formed by SEBI to examine the aforesaid issues. The recommendations

of the Working Group were deliberated in the Mutual Funds Advisory Committee (MFAC) and subsequent to that, SEBI (Mutual Funds) Regulations, 1996 ("MF Regulations") have been amended vide notification No. SEBI/LAD-NRO/GN/2023/134 dated June 26, 2023.

3. In furtherance to the same, the following has been decided:

A. Deployment of liquid net worth by Asset Management Company (AMC)

i. In terms of Regulation 21(1)(f) of the MF Regulations, an AMC shall deploy the minimum net worth required, as applicable, in assets as may be specified by SEBI.

ii. In this regard, the following has been decided:

a. AMCs shall deploy the minimum net worth required either in cash, money market instruments, Government Securities, Treasury bills, Repo on Government securities, or in listed AAA rated debt securities without bespoke structures/ structured obligations, credit enhancements or embedded options or any other structure/ feature which increase the liquidity risk of the instrument on a continuous basis and such investments shall be unencumbered.

LAKSHAYA CHAWLA
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

12 Roles and responsibilities of Trustees and board of directors of Asset Management Companies (AMCs) of Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/117 dated 07.07.2023]

1. As per the extant regulatory framework, the Trustees hold the property of the Mutual Fund in trust for the benefit of the unit holders and their primary role is to ensure that AMCs appointed by them act in the best interests of the unitholders. Accordingly, any conflict between interests of unitholder and that of AMCs' stakeholders needs to be addressed by the Trustees. While the SEBI (Mutual Funds) Regulations 1996 ('MF Regulations') provide for restrictions to address certain scenarios of conflict of interest, there are other areas of conflict which require specific attention from the Trustees.

2. At the same time, as an AMC is responsible for managing the funds of the schemes, the board of directors of the AMC is also accountable to ensure that the interests of the unitholders are protected.

3. SEBI had constituted a Working Group with a view to streamline the responsibilities at the level of the Trustees and AMCs, to deliberate and make recommendations for ensuring that Trustees can devote their attention to the fiduciary obligations and supervisory role cast upon them. Based on the recommendations of the Working Group and deliberations in the Mutual Fund Advisory Committee (MFAC), it has been decided to specify the "core" responsibilities for the Trustees of a Mutual Fund. Accordingly, amendments were carried out in MF Regulations. The amendments were notified on June 27, 2023 (link).

4. Consequent to the amendment, it has been decided as under:

4.1. Core responsibilities of the Trustees

4.1.1. As per Regulation 18(25)(C) of MF Regulations, the Trustees shall exercise due diligence on such matters as may be specified by the SEBI from time to time. In terms of the said Regulation 18 (25)(C), the Trustees shall exercise independent due diligence on certain "core responsibilities", which are specified as under:

a) The Trustees shall ensure the fairness of the fees and expenses charged by the AMCs.

b) The Trustees shall review the performance of AMC in its schemes vis-a-vis performance of peers or the appropriate benchmarks.

c) The Trustees shall ensure that the AMCs have put in place adequate systems to prevent mis-selling to increase assets under their management and valuation of the AMCs.

d) The Trustees shall ensure that operations of AMCs are not unduly influenced by the AMCs Sponsor, its associates and other stakeholders of AMCs.

e) The Trustees shall ensure that undue or unfair advantage is not given by AMCs to any of their associates/group entities.

f) The Trustees shall be responsible to address conflicts of interest, if any, between the shareholders/stakeholders/associates of the AMCs and unitholders.

g) The Trustees shall ensure that the AMC has put in place adequate systems to prevent misconduct including market abuse/misuse of information by the employees, AMC and connected entities of the AMCs.

PETER MARDI
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

13 Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS-PoD-2/P/CIR/2023/113 dated 05.07.2023]

1. SEBI issued circular SEBI/HO/DDHS/DDHS/CIR/P/2019/143 dated November 27, 2019 providing guidelines for preferential issue and institutional placement of units by listed InvITs ("Guidelines"). The guidelines were subsequently revised vide circulars SEBI/HO/DDHS/DDHS/CIR/P/2020/36 dated March 13, 2020, SEBI/HO/DDHS/DDHS/CIR/P/2020/183 dated September 28, 2020, SEBI/HO/DDHS/DDHS/CIR/P/2020/232 dated November 17, 2020, SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/115 dated August 26, 2022 and SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/129 dated September 28, 2022.

2. Pursuant to feedback received, the guidelines for preferential issue and institutional placement of units by listed InvITs stand modified as under:

   I. Clause 2 of Annexure II of SEBI Circular dated November 27, 2019 is modified as under:

   "2. Pricing of Units

   The institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date:

   Provided that the InvIT may offer a discount of not more than five percent on the price so calculated, subject to approval of unitholders through a resolution as specified in guideline 2.1.

   Explanation: "relevant date" for the purpose of clauses related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue.

3. This circular shall be applicable with immediate effect.

4. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the InvIT Regulations. This circular is issued with the approval of the competent authority.

5. This Circular is available on the website of the Securities and Exchange Board of India at www.sebi.gov.in under the category "Legal" and under the drop down "Circulars".

RITESH NANDWANI
Deputy General Manager

14 Amendments to guidelines for preferential issue and institutional placement of units by a listed REIT

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS-PoD-2/P/CIR/2023/114 dated 05.07.2023]

1. SEBI issued circular SEBI/HO/DDHS/DDHS/CIR/P/2019/142 dated November 27, 2019 providing guidelines for preferential issue and institutional placement of units by listed REITs ("Guidelines"). The guidelines were subsequently revised vide circulars SEBI/HO/DDHS/DDHS/CIR/P/2020/35 dated March 13, 2020, SEBI/HO/DDHS/DDHS/CIR/P/2020/184 dated September 28, 2020, SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/116 dated August 26, 2022 and SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/130 dated September 28, 2022.

2. Pursuant to feedback received, the said guidelines for preferential issue and institutional placement of units by listed REITs stand modified as under:

   I. Clause 2 of Annexure II of the SEBI circular dated November 27, 2019 (as amended), is modified as under:

   "2. Pricing of Units

   The institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date:

   Provided that the REIT may offer a discount of not more than five percent on the price so calculated, subject to approval of unitholders through a resolution as specified in guideline 2.1.

   Explanation: "relevant date" for the purpose of clauses related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue."

3. This circular shall be applicable with immediate effect.

4. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the REIT Regulations. This circular is issued with the approval of the competent authority.

5. This Circular is available on the website of the Securities and Exchange Board of India at www.sebi.gov.in under the category "Legal" and under the drop down "Circulars".

RITESH NANDWANI
Deputy General Manager

15 Appointment of Director nominated by the Debenture Trustee on boards of issuers

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/POD1/P/CIR/2023/112 dated 04.07.2023]

1. Regulation 23(6) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) obligates an issuer which is a company under the Companies Act, 2013 to ensure that its Articles of Association requires its Board of Directors to appoint as director, the person nominated by the debenture trustee(s) in terms of clause (e) of sub-regulation (1) of regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993[1].

2. While this obligation exists for issuers that are companies under the Companies Act, 2013, there is no similar obligation for issuers that are not companies. In this regard, representations have been received from Debenture Trustees. A gist of the representations, as follows, merit attention:

   2.1. Issuers that are incorporated under different statutes / are also under the purview of other regulators have expressed inability to execute such amendments as the composition of their boards is governed by certain statutes which do not provide for appointment of nominee directors by Trustees.

   2.2. Appointment of any director on the boards of certain issuers which are governed by certain statutes requires prior approval of the President of India.

   2.3. Certain issuers are unable to appoint Nominee Directors on their boards as their principal document / charter does not provide for the same; in a few cases, the absence of a statutory mandate fetters them from amending their principal document.

3. The appointment of a director including nominee director is driven by the provisions of the principal document of the entity (Articles of association, in case of companies under the Companies Act, 2013). A nominee director is a director, and therefore, except for specific provisions of law, articles or the terms of the agreement under which the right of nomination comes, the position, appointment process, responsibilities, etc., of the nominee director are the same as that of any other director on the Board.

4. Accordingly, owing to the issues mentioned in para 2 and similarities in roles and responsibilities of the directors as mentioned in para 3, issuers that fall in any of the categories mentioned in 2.1, 2.2 or 2.3 above shall submit an undertaking to their Debenture Trustees that in case of events as mentioned in Regulation 15(1)(e) of SEBI (Debenture Trustees) Regulations, 1993, a non-executive / independent director / trustee / member of its governing body shall be designated as nominee director for the purposes of Regulation 23(6) of NCS Regulations, in consultation with the Debenture Trustee, or, in case of multiple Debenture Trustees, in consultation with all the Debenture Trustees.

5. Debenture Trustees shall:

   5.1. ensure compliance with the provisions of this circular; and

   5.2. monitor and ensure compliance by issuers, with the provisions of this circular.

6. The circular shall come into force with immediate effect.

7. Provisions of this circular shall be appropriately incorporated in the NCS Operational Circular dated August 10, 2021 and the DT Operational Circular dated March 31, 2023.

8. This circular is issued in exercise of the powers conferred upon SEBI under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 2A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and regulations 55 and 56 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

9. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Circulars".

PRADEEP RAMAKRISHNAN
General Manager

16 Master Circular - Management of Advances - UCBs

[Issued by the Reserve Bank of India vide RBI/2023-24/51 DOR.CRE.REC. No.27/07.10.002/2023-24 dated 25.07.2023]

Please refer to our Mater Circular DOR.CRE.REC. No.17/13.05.000/2022-23 dated April 8, 2022 on the captioned subject. The enclosed Master Circular consolidates and updates all the instructions / guidelines on the subject issued till date.

MANORANJAN MISHRA
Chief General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

17 Implementation of Section 51A of UAPA,1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 02 Entries

[Issued by the Reserve Bank of India vide RBI/2023-24/50 DOR.AML.REC.26/14.06.001/2023-24 dated 24.07.2023]

Please refer to Section 51 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on May 04, 2023 (MD on KYC), in terms of which "Regulated Entities (REs) shall ensure that in terms of Section 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967 and amendments thereto, they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (UNSC)."

2. In this connection, Ministry of External Affairs (MEA), Government of India has informed about the UNSC press release SC/15363 dated July 21, 2023 wherein the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities enacted the amendments specified with strikethrough and/or underline in the entries below on its ISIL (Da'esh) and Al-Qaida Sanctions List of individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021), and adopted under Chapter VII of the Charter of the United Nations.

A. Individuals

QDi.124 Name: 1: YAZID 2: SUFAAT 3: na 4: na Title: na Designation: na DOB: 20 Jan. 1964 POB: Johor, Malaysia Good quality a.k.a.: na Low quality a.k.a.: a) Joe b) Abu Zufar Nationality: Malaysia Passport no: A 10472263 National identification no: 640120-01-5529 Address: a) Taman Bukit Ampang, State of Selangor, Malaysia (previous address) b) Malaysia (in prison since 2013 to 2019) Listed on: 9 Sep. 2003 (amended on 3 May 2004, 1 Feb. 2008, 10 Aug. 2009, 25 Jan. 2010, 16 May 2011, 11 Oct. 2016, 22 Sep. 2017, 1 May 2019, 8 Nov. 2022, 21 Jul. 2023) Other information: Founding member of Jemaah Islamiyah (JI) (QDe.092) who worked on Al-Qaida's (QDe.004) biological weapons program, provided support to those involved in Al-Qaida's 11 Sep. 2001 attacks in the United States of America, and was involved in JI bombing operations. Detained in Malaysia from 2001 to 2008. Arrested in Malaysia in 2013 and sentenced to 7 years in Jan. 2016 for failing to report information relating to terrorist acts. Completed detention on 20 November 2019. Served a two-year restricted residence order in Selangor Malaysia until 21 November 2021. Review pursuant to Security Council resolution 1989 (2011) was concluded on 6 Mar. 2014. Review pursuant to Security Council resolution 2253 (2015) was concluded on 21 Feb. 2019. Review pursuant to Security Council resolution 2610 (2021) was concluded on 8 November 2022. Photos included in INTERPOL-UN Security Council Special Notice web link: https://www.interpol.int/en/How-we-work/Notices/View-UN-Notices-Individuals.

SAIDUTTA SANGRAM KESHARI PRADHAN
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

18 Inclusion of "NongHyup Bank" in the Second Schedule of the Reserve Bank of India Act, 1934

[Issued by the Reserve Bank of India vide RBI/2023-24/49 DoR.RET.REC.25/12.07.160/2023-24 dated 18.07.2023]

It is advised that "NongHyup Bank" has been included in the Second Schedule to the Reserve Bank of India Act, 1934 vide Notification DoR.LIC.No.S1568/23.13.164/2023-24 dated June 20, 2023 and published in the Gazette of India (Part III - Section 4) dated July 15 - July 21, 2023.

BRIJ RAJ
Chief General Manager

19 Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)

[Issued by the Reserve Bank of India vide RBI/2023-24/48 DOR.AML.REC.24/14.06.001/2023-24 dated 04.07.2023]

Please refer to Section 52 and Section 53 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on May 04, 2023 (MD on KYC), in terms of which "REs shall ensure meticulous compliance with the "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005" laid down in terms of Section 12A of the WMD Act, 2005 vide Order dated January 30, 2023, by the Ministry of Finance, Government of India (Annex III of the Master Direction on Know Your Customer)."

