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CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS

INCENTIVIZING EXCELLENCE THROUGH COMPETITION

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)
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CONTENTS

ISSN 0972-1983

CHARTERED SECRETARY®

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Vol. : LIII ■ No.05 ■ Pg 1-156 ■ May - 2023

04 - **EDITORIAL**

08 - **FROM THE PRESIDENT**

10 - **RECENT INITIATIVES TAKEN BY ICSI**

15 - **INTERVIEW**

- Dr. Sangeeta Verma, Chairperson, Competition Commission of India

18 - **MEGA PROGRAMME OF CAPITAL MARKETS WEEK 2023**

35 - **ARTICLES**

- Incentivizing Excellence Through Competition

99 - **LEGAL WORLD**

107 - **FROM THE GOVERNMENT**

129 - **NEWS FROM THE INSTITUTE**

144 - **GST CORNER**

145 - **ETHICS IN PROFESSION**

- Acts considered to be 'Other Misconduct' by Company Secretaries under Part IV of First Schedule to the Company Secretaries Act, 1980

147 - **CG CORNER**

- Green Deposits

151 - **BEYOND GOVERNANCE**

- Case Study
- Crossword

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EDITORIAL

The Month of May begins with the International Labour Day and in India it is denoted as Antarrashtriya Shramik Diwas. This day celebrates the contribution and sacrifice of workers to and for society. The International Labour Day in its entirety denotes the significance of human resources and work force and conveys why it is important for the human workforce to be recognised globally. It undoubtedly acknowledges the fact that in times of digitisation and automation,the existence of businesses contributing to growing economies around the world largely depends on Humans and not Machines.

It is imperative to state that when the Covid-19 first wave hit the world, since then the world has been witnessing economic turmoil as markets across the globe have become unpredictable and volatile. Keeping this in view and to take forward ICSI's unrelenting efforts towards Capacity Building and updating the technical know-how regarding Capital Markets amongst the business and professional community, the Institute organised the ICSI Capital Markets Week from April 22- April 29 2023 .

A looming global recession, has raised global concerns and is in strong need for a resilient global transformation of workspaces and employment generation. This is forcing countries to sit together and have a conversation beyond their intrinsic matters. In times of these uncertainties, the world is looking at India which is now the world's fastest-growing economy. Buzzing with economic activity, India can boast of millions of aspirational consumers with a growing propensity to spend, a young labour force, and a huge start-up ecosystem. Adding to this is a pro-reform government eager to bring in investments and scale-up manufacturing, and all this makes India sit in a right spot offering solution to many global business concerns.

Given this scenario, the G20 Presidency is also proving an excellent opportunity to strengthen the partnership between businesses of the world's largest economies.

In the wake of these opportunities, the Institute is organising its 2nd International Conference of ICSI Overseas Centre - 11th to 12th May 2023 in London, United Kingdom. It is eagerly stepping beyond boundaries envisaging the requirement to lead the cause of ICSI's global Corporate Governance community that can come together on this platform, massively deliberate and further invoke ICSI's Vision "To be a global leader in promoting good Corporate Governance". As the Institute is propelling its efforts on a global scale, it is pertinent to have stable market dynamics and how the role of Company Secretaries as Governance Professionals is incentivizing excellence through Competition.

The Theme of this month's Journal very much reverberates with this thought process of ICSI's Leadership. Nothing falls short while describing Indian Competition Laws as the Magna Carta of free enterprise in India. Competition is important for the preservation of economic freedom and our free enterprise system, and the Competition Commission of India is playing the dual role of enforcement and advocacy, all by itself.

It is indeed an honour to publish viewpoints of the Chairperson, Competition Commission of India, Dr. Sangeeta Verma, in the form of an Interview, where her interaction with ICSI accentuates valuable insights on the areas of impetus of the esteemed CCI and how its impact has brought Market correction and Fair competition to bring the best to the business and economy in the right earnest.

We also have various authors who have through their articles, contributed in-depth analysis of various aspects of the Competition Act and its coherent application in bringing fairness in Indian as well as global business scenario.

The Article on "Promoting Competition, Empowering Consumers: The Competition

Commission of India's Game-Changing Contribution to the Marketplace analyses the role of the CCI in ensuring fair competition in India."

The author through article "Demystifying the Competition implications of "Abuse of Dominance" (Concept and Compliances)" projects how this Act has incorporated paradigm shift in regulatory structure from the Central Government to an independent Competition Commission of India. The article on "The Competition (Amendment) Act,2023: On Power, Penalties, Perplexity and Proposal briefly analyses the provisions of the Competition Act, 2002 pertaining to imposition of penalty and traces the jurisprudence on the antitrust penalties as developed by the Indian competition authorities. The author through the article "Achieving Excellence in Market Dynamics Through Competition" brings forth the fact that the Act is a tool to execute and uphold competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market. The article on Competition Act 2002: An Assessment with Reference to Anti-Competitive Agreements and Abuse of Dominant Position, aims at explaining provisions of Competition Act, 2002 relating to anti-competitive agreements and abuse of dominant position in simple and lucid way. The paper also aims at highlighting case laws relating to said practices. The author through the article, "Understanding Legalities - Mergers, Acquisitions and Combinations, throws light on The Competition Act and aims to promote and sustain competition in the market, protect consumer interests, and ensure freedom of trade in India. In the article "Study of anti-competitive behaviour with reference to decided case laws under the Competition Act 2002" explains the vision of the Competition Commission of India (CCI) which is to promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative and enhance consumer welfare and support economic growth.

The author through the article "The Role of the Competition Commission of India in Tackling Anti-Competitive Practices: An Evaluation of the Commission's Effectiveness" significantly evaluates the effectiveness of CCI in addressing anti-competitive practices and promoting fair competition in India. The author through the article "Key Managerial Personnel: Section 203 of the Companies Act, 2013 - Two Controversial Issues'- breaks the myth of how the Legislature might have intended to do a certain thing, but if the words employed do not express that intention, it is not for the courts to assume the role of legislators and give effect to the unexpressed intention. The author through the article "Human Resource Management, Accounting and Artificial Intelligence- A Promising Integration, brings forth the fact that in any organization, human beings are invariably considered business assets. Therefore, it is required to employ, train, and value human resources in a fair, appropriate, and reasonable manner. The article on Social Stock Exchange attempts to identify the challenges that Indian SSE may face in future by analysing SSE models of different countries.

The Journal, is putting in its best efforts to ardently bring forth the best of knowledge resources and provide our esteemed readers with a compendium of professional views and extensive facts and analysis.

Happy Reading !

CS Asish Mohan
(Editor - Chartered Secretary)

1. ICSI delegation led by CS Manish Gupta, President, The ICSI met with Hon'ble Shri T. S. Thakur, Former Chief Justice of India requesting him to chair the Jury for the 23rd ICSI National Awards for Excellence in Corporate Governance.
2. ICSI delegation led by CS Manish Gupta, President, The ICSI met with Shri M P Shah, Director General, MCA on his appointment as Government Nominee to the Central Council, ICSI.
3. ICSI delegation led by CS Asish Mohan, Secretary, ICSI called on Prof. Dinesh Prasad Saklani, Director, NCERT to apprise the academic community under the aegis of NCERT, on the role of CS in the growth and development of the country.
4. Seminar organized by Bareilly Chapter of NIRC on 8th April, 2023 on the theme "Corporate Social Responsibility & MSME Schemes". CS Manish Gupta, President, ICSI, addressed the Seminar.

5-6. CS Manish Gupta , President, ICSI addressed ICSI Navi Mumbai Chapter and ICSI CCGRT Mumbai Joint Programme on 'Annual Secretarial Compliance Report & Social Stock Exchange'.

7. Seminar on Nidhi, Producer and Small Company under the Companies Act 2013 organised by Agra Chapter in the presence of Sh. Sanjay Shorey, RD, North, MCA and CS Seema Rath, RoC Kanpur.
8. Half-day Seminar organised by Bhayander Chapter of WIRC of ICSI. Interaction of Members and Students with President, Vice- President and other Central Council Members, The ICSI.

9. Interaction of Members & Students with CS Manish Gupta, President, The ICSI & CS B. Narasimhan, Vice-President, The ICSI at Bengaluru Chapter of SIRC of ICSI on 15.04.2023.
10. CS Manish Gupta, President, ICSI, being felicitated at Capital Markets Week Mega Programme at Kolkata on 29 th April 2023.
11. CS Manish Gupta welcoming Dr. Dheeraj Jain, IRS, Additional Commissioner, Income Tax at the Seminar on "Cybersecurity" organised by Alwar Chapter.
12. CS Manish Gupta, President, The ICSI and Dr. Sangeeta Verma, Hon'ble Chairperson, Competition Comission of India, addressed the Seminar on "Importance of Competition Law for Industry" organised by Merchants' Chamber of Commerce and Industry, Kolkata.
13. Health Check-up camp organised on 21.04.2023 & 27.04.2023 at ICSI-CCGRT & ICSI, HQ respectively.
14. Glimpse of Cricket Match organised for ICSI team members at Delhi Headquarters, Noida Office & NIRO at Noida.
15. Workshop on "Meditation and Breath" conducted for the well-being of employees by The Art of Living Foundation.

विद्याधनं सर्वधनात् प्रधानम्

Education is the supreme wealth among all kind of wealth.

Dear Professional Colleagues,

It is a moment of great exhilaration both as the President leading the Team ICSI and as a member myself when the previous month ends on a high note and the next one holds in its garb great anticipations and expectations of amazing us, of reigniting the fires of knowledge in us and of bringing us a step closer to our ultimate vision - the ICSI vision "to be a global leader in promoting good Corporate Governance". Nearing the middle of the year, as I sit to pen this address to share the past, enliven the present and contemplate the future, the heart is filled with an immense satisfaction for the days passed and spell-binding anticipation.

CAPITAL MARKETS WEEK 2023: THE LEARNINGS FROM A WEEK LONG JOURNEY

A decade and a year ago, the Capital Markets Week was launched by the ICSI, and today it has become a legacy just like many other initiatives - one which finds a place of prominence in the ICSI Calendar of events.

At the beginning of the year, just as we sit to finalise the tentative schedule of events, picking out dates - where all other events take a day or two or a maximum of 3; this event comes to the table with the biggest demand - a full seven days - an entire week.

But even while being the longest running event of the year, the Capital Markets Week for us at the ICSI is not just an event - rather it is a moment of reiteration - of our roles and responsibilities towards one of the biggest stakeholder groups of the India Inc. - the shareholders and investors. People who park in their hard earned money - their savings into the stream and pool of the markets, all in the hope of reaping benefits greater than those earned in the safer ways.

Each year has witnessed us preparing in full swing and with immense fervour - the Inaugural session - the Mega programmes, the Regional Offices and Chapter events... But what warms my heart the most is the wait and the wholehearted participation of the Stock Exchanges and the Regulatory Authorities in this endeavour.

Each year we find the firm hand of support of the SEBI by our side - silently asking how we can help. Each year the Stock Exchanges not only join hands as our Knowledge Partner but lend greater magnanimity to this event by according us the opportunity of hosting the Inaugural Ceremony on their ground.

Our heartiest thanks to all our Chief Guests and Guests of Honour, the Experts who came on board for the panel discussions, our Regional Offices and Chapters who were equally zealous to make this happen and with them each and every single participant who lent the true magnanimity to our week long celebration of knowledge creation, awareness building and finer understanding. My heartfelt gratitude towards Ms. Priya Subbaraman, Chief Regulatory Officer, NSE, Shri Amarjeet Singh and Shri SV Murali Dhar Rao, Executive Directors, SEBI who made our Inaugural ceremonies at Mumbai, Chennai and Kolkata all the more memorable with their presence.

CS AMENDMENT REGULATIONS, 2023 - THE DAWN OF A NEW ERA

Another major development of the month of April 2023 that is surely going to change the face of governance and the profession is the rolling out of the Company Secretaries (Amendment) Regulations, 2023.

While some of the amendments in the Company Secretaries Regulations touch upon the procedural matters, the two major amendments which shall have a long-ranging impact would be that pertaining to the Standards Boards and the Academic Board. The amendments in regulation 105A and 105B are ones definitely aimed at strengthening the Institute, its functioning and its professionals from within.

The Secretarial Standards Committee and Auditing Standards Committee shall be making way for Secretarial Standards Board and Auditing Standards Board. While the erstwhile Committees comprised members of the Council only; the benefit of this amendment will be in the form of much needed presence, support, erudite and advice of some of the most experienced minds from the profession as well as the Industry. Add to that, the presence of members of Regulatory Authorities and the meeting of minds is bound to give us fruitful results.

With a change in the composition of the both the Committees as they transform into Boards – the overall thought and approach is bound to change. The presence of the tripartite of professionals, Industry and regulatory Authorities is bound to bring a more governance centric and yet all-encompassing, holistic approach.

The second amendment, the constitution of an Academic Board comprising persons of eminence and brilliance, bringing with them diversity of thought and approach, will add to the existing Course and syllabus – an industry oriented outlook, and an understanding of the dynamic market needs. The strengthening of the profession at the ground level – with the students benefitting will definitely be our step forward in achieving the ICSI mission of developing high calibre professionals.

CORPORATE TAX CONFERENCE 2023 : THE UAE CALLS AGAIN

The year 2022 witnessed the ICSI making its mark and presence felt in the Middle East with its first ever International Conference of ICSI Overseas Centre in Dubai. The year 2023 is set to witness another breakthrough with the ICSI organising the Corporate Tax Conference in Dubai (UAE) on June 3, 2023 on the theme UAE Corporate Tax - A New Paradigm towards Transparency and Good Governance, which is again being hosted by ICSI Middle East (DIFC) NPIO. Needless to say, the Conference is set to explore opportunities for Company Secretary Professionals in the wake of new tax regime scheduled to be rolled out in UAE, from June 1, 2023, besides providing a platform for holding dedicated and insightful discussions around strengthening the governance framework through appropriate guidance to the professionals.

MEETINGS, GREETINGS, GRATITUDE AND WAY FORWARD

Given the fact that this month's edition has been built with emphasis on Competition and the applicable laws in the country, I take this opportunity to extend my heartfelt gratitude towards Dr. Sangeeta Verma, Chairperson, Competition Commission of India for giving us as professionals a peep into the minds of Regulators and share her wisdom and opinion with us. In the same breath, I am equally and extremely thankful to Hon'ble Shri T. S. Thakur, Former Chief Justice of India for having acceded to our request of chairing the Jury for the 23rd ICSI National Awards for Excellence in Corporate Governance.

Having shared the major happenings of the month in great detail, I am indeed delighted to share two new developments. The first being the allocation of friends, philosophers and guides to the Central Council in the form of our Government Nominees - Shri Manoj Pandey, Shri Inder Deep Singh Dhariwal, Joint Secretaries, MCA; Ms. Mithlesh, Advisor (Cost), MCA; Shri M P Shah, DGCoA, MCA and Dr. Ashok Kumar Mishra, Ex-Technical Member, NCLAT. I am sure their knowledge, expertise and professional erudite would add greater strength to the Team and guide our way towards the achievement of our goals to the best of our capabilities.

Another great landmark event that I'm pleased to share is the signing of a Memorandum of Understanding between our Institute, the Institute of Company Secretaries of India with the Institute of Cost Accountants of India on 24th April 2023 for Reciprocal Exemptions in the Examinations conducted by both entities. The MOU shall go a long way in easing out the pathway to achieve greater academic accomplishments for our members, thus bringing to them greater expertise. My best wishes to all our members. May we all keep continuously growing together...!

Meanwhile the registrations have been opened for the 24th National Conference of Practising Company Secretaries to be held in Visakhapatnam on the 16-17 June, 2023 with the theme Company Secretary: Stepping Beyond Boundaries. I hope and wish to see all my practising brethren joining me in taking the baton of excellence forward. It would not be fair on my part to contain my excitement of the upcoming 2nd International Conference of ICSI Overseas Centre set to be held in the heart of United Kingdom - London - the complete details of which I'll be sharing with you through these pages in the next edition.

May we all break new grounds together !!!

Happy reading !!!

Warm regards,

Yours Sincerely

CS Manish Gupta
President, ICSI

INITIATIVES UNDERTAKEN DURING THE MONTH OF APRIL, 2023

INITIATIVES FOR MEMBERS

MEETINGS AND GREETINGS

During the month, ICSI delegation met with the following dignitaries:

- Shri T. S. Thakur, Former Chief Justice of India on April 12, 2023
- Prof. Dinesh Prasad Saklani, Director, NCERT on April 20, 2023
- Shri M P Shah, Director General, MCA & Government Nominee, ICSI on April 25, 2023

CAPITAL MARKETS WEEK, 2023

The ICSI has been observing Capital Markets Week for more than a decade as a part of its ongoing efforts to promote investor education and good governance in the Capital Markets. This year the theme of Capital Markets Week, 2023 was "Learnings from G20: Journey towards Sustainable, Competitive and Holistic Capital Markets". The PAN India event from April 22-29, 2023 comprised 4 Mega programmes at Mumbai, Chennai, Delhi and Kolkata, apart from sessions conducted by Regional Offices and Chapters providing a wonderful platform for critical analysis of challenges and opportunities in Capital Markets. The Inaugural Mega Programme of Capital Markets Week, 2023 was conducted on April 22, 2023 at National Stock Exchange of India Limited, Mumbai. Ms. Priya Subbaraman, Chief Regulatory Officer, National Stock Exchange of India Limited presided over as the Guest of Honour.

HANDBOOK ON IFSCA

The International Financial Services Centre Authority (IFSCA) has issued several regulations to promote and regulate various activities in the GIFT IFSC, wherein Company Secretaries have been recognized to ensure compliance. The Institute, with a view to acquaint members with the developments at the IFSCA and enable them to discharge their roles effectively, has prepared the publication titled 'Handbook on IFSCA'. This publication contains brief overview of the IFSCA, the IFSCs, opportunities at IFSC, benefits for operating at IFSC, recognitions for the CS Profession, brief background of regulations, suggestive formats, checklists, etc.

CORPORATE GOVERNANCE : FROM COMPLIANCE TO EXCELLENCE

The Handbook on Best Practices titled Corporate Governance : From Compliance to Excellence intends to share the best practices observed in corporate governance with the India Inc. Based on the analysis of companies which participated in the 22nd ICSI National Awards for Excellence in Corporate Governance, the publication highlights governance practices adopted by Indian corporates in respect of:

- Board Effectiveness
- Transparency and Disclosure
- Risk Management
- Stakeholders' Value Enhancement
- Sustainability
- Workplace Innovation

CORPORATE TAX CONFERENCE 2023 IN UAE

The Institute of Company Secretaries of India is organizing a Corporate Tax Conference in Dubai (UAE) on June 3, 2023 on the theme **UAE Corporate Tax - A New Paradigm towards Transparency and Good Governance**, which is being hosted by ICSI Middle East (DIFC) NPIO. The Conference is set to explore opportunities for Company Secretary Professionals in the new tax regime scheduled to be rolled out in UAE, from June 1, 2023, besides providing a platform for holding insightful discussions around strengthening the governance profession.

24TH NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES

The Institute is holding the 24th National Conference of Practising Company Secretaries on the theme **Company Secretary: Stepping Beyond Boundaries** at Hotel Novotel Varun Beach, Visakhapatnam during 16th & 17th June, 2023 (Friday & Saturday). The registrations for the Conference have commenced. Members are requested to visit the link below for registration and further updates https://www.icsi.edu/24thpcs/

KNOWLEDGE ON DEMAND

Knowledge on Demand is an initiative of the Institute providing facility to members to explore the recorded sessions delivered by subject experts on important topics as per their requirement and update their knowledge at their convenience online 24x7 on the LMS Platform of the Institute. It is an endeavour to provide access to the repository of videos available with the Institute to facilitate the members in keeping them abreast of latest developments, widening their knowledge base and improving their skills to maintain the cutting edge. A tile 'Knowledge on Demand' is available on the ICSI website to access the programme.

TRAINING PROGRAMME FOR EMPANELMENT OF PEER REVIEWERS

A training programme for empanelment of Peer Reviewers was organized on April 1, 2023 at Hyderabad. Thirty members from nearby cities participated in the training programme. More such training programmes will be organised in the days to come at different locations so as to enhance the number of Peer Reviewers.

WEBINAR ON PEER REVIEW

With a view to provide detailed insight and in-depth analysis of the Guidelines for Peer Review of Attestation and Audit Services by Company Secretary in Practice a Webinar on Peer Review - Mandatory Peer Review for Certificate and Audit Services was organized on April 19, 2023. Around 2500 members participated at the Webinar.

LAUNCH OF NEW BATCHES OF CERTIFICATE AND CRASH COURSES

The Institute has launched a new Crash Course on the topic **"Lending Transactions and Opportunities for CS in Banking"** to be held on April 29-30, 2023. The objective of this course is to provide an insight into the Concept of Charge, pledge and hypothecation on lending transactions, Registration of Charges, Pre and Post Loan Disbursement compliances, Diligence Reporting and Role of CS in the banking sector.

A new Certificate Course on the topic **"Corporate Tax and VAT in UAE"** has been announced to be held between May 12-14, 2023 with a view to equip the members with the necessary knowledge and skills in this upcoming area of practice.

The Institute has also re-opened admissions to fresh batches in 4 Certificate Courses on the subjects like **CSR, GST, Securities Laws and FEMA**, the classes of these courses will start from 6th May 2023.

FORMATION/RENEWAL OF ICSI STUDY CIRCLES

The ICSI has been promoting the formation/renewal of Study Circles for creating knowledge upgradation avenues through professional discussion and deliberation. In April, 2023 Study Circles renewed for the Financial Year 2023-24 were as under:

- Janakpuri Study Circle of ICSI (NIRC)
- Hubli-Dharwad Study Circle of ICSI (SIRC)
- Najafgarh Study Circle of ICSI (NIRC)
- Vikas Marg Study Circle of ICSI (NIRC)

WEBINARS CONDUCTED

During the month, Webinar was conducted as follows:

Date	Topic
April 11, 2023	MCA-21 V3 - Company Forms

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 shortlisted Resumes of 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		
Sl. No.	**Department / Organization**	**Designation**
1.	Arasu Rubber Corporation Limited	Company Secretary
2.	Dholera Industrial City Development Limited	Company Secretary
3.	Engineering Projects (India) Limited	Manager / Sr. Manager
4.	General Insurance Corporation of India	Company Secretary
5.	ICSI	Multiple Positions
6.	Insurance Regulatory and Development Authority	Multiple Positions
7.	ITI Limited	Multiple Positions
8.	National Handloom Development Corporation Ltd	Company Secretary
9.	Offices of Ministry of Corporate Affairs, Kolkata	Young Professionals
10.	Power Grid Corporation of India	Officer Trainee
11.	Serious Fraud Investigation Office (SFIO), MCA	Assistant Director
12.	The State Trading Corporation of India Limited	Company Secretary
13.	Apex Group	Multiple Positions
14.	Aplab Limited	Company Secretary
15.	CL Educate Limited	Assistant Company Secretary
16.	Classic Promoters and Builders Private Limited	Assistant Manager
17.	IIFL Samasta Finance Limited	Assistant Manager
18.	Infinium Pharmachem Limited	Company Secretary
19.	JMS Mining Private Limited	Company Secretary
20.	Lesha Industries Limited	Company Secretary
21.	LTI Mindtree	MCA - Company Filing Analyst
22.	Macleods Pharmaceuticals Limited	Assistant Manager
23.	Monopoly Innovations Private Limited	Company Secretary
24.	Quest Global Engineering Services Private Limited	Company Secretary
25.	RMK Infrastructure Private Limited	Company Secretary
26.	TCP Limited	Company Secretary
27.	UBS	Compliance Specialist
28.	Uniproducts India Limited	Company Secretary
29.	Vitane Pharmaceuticals Private Limited	Company Secretary
30.	Vizag Profiles Private Limited	Company Secretary

STATUS OF REGISTRATIONS AND POSTINGS AT THE PLACEMENT PORTAL

(As on 25th April, 2023)

Registered Users			Total no. of Vacancies
Members	**Students**	**Corporates**	**Jobs/ Trainings**
287	271	76	292

CAMPUS PLACEMENT PROGRAMME

The Campus Placement Programme of the Institute provides a unique opportunity to corporates to peruse 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. Two Campus Placement drives were conducted in the month of April 2023 and more than 400 members participated in the drive:

- Apex Group
- Vedanta Limited

TRAINEE DRIVE

The Trainee Drive of the Institute provides training opportunities to its students to place them in corporates to enhance their professional understanding. Three Trainee Drives have been conducted in the month of April 2023 wherein more than 100 students registered themselves for the drive:

- Tata Chemicals
- Tata Sons
- Power Transmission of Uttarakhand Limited

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

- **Workshops**

Date	Topic
April 1, 2023	Interplay of Companies Act and SEBI Act with IBC
April 15, 2023	Labour Laws & GST Law vis-à-vis IBC
April 25-26, 2023	IBC vis-à-vis Limitation Act and PMLA

- **Webinars**

Date	Topic
April 17, 2023	Income Tax Quandaries with IBC
April 21, 2023	Anatomy of IBC Cases – 4
April 28, 2023	Recent Important Orders by NCLAT

- **Interactive Meet**

"Let's Connect: A Platform for the IPs" on April 3, 2023

ICSI REGISTERED VALUERS ORGANISATION

- **50 Hours Online Education Course**
  - o ICSI RVO conducted "50 Hours Educational Programme" from March 31-April 9, 2023.
  - o Announced another batch from May18, 2023.

INITIATIVES FOR EMPLOYEES

- *Workshop on "Meditation and Breath" by The Art of Living Foundation*

  A workshop on 'Meditation and Breath" was organized on March 28-29, 2023 at Noida Office Auditorium for the well-being of employees through Art of Living (AOL) Foundation.

- *Webinar on "Health for All" by Dr Reddy's Foundation*

  A webinar was organized on April 18, 2023 on the topic "Health for All" by Dr Reddy's Foundation for the benefit of ICSI employees and pensioners. All employees participated in the webinar presented by Dt. Mr. Arun, Nutritionist.

- *General Healthcare Check-up Camp at Lodi Road Office*

  A general healthcare check-up camp was organized at Lodi Road Office in collaboration with Sitaram Bhartia Institute of Science & Research on April 27, 2023 for the welfare of the employees, as a part of continuous employee engagement programme. A team of 10-12 medical staff including a General Physician. Gynaecologist, Endocrinologist and Physiotherapist visited the Institute. All the employees participated in the camp.

JOINT PROGRAMME

The ICSI joined as Knowledge Partner in the Special Session on "Importance of Competition Law for Industry" organized by Merchants' Chamber of Commerce and Industry on April 28, 2023 at Kolkata. Dr. Sangeeta Verma, Chairperson, Competition Commission of India was the Chief Guest and CS Manish Gupta, President, ICSI was invited as Guest Speaker at the Programme.

INITIATIVES FOR STUDENTS

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. The Schedule of Rounds of the Competition will be 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
Semi Final Round	August 1, 2023
Final Round	September 2, 2023 (Physical/Virtual as decided by Institute)

CORPORATE LEADERSHIP DEVELOPMENT PROGRAMME (CLDP) IN NEW FORMAT

The Institute has decided to conduct Corporate Leadership Development Programme (CLDP) in two phases in the following sequential manner:

- 15 days through Online Mode (LMS Portal); and
- 15 days through Classroom Mode (Non-Residential/ Residential).

The link for the same is placed below: https://www.icsi.edu/media/webmodules/Revised_CLDP_Announcement_19042023.pdf

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 28th and 29th Samadhan Diwas were organised on April 12, 2023 and April 26, 2023 respectively 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.

COMMENCEMENT OF ONLINE DOUBT CLEARING CLASSES FOR JUNE 2023 EXAMINATION

ICSI is conducting online doubt clearing classes for the students from first week of May 2023. The online classes are being conducted for the students appearing in June 2023 examination, however other students of the Institute can also join the classes. Classes are being conducted for Executive and Professional Programme for all subjects. The classes are being taken by renowned and distinguished faculties with enriched teaching experience. The students can submit their queries through Google link which will be sent to them after registration. They can also interact live with the faculties through the chat box during the classes. Students are required to register at the following link to attend the classes: https://www.icsi.in/student/DelegateRegistration/tabid/137/ctl/DelegateRegistration/mid/454/EventId/109/Default.aspx

FREE HALF DAY PROGRAMME FOR ICSI STUDENTS THROUGH REGIONAL AND CHAPTER OFFICES

ICSI is organizing free Half Day Programme for the students of ICSI (Every month) through its Regional and Chapter offices. These programmes will immensely help the students in improving and updating their academic knowledge. Besides, the focus will be also on soft skills and personality development of the students. For details, click https://www.icsi.edu/media/webmodules/06092022_halfdayprogramme.pdf

RE-OPENING OF ONLINE WINDOW FOR SUBMISSION OF CS EXAMINATION FORM FOR JUNE 2023 EXAM SESSION

The Last date for submission of Examination form for CS Executive/ Professional Program Examinations for June 2023 Session was March 25, 2023 without late fees and April 9, 2023 with late fees.

In view to facilitate the students who could not submit the examination form and were desirous to appearing in the Examination for June 2023 Session, online window for submission of the said form for June 2023 session for CS Executive/ Professional students, it was decided to re-open the online window from 4.00 PM on April 17, 2023 till 4.00 PM on April 19, 2023.

MOU EXECUTED BETWEEN ICSI AND THE ICAI-COST FOR RECIPROCAL EXEMPTIONS

An MOU was signed with The Institute of Company Secretaries of India and The Institute of Cost Accountants of India on 24th April 2023 for Reciprocal Exemptions. Announcement pertaining to Exemption for the Final Pass students of ICMAI enrolling for CS Course has been updated at Institute's website www.icsi.edu or at: https://www.icsi.edu/media/webmodules/ATTENTION_STUDENTS_RECIPROCAL_EXEMPTION_NEW_SYLLABUS_2022.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.

SCHEDULE OF ICSI CLASSES AT ROs/ CHAPTERS FOR JUNE 2023 SESSION OF EXAMINATION

Classes are being conducted by Regional/Chapter Offices for the students appearing in June 2023 Session of Examination. For details, click https://www.icsi.edu/media/webmodules/websiteClassroom.pdf

COMPANY SECRETARY EXECUTIVE ENTRANCE TEST (CSEET)

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

- ***CSEET (May 2023 session)***

  CSEET May 2023 session will be held on May 6, 2023 through remote proctored mode. For details, click https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx

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

  CSEET Classes are being conducted by Regional/Chapter Offices for the students appearing in CSEET to be held in July 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 **April**, **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/

- *Consolidation of supplements applicable for June 2023 session of examination*

  Supplements covering the applicable amendments/developments from August 2021 – November 2022 for all the study materials of executive and professional programme have been uploaded on ICSI website.

ICSI ACADEMIC CONNECT SIGNED WITH CHITKARA UNIVERSITY

Taking one more step forward towards mutual collaboration and capacity building, the ICSI and Chitkara University, Rajpura, Punjab signed a MoU on April 5, 2023 under "Academic Connect" initiative of ICSI. President, ICSI, CS Manish Gupta and Dr. Sandhir Sharma, Pro Vice Chancellor and Dean, Business School, Chitkara University signed the MoU. Dr. Dhiresh Kulshrestha, Dean Economics, Dr. Kiran Mehta, Prof. Finance, Dean-MBA (Finance & Banking), Dr. Rashmi Aggarwal Dean Commerce (UG Prog.) were present during MoU signing ceremony on behalf of "Chitkara University".

RENEWAL OF MOUs OF ICSI STUDY CENTRES

ICSI Study Centre MoU was renewed with following academic institutions:

- Bharathidasan Government College for Women (Autonomous), Puducherry has been renewed on April 13, 2023. A Career Awareness Programme was also conducted for the benefit of the students.
- Alpha Arts & Science College, Porur, Chennai has been renewed by SIRO on April 17, 2023. A Career Awareness Programme was also conducted for the benefit of the students.
- SDNB Vaishnav College, Chromepet, Chennai has been renewed by SIRO on April 18, 2023. A Career Awareness Programme was also conducted for the benefit of the students.
- G. S. College of Commerce, Wardha has been renewed by Nagpur Chapter on April 19, 2023.

CHANGE IN THE NAME OF AURANGABAD CHAPTER OF WIRC OF ICSI

In Pursuance of ICSI Chapter Management Guidelines, 2019, as amended from time to time , and as decided by the Council at its 295th Meeting held on 24.03.2023, the name of Aurangabad Chapter of WIRC of ICSI stands changed to Chhatrapati Sambhajinagar Chapter of WIRC of ICSI .

The change in the name of above chapter will be effective from 10-04- 2023.

IMPORTANT LINKS FOR STUDENTS

To facilitate and update the students, a list of important links at the website of the Institute has been compiled. Students can go through the links given below to get all important details:

- For Student Services related updates: https://www.icsi.edu/media/webmodules/Student_Services_links.pdf
- For Academic updates: https://www.icsi.edu/media/webmodules/Academic_links.pdf
- For Training related updates: https://www.icsi.edu/media/webmodules/Training_Links.pdf

Dr. Sangeeta Verma

Chairperson
Competition Commission of India

Dr. Sangeeta Verma joined the Competition Commission of India as Member on 24th December 2018. Dr. Verma is from the 1981 batch of the Indian Economic Service (IES). She has wide-ranging experience of over three decades in government, both central and state, as an economist, administrator, regulator, and policymaker, and has served the government in several sectors of the economy, including consumer affairs, industry, agriculture, power, and women and child development. Dr. Verma superannuated as Principal Adviser to the Government of India in the Department of Consumer Affairs, where she was responsible for the administration of the Essential Commodities Act and the Consumer Protection Act, as well as for advising the government on various consumer protection interventions. She oversaw the introduction and successful implementation of the Price Stabilisation Fund — a complex scheme for the timely purchase and disbursal of pulses, which benefitted consumers by moderating pulse prices. It also benefitted farmers through assured procurement at government-declared prices. As Principal Adviser in the Department of Industrial Policy and Promotion (now DPIIT), Government of India, she advised on trade and fiscal policy. In the Department of Agriculture, Cooperation & Farmers Welfare, she oversaw national crop production estimates and advised on policy relating to the pricing of agricultural produce (MSP). In the power sector, Dr. Verma served as Secretary, U. P. State Electricity Regulatory Commission (UPERC), and Economic Adviser with the Central Electricity Authority, Ministry of Power. During her term as Secretary, the UPERC made several regulations bringing reforms to the state electricity sector. It also finalised the licencing and tariff regulations for all licensees. Dr. Verma also served as Member of the Appellate Authority for Industrial and Financial Reconstruction, which adjudicated on appeals against orders of the erstwhile Board for Industrial Financial Reconstruction (BIFR). Dr. Verma graduated in Economics (Hons.) from Lady Shri Ram College for Women, Delhi University. She has an M. A. in Economics from the Delhi School of Economics. She also has a Master's degree in Rural Social Development from the University of Reading (UK). She obtained a PhD in Economics from Lucknow University.

Being in-charge of the esteemed Competition Commission of India, for the benefit of our readers, kindly provide an insight as to how CCI is leading from the front in regulating Competition and Achieving Excellence in Market Dynamics?

The mandate of the Competition Commission of India (CCI) is to promote and sustain competition in markets through an effective mix of the twin instruments of enforcement and advocacy. Over the past fourteen years, the Commission's endeavour has been to bring about market correction by removing barriers to competition so that businesses can compete on merits and consumers can gain from improved market outcomes. The Commission has made judicious interventions where business conduct was found to undermine market processes and mute competition. In this relatively short span, businesses, irrespective of their size or market position, from across sectors and geographies, have approached the Commission, bringing forth an array of anti-competitive conduct that have been affecting markets adversely. It gives us utmost satisfaction that the industry has reposed its trust and confidence in the Commission. In terms of impact, our interventions have had positive outcomes in terms of correcting market imperfections to benefit both consumers and businesses.

To achieve the goal of fair competition alongside enforcement, the Commission accords the utmost importance to competition advocacy, which can be effective in preventing violation of the law and can help mitigate a range of competition concerns in Indian markets without burdening the industry with litigation costs.

Markets are not static. We are witnessing exceptional dynamism in markets, thanks to the advancement of technology. To keep the instruments of enforcement and advocacy fit-for-purpose and to anchor them in a clear and complete understanding of market developments, the Commission regularly undertakes market studies. These studies provide a valuable opportunity to engage with industry and form a 360-degree view of the issues and sectors concerned.

Digital markets are giving rise to a range of novel issues, which competition authorities across jurisdictions are grappling with. Given the growing importance of these markets for both businesses and consumers, it is absolutely critical that these markets remain contestable, fair, and transparent. The Commission, in its recent decisions in the digital sectors, went beyond just imposing penalties on the contravening entities, and spelt out positive obligations/remedies so as to enable competition and contestability.

Over the years, the Commission has also put in place transparent and fair procedures to ensure stakeholder trust in the system. The procedures have been constantly streamlined and simplified in line with global best practices and with the aim of furthering the larger goal of ease of doing business in India. Competition screening of M&As over the years has shown that a vast majority of transactions do not raise any concerns. Thus, a slew of industry-friendly measures has been adopted by the Commission to ensure speedy clearance to non-problematic transactions, reduce procedural burden, and make filings simpler. A Green Channel route has also been introduced for automatic approval of combinations. This is a first-of-its-kind trust-based system in the world, where notifiable transactions having no overlaps—horizontal, vertical, or complementary—between the parties, are deemed approved upon filing. It is expected to promote a speedy, transparent, and accountable merger review, striking a balance between facilitation and enforcement.

Going forward, the Commission will continually evaluate its progress across its workstreams, sharpen its toolkit to keep it fit-for-purpose, and benchmark itself against the global best. Competition and an effective competition regime in all its facets is critical to achieve our aspiration goals. An institution like CCI will be a propelling force in aiding this.

How would you like to educate the corporate world on fair competition in current times?