2. In this connection, a reference is invited to our circular DOR.AML.REC.23/14.06.001/2023-24 dated July 04, 2023, communicating thereby the Consolidated Lists of UNSC Designated / Sanctioned Individuals and Entities under the UNSC Resolutions relating to non-proliferation.

3. In this regard, Ministry of External Affairs (MEA), GoI has informed that the UNSC Committee established pursuant to resolution 1718(2006) enacted the amendments specified with strikethrough and/or underline in certain entries on its Sanctions List of individuals and entities (enclosed with this circular). Hence, the 'designated list' as referred in Para 2.1 and other relevant paras of the aforementioned Order dated January 30, 2023 is amended in accordance with the changes in these relevant entries.

4. The latest version of the UNSC Sanctions lists on DPRK & Iran are accessible on the UN Security Council's website at the following URLs:

https://www.un.org/securitycouncil/sanctions/1718

https://www.un.org/securitycouncil/content/2231/list

5. The REs are advised to take note of the aforementioned communications and ensure meticulous compliance.

SANTOSH KUMAR PANIGRAHY
Chief General Manager

20 Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Consolidated)

[Issued by the Reserve Bank of India vide RBI/2023-24/47 DOR. AML. REC.23/14.06.001/2023-24 dated 04.07.2023]

Please refer to Section 52 and Section 53 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on May 04, 2023 (MD on KYC), in terms of which "the Regulated Entities (REs) shall ensure meticulous compliance with the "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005" as laid down in terms of Section 12A of the WMD Act, 2005 vide Order dated January 30, 2023 by the Ministry of Finance, Government of India (Ref. Annex III of the MD on KYC)."

2. In this connection, the Ministry of External Affairs (MEA), Government of India has informed about the Consolidated Lists of UNSC Designated / Sanctioned Individuals and Entities under the UNSC Resolutions relating to non-proliferation on the Democratic People's Republic of Korea (DPRK) and Iran. The consolidated lists are enclosed in the Annex. It is also informed that this is the 'designated list' as referred in Para 2.1 and other relevant Paras of the aforementioned Order dated January 30, 2023, and for the purposes of implementation of the provisions of Section12A of the WMD Act 2005.

3. The latest version of the UNSC sanctions lists on DPRK & Iran are accessible on the UN Security Council's website at the following URLs:

https://www.un.org/securitycouncil/sanctions/1718

https://www.un.org/securitycouncil/content/2231/list

4. All REs are advised to take note of the aforementioned communications and ensure meticulous compliance.

SANTOSH KUMAR PANIGRAHY
Chief General Manager

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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असाधारण
EXTRAORDINARY

भाग III—खण्ड 4
PART III—Section 4

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 525] नई दिल्ली, बुधवार, जुलाई 26, 2023/श्रावण 4, 1945
No. 525] NEW DELHI, WEDNESDAY, JULY 26, 2023/SHRAVANA 4, 1945

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

(Constituted under the Company Secretaries Act, 1980)

NOTIFICATION

New Delhi, the 26th July 2023

No. 710/1(M)/3.—The following draft of certain regulations, further to amend the Company Secretaries Regulations, 1982, which the Council of the Institute of Company Secretaries of India proposes to make, in exercise of the powers conferred by sub-section (1) of section 39 of the Company Secretaries Act, 1980 (56 of 1980), and with the prior approval of the Central Government, is hereby published, as required by sub section (3) of section 39 of the said Act, for information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration after expiry of the period of thirty days from the date on which copies of the Official Gazette containing this notification are made available to the public;

Objection or suggestion in respect of the said draft regulations, may be addressed to the Secretary, the Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003;

The objection or suggestion, which may be received from any person with respect to the said draft regulations before the expiry of the period so specified, shall be considered by the Council.

DRAFT REGULATIONS

1. (1) These regulations may be called the Company Secretaries (Amendment) Regulations, 2023.

(2) They shall come into force on the date of their final publication in the Gazette of India.

2. In the Company Secretaries Regulations, 1982 (hereinafter referred as regulations),-

(i) For Regulation 3, the following shall be substituted, namely:

"3. Register of Members. –

(1) The Register of Members shall be maintained in the appropriate Form referred to in Schedule 'A.

(2) The member shall communicate to the Institute any change of his details entered in the Register, within thirty days of such change."

(ii) For Regulation 10, the following shall be substituted, namely:

"10. Grant or refusal of Certificate of Practice

(1) A member, after successful completion of Orientation Programme in such manner and mode as may be determined by the Council, may apply to the Council for a certificate entitling him to practise as a Company Secretary.

(2) An application for the grant of certificate of practice shall be made in the appropriate Form and shall be accompanied by the annual certificate fee and the annual membership fee unless the same has already been paid in accordance with Regulation 6.

(3) The Institute may issue the Certificate of Practice in the appropriate Form which shall be valid until it is cancelled under the provisions of these Regulations.

(4) On his ceasing to be in practice, a member shall inform the Council as soon as may be, but in any case, not later than one month from the day he ceases to practice.

(5) The Council may refuse to grant Certificate of Practice to a Member, if the particulars furnished in prescribed form for applying Certificate of Practice are found to be incomplete, incorrect or false or the member is not eligible to obtain such certificate under other provisions of the Act."

(iii) After Regulation 15A, the following regulation shall be inserted, namely:

"[15AA. Panel of persons for nomination to the Board of Discipline and Disciplinary Committee constituted under Section 21A and Section 21B of the Act

(1) The Council shall prepare and provide to the Central Government, Panel(s) of persons for nomination of the Presiding Officer and other members of the Board of Discipline and the Disciplinary Committee to be constituted as per the eligibility criteria laid down under clause (a) i.e. persons with experience in law and having knowledge of disciplinary matters and the

profession and (b) i.e. persons of eminence having experience in the field of law, economics, business, finance or accountancy, of sub-section (1) of section 21A and 21B of the Act.

Due regard shall be given to Officers retired from Indian Revenue Service, Indian Corporate Law Service, Indian Audit and Accounts Service, Indian Defence Accounts Service, Indian Civil Accounts Service, Indian P&T Accounts & Finance Service, Indian Railway Accounts Service, Director (Finance) of PSUs, Officers of Central/State Govts. as may be notified by Central Government, having 20 years of Group "A' service experience, Retired High Court Judge, Retired District Judge including Addl. District Judge with minimum five years of experience as District Judge or Addl. District Judge, for inclusion in the panel prepared by the Search Committee of the Council.

(2) For the purpose of preparing the Panel(s) for Presiding Officer and members to be nominated by the Central Government to the Board of Discipline and the Disciplinary Committee under clause (a) and (b) of sub-section (1) of section 21A and 21B of the Act, the Council may:-

(i) constitute a Search-cum-Selection Committee (hereinafter referred to as the Search Committee) consisting of President, Vice President, a Council Member to be nominated by the President and two Govt. Nominated Members of the Council to be nominated by the Central Government. The President of the Council shall be the Chairperson of the Search Committee.

(ii) Secretary of the Institute shall be the Secretary to this Search Committee.

(3) Search Committee for the purpose of clause (a) and (b) of sub-section (1) of section 21A and 21B of the Act, shall invite applications, scrutinize the applications received and prepare a panel for consideration of the Council:

Provided that in such panel, the Search Committee at its own may also include the names of persons of appropriate standing and having qualification as per clause (a) and (b) of sub-section (1) of section 21A and 21B of the Act.

Provided further that no person holding membership of the Institute anytime immediately preceding two years from date of request for empanelment or who has been a member of the current Council or the immediate previous Council, shall be eligible for empanelment in the category of persons mentioned under clause (a) and (b) of sub-section (1) of section 21A and 21B of the Act.

(4) The Search Committee, for the purpose of inviting, scrutiny of applications, preparation of panel for approval of the Council and identifying other persons for inclusion in the Panel shall decide its own procedure.

(5) The decision of the Search Committee shall be unanimous.

(6) The Panel so prepared shall be updated at such interval as may be decided by the Council.

(7) For nomination of members by the Council to the Board of Discipline and the Disciplinary Committee under clause (c) of sub-section (1) of Section 21A and of Section 21B, the member so nominated shall be a member of the Institute. However, the member so nominated in the BoD/DC shall not be eligible to contest election for a period of -4 years after he/she ceases to be member of Board of Discipline/Disciplinary Committee.

(8) The Panel to be provided by the Council to the Central Government shall include at least five names for each vacancy ordinarily.

(9) Presiding Officer or member(s) who have been nominated by the Central Government or member(s) nominated by the Council to Board of Discipline or Disciplinary Committee, shall hold office for period of two years and shall be eligible for being considered for one more term of two years

(10) No person shall be eligible for inclusion of his name in the panel, if he suffers from any of the following disabilities: -

(a) he is of unsound mind and stands so declared by a competent court;
or

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending; or

(d) he has been convicted by a Court of an offence, whether involving moral turpitude or otherwise; or

(e) an order disqualifying him from holding any post has been passed by a Court or tribunal or

(f) an order under Section 21(A) or 21(B) of the Chartered Accountants Act, 1949 or the Cost and Works Accountants Act, 1959 or the Company Secretaries Act, 1980 has been passed imposing any punishment by the Board of Discipline or the Disciplinary Committee, as the case may be."

(iv) After Regulation 15AA, the following shall be inserted, namely:

"[15AB - Allowances payable to the Presiding Officer and members of the Board of Discipline and Disciplinary Committee constituted under Section 21A and Section 21B of the Act.

(1) The Presiding Officer and the Members of the Boards of Discipline and the Disciplinary Committees shall be eligible for daily allowances and reimbursement of expenses of travelling, lodging and local conveyance for attending the meeting and related functions of the Board or the Committee, as the case may be, as follows: -

A. Reimbursement of Travelling expenses shall be as admissible to the Vice President of the Council.

B. Daily allowance and reimbursement of lodging expenses shall be as admissible to the Vice President of the Council.

C. Local Conveyance

The local conveyance shall be provided by the office and in case the same is not provided, they will be reimbursed as per actuals not exceeding the rates admissible to the Vice President of the Council.

In addition to the allowances at sub-regulation (1), the Presiding Officers and the members of the Boards of Discipline, Disciplinary Committees, shall also be eligible for sitting fees @ Rupees Twenty thousand and Rupees Eighteen thousand respectively for each day, subject to a maximum of Rs. 2,00,000/- in a calendar month or as modified by Central Government from time to time."

(v) After Regulation 15AB, the following shall be inserted, namely:

"[15AC-Status of actionable information and complaints in public domain

(1) The status of actionable information and complaints pending before the Disciplinary Directorate, the Board and the Committee shall be made available on the website of the Institute and shall be updated every month.

(2) The status of such pending information and complaints shall contain the following details: -

(i) Total number of actionable information and complaints pending.

(ii) Number of cases which are pending for investigation before the Directorate prior to the stage of preliminary examination report.

(iii) Break up of cases where Preliminary Examination Report has been submitted by Director (Discipline) to the–

a. Board of Discipline

b. Disciplinary Committee

(iv) Break-up of cases pending for hearing (including recalled hearings, if any) before the–

a. Board of Discipline

b. Disciplinary Committee

(v) Break up of cases where hearing has been concluded but findings have been kept reserved by the:

a. Board of Discipline

b. Disciplinary Committee.

(vi) Break-up of cases where findings have been issued but punishments are yet to be awarded by the –

a. Board of Discipline.

b. Disciplinary Committee.

(vii) Break-up of cases in which punishments have been awarded by the –

a. Board of Discipline.

b. Disciplinary Committee.

(viii) Break-up of appeal cases filed before Appellate Authority with statistics of

a. Appeals allowed,

b. Partly allowed,

c. Dismissed.

(3) Disposal Statistics to also include break-up of disposal i.e.; number of cases in which penalty of reprimand, removal from the register, fine or both removal from the register and fine, have been awarded.

(4) Information in the following format shall also be displayed on the website of the Institute and will be updated every month. This information shall be prepared for all firms/ CSs whose cases are either pending at the beginning of the financial year (before BoD/DC/Appellate Authority/Court) or in whose case, the PER has been filed during the financial year:

Financial Year _____ Updated upto month _____

1. Sl. No.

2. Name of the Firm

3. PER filed on

4. Status at BoD/DC - Pending/ Decided

5. Final Decision of BoD/DC - Not Guility/Guilty under Section__/Schedule__/Guidelines __

6. Decision in Higher Forum - No case filed in Higher Forum/ Case filed before ____ a/w Status

(5) The final Order passed by the Board of Discipline under sub-section (5) and (6) of Section 21A and by the Disciplinary Committee under sub-section (5) and (6) of Section 21B of the Act shall be made available on the website of the Institute in respect of each case after the same is communicated to the parties concerned."

(vi) In Regulation 46AB, after the clause 1 (b), clause (c) shall be inserted, namely: -

"(c) completed learning credit hours for such duration and in such manner as may be determined by the Council by laying down guidelines in this regard time to time."

(vii) After Regulation 114, regulation 114A shall be inserted, namely: -

"[114A- Disputes regarding election of office bearers to the Regional Council

Where any dispute arises regarding any election under Regulation 119 to a Regional Council, the matter may be referred by the aggrieved member of the Regional Council within thirty days from the date of the declaration of the result of the election, to the President and the decision of the President shall be final."

(viii) In the said regulations, in regulation 115,-

(a) In sub-regulation (1),

(i) for the word "Six" the word "Seven" shall be substituted.

(ii) for the words "such minimum number of members as may be decided by the Council for each election" the words "seven and half percent of the eligible voters or 1000 voters, whichever is less, in such Regional Constituency" shall be substituted.

(b) In sub-regulation (2),

(i) for the word "twenty one" the word "fifteen" shall be substituted.

(c) In sub-regulation (3),

(i) After the words "Regulation 111, may" the words "at its first meeting" shall be omitted.

(ix) In the said regulations, for regulation 152 the following shall be substituted, namely:-

"**152- Appointment of auditors**

(1) The Council shall appoint a firm of chartered accountants as auditor every year in accordance with the provisions of sub-section (5) of Section 18 of the Act.

(2) The auditors once appointed by Council shall be eligible for re-appointment for two more consecutive years provided if the Council wants to change such appointment, they shall seek the consent of C&AG and appoint another auditor from the panel of auditors maintained by C&AG."

(x) In the said regulations, for regulation 153 the following shall be substituted, namely:-

"153. Auditor's remuneration.-

The Council shall determine the remuneration, if any, to be paid to the auditors."

(xi) In the said regulations, for regulation 154 the following shall be substituted, namely:-

"154. Casual vacancy in the office of auditors. -

If any vacancy occurs in the office of an auditor the same shall be filled up from the fresh panel of auditors maintained by C&AG."

(xii) In the said regulations, for regulation 156 the following shall be substituted, namely:-

"**156. Powers and duties of the President –**

(1) The President shall exercise such powers and perform such duties as are specified by the Act and as may be delegated by the Council (except for approval related to Budget, Audited Annual Financial Accounts, powers to make regulations, guidelines and procedures) or its Standing Committees from time to time.

(2) The President may direct any business to be brought before the Council or any Standing Committee for consideration."

(xiii) In the said regulations, after regulation 156 the regulation 156A shall be inserted, namely: —

"**156A Powers and duties of the Vice-President**

The Vice-President shall exercise such powers and perform such duties as are specified by the Act and as may be delegated by the Council or its Standing Committees from time to time."

(xiv) In the said regulations, for regulation 157 the following shall be substituted, namely:-

"157. Powers, duties and functions of the Secretary

Subject to the overall control, guidance and supervision of the Council, the Secretary shall execute the following functions:

(a) being in charge of the office of the Institute as its Chief Executive Officer;

(b) maintaining registers, documents and forms as required by the Act and these regulations;

(c) being incharge of all the property of the Institute;

(d) making necessary arrangements for receiving moneys due to the Council and also issuing receipts therefor;

(e) incurring revenue and capital expenditure within the limits sanctioned by the Council or its Committees;

(f) causing proper accounts to be maintained and delivering of account books, information etc. to the auditors appointed by the Council for the purpose of audit of accounts of the Institute;

(g) making all other payments as sanctioned by the Council or its Committees;

(h) paying salary and allowances to the staff, granting of leave etc. to them, and other perks to them, and sanctioning their increments in accordance with the regulations;

(i) exercising disciplinary control over the officers and employees except dismissal in respect of which the sanction of the Council shall be necessary;

(j) refunding or transferring fees received under these Regulations for the examinations;

(k) recognising practical experience, sponsoring candidates for practical training, granting exemption from practical training requirements as may be delegated by the Council and the Committees concerned from time to time;

(l) signing and issuing all communications, guidelines, circulars, orders, decisions and notifications on behalf of the Council;

(m) taking necessary steps in matters of any civil or criminal or other proceeding on behalf of the Institute in courts or forums or judicial or quasi-judicial authorities and signing vakalatnamas on behalf of the Council, appointing solicitors or advocates on behalf of the Council, and filing papers in Courts, etc. on behalf of the Council, within the financial and administrative powers as may be approved by the Council or its committees from time to time;

(n) signing and execution of agreements, contracts, deeds, documents and undertaking, etc., on behalf of the Institute within the financial and administrative powers as may be approved by the Council or its committees from time to time.

(o) performing such other duties and functions as are incidental and ancillary to and may be required for the performance of the above duties and exercising such other powers as may be delegated by the Council.

(p) authorizing any officer or officers of the Institute to exercise or discharge any powers or duties under items (b), (d), (e), (f), (g), (j) & (k) as may be considered necessary from time to time."

(xv) In the said regulations, for regulation 161 the following shall be substituted, namely:-

"161. List of members

(1) The list of members of the Institute as on the 1st day of April each year shall be published region-wise, under sub-section (3) of section 19 of the Act and shall be made available at the website of the Institute. Physical copy shall be made available to member(s) on request, for sale at such price as may be fixed by the Council from time to time.

(2) The list of Members may contain the following details of members:

(i) Name – Member's Name as per records of the Institute.

(ii) Gender – Male, Female and Others

(iii) Qualification –Member's qualification as per records of the Institute

(iv) Membership No. -

(v) Whether Associate or Fellow

(vi) Year of enrolment as Associate or Fellow

(vii) Whether holding Certificate of Practice

(viii) Professional Address (refer Regulation 167)

(ix) Members residing abroad - Member's Region and residential address in India.

(x) Details of pendency of any actionable information or complaint against it under Chapter V of the Act.

(xi) Details of imposition of any penalty against it under Chapter V of the Act."

(xvi) In the said regulations, for regulation 165 the following shall be substituted, namely:-

"165 Manner of registration of firm and terms and conditions

(1) A company secretary in practice or a firm of such company secretaries orMulti-Disciplinary Partnership firm of CSs, shall, before commencement of practice in a trade name or firm name, apply to the Council in the form approved by the Council for permission to use a trade or a firm name as per the guidelines issued by the Council from time to time.

(2) For permission to use the existing trade or firm name or modification in trade or firm name, all the existing firms within 30 days from the date of commencement of these regulations, shall apply to the Council which may allow use of the existing trade/firm name or any modification in the name of the existing Firm as per the guidelines issued under sub-regulation (1) above.

(3) The Council may, refuse to approve a particular trade or firm name if

(i) the name of such firm is identical or similar to the name of any other firm already registered as per the records of the Institute; or

(ii) the name is in use by any firm within or outside India; or

(iii) If it bears the name of a god/goddess/deity and which has no relationship with the name of member(s); or

(iv) if the trade/firm name is descriptive; or

(v) if the trade/firm name smacks of publicity; or

(vi) if such name, in the opinion of the Council is undesirable; or

(vii) if in the opinion of the Council, the registration of the firm is undesirable.

(4) The firm of company secretaries shall within one month of the approval of the trade or firm name, or commencement of practice or change in the constitution or change in particulars of the firm or office, as the case may be, inform the Council of such particulars regarding his office, firm and changes as the case may be, in the appropriate Form.

(5) Where the same trade or firm name has been registered in the past in the register of firms in the case of two or more members or firms, the Council may direct the member or the firm, as the case may be, other than one whose name was registered first in the register of firms, to alter the name in such manner as the Council may consider appropriate and member or firm inform to the Council of such alteration within six months of the issue of the direction.

(6) The Council may recall, within one year, any Firm or trade name already registered and may direct to apply for a change in the name within six months from the issuance of directions of the Council, in case it finds the name earlier approved was not in accordance with the guidelines as per above sub-Regulation (1) which were in force at the time of approval of firm / trade name.

(6A) The Council may recall, within one year of registration of any firm, such registration in case it finds that the registration is undesirable;

(7) No member shall practice under a trade or firm name in respect of which a direction has been issued under sub-regulation (5) & (6) after the expiry of six months from the date of issue of the direction and the Council shall remove the name of such firm from the register of firms.

(8) The Council may, in its discretion, condone the delay in filing the particulars under sub-regulation (4) in appropriate cases."

(xvii) In the said regulations, for regulation 165A the following shall be substituted, namely:-

"165A-Register of Firms

(1) The Council shall maintain a register of firms in appropriate form in Schedule A in Part-III and shall enter therein the following details-

(i) particulars which are furnished by the firm under Regulation 165.

(ii) details of pendency of any actionable information or complaint, against the Firm under Chapter V of the Act.

(iii) details of imposition of any penalty against the Firm under Chapter V of the Act.

(iv) details of pendency of any legal proceedings related to penalty in the Appellate Authority or before any Court;

(v) In respect of clauses (ii), (iii) and (iv) above, the entry in the Register shall beupdated within 60 days.

(2) The Council shall remove the name of a firm from the Register of Firms which is subject to any of the disabilities under section 20C of the Act."

(xviii) In the said regulations, the following shall be inserted, namely:-

"165B List of Firms

(1) The List of Firms of the Institute as on the 1st day of April each year shall be published region-wise and shall be made available at the website of the Institute. Physical copy of the list of firms may be provided to such member or firm from which a request has been received at such price as may be fixed by the Council from time to time.

(2) The list of Firms shall be in two segments i.e., proprietorship firms and partnership firms (including Limited Liability Partnership) and may contain the following details of firms:-

(a) In the case of Proprietorship Firms

(i) Firm Name

(ii) Firm Registration Number

(iii) Proprietor Name (Member)

(iv) Membership No.

(v) COP Status of the Member

(vi) Firm Complete address

(vii) Member's Association in any other Firm

(viii) details of pendency of any actionable information or complaint against it under Chapter V of the Act.

(ix) details of imposition of any penalty against it under Chapter V of the Act.

(x) Any other particulars as may be decided by the Council from time to time.

(b) in the case of Partnership Firms

(i) Firm Name

(ii) Firm Registration Number

(iii) Partner Names

(iv) Membership No. of partners

(v) Partners COP Status

(vi) Partners' Association in any other Firm

(vii) Address of head office

(viii) Number of Branch(es)

(ix) Address of Branch Office(s)

(x) details of pendency of any actionable information or complaint against it under Chapter V of the Act.

(xi) details of imposition of any penalty against it under Chapter V of the Act.

Any other particulars as may be decided by the Council from time to time."

(xix) In the said regulations, Schedule A shall be substituted, namely:—

" SCHEDULE A

PROFORMA

(See Reg. 3)

Register of Members

1. Particulars of membership

(a) ACS No. and Date of entry in the Register

(b) FCS No. and Date of admission as Fellow

2. Name in full……..……..

3. Date of birth……..……..

4. Gender-: Male/Female/Others

5. (a) Nationality……..……...

(b) Domicile……..……..

6. Qualification……..…….

7. Address…….…….

(a) Professional……..…….

(b) Residential……..……...

8[(c) Mobile No……..…..

(d) Tel. No. ……

(e) Email id. ……..……]

9. Whether the member holds a certificate of practice

……..…..

10. Particulars of practice as Company Secretary..……..

(a) Certificate to Practice No…….……

(b) Date of effect……..

(c) Whether practicing independently, in partnership, or employed in a firm of Company Secretaries in practice ……..…….

11. Whether holding a salaried employment, if not in practice ……..……

12. Change of address, if any ……

13. Particulars of fees received ……

14. The details of actionable complaint or information pending or any penalty has been imposed against him under Chapter V in the tabular form as indicated below:

Details of actionable complaints/information against the member :-

Complaint/ Information Reference No.	If complaint/ Information actionable	Details of information or complaint pending for inquiry before the Board of Discipline or the Disciplinary Committee	If found guilty of professional or other misconduct by the Board of Discipline or the Disciplinary Committee after the inquiry, details of penalty imposed along with Order Number	If not found guilty of professional or other misconduct by BoD or DC, the details thereof along with Order Number	If penalty imposed, details of case filed before the Appellate Authority/Higher Court, if any .
(1)	(2)	(3)	(4)	(5)	(6)

15. Remarks ……"

(xx) In the said regulations, in Part III the following form shall be inserted, namely:-

" Form 'A'

(See Regulation 165A read with Section 20B of the Act)

Register of Firms of The Institute of Company Secretaries of India

1. Firm Registration Number
2. Firm Name
3. Date of Constitution
4. Type of Firm – Proprietary/Partnership/LLP/MDP
5. Date of approval of Firm Name
6. Address of the Head Office
7. Details of Partners (Along with their date of joining and leaving)
8. Branch office(s) of the firm- along with their address, date of opening, closure and in-charge details
9. Second Office(s) of the Firm
10. Details of Paid Assistants along with their date of joining and leaving
11. PAN of the Firm
12. GSTIN of the firm
13. Contact Number and email ID of the firm and Partners
14. Details of Merger and Demerger along with dates and firm numbers
15. Other association of the partners
16. Details of Network of the Firm
17. Details of dispute among the partners, if any.
18. Whether any actionable information or complaint is pending or penalty imposed, if any, against the firm under Chapter V in the tabular form as indicated below:

Complaint/ Information Reference No.	If complaint/ Information Actionable	Details of information or complaint pending for inquiry before the Board of Discipline or the Disciplinary Committee	If found guilty of professional or other misconduct by the Board of Discipline or the Disciplinary Committee after the inquiry, details of penalty imposed along with Order Number	If not found guilty of professional or other misconduct by BoD or DC, the details thereof along with Order Number	If penalty imposed, details of case filed before the Appellate Authority/Higher Court, if any .
(1)	(2)	(3)	(4)	(5)	(6)

Separate row to be used for each complint/ information

19. Remarks ……"

By Order of the Council,

ASISH MOHAN, Secy.