Fair competition benefits all. There is growing recognition around the globe of the benefits of competition to consumers and to the economy as a whole. For consumers, it ensures diversity of supply and lower prices, whereas, for businesses, it creates the best incentive to innovate and excel.

The Commission engages with the corporate world through various fora to highlight the virtues of fair competition and make corporates aware of the consequences of non-compliance. The way the companies, their management, and their employees conduct business may result in the infringement of competition law. This could expose the company and even individual employees to fines, reputational damage, and litigation. Playing by the rules of competition therefore makes good business sense.

To facilitate the compliance journey of corporates and to help them understand the nuances of this law, the Commission has come out with a detailed compliance manual. Further, based on engagements with stakeholders and the questions that are frequently raised by them, the Commission has published FAQs. The Commission's decisions also provide a detailed reasoning of how and when a business conduct infringes the provisions of the Act. We also have a corporate competition compliance training programme that is available to all corporates, whether public or private, regardless of their size. This programme provides virtual training of competition law, at no cost, to employees and management of companies.

I would urge senior management in corporates to actively assess the antitrust risks of their business plans and strategies and also demonstrate strong commitment towards preserving and promoting a competition culture within the organisation by taking corrective steps as soon as a potential violation is perceived. It is only then that the message of fair competition will be most effectively communicated throughout the organisation. Additionally, as part of their internal competition compliance program, emphasis should be placed on regular antitrust/competition audits, which would determine the efficacy of an organisation's work and policies and their adherence to competition law in order to avoid any antitrust violations. This is important, keeping in mind that the Indian Competition Act entails deemed liability for the persons in charge of the conduct of the business.

India is going to take the lead in shaping the outcomes of the world. How this growth saga would be recognized across the Globe?

Having just become the world's fifth largest economy, India is now in a crucial phase in which it will soon become the third largest. This has been possible because of several steps that the government has undertaken, resulting in the formalisation of the Indian economy and a market-driven system of allocation. It is undeniable that the economic performance of India has become a vital, indeed a defining, metric in shaping its role in global affairs. The notion that economic performance is the foundation of national power has gained currency. While well-functioning markets will ensure that the Indian economy seamlessly moves into its next phase of growth, the creation of physical and digital infrastructure by the government has accelerated the process.

India has witnessed the emergence of a vibrant startup ecosystem, fuelled by India's deep reservoir of engineering and entrepreneurial talent. Aadhar, along with India Stack, provides easy and affordable technological solutions for identity, verification, digital storage, and payments, as well as the necessary digital public infrastructure support required for startups. Today, India is able to offer many best practices, particularly with respect to its digital infrastructure innovations and startup ecosystems that can be emulated globally. These factors have the potential to promote competition in several ways. The development of start-ups and the consequent new entry of players can play a vital role in encouraging competition by aiding dynamism markets and offering efficient ways to enhance consumer welfare. Further, the development of digital infrastructure as an open-source, open-standard, and interoperable public good can support innovation and promote efficiency. With this, India is charting a course driven by the core idea of competition and has ushered a technology-deepening path for economic growth and development.

What role do you see Company Secretaries need to play in realising goal of India taking Fair Competition to the next level?

A company secretary is considered to be one of the principal officers of the company and is duty-bound to ensure good corporate governance. To this effect, the company secretary acts as an "advisor" to the board of directors to not only ensure compliance with applicable laws but also ensure adherence to best practices.

Company secretaries can take the lead by developing and sustaining competition compliance programs, which would ensure that the enterprise remains cognizant of actions that may constitute a violation of competition law. Preventing anti-competitive practices is one way to ensure fair competition.

As per the provisions of the Competition Act, the actions of the enterprise and board of directors of an enterprise can be interdependent and have ramifications on each other. Under certain situations, the directors of an enterprise may also be deemed guilty of contravention in the actions of the enterprise and may be proceeded against. Likewise, interlocking directors may lead to certain situations wherein certain enterprises may be held to be in common control, which can impact the competition assessment of the M&A activity of the enterprise.

Your worthy message to Young Company Secretaries.

Company secretaries are the torchbearers for efficient corporate governance practices and are uniquely positioned to ensure compliance in letter and spirit with the laws of the land. I would like to take this opportunity to tell young company secretaries to realise the significance of their role and contribute to the development of responsible corporate citizens who, with their unified approach on compliance of applicable laws and best practices, can foster the markets and spur the economic development. They should feel a sense of responsibility and pride and, in that spirit, contribute to the process of nation-building.

I believe that budding company secretaries should be well-read and aware of developments in not just core corporate laws like taxation laws, capital market regulations, and company law, but should also be mindful of newer and allied fields such as competition law and consumer protection law to truly contribute in a meaningful way to the companies they serve. Since company secretaries are bridges between the management and regulatory authorities, they have very meaningful roles in shaping the growth of companies. They can provide a futuristic roadmap to companies by preventing them from regulatory non-compliance.

Few words for the Institute of Company Secretaries of India.

Both Institute of Company Secretaries of India and CCI are important statutory bodies tasked with serving the interest and welfare of society at large. Together, we can ensure a better culture of legal compliance in the country and contribute towards further economic development of India. ICSI has carved out a niche for itself in corporate governance in the country, providing education, training, and leadership to students at large across India. We look forward to organising joint seminars, workshops, and conferences for relevant stakeholders to ensure holistic practical legal education.

How Corporate Governance and Fair Competition can contribute to National Governance?

Corporate governance refers to private and public institutions, including laws, regulations, and accepted business practices which together govern the relationship, in a market economy, between corporate managers and entrepreneurs and those who invest resources in corporations. At a theoretical level, competition law seeks to address the anti-competitive actions of companies in the market, and corporate governance norms seek to enforce mechanisms within the company for aligning shareholders' and management's interests. While it may appear that both laws are unrelated, there is increasing scholarship regarding the scope for meaningful interactions between them. In contrast to corporate governance law, which is concerned with the internal organisation of the public corporation, antitrust law focuses on competition between firms in the marketplace. At a fundamental level, greater product market competition has a positive correlation with better corporate governance, because competition pushes the management to make prudent decisions that are ultimately in the interest of shareholders. A firm's product market environment acts as an external mechanism for disciplining the management and ensuring corporate performance. Tough product market competition forces the management to improve financial performance and make the best decisions for the future, since failure to do so would possibly result in bankruptcy and job loss.

The interplay of corporate governance and fair competition play a significant role in facilitating national governance. An effective corporate governance, accompanied by fair competition, complement each other and balance the interest of all the stakeholders in the economic system. The role of the Competition Commission of India becomes inevitable in this context as the collaboration between corporate governance and competition law can ensure that enterprises behave ethically and do not follow unfair business practices. The Commission also ensures the safeguarding of consumers' interests, thus contributing to national governance. Going forward, we hope to create robust competitive structures in Indian markets that provide an inbuilt incentive for cultivating sound corporate governance practices and become the means of achieving the larger nation-building goal of an *aatmanirbhar Bharat*.

Mega Programme of Capital Markets Week 2023 held on April 22, 2023 at Mumbai

GUEST OF HONOUR

Ms. Priya Subbaraman, Chief Regulatory Officer, NSE

TECHNICAL SESSION - I

TECHNICAL SESSION - II

TECHNICAL SESSION - III

TECHNICAL SESSION - IV

Proceedings of the Mega Inaugural Programme of ICSI Capital Markets Week 2023 held at Mumbai

INAUGURAL SESSION

The ICSI has been observing Capital Markets Week since 2012 as a part of its ongoing efforts to promote investor education and good governance in the Capital Markets. This year the theme of Capital Markets Week, 2023 was "Learnings from G20: Journey Towards Sustainable, Competitive and Holistic Capital Markets". The event provides a wonderful platform for critical analysis of challenges and opportunities in Capital Markets, as well as a broad gateway of possibilities for enhancing the Indian securities markets in the competitive global economic scenario.

The Inaugural Mega Programme of Capital Markets Week, 2023 was celebrated on April 22, 2023 at National Stock Exchange of India Limited, Mumbai wherein Ms. Priya Subbaraman Chief Regulatory Officer, National Stock Exchange of India Limited presided over as the Guest of Honour.

CS Rajesh C Tarpara, Council Member, ICSI and Programme Director delivered the welcome address at the Mega Programme.

CS Amrita Nautiyal, Chairperson, ICSI-WIRC introduced the Guest of Honour, Ms. Priya Subbaraman.

CS B Narasimhan**,** Vice President, The ICSI introduced the theme and sub-themes of the Capital Markets Week, 2023. In his address CS B Narsimhan said that the "Capital Markets Week" is an innovative event highlighting the intricacies of the Capital Markets and creating awareness on the recent developments impacting the functioning of Capital Markets. He also emphasized that this mega event focuses on providing latest updates to the professional fraternity about the contemporary transformations in the Capital Markets. He further added that the current celebrations of ICSI Capital Markets Week have also been aligned with the India's G20 Presidency.

CS Manish Gupta, President, The ICSI, in his presidential address reiterated the thought that with *Corporate Governance and Sustainability* being one of the themes of G20 Presidency for the year 2023, the expectations in terms of their roles and responsibilities from Company Secretary in promoting good Governance and achieving the goal of Sustainability have spiralled high. Leading with the fact that India is more sustainable country and every third Unicorn in the world belongs to India now, he also shared that ICSI has formulated an ESG and Sustainability Board with the objective of framing uniform policies and standards for Corporates.

Reaffirming the importance of Company Secretaries in the Indian Capital Markets and congratulating the ICSI for organising the Capital Markets Week, the Guest of Honour, Ms. Priya Subbaraman deliberated upon the finer nuances of the theme of Capital Markets Week, 2023 – "Learnings from G20: Journey Towards Sustainable, Competitive and Holistic Capital Markets". Focussing on the significant role of Capital Markets in contributing for the development of the Nation, she applauded the Company Secretaries for the various roles played in Capital Markets in particular and in the growth of Indian economy in general. She shared a new development in the form of the Business 20 (B20) which is a platform enabling global business community to engage with G20 leaders on key policy issues. The B20 India 2023 will collaborate with global partners in areas such as inclusive global value chains (GVCs), energy and climate change, digital transformation, financial inclusion, and future of work.

Four releases were made namely "Compilation of SEBI (LODR) Informal Guidance", "Format of Annual Secretarial Compliance Report", "Company Secretaries: A Professional Catalyst in Capital Market" and "Flyer of Knowledge on Demand" during the Inaugural session.

CS Amrita Nautiyal, Chairperson, The ICSI – WIRC while proposing the vote of thanks expressed her sincere gratitude to Guest of Honour and other dignitaries on the dais for their enthusiastic, energetic and inspiring words.

TECHNICAL SESSION I

ESG Reporting: Alignment in disclosure frameworks

Moderator: CS Hrishikesh Wagh, Secretary, WIRC of ICSI

Programme Director: CS Rajesh C. Tarpara, Council Member of the ICSI

Panellists: Ms. Meera Tenguria, Founder and CFO of Aarohan Communications, CS Sachin Mishra, Head Legal and Company Secretary, Tata Consulting Engineers Limited.

CS Hrishikesh Wagh in his opening remarks discussed the significant impact of business operations across industries on various environmental, social and governance (ESG) aspects.

CS Sachin Mishra apprised about the importance of ESG norms, sustainability and the concept of giving back to the society to achieve the Sustainable Development Goals (SDGs). He also reiterated that India can achieve

the environmental, social, governance and sustainable development only after adopting the United Nations Convention to Combat Desertification (UNCCD) norms.

Ms. Meera Tenguria highlighted the role of Capital Markets in achieving the goal of sustainability and competitiveness in entire ecosystem. Her address was focused on the changing definition of the Investor i.e., an investor is not only investing on the basis of annual report and financials of the companies but in the era of digitization, the investors are more informed in terms of investments and ESG norms.

Then the session was opened for questions and answers which were duly addressed by the panelists and Mr. Wagh summed up the discussions and proposed vote of thanks.

TECHNICAL SESSION II

Social Stock Exchanges: Signalling the start of a New Era

Moderator: CS Sanjay Patare, Chairman of Professional Development Committee, WIRC, The ICSI

Panelists: Ms. Latha Suresh, Director, Centre for Social Initiative and Management (CSIM) and Mr. Abhinav Agarwal, Chief Manager, Primary Market Relationship, NSE Limited

CS Sanjay Patare introduced the topic of the session by reiterating the speech of the Hon'ble Finance Minister Smt. Nirmala Sitharaman for FY 2019-20 wherein the idea of an electronic fund-raising platform Social Stock Exchange(SSE), under the regulatory ambit of SEBI for listing social enterprises and voluntary organizations working for the realization of a social welfare objective was emanated. He welcomed the panelists and invited them for sharing their views and experiences with the delegates on the theme of the "Social Stock Exchanges: Signalling the start of a New Era".

Ms. Latha Suresh highlighted the concept of Social Auditors (SAs) and informed that India is the only country that has made Social Audit mandatory. SAs need to determine "what is the mission that is driving a particular Social Enterprise (SE) to exist." Major takeaways from the deliberations were that the SSE is meant for larger SEs that want to scale and investment can be made by only High Net-worth Investors (HNI) and not retail investors.

Mr. Abhinav Agarwal deliberated on the topic and said that Social Finance denotes dualistic mode of thinking, where traditional economic principles work in tandem with social environmental objectives. He deliberated that the structure similar to Social Stock Exchange exists in other countries like Brazil, South Africa and Singapore. He emphasised on the 16 eligibility criteria that revolve around Niti Aayog Goals and Sustainable Development Goals (SDGs). He deliberated that mere registration on SSE will give enough credibility to the NPOs and enhance transparency for the prospective investors.

CS Sanjay Patare then opened the session for questions and answers which were duly attended by the panelists. He thereafter, summed up the discussions and proposed the vote of thanks.

TECHNICAL SESSION III

Responsible Investing through a Stewardship Code

Moderator: Ms. Priya Subbaraman, Chief Regulatory Officer of NSE, India.

Panellists: Ms. Hetal Dalal, President and Chief Operating Officer, Institutional Investor Advisory Services India Limited, Mr. J. N. Gupta, Co-founder and Managing Director, Stakeholders Empowerment Services

Ms. Priya Subbaraman delivered the opening remarks. Ms. Subbaraman initiated the deliberations by inviting the panelists for sharing their views and experiences with the delegates on the topic. She deliberated that at present SEBI, IRDA and PFRDA have formulated Stewardship Codes and the effectiveness of the Codes and the need of a uniform Code.

Mr. J. N. Gupta emphasised that Stewardship is responsible management of something entrusted to one's care. He stressed upon the need of a Code which is more holistic and the sense of responsibility of implementing ESG framework along with Stewardship Code which should be there in-built in the Corporates rather than implementing on being forced by one or the other Regulator. He opined that Co-ordination at global level is the need of the hour in order to meet the sustainability goals.

Ms. Hetal Dalal's address revolved around the concept of Stewardship being adopted by other countries is based on the UK Stewardship Code. In India, the first sign of stewardship was in 2010, when SEBI asked mutual funds to publish their voting policies. She focussed on the duties of asset managers to vote on shareholder's resolution and investors being more empowered since they are moving beyond governance and are focussed on ESG.

The panelists 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 then concluded with summing up of the deliberations by Ms. Priya Subbaraman and vote of thanks by CS Snehal Chandrakant Shah.

TECHNICAL SESSION IV

Renewed continuing disclosure regime: Regulation 30 of SEBI (LODR)

Moderator: CS Snehal Chandrakant Shah

Panelists: Shri K Saravanan, Chief General Manager, Securities and Exchange Board of India, CS Parvatheesam Kanchinadham, Corporate Secretary & Chief Legal officer,

TATA Steel Limited and CS Geetika Anand, Company Secretary and Compliance Officer, Hindalco Industries Limited.

CS Snehal Chandrakant Shah, in his opening address briefed about the session and welcomed all the panelists for sharing their valuable views and experiences with the delegates. The session focused upon the disclosure requirements under Regulation 30 of SEBI LODR Regulations and its significance and impacts on the business environment.

Shri K Saravanan, in his introductory remarks deliberated the real intent of various disclosures under SEBI LODR Regulations from the perspective of regulators. He mentioned that providing regulators, general public and shareholders with relevant and accurate information can help the Management improve the entity's reputation, transparency and also will give optimistic impression about the future of the entity. He explained the importance and advantage of materiality threshold from the perspective of regulators.

CS Parvatheesam Kanchinadham, explained the importance of adequate, accurate and timely disclosures to the regulators with the help of four principles i.e., accurate, adequate, timely and simple language. He emphasized that the people who are running the affairs of the Company are not putting capital and people who are putting capital are not actually controlling the day-to-day affairs of the Company. That's where the mechanism of disclosure plays inevitable role.

CS Geetika Anand, highlighted the key challenges in front of the compliance officer related to disclosures under SEBI LODR. She explained the challenges and advantages of SEBI LODR disclosures from the perspective of Corporates and deliberated the impact of excessive, pre-mature and non-disclosures and also discussed about the International scenario related to disclosures.

The panelists deliberated on the various issues pertaining to the theme of the session and also answered to various queries which made the discussion more interactive and fruitful.

CS Snehal Chandrakant Shah summed up the discussions and proposed the vote of thanks.

Releases during Capital Markets Week 2023

Capital Markets Week Mega Programmes Held at Kolkata and Delhi on April 29, 2023

Mega Programme of Capital Markets Week 2023 held on April 29, 2023 at Chennai

CHIEF GUEST

Shri Amarjeet Singh, Executive Director, Securities and Exchange Board of India

Celebration of Capital Markets Week, 2023 at ICSI Chapters during April 22-29, 2023

Madurai

Gurugram

Kota

Pune

Thane

Amritsar

Jaipur

Bhubaneswar

Coimbatore

MoU executed between The Institute of Company Secretaries of India (ICSI) and The Institute of Cost Accountants of India (ICAI-Cost)

MOU signed with The Institute of Company Secretaries of India and The Institute of Cost Accountants of India on April 24, 2023 for Reciprocal Exemptions.

ICSI ACADEMIC CONNECT

MoU signed with Chitkara University, Rajpura, Punjab under the "ICSI Academic Connect" initiative

Renewal of MoUs of ICSI Study Centres

ICSI Study Centre MoU with G. S. College of Commerce, Wardha renewed by Nagpur Chapter on April 19, 2023.

ICSI Study Centre MoU with Alpha Arts & Science College, Porur, Chennai renewed by SIRO on April 17, 2023.

ICSI Study Centre MoU with SDNB Vaishnav College, Chromepet, Chennai renewed by SIRO on April 18, 2023.

ICSI Study Centre MoU with Bharathidasan Government College for Women (Autonomous), Puducherry renewed by SIRO on April 13, 2023.

Articles P - 35

Article Part - I

Promoting Competition, Empowering Consumers: The CCI Game-changing Contribution to the Marketplace

36

Shivika Narang and Mansi Sharma

The CCI is essential to preserving fair competition in India, and its most recent enforcement measures highlight its dedication in doing so. The purpose of this article is to analyze the role of the CCI in ensuring fair competition in India. The article will examine the legal framework for competition law in India, the powers and functions of the CCI, its role in preventing anti-competitive practices, and the impact of its actions on fair competition in India. The article has also discussed the role of Artifical Intelligence in promoting competition and empowering consumers. The article analyses landmark and recent cases involving the CCI, identify the lacunae in the current legal framework for fair competition in India, and provide suggestions to overcome these limitations. The article concludes with a summary of the key findings and final thoughts on the role of the CCI in promoting fair competition in India.

Demystifying the Competition Implications of "Abuse of Dominance" (Concept and Compliances)

42

Divyesh Patel, FCS and Dr (Prof.) Naresh Patel

Competition Act 2002 has been implemented to prevent abuse of dominance along with to protect consumer interest ensuring fair trade by Indian Enterprises or group of enterprises. This Act has incorporated paradigm shift in regulatory structure from the Central Government to an independent Competition Commission of India (hereinafter the "CCI"). Dominance is not inherently evil, but its abuse is outlawed by the 2002 Competition Act.

The Competition (Amendment) Act, 2023: Power, Penalties, Perplexity and Proposal

46

Dr. Vidhi Madaan Chadda, FCS

The present paper briefly analyses the provisions of the Competition Act, 2002 pertaining to imposition of penalty and traces the jurisprudence on the antitrust penalties as developed by the Indian competition authorities. The paper further comprehends the changes recently proposed vide the Competition (Amendment) Act, 2023 and examines its implications on the competition law enforcement in the future.

Achieving Excellence in Market Dynamics Through Competition

Pramod S. Shah, FCS and Ashwini Kutty

The Parliament of India passed the Competition Act, 2002, on January 13, 2003, which repealed the Monopolies and Restrictive Trade Practices Act, 1969. It is a tool to execute and uphold competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market. Competition law is similarly relevant on composed as well as oral agreement, arrangements between the enterprises or persons.

Competition Act 2002 : An Assessment with Reference to Anti-Competitive Agreements and Abuse of Dominant Position

Dr. Rajwant Kaur

The Competition Act, 2002 is one such act which aims at promoting a healthy competitive environment for enterprises in India and ensuring equal opportunities to every individual and firm operating in India to grow and flourish. This act restricts the use of unfair practices by the enterprises to have an edge over their competitors or entering into anti-competitive agreements. The Competition Act further mentions that deliberate indulgence of any enterprise in unfair trade practices will be subjected to legal action and huge fines.

Study of Anti-Competitive Behaviour with reference to Decided Case Laws under the Competition Act 2002

Prof. R Balakrishnan, FCS & FICWA

The vision of the Competition Commission of India (CCI) is that to promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative, enhance consumer welfare and support economic growth as displayed at the website of Competition Commission of India (reference: - Website of CCI in its caption our vision- https://www.cci.gov.in/).

Our country is continuously marching ahead with holistic focussed efforts at all round and all inclusive development. Government has been constantly striving and continue to strive for a world class governance practices that is driven by expert professional in the field and also by process driven. The approach of the Government has always been to reform with intent, perform with integrity, transport with intensity. In order to reach the world class governance in all around, the role and responsibilities of the CCI assumes a greater significance in promoting a wealthy competitiveness amongst the players in the market with an aim to inspire the stakeholders towards innovation coupled with augmentation for effectiveness. Needless to mention that the CCI is trying its best for a level playing field and also stimulating the business process which is very critical for the larger benefit for our country. The article titled as study of anticompetitive behaviour with reference to decided case laws under the Competition Act, 2002 would provide the various dimensions of the Competition Act, 2002 by taking through some of the decided case laws by the CCI.

Understanding Legalities - Mergers, Acquisitions and Combinations

Jay Bhavesh Parekh, ACS

The Competition Act aims to promote and sustain competition in the market, protect consumer interests, and ensure freedom of trade in India. The Competition Act also provides for penalties and other consequences for non-compliance with its provisions.

The Role of the Competition Commission of India in Tackling Anti-Competitive Practices: An Evaluation of the Commission's Effectiveness

Jitendra Kumar

The study assesses the prevalence of anti-competitive practices in India and the role of CCI in regulating them. The findings indicate that CCI has successfully identified and penalized instances of anti-competitive practices in various sectors. However, the study also identifies challenges such as the complex nature of anti-competitive practices. The study recommends that CCI should adopt a more proactive approach in identifying and addressing emerging anti-competitive practices and collaborate with other regulatory bodies to address regulatory overlaps. The study concludes that while CCI has played a crucial role in promoting fair competition in the Indian market, there is still scope for improvement to ensure effective regulation of anti-competitive practices.

Part - II

Key Managerial Personnel: Section 203 of the Companies Act, 2013 - Two Controversial Issues

76

Dr. K R Chandratre, FCS

The intention of the Legislature must be gathered from the words used by the Legislature, for the words declare best the intention. The Legislature might have intended to do a certain thing, but if the words employed do not express that intention, it is not for the courts to assume the role of legislators and give effect to the unexpressed intention. No confusion must be made … between what the draftsman might have intended to do and the effect of the language which in fact was employed by him. If the words, which are a medium of expressing intention, fall short of declaring the intention, it is for the Legislature to amend the language of the section. However, the literal rule of giving undue importance to grammatical and literal meaning has, of late, gave place to "rule of legislative intent". While interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted. In several cases, the Supreme Court has applied the principle of purposive construction.

Human Resource Management, Accounting and Artificial Intelligence- A Promising Integration

81

Talsaniya Gauravkumar Kanaiyalal and Dr. Kunal Sinha

HR personnel can spend more time on strategies and decision-making tasks. This paper reviews the importance and evolution of HRM as an emerging core business operation, the perspectives, and challenges of AI-enabled HRM systems, the change in the role of HR personnel because of technological transition, and the human resource accounting approach.

Research Corner P - 91

Social Stock Exchange: New Paradigm For Social Enterprises

Dr. Pragati Mehra and Dr. Madhu Vij

The hon'ble Finance Minister proposed during the Budget speech for F.Y. 2019-20 to take steps for creating a "Social Stock Exchange" (SSE) which will ensure more inclusive growth. A Social Stock Exchange (SSE) is a digital platform that enables alternate fund-raising methods to Social Enterprises (SE). SSE is a breakthrough initiative for the SE to raise funds in support of the objective of social welfare. It serves as a forum for connecting those who want to make a social impact with others who are actively pursuing one. Majority of the SSEs around the world were unable to sustain themselves beyond a certain number of years. Therefore, this article attempts to identify the challenges that Indian SSE may face in future by analysing SSE models of different countries.

Legal World P-99

- **LMJ 05:05:2023** Therefore, we are of the considered opinion that the findings given by the Company Court as affirmed by the Appellate Court as to the violation of the injunction order also as to the validity of the transfer and the title of the appellant over the shares held by it in the MIL being findings which are made beyond the jurisdiction of the courts below, we have no hesitation in setting aside these findings.[SC]
- **LW 32:05:2023** The spirit, tenor and objective of IBC being that of a beneficial legislation and not penal, we are of the considered view that the Adjudicating Authority instead of penalizing the Appellant by allowing attachment of the subject property where he was residing, ought to have given an opportunity to the Appellant to settle with the fourth statutory creditor rather than straightway allowing the auction of the subject property.[NCLAT]
- **LW 33:05:2023** We are of the opinion that learned NCLT by the impugned order i.e. direction to respondents particularly the appellant herein for maintaining status quo relating to remaining 227 units by not creating any third party interest or no construction beyond 302 units till disposal of the main CP has to go and as such the impugned order is hereby set aside.[NCLAT]
- **LW 34:05:2023** Once consent is taken from the Pollution Control Board, the necessity for reading down Section 10 of the Kerala MSME Act, for the purpose of protecting the environment, does not arise.[SC]
- **LW 35:05:2023** In the aforesaid view, we find no infirmity with the decision of the learned Single Judge in interdicting HUL from publishing the impugned advertisement on the ground that it, prima facie, denigrates and disparages Reckitt's product Harpic.[Del-DB]
- **LW 36:05:2023** Once an employee has earned the increment on completing one year service he cannot be denied the benefit of such annual increment on his attaining the age of superannuation and/or the day of retirement on the very next day.[SC]
- **LW 37:05:2023** In the light of the above Rule, there was actually no scope for the respondents to seek payment of Double Over Time Allowance. It is needless to say that no benefit can be claimed by anyone dehors the statutory rules.[SC]
- **LW 38:05:2023** It is always open for the High Court to examine in each case whether the determination of the arm's length price and the findings recorded by the Tribunal are perverse or not.[SC]

From The Government P-107

- Removal of Names of Companies from the Register of Companies, Amendment Rules, 2023
- Bank Guarantees (BGs) created out of clients' funds
- Modifications in the requirement of filing of Offer Documents by Mutual Funds
- Contribution by eligible Issuers of debt securities to the Settlement Guarantee Fund of the Limited Purpose Clearing Corporation for repo transactions in debt securities
- Procedure for seeking prior approval for change in control of Vault Managers
- Issue of Master Circular by Stock Exchanges, Clearing Corporations and Depositories
- Dispute Resolution Mechanism for Limited Purpose Clearing Corporation (LPCC)
- Formulation of price bands for the first day of trading pursuant to Initial Public Offering (IPO), re-listing etc. in normal trading session
- Guidelines with respect to excusing or excluding an investor from an investment of AIF
- Direct plan for schemes of Alternative Investment Funds (AIFs) and trail model for distribution commission in AIFs
- Usage of brand name/trade name by Investment Advisers (IA) and Research Analysts (RA)
- Advertisement code for Investment Advisers (IA) and Research Analysts (RA)
- Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)
- General Credit Card (GCC) Facility – Review
- Provisioning for standard assets by primary (Urban) co-operative banks – revised norms under four-tiered regulatory framework
- Master Circular - Prudential Norms on Capital Adequacy - Primary (Urban) Co-operative Banks (UCBs)
- Master Circular - Housing Finance for UCBs
- Framework for acceptance of Green Deposits
- Authorised Dealers Category-II - Online submission of Form A2
- Master Direction on Outsourcing of Information Technology Services
- APConnect - Online application for Full Fledged Money Changers and non-bank Authorised Dealers Category-II
- Master Direction on Framework of Incentives for Currency Distribution & Exchange Scheme for bank branches including currency chests based on performance in rendering customer service to the members of public
- Master Circular - Asset Reconstruction Companies

- Master Circular – Lead Bank Scheme
- Master Direction – Facility for Exchange of Notes and Coins
- Master Direction on Penal Provisions in reporting of transactions/ balances at Currency Chests
- Master Direction – Scheme of Penalties for bank branches and Currency Chests for deficiency in rendering customer service to the members of public
- Master Direction on Counterfeit Notes, 2023 - Detection, Reporting and Monitoring
- Master Circular – Housing Finance
- Master Circular - Bank Finance to Non-Banking Financial Companies (NBFCs)
- Master Circular - Disbursement of Government Pension by Agency Banks
- Master Circular - Guarantees, Co-Acceptances & Letters of Credit - UCBs
- Master Circular on SHG-Bank Linkage Programme
- Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances
- Master Direction – Reserve Bank of India (Classification, Valuation and Operation of Investment Portfolio of Primary (Urban) Co-operative Banks) Directions, 2023
- Master Circular - Credit facilities to Scheduled Castes (SCs) & Scheduled Tribes (STs)
- Master Circular on Credit Facilities to Minority Communities
- Master Circular - Guarantees and Co-acceptances

Other Highlights P-129

- NEWS FROM THE INSTITUTE
- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER

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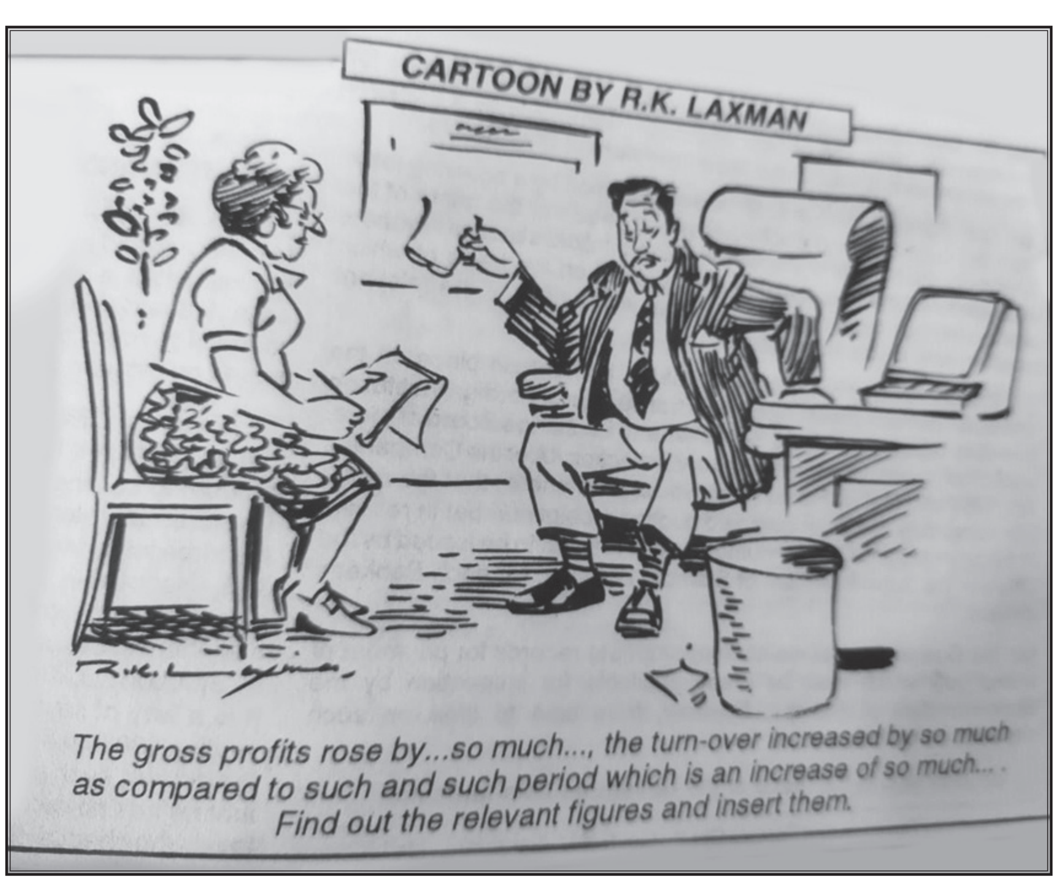

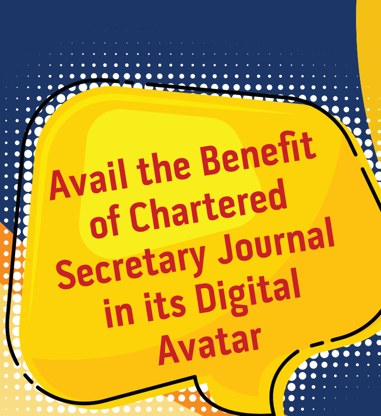

CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS

The ICSI in its endeavour to align with the 'Green Initiatives' of Government of India, has revamped the delivery mechanism of Chartered Secretary Journal wherein e-copies of the Journal will be shared with the members at their registered e-mail IDs and shall also be available on ICSI portal.

Further ICSI as a support to 'digital India' initiatives has come up with:

E–Copy of the Journal facilitating its members with Anytime, Anywhere Access.

Made the Journal available section-wise on the ICSI Website having easy access through the dedicated URLs.

As a progressive step towards above, esteemed members can now choose one of the three options mentioned below during renewal of their Annual Membership Fee from 1st April 2023 onwards. This option is only to be exercised once in a year at the time of payment of Annual Membership Fee.

The Implementation of the Opt-Out Option for Chartered Secretary Journal will begin from the month of July of the Current year of the renewal of membership till the month of June of the consecutive year.

For eg: For Members who select a particular Option for Chartered Secretary Journal during renewal of membership from April-June 2023,the implementation of the option selected will begin from July 2023 till June2024.

1st OPTION	2nd OPTION	3rd OPTION
Chartered Secretary by Ordinary Post	Chartered Secretary by Speed Post/ Registered Post	Opt-out from Receipt of Printed Copy of Chartered Secretary
No change in Membership Fee	₹ 500 will be charged additionally towards postage charge	Reduction of ₹ 500 (exclusive of GST) on Annual Membership Fee (ACS/FCS)

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"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"

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)

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PCS: PERFECTION, COMPETENCE, SUSTAINABILITY

The Institute of Company Secretaries of India has taken pride in the role played and responsibilities dispensed with by its members- both in employment and in practice. While the Company Secretaries in employment guard the corporates from the inside, the Company Secretaries in practice or the PCS with their independent status and holistic approach guide the companies and even undertake checks and double checks of their actions, compliances and expected duties through the audit activities. All this and more call for a heightened level of competence and perfection - one which is sustained over a long period by continuous self enhancement activities.

Given the fact that the month of June marks the celebration of the day when the practising side of profession was recognised under the legislation on 15th June 1988. Although celebrations are in order on a Pan India basis, it seems pertinent that discussions and deliberations are raised to chart the future course of action for this brigade of professionals. In view of the same, we are pleased to inform you that the June 2023 issue of Chartered Secretary Journal will be devoted to the theme PCS: Perfection, Competence, Sustainability, covering inter alia the following aspects:

- PCS : Ever-expanding multidisciplinary professional
- Opportunities for PCS in India and abroad
- Growing role of CS in MSMEs & Startups
- Secretarial Audit and Auditing Standards
- Social Audit: Emerging area for PCS
- Company Secretaries as Entrepreneurs
- Legislative recognitions to Company Secretaries: A hallmark of trust and expectations
- Role, Recognition and Challenges of Company Secretaries
- Opportunities for PCS in Quasi-judicial authorities

And many more...

Members and other readers desirous of contributing articles may send the same latest by Thursday, May 25,2023 at **cs.journal@icsi.edu** for June 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

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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.
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1

ARTICLES

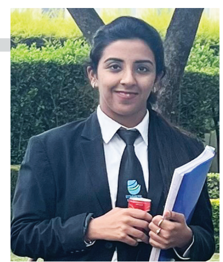
- PROMOTING COMPETITION, EMPOWERING CONSUMERS: THE CCI GAME-CHANGING CONTRIBUTION TO THE MARKETPLACE
- DEMYSTIFYING THE COMPETITION IMPLICATIONS OF "ABUSE OF DOMINANCE" (CONCEPT AND COMPLIANCES)
- THE COMPETITION (AMENDMENT) ACT, 2023: POWER, PENALTIES, PERPLEXITY AND PROPOSAL
- ACHIEVING EXCELLENCE IN MARKET DYNAMICS THROUGH COMPETITON
- COMPETITION ACT 2002 : AN ASSESSMENT WITH REFERENCE TO ANTI-COMPETITIVE AGREEMENTS AND ABUSE OF DOMINANT POSITION
- STUDY OF ANTI-COMPETITIVE BEHAVIOUR WITH REFERENCE TO DECIDED CASE LAWS UNDER THE COMPETITION ACT 2002
- UNDERSTANDING LEGALITIES - MERGERS, ACQUISITIONS AND COMBINATIONS
- THE ROLE OF THE COMPETITION COMMISSION OF INDIA IN TACKLING ANTI-COMPETITIVE PRACTICES: AN EVALUATION OF THE COMMISSION'S EFFECTIVENESS
- KEY MANAGERIAL PERSONNEL: SECTION 203 OF THE COMPANIES ACT 2013 TWO CONTROVERSIAL ISSUES
- HUMAN RESOURCE MANAGEMENT, ACCOUNTING AND ARTIFICIAL INTELLIGENCE- A PROMISING INTEGRATION

ARTICLE

Articles Part - I

Promoting Competition, Empowering Consumers: The CCI Game-changing Contribution to the Marketplace

The primary objective of competition law is to create a market that is responsive to consumer preferences. The Constitution of India provides for the Directive Principles of State Policy, and Articles 38 and 39 of the Constitution mandate upon States to secure a social order for the promotion and welfare of the people. In 1969, the Monopolies and Restrictive Trade Practices (MRTP) Act came into force in India with the objective of preventing economic power concentration and promoting overall development. However, after the economic reforms of 1990, the Competition Act, 2002 was enacted to curb monopolies and promote competition.



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INTRODUCTION

Competition in the market is essential for the advancement of the economy, as it promotes better products and services, enhances consumer welfare, offers a wider range and promotes efficiency. When competition is present, there is more likelihood that the industry will become more efficient and lead to better-quality products and services at cheaper prices. Competition law is designed to regulate competition, ensuring economic growth and promoting the interests of the consumers.

The primary objective of competition law is to create a market that is responsive to consumer preferences. The Constitution of India provides for the Directive Principles of State Policy, and Articles 38 and 39 of the Constitution mandate upon States to secure a social order for the promotion and welfare of the people. In 1969, the Monopolies and Restrictive Trade Practices (MRTP) Act came into force in India with the objective of preventing economic power concentration and promoting overall development. However, after the economic reforms of 1990, the Competition Act, 2002 was enacted to curb monopolies and promote competition.

After globalization, markets have become increasingly competitive, and there is a need to prevent malafide practices to ensure fair competition. The Competition Act, 2002 prohibits anti-competitive agreements, such as agreements to fix prices, limit production, subdivide the market or customers, or discriminate between customers. The law aims to maintain the process of competition between enterprises, remedy behavioral or structural problems, and establish effective competition in the market. This results in higher economic efficiency, greater innovation and enhancement of consumer welfare.

Consumer protection policy and law are focused on maintaining good performance in competitive markets and effective exercise of consumer choice, whereas competition law is ultimately concerned with the interests of consumers. Both areas aim to maintain competitive markets that promote consumer welfare.

1. In (**Ashoka Smokeless Coal Ind. P. Ltd. v. Union of India, 2006**), the Honorable Supreme Court made an observation regarding consumers' interests in a free-market economy where competition reigns. The producers can fix their prices, but it is challenging to balance the constitutional obligations of a State with the principles of a free economy. A level playing field will be the key factor in invoking a new economy, and

this can be achieved through the presence of several suppliers and competitors in the market to give consumers options to choose the best goods. The State must prioritize the benefits of consumers' interests if it aims to achieve the policy of an open market.

IMPORTANCE OF CCI

The CCI plays a vital role in ensuring that firms in India operate in a fair and competitive environment, thus promoting India's economic development. Despite facing several challenges, the CCI has been successful in creating a culture of competition in India and upholding the requirements of the Competition Act.

The Competition Commission of India (CCI) plays a critical role in promoting fair competition and outlawing anti-competitive behavior in the Indian market. The CCI's powers to investigate and punish those responsible for anti-competitive activity and promote a competitive culture through various strategies make it an essential entity for ensuring that firms in India operate in a fair and competitive environment.

LEGAL FRAMEWORK FOR COMPETITION LAW IN INDIA

The Competition Act of 2002 is a comprehensive piece of legislation that lays the groundwork for fair competition in India. The act aims to prohibit anti-competitive behavior, foster and maintain competition, and protect consumer interests. The primary body responsible for enforcing competition legislation and ensuring compliance with the Competition Act of 2002 is the Competition Commission of India (CCI).

PROHIBITION OF ANTI-COMPETITIVE BEHAVIOR

Section 4 of the Competition Act of 2002 addresses anti-competitive agreements between businesses that harm competition. Such agreements that split markets, impose discriminatory terms, or restrict access to the supply of goods or services are prohibited under the Act. The Law also forbids businesses with a dominant market position from abusing that advantage. The misuse of a dominant position in the market may be investigated and controlled by the CCI.

REGULATION OF COMBINATIONS (MERGERS AND ACQUISITIONS)

Section 6 of the Competition Act of 2002 governs mergers and acquisitions (M&A). A proposed M&A must be approved or rejected by the CCI depending on how it would affect Indian competition. The CCI considers factors such as market share, concentration of market power, and consumer impact when evaluating how a proposed merger may affect competition in India. Combinations that seriously restrict competition in the market may be banned by the CCI.

The Competition Act of 2002 is a comprehensive piece of legislation that lays the groundwork for fair competition in India. The act aims to prohibit anti-competitive behavior, foster and maintain competition, and protect consumer interests. The primary body responsible for enforcing competition legislation and ensuring compliance with the Competition Act of 2002 is the Competition Commission of India (CCI).

ENFORCEMENT MEASURES

The CCI has the power to investigate claims of anti-competitive activity and take appropriate measures to stop it. The CCI has the power to carry out investigations, perform inspections, and demand information and documents from businesses. The CCI may also impose penalties and fines for failure to comply with the Competition Act of 2002. Additionally, the CCI has the authority to mandate the termination of anti-competitive behavior, the sale of assets, or the dissolution of a business.

THE COMPETITION COMMISSION OF INDIA AND ITS ROLE

The primary organization in charge of carrying out competition legislation and fostering fair competition in India is the Competition Commission of India. With the goals of prohibiting anti-competitive behavior, fostering and maintaining competition, and defending the interests of consumers, the CCI was created in accordance with the Competition Law of 2002. The CCI has a wide range of functions and powers to accomplish its goals, including the capacity to look into claims of anti-competitive activity, issue penalties and fines, and take action to stop it.

The CCI has the power to investigate claims of anti-competitive activity and take appropriate measures to stop it. The CCI has the power to carry out investigations, perform inspections, and demand information and documents from businesses. The CCI may also impose penalties and fines for failure to comply with the Competition Act of 2002. The CCI also has the power to compel the cease of anti-competitive behavior, the sale of assets, or the dissolution of a company. The CCI may also accept or reject proposed mergers depending on how they would affect Indian competition. (Ramappa, 2015)

RECENT ENFORCEMENT ACTIONS

The CCI has aggressively pursued different enforcement cases in recent years to enforce competition law in India. Investigations into anti-competitive conduct in the banking, pharmaceutical, and e-commerce sectors

are a few recent notable instances. The Competition Commission of India has fined e-commerce enterprises for breaking the requirements of the 2002 Competition Act, among other penalties, on businesses deemed to be participating in anti-competitive behavior. (Unni, 2010)

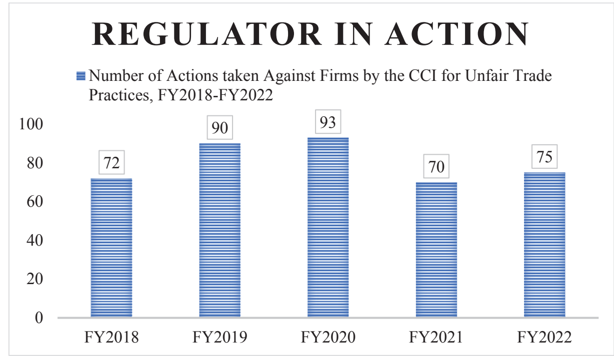

Figure 1. Number of actions taken against firms by the CCI for Unfair Trade Practices, FY2018-2022. (Mishra, 2022)

The CCI has been proactive in investigating and taking action against firms that engage in anti-competitive practices. This graph shows a closer look at the CCI's enforcement efforts from the year 2018 to 2022.

In 2018, the CCI ordered against 72 firms that were found to be indulging in unfair trade practices. Despite a lower number of enforcement actions taken in this year, the CCI remained vigilant in its efforts to promote fair competition in the market.

The following year, the number of enforcement actions taken by the CCI increased significantly, with 90 firms being ordered against. This reflected the CCI's heightened focus on promoting fair competition in the market and taking action against firms that engage in anti-competitive practices.

In 2020, the CCI stepped up its enforcement efforts even further, ordering against 93 firms that were found to be engaging in unfair trade practices. This marked a new high in the CCI's efforts to promote fair competition in the market and demonstrates its commitment to ensuring that businesses operate in a competitive environment.

The number of enforcement actions taken by the CCI declined slightly in 2021, with 70 firms being ordered against. Despite the decrease, the CCI continued to monitor the market and take action against firms that engage in anti-competitive practices.

In 2022, the CCI ordered against 75 firms that were found to be engaging in unfair trade practices. This marked a return to the high levels of enforcement seen in previous years and demonstrates the CCI's ongoing commitment to promoting fair competition in the market. (Mishra, 2022)

IMPACT

Fair competition in India has been greatly impacted by the CCI's actions. A fair playing field exists for all market participants as a consequence of the CCI enforcement actions' unambiguous message to businesses that engaging in anti-competitive activities will not be tolerated. By ensuring that market forces work fairly, the CCI's activities have also contributed to the protection of consumer interests. In India, the CCI's actions have played a significant role in advancing fair competition and defending consumer interests.

Fair competition in India is made possible in large part because to the CCI. The country's fair competition has been significantly impacted by the CCI's wide powers, operations, and recent enforcement actions. The CCI's measures helped level the playing field for all market participants by making it obvious to businesses that engaging in anti-competitive activities would not be tolerated. The CCI's role in fostering fair competition in India is essential for both consumer protection and the nation's economic progress. (Khanna K. , 2012)

LANDMARK CASES

The historic cases involving the CCI had a big influence on the promotion of fair competition and the enforcement of competition law in India. The CCI has recently been engaged in a number of significant cases, the outcomes of which have significantly influenced the development of competition law in India. There have been several important court cases involving the CCI in recent years. Some of the more prominent instances include:

The Competition Commission of India has been involved in a number of noteworthy cases that have had a major impact on the promotion of fair competition in the Indian market. Examples of these include:

Recent cases involving the Competition Commission of India demonstrate the Commission's continued efforts to ensure fair competition in the Indian marketplace. In this, we will examine some of the most notable recent cases and the impact they have had on fair competition in India. (P. S. Mehta, 2015)

1. In the case of **(Reliance Jio Infocomm Ltd. v. Bharti Airtel Ltd., 2021)**, the CCI investigated a complaint against Bharti Airtel, Vodafone and Idea Cellular for allegedly abusing their dominant position in the Indian telecom market by denying interconnection to Reliance Jio, a new entrant. The CCI found the three companies guilty of abusing their dominant position and imposed a fine of INR 2,727 crore ($379 million) on them. This case was significant because it demonstrated the CCI's willingness to take strong action against dominant players in the market who abuse their position to harm competition.

2. In the case of **(Google India Pvt. Ltd. v. Competition Commission of India, 2021)** challenge was made to the CCI's 2018 decision to impose a fine of INR 136

crore ($18.7 million) on Google for allegedly abusing its dominant position in the online search market in India. The CCI found Google guilty of engaging in anti-competitive practices by manipulating search results in favor of its own services, such as Google Maps and Google Flights. The case was significant because it demonstrated the CCI's ability to effectively enforce competition law against tech giants operating in India.

3. In the case of **(Tata Motors Ltd. v. CCI, 2021)**, the CCI imposed a fine of INR 50 crore ($6.7 million) on Tata Motors for allegedly abusing its dominant position in the commercial vehicle market. The CCI found Tata Motors guilty of imposing excessive and discriminatory prices on dealers, thereby causing harm to competition in the market. This case was significant because it demonstrated the CCI's ability to take action against companies that abuse their dominant position to harm competition in the market.

4. In the case of **(Re: Proposed merger between Bharti Airtel Limited and Idea Cellular Limited, 2017)**, the planned merger of Bharti Airtel and Idea Cellular was investigated by the CCI to see how it might impact market competition in India. The CCI put conditions on the merger to make sure that the market's level of competition wasn't severely diminished after determining that the merger was likely to do so. The case was significant because it showed the CCI's dedication to upholding fair competition in the marketplace and controlling mergers and acquisitions that may impair competition.

5. In **(Re: Complaint against Reliance Industries Limited, 2015)**, the CCI looked into claims that Reliance Industries Limited had exploited its market dominance in India. The CCI found that Reliance Industries engaged in anti-competitive behavior, including discriminatory pricing and placing onerous conditions on its suppliers, which significantly reduced market competition. The case was notable because it showed the CCI's dedication to maintaining the marketplace's fairness and making sure that businesses function in a competitive atmosphere.

6. The case of **(Hindustan Unilever Limited v. Competition Commission of India, 2013)** involved allegations of anti-competitive practices by Hindustan Unilever Limited in the fast-moving consumer goods sector. The CCI imposed a fine on the company for engaging in anti-competitive practices, and the case helped to set a precedent for the enforcement of competition law in India.

7. In the case of **(Competition Commission of India v. UltraTech Cement Ltd, 2012)**, the CCI conducted an investigation into allegations of price fixing and market sharing among cement companies. The CCI found that the companies were engaging in anti-competitive practices and imposed penalties on the companies involved. The case was significant in that it highlighted the importance of fair competition in the market and the role of the CCI in promoting fair competition.

8. The case of **(Y.K. Hamied v. Competition Commission of India & Anr, 2012)** involved a challenge to the CCI's authority to impose penalties and fines for anti-competitive practices. The Supreme Court upheld the CCI's authority to impose penalties and fines, thereby strengthening its powers to enforce competition law in India.

The outcome of these landmark cases has had a significant impact on fair competition in India. The cases have helped to establish the CCI's powers to enforce competition law,

and have sent a strong message to enterprises that anti-competitive practices will not be tolerated. The cases have also helped to establish precedents for the enforcement of competition law in India, and have helped to create a level playing field for all participants in the market.

The CCI's role in these landmark cases has helped to promote fair competition in India by ensuring that anti-competitive practices are prevented and that the interests of consumers are protected. The CCI's actions in these cases have also helped to establish the CCI as an effective and authoritative institution responsible for enforcing competition law in India. (Khanna P. C., 2010)

The CCI's role in these cases has helped to establish its powers to enforce competition law, and has sent a strong message to enterprises that anti-competitive practices will not be tolerated. The CCI's actions in these cases have also helped to create a level playing field for all participants in the market, and have helped to promote fair competition in India.

These recent cases demonstrate the CCI's commitment to ensuring fair competition in the Indian marketplace. Through its enforcement actions, the CCI has demonstrated its willingness to take strong action against dominant players who abuse their position to harm competition, and its ability to effectively enforce competition law against tech giants operating in India. The impact of these actions has been significant, as they have helped to level the playing field for companies operating in the Indian market and encouraged more fair competition.

AI'S POTENTIAL TO PROMOTE COMPETITION AND EMPOWER CONSUMERS

AI can play a significant role in promoting competition and empowering consumers. Following are some ways in which AI can help:

1. **Price comparison:** AI algorithms can analyze pricing data across different retailers and brands and provide consumers with information about the best deals and discounts. This can help consumers make informed decisions and encourage competition among retailers.

2. **Personalization:** AI can help retailers personalize their offerings according to a customer's preferences and requirements. This can lead to better customer experiences and increased loyalty.

3. **Fraud detection:** AI can detect fraudulent activities like false reviews, fake products, and counterfeits. This can help consumers make better choices and promote healthy competition.

4. **Predictive analytics:** AI can predict trends and patterns of consumer behavior, which can be used by retailers to improve products and services to meet customer demands. This can also encourage competition among retailers to provide better products and services.

5. **Customer service:** AI chatbots can provide 24/7 customer service to consumers, which can help resolve issues quickly and efficiently. This can lead to increased customer satisfaction and empower consumers to make informed choices. (Mehta P. S., 2019)

SUGGESTIONS

To close the gaps, there are a number of ideas that might be made to enhance India's present fair competition laws.

1. To begin with, the 2002 Competition Act's provisions need to be more precisely and uniformly construed. This may be done by providing clearer guidance on how to interpret important laws, such those addressing the abuse of power. Additionally, ITC must provide guidance notes on crucial portions to clarify them for businesses doing business in India.

2. Third, there has to be more public understanding of the CCI's function in promoting fair competition in India. Campaigns for public education as well as outreach programmes for businesses and customers might achieve this. The significance of fair competition and the CCI's support role would be brought to light as a result.

3. Fourth, in order to guarantee that anticompetitive conduct is appropriately controlled in all nations, the CCI and other regulatory bodies in India, such as the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI), need to collaborate more closely. many economic areas (Mehta P. S., 2014)

4. Fifth, AI needs to be used by CCI as it can play a crucial role in promoting transparency and accountability in the market, by monitoring and regulating prices, ensuring quality standards, and detecting fraud, resulting in fair competition that ultimately benefits the consumers.

5. Finally, it is necessary to review and revise India's present fair competition laws to close any gaps and remove any impediments. This can include passing new legislation to address the emergence of certain anti-competitive practices, such domain misuse in online marketplaces.

There are several options that might be proposed to fill the gaps in India's current legal system for fair competition. Some of them include a clearer interpretation of the 2002 Competition Law, more CCI authority and resources, greater public knowledge of the CCI, improved cooperation and coordination across regulatory agencies, and a review and updating of the existing legal framework.

CONCLUSION

The Competition Commission of India has been instrumental in fostering fair competition in India ever since its founding in 2003. The CCI has extensive authority and duties to prohibit anti-competitive behavior,

encourage fair competition, and defend the interests of consumers. The Competition Act of 2002, which serves as India's primary source of competition legislation, has been rigorously enforced by the CCI.

India's fair competition has benefitted from CCI enforcement efforts. The CCI cases that made history served to clarify the Competition Act of 2002 and created important precedents in the field of competition law. The Commission's commitment to guaranteeing fair competition in India has also been demonstrated by recent CCI cases.

However, despite their efforts, there are several inadequacies in India's present legal system for fair competition. The current legal system has flaws, including a vague definition of what constitutes anti-competitive behavior, a lack of unambiguous prohibitions against abusing a dominating market position, and a narrow range of the CCI's enforcement authority.

It is advised that India's legal framework for fair competition be strengthened in order to close these loopholes. To achieve this, clear definitions of anti-competitive behavior and norms regarding the abuse of market dominance should be included. Furthermore, the 2002 Competition Act should be amended to include sectors not presently covered by competition law enforcement in the CCI's scope of competence.

Although the CCI has made significant efforts to encourage fair competition in India, more may be done. For the CCI to effectively outlaw anti-competitive behavior, advance fair competition, and protect consumer interests, India's legal framework for fair competition must be strengthened further. India's economic growth and development depend on the CCI's role in guaranteeing fair competition, which must be backed by a robust and efficient regulatory structure.

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ARTICLE

Demystifying the Competition Implications of "Abuse of Dominance" (Concept and Compliances)

There are two basic reasons why the practice of prohibiting 'abuse of dominance' is difficult and complex for competition agencies worldwide: There are several practices that may constitute abuse of dominance (e.g. predatory pricing, rebating etc.) There is a very fine line between an enterprise's legitimate practice of becoming dominant in a market (which is entirely legitimate from a business point of view) and the unfair use of the dominant position to the disadvantage of competitors in markets. Hence, Competition Act 2002 has been implemented to prevent abuse of dominance along with to protect consumer interest ensuring fair trade by Indian Enterprises or group of enterprises.

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1. INTRODUCTION

As corporations, both Indian and foreign, are perpetually engaged in global deal making, the Indian business diaspora is in perpetual transition and that would lead to stiff competition. A trade becomes the essential element of competition. But now a day, the "Trade" has transformed into "Free Trade" signifies the unfettered freedom of any man to buy, sell, and trade whenever, when, and how he pleases, with whoever and to whom he pleases. Moreover, the free trade market is unregulated. Hence, the growing and bullish nature of the contemporary Indian market enterprise or group of enterprises try to dominate the market where enterprises put their legs on the shoulders of other enterprises. It ignites the rising need for effective regulation to control "Dominance". There are two basic reasons why the practice of prohibiting 'abuse of dominance' is difficult and complex for competition agencies worldwide: There are several practices that may constitute abuse of dominance (e.g. predatory pricing, rebating etc.) There is a very fine line between an enterprise's legitimate practice of becoming dominant in a market (which is entirely legitimate from a business point of view) and the unfair use of the dominant position to the disadvantage of competitors in markets.

Hence, Competition Act 2002 has been implemented to prevent abuse of dominance along with to protect consumer interest ensuring fair trade by Indian Enterprises or group of enterprises. This Act has incorporated paradigm shift in regulatory structure from the Central Government to an independent Competition Commission of India (hereinafter the "CCI"). *Dominance is not inherently evil, but its abuse is outlawed by the 2002 Competition Act.* According to Rajesh Verma, Secretary, Ministry of Corporate Affairs, the Competition Commission of India (CCI) has dealt with 846 complaints of abuse of dominant position from its formation (till June 2022). Of the 846 instances, one was launched by the Commission on its own initiative, 794 were admitted after complaints were received from consumers, their associations, or trade associations, and 8 were referred by the Central or State governments. Keeping in mind of above, the objective of this paper is to demystify the competition implications of "Abuse of Dominance" in terms of concept and compliances. In order to achieve the objective, it is important to address the following questions?

- When can Competition Act,2002 recognizes its ability to adversely affect competition in the market?
- When to say contravention of Competition Act,2002 stand established?
- When to say the statutory prohibition under section 4(2) triggered?
- How to check "Abuse of Dominance?

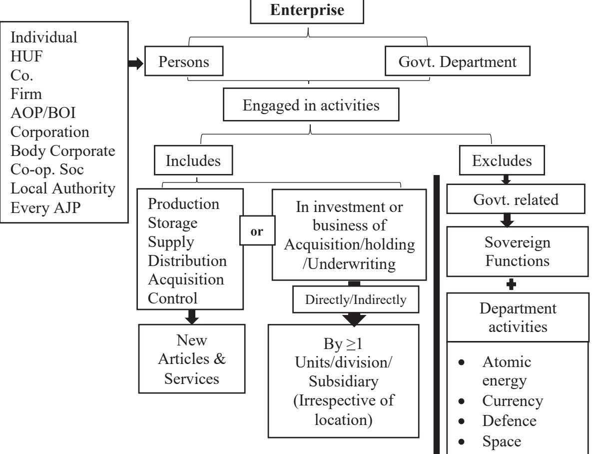
2. AREAS OF CONCERNS

To address the above questions, one need to understand the definitions in chronologically starting with Enterprise [Section 2*(h)*] and Group [As per the explanation under section-5] followed by Relevant Market [Section 2(r)] and Dominant position and lastly Abuse of dominant position [Section 4(2)].

[2.1] Enterprise and Group

No enterprise or group shall abuse its dominant position as per section 4(1) of the Act. Hence, it is equally important to understand the concept of Enterprise [Section 2*(h)*] and Group. The Competition Act, 2002, in S. 2(h) defines the term "Enterprise" as "person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space. It is summarized in Figure-1 to understand in lucid manner.

Figure-1 Enterprise [Section 2(h)]



Whereas, Group is explained under section 5 of The Competition Act, 2002 based on any of three criteria namely Voting Right, Appointment Power and Control which is shown in Figure-2.

Figure-2 Group [Explanation to Section-5]

Figure-2 Group [Explanation to Section-5]

Group → ≥2 enterprise, Directly/Indirectly In position → In relation to other enterprise

Criteria	
Voting Rights	To exercise Voting Right ≥26%
Appointments	To appoint >50% of Board Members
Control	To Control/ Mgt affairs

[2.2] Relevant Market

After examining the concept to enterprise and Group and if it satisfies the criteria definitions, then next step to check relevant market. The Competition Act, 2002, in S. 2(r) defines the term "relevant market" as, "the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets". The definition of the market is, to put it differently, an Antimonopoly Market, not an Economic Market. Both of them are concepts in their own right. The latter shall comprise firms which determine price, and the latter shall be composed of a group of undertakings capable of having an effect on the total price. For that reason, a set of boundaries for both product and geographical space must be drawn conceptually to define the market. It is a base concept to check "abuse". The Competition Act of 2002 stipulates that the relevant market for a given product is: "market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reasons of characteristics of products or services, their prices and intended use" [Section 2(t)]. Hence, it is defined in terms of substitutability. It is the smallest set of products (both goods and services) which are substitutable among themselves, given a small but significant non-transitory increase in price (SSNIP). Whereas, a relevant geographic market is also specified in the 2002 Act of Competition means: "a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from conditions prevailing in neighbouring areas" [Section 2(s)]. However, for determining the "relevant geographic market" and "relevant Product Market", the Commission shall have due regard to consider various factors.

Although the definitions of those terms are undoubtedly comprehensive, it is challenging to understand a market as established by the 2011 Regulations due to several reasons. Firstly, it is still very difficult to define the market for products and geographic areas. Details such as the necessary substitutableness of products or the manner in which neighbourhoods are to be established have not been made public by the 2002 Competition Act and subsequent 2011 Regulations. Second one is the development of submarkets does not fit the definition of a relevant market as provided for by the Act. Same has been endorsed in the research of Rishi Shroff Ashwita Ambast, (2012). In the course of antitrust proceedings, it has become a recognised practice to identify submarkets because they may act as independent appropriate markets for purposes of competition, in particular with respect to product differentiation. Lastly, the final step in determining the definition of the market is the collection of Empirical evidence as to the size of the market. Hence, for this purpose, different means of proof have been accepted by courts around the world. This includes price differences, trade relationships, supplier and purchaser's location and identity, customers' preferences as well as transport costs in the EU. As it does not provide for such

mechanisms of proof, the definition of the Indian market remains incomplete (Rishi Shroff Ashwita Ambast,2012). There is very few information on how those conclusions were arrived at in the orders which have been issued by the CCI until now, even though there is some analysis of what the relevant market might be. The problem is, therefore, that months after the regulations were adopted, there are no defined evidentiary mechanisms in place.

[2.3] Dominant position:

In common parlance, dominance is generally considered to be a position of superiority and the ability to exercise a dominant position over another competitor. According to act, it is a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour. As discussed earlier, it is determined based on "Relevant Market" not on with reference to "assets", "turnover" or "market share". A dominant position is important from a competitive point of view only if the relevant market is defined. The Act sets out a number of factors, one or all of which the CCI must take into account when defining the relevant market. The concept of 'dominant position' is not just an Indian one, it is an international phenomenon. His two major global markets, the US and his EU, have antitrust laws. A fundamental difference between the EU and US enforcement approaches is that antitrust enforcement is criminal in the US and administrative in the EU.

[2.4] Abuse of dominant position

The concept of abuse is an objective concept, as the Court of the European Communities found in the Hoffman La Roche case. According to Section 4(2),

There shall be an abuse of dominant position if an enterprise or a group

a. Directly or indirectly, imposes unfair or discriminatory

   i. Condition in purchase or sale of goods or service; or

   ii. Price in purchase or sale (including predatory price) of goods or service.

   (Excluding discriminatory condition or price which may be adopted to meet the competition)

b. Limits or restricts—

   i. Production of goods or provision of services or market therefor; or

   ii. Technical or scientific development relating to goods or services to the prejudice of consumers; or

c. Indulges in practice or practices resulting in denial of market access or

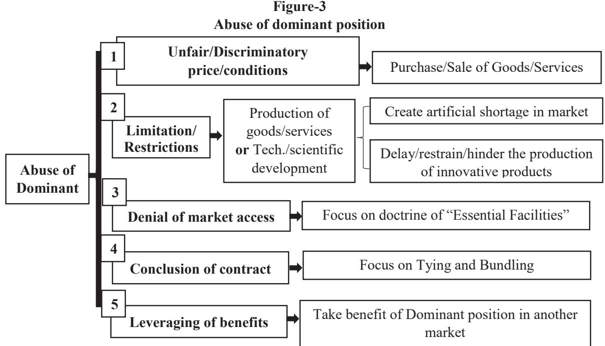
d. Makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

e. Uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Section 4 of the Act provides for five categories of abuses which may be exploitative or exclusionary as depicted in Figure-3.

Figure-3

Abuse of dominant position

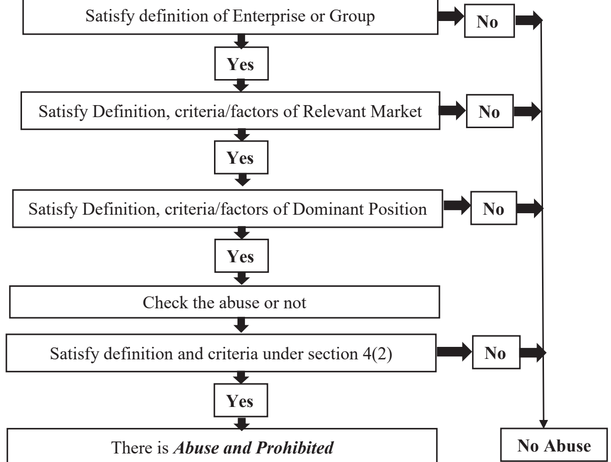


Abuse in the legal sense can be divided into two broad categories: exploitative (excessive or discriminatory pricing) and exclusionary (such as denial of market access). Such acts are prohibited under the law. The term "predatory pricing" refers to the practice of selling goods or services at a price that is lower than the cost (which may be regulated) of producing the goods or services, with the aim of eliminating competitors or reducing competition. Predation is an exclusionary practice and can only be practised by an undertaking(s) that have a dominant position on the relevant market.

3. HOW TO CHECK ABUSE OF DOMINANCE?

Figure-4

Steps to determine abuse of dominance



4. CONCEPTUAL CLARIFICATION

When can act recognizes its ability to adversely affect competition in the market?

- Once an entity is found to be dominant in the relevant market.

Abuse in the legal sense can be divided into two broad categories: exploitative (excessive or discriminatory pricing) and exclusionary (such as denial of market access). Such acts are prohibited under the law. The term “predatory pricing” refers to the practice of selling goods or services at a price that is lower than the cost (which may be regulated) of producing the goods or services, with the aim of eliminating competitors or reducing competition.

When to say contravention of act stand established?

- Once a dominant undertaking is found to have indulged in any of the acts provided in Section 4(2) of the Act.

When to say the statutory prohibition under section 4(2) triggered?

- The moment there is any imposition of any unfair or discriminatory condition by a dominant player.

5. REMEDIES/PENALTIES

[5.1] Section-27

In the event of discovery of abuse of a controlling position under Section 4 of the Act, CCI may issue orders under Section 27 of the Act; to pass Cease and desist order, to impose penalty not exceed ten percent of the average turnover of the previous three financial years and Pass such other orders or issue such directions as it may deem fit.

[5.2] Section -28

In addition, under Section 28 of the Act, the CCI can also order the separation of a company in which it enjoys a dominant position in order to prevent it from abusing that dominant position. Orders from CCI requiring a written form may provide:

- Transfer or vesting of property, rights, liabilities or obligations.
- Adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise.
- Creation, allotment, surrender or cancellation of any shares, stocks or securities.
- Formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise.
- The extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof.

[5.3] Section -33

The CCI may suspend an investigation pending an abuse of a dominant position investigation if the conditions of Section 33 of the Competition Act 2002 are met. Moreover, an application under section 53-N of the Act may be made by a central government, a state government, a local government, or by a company or individual to order recovery from the company of compensation for proven loss or damage suffered.

CONCLUSION

The Competition Law 2002 is in line with contemporary competition law philosophies and plays an important role in ensuring competition culture and compliance. The setting of parameters for assessing “considerable harm to competition caused by agreement”, “the dominant position” and “the relevant market” are designed to ensure uniformity and predictability in the work of the Commission, which must take into account all, or any, of the relevant factors. It is clear that CCI’s research is an in-depth study that includes not only information related to technical or marketing factors, but also government policies related to any transaction or business in which the company is involved. Regulatory trade barriers, including import and export policies, tariffs and subsidy issues, are also taken into account by the CCI.

Competition law clearly states that a prima facie dominant position is not invalid, but no company has the right to abuse that dominant position. Therefore, “it is not the control that is prohibited by law, but its misuse.” Therefore, it is safe to conclude that Article 4 of the Competition Law is a substantive provision that explicitly prohibits abuse of a dominant position. The burden of proving the existence of a dominant position and the abuse of such a dominant position rests with CCI. Therefore, “dominance itself is not illegal, but abuse of a dominant position is.”.

In some cases, the “vague wording” of a rule needs to be clarified. Researchers believe that terms such as “relevant market,” “company,” and “dominant position” are too broad and should be rationalized to avoid misuse.

While it is impossible to agree on comprehensive, global rules, the fundamental purpose of competition law is to reconcile existing disputes and maximize the strategic interests of companies involved in the abuse of a dominant position. We need some agreement about international perspective, Indian regulators can benefit from the experience of more developed and mature merger rules such as those of the US and EU, using international best practices. can be obtained. Going forward, it will depend on how effectively the regulations are implemented and interpreted in a commercially effective manner and whether adequate resources are allocated to the Indian regulators for this purpose.

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ARTICLE

The Competition (Amendment) Act, 2023: Power, Penalties, Perplexity and Proposal

The Indian competition law casts an obligation upon the competition regulator to eliminate anti-competitive practices, promote competition, interest of consumers and ensure freedom of trade within markets in India. Recently introduced Competition (Amendment) Act, 2023 seeks to overhaul the Indian competition law landscape making it adept to tackle the contemporary challenges the economy faces. One of the changes introduced, empowers the Competition Commission of India to impose penalties based upon the 'global turnover' criteria which is derived from all the products and services by a person or an enterprise. In this backdrop, the present paper traces the jurisprudence on the antitrust penalties as developed by the Indian competition authorities. It further analyzes the recently proposed amendments and examines its implications on the competition law enforcement in the times to come.

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INTRODUCTION

Competition law aims at attaining its ultimate aim of consumer welfare by ensuring that the market functions effectively.[1] In order to ensure market efficiency, the Indian competition law casts an obligation upon the competition regulator to eliminate anti-competitive practices, promote competition, interest of consumers and ensure freedom of trade within markets in India.[2] The edifice of the Competition Act, 2002 (Act) rests primarily upon the four pillars namely; prohibition of anti-competitive agreements[3], prohibition of abuse of dominant position by an enterprise[4], regulation of combinations[5] and competition advocacy[6]. Competition Commission of India (CCI) has been established as the regulator and quasi-judicial authority under the Act to attain the objects as enumerated under the Act.

Imposition of huge penalties upon the defaulters brought the Indian competition regulator in the public eye during its' initial years of enforcement. These hefty penalties have often been a major cause of concern for the corporates and as such they choose to challenge the same by offering an appeal before the appellate authorities.[7] It was in the case of *FICCI, New Delhi* v. *United Producers/Distributors Forum, Mumbai & Ors.*[8] that CCI imposed penalty for the first time in May 2011. Since then, the Commission has imposed penalties on the erring persons and enterprises violating the provisions of the Act (Sections 3 and 4). Even though the CCI, has imposed huge quantum of penalties, the amount of penalty realized remains too little. Thus far the CCI has levied an aggregate of Rs. 15668.77 crores (approx.) as penalty till March 31, 2022 of which only Rs. 191.43 crores could be realized.[9] The reason being that most of the CCI's orders are either pending before the Appellate Tribunal or are under challenge before the High Courts or the Supreme Court. A look back at the decade of CCI's enforcement fails to reveal any substantial trend on its method of devising the metrics for imposing penalties nor clarity on the assessment of the quantum of penalty.[10]

The present paper briefly analyses the provisions of the Competition Act, 2002 pertaining to imposition of penalty and traces the jurisprudence on the antitrust penalties as developed by the Indian competition authorities. The paper further comprehends the changes recently proposed vide the Competition (Amendment) Act, 2023 and examines its implications on the competition law enforcement in the future.

CCI's POWER TO PENALIZE UNDER THE COMPETITION ACT, 2002

Section 27 of the Competition Act, 2002 specifies the kinds of orders that may be passed by CCI post inquiry[11] into an agreement or an act of an enterprise in dominance position in case there exists a violation of section 3 or section of the Act, as the case may be. The provision enumerates such orders under clauses (a), (b), (d), (e) and

1. *Competition Commission of India v. Steel Authority of India Limited, (2010) 10 SCC 744*
2. *The Competition Act, 2002, s 18*
3. *The Competition Act, 2002, s 3*
4. *The Competition Act, 2002, s 4*
5. *The Competition Act, 2002, s 5 & 6*
6. *The Competition Act, 2002, s 49*
7. *"CCI favours better compliance, not penalties: Chairman", Business Standard, September 9, 2016 CCI favours better compliance, not penalties: Chairman (business-standard.com) <last accessed on 15 April 2023>*
8. *Case No. 1 of 2009, MANU/CO/0018/2011.*
9. *See CCI Annual Report 2021-22 Competition Commission of India, Government of India (cci.gov.in) <last accessed on 11 April 2023>*
10. *"A look back at 10 years of CCI's Penalties" A Look Back at 10 Years Of CCI's Penalties (azbpartners.com) <last accessed on 12 April 2023>*
11. *Procedure of inquiry is laid down under s 26, Competition Act, 2002.*

(g). According to clause (b), CCI is empowered to impose penalty upon the erring person or enterprises, quantum of which cannot exceed *10 percent of the average of the turnover of the last three financial years*. The proviso further provides that in case of Cartels, CCI may impose a penalty upon each producer, seller, distributer, trader or service provider involved in the cartel, the quantum of which is up to three times of the profit for each year of the duration of such agreement or 10 percent of its turnover for each year of the continuance of such agreement, whichever is higher. As per the Act, 'turnover' has been defined as including the value of goods and services.[12]

The provision purports to deter persons or enterprises from indulging in anti-competitive conduct. As per the provision, CCI has a discretion to impose a penalty with a quantum anywhere between 0-10 percent of the turnover. Wherein a cap of 10 percent has been imposed to keep a check on the powers of the CCI as well. A cursory glance of CCI's decisional practice on penalty imposition reveals following trends:

- In cartel cases, CCI has levied penalty based on the 'turnover' criteria and only for the past few years it has started to employ the 'profit' metric as per the penalty provision (Proviso to section 27). CCI in its judgement arrayed a wide range of 3-10 percent of the turnover to determine the penalty amount under the 'turnover' criteria. Detailed reasons for this discretion are seldom supplied in the orders.
- Cases involving charges of abuse of dominant position have attracted lesser penalties in comparison to cartel cases. Further, cases involving multiple abuse allegations have attracted higher penalties.
- CCI has been sparingly imposing penalties on individuals violating the provisions of the Act.
- The quantum of penalty was determined by CCI on the basis of total turnover until the Supreme Court of India based on the Appellate Tribunals' decision in *Excel Crop Care Limited v. Competition Commission of India*[13] interpreted turnover as 'relevant turnover'.