[ADVT.-III/4/Exty./307/2023-24]

Note: The principal regulations were published in the Gazette of India vide Notification ICSI No.710/2 (1), dated the 16th September, 1982 and subsequently amended vide:

(i) Notification No. ICSI/710/2/M(1) dated the 30th March, 1984;

(ii) Notification No. ICSI/710/2/M(1) dated the 3rd May, 1984;

(iii) Notification No. 710:2:(M)(1) dated the 30th December, 1985;

(iv) Notification No. 710(2)(M)(1) dated the 23rd February, 1987;

(v) Notification No. 710(2)(M)(1) dated the 9th March, 1987;

(vi) Notification No. ICSI/710(2)(M)(2) dated the 22nd August, 1988;

(vii) Notification No. 710(2)(M)(2) dated the 23rd August, 1988;

(viii) Notification No. 710/1(M)/1/18 dated the 20th August, 1993 and 24th November, 1993;

(ix) Notification No.710/1(M)/17 dated the 21st February, 1995;

(x) Notification No.710/1(M)/20 dated the 28th November, 1996;

(xi) Notification No. ICSI/710/2/M/26 dated the 10th August, 2001;

(xii) Notification No.710/1(M)/1 dated the 4th May, 2006;

(xiii) Notification No.710/1/(M)/1dated the 26th June, 2006;

(xiv) Notification No.531:legal:710/1(M)/1 dated the 26th July, 2010;

(xv) Notification No.710/1(M)/2 dated the 4th June, 2012;

(xvi) Notification No.710/1(M)/1 dated the 1st April, 2014;

(xvii) Notification No.710/1(M)/1 dated the 3rd February, 2020.

(xviii) Notification No. 710/1(M)/2 dated the 3rd April, 2023

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NEWS FROM THE INSTITUTE

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- LIST OF PEER REVIEWED UNITS
- NEW ADMISSIONS
- OBITUARIES
- CHANGE / UPDATION OF ADDRESS
- UPLOADING OF PHOTOGRAPH AND SIGNATURE

Institute News

MEMBERS RESTORED DURING THE MONTH OF JUNE 2023

SL. NO	NAME	MEMB NO	REGION
1	CS DASARI RAMA PRASAD	ACS - 12727	SIRC
2	CS SHIVANI NILESH KORDE	ACS - 18752	WIRC
3	CS SHEKHAR SHARAN SHRIVASTAVA	ACS - 20647	NIRC
4	CS GREESHMA VINOD KERKAR	ACS - 22283	WIRC
5	CS ANAND KUMAR CHAND	ACS - 30680	EIRC
6	CS RAJAT SAMAR	ACS - 31433	NIRC
7	CS SAURAV NARANG	ACS - 32813	EIRC
8	CS ANSHIKA GARG	ACS - 34503	NIRC
9	CS PRIYANKA AGARWAL	ACS - 36112	SIRC
10	CS CHINTAN DINESHBHAI SORATHIYA	ACS - 37382	WIRC
11	CS YOGESH KUMAR	ACS - 39679	NIRC
12	CS RACHNA	ACS - 44525	NIRC
13	CS ARVINDKUMAR LAKSHMAN AIYER	ACS - 4583	WIRC
14	CS KARISHMA JAIN	ACS - 46124	NIRC
15	CS ARPIT ROY	ACS - 49055	NIRC
16	CS AVANTIKA SHUKLA	ACS - 49698	NIRC
17	CS MANPREET KAUR SEHMI	ACS - 56749	NIRC
18	CS V N PRABAKAR	ACS - 5675	SIRC
19	CS ANAMIKA RUNWAL	ACS - 58433	NIRC
20	CS SATISH KUMAR SINGH	ACS - 59136	WIRC
21	CS CHANDNI NICHINABATTALU MALLIKA	ACS - 61038	SIRC
22	CS ASHISH GUPTA	ACS - 61292	NIRC
23	CS AKSHAT JAIN	ACS - 61469	NIRC
24	CS NAMITHA D BHOMBORE	ACS - 68258	SIRC
25	CS GAURAV PURI	FCS - 5890	NIRC
26	CS INDERPREET SINGH DHALIWAL	FCS - 7352	NIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF JUNE 2023

SL. NO	NAME	MEMB NO	COP NO	REGION
1	CS ABHISHEK SONI	ACS - 41808	15641	WIRC
2	CS AKANKSHA AWASTHI	ACS - 49047	24099	WIRC
3	CS ALIVIA DAS	ACS - 37780	22848	SIRC
4	CS ANKIT KHURANA	ACS - 42090	16884	NIRC
5	CS ANKITA GUPTA	FCS - 6905	7481	WIRC
6	CS ANKITA PAHWA	ACS - 57775	22497	NIRC
7	CS ANTONY KEVIN KULANDAISAMY FERNANDO	ACS - 50509	25765	SIRC
8	CS APARNA MAJEJI	ACS - 61619	24674	EIRC
9	CS ARIPIRALA SRIDHAR	FCS - 9736	12011	SIRC
10	CS ARUSHI GOEL	ACS - 64615	24318	NIRC
11	CS CHARU AGARWAL	ACS - 58791	22260	NIRC
12	CS DEEKSHA DUGAR	ACS - 55893	23935	NIRC
13	CS DILIPBHAI CHUNILAL CHAUHAN	ACS - 63390	23914	WIRC
14	CS GAJARA KRUSHANG SHAH	ACS - 37875	22522	WIRC
15	CS GEETIKA KHANDELWAL	ACS - 36118	22185	SIRC
16	CS HARDIK MUKESHKUMAR PANCHMATIA	ACS - 57175	21990	WIRC
17	CS HINABEN DHRUMILKUMAR PATEL	ACS - 69304	25947	WIRC
18	CS JAANVI NARENDRA VANWANI	ACS - 22940	14680	WIRC
19	CS JASMIN JAYKUMAR DOSHI	ACS - 36029	22460	WIRC
20	CS JHANVI VIJAYDEEP AILSINGHANI	FCS - 11954	21536	WIRC
21	CS JYOTI ARORA	FCS - 5488	26227	WIRC
22	CS JYOTI KUKREJA	FCS - 9154	10355	NIRC
23	CS K PHANI KISHORE	ACS - 21801	22227	SIRC
24	CS KAMAKSHI SUNDARAM UTHRA	FCS - 10849	19948	SIRC
25	CS KANIKA LOHIYA	ACS - 33291	14821	NIRC
26	CS KAUSTUBH BHALCHANDRA KULKARNI	ACS - 52980	26287	WIRC
27	CS KHYATEE CHIRAYU VYAS	ACS - 21434	26316	WIRC

28	CS KOMAL JAIN	ACS - 25666	12258	WIRC
29	CS KOMAL JAIN	ACS - 40470	25997	NIRC
30	CS KRITHIKA SELVAKUMAR	ACS - 62623	23849	SIRC
31	CS LATA JOSHI	ACS - 54653	20857	NIRC
32	CS MEENA OMPRAKASH RANGVANI	ACS - 55927	23907	WIRC
33	CS MEETU BATRA	FCS - 11927	18391	NIRC
34	CS MONIKA PAREEK	ACS - 50964	18992	NIRC
35	CS MONIKA SHARMA	ACS - 66578	26039	NIRC
36	CS NARENDRA MISHRA	ACS - 46018	21172	EIRC
37	CS NEHA CHOUDHARY	ACS - 28609	11584	EIRC
38	CS OMKAR VILAS DEOSTHALE	FCS - 9600	8908	WIRC
39	CS PAWAN ARORA	ACS - 13978	23634	WIRC
40	CS POOJA JAIN	ACS - 48513	23425	NIRC
41	CS POOJA CHETAN KALBANDE	ACS - 60435	24023	WIRC
42	CS POOJA KISHORE SONI	ACS - 63755	23881	WIRC
43	CS PRERNA NAGPAL	ACS - 52695	21066	NIRC
44	CS PRIYANKA KARNANI	ACS - 37038	20225	EIRC
45	CS RAGINI RATHORE	ACS - 54277	20152	NIRC
46	CS RAHUL CHAUHAN	ACS - 63232	25228	NIRC
47	CS RAHUL JAIN	FCS - 10995	19753	NIRC
48	CS RAJESH SAMPATKUMAR MODANI	ACS - 25589	13845	WIRC
49	CS REENKEY KUMARI GUPTA	ACS - 67082	26371	EIRC
50	CS RINKU KUMARI	ACS - 60179	25166	NIRC
51	CS RITIKA DEEPAK PANERI	ACS - 40030	20985	WIRC
52	CS SATISH KUMAR BARAI	ACS - 43042	16167	WIRC
53	CS SEEMA VYAS	ACS - 50041	18557	NIRC
54	CS SEETHAL P RAMACHANDRAN	ACS - 45684	26563	SIRC
55	CS SHAGUFTA ANJUM ANSARI	ACS - 64518	24747	NIRC
56	CS SHILPA SHIVAYOGI TURMARI	FCS - 9006	10270	SIRC
57	CS SHYMA MOL SAJIDA BEEVI	ACS - 62151	25363	SIRC
58	CS SONAL MALIK	ACS - 53731	19874	NIRC
59	CS SUMAN KANAYALAL MAKHIJA	FCS - 9925	13322	WIRC
60	CS SURENDAR KUMAR GAUR	FCS - 3528	10383	NIRC
61	CS SWABHILASH BORTHAKUR	ACS - 66809	26343	EIRC
62	CS SWETA ABHISHEK	ACS - 35269	26408	SIRC
63	CS TANYA SINGHAL	ACS - 69562	26035	NIRC
64	CS TARU JAIN	ACS - 49813	24636	WIRC
65	CS VIKAS KUMAR SHARMA	ACS - 30697	12303	NIRC
66	CS VIPUL JAIN	ACS - 59021	24968	NIRC
67	CS YOGESH SHYAM HEGDE	ACS - 48796	21234	SIRC

LIST OF PEER REVIEWED UNITS

The List of Peer Reviewed Units is updated on ICSI Website from time to time and can be accessed at https://tinyurl.com/PRList2023

We request members to visit the list for their reference and records.

Peer Review Secretariat

ICSI

NEW ADMISSIONS

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link https://www.icsi.edu/member

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following members:

CS Naizee Pankaj Fadia (08.05.1993 – 28.05.2023), an Associate Member of the Institute from Mumbai.

CS Karthiswaran A (10.05.1989 – 03.05.2023), an Associate Member of the Institute from Madurai.

CS Cherookaren Inasu Lazar (12.03.1943 – 13.05.2023), a Fellow Member of the Institute from Thrissur.

CS Pradeepta Kumar Puhan (01.05.1968 – 15.05.2023), a Fellow Member of the Institute from Noida.

CS Deepashri Cornelius (14.12.1985 – 12.06.2023), a Fellow Member of the Institute from Mumbai.

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

May the departed souls rest in peace.

CHANGE / UPDATION OF ADDRESS

The members are requested to check and update (if required) your professional and residential addresses ONLINE only through Member Login. Please indicate your correspondence address too.

The steps to see your details in the records of the Institute:

1. Go to www.icsi.edu
2. Click on **MEMBER** in the menu
3. Click on **Member Search** on the member home page
4. Enter your membership number and check
5. The address displayed is your Professional address (Residential if Professional is missing)

The steps for online change of address are as under:

1. Go to www.icsi.edu
2. On the Online Services ----select **Member Portal** from dropdown menu
3. Login using your membership number e.g. A1234/F1234
4. Under **My Profile** --- Click on View and update option and check all the details and make the changes required and save
5. To change the mobile number and email id click the side option **"Click Here to update Mobile Number and E-mail Id"**
6. Check the residential address and link the Country-State-District-City and check your address in the fields Add. Line1/Add. Line2 & Add. Line3 (Click Here to change residential address)
   a) Select the Country#
   b) Select the State
   c) Select the City
   d) Submit the Pincode which should be 6 digits without space.
   e) Then click on "Save" button.
7. Select the appropriate radio button for Employment Status and check your address in the fields Add. Line1/Add. Line2 & Add. Line3 click the link on the right (Click Here to change Professional address)
   a) Select the Country#
   b) Select the State
   c) Select the City
   d) Submit the Pincode which should be 6 digits without space.
   e) Then click on "Save" button.
8. Go back to the Dashboard and check if the new address is being displayed.

#in case of Foreign Country and State is not available in options then Select **"Overseas"** – A pop-up will open and you can add the "City, District, State" of that Country alongwith Zipcode

Members are required to verify and update their address and contact details as required under Regulation 3 of the CS Regulations, 1982 amended till date

For any further assistance, we are available to help you at http://support.icsi.edu

UPLOADING OF PHOTOGRAPH AND SIGNATURE

Members are requested to ensure that their latest scanned passport size front-facing colour photograph (in formal wear) and signature in .jpg format (each on light-colored background of not more than 200 kb file size) are uploaded on the online portal of the Institute.

Online Steps for Uploading of photo and signature.

- Use ONLINE SERVICES tab on www.icsi.edu
- Select Member Portal from dropdown
- Login using your membership number e.g. A1234/F1234
- Enter your password
- Under My Profile --- Click on View and Update
- Upload/update the photo and signature as required
- Press Save button

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Vision
"To be a global leader in promoting good corporate governance"

Motto
सत्यं वद। धर्मं चर। speak the truth; abide by the law.