CCI has been imposing penalties for over a decade, however the emerging trends from the decisions have not culminated into any guidance for the businesses and other stakeholders. Although, CCI in certain cases while deciding upon the quantum of penalty has observed that the same must correspond with the gravity of the offence committed and must be calculated after having due regard to the mitigating and aggravating circumstances of the case. Justification for imposition of penalty has been to stress upon the gravity of the violation and to ensure deterrence amongst businesses.[14]

THE 'TURNOVER' PERPLEXITY: SUPREME COURTS' PROPOSAL

To settle the muddle over the imposition of penalty the Supreme Court of India passed a significant ruling in the *Excel Crop* case[15]. The case was initiated vide a complaint of Food Corporation of India alleging anti-competitive arrangement in relation to the tendering process involving four companies manufacturing aluminium phosphide tablets (namely; Excel Crop Care Ltd., United Phosphorous Limited, Sandhya Organics (P) Ltd. and Agrosynth Chemicals Limited). The Director General found the companies involved in collusive bidding in violation of section 3 of the Act. Based on the findings of the Director Generals' report, CCI held the three companies (barring Agrosynth Chemicals Limited) violating section 3 of the Act by indulging in anti-competitive conduct, thereby impose a penalty of the magnitude 9 percent of the average turnover of three years in accordance with section 27 (b) of the Act. Aggrieved by CCI's order, the companies approached the Appellate Tribunal. The Appellate Tribunal held that in case of multi-product companies, the quantum of penalty to be decided on the basis of 'relevant turnover' of the product or service under consideration. The matter went in appeal before the Apex Court on the question as to whether the turnover referred to under section 27 of the Act, means 'total turnover' or 'relevant turnover'?

The Supreme Court relying upon the decision of the Appellate Tribunal held the parameter to be relevant turnover which must be taken into account while determining penalty and not total turnover as interpreted thus far. According to the Court, the criteria of 'relevant turnover' aligned well with the legislative philosophy and the criteria of total turnover would lead to unjustly crucifying erring entities when the need is to merely disciplining them. Particularly, in case of imposing penalty on basis of total turnover upon businesses having more-than one product, there seemed to be no justification.

The Court whilst giving purposive interpretation to the provision applied the doctrine of proportionality. Doctrine of proportionality is a result-oriented doctrine aimed at bringing about proportionate results. It examines the outcome of law in fact by balancing between the two conflicting interests; harm caused to the society by the violator which justifies the penalty imposition upon the violator on one hand and the right of the violator by not suffering the punishment which may be disproportionate to the gravity of the act in question.[16]

The apex court affirmed that the doctrine of purposive interpretation also leaned in favor of 'relevant' turnover metric for determining penalty. The court here relied upon the ruling of the Competition Appeal Court of South Africa in *Southern Pipeline Contractors Conrite (Pty) Ltd* v. *The Competition Commission*[17], wherein the Appeal Court while penalizing a multi-product company, held that the appropriate amount of penalty must be determined taking into consideration the damage caused and the profits which accrue from the alleged act of

12. *The Competition Act, 2002, s 2 (y)*
13. *AIR 2017 SC 2734*
14. *In Re: House of Diagnostics and Esaote S.P.A & Ors., Case No. 9 of 2016.*
15. *Excel Crop Care Limited v. Competition Commission of India, [2017] 138 CLA 95 (SC).*
16. *Ibid.*
17. *Case No. 105/CAC/Dec 10.*

cartelization. Here the court termed the said parameter as ‘affected turnover’.

Besides this, the Supreme Court also looked towards other jurisdictions for guidance on the imposition of penalty. It was noted that the statute in the European Union (EU) did not provide much clarity but the EU guidelines[18] on fixing penalties offered much needed direction. These guidelines refer to relevant turnover and provide for a methodology for fixing fines. European Commission possess wider powers to impose fines on the basis of total or worldwide turnover of the infringements under the regulations.[19] Whereas the guidelines offer a method including; determination of basic amount of fine, followed by adjustments to the basic amount.[20]

In the light of the above discussion, it was observed that the penalty provision under section 27 of the Act, subserves its twin aims of punishing the violator and creating deterrence. Such objects could be adequately attained with relevant turnover as the yardstick for imposing penalty. Justice Ramanna, in his concurring judgement mooted for giving an indigenous deliberation to the issue than reliance on international framework and practices followed by foreign jurisdictions. He further laid out a two-step methos for calculation to be followed while imposition of penalty under the Act, comprising of:

Step 1: Determination of relevant turnover based on the turnover of the enterprise pertaining to the products and services under violation. For estimating such turnover, CCI must rely upon the audited balance sheet of the entity and where the audited balance sheet is unavailable, then reliance may be placed on other available records and information.

Step 2: Determination of appropriate percentage of penalty based on aggravating and mitigating circumstance. Herein, the CCI may decide upon the apposite quantum of penalty percentage based on a host of factors including nature and gravity of violation, role of the erring parties, market circumstances, entry-exit barriers etc. Such factors to guide the Commission, however penalty at any point should not exceed the overall cap prescribed under the statute i.e. 10 percent of the relevant turnover of the enterprise. It was reiterated that the discretion of the CCI at all times be guided by the established principles of law in order to subserve the purpose of the statute.

In cases subsequent to Excel Crop, CCI has been relying upon the ‘relevant turnover’ criteria. Barring a few instances where there existed ‘no relevant’ turnover or

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profit since the bidders involved in collusive bidding did not carry out the same manufacture, trade or service as that under enquiry.[21] Further, instances where existed no possibility of deducing relevant turnover. Like in Re: *Cartelisation by broadcasting service providers by rigging the bids submitted in response to the tenders floated by Sports Broadcasters*[22] which emanated out of the lesser penalty application filed before the CCI. Entities were responsible for infringement of provisions of Section 3(3)(d) read with Section 3(1) of Act and were, hence, liable for penalty. Here the entities namely; ESCL and Globecast had not elaborated on aspect as to how they were multi-product companies. They merely provided their turnover/profit from particular sporting events for which they provided services and that too only with respect to fourteen events under investigation. In the present case, the entities provided restricted turnover and not relevant turnover. Restricted turnover was different from relevant turn over. Thus, Commission decided to impose penalty on under proviso to Section 27(b) of Act, by taking into consideration their total profit.

TOWARDS INDIAN COMPETITION REGIME 2.0

Global developments witnessed in the past few years have led to a paradigm shift in the market dynamics. This shift has been propelled by thriving e-commerce model, evolving digital technologies, emerging new age markets and emergence of new business models. In the backdrop of such changes and ensuing contemporary challenges, there existed a felt need to revisit and revamp the competition regime.

This long-drawn exercise for overhaul began with the setting up of the Competition Law Review Committee by the Ministry of Corporate Affairs in 2018. Based on the recommendations of this committee, draft Competition (Amendment) Bill was laid out for public comments, stakeholder comments and consultations with various departments of the government. Upon being introduced in the Lok Sabha, the draft amendments were sent to the Parliamentary Standing Committee on Finance for examination and review in 2022. Subsequent to the approval of the Companies (Amendment) Bill, 2023 before both the houses of the Indian Parliament it received the assent of the President recently in April 2023. It now awaits notification in the official gazette.

18. *European Commission, Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 OJ C 210, 1.9.2006 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52006XC0901%2801%29 <last accessed on 15 April 2023>*

19. *European Commission, Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty EUR-Lex - 32003R0001 - EN - EUR-Lex (europa.eu) <last accessed on 15 April 2023>*

20. *Richard Whish and David Bailey, Competition Law, (Oxford University Press, 2018)*

21. *In Re: Nagrik Chetna Manch and Fortified Security Solutions, Case No. 50 of 2015*

22. *Suo Moto Case No. 2 of 2013. MANU/CO/0045/2018*

RECOMMENDATIONS OF THE COMPETITION LAW REVIEW COMMITTEE

Ministry of Corporate Affairs, Government of India constituted Competition Law Review Committee (CLRC) in 2018 with a view to strengthen and recalibrate the present competition regime in the light of changing business environment.[23] Since the Competition Act, 2002 was to complete a decade of its enforcement in 2019, it was a felt need to revisit the existing provisions by taking into consideration the international best practices for creating a robust regime addressing contemporary challenges. The committee comprised of representatives from the Department of Commerce, Department of Economic Affairs, Department of Consumer Affairs, Department for Promotion of Industry and Internal Trade, NITI Aayog, lawyers, academicians, economics and other experts. CLRC considered the suggestions of the stakeholders including general public while making the report which was submitted in July 2019 recommending amendments for moving towards a more robust and effective competition regime.

On penalties, the CLRC stressed on the need for inducing certainty in the interpretation of statutes and predictability of outcomes for ensuring an effective ecosystem for enforcement. The committee took cognizance of the gap in recovery of penalty imposed by CCI owing to various reasons including litigation and backlog of cases at the appellate levels.

The committee while mulling over the possible amendment to section 27 (b) to replace 'turnover' with 'relevant turnover' explored the possible outcomes of the said change. It contemplated situations where no penalty would be imposed if 'relevant turnover' parameter was to be adhered. Situations involving 'hub and spoke' cartels where the hub is not engaged in the same line of business as that of the spoke or in case of bid rigging/collusive bidding where bidders carry out distinct business. Reference to *Nagrik Chetna Manch* case[24] was made, where in case of bid rigging, few of the bidders were not carrying out manufacture, trade or service which was the subject matter of the tender. The claim being no 'relevant' profit nor 'relevant' turnover to levy penalty was declined by the CCI. Thus, the CLRC experts felt that there existed no need for an amendment to the existing penalty provision. Further, the term 'turnover' doesn't require replacement with 'relevant turnover', though it could be duly considered by CCI while deciding on the quantum of penalty under section 27 of the Competition Act, 2002. The committee in line with the *Excel crop* case stressed on the adherence to the doctrine of proportionality for deciding the quantum of penalty by CCI which would ensure deterrent effect of the law and keep fetters on the penalty powers of the competition regulator. In order to address the said issues, the committee proposed that

23. *Notification dated 30 September 2018 Government constitutes Competition Law Review Committee to review the Competition Act (pib.gov.in) <last accessed on 5 April 2013>*

24. *In Re: Nagrik Chetna Manch and Fortified Security Solutions, Case No. 50 of 2015.*

the CCI be mandatorily required to issue guidelines on the imposition of penalty. According to the committee, such guideline would aide in ensuring transparency in the justice delivery on one hand and will also expedite the decision-making process of the competition authority. [25]

REPORT OF THE PARLIAMENTARY STANDING COMMITTEE ON FINANCE

Lok Sabha referred the Competition (Amendment) Bill to the Parliamentary Standing Committee on Finance to examine the provisions and submit its report thereof. The Standing Committee took note of the key features of the amendments proposed in the draft Bill and subsequently reviewed the issues taking into consideration the CLRC recommendations and consultations with experts.

On the issue of penalty, the committee while enumerating the proposed changes highlighted the need for issuance of guidance on penalty calculation by CCI which would induce transparency and certainty in the enforcement practice. However, the issue of penalty was not delved deeper into by the committee.

THE COMPETITION (AMENDMENT) ACT, 2023 AND THE PENALTY PROVISION

In the past, the Competition Act has been amended thrice in the years 2007, 2009 and 2017 respectively. The amendments brought in the year 2007 were substantial in nature, whereby it altered the composition of the CCI and established the Appellate Tribunal to hear the appeals arising from the orders of CCI, besides other major changes. Amendment of 2009 concerned with facilitating the transfer of pending cases before the erstwhile MRTP Commission to CCI for adjudication. While the recent amendment of 2017 was to replace Competition Appellate Tribunal (COMPAT) with National Company Law Tribunal (NCLAT) as the appellate authority as directed by the Finance Act, 2017.

The Competition (Amendment) Act, 2013 is set to usher in the competition reforms. Several significant changes are proposed vide this amendment including introduction of 'deal value' threshold for combinations, aligning definition of 'control', reduction in approval timelines, hub and spoke arrangements to name a few.

The amendment Act has added explanations to existing provision on penalty i.e. section 27 (b). The explanations state as under:

"Explanation 1.—For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by regulations."

"Explanation 2.—For the purposes of this clause, "turnover" means global turnover derived from all the products and services by a person or an enterprise.'."

Reading turnover in terms of global turnover, one that is derived from all the products and services by an enterprise instead of domestic turnover. This shift is expected to have massive impact specially on digital enterprises as these entities operate beyond territorial bounds and now upon any violation, their entire turnover is expected to be considered for penalty imposition.[26] Few have called this change as a 'wild card entry' and project this to be investment dampener.[27] Since this proposal has been lately introduced and was not a part of consultation nor recommendation at the CLRC and Standing committee report, a question on its procedural regularity is raised as well. Rest will now depend upon the regulations that will follow for determining turnover and income for the purposes of imposition of penalty.

REFLECTIONS FOR FUTURE

With the unfurling of significant changes, the Amendment Act seeks to overhaul the Indian competition law landscape. The reforms so introduced are expected to have far reaching implications on entities across sectors particularly technology-driven or digital businesses. The changes are being lauded by stakeholders for their conduciveness towards ease of doing business. Indian competition framework and the regulator are hailed as one of the active and evolving regimes across the globe. With the introduction of recent changes this belief is only going to be strengthened. Further, with India's central role in G20, the implication of these changes on digital economy will be of significant importance.

Several attempts have been made in the past to settle the muddle over penalty imposition under the competition law. The Indian apex court event attempted to settle the 'relevant turnover v. total turnover' debate on the penalty imposition for competition law violation under the Competition Act, 2002 and also enumerated the guiding factors for the imposition of the penalties in case of contraventions. As far as the recent introduction of 'global turnover' is concerned much will depend upon the interpretation that is accorded to it by the competition authorities in the times to come.

CONCLUSION

Well defined provision of law, clear guidance by the regulator, certainty in interpretation of the law and predictability of outcomes will surely secure the interest of all stakeholders in the competition regime.

25. *Ministry of Corporate Affairs, Report of the Competition Law Review Committee 2019 Report of the Competition Law Review Committee (ies.gov.in) <last accessed on 15 April 2023>*

26. *Parikshit Luthra, Global turnover in competition amendment bill will have implications: Former CCI chairman, 'Global Turnover In Competition Amendment Bill To Have Implications' (cnbctv18.com) <Last accessed on 18 April 2023>*

27. *Pradeep S Mehta, Why does all not seem hunky-dory with the latest Competition Amendment Bill? Why does all not seem hunky-dory with the latest Competition Amendment Bill? (moneycontrol.com) <Last accessed 19 April 2023>*

ARTICLE

Achieving Excellence in Market Dynamics Through Competition

The competition laws in India have been outlined in such a method for guaranteeing manageable improvement of the market as well as the entire economy of the country. There are some significant competition laws governing the market in India and they structure a fundamental piece of the Competition Act, 2002. These provisions have been taken from different regulations of different purviews and are framed in accordance with the Indian market structure. The examination depends on a few essential standards of the competition law which include anti-competitive agreements, abuse of dominant position and combinations and their regulations.

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INTRODUCTION

The Parliament of India passed the Competition Act, 2002, on January 13, 2003, which repealed the Monopolies and Restrictive Trade Practices Act, 1969. It is a tool to execute and uphold competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market. Competition law is similarly relevant on composed as well as oral agreement, arrangements between the enterprises or persons.

The Competition Act, 2002 was amended by the Competition (Amendment) Act, 2007 and again by the Competition (Amendment) Act, 2009. The Act establishes a Commission which is compelled by a solemn obligation to safeguard the interests of free and fair competition (including the process of competition), and as a consequence, protect the interests of consumers. Comprehensively, the commission's obligation is:-

- To prohibit the agreements or practices that have or are likely to have an appreciable adverse effect on competition in a market in India, (horizontal and vertical agreements / conduct);
- To prohibit the abuse of dominance in a market;
- To prohibit acquisitions, mergers, amalgamations etc. between enterprises which have or are likely to have an appreciable adverse effect on competition in market(s) in India.

EVOLUTION AND DEVELOPMENT OF COMPETITION ACT

Today, the entire world is confronting the idea slice competition and to stand 'in'; every nation is attempting to pull their economy up. The globalization and urbanization is likewise assuming a decent part in something very similar. To have a fair and healthy competition, our nation has set up a body – judicial body which is known as the 'competition commission of India' [CCI]. In India there was an act regarding the competition in the market named MRTP Act [Monopolistic & Restrictive Trade Practice Act] however as the time changed this act was not able to prevent the needed defense for the society and market, and thus new act named The Competition Act enacted in 2002 which is widely known as the 'antitrust act' in United States. The substance and practice of this act differ from jurisdiction to jurisdiction.

In today's world this law is being seen as the way to provide better public services. The historical backdrop of this regulation was from the Roman Empire. It is said that the competition act is, an act to provide, keeping in view of the economic development of the country, for the foundation of a commission to prevent practices having

adverse effect on competition in the market, to protect the interest of consumers and to ensure freedom of trade carried on by other participants in the markets, in India, and for issues associated there with or coincidental thereto.

The Monopolistic and Restrictive Trade Practices Act, 1969

Now, paying attention to the legislative part, the government has enacted the MRTP Act. The Monopolies and Restrictive Trade Practices Act of 1969 (MRTP Act) was the first competition law established in India. The MRTP Act came into effect on June 1st, 1970, with the goal of ensuring that the working of the market structure didn't bring about the centralization of the economy in a couple of hands. It likewise precluded monopolistic and oppressive demonstrations that are hurtful to general society at large.

Economic liberalisation and the abolition of the MRTP Act in 1991

In 1991, economic liberalisation was presented, which was a significant defining moment Indian business sectors in the globalized world. With the elimination of trade barriers the country started to confront contest from both within and beyond the country. Thus, to prepare for globalization, India executed a lot of new financial plans, decreased government obstruction, and continuously began opening open doors for industry and worldwide speculation. Among such new provisions, plenty of changes were made to India's competitive system, such as:

Amendment to the Monopolies and Restrictive Trade Practices Act has eliminated-

- The strategy for pre-entry critical examination of venture by MRTP Industries,
- The extent of MRTP in consolidations, acquisitions, and combination, and
- The precondition of government permission for spreading and forming new enterprises.

Following economic liberalisation in 1991, it became fundamental to lay out a contest regulation framework that was more pertinent to home-grown monetary powers and viable with worldwide practices.

ANTI-COMPETITIVE BEHAVIOUR

Anti- competitive practices are business or government practiced that prevent or lessen competition in a market. Antitrust laws contrast among state and federal laws to ensure business don't take part in competitive practices that harm other, usually smaller, businesses or consumer. These regulations are shaped to promote healthy competition within a free market by limiting the abuse of monopoly power. Competition allows companies to compete in order for products and services to improve; promote innovation; and provide more choices for consumers. To get more prominent benefits, a few huge undertakings exploit market ability to frustrate endurance of new participants. Anti-competitive behaviour can undermine the efficiency and fairness of the market, leaving consumers with little choice to obtain a reasonable quality of service. Anti-competitive behaviour is utilized by business and government to diminish competition within the market so that monopolies and prevailing firms can produce supernormal benefit and deter competitors from the market. Therefore, it is heavily regulated and punishable by law in situations where it significantly influences the market.

Anti-competitive practices are usually possibly considered unlawful when the practice result in a substantial dampening in competition, hence why for a firm to be punished for any form of anti-competitive behaviour they generally need to be a monopoly or a dominant firm in a duopoly or oligopoly who has critical impact over the market.

Anti-competitive behaviour can be assembled into two classifications. Horizontal restraints regard anti-competitive behaviour that involves competitors at the similar level of the supply chain. These practices include mergers, cartels, collusions, price-fixing, price discrimination and predatory pricing. On the other hand, the second category is vertical restraint which implements restraints against competitors due to anti-competitive practice between firms at different levels of the supply chain e.g. supplier-distributor relationships. These practices include exclusive dealing, refusal to deal/sell, resale price maintenance and more.

Anti-Competitive Behaviour types:

a) **Dumping** also known as predatory pricing is a business technique for which an organization sells an item at a forcefully low cost in a competitive market at loss. A company with large market share and the capacity to briefly forfeit selling an item or administration at less than ideal expense can drive contenders out of the market, after which the organization would be allowed to raise costs for a more prominent benefit. For instance, many developing countries have accused China of dumping. In 2006, the nation was blamed for unloading silk and glossy silk in the Indian business sectors at a less expensive rate which impacted the nearby makers unfavourably.

b) **Exclusive Dealing** where a retailer or distributer is obliged by agreement to buy from the contracted provider as it were. This component forestalls retailers to decrease benefit boost and additionally customer decision.

c) **Price Fixing** where companies collude to set cost, successfully destroying the free market by not taking part in competition with one another. In 2018, travel agency giant, flight center was fined $12.5 million for empowering a conniving cost fixing plan between 3 international airlines from somewhere in the range of 2005 and 2009.

ARTICLE

d) **Price Discrimination**, when an item or administration is proposed to various purchasers at various costs in different markets. Examples include student and senior discounts for transport, well-packaged books versus paperback editions, differences in the price of lunch and dinner in restaurants, or airfare differences. Lott and Roberts (1991) contend that there are cost or different clarifications for these peculiarities and give a clarification to these circumstances.

Horizontal mergers

Horizontal merger alludes to further developing effectiveness by decreasing purchaser bending of firm decision and cost heterogeneity. At the point when two organizations with comparable items or item qualities consolidate evenly, there is less competition. However, a net social advantage can be made, on the grounds that when the two organizations battle a nonstop cost battle because of furious contest, it will emphatically misshape the decisions of consumers. **Horizontal mergers can also easily lead to a monopoly, reducing consumers' choices and indirectly harming consumers' interests.**

An illustration of horizontal agreement is when two manufacturers of a particular commodity fix the price of their commodity. Some horizontal agreements that are precluded under the Competition Act, 2002 are as follows:

- Agreements involving the explicit or implicit setting of the commodity's buying or selling price.
- Contracts that limit or regulate the manufacturing, sales, expenditure, or service provisions for specific goods and numbers.
- Contract related to market sharing.
- Contracts for bid rigging: Section 3(3)(d) defines bid rigging as an agreement between two parties engaged in a similar business that has the effect of removing or lowering bid competition or adversely affecting or influencing bidding.
- Agreements in the form of cartels: Cartels, in reality, are confidential contracts between corporations that exist only to fix prices or share markets. They pose a substantial danger to competition and, as a consequence, choke free trade.

Vertical mergers

The Chicago school of economics argues that vertical mergers, normally shaped under anti-competitive intention, might be favourable to cutthroat to wipe out twofold marginalisation. A chain of monopolists under can cause costs that extract beyond consumer surplus as wholesalers increase costs, retailers have the ability to move this cost onto the retail cost.

For example, an agreement between a producer and a supplier that has the ability to affect competition in the market can be termed a vertical agreement.

Today, the entire world is confronting the idea slice competition and to stand 'in'; every nation is attempting to pull their economy up. The globalization and urbanization is likewise assuming a decent part in something very similar.

Various vertical agreements permitted under the Competition Act, 2002 are as follows:

- Tie-in agreement
- Exclusive supply agreement
- Exclusive distribution agreement
- Refusal to deal
- Maintenance of resale prices

It observed that, the Anti-competitive isn't just an industry guideline conduct, yet additionally a modern industry characteristics for stakeholders to compete in within a fair market system. In the monopolist market framework, the anti-competitive practices will turn into a fundamentally valuable strategy to decrease the control of business goliaths and potential conspiring activities. In the meantime, in portrayal of the economic approach, the anti-competitive practices is also a useful approach to sustain a stabilized economic development and national welfare. With the implementation of anti-competitive practices, , it will really eliminate the market shortcomings and dispose of the extra weight misfortune from the monetary perspective. As firms engage in the fair competition act with the government regulations and laws. There is sufficient evidence to conclude that, the utilization of anti-competitive practices can dramatically reduce the phenomenon of black market, hence improves the investment incentives on aggregate demands. In general, with the effective implementation of anti-competitive practices, the whole economy will expand into a further prosperity with less crowing out effects.

POSITIONS OF DOMINANCE – THE ABUSES AND RECOURSES

In simple terms 'dominant position' signifies something in a better situation as compared to others based on some factors. Nonetheless, remaining in a good position doesn't hurt anybody, except if an individual is taking advantage of such power. In this way having a predominant position can't be viewed as terrible essentially. Be that as it may, manhandling such a position in light of its predominance is viewed as lacking.

The abuse of dominant position impedes fair competition between the organizations, take advantage of consumer and make it challenging for other players to compete

with the dominant enterprise on merit. The Act does not consider dominance as anti-competitive but its abuse. Abuse of dominance rather than dominance should be the key for competition policy. Abuse of dominance which prevents, restricts or distorts competition needs to be frowned by Competition Law. However, the dominance has the tendency to be abused.

Abuse of dominant position includes:

- Imposing unfair condition or price
- Predatory pricing
- Limiting production/market or technical development
- Certain barrier to entry
- Applying dissimilar conditions to similar transactions
- Denying market access
- Using dominant position in one market to gain advantages in another market

Section 4 of the Competition Act, 2002 provides for prohibition of abuse of dominant position.

It is fascinating to take note that the provision of section 4 of the Competition Act, does not have the word 'dominance' yet the 'dominant position'. The Act defines 'dominant position' in terms of strength enjoyed by an enterprise, in the relevant market in India, which empowers it to

- Operate independently of the competitive forces prevailing in the relevant market;
- Influences it's competitors or consumers or the relevant market in its favour.

Thus, it is the ability of the enterprise to act autonomously of the competitive forces that determines the dominant position.

There are two important elements of section 4.

- First, there must be a dominant position.
- Second, the existence of clearance is not sufficient for a prohibition to be invoked; it is also necessary that the position is abused.

The dominant position can be determined in the context of the relevant market and on the basis of any of the thirteen factors enlisted under clauses (a) to (m) of section 19(4) of the Act.

Sub-section (1) of section 4 of the Competition Act provides that no enterprise or group shall abuse its dominant position. It is not the dominant position but its abuse which is prohibited. The provision prohibits abuse of dominant position by any enterprise or group. It may be noted that prior to the Competition (Amendment) Act, 2007, section 4 was applicable to an enterprise and not to the group of enterprises but now section 4 is applicable to group of enterprises also after the 2007 Amendments. Dominance isn't viewed as terrible in essence. Its abuse is stated to occur when an enterprise or a group of enterprises uses its dominant position in the relevant market in an exclusionary or/and an exploitative manner. In **Anuj Kumar Bhati v Sony Entertainment Television (SET)**, it was alleged that the opposite parties have duped the participants of T.V. Quiz Show 'Kaun Banega Crorepati-4' (KBC-4) and are indulging in foul play in the selection of contestants. The main allegation was that the opposite parties, being in dominant position, were segregating in choice of the candidates and taking on unreasonable practices in determination of inquiries posed during the show which is in violation of section 4 of the Competition Act. The Competition Commission, on the basis of viewership rating observed that compared to all other remaining shows/programs broadcasted on T.V. in Hindi during early evening in India, the portion of watchers of KBC was not such a lot of that based on which one might say that it was overwhelming any remaining shows. The watchers had numerous choices to watch programs during the early evening relying upon the segment profile of the watcher, his preferences and inclinations. The KBC show was not antagonistically influencing some other program as each program has its specialty viewership The Commission thus held that there was no violation of the provisions of section 3 or section 4 of the Act and, consequently, the matter be closed under section 26(2) of the Act.

Consequences of Abuse of Dominance:

The Competition Commission, after an inquiry into the abuse of dominant position, may pass all or any of the following orders under section 27 of the Competition Act:

- Direct an enterprise with dominant position involved in abuse of such dominant position to discontinue such abuse;
- Impose penalty not exceeding ten percent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such abuse;
- Direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of cost, if any.
- In addition to the aforesaid orders, the Competition Commission has the power to order division of enterprise enjoying dominant position to ensure that it does not abuse its dominant position under section 28 of the Competition Act.

Hence with the rising utilization of dominant position, our implementation of statutory laws relating to the Competition Act also became relevant.

NEED FOR COMPETITION STANDARDS

India's competition law has just been in force for around 14 years. But, in these couple of years, the Competition Commission of India (CCI) has had to address complex cases involving anti-competitive conduct in a wide range of businesses, including tech markets. Amendments to India's competition law are supposed to go through in practically no time, which will probably present new

apparatuses in the CCI's arsenal to effectively intervene in markets. There are likewise equal conversations to present a digital competition law, which would introduce rules by which tech platforms function in India – along the lines of the EU's Digital Markets Act.

These moves mirror a developing conviction across the world that current competition laws and tools are not adequate to manage the high speed, consistently changing computerized economy. But is more regulation necessarily better for the Indian economy? We have proactively seen, of late, that competition law has been used to settle corporate rivalries, with an inclination of David v. Goliath elements among contenders and partners - all assuming some pretence of making everything fair. Where then, do we define the boundary between authentic rivalry driven by development and proficiency from one perspective and monopolistic oppressive practices then again that sabotage market elements and wind up hurting buyers and contenders the same?

To comprehend the role of competition law, we will initially have to understand what it is intended to secure. The Competition Act, 2002(Competition Act) engages the CCI to promote and support sustain competition in markets. Consumers are an indispensable piece of any market-yet a market also includes competitors, suppliers and other stakeholders that impact how competition plays out. The Competition Act isn't pointed toward safeguarding a specific partner bunch - it is entrusted with safeguarding the cutthroat course of the market in general. The fundamental instinct here is that by guaranteeing free and fair contest, benefits stream to all partners, remembering purchasers for the long run (regardless of whether less effective contenders miss out all the while). The CCI has needed to gauge the interests of customers and competitors in various cases. The CCI has been approached by competitors looking to address commercial disputes through competition law. Specifically, the developing omnipresence of cutting edge markets have seen rivals utilizing lawful instruments to play make up for lost time - frequently to the disservice of the customer and her inclinations.

Take for example the CCI's transition to research web based business stages Amazon and Flipkart in Delhi Vyapar Mahasangh versus Amazon/Flipkart. Customary physical stores griped that select send-offs of famous cell phones at exceptional limits on the stages hurt their incomes and were in this way, anticompetitive. The CCI's methodology here focussed on safeguarding the contender, instead of serious economic situations. Profound limits and elite tie-ups have been a well-known showcasing methodology that have offered the normal Indian a plenty of decisions at progressively lower costs. How the CCI adjusts these contemplations when it at last concludes the case will have clearing suggestions for the Indian economy.

The CCI has, to its credit, also closed down innovation market situations where it became evident that Uber's plan of action helped shoppers and drivers through their ride-hailing stage, yet kept on rivalling other taxi aggregators and customary radio taxi administrators the same. The CCI has had the option to recognize strategic policies that influence the commercial center, and those that don't, by specifically applying the "impacts test". The impacts test basically permits the CCI to look past the lead of a "dominant entity" and evaluate whether the direct outcomes in an unfriendly impact on rivalry in the market all in all.

Nonetheless, the CCI practice in considering a definitive market impacts of the lead of prevailing substances has been blended and must be adhered to without exception in all cases to ensure that it isn't misused by competitors to settle rivalries and keep down development.

COMPETITION LAW: ROLE OF COMPANY SECRETARY

In Easter days the leading companies plays a predominant situation to do the business it prompts impeding of numerous contenders inside the Indian Market. In Order to monitor the restrictive trade practices in India Law has been passes as MRTP Act (Monopoly Restrictive Trade Practise) to avoid the Monopoly trade practice in India.

Competition law acquainted with balance the best trade practices Between Corporates within India. One of the significant elements of law was establishment of the Competition Commission of India. The Competition Law framework to control the Dominance Position, Holistic Take Over, Merger& Acquisitions.

The Competition Act was amended in 2007 in view of economic developments and liberalization which expected the Indian economy to permit home-grown as well as global rivalry on the lookout and the said revision gives that Competition Commission of India is function as a regulator for preventing and regulating anti-competitive practices in the Country in accordance with the Act. The Act was amended again in 2009, in accordance with the said amendment, the Competition Commission of India and the Competition Appelate Tribunal have been established. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on May 20, 2009. Combination Regulations, 2011 introduced and explained "Combinations", which is emphasize on following aspects: Regular acquisition of Person Regular Merger& Acquisition The above three aspects plays a Vital role in Combination of entities:

- Regular Acquisition: When a Company Shares, Voting Right, Assets were acquired, were known fall into Combination.
- Acquisition of Person: When a Person acquires Control over the Enterprises which engage in Competition.
- If a person able to control the affairs of the company.
- Defacto Control
- Regular Merger & Acquisition: When a Regular Merger& Acquisition quantitative threshold need to consider to ensure the Combination is regular.

The Competition Act plays a vital role in Horizontal, Vertical, Coglomarte Mergers and Acquisitions. In the recent amendment of the Competition Act, 2019, describes Combination and impacts within India and Outside India.

Company Secretary having a certificate of practice can show up before Competition Commission of India and ensuring all compliances under the Act. Company Secretary also plays an important role as an advisor to the Company to comply with the provisions of the Competition Act. Company Secretary is the best suited professional to be appointed as "Compliance Officer" under the Competition Compliance Program. Company Secretary plays vital and significant role when the company proposes for Merger and Amalgamation, Acquisition and Takeover. The role of the Company Secretary is also very important in a foreign Company operates business in India. Role of Company Secretary being in pivotal position to prevent any participation of Competition Commission of India to facilitate ease of doing business that will facilitate deciding in favour of investing in India as compared investments in other developing countries. If the Company regular in compliances than regulatory watch of Government by monitoring routines of organization and results in absence of litigations by or against the Target Company.

Role of Company Secretaries in compliances:

a) Section 35 authorizes a company secretary holding a certificate of practice under Section 6(1) of the Company Secretaries Act, 1980 to appear before CCI.

b) Company Secretary is liable or guaranteeing all lawful compliances including compliance of all statues.

c) Clause 49 of the Listing agreement of SEBI includes compliance of Competition Act, 2002.

d) It turns into an obligation of a company secretary to advise the Company to comply with provisions of the Competition Act, 2002.

e) Company Secretary is the most appropriate to be selected as "Compliance Officer" under the Competition Compliance Program (CCP).

RELEVANCE OF COMPETITION LAW IN THE DIGITAL ERA

The usage of digital platforms has expanded during the beyond couple of years. Under the Competition Act, 2002, CCI has implemented aggressive regulating procedures made a proactive move against digital platforms engaged in anti-competitive activities. CCI examines network effects, internet privacy, data manipulation, data collection, incorporation, and exchange to enhance competition regulation in digital markets. CCI has reconsidered the specific market by limiting itself principally to online market sections, as opposed to its past act of incorporating on the web and disconnected commercial centers, accordingly bringing extra innovation stages being scrutinized. While competition laws successfully regulate digital markets, there is an opportunity for competitive markets to be strengthened through proper modifications to keep up with the intricacies of evolving technologies. The future of antitrust regulation of digital marketplaces looks to be bright.

CONCLUSION

The Competition Act of India is quite broad and was intended to satisfy the necessities of development in the economy and overall monetary patterns concerning competition law. Thus, the competition law of 2002 is recognised as a historic law. This regulation doesn't permit misuse of power. This regulation principally advances rivalry in the market while additionally giving adaptability in the conveyance of pay to firms of all sizes to support the industry's commercial viability. However the whole regulation has still not been executed, the reception of the entire Act will undoubtedly increase market competitiveness on a national and worldwide scale.

Any business operated in India, they should have the information on the different regulations and related rules and guidelines and furthermore the execution of the equivalent. Competition in the global market is a huge challenge in current situation and needs to be dealt with very carefully. Here, it is vital to all organizations to understand that in spite of the fact that opposition brings success, flourishing and endeavouring, will be a constant cycle.

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Competition Act 2002 : An Assessment with Reference to Anti-Competitive Agreements and Abuse of Dominant Position

Healthy competition is must in commercial markets for innovation, wider product choice, consumer welfare and economic expansion. Cartels, monopolies and various other anti-competitive practices restrict free trade, consumer choice and economic development. Hence, such practices need to be checked and controlled. Competition Act, 2002 is enacted to curb anti-competitive practices and promote healthy competition. The current paper aims at explaining provisions of Competition Act, 2002 relating to anti-competitive agreements and abuse of dominant position in simple and lucid way. The paper also aims at highlighting case laws relating to said practices. The study infers that Competition Act has crucial role in prohibiting agreements and practices that limit free trade and competition between businesses. The Competition Commission of India keeps check on such practices and imposes huge penalties for violation of provisions of Competition Act.

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1. INTRODUCTION

Competition is always considered to be a healthy practice in all fields for nourishing the opportunities. In context of markets, competition is often viewed as a long-term dynamic process where commercial firms compete against each other for market dominance. It works as a motivating factor if followed in a legitimate manner. Promoting competition offers wider choice of higher quality products at reasonable price. Competition brings efficiency in the system of market working. It encourages enterprise and widens choice.

In most of the countries, the Competition laws are enacted with the purpose to ensure fair trading, increase consumer welfare, enhance economic efficiency and prevent abuse of market power i.e. Dominant Position. Competition Law does not eliminate competition. Rather it encourages competition by penalizing anti-competitive behavior of entities like anti-competitive agreements, abuse of dominant positions.

The Competition Act, 2002 is one such act which aims at promoting a healthy competitive environment for enterprises in India and ensuring equal opportunities to every individual and firm operating in India to grow and flourish. This act restricts the use of unfair practices by the enterprises to have an edge over their competitors or entering into anti-competitive agreements. The Competition Act further mentions that deliberate indulgence of any enterprise in unfair trade practices will be subjected to legal action and huge fines.

2. OBJECTIVES OF THE STUDY

(i) To explain provisions relating to Anti-competitive Agreements and Abuse of Dominant Position as given in Competition Act, 2002, in a simple and lucid way.

(ii) To discuss case laws relating to Anti-competitive Agreements and Abuse of Dominant Position.

3. MAIN FEATURES OF THE COMPETITION ACT, 2002

3.1 Establishment of Competition Commission of India (CCI): The act provides for establishment of a Commission (i.e. Competition Commission of India) to restrict anti-competitive practices, to encourage and sustain competition in the market, to prevent exploitation of the consumers and to ensure freedom of trade to all participants of the market.

3.2 Regulating anti-competitive practices: The Act regulates three Anti-competitive practices:

- Anti-competitive agreements including Cartels
- Abuse of Dominant Position and
- Mergers & Acquisitions (Combinations which have potential for anti-competitive effect).

The main criteria used for regulating anti-competitive practices are that these practices should not cause an appreciable negative impact on competition within India.

Section 3 of the Act discusses the agreements which are anti-competitive in nature. It divides these agreements into two categories viz. horizontal agreements and vertical agreements. It further explains that all the anti-competitive agreements causing a substantial adverse impact on competition in India shall be void except few cases as given under section 3(5). *Section 4* of the Act deals with issues of abuse of dominant position. The Section enumerates a list of acts which may depict abuse of dominant position. *Section 5 and Section 6* explain aspects of combinations and prescribe certain norms to regulate such combinations (Tyagi, 2019).

4. EXPLANATIONS TO TERMS 'ANTI-COMPETITIVE AGREEMENTS' AND 'ABUSE OF DOMINANT POSITION'

4.1 Anti-competitive Agreements

Agreement comes into existence as a result of acceptance of offer made by other person or persons. It includes any arrangement or understanding or action in concert whether or not formal or in writing [(Sec. 2(b)(i)].

Anti-competitive agreements are those agreements entered into by enterprises or persons which have the tendency to harm the competition in Indian market. Such agreements usually result in undue benefit to one or group of person over the loss of others (Tyagi, 2019). Section 3 of the Competition Act, 2002, prohibits anti-competitive agreements. As per the Act, anti-competitive agreements are classified into two categories viz. horizontal agreements and vertical agreements. These are explained as follows:

4.1.1Horizontal Agreement: These are the agreements which generally occur between two or more entities operating in the same market and are competitors. These entities operate at the same level of supply chain. Thus, horizontal agreements may be between competing manufacturers, retailers or distributors. Such agreements would be prohibited if they contain anti competitive intent. *For example*, an agreement between producers of a particular commodity of not selling specific product below determined price in the market would be considered as horizontal anti-competitive agreements and hence, prohibited.

Competition Act, 2002 prohibits following types of horizontal agreements containing:

- Direct or indirect fixation of purchase or selling prices of a product [Sec.3(3)(a)].
- An understanding or practice to limit or control production, supply, investment, technical development or provision of services [Sec.3(3)(b)].
- Sharing of market or source of production [Sec.3(3)(c)].
- Bid rigging or collusive bidding agreements. [Sec.3(3)(d)].

As per explanation to Section 3(3)(d) 'bid rigging' *is an agreement, between persons engaged in similar business, of eliminating or reducing the competition for bids or negatively affecting or manipulating the process for bidding.*

- Agreements in the form of Cartels.

  'Cartel' includes an association which may be of producers, distributors, traders, sellers or service providers who, by agreement, limit, control or attempt to control the production, sale, distribution or price of, or, trade in goods or services[Sec.2(c)].

  Cartels are secret agreements between business enterprises with the primary motive of fixing prices or sharing markets among them (Gupt Sarsiz, 2020). Business enterprises create Cartels by anti-competitive horizontal agreements. Cartels are a great threat to fair competition. They tend to destroy the free trade.

4.1.2 Vertical Agreements: 'Vertical agreements' are the agreements among enterprises at different stages of production or supply chain i.e. production, distribution, storage, sale or price of goods etc. [Section 3(4)] *For example,* any agreement between manufacturer and distributor which can harmfully affect competition in the market will be considered as a vertical anti-competitive agreement.

Competition Act, 2002 encompasses various types of Vertical agreements. These are as follows:

- **Tie-in-Arrangement:** This arrangement includes any arrangement that requires a purchaser of goods as a requirement of such purchase to buy some other kinds of goods also. It is also termed as tying agreement, tie-up sale, or clubbed sale. Sellers, usually enter into such kind of agreements to increase their sales and earn huge profit. A tie-in arrangement will become illegal and hence, prohibited when a firm uses its strong market power enjoyed because of a particular product to compel the customer to purchase another product that the firm wants him to buy in order to get its premium or exclusive product. *For example*, where a consumer cannot purchase a company's computer without also purchasing its printer.
- **Exclusive Supply Agreement**: Such agreements put restrictions on purchaser of the goods of not to obtain or deal in goods other than the goods of the seller or any other person. Usually, entities having market power enter into such agreements. However, agreements between the buyers and sellers or manufacturers regarding specifications, quality, size etc. are legal and not anti-competitive in nature.
- **Exclusive Distribution Agreement:** These agreements impose conditions that limit,

confine or withhold the output or supply of goods. Sometimes, these conditions include arrangements for allocation of area or market for sale of goods i.e. putting geographical limit or customer limit. Such agreements are prohibited if they substantially lessen competition or tend to create monopoly.

- **Refusal to Deal:** Those agreements, which, by any method, restrict, or are likely to restrict persons from whom goods are purchased or to whom goods are sold, are prohibited under the Act as such agreements have anti-competitive tendencies.
- **Resale Price Maintenance:** Resale price maintenance includes agreement to sell goods on the condition that the prices to be charged by the purchaser on the resale shall be the prices as stipulated by the seller unless it is noticeably stated that prices lower than those stated prices may be charged. In other words, resale price maintenance agreement indicates an attempt by an upstream supplier or manufacturer to control the price at which the product is to be resold by its customer. This restricts the resellers from competing too intensely and thereby reducing their profits. Insisting that a re-sale should be at a specific margin, in fact limits the reseller's ability to set a price himself and is prohibited. It may be noted that mere recommendation of the prices to be followed by resellers or retailers does not amount to violation of Sec. 3(4) (e) of the Competition Act, 2002. As in case of *ESYS Information Technologies v. Intel Corporation*, CCI found that Intel only recommended prices and monitored them. Deciding final prices was left to the discretion of retailers. Thus, there was no violation of the competition Act.

Exceptions to prohibited agreements

Competition Act, 2002 provides for certain exceptions regarding prohibited agreements for protecting certain rights as given under various Acts. Section 3(5) states that prohibition for anti-competitive agreements will not impinge upon the right of any person to restrain infringement of, or to inflict reasonable conditions as may be essential to protect, any rights conferred upon him under the following legislations:

- The Copyright Act, 1957
- The Patents Act, 1970
- The Trade and Merchandise Marks Act, 1958
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Designs Act, 2000
- The Semi-Conductor Integrated Circuits Layout-Design Act, 2000

In case of exports also, exemption against anti-competitive agreements is provided. Section 3(5) (ii) states that prohibition of anti-competitive agreements shall not apply to the right of a person to export goods from India only to the extent to which such agreement relates to export of goods or services.

4.2 Abuse of Dominant Position

An enterprise is considered to be in dominant position when such enterprise enjoys a position of power in the market and due to such position enterprise operates irrespective of competitive forces existing in the relevant market or influences its competitor, consumers or relevant market in its favour. The European Commission states that 'a firm is said to be in a dominant position when it has the ability to act independently of its competitors, suppliers, customers and ultimately, the final consumer.'

Competition Act does not make merely having monopoly or dominant position illegal, but rather abusing the power that monopoly may confer through exclusionary practices (Banerji, 2022). Thus, for an abuse of dominance allegation, first it is necessary to discover the enterprise in question occupies a position of dominance in terms of specific product market and the demarcation of geographic market for that product. If a firm occupies a dominant position, then it has a particular responsibility not to permit its conduct to adversely affect competition in the common market.

Certain categories of abusive conduct of dominant undertakings damage the competitive spirit and are usually prohibited under country's legislation.

Section 4 of the Competition Act, 2002 provides for control of abuse of dominant position. It states that no enterprise or group shall abuse its dominant position [Competition (Amendment) Act, 2007]. It further describes instances amounting to abuse of dominant position. The instances are depicted in Fig.1.

Fig.1

(i) Direct or Indirect imposition of unfair or discriminatory conditions in purchase or sale of goods or services or prices in purchase or sale (including predatory price) of goods and services.

(ii) Limiting or restricting the production of goods or services or putting restrictions on technical or scientific development relating to goods or services to the prejudice of consumers.

(iii) Indulging in practices which result in denial of market access in any manner

(iv) Use of dominant position in one relevant market to protect or to enter into another relevant market.

Competition Commission of India (CCI) is empowered to investigate into the matters relating to violation of the said provisions of the Act. It can impose penalties and pass orders to desist from anti-competitive practices. It can also pass orders to modify the agreements to the extent they restrict freedom of trade.

5. ANALYSIS OF JUDICIAL PRECEDENTS

CASE(i)	**CCI imposed penalty of Rs. 936.44 Cr. on Google for abuse of dominance in the market for licensable OS for smartphones and in market for app store for Android**
Facts of the Case	The CCI found that Google had abused its dominant position in contravention of several provisions of the Competition Act, 2002 as under –
	• Making access to the Play Store, for app developers, by compulsory usage of the Google Play Billing System (GPBS). It constituted an imposition of an unfair condition on app developers [violation of the provisions of Section 4(2)(a)(i)].
	• Following discriminatory practices by not using GPBS for its own applications such as YouTube [violation of Section 4(2)(a)(i) and 4(2)(a)(ii)].
	• Compulsory imposition of the Google Play Billing System and, thus. disrupting innovation incentives and limiting the ability of payment processors and app developers [violation of Section 4(2)(b)(ii)].
	• The denial of market access for the payment aggregators and app developers by mandatory imposition of GPBS [violation of Section 4(2)(c) of the Act].
	• Google's leveraging its dominance in market for licensable mobile operating systems (OS) and app stores for Android to save its position in the downstream markets [violation of Section 4(2)(e)].
	• Google's use of various methodologies to combine its own UPI app with the Play Store as compared to rival UPI apps [violation of Sections 4(2)(a)(ii), 4(2)(c) and 4(2)(e)].
CCI Held	The CCI observed that Google, by imposing unfair conditions and engaging in other conducts violated Section 4 of the Act. The CCI imposed a penalty of Rs. 936.44 crores upon Google. The CCI also directed Google to cease and desist from indulging in anti-competitive practices.

Source: *https://www.taxmann.com/post/blog/landmark-competition-law-case-laws/*

CASE (ii)	• In July 2015, CCI ordered 3 car companies,viz. Hyundai Motor India Ltd. (Hyundai), Premier Ltd. (Premier) and Mahindra Reva Electric Car Company (P) Ltd. (Reva) to 'cease and desist' from anti-competitive practices. The Commission also passed order to allow open market sale of spare parts.
CASE (iii)	• Competition Commission of India (CCI) found activities of Kerala Film Exhibitors Federation ('KFEF'), an association of theatre owners, in contravention of Section 3 of the Competition Act, 2002. It imposed penalty on KFEF and its two office bearers (Sept. 2015).
CASE (iv)	• The Competition Commission of India (CCI) imposed a penalty of Rs. 52.24 crore on the Board of Control for Cricket in India (BCCI) for abusing its dominant position.The CCI found that the BCCI had violated Section 4(1) read with Section 4(2)(c) (abusing domination position by denial of market access)[Nov.2017]
CASE (v)	• The Competition Commission of India imposed a fine of Rs 200 crore on Maruti Suzuki India Ltd (MSIL) for its discount control policy enforced on dealers. The Commission also directed MSIL to "cease and desist" from following its discount control policy which penalized dealers and individuals (Aug 2021).
CASE (vi)	• The Competition Commission of India (CCI) imposed a penalty of Rs. 1337.76 Crore on Google under Section 27 of the Competition Act, 2002, for abusing its dominant position in multiple markets in the Android Mobile device ecosystem. The Commission also issued a cease and desist order (Oct. 2022).

Source:*https://www.livelaw.in/tags/competition-act-2002*

6. CONCLUSION

A study of provisions of the Competition Act, 2002 relating to anti-competitive agreements and abuse of dominant position and various Judgements infers that the primary aim of the Act is to regulate competition in the market, ensure free trade to all participants and enhance consumer welfare. The Competition Commission of India is consistently taking effective steps to curb cases of anti-competition and pro-monopolistic to prevent consumer exploitation. Transactions that threaten the competitive process are prohibited altogether, or permitted subject to 'remedies' like modification in agreements or access to facilities to allow other businesses to continue competing. Thus, Competition regime of India is becoming effective under regulatory measures and social awareness. In nutshell, Competition Act and Commission has helped in developing market economy in India (Patwari Sumita,2018) and in providing opportunity to consumers to make the most affordable choices.

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ARTICLE

Study of Anti-Competitive Behaviour with reference to Decided Case Laws under the Competition Act 2002

The CCI ensures that the companies at fault are penalized and discouraged from such practices in the future. By promoting competition the CCI also benefits the consumers and the CCI would continue to ensure there is no dominance of a few firms on the market by making it sure that both the small and big firms can co-exist peacefully in the economy.

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INTRODUCTION

When there are free trade and fair competition in the market, then any economy thrives to achieve its best desired results. Unfair competition practices like monopolies, cartels, etc. thwart the growth of smaller firms and businesses which are essential to the growth of an economy. The CCI protects such businesses from unfair competition and its adverse effects. The CCI also ensures that the companies at fault are penalized and discouraged from such practices in the future. By promoting competition the CCI also benefits the consumers and the CCI would continue to ensure there is no dominance of a few firms on the market by making it sure that both the small and big firms can co-exist peacefully in the economy. In this background, the article is examining the five dimensions of the Competition Act, 2002 with reference to few decided case laws on this matter.

A BRIEF ABOUT COMPETITION ACT, 2002

The main purpose of Competition Act, 2002 is that promotes or seeks to maintain market competition by regulating anti-competitive conduct by companies and the same is regulated by the Competition Act, 2002. The main objective of the Competition Act, 2002 enacted was to encourage and preserve market completion and to safeguard the interests of consumers, guarantee trade freedom for other participants in the market and also protect from anti-competitive behaviour in the market by ensuring freedom and liberty to trade in the market. The law makers in our country also acknowledges that market flaws might produce less than ideal results that are expected. In view of this, it is very important and vital for corporates to understand the risks around Competition Act.

FIVE DIMENSIONS OF THE COMPETITION ACT, 2002

The following are the five dimensions of the Competition Act 2002. We shall go through each one of them in details with reference to decided case laws on the subject so that one can have a better understanding.

Table – 1
Five dimensions of the Competition Act 2002

Section	Dimension	Brief details
Sec. 3	Anti-competitive agreements	The agreement which is to limit production and/or supply; agreement to allocate markets; bid rigging or collusive bidding are all prohibited under the Act
	Examples	i. Tie-in-arrangements, ii. Exclusive supply agreements, iii. Exclusive distribution agreements, iv. Refusals to deal, and v. Resale price maintenance, where such agreement causes or is likely to cause an appreciable adverse effect on competition in India.
Sec.4	Abuse of dominance position	Abuse of dominant position is prohibited under the Act
	Examples	i. Imposing unfair condition or price. ii. Predatory pricing. iii. Limiting production/market or technical development. iv. Certain barrier to entry. v. Applying dissimilar conditions to similar transactions. vi. Denying market access.

Sec. 6	Combinations,	Combinations, include acquisition of shares, voting rights, assets/control, mergers, amalgamations and takeovers.
	Horizontal	Horizontal Combinations are formed between the enterprises that operate in the same level of production process and there are substitute goods available for the same. Sometimes such a combination can be bad in law as it reduces the competition in the market and which leads to "high pricing power of one power" of one combination. This is bad for the consumers because they are forced to buy the goods at a higher price value.
	Vertical	Vertical combination is a non-horizontal combination, wherein the firms are in different levels of supply and distribution of a product. The formation of vertical combinations leads to a pro-competitive environment in the market which further results in process control, more market share and establishing a better supply chain.
	Conglomerate	Conglomerate Combinations involve enterprises or firms that are unrelated in their business fields and they form a merger or combination. For example: If one company is involved in the production of goods, while another company provides services for the same. Then they tend to collaborate with each other for making better profit standing in the market. However, the huge disadvantage for such a combination can lead to monopolization of this conglomerate which eventually to denial of entry for the new competitors in the market.
Sec.49	Advocacy	The Act provides for advocacy with maximum impact with least intervention.
-	Advisory	The Act also encourage the Advisory to tame anti-competitive public action.
Reference:- Competition Act, 2002		

ANTI-COMPETITIVE AGREEMENTS

Any agreement for goods or services which has an appreciable adverse effect on competition is prohibited as per the provisions of the Competition Act, 2002. Anti-competitive agreements if entered into shall be void. Section 3(1) of the Competition Act, 2002 states that no enterprise shall be entered into any agreement with respect of production, supply, distribution, storage, acquisition or control of goods/provision of services, which causes or is likely to cause appreciable adverse effect on competition within India. From the above, we can conclude that first up all there should be an agreement and secondly such agreement must cause or is likely to cause an appreciable adverse effect on competition in a relevant market in India. The relevant market may be a geographical or the market of a product.

TYPES OF ANTI-COMPETITIVE AGREEMENTS

There are two kinds of anti-competitive agreements viz. horizontal anticompetitive agreements [section 3(3)] and vertical anticompetitive agreements [Section 3(4)].

HORIZONTAL ANTI-COMPETITIVE AGREEMENTS

Horizontal anti-competitive agreements are agreements between parties in the same line of production. Example of horizontal anti-competitive agreements could be- an agreement between manufactures, agreement between distributors and horizontal agreements are presumed to have appreciable adverse effect on competition if they (a) directly or indirectly determine purchase or sale prices such as price fixing agreements [section 3(3)(b)]; (b) limit or control output, technical development, services etc.[section 3(3)(b); (c) market allocation and share or divide markets[section 3(3)(c)] and (d) indulge in bid-rigging or collusive bidding[section 3(30(d)]. These type of agreements i.e. fixing the prices, limiting or controlling production, allocating markets or customers and rig bids/ collusive bidding are presumed to have appreciable adverse effect on competition (AAEC). Illustrative cases of these agreements could be cartels-engaged in same or similar products for example cement manufacturer, bid rigging. Collusive bidding – examples cold be LPG cylinders, Phosphorus explosive supplier etc., market allocation and limiting of production and supplies.

VERTICAL ANTI-COMPETITIVE AGREEMENTS

Vertical anti-competitive agreements are agreements between enterprises at different stages or levels of the production chain and such agreements include; (a) tie-ins; (b) exclusive supply; (c) exclusive distribution; (d) refusal to deal and (e) resale price maintenance. These types of vertical anticompetitive agreements are less sensitive than the Horizontal Agreement.

DECIDED CASE LAW ON RESALE PRICE MAINTENANCE

In one of the decided case by the CCI, Maruti Suzuki India Limited (Maruti) was levied a penalty ₹ 200 crore for restricting discounts by dealers (the readers could go through the complete order of this case in detail at the web site of mondaq under caption CCI Imposes fine of ₹ 200 crore on Maruti for Anti-Competitive

Policies. The CCI passed a final order against Maruti for indulging in anti-competitive conduct of Resale Price Maintenance in the passenger vehicle segment by way of implementing Discount Control Policy vis-à-vis dealers, and accordingly, imposed a penalty of ₹ 200 crore (rupees two hundred crore only) upon Maruti, besides passing a cease-and-desist order. The CCI found that Maruti not only imposed the Discount Control Policy on its dealers, but also monitored and enforced the same by monitoring dealers through master service agreements (MSAs), imposing penalties on them and threatening strict action like stoppage of supply, collecting and recovering penalty, and utilisation of the same. Hence, such conduct of Maruti which resulted in appreciable adverse effect on competition within India, was found by the CCI to be in contravention of the provisions of Section 3(4)(e) read with Section 3(1) of the Competition Act, 2002. Maruti went in appeal with National Company Appellate Law Tribunal after depositing 10% of the penalty amount before making the appeal petition and the National Company Law Appellate Tribunal would be hearing this case.

ABUSE OF DOMINANCE POSITION

Dominant position refers to a position of strength enjoyed by an enterprise or group in the relevant market in India, which enables to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour. The Competition Act, 2002 does not prohibit dominant position but it only frowns upon the 'abuse' thereof.

Types of abuse could be exploitative abuses or exclusionary abuses. The examples of exploitative abuses could be by the conduct which results in exploitation of others in the value chain and the examples could be imposition of unfair or discriminatory conditions and imposition of unfair or discriminatory prices – for example predatory pricing. The examples of exclusionary Abuses could be the conduct which interferes with the competitive process, for example making conclusion of contract subject to acceptance of supplementary obligations, denial of market access, limiting production of goods, provision of services; scientific development and using dominance in one relevant market to enter into or protect other relevant market – example DLF India, Coal India who are the dominant player in the market.

DECIDED CASE LAW ON EXPLOITATIVE ABUSES

In the case of, *Pankaj Agarwal v. DLF, Case No. 13 & 21 of 2010 and case No. 55 of 2012*, where, for a situation relating to the distribution of apartment, the agreements drafted singularly by Delhi Land and Finance (DLF), empowered them to be discretionary about the designation of super-area, secretive about data pertinent to the buyer, like the number of the apartment on the floor, and to drop portions and relinquish booking sums. The CCI held the agreements to be exploitative against

The main purpose of Competition Act, 2002 is that promotes or seeks to maintain market competition by regulating anti-competitive conduct by companies and the same is regulated by the Competition Act, 2002.

purchasers, and consequently, it was one-sided and abusive. The Delhi Land and Finance (DLF) was fined Rs. 6300 million (USD 140 million) at the rate of the average turnover for the last preceding three financial years for abusing their dominant position in industry against buyers. DLF went in appeal to the Competition Appellate Tribunal (COMPAT) and in the *appeal M/s DLF Limited v/s Competition Commission of India* and Others, the Competition Appellate Tribunal upheld a penalty of INR 6,300 million. (reference: - the website of Mint on the topic seven large penalties imposed by CCI - https://www.livemint.com/Politics/ 28q9vf3FP7bU8JaIPpX0pL/Seven-large-penalties-imposed-by-CCI.html)

DECIDED CASE LAW ON EXCLUSIONARY ABUSES

Exclusionary activities are those in which the dominant body utilizes its strength to confine entry of competition into the relevant market. The relevant case law on this matter is that of *Shri Shamsher Kataria v/s Honda Siel Cars India Limited & Others*, where there already existed agreement between the dominant entities and the Overseas Suppliers of unique vehicle parts which kept the Overseas Suppliers from providing parts to free repairers, such understandings were held to be anti-competitive as they limited passage of new firms. The agreements entered were in violation of section 3(4) [anticompetitive vertical agreements] and section 4 (abuse of dominant position) of Competition Act, 2002. The agreement contained the restrictive classes such as restricting free availability of auto spare parts in the market and imposing unfair prices, restricting from directly selling spare parts to the independent repairers and car users in the market. Further to this, original equipment manufacturers (OEM) were not providing technological information, diagnostic tools and software programmes to independent repairers that are required to maintain the service and repair advanced technology advanced automobiles. The above led to imposition of unfair and discriminatory conditions in purchase of spare parts for independent repairers and amounts to market denials. Each OEM is the only source of spare parts and there is nil possibility of interchangeability of spare parts and therefore each OEM is in a dominant position. The authorized dealers are required to source spare parts directly from OEM or their approved vendors only. Agreements between OEM and authorized dealers do not allow them to deal with in competing brands of cars or sell spare parts and diagnostic tools to independent repairers.

The CCI held that all the OEM restrict the availability in the diagnostic tools/repairs manuals etc., which is required to effectively repair models of their respective brand of automobiles to independent service providers and multiple brand retailers. Such practices amount to denial of market access by OEM under section 4(2)(c) of the Competition Act, 2002. The CCI also found the OEM guilty of leveraging under section 4(2)(e) by using dominance in market of sale of spare parts for protecting the relevant market of after sale service and repairing.

The CCI imposed a penalty of 2% of the total turnover in India was imposed on the OEMs (Rs. 25.54 Billion approx.) and ordered them to submit a compliance report within 180 days. The OEM gave been directed to cease and desist from anticompetitive conducts, allow OESs to sell their spare parts in the open market and put it in place an effective system to ensure availability of aftermarket spare parts, diagnostic tools and other relevant information in the public domain.

Appeal was made by the OEM and the matter went to the High Court of Delhi who confirmed the penalty levied by the CCI stating that while imposing a penalty the principal followed by CCI were in accordance with the principle laid down by the Supreme Court in the case *of Excel Crop and Hindustan Steel Ltd v State of Orissa* and hence valid and acceptable.

COMBINATIONS

Section 5 of the Competition Act, 2002 is the principal section that defines what a combination is. It gives a situation in which an ordinary transaction, if falling within any of the subsections, becomes and qualifies as a combination. Accordingly, it includes two categories of transactions which are (a) acquisition of one or more enterprises that is done by one or more persons or a group; or (2) a merger or amalgamation of enterprises. The section further declares that such acquisition or merger or amalgamation will become a combination if any of the conditions are met as specified in the Competition Act, 2002 under its section 5(a) or 5(b) or 5(c).

Section 6 regulates these combinations and section 6(1) prohibits the formation of combinations that are likely to have an appreciable adverse effect on competition (AAEC) in the relevant market in India and further declares that such combinations should be deemed void. Further, section 6(2) declares that the parties entering into a combination will have to inform the CCI by giving a notice. This notice has to be given in a form, with fees, which is governed by the Combination Regulations mentioned above. Additionally, this notice has to be given to the CCI for clearance within 14 days of either approval by the Board of directors, in case of mergers or amalgamation or execution of any agreement or document which has the effect of transferring control, shares, voting rights, or assets that may make it eligible under Section 5(c) or Sections 5(a) & (b) respectively.

The Competition Act 2002 also has a standstill clause under section 6(2) (A). It says that no combination will take effect 210 days from the date of giving notice to the CCI until the CCI passes an order on the Combination. This clause ensures that the parties in consideration don't stop competing in the market because if the CCI finds the combination anti-competitive then the damage their cooperation would have done in the meantime can't be reversed.

Finally, this section exempts certain transactions from the purview of Section 6 under Section 6(4). Accordingly, any acquisition of control, acquired by way of a share subscription or a financing facility by a public financial institution or a foreign institutional investor or a bank or a venture capital fund that is done pursuant to a loan or an investment agreement is exempt. For these categories of investment, section 6(5) mandates that they submit the details of such investment with the CCI within 7 days from the date of such acquisition. Again, these have to be submitted in a form and fees that are given under the Combination Regulations.

The Commission is authorized to impose fine which may extend to 1 per cent of the total turnover or the assets of the combination, whichever is higher, for failure to notify, or in case the parties implement the combination without waiting for the statutory period of 210 days. (reference – website of CCI – *case number 03/2011 Shri Shamsher Kataria vs 14 other car companies* - https:// www. cci. gov. in/antitrust/orders/details/750/0)

DECIDED CASE LAW ON COMBINATION

As per the provision of section 43A, the CCI has a power to impose penalty for non-furnishing of information on combinations. The decided case law on his matter is relating to the penalty of 2 crore (approx. US$ 0.3 million) imposed by the CCI on SCM Solifert Limited and Deepak Fertilizers and Petrochemicals Limited (DEPCL). On July 3, 2013, SCM along with DFPCL had purchased 24.46% of the share capital of Mangalore Chemicals and Fertilizers Limited (MCFL) on the BSELtd. being the first acquisition. This was followed by a press release on the same day by Deepak Fertilizers and Petrochemicals Limited, which was filed with the stock exchanges, in compliance with the requirements of the Listing Agreement.

Thereafter on April 23, 2014, SCM and DFPCL made a purchase in the open market for 0.8% of the shares of MCFL ('Second Acquisition') and subsequently, an open offer was made for acquiring up to 26% of the shares of MCFL in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Public Announcement'). SCM filed a notice disclosing details of the First Acquisition and notifying the Second Acquisition within 30 days of the Public Announcement. CCI passed an order approving the proposed combination.

However, because SCI and DFPL did not seek approval prior to consummating the First Acquisition, CCI commenced proceedings for filing the belated notice. In

this regard, SCM claimed that the First Acquisition was exempt, under Schedule 1 of the CCI (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2011 ('Combination Regulations'). SCM argued that the First Acquisition was as an acquisition of shares less than 25% in MCFL solely as an investment. On this basis, SCM assumed that the First Acquisition would qualify for the Item 1 exemption available under Schedule 1 of Combination Regulations. In any event, SCM submitted that a notice was filed within the 30 days of the Public Announcement made pursuant to the Second Acquisition. Further, it was submitted that with regard to the Second Acquisition, the shares were credited to an escrow account, created specifically to avoid consummation prior to CCI approval.

The CCI dismissed SCM's submissions after noting that the First Acquisition was notifiable. This was because the acquisition of shares was not made solely as an investment. By its own admission, SCM in the Press Release and the Public Announcement had claimed that the investment was 'very strategic'. Further, the CCI noted that MCFL was not very profitable, which further went to show that the First Acquisition could not be considered to be an investment by a prudent investor.

Arising out of the above, the CCI imposed a penalty of rupees two crore as discussed earlier. The concerned companies filed an appeal with the Competition Appellate Tribunal (COMPAT) and the Tribunal upheld the decision of the CCI's order of levying the penalty of ₹ 2.00 crore. Again, another appeal was prepared by the parties and the matter went to the Honourable Supreme Court of India. On April 17, 2018, in the matter of SCM *Solifert Limited v. CCI,* SC upheld COMPAT's order which affirmed CCI's decision imposing a penalty of ₹ 2 crore. The Honourable Supreme Court while agreeing with CCI's rationale held that SCM had not complied with section 6(2) of the Competition Act 2002 and there was a failure to file notify for the First Acquisition. In relation to the second acquisition, the Honourable Supreme Court held that SCM ought to have notified the transaction prior to the acquisition and rejected SCM's claim that it was enough to hold the shares in an escrow account, which could not be accessed (reference – website of AZB & partners – Advocates and Solicitors on SC upholds decision to impose penalty on SCM Solifert Limited and Deepak Fertilizers and Petrochemicals Limited - https://www.azbpartners.com/bank/sc-upholds-decision-to-impose-penalty-on-scm-solifert-limited-and-deepak-fertilizers-and-petrochemicals-limited/)

ADVOCACY BY THE CCI

The term advocacy includes all activities of a competition agency that are intended to promote competition apart from those that involve enforcement of the competition law. The CCI, in order to reach out to each and every stakeholder in an effective manner, brought out the mandated section 49 of the Competition Act for the advocacy of various facets of Competition Law and role and functions of the CCI. Advocacy is imperative as competition law is a relatively newer legislation in our country requiring creation of awareness among stakeholders such as Industry, Academia, Central and State Governments, Public Sector Undertakings (PSUs), Trade Associations etc., before they fall on wrong side of competition law.

As per the provisions of the section 49 of the Competition Act, 2002, the Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the CCI for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the CCI shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit. In order to bring awareness to all stake holders a dedicated division of the CCI, under the nomenclature of Advocacy Division undertakes a wide array of activities such as seminars, conferences, workshops, interactive sessions, moot court competitions, internships, road shows, competitions assessments of legislations, essay competitions, publications of comprehensive advocacy material on various aspects of competition law etc.by adopting innovative approaches so that changes occurring in the market due to various factors- digitalisation, innovative disruptions etc.- are adequately addressed to the needs of the target stakeholders.

ADVISORY SERVICES BY THE CCI

As per the provision of section 21(1) of the Competition Act, 2002, where in the where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of the Competition Act, 2002, then such statutory authority may make a reference in respect of such issue to the CCI. Upon receipt of a reference as under sub-section (1) of section 21 of the Competition Act, 2002, the CCI shall, after hearing the parties to the proceedings, give its opinion within sixty days of receipt of such reference to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit.

The role of the CCI under the provision of section 21 is that of advisory in nature. The concerned authorities may act on the opinion given by the CCIdepending upon the case to case basis.

SOME OF THE IMPORTANT ORDERS PASSED BY THE CCI

The following are some of the orders passed by the CCI on account of abuse of the dominant position, practicing unfair trade practices, denial of market access, price fixing cartelisation etc. Against these orders, the affected parties had gone on appeal to the Competition Appellate Tribunal and thereafter the to the Supreme Court etc. The following orders are only the initial orders passed by the CCI for the information of the readers and the outcome of the appeal proceedings are not discussed here.

Table – 2				
Some of the important orders passed by the CCI				
S. No.	**Year**	**Case details**	**Gist of the matter**	**Penalty levied by CCI - Rs.**
1	2011	DLF	For abusing its dominant position.	630 crore
2	2015	Hyundai car manufacturer	Violation of anti-trust laws in the supply of genuine spare parts and diagnostic tools.	420 crore
3	2013	Coal India and 3 other subsidiaries i.e. Mahanadi Coalfields Ltd, Western Coalfields Ltd & South Eastern Coalfields Ltd	For misuse of their monopoly to supply poor quality coal and fixing prices.	1,773 crore
4	2014	Maruthi Suzuki India Ltd and other 13 car makers	Misuse of dominant position.	2,554 crore
5	2015	Jet Airways (India) Ltd, IndiGo and SpiceJet Ltd	Alleged cartelization in fixing fuel surcharge on air cargo.	257.91 crore
6	2016	11 cement companies i.e. ACC, Ambuja Cement, Binani Cement, Century Cement, Shree Cements, India Cements, JK Cements, Lafarge, Ramco, Ultra Tech and Jaiprakash Associates. companies as well as their trade association	Concept of cartelization – price fixing prices of cement.	6,715 crore
7	2016	Lupin	Anti-competitive practices – refusal to supply etc.	72.96 crore
Reference:- website of Mint on the topic seven large penalties impsed by CCI and the relevant site is https://www.livemint.com/Politics/ 28q9vf3FP7bU8JaIPpX0pL/ Seven-large-penalties-imposed-by-CCI.html				
8	2015	Google Inc. & Ors vs. Competition Commission of India	Abuse of its dominant position in Android mobile device markets.	1,337 crore
Reference:- website of Competition Commission of India stating CCI imposes a monetary penalty of Rs 1337.76 crore on Google for anticompetitive practices in relation to Androi d Mobile Devices - https://pib.gov.in/ PressReleaseIframe Page.aspx? PRID= 1869748				

CONCLUSION

The companies could formulate a competition compliance programme for ensuring the adherence of the applicable provisions of the Competition Act 2002 and in this connection, the Government of India had brought out a booklet titled as "Compliance Manual for Enterprises" and the same is available at the website at https://www.cci.gov.in/images/publications_compliance_manual/en/compliance-manual1652179683.pdf. By implementing the competition compliance programme, the companies could reduce the risk of contraventions and its consequences; CCP are generally inexpensive vis-à-vis penalties which can be imposed; helps in early detection of contraventions; early detection reduces quantum of penalties as well as compensation to third parties; ensure compliance with the orders passed by the CCI and action can be taken against delinquent employees who have contravened or have been party to contravention.

The Company Secretaries in the companies could be the compliance officer and the Company Secretary could also represent before the CCI, DG and COMPAT and the company secretary could facilitate in creating right opinion in taming the rigor of anti- -competitive law or policy for the company.

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Understanding Legalities - Mergers, Acquisitions and Combinations

With the liberalization of the Indian economy, globalization, and the need for consolidation and diversification, mergers and acquisitions (M&A) activity has seen a surge in recent years. However, the execution of mergers, acquisitions, and combinations entails intricate legalities that must be comprehended to ensure a successful transaction.

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INTRODUCTION

Mergers, acquisitions, and combinations are increasingly utilized by businesses in India as a means of achieving economies of scale and growth. However, the implementation of these strategies is subject to a complex legal framework that includes both competition and corporate law. In this article, I aim to provide an overview of the legal aspects of mergers, acquisitions, and combinations in the Indian context, including the regulatory framework, the key legal requirements, procedure to be followed and the consequences of non-compliance.

With the liberalization of the Indian economy, globalization, and the need for consolidation and diversification, mergers and acquisitions (M&A) activity has seen a surge in recent years. However, the execution of mergers, acquisitions, and combinations entails intricate legalities that must be comprehended to ensure a successful transaction.

REGULATORY FRAMEWORK

The legal framework governing mergers, acquisitions, and combinations in India is primarily governed by the Companies Act, 2013, along with the rules made thereunder (hereinafter the "Companies Act"). There are two types of combinations: mergers and amalgamations, and demergers. The former involves a combination of two or more companies into one, while the latter involves the transfer of one or more undertakings of a company to another or multiple companies.

The process for mergers, acquisitions, and combinations is primarily set out in the Companies Act. It requires obtaining approval from various parties, including the board of directors, shareholders, and regulatory authorities like the National Company Law Tribunal (NCLT), the Securities and Exchange Board of India (SEBI), and the Competition Commission of India (CCI). In addition, the Companies Act outlines the rights of shareholders, creditors, and employees of the companies involved in the combination. Overall, the legal framework in India for mergers, acquisitions, and combinations is well-established and regulates these transactions thoroughly.

A. Companies Act

The Companies Act is the primary legislation in India that governs the incorporation, management, and operation of companies. It provides a legal framework for mergers, acquisitions, and combinations in India, which are often used as a strategy for corporate growth or restructuring.