Mission
"To develop high calibre professionals facilitating good corporate governance"

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THE INSTITUTE OF Company Secretaries of India
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ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE, 2023

INVITING APPLICATIONS

23RD ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE

Eligibility: All Listed Entities and Unlisted Companies (Companies applying should be ACTIVE compliant)

New Category introduced for SME Listed

8TH ICSI CSR EXCELLENCE AWARDS

Eligibility: All Companies having prescribed CSR spend of ₹50 lakhs and above for the FY 2022-23

2ND ICSI BUSINESS RESPONSIBILITY AND SUSTAINABILITY AWARDS

Eligibility: All Listed Entities and Unlisted Companies (Companies applying should be ACTIVE compliant)

LAST DATE FOR SUBMISSION 24th AUGUST 2023

For further details: Mail us at cgawards@icsi.edu
Contact us: 011 45341039/ 45341066

CS Manish Gupta
President
The ICSI

CS B. Narasimhan
Vice President
The ICSI

CS Dhananjay Shukla
Chairman, CLGC and Council Member
The ICSI

CS Asish Mohan
Secretary
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6

MISCELLANEOUS CORNER

- GST CORNER
- ETHICS IN PROFESSION
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GST DAY PAN INDIA CELEBRATIONS

ICSI-EIRC


ICSI -WIRC

Faridabad

Bhubaneswar

Jaipur


Pune

Dhanbad

Thane

CENTRAL TAX NOTIFICATIONS

Number	Date	Subject
18/2023	17th July, 2023	Seeks to extend the due date for furnishing **FORM GSTR-1** for the month of April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur from 30th June 2023 to 31st July 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009772/ENG/Notifications*
19/2023	17th July, 2023	Seeks to extend the due date for furnishing **FORM GSTR-3B** for the month of April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur from 30th June 2023 to 31st July 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009773/ENG/Notifications*
20/2023	17th July, 2023	Seeks to extend the due date for furnishing the return in **FORM GSTR-3B** for the quarter ending June, 2023 for the registered persons whose principal place of business is in the State of Manipur to 31st July 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009774/ENG/Notifications*
21/2023	17th July, 2023	Seeks to extend the due date for furnishing **FORM GSTR-7** for the month of April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur from 30th June, 2023 to 31st July, 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009775/ENG/Notifications*
22/2023	17th July, 2023	Seeks to extend amnesty scheme for **GSTR-4** non-filers from 30th June 2023 to 31st August 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009776/ENG/Notifications*
23/2023	17th July, 2023	Seeks to extend time limit for application for revocation of cancellation of registration from 30th June 2023 to 31st August 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009777/ENG/Notifications*
24/2023	17th July, 2023	Seeks to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62 from 30th June 2023 to 31st August 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009778/ENG/Notifications*
25/2023	17th July, 2023	Seeks to extend amnesty for **GSTR-9** non-filers from 30th June 2023 to 31st August 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009779/ENG/Notifications*
26/2023	17th July, 2023	Seeks to extend amnesty for **GSTR-10** non-filers from 30th June 2023 to 31st August 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009780/ENG/Notifications*
27/2023	31st July, 2023	Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021). *https://taxinformation.cbic.gov.in/view-pdf/1009805/ENG/Notifications*
28/2023	31st July, 2023	Seeks to notify the provisions of sections 137 to 162 of the Finance Act, 2023 (8 of 2023). *https://taxinformation.cbic.gov.in/view-pdf/1009806/ENG/Notifications*
29/2023	31st July, 2023	Seeks to notify special procedure to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018. *https://taxinformation.cbic.gov.in/view-pdf/1009807/ENG/Notifications*
30/2023	31st July, 2023	Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods. *https://taxinformation.cbic.gov.in/view-pdf/1009808/ENG/Notifications*
31/2023	31st July, 2023	Seeks to amend Notification No. 27/2022 dated 26.12.2022. *https://taxinformation.cbic.gov.in/view-pdf/1009809/ENG/Notifications*
32/2023	31st July, 2023	Seeks to exempt the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year. *https://taxinformation.cbic.gov.in/view-pdf/1009810/ENG/Notifications*
33/2023	31st July, 2023	Seeks to notify "Account Aggregator" as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017. *https://taxinformation.cbic.gov.in/view-pdf/1009811/ENG/Notifications*

34/2023	31st July, 2023	Seeks to waive the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions. *https://taxinformation.cbic.gov.in/view-pdf/1009812/ENG/Notifications*
35/2023	31st July, 2023	Seeks to appoint common adjudicating authority in respect of show cause notices issued to M/s BSH Household Appliances Manufacturing Pvt Ltd. *https://taxinformation.cbic.gov.in/view-pdf/1009813/ENG/Notifications*

CENTRAL TAX (RATE) NOTIFICATIONS

Number	Date	Subject
06/2023	26th July, 2023	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11th July, 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009783/ENG/Notifications*
07/2023	26th July, 2023	Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11th July, 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009784/ENG/Notifications*
08/2023	26th July, 2023	Seeks to amend notification No. 13/2017- Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11th July, 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009785/ENG/Notifications*
09/2023	26th July, 2023	Seeks to amend notification No. 01/2017- Central Tax (Rate) to implement the decisions of 50th GST Council. *https://taxinformation.cbic.gov.in/view-pdf/1009786/ENG/Notifications*
10/2023	26th July, 2023	Seeks to amend notification No. 26/2018- Central Tax (Rate) to implement the decisions of 50th GST Council. *https://taxinformation.cbic.gov.in/view-pdf/1009787/ENG/Notifications*

INTEGRATED TAX NOTIFICATIONS

Number	Date	Subject
01/2023	31st July, 2023	Seeks to notify all goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid. *https://taxinformation.cbic.gov.in/view-pdf/1009814/ENG/Notifications*

INTEGRATED TAX (RATE) NOTIFICATIONS

Number	Date	Subject
06/2023	26th July, 2023	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11th July, 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009788/ENG/Notifications*
07/2023	26th July, 2023	Seeks to amend notification No. 09/2017- Integrated Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11th July, 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009789/ENG/Notifications*
08/2023	26th July, 2023	Seeks to amend notification No. 10/2017- Integrated Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11th July, 2023. *https://taxinformation.cbic.gov.in/view-pdf/1009790/ENG/Notifications*
09/2023	26th July, 2023	Seeks to amend notification No. 01/2017- Integrated Tax (Rate) to implement the decisions of 50th GST Council. *https://taxinformation.cbic.gov.in/view-pdf/1009791/ENG/Notifications*
10/2023	26th July, 2023	Seeks to amend notification No. 27/2018- Integrated Tax (Rate) to implement the decisions of 50th GST Council. *https://taxinformation.cbic.gov.in/view-pdf/1009792/ENG/Notifications*

CIRCULARS

CIRCULAR NO 192/04/2023-GST DATED 17TH JULY, 2023

Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

As per section 50(3) of CGST Act, 2017, if the registered person has wrongly availed and utilised the Input Tax Credit (ITC), then he shall be liable to pay interest at the rate not exceeding 24% on the amount of ITC wrongly availed and utilised.

As per explanation provided in sub-rule (3) of rule 88B of CGST Rules, ITC shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed. Further, the extent of such utilisation of ITC shall be such amount by which the balance in electronic credit ledger falls below the amount of ITC wrongly availed.

Issue

In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of ITC available in electronic credit ledger under the head of IGST only needs to be considered or total ITC available in electronic credit ledger, under the heads of IGST, CGST, SGST and Compensation Cess taken together, has to be considered.

Clarification

The total ITC available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together shall be considered –

- for calculation of interest under rule 88B,
- for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed ITC of IGST, and
- for determining to what extent, balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

As credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

For more details, please refer *https://taxinformation.cbic.gov.in/view-pdf/1003166/ENG/Circulars*

CIRCULAR NO. 193/05/2023-GST DATED 17TH JULY, 2023

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.

Restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of CGST Rules, 2017 w.e.f. 9th October 2019.

The said rule allowed availment of ITC by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in FORM GSTR-1 or using the invoice furnishing facility (IFF), to the extent not exceeding 20% of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under in FORM GSTR-1 or using the IFF. The said limit was brought down to 10% w.e.f. 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021.

Vide Circular No. 183/15/2022-GST dated 27th December, 2022, clarification was issued for dealing with the difference in ITC availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19, subject to certain terms and conditions.

Period	**Applicability of guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022**
01.04.2019 to 08.10.2019	Since rule 36(4) came into effect from 09.10.2019 only, hence, the guidelines provided by Circular shall be applicable as a whole.
09.10.2019 to 31.12.2019	The guidelines provided by Circular shall be applicable for verification of the condition of section 16(2)(c) related to payment of tax charged to the Government subject to the fulfilment of condition as specified in rule 36(4) as applicable during that period.
01.01.2020 to 31.12.2020	
01.01.2021 to 31.12.2021	

For more details, please refer *https://taxinformation.cbic.gov.in/view-pdf/1003167/ENG/Circulars*

CIRCULAR NO 194/06/2023-GST DATED 17TH JULY, 2023

Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators (ECOs) in one transaction.

Where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform, the compliances under section 52 including collection of TCS will be done as follows:

Where the supplier-side ECO himself is not the supplier in the said supply.

In such a situation, the compliances under section 52 of the CGST Act, 2017 including collection of TCS is to be done by the supplier-side ECO who releases payment to the supplier for a particular supply made by the supplier through him.

In this case, the buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to that supply.

Example: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

Where the supplier-side ECO is himself the supplier of the said supply.

In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

Example: Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

For more details, please refer *https://taxinformation.cbic.gov.in/view-pdf/1003168/ENG/Circulars*

CIRCULAR NO 195/07/2023-GST DATED 17TH JULY, 2023

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

Case1: The original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty.

The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.

Therefore, in cases where no separate consideration is charged by the manufacturer at the time of such replacement/repair services, no GST is to be levied on such replacement of parts and/ or repair service during warranty period. However, GST is levied in case additional consideration is charged for the same.

Case 2: The distributor provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer without charging any consideration from the customer.

Where no consideration is charged by the distributor from the customer, no GST is payable by the distributor on the said replacement/repair services provided during warranty period. In case additional consideration is charged, GST shall be payable.

Case 3: The distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services.

In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017.

Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the ITC of the same, subject to other conditions of CGST Act.

Case 4: Extended warranty services provided by manufacturers/distributors to the customers which can be availed at the time of original supply or before the expiry of standard warranty period.

If the customer enters into an agreement for extended warranty at the time of original supply, then it would be considered as composite supply (principal supply being supply of goods). GST would be payable on the consideration for such extended warranty along with the principal supply at the rate applicable on the principal supply.

If the customer enters into an agreement for extended warranty at any time after the original supply, then it would be considered as separate contract. GST would be payable by the service provider whether it be manufacturer or distributor or any third party depending on the nature of the contract.

For more details, please refer *https://taxinformation.cbic.gov.in/view-pdf/1003169/ENG/Circulars*

CIRCULAR NO 196/08/2023-GST DATED 17TH JULY, 2023

Clarification on taxability of shares held in a subsidiary company by the holding company.

Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.

This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest." unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act.

Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

For more details, please refer *https://taxinformation.cbic.gov.in/view-pdf/1003170/ENG/Circulars*

CIRCULAR NO 197/09/2023-GST DATED 17TH JULY, 2023

Clarification on refund related issues.

It was decided *vide* Circular No.135/05/2020–GST dated the 31st March, 2020 that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Now, it has been decided that since the availment of ITC has been linked to GSTR-2B w.e.f. 01.01.2022 by amending rule 36(4), availability of refund of the accumulated ITC under section 54(3) of CGST Act for a tax period shall be restricted to ITC as per those invoices, the details of which are reflected in FORM GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the ITC is available to the applicant.

It has been further clarified that as the amendment in section 16(2)(aa) and rule 36(4) has been brought from 01.01.2022, the restriction regarding the admissibility of refund on the basis of GSTR-2B for the said tax period or for any of the previous tax period shall be applicable for refunds claim for the tax period from January 2022 onwards. Where the refund claims relating to the tax period from January, 2022 onwards has been disposed by the proper officer before the issuance of the circular, in accordance with the extant guidelines in force, the same shall not be reopened because of this clarification.

For more details, please refer *https://taxinformation.cbic.gov.in/view-pdf/1003171/ENG/Circulars*

CIRCULAR NO 198/10/2023-GST DATED 17TH JULY, 2023

Clarification on issue pertaining to e-invoice.

Issue

Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act?

Clarification

Government Departments or establishments/ Government agencies/ local authorities/PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons under the GST law as per provisions of clause (94) of section 2 of CGST Act.

Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules.

For more details, please refer *https://taxinformation.cbic.gov.in/view-pdf/1003172/ENG/Circulars*

CIRCULAR NO 199/11/2023-GST DATED 17TH JULY, 2023

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.

Issue

Whether HO can avail the ITC in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (ISD) mechanism for distribution of such ITC?

Clarification

Input services procured from the third party for the entire organization by HO but attributable to both HO and BOs or exclusively to one or more BOs

HO has an option to distribute ITC in respect of such common input services by following ISD mechanism or it can issue tax invoice under section 31 of CGST Act to the concerned BOs and the BOs can then avail ITC on such common ITC subject to the provisions of section 16 and 17 of CGST Act.