Under the Companies Act, a merger is defined as the amalgamation of two or more companies into one new or existing company, while an acquisition is defined as the purchase of one company by another company. A combination is a term that includes both mergers and acquisitions.

The Companies Act sets out the procedures for mergers and acquisitions, including the approval of shareholders and regulatory authorities, the valuation of shares, and the treatment of minority shareholders.

Approval of Shareholders: Before a merger or acquisition can take place, the proposal must be approved by the shareholders of each company involved. The Companies Act requires that at least 75% of the shareholders present and voting must approve the proposal.

Approval of Regulatory Authorities: The Act also requires approval from various regulatory authorities, including the National Company Law Tribunal (NCLT), the Competition Commission of India (CCI), and the Securities and Exchange Board of India (SEBI). The NCLT and CCI evaluate the impact of the proposed merger or acquisition on competition and ensure that the rights of minority shareholders are protected.

Valuation of Shares: The Companies Act also sets out rules for the valuation of shares, which is necessary for determining the share exchange ratio between the

companies involved in the merger or acquisition. The valuation must be done by an independent valuer appointed by the company's board of directors.

Treatment of Minority Shareholders: The Companies Act also provides protection for minority shareholders. The Companies Act requires that the shares of minority shareholders be treated on par with the shares of the majority shareholders. Minority shareholders have the right to object to the merger or acquisition and can ask for the fair value of their shares to be determined by an independent valuer.

In summary, the Companies Act provides a comprehensive legal framework for mergers, acquisitions, and combinations in India, which includes procedures for shareholder and regulatory approval, valuation of shares, and protection of minority shareholders' rights.

B. Competition Act, 2002

The Competition Act, 2002 (hereinafter the "Competition Act") is an important legislation in India that regulates competition in the market by preventing anti-competitive agreements, abuse of dominance, and mergers and acquisitions that may have an adverse impact on competition in the market. Following are some of the important and noteworthy functions of the Competition Act:

Prohibition of Anti-Competitive Agreements: The Competition Act prohibits agreements that have an appreciable adverse effect on competition in the market. Such agreements may include agreements between competitors to fix prices, limit production, or share markets, among others. The Competition Act also prohibits vertical agreements between enterprises that may cause an adverse effect on competition in the relevant market.

Abuse of Dominant Position: The Competition Act prohibits an enterprise from abusing its dominant position in the market. This may include actions such as imposing unfair conditions on customers or suppliers, refusing to deal with certain customers or suppliers, or charging excessive prices, among others.

Regulation of Mergers and Acquisitions: The Competition Act regulates mergers, acquisitions, and combinations that may have an adverse impact on competition in the market. The CCI is responsible for evaluating whether a proposed merger or acquisition may have an adverse impact on competition in the market. The CCI may approve the merger or acquisition subject to certain conditions, or it may prohibit the merger or acquisition if it determines that it would have an appreciable adverse effect on competition in the market.

The Competition Act aims to promote and sustain competition in the market, protect consumer interests, and ensure freedom of trade in India. The Competition Act also provides for penalties and other consequences for non-compliance with its provisions.

C. SEBI Regulations

The Securities and Exchange Board of India (SEBI) is the primary regulatory body for the securities market in India. Its objective is to protect the interests of investors in securities and to promote the development of the securities market in India. One of the ways SEBI achieves this is by regulating the process of M&A in the Indian securities market.

SEBI regulations require companies to disclose information about M&A transactions to the stock exchanges and to their shareholders. This is to ensure that all relevant information is made available to investors so that they can make informed decisions about their investments. The information that must be disclosed includes the terms and conditions of the proposed merger or acquisition, the valuation of the companies involved, and any potential risks or benefits associated with the transaction.

SEBI also specifies the procedures for obtaining approval from the stock exchanges for mergers and acquisitions. The companies involved in the M&A transaction must submit a draft scheme of the merger or acquisition to the stock exchanges for approval. The scheme must include details about the companies involved, the share exchange ratio, and the benefits and risks of the transaction. The stock exchanges will then review the scheme and provide their approval if they find that it is in compliance with SEBI regulations.

In addition to the above, SEBI also requires companies to obtain approval from their shareholders for M&A transactions. The companies must hold a general meeting of their shareholders to obtain approval for the transaction. Shareholders must be provided with all relevant information about the transaction and must be given the opportunity to ask questions and express their views.

Overall, SEBI regulations aim to ensure that M&A transactions in the Indian securities market are conducted in a fair and transparent manner, with all relevant information made available to investors and with the approval of the stock exchanges and shareholders.

TYPES OF COMBINATIONS

There are various types of combinations, which include horizontal mergers, vertical mergers, and conglomerate mergers.

A. **A horizontal merger :** A horizontal merger is a merger between two or more companies that operate in the same industry and are direct competitors. The main goal of such a merger is to combine the resources and capabilities of the merging companies to create a larger entity that can achieve greater economies of scale and scope, increase market share, and gain a competitive advantage over its rivals.

   By merging, the companies hope to achieve a larger customer base and a stronger presence in the market,

which can lead to higher profits and greater market power. However, such mergers can also reduce competition and increase the risk of monopolistic practices, such as price fixing or other anti-competitive behaviors that harm consumers.

Regulatory bodies such as antitrust authorities may scrutinize such mergers to ensure that they do not result in anti-competitive practices that harm consumers. In some cases, the authorities may require the merging companies to divest some of their assets or take other measures to mitigate the risk of anti-competitive practices.

B. Vertical Merger: A vertical merger occurs when two or more companies that operate at different stages of the production process combine. This means that a company that is involved in producing a particular good or service merges with another company that is involved in providing the raw materials or other inputs necessary to produce that good or service.

For example, a car manufacturer might merge with a company that produces the steel that is used to make the cars. Or a company that produces pharmaceuticals might merge with a company that manufactures the chemicals that are used in the production of those pharmaceuticals.

Vertical mergers are often done with the aim of increasing efficiency and reducing costs. By bringing together different stages of the production process under one roof, companies can potentially reduce transaction costs, improve communication, and streamline operations.

However, there can also be potential downsides to vertical mergers. For example, they can reduce competition in the industry, potentially leading to higher prices for consumers. They can also create conflicts of interest between the different stages of the production process, such as between the manufacturer and the supplier of raw materials, which could potentially harm other businesses in the supply chain.

C. Conglomerate mergers: Conglomerate mergers are a type of merger that involves the combination of two or more companies that operate in different industries or markets. The aim of such a merger is to create a larger company that has a more diversified business portfolio, allowing it to spread its risks across multiple industries and reduce its dependence on any one market or product.

For example, suppose a company that produces consumer electronics merges with a company that operates in the healthcare industry. In that case, the resulting conglomerate would have a more diverse range of products and services, making it less vulnerable to economic or market fluctuations in any one industry.

With the liberalization of the Indian economy, globalization, and the need for consolidation and diversification, mergers and acquisitions (M&A) activity has seen a surge in recent years. However, the execution of mergers, acquisitions, and combinations entails intricate legalities that must be comprehended to ensure a successful transaction.

Conglomerate mergers can take two forms: pure conglomerate mergers and mixed conglomerate mergers. In a pure conglomerate merger, the companies involved have no common business interests, while in a mixed conglomerate merger, the companies involved have some overlapping business interests.

Pure conglomerate mergers are less common than mixed conglomerate mergers because they involve companies from completely different industries that have no common interests. However, both types of mergers have the potential to create a more resilient and diversified company.

PROCEDURE FOR MERGERS, ACQUISITIONS, AND COMBINATIONS

Mergers, acquisitions, and combinations are complex business transactions that require careful planning, execution, and evaluation. Here's a general overview of the procedures involved:

1. **Pre-transaction planning:** Before the transaction, both companies should conduct a thorough analysis of their own strengths and weaknesses, as well as those of their potential partner. They should also identify areas of overlap and determine the strategic fit of the transaction.

2. **Valuation:** Both companies should determine the fair value of their assets and liabilities to establish a fair exchange ratio or price. This process typically involves hiring a third-party appraiser to provide an objective valuation.

3. **Due diligence:** The acquiring company should conduct a comprehensive review of the target company's financial statements, contracts, legal documents, and operational procedures to identify any potential risks or liabilities.

4. **Negotiation:** Once the due diligence process is complete, both companies should enter into negotiations to establish the terms of the transaction, including the exchange ratio or price, the structure of the transaction, and any contingencies or conditions.

5. **Documentation:** Once the terms have been agreed upon, both companies should prepare and execute legal documents, such as a merger agreement, acquisition agreement, or purchase agreement.

6. **Regulatory approvals:** Depending on the nature of the transaction and the industries involved, both companies may need to obtain regulatory approvals from board of directors, shareholders and various other stakeholders including regulatory agencies and government agencies.

7. **Integration:** After the transaction is complete, the companies should begin the process of integrating their operations, systems, and cultures to realize the benefits of the transaction.

8. **Post-transaction evaluation:** Finally, both companies should evaluate the success of the transaction and identify any areas for improvement or further integration. This evaluation process should continue over time to ensure the ongoing success of the combined entity.

Overall, the procedures involved in mergers, acquisitions, and combinations can be complex and time-consuming, and it's important to have experienced professionals to guide the process.

CONSEQUENCES OF NON-COMPLIANCE

In India, mergers, acquisitions, and combinations are governed by the Companies Act and Competition Act. Non-compliance with the legal requirements for such transactions can lead to various consequences, including:

1. **Imposition of penalties:** Non-compliance with the legal requirements can result in penalties being imposed by the competition authorities. The CCI has the power to impose a penalty of up to 1% of the total turnover or assets of the company, whichever is higher, for non-compliance with the provisions of the Competition Act.

2. **Rejection of the merger/acquisition:** Non-compliance with the legal requirements may lead to the rejection of the merger or acquisition by the regulatory authorities. For instance, the CCI can reject a merger or acquisition if it finds that the transaction is likely to have an adverse effect on competition in the relevant market.

3. **Legal action:** Non-compliance with the legal requirements can also result in legal action being taken against the companies involved. The Companies Act provides for legal action against the company and its officers for non-compliance with the provisions of the Companies Act.

4. **Damage to reputation:** Non-compliance with the legal requirements can lead to damage to the reputation of the companies involved. This can have a negative impact on their brand image and customer loyalty.

5. **Delay in the transaction:** Non-compliance with the legal requirements can result in a delay in the completion of the transaction. This can lead to increased costs and uncertainty for the companies involved.

In summary, non-compliance with the legal requirements for mergers, acquisitions, and combinations in India can have significant consequences for the companies involved. It is important for companies to comply with the provisions of the Companies Act, Competition Act, 2002 and other statutes to ensure a smooth and successful transaction.

CONCLUSION

In conclusion, mergers and acquisitions are a common strategy used by companies to achieve growth and expand their market share. However, they can also be complex and challenging endeavours that require careful planning, execution, and integration. Success in mergers and acquisitions relies heavily on various factors such as strategic fit, cultural alignment, communication, and leadership. As such, companies should carefully evaluate the potential benefits and risks before embarking on any merger or acquisition. While they can offer significant opportunities for growth and competitive advantage, they can also result in significant costs and challenges if not managed effectively. Ultimately, the success of mergers and acquisitions will depend on the ability of the companies involved to work together towards a common goal and create value for their stakeholders.

Further, mergers, acquisitions, and combinations are subject to a complex legal framework in India. Therefore, it is essential for parties involved in such transactions to seek legal advice and ensure compliance with the relevant laws and regulations. By doing so, the parties can avoid the consequences of non-compliance and ensure a smooth and successful transaction.

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ARTICLE

The Role of Competition Commission of India in tackling Anti-Competitive Practices: An Evaluation of Commission's Effectiveness

The Competition Commission of India (CCI) is an autonomous regulator established to ensure healthy competition in the Indian market and prevent anti-competitive practices. This paper evaluates the effectiveness of CCI in addressing anti-competitive practices and promoting fair competition in India. The study assesses the prevalence of anti-competitive practices in India and the role of CCI in regulating them. The findings indicate that CCI has successfully identified and penalized instances of anti-competitive practices in various sectors.

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INTRODUCTION

The CCI is an independent regulator established in 2003 to ensure fair competition in the Indian market. Its principal responsibility is to prevent anti-competitive practises including the fixing of prices, rigging of bids, and misuse of dominant position, which can hurt consumers and hamper innovation. Over the years, the CCI has investigated and penalized several companies for such practices.

ANTI-COMPETITIVE PRACTICES IN INDIA

Anti-competitive practices in India have been a cause of concern for a long time. The Indian market is characterized by a large number of small firms, which are often at a disadvantage compared to larger, dominant firms. Some of the most common anti-competitive practices in India include:

Cartels: Cartels are groups of businesses that collude to fix prices, limit production, and share markets. In India, cartels are prevalent in industries such as cement, sugar, and steel.

Abuse of dominant position: Dominant firms can abuse their market power to limit competition. For example, a dominant firm can charge unreasonable prices, impose unfair conditions, or engage in predatory pricing.

Bid rigging: Bid rigging is a form of collusion in which bidders agree to coordinate their bids to manipulate the outcome of a tender. This practice is common in government contracts and public procurement.

ROLE OF CCI

The CCI was formed to regulate competition in the Indian market and prevent anti-competitive practices. Its functions include:

Investigating and penalizing anti-competitive practices: The CCI has the authority to investigate and penalise companies that engage in unlawful competition. It can impose fines, order the breakup of cartels, and require companies to change their business practices.

Promoting competition: The CCI promotes competition by encouraging new entrants, preventing abuse of dominance, and removing barriers to entry.

Advising the government: The CCI advises the government on competition-related issues and makes recommendations for policy changes.

REVIEW OF LITERATURE

Kapoor, S., & Mehra, S. (2014) The authors find that the CCI has been effective in regulating anti-competitive practices in the Indian pharmaceutical industry. Specifically, the CCI has been successful in identifying and penalizing instances of misuse of dominating position, price fixing, and collusion. The article notes that the CCI's success can be attributed to its robust legal framework, well-defined procedures, and strong enforcement mechanisms.

However, the authors also identify some limitations in the CCI's effectiveness. For instance, the CCI's limited resources and the complex nature of anti-competitive

practices in the pharmaceutical industry pose challenges to the CCI's effectiveness. Additionally, the study highlights the need for greater awareness among stakeholders about the CCI's role and the benefits of competition.

Mishra, A. K., & Rao, G. (2015) The authors find that anti-competitive practices are prevalent in the Indian telecom industry, with the leading operators engaging in practices such as predatory pricing, cartelization, and abuse of dominance. The study notes that these practices have negative effects on consumers, including higher prices, reduced choice, and poor quality of service.

The authors argue that the Competition Commission of India (CCI) needs to take a more proactive role in regulating anti-competitive behaviour in the Indian telecom industry. Specifically, the authors suggest that the CCI should increase its monitoring and enforcement activities, as well as collaborate with other regulators to address issues of regulatory overlap.

Chakraborty, S., & Sarkar, S. (2016) The authors find that the CCI has been effective in regulating anti-competitive practices in the Indian cement industry. They point out that the CCI has investigated and penalised many cement businesses for pricing manipulation, market sharing, and bidding frauds. The study also highlights the role of the CCI in promoting competition in the cement industry by encouraging new entrants and promoting transparency in the industry.

The authors believe that the CCI has played a significant role in increasing competition in the Indian cement business, but they also point out that there is potential for improvement. They recommend that the CCI should increase its monitoring and enforcement activities, and also work closely with other regulatory bodies to address issues of regulatory overlap.

Das, S., & Choudhury, N. (2020) The study provides an overview of the e-commerce market in India, identifies various anti-competitive practices prevalent in the market, and examines the role of CCI in regulating such practices. The authors analyse the cases where CCI has intervened in the e-commerce sector and evaluate the effectiveness of its interventions in ensuring fair competition. The study highlights that although CCI has played a proactive role in regulating anti-competitive practices in the e-commerce sector, there are still certain challenges that need to be addressed. The authors suggest that CCI needs to adopt a proactive approach in identifying and addressing emerging anti-competitive practices in the e-commerce sector. The paper indicates that CCI may play a key role in promoting fair competition in the e-commerce sector, and it proposes that more investigation is required to understand the obstacles and prospects for successful regulation in this field.

OBJECTIVE OF THE STUDY

This paper aims to evaluate the effectiveness of the CCI in tackling anti-competitive practices and its role in promoting competition in India.

The purpose of the study is to evaluate the effectiveness of the CCI in tackling anti-competitive practices in the Indian market. The study aims to analyse the role of CCI in regulating anti-competitive practices, identify the challenges faced by CCI in its regulatory role, and assess the impact of CCI's interventions in ensuring fair competition in the market. The study also aims to provide insights and recommendations to improve the effectiveness of CCI's role in curbing anti-competitive practices in the Indian market.

RESEARCH METHODOLOGY

Secondary data analysis is used in this research paper to acquire a thorough knowledge of "The Role of the CCI in Tackling Anti-Competitive Practices". The secondary data was gathered from government official website and circulars.

IMPACT OF THE COMMISSION'S ENFORCEMENT ACTIONS

The Competition Act aims to increase market competition while also safeguarding consumers. The CCI examines claims of infringement of two parts of the Act (parts 3 and 4).

Section 3 of the Act addresses anti-competitive contracts, which are corporate agreements that limit competition.

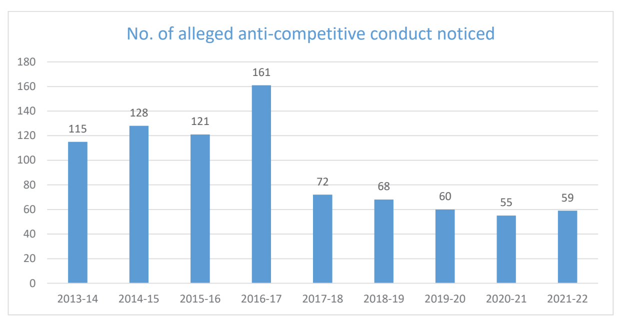
Section 4 addresses dominant position misconduct, which happens when a corporation with great market influence misuses that authority to damage competitors or customers.

The Commission can investigate alleged violations of these sections in three ways. Firstly, it can take *Suo motu* action, meaning it can initiate an investigation on its own initiative. Secondly, under Section 19(1)(a) of the Act, it may conduct an investigation after obtaining information from any individual, consumer, or member of their association or business association. Finally, it has the competence to investigate if it receives a referral from the Central Government, a State Government, or a statutory body under Section 19(1)(b) of the Act.

The Commission investigates the claimed infringement to see if there is a prima facie case, which means there is enough a proof to suggest a violation occurred. If the Commission determines that there is a prima facie case, it will instruct the Director General (DG) to begin an inquiry under Section 26(1) of the Act. If the Commission, on the contrary, acknowledges no prima facie case, it will conclude the investigation by issuing an order under Section 26(2) of the Act.

INVESTIGATIONS AND INQUIRIES ORDERED BY THE COMMISSION

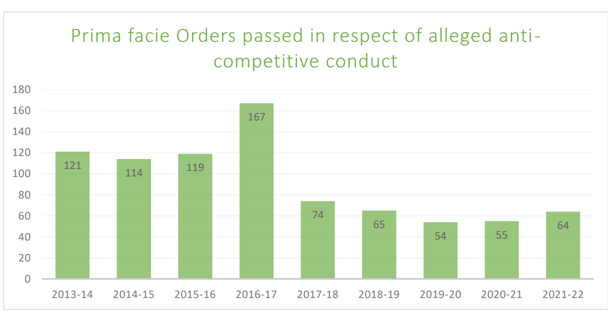
Figure 1: No. of alleged anti-competitive conduct noticed u/s 19(1)(a), 19(1)(b) and Suo-Motu.



Source: *Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from https://www.cci.gov.in/annual-report#.*

Figure 1 summarises the Commission's performance from 2013-14 to 2021-22. Under the Act, the commission took notice of 839 accusations of anti-competitive arrangements and misuse of dominant position offences. According to the above statistics, complaints of anti-competitive arrangements and misuse of dominant position rose from 2013-14 to 2016-17,

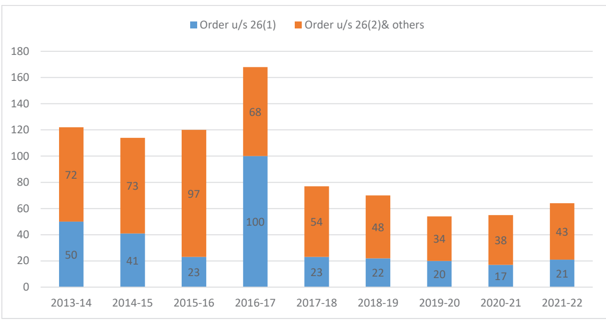
Figure 2: Total number of prima facie orders issued for alleged anti-competitive behaviour



Source: *Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from https://www.cci.gov.in/annual-report#.*

The Commission evaluates if a prima-facie case exists in the matter after reviewing the violation. If it identifies a prima facie case, it authorizes the DG to initiate an investigation under Section 26(1) of the Act. If, on the contrary, the Commission concludes that no prima-facie case exists, the matter is terminated by an order issued under Section 26(2) of the Act. Figure 3 depicts situations involving suspected breaches of Sections 3 and 4 of the Act, as well as their disposal under Sections 26(1) and 26(2) of the Act after a prima facie determination.

Figure 3: Total no of disposed of Order u/s 26(1) and 26(2) & others.



Source: *Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from https://www.cci.gov.in/annual-report#.*

There are certain cases that are pending at the end of the fiscal year and are carried forward to the next year.

Table 1: Year wise disposal of alleged violations of Sections 3 and 4 of the Act.

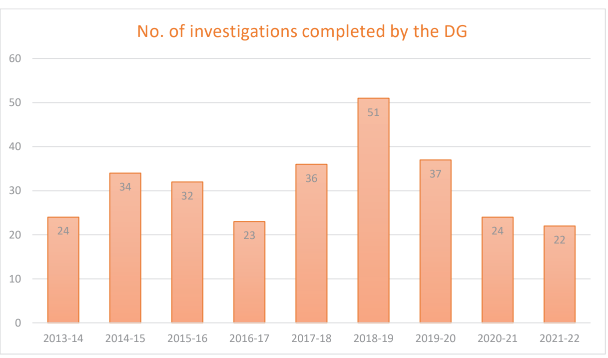
Year	Opening balance	No. of Cases Noticed	Disposed of by Order u/s		Balance at the end of year
			26(1)	26(2) & others	
2013-14	26	115	50	72	19
2014-15	19	128	41	73	33
2015-16	33	121	23	97	34
2016-17	34	161	100	68	27
2017-18	27	72	23	54	22
2018-19	22	68	22	48	20
2019-20	20	60	20	34	25
2020-21	25	55	17	38	25
2021-22	25	59	21	43	20
Total	-	**839**	**317**	**527**	

Source: *Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from https://www.cci.gov.in/annual-report#.*

INVESTIGATIONS AND INQUIRIES UNDERTAKEN BY DIRECTOR GENERAL

When approved by the Commission, the DG undertakes investigations into alleged breaches of the Act, or the regulations or laws imposed thereunder. The Commission renders final orders under various sub-sections of the Act based on the results of the inquiry and processes carried out in line with natural justice principles.

Figure 4: Investigations and enquiries undertaken by Director General

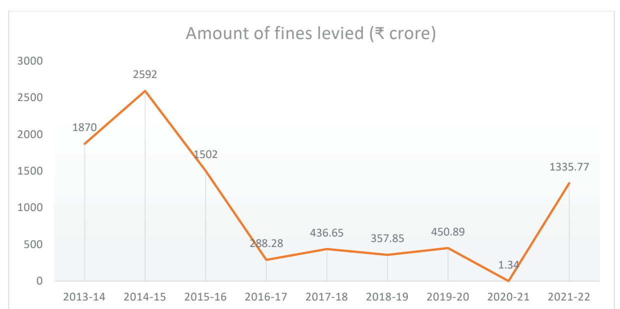


Source: *Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from https://www.cci.gov.in/annual-report#.*

MONETARY PENALTIES

- In cases where Sections 3 or 4 of the Act are violated, Section 27 of the Act empowers the CCI to levy a monetary fine in addition to other appropriate directions such as cease and desist.
- Sections 42, 43, and 43A of the Act empower the Commission to levy a monetary fine if an opposing party is unable to comply with the Commission's directions or fails to provide the necessary evidence/ notice regarding the combination.
- Sections 44 and 45 of the Act empower the CCI to levy penalties if an affected party makes misleading statements or produces fraudulent paperwork.
- Section 48 of the Act empowers the CCI to pursue those who manage and are liable for the corporation and commit breaches on its part in the case of corporate infractions. Such people incur financial fines.

Figure 5: Monetary fines Imposed by the Commission.



Source: *Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from https://www.cci.gov.in/annual-report#.*

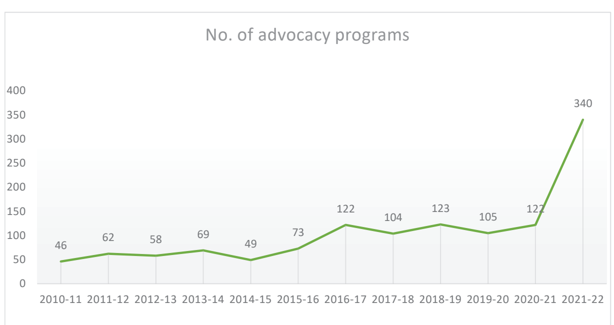
Anti-competitive practices in India have been a cause of concern for a long time. The Indian market is characterized by a large number of small firms, which are often at a disadvantage compared to larger, dominant firms.

COMPETITION ADVOCACY

The competition legislation comprises two key components: enforcement and advocacy, both of which are critical in establishing an atmosphere of competition in the country. Section 49(3) of the 2002 Competition Act mandates the Commission to take activities to promote competition advocacy, raise awareness, and provide competition training. The Commission works with a wide range of stakeholders to carry out its mandate, including the courts, businesses educational institutions, central government, and state governments, federal and PSUs, professional organisations, trade groups, and training centres.

Competition promotion is a strategy for reaching out to stakeholders to influence their economic behaviour, get endorsement of competitive economic values, and educate them on the benefits of competition law. The statutory requirement for competition awareness stresses the fact that prosecution alone cannot accomplish all the goals of competition rules. As a result, both enforcement and advocacy are being used in combination to address both visible and hidden market inefficiencies and anomalies in the economy.

Figure 6: A overview of the Commission's many campaigning during the previous twelve years



Source: *Competition Commission of India. (2010-11 to 2021-22) Annual report [PDF file]. Retrieved from https://www.cci.gov.in/annual-report#.*

CONCLUSION

The CCI has been making remarkable strides in the regulation of anti-competitive practices in the Indian

market. The Commission's unwavering commitment to identifying and penalizing instances of anti-competitive practices has led to a steady decrease in the number of cases disposed of by the Commission in recent years. The Annual Report of the Commission confirms this trend, showing a consistent decrease in the cases of anti-competitive practices from financial year 2016-17 to 2021-22. Even though there has been a slow increase in cases after that, the Commission's efficiency in handling these cases remains commendable.

Moreover, the Commission's enforcement actions have had a positive impact on the market. For example, the Commission's imposition of a penalty of INR 136 crore on Google in 2018 for abusing its top spot in the internet search advertising business resulted in a significant decline in Google's market share. From 97% in 2012, the market share of Google declined to 88% in 2018, which is a clear indication of the effectiveness of the Commission's enforcement actions in promoting competition in the Indian market.

Apart from enforcement actions, the CCI is also involved in competition advocacy, which raises awareness and provides training on competition concerns to stakeholders. The Commission has engaged in numerous advocacy initiatives over the years, which has helped increase awareness about the importance of competition legislation and its advantages. The CCI's efforts in promoting fair competition in the Indian market are commendable and reflect its commitment to its mandate.

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ARTICLE

Part - II

Key Managerial Personnel: Section 203 of the Companies Act, 2013 - Two Controversial Issues

While section 203 is the key operating provision, the definition in section 2(51) is only to define the meaning of the expression; the term KMP used in first and second proviso to subsection (3) of section 203 will mean nothing but a KMP appointed on whole time basis as per the requirement of that section. In my opinion, the term 'key managerial personnel' wherever it occurs in the Act or Rules must be understood to mean whole-time key managerial personnel.All the KMPs of a listed company and a public company having a minimum paid-up share capital of Rs. 10 crores or more, must be appointed as such only on whole-time basis and such companies are required to comply with section 203 with respect to such appointment; they must also comply with the restrictions stated in that section regarding appointment of KMP of the company as KMP of another company on whole-time basis.

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Issue 1: One individual holding two positions of KMP in one company

PRINCIPAL RULES OF INTERPRETATION OF STATUTES

The first and principal rule of construction of statutes, which is elementary, is that the words used in the section must be given their plain grammatical meaning.[1] This is the 'literal rule' (called the 'golden rule of interpretation') is the basic and cardinal rule of interpretation of statutes, according to which words that are reasonably capable of only one meaning must be given that meaning whatever may be the result. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.[2]

The intention of the Legislature must be gathered from the words used by the Legislature, for the words declare best the intention. The Legislature might have intended to do a certain thing, but if the words employed do not express that intention, it is not for the courts to assume the role of legislators and give effect to the unexpressed intention. No confusion must be made … between what the draftsman might have intended to do and the effect of the language which in fact was employed by him. If the words, which are a medium of expressing intention, fall short of declaring the intention, it is for the Legislature to amend the language of the section.[3]

However, the literal rule of giving undue importance to grammatical and literal meaning has, of late, gave place to "rule of legislative intent". While interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted. In several cases, the Supreme Court has applied the principle of purposive construction. A classic exposition of the two rules is the *Sussex Peerage* case.[4] It was said:

"The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. *But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute….*" [emphasis supplied]

Having regard to the above basic principles of interpretation, let us examine the relevant statutory provisions under the Companies Act 2013 (the Act).

STATUTORY FRAMEWORK

The expression key managerial person is defined in section 2(51) of the Act. Section 203 of the Act, deals with the manner of appointment of a whole time key

1. *Madanlal Fakirchand Dudhediya v Shree Changdeo Sugar Mills Ltd AIR 1962 SUPREME COURT 1543*
2. *Kanailal Sur v. Paramnidhi Sadhu Khan, AIR 1957 SC 907; State of Maharashtra v. Nanded Parbhani Z.L.B.M.V. Operator Sangh 2000 AIR SCW 261.*
3. *Madanlal Fakirchand Dudhediya v Shree Changdeo Sugar Milla Ltd [1958] 28 Comp Cas 312 (Bom).*
4. *(1844) 11 CI&F 85.*

managerial personnel in the companies prescribed under that section. It also lays down the abilities and disabilities in respect of appointment of a whole time Key Managerial Personnel (KMP).

Section 203(1) of the Act states that every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time KMP:

(i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) Company Secretary; and

(iii) Chief Financial Officer.

According to subsection (3), a whole-time KMP shall not hold office in more than one company except in its subsidiary company at the same time.

As per Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time KMP.

ANALYSIS

While section 203 is the key operating provision, the definition in section 2(51) is only to define the meaning of the expression; the term KMP used in first and second proviso to subsection (3) of section 203 will mean nothing but a KMP appointed on whole time basis as per the requirement of that section. In my opinion, the term 'key managerial personnel' wherever it occurs in the Act or Rules must be understood to mean whole-time key managerial personnel.

All the KMPs of a listed company and a public company having a minimum paid-up share capital of Rs. 10 crores or more, must be appointed as such only on whole-time basis and such companies are required to comply with section 203 with respect to such appointment; they must also comply with the restrictions stated in that section regarding appointment of KMP of the company as KMP of another company on whole-time basis.

CONNOTATION OF THE EXPRESSION 'WHOLE-TIME'

Section 203 requires appointment of 'whole-time' KMP. Let us consider the significance of the expression 'whole-time' and ascertain its true implication. The term 'whole-time' is analogous to 'full-time' and this term has been defined in several dictionaries. The Webster's Third New International Dictionary page 2612 gives the meaning of the words 'whole-time' as full time. The words 'full time' (adj) on page 919 mean employed for or working the amount of time considered customary or standard e. g. full time clerks; involving or operating the amount of time considered customary or standard. e. g. Full time teaching. The Shorter Oxford English Dictionary, 5th Edition page 3633 also gives the meaning of words 'whole time' as full time. According to this dictionary, page 1047, the term 'full time' (adjective) means the total normal working hours. In the American Heritage Dictionary of the English Language, it is defined as employed for involving a standard number of working time. The Advance Law Lexicon by P Ramanatha Aiyar 3rd Edition 2005, page 1945, states 'full time employment' as: long-term employment that entails an employee putting in a full working week.

The expression "whole-time" was considered by the Bombay High Court in the context of whole-time director and it has been held that the expression "whole-time director" must refer to a director who spends his whole-time in the management of the company.[5]

INTERPRETATION OF 'AND'

As noted above, the definition of KMP in section 2(51) specifies in its five clauses, five categories of key managerial personnel and each of them is connected with the next one by 'and' because after each category there is semicolon and clause (v) uses 'and' after the semicolon at its end.

The same pattern of drafting is adopted in section 203(1) as its first two clauses have a semicolon at the end and clause (ii) ends with semicolon and 'and'.

As stated in the Maxwell's Interpretation of Statutes, in ordinary usage, 'and' is conjunctive (that connects words, phrases and clauses in a sentence) and 'or' is disjunctive (that separates words, phrases and clauses in a sentence). Thus 'and' connects two or more items and makes a cumulative group of them whereas 'or' separates two or more items and makes them alternative to one another. Normally the word "and" should be given its ordinary meaning and should be understood in a conjunctive sense.[6]

Conjunctive means serving to connect; connective. Disjunctive means serving or tending to disjoin; separating; dividing; distinguishing. The Supreme Court has held that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together and herein it is the antithesis of 'or' Sometimes, however, even in such a connection, it is, by force of a context, read as "or". Sometimes to carry out the intention of the legislature it is found necessary to read the conjunctions "or" and "and" one for the other.[7]

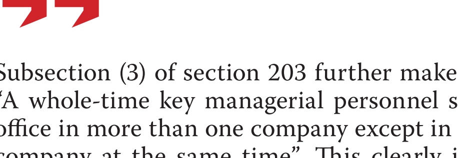
The use of 'and' before clause (vi) in section 2(51) and also before clause (iii) in section 203(1), makes it clear that the five items of the definition and the three items in section 203(1), are cumulative and not alternative. In other words, each of the five categories of key managerial personnel must have an independent individual holding one of these offices and one person cannot hold two or more offices.

5. *Ramaben A Thanawala v Jyoti Ltd. (1957) 27 Comp Cas 105 (Bom)*

6. *Maharaja Sir Pateshwari Prasad Singh v State of Uttar Pradesh [1963] 50 ITR 731 (SC)*

7. *Ishwar Singh Bindra v. State of U.P. AIR 1968 SC 1450.*

The Company Law Committee had recommended in its Report (February 2016) as follows: "At the same time, **the Committee also recommended enabling a whole time key managerial personnel, holding necessary qualifications, to hold more than one position in the same company at the same time,** so as to reduce the cost of compliance for such companies, and also to utilise the capacities of these officers to the optimum level." However, this recommendation of the Committee has not been implemented by inserting an express provision in section 203.



Subsection (3) of section 203 further makes it clear that "A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time". This clearly indicates that a KMP of a company appointed in terms of section 203 cannot hold the office of KMP in any other company to which section 203 is applicable, except that such other company is its subsidiary. The, first proviso to subsection (3) states that nothing contained in this sub-section shall disentitle key managerial personnel from being a director of any company with the permission of the Board.

Section 203 itself provides for some exception to the abovementioned requirement. For example, sub-section (3) provides that a KMP of a company may act as a KMP in a subsidiary of the company at the same time. The first proviso to sub-section (3) states that nothing contained in this sub-section shall disentitle a KMP from being a director of any company with the permission of the Board:

On a combined reading of sub-section (1) and sub-section (3), it is, therefore, clear beyond doubt that, subject to the exceptions provided in section 203 itself, a KMP means a person who devotes the whole of his time for the company of which he/she is a KMP and who cannot work (full-time or part-time) for any other company or do any other profession or vocation, business or any similar activity, even with the permission of his employer.

If section 203(1) is interpreted to mean that one individual can work in the position of more than one category specified in it, then it can go to the extent that one individual can hold the position of KMP all the three categories in one company at the same time. For example, a person who is a Chartered Accountant and also a Company Secretary and is a director of the company can hold the position of Whole-time Director or CEO and also CFO and CS. Such an interpretation would be incongruous and incompatible with the legislative intent.

CLC'S RECOMMENDATION

The Company Law Committee had recommended in its Report (February 2016) as follows:

"At the same time, **the Committee also recommended enabling a whole time key managerial personnel, holding necessary qualifications, to hold more than one position in the same company at the same time**, so as to reduce the cost of compliance for such companies, and also to utilise the capacities of these officers to the optimum level."

However, this recommendation of the Committee has not been implemented by inserting an express provision in section 203.

CONCLUSION

To conclude, although there is no express prohibition under section 203 for one individual to hold two or three KMP positions, there is no express permission either. In such a situation, the statutory provision must be interpreted having regard to the object and purpose of the provision and the legislative intent as discernible from the object and purpose. Therefore, the correct interpretation consonant with the object and purpose of section 203 seems to be that for each of the three categories of KMP, there must be three independent individuals holding any one of the three offices of key managerial personnel. One individual cannot hold more than one position of KMP at the same time. The words 'shall have the following whole-time key managerial personnel' in subsection (1) must be interpreted to mean that there must be three different individuals holding the three different offices and one individual cannot hold more than one office of a KMP.

Issue 2: Whether section 203 applies to Private Companies

As noted above, every company falling within the ambit of section 203 read with Rule 8, is required to appoint a KMP within the meaning of that section in accordance with the requirements of that section, and a company which does not fall within the mandatory requirement of section 203 need not comply with the provisions of the section nor is it necessary to comply with any or all of the provisions of the company if a company voluntarily opts for appointment of a KMP. There is nothing in section 203 requiring compliance by such a company. The definition of KMP cannot be taken to interpret the section requiring such compliance.

From the language of subsection (1) of section 203, it is clear that only those companies which belong to such class or classes of companies as may be prescribed are required to have the whole-time KMP. There is nothing in section 203 to the effect that a private not required to comply with that section must comply with it chooses to voluntarily designate an officer as Chief Financial Officer.

It is against the principle of statutory interpretation to insert any words in a statute. No words can be added in,

or deducted from, a statute. It is a corollary to the general rule of literal construction that nothing is to be added to or taken out from a statute unless there are adequate grounds to justify the inference the legislature intended something which it omitted to express.[8] The intention of the legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support with additional substitution of words or which results in rejection of words as meaningless has to be avoided.[9]

Any company can use the designation Chief Financial Officer for an officer who is the head of financial function of the company. There is nothing in the Act prohibiting its use by a company which is not required to mandatorily appoint a KMP. But by virtue of such designation, that officer does not become key managerial person in terms of section 203 of the Act, nor can he be treated as officer who is in default. But the designation "key managerial personnel" can be used only by a company which is so required to appoint KMP under section 203.

CLASSES OF COMPANIES TO WHICH SECTION 203 APPLIES

While section 203 provides that every company belonging to such class or classes of companies as may be prescribed shall have the KMP, Rule 8 prescribes two classes of companies, i.e. (i) every listed company; and (ii) every other public company having a paid-up share capital of ten crore rupees or more.

Section 2(68) of the Act defined 'private company' and section 2(71) defines 'public company'. The Act clearly distinguishes between public company and private company and the definition of 'public company' specifically states that 'public company means a company which is not a private company'. The three expressions, 'company', 'private company' and 'public company', have been used throughout the Act to signify the intention of the legislature as to the applicability of various provisions to all companies or to only private companies or to only public companies.

The expression 'listed company' is defined in section 2(52) as follows:

"listed company" means a company which has any of its securities listed on any recognised stock exchange: Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

Rules 2A of the Companies (Specification of Definitions Details) Rules, 2014 excludes the following classes of companies from the ambit of the definition of 'listed company."

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their–

  (i) Non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

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8. *Maxwell on the Interpretation of Statutes, 12th edn, page 33*

9. *State of Maharashtra v. Nanded Parbhani Z.L.B.M.V. Operator Sangh 2000 AIR SCW 261.*

(ii) Non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations 2013; or

(iii) Both categories of (i) and (ii) above.

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

ARE PRIVATE COMPANIES REQUIRED TO APPOINT KMP?

One thing that is conspicuous from Rule 2A of the Companies (Specification of Definitions Details) Rules, 2014, is that its clause (b), excludes from the ambit of 'listed company' private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

Private are not eligible to list their equity shares. Thus, none of the private companies falls within the purview of 'listed company'; and it is also not within the purview of 'public company'.

Thus, reading section 203(1) and Rule 8 together clearly indicates that private companies (which are not subsidiaries of public companies) are not obliged to comply with the requirement of mandatory appointment of KMP.

NCLAT'S ORDER IN *HAMLIN TRUST CASE*

Some observations in the NCLAT's order in *Hamlin Trust v LSFIO Rose Investments S.A.R.L.* [2022] 235 Comp Cas 158 (NCLAT) create an impression that a private company voluntarily choosing to designate one of its officers as CFO must comply with section 203. But those observations would seem mainly influenced by a provision in the articles of association of a company and a term in the shareholders' agreement, which had provided in article 140 that "(i) Rose Investments shall, from time to time, have the right to nominate a person to the position of chief financial officer of the company ('CFO'). In the event that the JV partners reject the appointment of such nominee to the position of CFO, Rose Investments shall have the right to nominate another person to the position of CFO."

This case was, in the first instance, decided by the NCLT [*LSF 10 Rose Investment S. A. R. L. v. Rattan India Finance P. Ltd.* [2022] 235 Comp Cas 151 (NCLT)] in which it was submitted to the NCLT that section 203 was not applicable to the company which was a private company. But the NCLT did not dwell upon this point.

In the NCLAT also, it was submitted that section 203 was not applicable to the company being a private company.[10] The NCLAT order also does not contain any meaningful discussion on the point. The NCLAT would seem to have proceeded on the assumption that section 203 was applicable to the company, and only observed:

"... the position of CFO is included as a KMP in sub-section (51) of section 2 of the Act. Section 6 of the Companies Act provides that the provisions of this Act shall override anything to the contrary contained in the memorandum or articles of association of the company. ...

Section 203 of the Act lays down that the CFO is a whole-time KMP and is prohibited from holding office in more than one company except in its subsidiary company at the same time. There are other elements of conduct that are provided in the Act as being relevant to the functioning of a KMP....

In the absence of any specific mention regarding eligibility and the method of selection of the CFO in the articles of association, it would be logical to take recourse to section 203 of the Companies Act, 2013 in the selection and appointment of CFO, ... even though the *company is a private limited company, and the provisions of the Companies Act, 2013 do not apply thereto, the principles governing the appointment and qualification of the KMP under section 203 can be taken for guidance de hors article 140 of the articles of association of the company.* Thus, we are of the view that the appellants are not precluded from arguing the applicability of section 203 at the stage of appeal."

It will be noticed that the NCLAT's observations on the applicability of section 203 to private companies are ambiguous and confusing. We cannot read anything in section 203 which would have the effect of making the section applicable to a private company when Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014clearly and unambiguously uses the expression 'public company'.

CONCLUSION

Consequently, NCLAT's order needs reconsideration for the sake of clarity and correct interpretation of section 203 read along with the Rules. A private company cannot be brought within the ambit of section 203 by reading the words 'private company' as including public company.

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10. *Hamlin Trust v LSFIO Rose Investments S.A.R.L. [2022] 235 Comp Cas 158 (NCLAT).*

ARTICLE

Human Resource Management, Accounting and Artificial Intelligence- A Promising Integration

In any organization, human beings are invariably considered business assets. Therefore, it is required to employ, train, and value human resources in a fair, appropriate, and reasonable manner. The applicability of advanced technologies (e.g., Artificial Intelligence) in human resource management improves workforce productivity, efficiency, and accountability. Further, it brings more transparency and accuracy in measuring the return on investment made in human resources from an accounting perspective. Consequently, HR personnel can spend more time on strategies and decision-making tasks. This paper reviews the importance and evolution of HRM as an emerging core business operation, the perspectives, and challenges of AI-enabled HRM systems, the change in the role of HR personnel because of technological transition, and the human resource accounting approach.

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INTRODUCTION

HUMAN CAPITAL, ACCOUNTING, AND CUTTING-EDGE TECHNOLOGY

Human capital is a prime resource for the development of any organization, irrespective of size and sector. And it is the role of the HR personnel to implement HRM strategies to acquire, nurture, and support human resources and create a progressive workplace environment. It ensures higher efficiency, productivity and engagement in business operations that are consequential in achieving goals. However, the lack of understanding regarding HRM resulted in low productivity, high dissatisfaction, and a turnover ratio (Mathis & Jackson, 1991). In this context, it is advisable to implement HRM strategies designed to deal with the workforce to achieve the business goal timely. Hence, HRM is equivalently crucial as marketing, finance, or any other business activity.

If one were to look at the industrial revolution, manufacturing procedures had significant weightage in the economy. There was a technological and social change too. And all relevant tools, machinery, and plant were recognized, measured, and valued. Comparatively, human capital was less valued. It was the result of the post-industrial period, where both- the manufacturing and service sector contributed equally to the economy. Hence, intangible assets such as information, knowledge, and intellectual property- specifically in the context of human capital considered core business assets globally. In addition, human resource accounting (HRA) is a process by which an organization can measure the investment made on and value received from the workforce through cost and accounting principles. It is the internal financial report by which management apprehends the contribution of human resources to the overall profitability and valuation of the company. It is a part of human resource management and managerial accounting.

Apart from management and accounting, technological perspectives towards human capital equally need to be encountered. The motivation to adopt cutting-edge technologies in manufacturing, agriculture, finance, Information Technology (IT), and management is burgeoning, including the HRM. In management, AI offers better decision-making expertise to executives, managers, and business leaders by analyzing complex datasets through neural nets, natural language processing, and robotic process automation. It can redesign how entities recruit, manage, and utilize human intelligence and labour. As a result, it streamlines entire workforce management. Therefore, it is unwise to

overlook the potential of AI in HRM, despite numerous challenges being overcome solely by human intervention. For example, the algorithms to predict which candidates are ideal to appoint are questionable (i.e., on quantifiable measures) while embracing social and psychological settings. Hence, regulations and supervision of technological interventions are crucial to subdue emerging challenges.

HRM: A HISTORICAL BACKGROUND AND PERSPECTIVES

The earlier practice of controlling and managing human labour appeared in the Greek and Roman civilizations. However, historically there was no recognition of HRM as a specialized discipline. The concept developed during the mid to early 20th century. Issues pertaining to wages, working hours and conditions, layoffs and employment-related rules & regulations come under "worker management". In the USA, during the mid-19th century, HR-related activities such as training, performance appraisal, and testing (i.e., evaluating work efficiency) appeared as managerial functions. It was the combined effort of demand from labour unions and the revolutionary work of industrial psychologists (Munsterberg, 1913; Wright, 1994). However, the perspective of HRM extends merely to enriching performance and creating a competitive environment among workers to earn surplus value. It benefitted factory owners and managers more than workers. Thus, the journey from negotiation with labour unions to motivating employees for a maximum outcome is a transition of HRM as a specialized profession. Besides this, the human relation movement after World War II asserted a strong relationship between employee satisfaction and productivity (Roethlisberger & Dickson, 2003). And finally, after introducing the Civil Rights and Equal Pay Act in the USA to prohibit discrimination in the workplace and ensure fair and equitable payment practices adopted by an organization, HRM was recognized a legitimate function.

Relatively, the impact of globalization, free trade, and market competition propels industrialists in the USA to acknowledge HRM as an integral function of the organization, e.g., production and marketing. Furthermore, international competition led to three emerging HRM issues (after the 1970s): (1) To link HRM to the strategic management process, (2) select, train, and compensate individuals, and (3) provide quantitative estimates of the dollar-value contributions made by the human resources department (Wright, Et al., 1994).

Generally, there are six HRM perspectives: normative, critical, behavioural, contingency, and strategic. All these perspectives work towards improvements at organizational and employee levels by introducing HR policy, identifying, and resolving worker's issues, motivating employees, providing tailored solutions as per the need of organizations, and finally helping the organization to achieve goals. Thus, a HR ecosystem is essential to accomplishing business goals and managing human capital- as they are involved in every operation, from production to distribution to management. Therefore, researchers, experts, and HR professionals work towards identifying required human resources and employing them to execute enterprise goals.

The typical HR roles include tasks such as screening and shortlisting resumes for recruitment, onboarding new hires, scheduling training and skill enhancement programmes, managing talent and performance of workers, creating strong communication and engagement mediums, executing compensation and other employee benefit schemes, and compliance of labour laws and policies. Thus, it ensures a secure and optimistic workplace environment. In addition, HR outcomes improvised the first operational and then financial outcomes (Dyer & Reeves, 1995). HR outcomes focus on skills, knowledge, and training-related tasks. Improvement in mass production and quality of goods and channelizing business operations are called operational outcomes. The result of HR and Operational outcomes increased return on capital (human and non-human assets), profitability, and reduced cost. These assure the smooth functioning of all business operations in the long run.

AI AND HRM- A PROMISING INTEGRATION

Globalization impacts both ways- the development of technology, and the integration of all organizational processes, from manufacturing to finance to HR. The blossoming use of computer based HRM procedures appeared around the 1980s (Sikula and McKenna, 1990). Further, the evolution of personal computers conceptualized and developed human resource information systems (HRIS) - a systematic procedure for collecting, storing, maintaining, retrieving and validating data about organizations' human resources, personnel activities, and unit characteristics (Kovach and Cathcart Jr., 1999). It can automate and streamline essential HR activities, such as screening and shortlisting job applications, onboarding, e-learning, and training, payroll, HR reporting and analytics, performance management, etc.

The advancement in computer science further transformed HRM practice from a record-keeping tool to supporting decision-making strategies. Thus, recent technological development enhances productiveness and comes with an approach to redefining HR roles. The term e-HRM refers to controlling and managing all HR activities (Strohmeier, 2007) to reduce HR and administrative costs, increase productivity and efficiency, and provide opportunities to conduct more strategic tasks (Stone and Dulebohn, 2013). Accordingly, the usability of AI-enabled systems rapidly increased in all sectors, including HRM, and the emergence of COVID-19 further accelerated its applicability. How technology impacts the most known HR roles are explained below.

A. Recruitment:

Screening the right candidate is a time-consuming chore. AI advances recruitment procedures by improving candidate engagement, processing

big data for talent acquisition & assessment, and making a framework (i.e., set of guidelines) for future recruitment and selection. For example, the IBM Watsons recruitment cognitive approach assists talent acquisition procedures by processing structured and unstructured requisition data, matching candidate profiles and assigning a score, determining which active candidate in the client ATS is more likely to fit and qualify, and providing a market view regarding employee sentiment (IBM, 2021). Further, using NLP, OCR, and AI-enabled chatbots for recruitment improvise candidate engagement, speeding the documentation process and reducing time and cost per hire (Majumder and Mondal, 2021).

B. Training and Development:

According to the metacognitive theory, learners learn best when they have awareness about their weak areas or know what they do not know. Hence, with the help of pre-training assessments, quizzes, tests & feedback, an AI-enabled HR system inform trainee about their weak areas (Upadhyay and Khandelwal, 2019; Posner, 2017). Human skills, knowledge, and talent are valued and considered prime assets. Seeing that- training is of utmost primacy as the expertise and knowledge of employees grow accordingly to the market demand.

The majority of the enterprise (whether- small, medium, or large) started investing in AI for many reasons, including learning and development that allows employees to learn and train as per their learning styles, preferences, and locations (Ather, 2022). For example, IBM's talent development consulting service focuses on developing and delivering customized employee learning programs to meet present and future skills requirements. It addresses operational and developmental issues, such as job descriptions, key responsibilities, and required competencies and assists HR professionals by providing interview questions, coaching tips, and prescriptive learning suggestions for each competency and skill level (Yabanci, 2019; IBM, 2019). In addition, Watson's career coach analyses the complex data of employees' interests, preferences, and experiences. It provides a roadmap for existing and future career opportunities.

C. Onboarding:

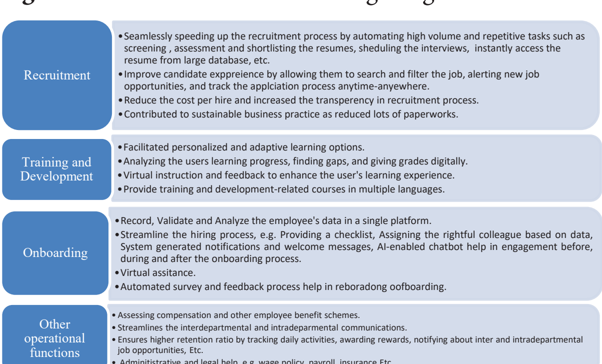
Onboarding refers to the socialization process, in which the organization carries a set of actions (Klein et al., 2015) whereby new employees learn knowledge, skills, and behaviour they need to develop according to job requirements and become effective organizational members (Bauer and Erdogan, 2011). It is a learning process through which new hiring familiarizes themselves with the organization's function and culture. Thus, a robust onboarding process builds an effective communication channel that ensures employee retention, engagement, and goal attainment attitude. Bauer (2010), while advocating the reason for implementing an effective onboarding process, stated that half of all hourly workers leave new jobs within the first 120 days, and half of all senior outside hires fail within 18 months in the newly acquired position.

The role of AI in onboarding includes tasks such as response to basic work inquiries through chatbot, providing real-time guidance, sending notifications to the employees regarding business conduct guidelines, and new-hire checklist and employee benefits policy (Bokelberg et al., 2017).

D. Other operational functions:

Integrating AI in HR automates all activities, from screening to selecting to retaining skilled employees. For example, in the case of the compensation process, the artificial neural networks (i.e., that recognize relationships in big data sets) provide transparency, fairness, and accuracy while assessing compensation (Jia et al., 2018). It also helps in interdepartmental, external communication and engagement strategies (e.g., public relations). Furthermore, AI can minimize biases in recruitment and selection processes and detect applicant mislead or fraudulent information by digitally analyzing large-volume datasets. In addition, AI-enabled software also assists top management by identifying the gap in skills or suggesting new skill enhancement programmes to perform better. Thus, from processing numerous job applications to supporting HR planning to establish an effective engagement channel, it is conclusive that AI can redefine the whole HRM process.

Figure 1: AI and HRM: Reinventing the general HR tasks.



Source: *Crawshaw et al., 2020; O'Sullivan, 2018; etc. (Compilation by Author)*

CHALLENGES IN AI-ENABLED HRM SYSTEMS

Several challenges are associated with AI-enabled HRM systems: fear of alienation, data integration and optimization, usage of AI, investment output, ethical and legal issues, and the requirement for skilful HR specialists. Thite (2018) and Baykal (2022) stated that in moving from traditional HR practices to e-HRM, researchers, professionals, and business leaders face two fundamental challenges. One is about digitalizing

the entire management, and the second is re-evaluating workforce experience.

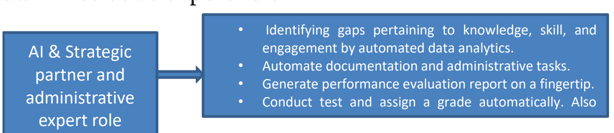
Despite several features of e-HRM or virtual HR that can automate routine HR administrative tasks, it cannot improve HRM service (Gardner et al., 2003) as it is in the introductory stage to automate strategic and decision-making tasks (Marler and Fisher, 2013). Furthermore, the data upon which these systems work and facilitate HR managers must be accurate, structured, and properly integrated. It is the accountability of HR to look at the quality, continuity, and integration of structured and unstructured data to ensure the smooth functioning of an AI-enabled HRM system (Sun and Medaglia, 2019). Moreover, there are three employment-related challenges: (1) defining criteria for hiring a desired employee, (2) the size and nature of the workforce and (3) how technology attributes social aspects while doing performance evaluation and determines who is being fired or not.

Ethical and legal issues became a substantial challenge seeing the widespread applicability of AI-enabled products. Thus, it is necessary to address these issues, such as inappropriate and unethical data usage, unauthorized access, and lack of confidentiality in implementing a legal framework (Duan et al., 2019; Remenyi and Williams, 1996). Furthermore, appointing skilled employees with prior expertise in both technology and HRM is difficult for the organization. Accordingly, there is a chance of system breakdown without technical experts.

CHANGE IN THE ROLE OF HR PERSONNEL BECAUSE OF TECHNOLOGICAL TRANSITION

Based on Ulrich's model, HR needs to fulfil four roles: (1) Strategic partner, (2) Administrative expert, (3) Change agent, and (4) Employee champion (Ulrich, 1997). The rapid innovation and diffusion of technology directly impact these roles. It creates new HR roles too. At first, the HR role is concerned with overall organizational operations and not solely and merely participating in strategizing HR activities. AI implementation in HRM gives more opportunities for HR to become an effective strategic partner. The administrative-expert role focuses on the transactional procedure and staff-related administrations. Technology such as RPA already e-enable several HR processes ranging from manager/employee self-service to records/payroll administration (Reilly, 2018). Accordingly, HR must identify errors and gaps.

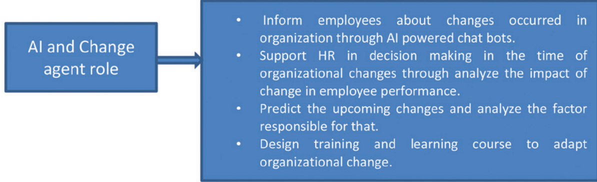
Figure 2: Applicability of AI in Strategic partner and administrative expert role



Source: *Ulrich, 1997; Reilly, 2018, and other secondary data (Compilation by Author)*

In the change agent role, the HR officer communicates to the in-line manager to ensure the smooth functioning of all departments and how to cope with the changing environment. This role fosters an adaptive culture that copes with the organization's environmental changes, e.g., technology and innovation enhance the organizational capacity for change and provides daily operational support for employees and managers (Hmoud, 2021).

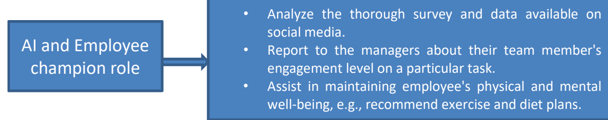
Figure 3: Applicability of AI in Change agent role



Source: *Ulrich, 1997; Hmoud, 2021, and other secondary data (Compilation by Author)*

The last one- the employee champion is the kind of role in which HR tries to establish a communication channel between employees and management, resolve conflicts in time, provide adequate resources to the employees, create a positive workplace environment, etc. Additionally, it also builds a good image of the company in public. Similarly, e-HRM software alerts HR about who is suitable for promotion and whose recognition is needed to share with the team.

Figure 4: Applicability of AI in Champion role



Source: *Ulrich, 1997; Hughes, et al., 2019; and other secondary data (Compilation by Author)*

THE APPLICATION OF AI-POWERED HRM SYSTEM IN INDIA

Applying cutting-edge technology reinforced all traditional HR tasks with more accuracy, productivity, and transparency without human biases or interference. It helps in performance evaluation, building employee communication & engagement channels, and producing progress reports. Thus, AI-enabled HR systems assist organizations, top-level management, and HR professionals in goal attainment.

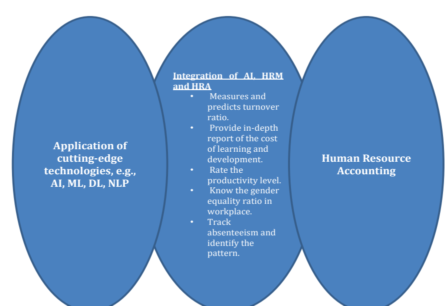
In India, the affordabilities of e-HRM software rely upon the number of employees, features, and customization it offers, initial investment and requirements of skilled employees, nature, and size of the organization, etc. Due to such reasons, small-sized organizations hesitate to adopt modern HR practices. Refers the Figures 5 and 6 for knowing the available AI-enabled HRM systems in India, how these technologies transform or assist HR tasks, its trust behaviour among market trends, a few suggestions for the HR personnel, and how some of the intelligence-enabled HRM functions support HRA reports.

Figure 5: E-HRM software used in India.

AI-enabled HRM system:	Features	Trusted by	Suggestions for the HR professional
People Strong, Zoho People, Darwinbox, GreytHR, Keka, Pockethrms, etc.	• AI-enabled payroll self-service (ESS), attendance and leave records and performance management. • AI and ML-powered learning portal for skill advancement. • AI-driven people analytics and reporting. • AI-based doc validation for onboarding. • AI-powered chatbot, etc.	TATA digital, Cipla, Aditya Birla Group, Zomato, IIFL, Goel steel, Vedanta, Arvind, adani wilmar, Healthifyme, Oneplus, Cleartax, etc.	• Be clear on the objective. • Ensure maximum transparency. • Develop learning attitude for self and employees. • Frequently test the E-HRM system. • Understand business needs and find out digital gaps to get a maximum output. • Resolve errors, etc.

Source: *Companies own website and other secondary data (Compilation by Author)*

Figure 6: Features of AI-enabled HRM system assist in HRA function.



Source: *Compilation by Author*

HUMAN RESOURCE ACCOUNTING: PERSPECTIVES AND SUGGESTIONS

The increasing contributions of the service sector to the world economy led to consider the importance of knowledge, skill, and talent in overall business growth. As a result, managing the workforce and considering it as one of the organizational assets raises the question of how to measure human resources correctly.

Human resource accounting (HRA) is a process to measure both the costs and benefits made by an organization in human capital- an integral intangible asset. It refers to measuring cost as an investment materialized

towards managing human resources (Lau and Lau, 1978)- including screening, recruitment, onboarding, learning & development (i.e., as a part of HRM functions) and reporting benefits produced by the same human resources (Flamholtz, Et al., 2002). The expenses incurred from recruiting to retaining the workers are shown in the balance sheet as an asset as per the HRA reporting. It is contrary to the Indian accounting practice (i.e., following Indian accounting standards) in which human resource costs are treated as business expenses and shown in the income statement.

Further, increasing international trade of goods and services, access to capital markets, requirements to meet global regulatory compliances, and improving transparency in financial transactions lead organizations to adopt IFRS. In the context of HRA, it guides the organization in accounting for intangible assets, including those related to human resources. However, even according to IFRS, human resource accounting report is not mandatory for companies, and there is no particular method suggested by the IFRS about how to measure human resources as an asset. As a result, the decision to prepare an HRA report or not rest with the organization's management. However, it is invariably a part of managerial decisions.

Advantages:

- Track the growth and the decline in human capital value over the years.
- Helps in taking employee retention decisions.
- Organizations get information regarding employee performance and productivity.
- It assists in a fair, accurate and transparent employee compensation process.
- HR personnel can get better insights into human resources from HRA practices.

Limitations:

- The organization does not need to prepare an HRA report according to IAS. In addition, IAS does not suggest any guidelines to follow while preparing the HRA report.
- Organizational behaviour tendency: for example, it is an unnecessary additional cost burden for small and medium enterprises that can be avoidable.
- It is a lifelong time-consuming task.
- Authenticity and responsibility of the data used for HRA are concerns matters.
- Some HRA reporting utilizations, for example, calculating return on investment against cost incurred on employee training or gender equality ratio in the workplace derived from the same data used in HRM functions.

Suggestions:

- Due to the advancement of technology and its implementation in HRM, most human resources-related data is available. It will smoothen the process of the HRA report.
- There is a need to spread awareness about the benefits of preparing an HRA report as it is integral to other organizational functions such as finance, management accounting, cost accounting, human resource management, Etc.
- Getting the correct value of human resource increases the financial soundness of the companies and their shareholders.

Human capital is a prime resource for the development of any organization, irrespective of size and sector. And it is the role of the HR personnel to implement HRM strategies to acquire, nurture, and support human resources and create a progressive workplace environment.

CONCLUSION

Advancements in technology, such as ML, IoT, and AI, have enough potential to improve HRM functions. It benefits the organization, employees, HR professionals, and technology developers. Hempel (2004) stated that there is a correlation between IT and HRM, as the applicability of technology can change and automate the function of traditional HRM while adopting technology provides opportunities for the developer to make more advanced technology.

In India, large organizations prefer customizable E-HRM packages to manage, value, train, and develop their human assets. However, there are still some challenges of E-HRM software regarding the applicability, rules and regulations, cost-effectiveness, and shift from traditional HR practice, especially in the small and unorganized organizations of India. In India, in the small and unorganized sector, there is no need for separate HR management systems, and no entity even realizes the need. Further, there is a direct engagement between the employees and the owner. It resulted in a low adoption ratio of E-HRM. Thus, it is advisable to adopt modern-day technologies with care. However, with digital India initiatives and continuous rapid advancement, it is easy for the developer of the AI-powered HRM system to overcome these challenges. Now concerning HRA practice in India, there is no mandatory accounting standard to measure, value, and represent human resources as business assets or capital in the balance sheet. Even the Companies Act 1956 and 2013 (an act of the Indian parliament) do not provide specific information or methods needed to follow by organizations. However, the integration of intelligence technologies and human resource management has the potential to increase the HRA practice in India.

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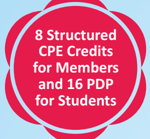

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Delegate Category	Early Bird (24th April, 2023 to 20th May, 2023)	Registration (on or after 21st May, 2023 including on the spot registration)
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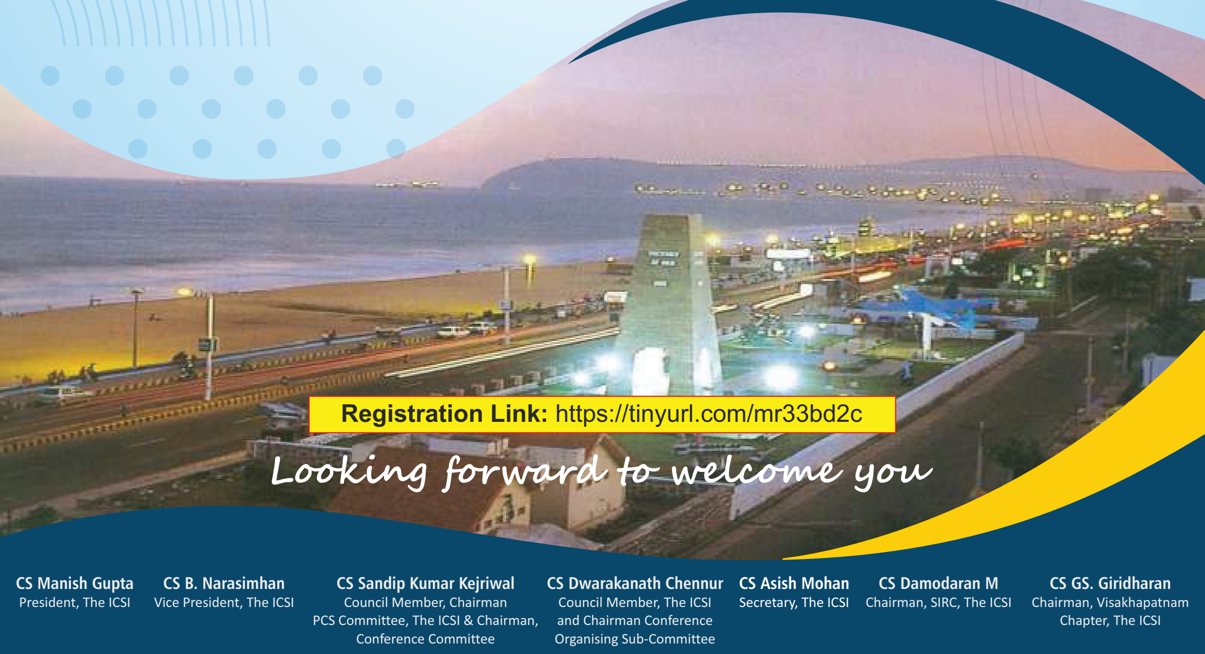

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Announcement for Hotel Booking of Residential Delegates

For

24th National Conference of Practising Company Secretaries

1) The members/students/others (as the case may be) are required to first get themselves registered as delegate for the 24th National Conference of Practising Company Secretaries by visiting Registration Link: **https://tinyurl.com/mr33bd2c**

2) The ICSI has taken best rates from **Hotel Novotel Visakhapatnam Varun Beach**, Dr NTR Beach Rd, Visakhapatnam, 530002 (Google Map: **https://goo.gl/maps/kxwdbM8kgiyQ4min6)** and blocked the limited number of rooms at concessional rates for delegates of 24th National Conference of PCS. The delegates are advised to avail this opportunity at the earliest.

Occupancy	Special Rate	Inclusions
Superior Room on Single Occupancy	Rs. 7499 plus 12% Tax per room	Buffet Breakfast, WiFi
Superior Room on Double Occupancy	Rs. 8500 plus 18% Tax per room	Buffet Breakfast, WiFi

3) All Delegates will contact the Hotel, directly for their individual reservations. Delegates may click on below link to download the Hotel Booking Form and they are required to fill-up details in the Form and send a scan copy of Hotel Booking Form to Hotel Novotel Visakhapatnam Varun Beach at respective email id *i.e.* h7535-re@accor.com

Hotel Booking Form of Hotel Novotel Visakhapatnam Varun Beach

4) All payments related to hotels are to be settled by the delegate with the hotel concerned directly. Reservations can be processed online with valid credit cards details. All reservations will be held on a guaranteed basis as the credit cards will be charged towards 100% advance payment for entire length of stay, at the time of confirmation.

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.

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.

7) Lunch is being arranged, to be served on 16th June 2023 from 12.00 noon onwards at conference venue, to facilitate such delegates who are reaching Visakhapatnam before check-in timing of their respective hotels.

Team ICSI

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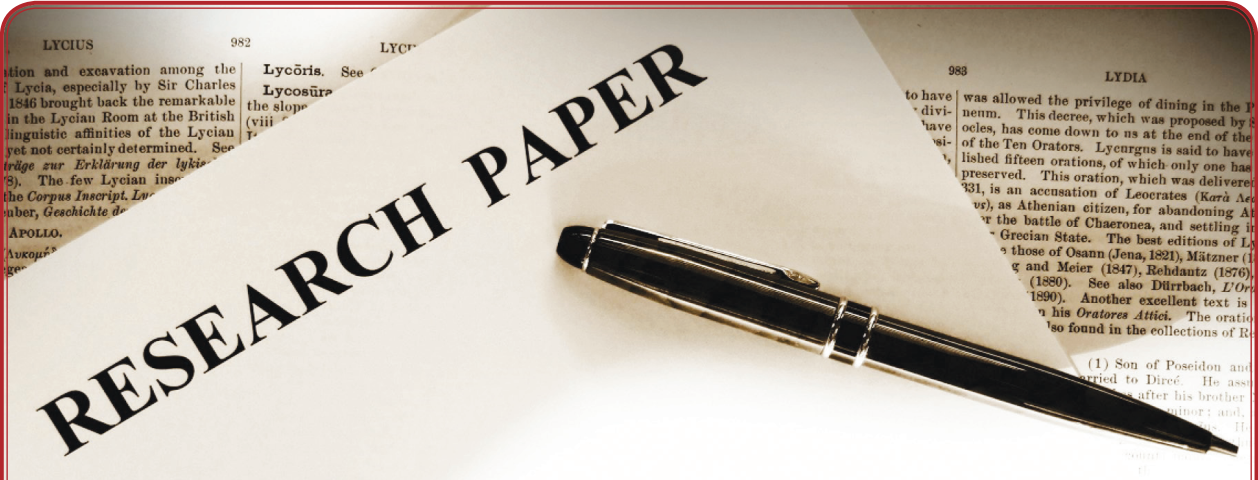

Invitation For Research Papers In CS Journal – June 2023 Issue

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.
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Members and other readers desirous of contributing articles may send the same latest by **Thursday, May 25, 2023** for the June 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,

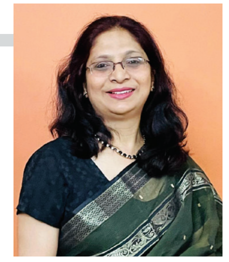
Team ICSI

RESEARCH CORNER

- SOCIAL STOCK EXCHANGE: NEW PARADIGM FOR SOCIAL ENTERPRISES

Social Stock Exchange: New Paradigm For Social Enterprises

The Hon'ble Finance Minister proposed during the Budget speech for F.Y. 2019-20 to take steps for creating a "Social Stock Exchange" (SSE) which will ensure more inclusive growth. A Social Stock Exchange (SSE) is a digital platform that enables alternate fund-raising methods to Social Enterprises (SE). SSE is a breakthrough initiative for the SE to raise funds in support of the objective of social welfare. It serves as a forum for connecting those who want to make a social impact with others who are actively pursuing one. Majority of the SSEs around the world were unable to sustain themselves beyond a certain number of years. Therefore, this article attempts to identify the challenges that Indian SSE may face in future by analysing SSE models of different countries.



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1. INTRODUCTION

India has an extremely diversified, flexible, and vibrant society. With many organisations seeking to empower local communities and build resilience to the struggle against poverty, climate change, and other socio-economic problems, the social sector has been a driving force in the development of this society. Social organisations have demonstrated that they are crucial partners in lowering the risks that the underprivileged segments of society face in areas like healthcare, education, gender, sanitation, and other areas. To execute the strategies to solve such pressing problems, the government has also begun forming partnerships with the corporate sector and philanthropic organisations. There are a number of entities working in the social sector. The urge to create a significant social impact is growing across the nation. In this regard, the idea of Social Stock Exchanges has grown in acceptance on a global scale.

2. BACKGROUND

In order to ensure more inclusive growth and financial inclusion, the hon'ble Finance Minister proposed during the Budget speech for F.Y. 2019-20 to take steps for creating a "Social Stock Exchange" (SSE). The aim was to bring the concept of social welfare closer to the masses. The listing of Social Enterprises (SE) will also help them in raising capital as debt, equity or units of mutual funds. Since the proposed SSE would fall under the regulatory ambit of Securities and Exchange Board of India (SEBI), in 2019 a Working Group (WG) was constituted under the chairmanship of Shri Ishaat Hussain (Ex-Director, Tata Sons) along with various stakeholders from different NGOs, Ministry of Finance, stock exchanges and people active in social welfare and social impact investing. After analysing the difficulties faced by social organisation in raising funds, certain high-level recommendations were made for means and mechanism of initiating an SSE. The recommendations given by WG were further considered by the Technical Group (TG) which was formed in September, 2020 under the chairmanship of Dr. Harsh Kumar Bhanwala (Ex-Chairman, NABARD). The TG provided details on specific matters like scope of work, social auditors, eligibility criteria for listing, disclosure requirements etc. The SEBI through a notification dated 25th July, 2022 has given more details about the operational mechanism of SSE in India. In this paper an attempt has been made to understand the concept of SSE in India and to compare the Indian model of SSE with models around the world. The comparison will provide us with the possible challenges that India might face in future.

3. SOCIAL STOCK EXCHANGE IN INDIA

An SSE is a digital platform that enables alternate fund-raising methods to SE. It will permit a SE's listing; SEs would register themselves on the SSE platform and then raise money from there. Any social enterprise, including both For-Profit Enterprises (FPE) and Non-Profit Organisations (NPO), that demonstrates the importance of its social mission is eligible to register with and list on the social stock exchange. According to the working definition of a social enterprise established by the International Labour Organization (ILO), "The fundamental objective of a social enterprise is to address social issues through a financially viable business model in which surpluses (if any) are primarily reinvested for that purpose." (ILO 2009). For the purpose of the SEs establishing the predominance of social intent, SEBI has specified specific eligibility requirements. It has outlined a list of 17 tasks in which an SE can engage in with the goal of focusing on underprivileged or undeserving population segments. Furthermore, 67% of the activities should be performed towards the target group, according to the statement. This can be established further by demonstrating that at least 67% of the average revenue or average expenditure over the previous three years came from or went towards qualified activities, respectively. Apart for affordable housing, business foundations, political or religious organisations, professional or trade groups, and infrastructure corporations are not eligible to be designated as SE.