However, the distribution of ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if –

- it gets itself registered mandatorily as an ISD in accordance with section 24(viii) of the CGST Act, and
- the said input services are attributable to the said BO or have actually been provided to the said BO

In respect of internally generated services provided by the HO to BOs, whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the BOs

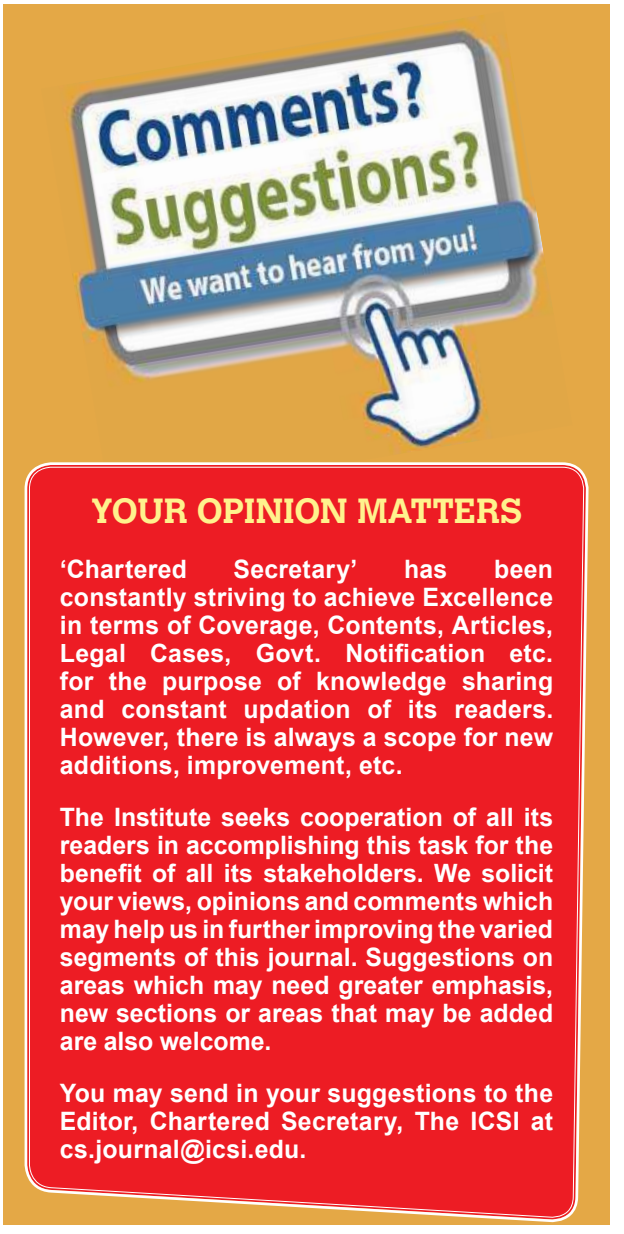
In such cases, the value declared in the invoice by HO shall be deemed to be the open market value of such services, in terms of second proviso to rule 28 of CGST Rules, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

If HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

In respect of internally generated services provided by the HO to BO, where HO is issuing tax invoice to the BOs and full ITC is not available to the concerned BO

In such cases, the cost of salary of employees of the HO, involved in providing services to BOs is not mandatorily required to be included while computing the taxable value of supply of services.

For more details, please refer *https://taxinformation.cbic.gov.in/view-pdf/1003173/ENG/Circulars*



Disciplinary Mechanism - an Overview

Chapter V of the Company Secretaries Act, 1980 incorporates the provisions regulating the conduct of the members of the ICSI. For the purposes of the Company Secretaries Act, 1980, the expression *"professional or other misconduct"* according to section 22 of the Company Secretaries Act, 1980 shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances. Further, there are two Schedules to the Company Secretaries Act, 1980 - the First Schedule and the Second Schedule.

The Council by notification has established the Disciplinary Directorate under section 21 of the Company Secretaries Act, 1980, headed by the Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it. In order to make investigations under the provisions of the Act, the Disciplinary Directorate shall follow such procedure as may be specified under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. (as amended)

The Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct in each case and shall place the same before the Board of Discipline or the Disciplinary Committee, as the case may be, depending upon the Schedule or provision of the Company Secretaries Act, 1980 to which the case relates, for taking further decision by these authorities.

The Council constitutes a Board of Discipline under section 21A of the Company Secretaries Act, 1980, consisting of - (a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer; (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of Section 16; (c) the Director (Discipline) shall function as the Secretary of the Board.

Where the Director (Discipline) is of opinion that a member is guilty of any *professional or other misconduct* mentioned in the First Schedule, he shall place the matter before the Board of Discipline. Where the Director (Discipline) is of opinion that there is no *prima facie* case, he shall place the matter before the Board of Discipline.

The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it. The Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Board of Discipline is of the opinion that a member is guilty of a *professional or other misconduct* mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:-

(a) Reprimand the member;

(b) Remove the name of the member from the Register up to a period of three months;

(c) Impose such fine as it may think fit which may extend to rupees one lakh.

The Council constitutes a Disciplinary Committee under section 21B of the Company Secretaries Act, 1980, consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy. The Council may constitute more Disciplinary Committees as and when it considers necessary.

Where the Director (Discipline) is of opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified. Where the Disciplinary Committee is of the opinion that a member is guilty of a *professional or other misconduct* mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) Reprimand the member;

(b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) Impose such fine as it may think fit, which may extend to rupees five lakhs.

According to section 22A of the Company Secretaries Act, 1980, the Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of the Company Secretaries Act, 1980 subject to the modification for clause (b) of said sub-section (1), that the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council.

According to section 22E of the Company Secretaries Act, 1980, any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the

Authority constituted under section 22A of the Company Secretaries Act, 1980. However, the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorized by the Council, within ninety days. The Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

According to section 21C of the Company Secretaries Act, 1980, the Appellate Authority, the Disciplinary Committee, the Board of Discipline and the Director (Discipline) are vested with the powers of civil court for the purposes of an inquiry under the provisions of the Company Secretaries Act, 1980; and shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of (a) summoning and enforcing the attendance of any person and examining him on oath; (b) the discovery and production of any document; and (c) receiving evidence on affidavit.

A complaint against a member of the Institute or a firm registered with the Institute under the Company Secretaries Regulations, 1982 can be filed under section 21 of the Company Secretaries Act, 1980 in prescribed Form I, in triplicate before the Director (Discipline) in person or by post or courier or through electronic mode. Written information containing allegation or allegations against a member of the Institute or a firm registered with the Institute under the Regulations, received in person or by post or courier or through electronic mode, shall be treated as information under Section 21 of the Act and shall be dealt in accordance with the provisions of the Rules. Anonymous information received, will not be entertained by the Disciplinary Directorate. Every complaint, other than a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority, shall be accompanied by a fee of Rs. 2500/- (as prescribed by the Council through the Company Secretaries Regulations, 1982). The fee shall be paid through electronic mode or in the form of a demand draft. The fee once paid shall not be refunded.

The complaint sent by post or courier or through electronic mode shall be deemed to have been presented to the Director (Discipline) on the day on which it is received in the Disciplinary Directorate or uploaded on portal. Every complaint received by the Directorate shall be acknowledged by electronic mode or through ordinary post together with an acknowledgement number. The Director or an officer or officers authorized by him shall scrutinize the complaints so received. If on scrutiny, the complaint is found to be in order, it shall be duly registered and a unique reference number allotted to it, which shall be quoted in all future correspondence, and shall be dealt with in the manner as prescribed in the rules. If a complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Director (Discipline) may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine. However, no additional fee shall be payable if the complaint is resubmitted after rectification of defect.

If the complainant fails to rectify the defects within the time allowed under the Rules, the Director (Discipline) shall form the opinion that there is no *prima facie* case. If the subject matter of a complaint in the opinion of the Director (Discipline) is substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, he shall take further action for clubbing of such cases, as per the provisions of the Company Secretaries Act, 1980 and the Rules.

Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or the Disciplinary Committee, as the case may be, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

The Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 provides for the procedures to be followed by the Director (Discipline), Board of Discipline and Disciplinary Committee. Further, the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Amendment Rules, 2020 also provides for e-filing of complaints, documents, services of notices, letters, summons etc. conducting e-hearing of cases, and payment of fees, cost, fine etc. through electronic mode.

CASE STUDY 1

1. A complaint of professional misconduct has been filed against a member wherein the Complainant has investigated the affairs of a company and other entities which established that there is laundering of unaccounted income through directing mind and *mala-fide* intentions of a group of people involved in furtherance of the common intention of creating assets out of proceeds of money laundering involving criminal conspiracy invariably causing huge loss to the public-exchequer with the help of professionals. Funds were routed through mostly non-functional & non-income generating shell companies; there is large scale falsification of books of accounts including fudging of financial statements, irregular transfer of shares etc.

2. It was alleged that the Respondent has given professional service to some of the companies under investigation as per the advice of one PCS to provide professional services such as to preparation of forged back dated Minutes Book, Register(s) of Members/ Directors/Transfer etc. The Respondent has undertook course training with the said PCS. The Respondent has facilitated the creation of fabricated documents such as Minutes Book and statutory registers along with one other member with a common intention of preparing the back dated documents of mere sham/ paper companies, which were not even required to be signed and authenticated by them. There is an involvement of the Respondent in facilitating the creation of fabricated statutory registers/records pertaining to the period of 2008-09 to 2014-15. The

Respondent has facilitated the commission of fraud by exercising negligence in discharging his professional duties including extending professional services in violation of provisions of the Companies Act, 2013 and erstwhile the Companies Act, 1956 with regard to maintenance of Minutes of the meetings and Minutes Books. The Respondent has agreed and undertaken the work of creation of forged back dated documents with regard to the Shell/Paper/Sham companies deliberately, knowing the fact that such companies are not into any kind of business operations and are incorporated or acquired only to be used as Special Purpose Vehicles for furtherance of fraud involved as reported in the investigation report, which shows that the Respondent failed to discharge duties and committed professional misconduct.

3. It was alleged that the Respondent had prepared the falsified documents which were *ante-dated*. At the time of preparation of these documents, the Respondent had knowledge that the documents pertain to paper/sham companies, which had indulged in various illegal activities. The Respondent was assigned the task of preparation of those Statutory Records and has prepared those Statutory Records and hence, acted in furtherance of covering up of the fraud/scam committed by the group of companies. No original documents were provided and records/registers were prepared on the basis of details and information available on MCA website. After preparation, the documents in piecemeal were handed over to the said PCS, so that the same may be utilized and tendered towards compliance with the legal provisions and requirements. Even after recovery of these unsigned registers from the office of a CA, soft copies of such records were again requested from the Respondent, which was duly sent to the said PCS through email.

4. It was alleged that the Respondent has knowingly drafted *ante dated* documents, while investigation was pending, and has taken steps to cover-up fraud and misled the law enforcement agencies. The Complainant has contended that non-receipt of consideration is immaterial as the work was out sourced by the said PCS as per their internal arrangement. As per deposition on oath, the Respondent has prepared documents viz. Minutes Book, Register of Members, Register of Directors, Register of Transfer for 58 companies, without knowing anything about the management of these companies for the year 2008-09 to 2014-15 in the year 2016. The Respondent, without knowing the management of the companies reached to the conclusion that the management will follow the procedure laid down under the statute.

5. The Respondent has denied the allegations and argued of having not filed or signed any documents in e-Forms and non e-Forms. The Respondent was then a newly qualified young Company Secretary with less than two months of having received the membership and assisted merely in drafting work of minutes which was not final. The Respondent was unaware that the companies were under investigation and were paper/sham companies. The Respondent had done the work as a fresher only as a moral courtesy for furthering learning experience without any consideration. The Respondent had left the work when found that it was hampering a lot of time and handed over the unfinished task.

6. The Respondent had never met CA and was connected only with the said PCS. The Respondent has contended that the preparation of statutory registers for events pertaining to past events is not an offence under any law for time being in force. The preparation of statutory registers of past years *qua* which records has not been maintained under the provisions of the Act is a prerequisite for compounding of offences under the Companies Act, 2013. It is well settled that unsigned documents is *non-est* and has no validity in law for the purpose whatsoever. There is neither any allegation with respect to falsification of any account of any of the accused company, nor has any professional service provided by the Respondent. Even *prima facie* no case or allegation is being made out against the Respondent. The work of the Respondent cannot be construed to be work of minutes as the same was never signed or approved by the management under the company law. No material particular as to the content of the said minutes has even been alleged to have been made. The only allegation is preparation of the said minutes after its occurrence.

7. The Respondent has quoted clause 2 of Section 2 of the Company Secretaries Act, 1980 and contended of not performing any professional duty towards the client in the instant case and that the work was not done for any consideration. Hence, the Respondent is not covered under the definition of a member deemed to be in practice and Section 21 of the Company Secretaries Act, 1980 and Part I of the Second Schedule are not applicable in this case. Further, a junior Company Secretary is allowed to work with other senior Company Secretary and the Respondent as a newly admitted member did some draft work from MCA statutory records for learning purpose and no *mens rea* is involved.

8. The Disciplinary Committee observed that the other PCS has assisted the Respondent in establishing practice. The work was assigned to the Respondent by the said PCS under whom the Respondent had undergone training prescribed under the Company Secretaryship course. The work for preparation of statutory records, draft minutes and registers have been assigned by the said PCS to the Respondent. The Respondent before undertaking the assignment did not even enquire about the companies. The Respondent has prepared the documents without verifying the original documents. The Disciplinary Committee held the Respondent 'Guilty' of professional misconduct under Clause (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980. The Disciplinary Committee keeping in view that the Respondent, at the time of preparation of documents, was a newly qualified Company Secretary and was at nascent stage of practice, took a lenient view in the matter and passed an order of 'Reprimand' against the Respondent.

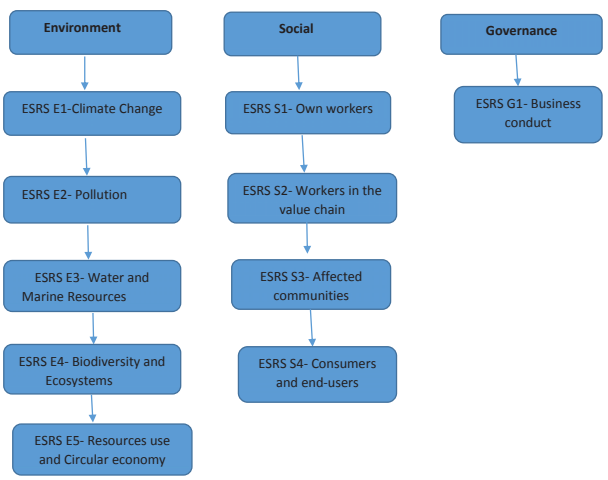
European Sustainability Reporting Standards

The European Sustainability Reporting Standards (ESRS) is a key element of the EU's new Corporate Sustainability Reporting Directive (CSRD) and has been praised as the game changing standard for corporate sustainability reporting. For the first time ever on an EU-wide level, Environmental, Social, and Governance (ESG) information and corporate sustainability disclosure will be required to be reported in a standardized, comparable and more consistent format just like financial reporting.

Nearly 50,000 companies operating within EU-regulated markets will be expected to align their reporting to the ESRS or other established framework. While this is a great step to combat corporate greenwashing, this will also pose a big challenge for many reporting companies in particular first-time reporters.

The 12 proposed ESRSs are divided into three categories:

1. 1 standard on general principles
2. 1 standard on cross-cutting disclosure requirements
3. Specific disclosure requirements on 10 ESG topics that is five on environmental topics, four on social topics, and one on governance. The topics are provided in the following exhibit-



On 9 June, 2023 the EU released near-final drafts of incoming, mandatory sustainability reporting standards for EU companies. Key EU bodies had shared broad support for the draft standards, but raised concerns about the connectivity with international standards and a lack of clarity over fundamental concepts, for example the approach to materiality and reporting about a company's value chain.

ALIGNMENT OF ESRS AND EUROPEAN RULES

The CSRD has been designed to ensure it supplements the EU Taxonomy. According to the EU Taxonomy, companies falling within the scope of the existing NFRD are expected to report on the extent to which their activities are sustainable. The indicators for this requirement will be specified in a separate Commission Delegated Act, in alignment with SFDR and existing EU Taxonomy requirements.

ALIGNMENT OF ESRS AND INTERNATIONAL RULES

EFRAG (European Financial Reporting Advisory Group) is working with international bodies to align the ESRS with international standards to reduce the compliance burden of entities' sustainability reporting. Some of these standards are Task-force Climate Financial Disclosure (TCFD), International Sustainability Standards Board (ISSB), the United Nations Guiding Principles on Business and Human Rights and Global Reporting Initiative.

THE CSRD FOR NON-EU COMPANIES

As of 1 January 2028, non-EU companies with substantial activity in the EU market will also need to report their sustainability using the ESRS if they are in the scope of the CSRD. The entities in scope will need to check the data reported externally with either a European auditor or an independent auditor from a third country.

For some countries, there might be international alignment in the disclosure requirements. For instance, in the United States, the SEC is expected to adopt climate rules that could be considered equivalent to the ESRS.

DISCLOSURE STAGES OF THE ESRS

There are 4 stages where the CSRD will be phased in to substitute the NFRD:

- 1 January 2025 - CSRD applied to companies, banks and insurance under NFRD have to report the first set of Sustainability Reporting standards for the **financial year 2024**.
- 1 January 2026 - CSRD applied to other large companies not under the NFRD report on **financial year 2025**.
- 1 January 2027 - CSRD applied to listed SMEs on public markets have to start reporting to a reporting standard for the **financial year 2026**.

  -A possible "opt-out" during a transitional period, meaning that they will be exempted from the application of the directive until 2029.
- 1 January 2029 - Non-EU companies, listed in EU markets with subsidiarity in the EU and working in the EU that have a turnover above the thresholds (>250 employees, turnover of at least €40M or a balance sheet total of at least €20M) will need to disclose their **financial year 2028.**

REFERENCES:

i. https://blog.worldfavor.com/what-are-the-esrs-the-eus-new-mandatory-sustainability-reporting-standards

ii. https://kpmg.com/xx/en/home/insights/2022/05/european-sustainability-reporting-standards-eu-esrs.html

iii. https://greenomy.io/blog/esrs-phase-in-journey#:~:text=The%20European%20Sustainability%20Reporting%20Standards%20(ESRS)%20are%20standards%20that%20define,will%20need%20to%20report%20on.

7

BEYOND GOVERNANCE

Case Study

In order to make the Chartered Secretary Journal (CSJ) more interactive for the members and students, the Case Study section has been introduced from April issue. Each Case Study is followed by question(s) which are to be solved by member(s)/student(s). The answer(s) are to be sent to cs.journal@icsi.edu latest by 25th of each month.

The answer(s) will be reviewed by a Panel of reviewer(s). The winner will be given:

(i) Certificate of Appreciation.

(ii) His/Her name will be published in the next issue of the Journal.

(iii) He/She will be awarded cash award of ₹ 2,500.

Crossword

A new section 'Crossword' containing terminologies/concepts from Companies Act, IBC, NCLT and such related areas of profession is introduced. Members/ students are to send the answers of Crossword to cs.journal@icsi.edu latest by 25th of each month.

- The answer(s) will be published in the next issue of CSJ.
- The winners will be selected randomly.
- The name of three winners will be published in the next issue of CSJ.

An appeal was preferred before NCLAT, as an 'Aggrieved Persons', by XYZ Private Limited ("Transferor Company") and PQR Private Limited ("Transferee Company") in respect of the `impugned order' dated 10.03.2022, dismissing the 'Applications' filed for sanctioning scheme of amalgamation and merger (Filed under Section 391 – 394 of the Companies Act, 1956), by the `Appellants / Petitioners' (Transferor and Transferee Company), passed by the `National Company Law Tribunal', Bench.

NCLT Bench gave following reasons for dismissing application:

(i) The Regional Director, Ministry of Corporate Affairs (Respondent), who is the competent authority in the matter, has strongly objected to the Scheme of amalgamation submitted by the petitioner companies for the reasons that

- The companies have violated Section 74(1)(b) of the Companies Act, 2013 by retaining amounts of Rs.17,50,000/- accepted from Sri Mishan, a Director of the transferor company during the year 2014-15 as also Rs.15,00,000/- from Sri Ika, another Director of the transferor company during the year 2015-16. In the Board report for 2014-15 and 2015-16, the company has not made disclosure regarding acceptance of deposits of the aforesaid two amounts from the said Directors violating the provisions of Section 73 of the Companies Act, 2013.
- They have violated the new provisions of Sections 73 to 76A prohibiting the private limited companies from accepting or renewing any deposits from shareholders in excess of the aggregate of the paid up capital, free reserves and securities premium amount. However, the companies have not disclosed in the Notes to the Financial Statements for the financial year coming after 1st April 2014, the figure of such amount.
- The transferor company has not uploaded the Notes forming part of the accounts in the MCA portal from 31.3.2014 to 31.3.2019.
- The '1 st Appellant /(Transferor Company), in the year 2013-14, had accepted `numerous Deposits', from as many as '100 Members', (including the Directors), and that '37 Members', out of 100, were 'existing', as on 12.09.2013, the date prior to the `Notification' of the Companies Act, 2013, which permitted the 'Private Companies', to 'increase the Limit', on the 'number of Members', from 50 to 200. As a matter of fact, the '1st Appellant / (Transferor Company)', had shown in their record, that 63 more persons, from whom the 'Deposits', were 'accepted', became 'Members', from 13.09.2013 to 31.03.2014. Indeed, the '1st Appellant' / 'Transferor Company', had manipulated the 'records', to reflect that the 'Sum' received from these '63 persons', as amount received from the 'Members', with a view to 'escape', from the 'breach of the ingredients of Section 58A of the Companies Act, 1956'.
- The '1st Appellant / (Transferor Company), had filed two (2) PAS-3 forms on 26.08.2014 for allotments made on 27.03.2014 and 29.03.2014, each containing 49 new shareholders with a considerable delay, as seen from the 'records', on verification. In both instances, the 'Number of Shareholders' involved was 49', and it was the 'methodology' of the '1st Appellant / Company', to first 'accept' the 'monies' from 'outside parties', as 'Unsecured Loans', and later, having realised the 'non-adherence of Section 58A of the Companies Act, 1956', these 'two allotments', were made to 'circumvent' the provisions.
- The said amount collected from the shareholders have been retained by the Transferor company without replaying them with a period of three years under Section 74 of the Act on the due dates as per the terms of acceptance, which is violation of Section 74(1)(b) of the Companies Act.
- The transferor company accepted deposits from outside parties, which was not disclosed in the Balance Sheet as on 31.3.2016 but misleading facts were stated that it was received from parties stating it as Long Term Borrowings.

- The amount outstanding unsecured loans / deposits is over Rs. 14 crores as compared to share capital of around Rs. 2.5 crores is violation of Section 448 of the Companies Act.
- Similar violations were committed by the Transferee Company also.

(ii) Even though the petitioners filed a counter to the report of Registrar of Companies denying the allegations regarding violation of Sections 73 or 74 of the Companies Act, they simply stated that they are not valid grounds for objecting the proposed scheme of amalgamation. Their further submission is that prior to 15.9.2015, there was no requirement to disclose the details of the money accepted from the Directors in the Board's report. However, they stated that an inadvertent omission occurred on the part of the company which resulted in the non-disclosure of the details of loans received from the Directors and that the company has not accepted any deposits within the meaning of term as defined under Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014.

(iii) On going through the report of the Registrar of Companies, it is seen that both companies have violated the provisions of the Companies Act and the petitioners could not successfully controvert the objections raised by the Regional Director. They have not followed most of the provisions of the Companies Act, which are mandatory for continuance of a company honestly. They must be humble and serious enough to abide the law and any proposition of business must be planned in such a manner that no law, logic and rights of any person are violated. *Hence this Tribunal is of the opinion that this is not a fit case to sanction the Scheme of Amalgamation and dismissed the `Applications'.*

Arguments on behalf of the Appellant

(i) The 'Tribunal', while passing the 'impugned order', had incorrectly, rejected the 'Scheme', resting upon the 'Objections', raised by the 'Respondent', averring that certain 'Violation of Law', in regard to some transactions, that took place, during the year 2014-15.

(ii) The 'Appellant Companies', were formed with the purpose of 'establishing and running Hotel business and Restaurants'. In fact, the 'Scheme' proposes the 'Amalgamation' of 'Appellant No. 1 / Transferor Company', with the 'Appellant No. 2 / Transferee Company', and further seeks approval of the 'Tribunal', to 'dissolve' the 'Appellant No. 1 / Transferor Company', without a 'winding up', in lieu of 'Amalgamation', of the entire undertaking of the `Appellant No. 1 / Transferor Company', with the 'Appellant No. 2 / Transferee Company', on a going concern basis.

(iii) The 'Scheme of Amalgamation', had set out the major benefits flowing from the 'proposed Amalgamation', and inter alia, it has been clearly explained that the 'Scheme of Amalgamation', is proposed for the better, efficient and economical management, control and running of their business, achieve synergies in business activities, attaining economies of scale, for further development and growth of the business of the 'Transferee Company', and to avoid and eliminate unnecessary duplication of the 'Transferee Company' and distribution, etc., and for administrative convenience.

(iv) The 'Tribunal', had rendered a finding that the `purported breach of the provisions of the Companies Act, 2013', are fatal to the 'Approval of Scheme of Amalgamation'.

(v) The 'Tribunal', had failed to 'appreciate', that the 'Scheme' was 'Approved', by the `Shareholders', 'Secured Creditors' and 'Unsecured Creditors' of both the Companies, and that the 'Notice' of the 'Meetings', as well as the 'Petitions', were published in newspapers having wide circulation.

(vi) The 'Tribunal', had failed to 'appreciate' the ambit of its jurisdiction, under Section 230 & 232 of the Companies Act, 2013.

(vii) Just because, there is an 'allegation of commission of an offence', against the provisions of the Companies Act, 2013, the 'Scheme of Arrangement', is not to be 'rejected'.

(viii) By virtue of the 'Amalgamation', there shall be an 'impetus' and 'increase', in the 'area of operations' of the '2nd Appellant / Transferee Company', apart from the 'reduction in costs'.

(ix) It is projected before this 'Tribunal' that the 'Amalgamation', shall result in the combination of manpower of both the Companies and a 'single management structure' for the 'Companies'. Added further, the combined managerial and technical expertise, will enable the '2nd Appellant / Transferee Company', to develop a business model, that would be `'competitive' and 'cogent'.

(x) There is nothing in the 'Scheme', which aims to achieve anything 'fraudulent' or 'hidden' or which may result in 'violation' of any 'Law', for the time being in force. Although the Companies are not facing any 'investigation' or 'winding up proceedings'. In fact, both the Companies have filed their 'Income Tax Returns', 'Statutory Returns', and there is no 'Default', in this regard.

(xi) Both the Companies are closely held 'Private Companies', and they are 'Operating', 'Functional', and have 'Valuable Physical Assets', 'Human Resources' and 'Valuable Licences', to run their Hotels and Restaurants.

Q1. Whether on the basis of the objections raised by the Regional Director, Ministry of Corporate Affairs, pointing out various lapses in the past on the part of the petitioner companies, the application for sanction of amalgamation can be rejected by NCLT?

Q2. Whether the 'Tribunal', had failed to 'appreciate' the ambit of its jurisdiction, under Section 230 & 232 of the Companies Act, 2013 while rejecting the scheme of amalgamation?

Winner of Case Study – July 2023

Nirali Rajesh Shah

ACS- 37743

BEST ANSWER CASE STUDY JULY 2023

Q1. Whether the applicant is duly eligible to take full credit of GST charge in tax invoice issued by supplier and GST was paid by such supplier to government even though later commercial/financial credit note is issued for part amount of invoice corresponding to "after sales discount"?

Ans. Section 15 of the CGST Act 2017 talks about the value of the supply of goods or services or both shall being the transaction value, which is the price actually paid or payable for the supply of goods or services, or both where the supplier and the recipient of the supply are not related and price is the sole consideration for the supply.

The value of taxable supply shall include:-

(i) All the incidental expenses, such as commission and packaging fees, as charged by the supplier to the recipient.

(ii) Any interest, late fee or penalty charged in lieu of consideration by the supplier.

(iii) Any taxes, duties, cess levied under law in force other than this act.

(iv) Subsidies directly linked with the consideration other than government subsidies.

(v) Discounts offered by supplier shall not be included in the transaction value.

Section 15(3) of CGST Act,2017 states that the value of supply shall not include any discount that is given-

(a) before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been affected, if- (i)such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and (ii)ITC as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

Case brief: M/S. Muneraka Electricals India Private Limited (The Applicant) purchases various electronic items from M/S Sumedha Electricals Private Limited (The Supplier). The supplier has issued a tax invoice and applicant has submitted that supplier has paid GST and filed GSTR-3B and reported details of supplies of GSTR-1. The applicant has received the goods and made the payment for consideration.

Various incentives were received by the applicant in the form of after-sales discounts.

Now, the applicant submitted that he is satisfying all the conditions mentioned in Section-16 of the CGST Act,2017 (Eligibility to avail ITC) and therefore is eligible to avail credit of the input tax charged.

Supporting Case: In the matter of" Vedmutha Electricals India Private Limited" it was held that the assessee is eligible to take full credit of GST charged in invoice issued by the supplier even though a later commercial/financial credit note has been issued.

Held that, the post-supply discount received by the applicant from the supplier did not impact the transaction value between the parties. Therefore, the applicant is eligible to take full credit for the GST charged in the tax invoice.

Conclusion: Since M/S Muneraka Electricals India Private Limited is satisfying all the conditions of Section-16 of CGST Act,2017 which are as follows: -

(i) He is in possession of a tax invoice issued by supplier registered under this Act.

(ii) He has received the goods.

(iii) Goods received by him are intended to be used for his business further.

(iv) GST charged in respect of such supply has been paid to the government along with timely filing of return under Section-39.

Hence, the applicant is duly eligible to take full credit of GST charge though later commercial/financial credit note is issued for part amount of invoice corresponding to "after sales discount".

Q2. Whether the applicant is required to reverse the ITC proportionately to the extent of financial/commercial credit note issued by supplier?

Ans. Rule 43 of CGST Rules,2017 deals with the reversal of input tax credit on account of exempt supplies whereas Rule 44 deals with the reversal on account of non-taxable supplies.

Case brief: Since M/S. Muneraka Electricals Private Limited took full credit of GST charge in tax invoice issued by supplier and GST was paid by such supplier to government even though later credit note is issued for part amount of invoice corresponding to "after sales discount "and supplier i.e., M/S Sumedha Electricals Private Limited does not reduces its output tax liability in respect to said credit note.

Supporting case: In the similar case of Vedmutha Electricals India Private Limited, The AA, Andhra Pradesh, in advance ruling held as under-

The provisions of Section 15(3)(b) of the CGST Act can only be applicable if there was a prior agreement and a link is established between the relevant invoices and the discounts provided. In this case, no such co-relation was found between the credit notes issued by the supplier and the applicant. As a result, the benefit of reducing the value of the discount from the transaction value, as per the provisions of Section 15(3)(b), was not allowed.

Note that the financial credit note should not be used as a means of fraudulently transferring ITC by inflating an invoice.

Held that the post-supply discount received by the applicant from the supplier did not impact on the transaction value between the parties. Therefore, the applicant is eligible to take full credit of the GST charged in the tax invoice and was

not required to reverse the ITC to the extent of the financial or commercial credit notes issued by the supplier.

Conclusion: According to the established case law above, as the facts are similar in this case, the applicant is not required to reverse the ITC to the extent of the financial or commercial credit notes issued by supplier.

Q3. What would have been the situation in above two cases if after sales discount is established as per the terms of the agreement before or at the time of such supply and a link established with relevant invoices of the discounts given and supplier has reduced output GST liability on account of financial/commercial credit note?

Ans. As per the provisions of Section 15(3)(b) of CGST Act, it will only be applicable if there was a prior agreement and a link is established between the relevant invoices and the discounts provided.

Section 15(3) states that the value of supply shall not include any discount that is given-

(a) before or at the time of supply if such discount has duly been recorded in the invoice issued in respect of such supply; and

(b) after the supply has been affected, if-

(i) such discount is established in terms of an agreement entered at or before the time of such supply and specifically linked to relevant invoices; and

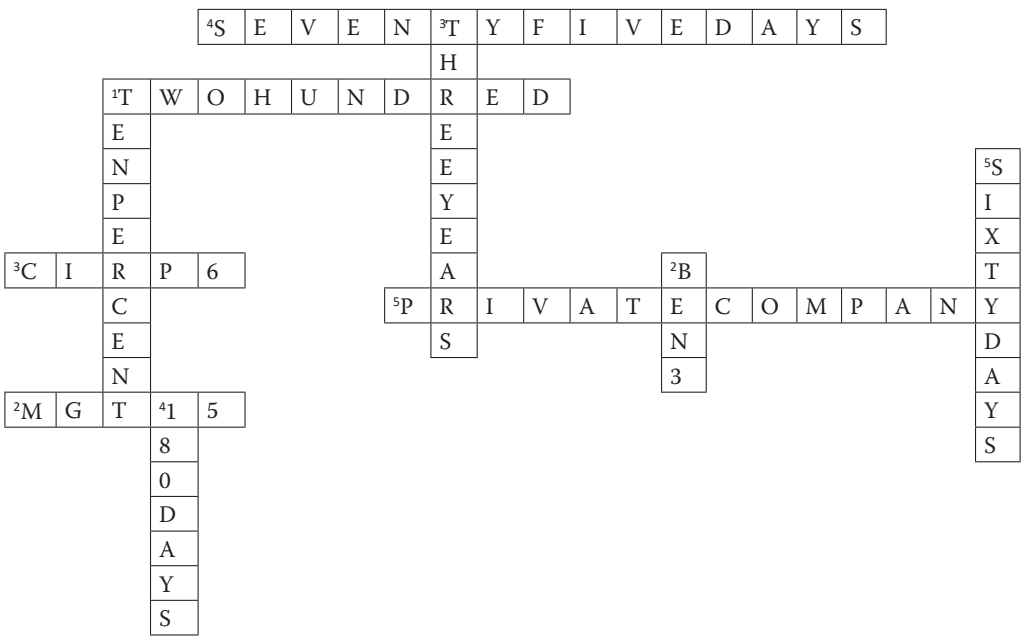
(ii) Input tax credit as is attributable to the discount based on the document issued by the supplier has been reversed by the recipient of the supply.

Therefore, the discount value shall not be included, as per Section 15(3)(b), when such supply has already been affected and the discount is established as per the terms of an agreement at or before the time of such supply and there is a link to the invoices of the discounts given. Further, the ITC attributable to the discount is to be reversed by the recipient of the supply.

Conclusion: Hence, if after sales discount is established as per the terms of an agreement before or at the time of such supply and a link is established with relevant invoices of the discounts given and supplier has reduced output GST liability on account of a financial/commercial credit note then the discount value shall not be included as per section 15(3)(b) of the CGST Act,2017.

Therefore, the input tax credit attributable to the discount is to be reversed by the recipient of the supply.

CROSSWORD PUZZLE – JULY 2023 ANSWERS



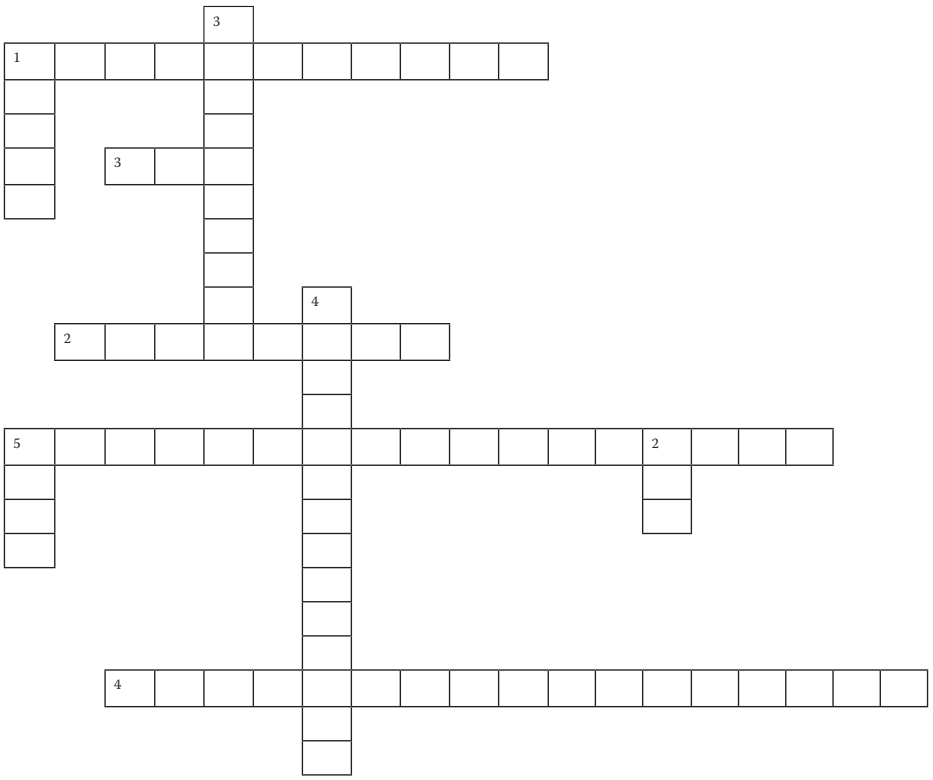
Winners - Crossword July 2023

1st Radhika Anand ACS-27696

2nd Jayalakshmi Rajesh Iyer FCS-8741

3rd Kusum Lata ACS-24282

CROSSWORD PUZZLE – COMPANY LAW
AUGUST 2023



ACROSS

1. Under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the liquidator shall submit the first Progress Report within _____after the end of the quarter in which he is appointed.

2. Under Companies Act, 2013 where _____of the total number of Directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

3. Under Companies Act, 2013, The Audit Committee may make omnibus approval for related party transactions which shall be valid for a period not exceeding _____financial year and shall require fresh approval after the expiry of such financial year.

4. Issue of Sweat Equity Shares of a class of shares already issued, must be authorised by a _____passed by the Company.

5. A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of— _____Reserve Account.

DOWNWARDS

1. Under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation, as specified in _____.

2. Under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within_____days of the verification of claims received.

3. Under Insolvency and Bankruptcy Code, 2016, The resolution professional shall give notice of each meeting of the committee of creditors to-operational creditors or their representatives if the amount of their aggregate dues is not less than _____of the debt.

4. Under Companies Act, 2013, The Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees shall establish _____ for their directors and employees to report their genuine concerns or grievances.

5. Every company shall keep at its registered office a register of charges in Form No. _____.

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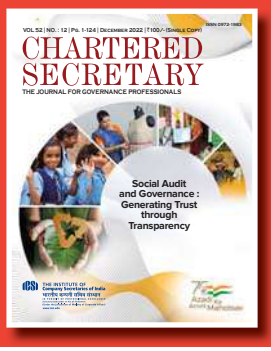

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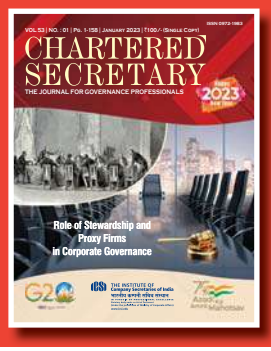

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