3.1 Need for SSE

India has changed the conventional wisdom that social and economic development is solely the government's responsibility into a framework where individuals, corporations, and other social organisations also share the responsibility for bringing India to its pinnacle potential for social and economic development. According to the British Council Report from 2018, Indian social entrepreneurs had trouble achieving the SDGs because of a shortage of funding. The Indian Philanthropy Report, 2019 by Anant Bhagwati, A.S. (2019), which contends that India alone accounts for more than 20% of the global performance difference in 10 of the 17 SDGs and more than 10% of the gap in another 6 SDGs, provides insight into this disparity. According to the SEBI study from 2021, in order to achieve just 5 out of the 17 SDGs by 2030, there is a financing shortage of 4.2 lakh crore yearly. According to UN research, private and public sectors will have to invest US$1.4 trillion in order to close the US$3.9 trillion investment gap that developing nations will need to make in order to achieve the SDGs by 2030. It is suggested that social impact investments will fill this gap. India's SDG Index composite score in 2021 was 60.81, placing it 121st out of 195 UN Member nations. This highlights the crucial fact that impact investing plays an important role in supporting governmental efforts to meet the 2030 goals. It's absolutely essential to shift to a culture of social investment, which calls for a shared platform for identifying and allocating funds for such impact projects, as well as for incorporating and establishing the foundation for impact evaluation and related techniques such as SWOT analysis and impact measurement and evaluation. ensuring unbiased compliance and governance viewpoint. The Social Stock Exchange (SSE) is extremely important in this situation (A. Sekar, N. P. 2021).

3.2 Social Auditor

SEBI as per the circular dated 25th July, 2022 gave the following definition of Social Auditor *"Social Auditor means an individual registered with a self-regulatory organization under the Institute of Chartered Accountants of India or such other agency, as may be specified by the Board, who has qualified a certification program conducted by National Institute of Securities Market and holds a valid certificate."*

3.3 Benefits of SSE

SSE is a breakthrough initiative for the SE to raise funds in support of the objective of social welfare. It serves as a forum for connecting those who want to make a social impact with others who are actively pursuing one. SSE will give the following benefits in India:

- **Public Accountability of NPOs:** NPO's registration on SSE offers a decent level of assurance that the social enterprise registered there will be able to accomplish the desired goals and show public accountability.
- **Increased Capacity of NGOs/NPOs:** A functional SSE gives non-governmental organisations the opportunity to expand their social initiatives while also ensuring a comparatively reliable financing source with integrated accountability frameworks. The registered entities would receive capacity building funds' support for financial instruments, impact reporting frameworks, and regulatory compliance.
- **Reduced Information Asymmetry:** For both NPOs and FPEs, minimum reporting criteria have been proposed, which will lessen information asymmetry. Initial disclosures on general governance and financial matters are among them, as are ongoing disclosures on social effect, which must be made annually.
- **Standardised Impact Creation:** Over time, an entirely new class of auditors called social auditors will independently verify NPOs' impact reporting. This would start the process of standardising and creating credible impacts.
- **Synergistic advantages:** Using the BSE or NSE as the host for the Indian SSE and the existing infrastructure to deliver SSE services will probably save money and time and enable the more effective execution of SSE activities at scale. Like the Jamaican SSE, the Indian SSE might also gain from some support from BSEs or NSEs own CSR allocations.
- **More confident investor:** The strict registration and disclosure requirements for SSE would methodically instill policies and systems that would streamline

operations and result in effective management of projects. It will close the gap between vision and reality and increase investor confidence.

- **Tax exemptions:** The group has also suggested a number of tax exemptions, advantages, and other helpful regulatory clarifications to boost the acceptance of these funding arrangements among different classes of investors. First-time retail investors will be able to invest in the SSE MF structure with a 100% tax exemption, with a maximum limit of INR 1 lakh. For investments and capital gains made through SSE, investors would also not be required to pay the Securities Transaction Tax and Capital Gains Tax. It also allows corporations to deduct CSR expenses from their taxable income.
- **Capacity Building Fund:** India has recommended the creation of a capacity-building fund to assist NPOs in expanding their skills and cover some of the costs associated with stricter reporting requirements. The fund will include elements including CSR-eligible contributions and contributions that take use of the same rules and tax breaks as those provided by the Income Tax regulations.

4. OPERATIONAL MECHANISM

The initial requirement for any SE is to establish the primacy of its social intent by meeting the criteria specified by the Technical Group w.r.t broad area of activities, target population and percentage of funds deployed for the same. An NPO then has the choice of listing or not listing after being required to register on the SSE. However, if an FPE complies with the requirements of SEBI Regulations for the issuing and listing of equity or debt instruments and is a company incorporated under the Companies Act 1956/2013, it may proceed immediately with listing. It is important to remember that in order for an organisation to be legally registered as an NPO, a minimum fund flow of Rs. 50,00,000 based on annual spending during the most recent fiscal year (FY) is required.

4.1 Fund Raising by SEs

A SE can raise funds by various means. They are presented in Table 1. Apart from these methods the board has the liberty of specifying others from time to time.

Table 1

Non-Profit Organizations (NPOs)	For Profit Enterprises (FPE)
• Zero Coupon Zero Principal Bonds (ZCZPs). Can be issued to both institutional and non-institutional investors. • Specified Mutual Fund schemes.	• Issue of equity shares. • Issue of debt securities.

However, SEBI has also notified cases where a SE will not be eligible to raise funds through an SSE. In the following cases an SE will become ineligible to raise funds or even register on an SSE:

- The SE or any of its promoters or directors is a deceptive borrower or a fugitive economic violator;
- The Ministry of Home Affairs or any other department of either the state or national government has disqualified the SE, any of its promoters, promoter group, or directors from accessing the securities market; or
- They are promoter or directors of any other company or SE which has been disqualified from gaining access to the securities market by the Board.

4.2 Reporting Framework

Regulation, as well as access, enhancement, and operational improvement, are some of the many goals of reporting. If their stocks are listed (or after the NPO has registered with an exchange but decides not to list), the FPE and the NPO will both be required to publish an Annual Impact Report (AIR), in addition to the disclosures on general, governance, and financial factors (which vary for NPOs and FPEs). Within 90 days of the end of the fiscal year, all SEs must submit properly audited AIR to SSE, including both the qualitative and quantitative facets of the social benefits they have generated. Major initiatives, programmes, or projects carried out by a NPO that is registered without being listed must also be covered in the report. Other details of an AIR are presented in Table 2.

Table 2

Aspects	Details
Strategic Intent and Planning	• Social or environmental challenge that the organisation is addressing. • Ways and means to cater the challenge. • Target group. • Outcomes of various activities undertaken or projects carried out. Ir will include both positive as well as negative outcomes. The entity is required to present all the matters in comparison with last year.
Approach	• Status or analysis of activity or programs at the initiation of it and at the end of FY. • Solutions developed for attaining SDGs or achieving other national/state/ developmental priorities. • Considering stakeholder feedback. • Risk identification and mitigation.
Impact Score Card	• Trend analysis of metrics mentioned. • Impact on target group. • Using surveys for beneficiary validation.

5. SSE AROUND THE WORLD

SSE is an evolving issue around the world and is developed differently keeping in mind the needs and regulating environment of a nation. While India is still in the development stage of its SSE, there are a few countries which have already framed their model and are also operating on the same. For the present study, we have undertaken detailed analysis of 7 SSEs operating globally. The main credentials of the global models are presented in Table 3.

In order to improve the prospects for social investment, the Nairobi Securities Exchange and Capital Markets Authority regulated Kenya Social Investment Exchange (KSIX) in 2009 in addition to the seven SSE listed in Table 3. 2010 saw the addition of the United States and Germany to the SSE clan. The Federal Financial Supervisory Authority oversees the German Social Stock Exchange, Global Exchange for Social Investment (GEXSI), which has assisted investors in raising funds at scale and acts as a boutique agency for social impact initiatives. It operates using the Benefit Corporation (B-Corporation) certification concept. According to B. Lab, the organisation awarding the certificate, "B-Corporations" are companies that adhere to the highest standards of social and environmental performance to balance profit and purpose.

Table 3

Basis	Brazil	Canada	Jamaica	Portugal	Singapore	South Africa	United Kingdom
Name of SSE	Bolsa de Valores Socioambientais (BVSA)	Social Venture Connexion (SVX)	Jamaica Social Stock Exchange (JSSE)	Bolsa de Volares Sociais (BVS)	Singapore's Impact Exchange (IX)	South African Social Investment Exchange (SASIX)	UKs Social Stock Exchange (SSX)
Launch Year	2003	2013	2019	2009	2013	2006	2013
Current Status	Closed Operations in 2018.	Active	Active	Closed operations in 2015.	Active	Closed operations in 2009.	Not functional in its original form.
Developed By	Brazil Stock Exchange (B3) as a part of its CSR initiative.	Mars Discovery District, supported by government of ontario.	Jamaica Stock Exchange as a CSR Initiative.	Co-founded and developed by Celso Grecco (founder of BVSA).	Developed as a joint initiative between Impact Investment Exchange (IIX) and Stock Exchange of Mauritius.	Developed by greater good South Africa.	Developed based on recommen-dation from Social Investment Task Force (SITF).
Structure	Housed under Brazilian Stock Exchange as a crowdfunding platform.	Independent NPO since 2019.	Working through Jamaica Social Investment Market.	Managed by VHL Association for the Sustainable Financing of Social Impact.	Operated by SEM and regulated by Financial Services Commission.	Housed in Johannesburg Stock Exchange.	Standalone private company, not regulated or housed under any stock exchange.
Types of Investors	NPOs or foundations legally registered.	NPOs, FPEs, Charitable organisations.	NPOs registered under Charity Law of Jamaica, Social.	Portuguese NPOs.	Social enterprise, social investment funds and development.	NPOs and other social enterprises.	FPEs with social or environmental purpose.
Objectives	Bridge between social/ environmental organisations and investors, to change the habit of charity into a culture of social investment.	To break the cycle of poverty and create opportunity, to provide easy access to capital to social organisations.	To achieve SDGs and ensure social giving by improving transparency of funds utilisation.	To facilitate the matching between social organisations and social investors.	To provide a platform for social purpose organisations to raise capital and for investors to enjoy liquidity.	To build a culture of accountability for social performance among beneficiary organisations.	To create an efficient and universally accessible marketplace where buyer and seller can achieve greater social impact.

Types of Returns	Social and Environmental returns only.	Social, Environmental and Financial returns.	Social and Financial returns.	Social returns	Social, Environmental and Financial returns.	Social and Financial returns.	Social and Financial returns.
Services offered to Investees	Networking opportunities and capacity building guidance to investees.	Capacity Building and advisory services for investees.	Capacity Building for investees	Guidance in drafting investment and business plans, strengthening financial systems.	Capacity Building and marketing support for investees.	—--	Guidance provided to investees by Social Company Advisors and other experts.
Services offered to Investors	Social broking services from firms associated with	Investment Readiness Programme, Investment tracking services for investors.	—---	—---	Assistance to investors to align their investments with their impact priorities.	Social investment broking, portfolio management and	Brokerage services for investors.
Targeted Areas	Livelihood and Skill, Physical Health, Education, Disability, Environment, Advocacy, Arts, Marginalised communities, Inclusion of Immigrants.	Livelihoods and Skilling, Education, Rehabilitation, Environment, Affordable housing, Financial Inclusion.	Mental Health, People with Disabilities, Livelihoods, Education, Rehabilitation, Affordable Housing, Covid-19 relief and others.	Livelihood and Skill Training, Education, Disability, Environment and Conservation and Inclusion of Immigrants.	No information available.	Physical Health, Mental Health, Rehabilitation, Disability.	Physical health, Mental Health, Rehabilitation, Environment, Affordable housing, Financial Inclusion, Elderly Care and others.
Quantum of Funds Raised	R $19 million from 2003-18	CAD 150 million till 2020	US $240,103 (2020)	2 million euros till 2012	No information available	US $2.7 million till 2009	400 million euros in 2015
Number of Projects listed	20 till 2018	14 till 2020	9 till 2020	26 till 2015	No Information available	15 till 2019	50 till 2018

5.1 What India can learn from different SSE models

- **Independent leadership and decision making:** SSEs and their local traditional stock exchanges collaborate closely on a global scale. By doing so, they can not only benefit from the synergies provided by traditional stock exchanges, such as investor pools, technology infrastructure, and process-related infrastructure, but also preserve their independence in decision-making. For instance, the Jamaica Stock Exchange's CSR programme is created for JSSE whereas it also has its own independent board and staff. Similar to SVX, which has six members and operates independently as a non-profit organisation, it too submits reports to the Ontario Securities Commission.

  India's SSE stands to gain significantly from utilising the networks, credibility, efficiency, and knowledge capital that the BSE/NSE have built up over time. However, it is crucial that the SSE has independent leadership and decision-making, with representation from the entire finance, compliance, and investing eco - system as well as civil social structure, and that it involves persons from across gender groups and minority groups. This will assist in safeguarding the SSE's social mission.

- **Differential capacity of NPOs:** Organisations listed on SSEs tend to be relatively large. UK SSE, for instance has a median revenue of USD 8.2 million (25 out of 36 FPEs listed), Canadian SSE has a median revenue of USD 4.7 million (for 3 SEs listed) and South Africa SSE has a median revenue of USD 0.7 million (for 8 out of 12 NPOs listed). It is expected that only a small part of NPOs in India out of total (1,000,000, according to Darpan Portal) will be permitted to list on the SSE. What's worrying is how many NPOs will actually be able to list on SSE by fulfilling the requirements and successfully completing the listing process.

- **Creating a culture of Philanthropy:** One of the main factors contributing to the failure of SSEs globally has been a decreased level of donor and investor engagement—and as a result, a lack of a critical mass of transactions. The notion of SSE must be widely accepted in order to increase the base for fundraising and impact investing. Almost all SSEs made significant

investments in it. In order to encourage greater participation, UK's SSE frequently hosted events and campaigns that were directed at investors and donors. To increase the ability of impact investors, Canada's SSE offers offline and online investment preparedness programmes. Through a variety of events, it also offers other investors networking possibilities. The SSEs of Brazil and South Africa employed comparable tactics, with the latter even providing investors with a detailed, step-by-step plan to follow.

Developing a culture of philanthropy and giving also entails mobilising and increasing demand for the services provided by SSEs. Despite a burgeoning middle class, India's charitable giving has relied more on a small number of high-net-worth people than a broad retail base. The SSE is in a perfect position to spark a thriving giving ecosystem thanks to the support of the government, a broad national mission, and the legitimacy of SEBI. Yet, it appears that this issue is not explored in the present thinking on SSE.

6. CHALLENGES AHEAD

- **Need for "organisation funding" rather than "project funding":** The majority of SSEs provide project finance, or tools for raising money for a particular, time-limited project. Although this method of funding promotes transparency, accountability, and measurement simplicity, there is rising concern that non-profit organisations require "organisational funding"—that is, general resources and core funding—to help establish and scale processes and systems that will result in more resilient and well-managed organisations.

- **Less Opportunities for Retail investors:** India offers institutional and retail investors alike investing opportunities, just like all other SSEs throughout the world. Opportunities for retail investors have, however, typically been constrained by factors like regulatory limitations, a lack of acceptable products that strike a balance between risk and return, and the high cost of serving individual investors.

- **Measurement of Social Returns:** SSE is founded on both financial and social returns. Contrary to financial returns, there is a large body of research that describes the challenges of calculating social returns. Even though all SSEs use pre-listing criteria to screen and detect impact-creation, each one has a different level of verification that is necessary.

- **History of Inactive SSEs:** As shown in Table 3 above, the majority of SSEs were unable to maintain themselves for more than a few years. There isn't much information in the public domain about the reasons these SSEs were made inactive. It is obvious that SSE models and marketplaces are still in the early stages of development. Any new model will inevitably experience failures during its early phases. In addition to lifespan, financing running costs appears to be a more pressing matter as a 2018 study by Impact

Finance Network revealed that 80 out of 150 impact platforms, including SSEs, were unable to cover their operating costs.

- **Possibility of biasness towards a particular problem:** By favouring social issues that are easily quantifiable and lend themselves to market solutions over less profitable and business-friendly programmes, the concept of SSEs may further stratify the social sector.

- **Possible suppression of local SEs:** It might favour large, established, or urban organisations over small, local, or fresh enterprises.

- **Difficult to establish unbiased motive of various stakeholders:** Auditors and project managers, for example, could be motivated by business potential yet have little knowledge of the social sector.

- **Creating demand for itself:** Many SSEs had to shut down as a result of the failure to develop a sizable and diverse market for charitable giving or social investing, as demonstrated by their experiences. The WG says nothing about the SSE's plan to generate demand for itself. The SSE may stand out from other fundraising platforms due to its capacity to promote widespread participation through investor/donor education and engagement.

In conclusion, it appears that the proposed SSE in India has adopted an inclusive and all-encompassing strategy that is considerate of the requirements and limitations of social organisations and donors/investors in India. The governance, management, and sustainability of the SSE, as well as developing strategies for donor and investor demand generation, are two areas that, according to findings from global experience, deserve more attention. At the same time, ongoing consultation with civil society should be encouraged, and non-profit perspectives should be institutionalised within the SSE itself. Unfortunately, for a number of reasons, many SSEs have been unable to maintain their business activities. The concept of SSE still has the ability to revolutionise civil society, despite the tendency to discount it given their high rate of closure and unforeseen bad effects. Countries must rethink how SSEs are created, avoiding the naive blueprinting of conventional stock markets, contextualising them within

the reality of civil society, and gaining more support from the social sector in order to realise the benefits. The suggestions made below will assist in ensuring that SSEs develop into inclusive organisations that promote non-profits and civil society.

7. RECOMMENDATIONS

- To ensure that funding is not skewed in any one direction and to prevent unhealthy competition between the sectors, the SSE may need to engage in educational activities with donors and investors, particularly retail investors, to develop a more sensitive and thorough understanding of differences between NPO and FPE.
- It would be fair to extend the tax benefits and exemptions to all registered NPOs, not only those that are listed, in the interest of equity and developing a wider culture of giving in the nation.
- NPOs are unable to explore traditional financial markets or instruments like the issuing of shares and debt through SSEs due to their intrinsic characteristics. To acquire capital that anticipates a financial return in addition to social returns, NPOs may benefit from using and exploring novel financing instruments. The issuing of Women Livelihood Bonds by Singapore's Impact Investing Exchange serves as evidence of this.
- Balance should be sought not only between NPOs and FPEs but also between different theme areas by SSEs. The development of structural means to direct funds to problem areas that receive insufficient funding, such as mental health, land rights, etc., requires close attention. To identify areas that need more funding, the SSE could speak with members of civil society.
- By various initiatives including investor/donor education, gatherings, workshops, and extensive marketing, SSEs will need to pro-actively create demand and encourage a culture of giving. Despite lesser donations and higher expenditures, it is crucial to include individual or small donors in SSE in order to ensure that the concept is widely accepted.
- When choosing impact measurement techniques, it is important to consider their applicability, objectivity, and rigour as well as the practical considerations of time, expense, and talent needed. To ensure that impact assessment and reporting are not too burdensome, especially for smaller non-profits, and that capacity-building and training resources continue to level the playing field, some flexibility should be built into the system.

CONCLUSION

The SSE has the potential to transform civil society, but this transition may be constrained by a number of variables and may potentially have unforeseen effects on the industry. Stakeholders must establish a representative and participatory system that fully embraces the concerns and expertise of civil society and social organisations while utilising effective financial and institutional capability in order to truly generate sustained social impact. An SSE should, above all, enable the markets to serve society rather than society serving the markets.

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LEGAL WORLD

- NATIONAL ORGANIC CHEMICAL INDUSTRIES LTD v. MIHEER H. MAFATLAL & ANR [SC]
- T.S. MURALI v. THE LIQUIDATOR, M/S. HELPLINE HOSPITALITY PVT. LTD[NCLAT]
- GALAXY ENTERPRISE v. INDIRABEN & ORS [NCLAT]
- JOLLY GEORGE & ANR v. GEORGE ELIAS AND ASSOCIATES & ORS [SC]
- HINDUSTAN UNILEVER LTD v. RECKITT BENCKISER (INDIA) PVT LTD [Del]
- THE DIRECTOR (ADMN&HR) KPTCL v. C.P. MUNDINAMANI [SC]
- SECURITY PRINTING & MINTING CORPORATION OF INDIA & ORS v. VIJAY D. KASBE & ORS ETC. [SC]
- SAP LABS INDIA PVT LTD v. INCOME TAX OFFICER [SC]

Corporate Laws

Landmark Judgement

LMJ 05:05:2023

NATIONAL ORGANIC CHEMICAL INDUSTRIES LTD v. MIHEER H. MAFATLAL & ANR [SC]

Appeal (Civil) 4796 of 1997

N. Santosh Hegde, S.B. Sinha & A.K. Mathur, JJ. [Decided on 21/07/2004]

Equivalent citation: [2004] 121 Comp Cas 519

Companies Act,1956- injunction order to maintain status quo with respect to certain shareholding- allotment of rights shares to appellant- company court in an amalgamation petition decided on the status of the rights shares against the appellant- whether correct- Held, No.

Brief facts:

Certain shares of Mafatlal Industries Ltd ["MIL"] were allotted to the appellant and 3 members of MIL challenged this share allotment in 2 civil suits. The appellant was not a party in these suits. The civil court directed MIL to maintain status-quo in respect of the allotment of shares. While the said suits were pending, MIL issued rights shares and appellant also got allotted rights shares. In the petition concerning with the amalgamation of MIL the issue of allotting rights shares, in violation of the civil courts status quo order, was raised and disposed of against the appellant. The appellant approached the Supreme Court.

Decision: **Allowed.**

Reason:

Having heard the learned Counsel for the appellant in this appeal and the connected appeals we are satisfied that the courts below in the impugned order have gone far beyond their jurisdiction by giving findings as to the validity of shares acquired by the appellant. Before the Company Court this issue did not arise at all consequently, even before the Appellate Court this question did not arise. The question whether the transfer of shares by the MIL to the appellant was in contravention of the interim order of injunction granted by the City Civil Court or not, is a matter to be decided by the City Civil Court in the pending proceedings before it and it could not have been decided in an alien proceedings before the Company Court. There was no statutory need to have decided this issue while dealing with the application for approval of the Scheme under Section 391 of the Companies Act, indeed, that issue did not arise before the Company Court. That apart basic principles of natural justice are violated by the courts below in deciding an issue against the appellant in proceedings to which the appellant was not even party. By this finding, the appellant's right to hold shares in the MIL gets affected and even the question of violation of the terms of injunction on facts of this case, was not a matter before these forums. Therefore, we are of the considered opinion that the findings given by the Company Court as affirmed by the Appellate Court as to the violation of the injunction order also as to the validity of the transfer and the title of the appellant over the shares held by it in the MIL being findings which are made beyond the jurisdiction of the courts below, we have no hesitation in setting aside these findings. This issue as to the violation of injunction order or any other issue pertaining to the validity of title of the shares transferred in favour of the appellant by MIL is a matter if at all, to be decided by the City Civil Court in the pending suits if it arises for consideration. Therefore, we allow this appeal, set aside the findings impugned in this appeal.

LW 32:05:2023

T.S. MURALI v. THE LIQUIDATOR, M/S. HELPLINE HOSPITALITY PVT. LTD[NCLAT]

Company Appeal (AT) (Insolvency) No. 275 of 2023 & connected appeals

Ashok Bhushan & Barun Mitra. [Decided on 21/04/2023]

Insolvency and Bankruptcy Code,2016- CIRP- liquidation proceedings- e-auction by liquidator- opposition of ex-director of the Corporate debtor rejected- whether correct- ex-director was taking steps to settle the dues with secured creditors- Held, No.

Brief facts:

The Appellant in the present case is promoter and ex-Director of M/s Helpline Hospitality Pvt. Ltd. (hereinafter referred to as the 'Corporate Debtor'). The Liquidator of the corporate debtor obtained the permission from the NCLT to conduct e-auction sale for selling the property of the corporate debtor. The appellant opposed this e-auction but could not succeed. Hence these appeals.

Decision: **Disposed of with giving directions.**

Reason:

The moot point for consideration is whether the liquidation proceedings should be allowed to proceed or whether an opportunity with a strict timeframe can be given to the Appellant to settle the dues of the Corporate Debtor.

Keeping in view the peculiar facts of the present case and the ground situation, we hold that the liquidator should assume a more positive approach in resolving the distressed position of the Corporate Debtor and not shun the bona- fide efforts being made by the Appellant in this direction to clear the debt of the Corporate Debtor.

The spirit, tenor and objective of IBC being that of a beneficial legislation and not penal, we are of the considered view that the Adjudicating Authority instead of penalizing the

Appellant by allowing attachment of the subject property where he was residing, ought to have given an opportunity to the Appellant to settle with the fourth statutory creditor rather than straightway allowing the auction of the subject property.

Given that the Appellant has all along been making genuine efforts to settle the claims of the statutory creditors, we see no harm in giving a chance to the Appellant to arrive at a settlement with the statutory creditor but we hasten to add that this settlement has to complete within a limited and stringent time frame. This would be a step in the direction which would balance the interests of all the stakeholders. In any case, if the Appellant fails in his endeavours, the liquidation proceedings will commence.

For the foregoing reasons, the impugned order dated 22.02.2023 is set aside. The e-auction notice published by the liquidator in the newspapers and warrant of attachment of subject property is stayed. In the interim, the Appellant is allowed to settle all dues of the statutory creditors by complying to the following directions:

(i) The Appellant will submit a full and final proposal for settlement of dues of all statutory creditors including for those statutory creditors where the dues have been settled. These proposals shall be submitted by the Appellant to the liquidator within two weeks of the uploading of this order.

(ii) The liquidator in turn shall transmit these settlement proposals to the concerned statutory creditors within a period of 10 days from the date of receipt for seeking their concurrence/acceptance of the said proposals. The liquidator shall provide a timeframe of one month to statutory creditors for their response.

(iii) The response of the statutory creditors will be forthwith communicated to the Appellant and the Appellant in turn will have to clear all outstanding dues as per the settlement proposal concurred in by the statutory creditors within a period of one month from the date of receipt of the same from the liquidator.

(iv) In the event of any of the statutory creditors not having agreed to the settlement proposal within the stipulated period, the liquidator shall proceed with liquidation proceedings and the Appellant will have to vacate the subject property forthwith. An undertaking to this effect will be given by the Appellant to the liquidator before sending the settlement proposals for transmission to the statutory creditors.

(v) In case all the statutory creditors agree to their respective settlement proposals and payments are made within the above stipulated Company Appeal (AT)(Insolvency) No. 275 of 2023 Company Appeal (AT)(Insolvency) No. 276 of 2023 Company Appeal (AT)(Insolvency) No. 277 of 2023 Company Appeal (AT)(Insolvency) No. 344 of 2023 timelines, the liquidation proceedings shall stand extinguished. In such event, the Appellant shall bear the lumpsum amount of liquidator's fees & expenses which is fixed at Rs.20 lakhs.

(vi) In case any of the statutory creditors fails to respond to the settlement proposal, it will be deemed that they have not agreed to the same and liquidation proceedings will commence forthwith. In such event, the liquidator shall claim his fees and expenses in terms of IBBI (Liquidation Process) Regulations, 2016.

All the appeals are disposed of in view of the above terms. Parties shall bear their own costs.

LW 33:05:2023

GALAXY ENTERPRISE v. INDIRABEN & ORS [NCLAT]

Company Appeal (AT) No. 38 of 2023

Rakesh Kumar & Alok Srivastava. [Decided on 18/04/2023]

Companies Act,2013- appellant purchased the property from Respondent company No. 2 by paying consideration- seller company and its directors were under company petition before the NCLT- NCLT passed status quo order against the appellant with respect to the property- Whether correct-Held, No.

Brief facts:

The appellant, who purchased a piece of land through registered sale deed from Respondent No.2-Galaxy Cinema Private Limited, was aggrieved with an interim order passed by National Company Law Tribunal , Ahmedabad (hereinafter referred to as NCLT). By the order the Learned NCLT, directed Respondent No.1 to 9 "to maintain status quo relating to remaining 227 units by not creating any third party interest and not to carry on work construction beyond 302 units till disposal of main CP." The appellant has specifically pleaded that being purchaser of the land in question he was not at all related in any manner with the Respondent No.2, who was the vendor of land in question. The appellant asserted that the appellant or its partner was neither director nor shareholder and also was not connected with the company in question. However, by the impugned order the appellant has been restrained from proceeding further with transferring/executing sale deed in respect of remaining constructed units which has been constructed much after purchase of the land in question. Hence the present appeal.

Decision: **Allowed.**

Reason:

In view of facts and circumstances which has emerged from the record as well as on the basis of argument advanced by the party it is not in dispute that in respect of the open land a registered sale deed was executed by the company (vendor) after receipt of payment of total consideration amount of Rs.6 crore. From the order impugned it is reflected that NCLT at least at the time of passing interim impugned order has not accepted the valuation report of the private valuer and recorded that the land was sold to the price fixed as per ready reckoner rates fixed by the Govt of Gujarat properties situated in that area. Meaning thereby that the contention of the applicant before the NCLT regarding undervalued sale was not accepted by the NCLT for passing ad interim order. It is also not reflected as to any question was raised that the appellant had not purchased the land in good faith, rather the transaction appears to have been done in

good faith by the appellant. It is also not disputed that the (i) sale deed was registered on 13.7.2020; (ii) the pleading that after registration permission was obtained from competent authority for construction of the building; (iii) approval of the plan and mortgaging of the land for obtaining loan; (iv) thereafter almost completion of the project by way of construction of above 302 units;(v) creation of third party right since 61 persons had already purchased the unit; and (vi) NOC for another 14 purchasers from the Bank was received. In such a situation it was not permissible for the NCLT to pass an order affecting the right of the appellant as well as affecting right of those persons who were neither arrayed as party in the petition before NCLT nor they were noticed.

The interim relief which was sought for by the applicant before the NCLT was not needed to be entertained by the NCLT. On perusal of the language of the interim relief it is evident that the applicant was under impression as if some construction on land was going to be done by the appellant herein whereas facts noticed hereinabove makes it clear that construction over the land was almost complete and some of third party right was also created. Such circumstances are sufficient to draw an inference that balance of convenience was completely against the applicant and in absence of balance of convenience the learned NCLT has committed error in passing the order of status quo restraining appellant from either creating any third party right or carrying any construction work. If we allow the status quo order to continue, there is every possibility of irreparable loss to the appellant and also some other proposed purchasers who had entered into agreement for purchasing the units in the premises in question which has been constructed over the land. If we allow the impugned order to continue, certainly the persons who have entered into agreement with the appellant for purchasing the units and also paid to the appellant may also suffer irreparable loss. We are not sure of the possibility that some of purchasers might have obtained loan for purchasing the unit. If status quo is not vacated, unnecessarily those proposed purchasers may be constrained to make payment of EMI without immediately enjoying physical possession of the unit in question. In such a situation we are of the considered opinion that besides suffering of the appellant, others who are not party before the NCLT may also suffer which would not be in accordance with law.

In view of the facts and circumstances we are of the opinion that learned NCLT by the impugned order i.e. direction to respondents particularly the appellant herein for maintaining status quo relating to remaining 227 units by not creating any third party interest or no construction beyond 302 units till disposal of the main CP has to go and as such the impugned order is hereby set aside. We may clarify that whatever observations we have recorded may not be taken note of by the NCLT while proceeding with the main case. We have passed order only to the extent of setting aside of status quo order which was obviously affecting the right of the appellant as well as some other persons who were not even party before the NCLT or even before this NCLAT. The appeal stands allowed, however, without costs.

General Laws

LW 34:05:2023

JOLLY GEORGE & ANR v. GEORGE ELIAS AND ASSOCIATES & ORS [SC]

Civil Appeal Nos. of 2023 [@ SLP(C) Nos.1333-1335 of 2022)

V. Ramasubramanian & Pankaj Mithal, JJ. [Decided on 12/04/2023]

Kerala MSME Act read with Kerala Panchayat Act- road construction in panchayat- establishment of hot mixer plant- contractor registered under the Kerala MSME Act- gram panchayat refused to give permission to establish hot mixer plant- whether correct- Held, No.

Brief facts:

Facts are complicated. The moot question arose in these appeals was whether permission under the Panchayat Act is required to establish a hot mix plant when permission from the pollution control board and a certificate of acknowledgement under the Kerala MSME Act have been obtained.

Decision: **Petitions of the respondents allowed.**

Reason:

What is held against the writ petitioners today is the requirement of a permission under the Act of 1994. But Section 10 of the Kerala MSME Act not only confers overriding effect to the Act on other laws, but also makes a specific reference to the Act of 1994.

Therefore, the prayer made by the writ petitioners in their second writ petition, deserved to be granted, clearly in the light of the statutory prescription. But unfortunately, both the learned Single Judge and the Division Bench completely overlooked this most vital aspect.

According to the learned counsel for the objectors, Rule 3 of the Kerala Micro Small Medium Enterprises Facilitation Rules, 2020, requires all persons seeking Acknowledgment Certificate under Section 5(3) to furnish a duly filled self-certification in Form-I. This form contains an undertaking from the applicant to comply with the Kerala Panchayat Building Rules, 2019 and hence it is contended that the writ petitioners cannot avoid the requirement of permission from the local Panchayat.

But the said argument cannot be sustained for the simple reason that the Rules framed under the Act cannot annul the effect of the statutory provisions. Section 10(2) of the Kerala MSME Act makes it clear that the provisions of the Act of

1994, shall be read as amended to be in conformity with the provisions of the Kerala MSME Act. Therefore, the objectors cannot fall back upon the Rules to nullify the effect of the provisions of the Act.

It is contended by the learned counsel that though his clients have not challenged the constitutional validity of Section 10 of the Kerala MSME Act, this Court can read down the overriding and absolute clauses in public interest. According to the learned counsel, the Panchayat has a public duty to safeguard the areas and persons within its jurisdiction against environmental pollution and that the precautionary principle requires to be applied. The learned counsel relied upon the decisions of this Court in *Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal & Ors. (2020) 13 SCC 234 and A.P. Pollution Control Board vs. Prof. M.V. Nayudu (Retd.) and Ors (1999) 2 SCC 718*

But the above argument is completely misconceived. Section 10 of the Kerala MSME Act does not override the provisions of any of the pollution control laws such as Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974. The Kerala MSME Act overrides the 1994 Act and a few other local enactments. This is why the writ petitioners have taken "consent" from the Pollution Control Board. Once consent is taken from the Pollution Control Board, the necessity for reading down Section 10 of the Kerala MSME Act, for the purpose of protecting the environment, does not arise.

The argument that Panchayat being the grassroot institution, has the right of participation in decision making, is again misconceived. All Panchayats want motorable roads. But if they do not want road construction materials to be manufactured within their Panchayat, we do not know where from these materials can be imported. Therefore, the reliance placed by the learned counsel for the objectors on the decision of this Court in Lafarge Umiam Mining Private Limited in T.*N. Godavarman Thirumulpad vs. Union of India and Ors.*, is also misplaced.

In view of the above, the writ petitioner who is respondent No.1 in three of these appeals and the appellant in one of these appeals is entitled to the reliefs sought in both the writ petitions. Accordingly, the appeal filed by the writ petitioner George Elias and Associates is allowed, the impugned orders are set aside and the writ petitions filed by George Elias and Associates are allowed. The appeals filed by the objectors, namely, the people of the locality are dismissed. There will be no order as to costs.

LW 35:05:2023

HINDUSTAN UNILEVER LTD v. RECKITT BENCKISER (INDIA) PVT LTD [Del]

FAO (OS) (COMM) 157/2021 and CM No. 42978/2021

Vibhu Bakhru &. Amit Mahajan, JJ. [Decided on 13/04/ 2023]

Disparaging advertisements- injunction against- appellant disparaging respondents products in print and video advertisements- single Judge granted injunction against this- whether correct- Held, Yes.

Brief facts:

The appellant (hereafter 'HUL') has filed the present intra-court appeal impugning a judgement (hereafter 'the impugned judgment') passed by the learned Single Judge of this Court whereby the appellant was restrained from publishing a print advertisement (hereafter 'the impugned advertisement') and airing three YouTube videos (hereafter collectively referred to as 'the impugned videos' and separately as 'the first impugned video'; 'the second impugned video'; and 'the third impugned video'). These advertisements for the toilet cleaner sold under the tradename 'Domex', were found to be, prima facie, disparaging the toilet cleaner sold by the respondent (hereafter 'Reckitt') under its trademark 'Harpic'.

HUL claims that the impugned advertisement and the impugned videos truthfully depict that the effect of its product lasts longer than Reckitt's product. Thus, the impugned advertisement and impugned videos are permissible and ought not to have been interdicted. Reckitt disputes the claims made by HUL and complains that the impugned advertisement and the impugned videos are misleading and disparaging.

Decision: Dismissed.

Reason:

There can be little doubt that the impugned advertisement is disparaging to Reckitt's product. It mentions Harpic in particular and claims that Domex fights bad smell for a longer period of time. Apart from that, it shows that the toilet bowl cleaned with Domex emanates fragrance while that cleaned with the use of Harpic emanates a foul smell. As stated above, an advertiser can indulge in puffery and hyperbole to reflect its product in a good light. However, it is not open for an advertiser to claim that the product of its competitor is bad, substandard or its use would be detrimental to the interest or well-being of the customers. In the present case, the advertisement denigrates Reckitt's product by reflecting that the toilet bowl cleaned by the use of the said product would result in the same remaining unclean and emanating a foul smell.

The impugned advertisement is also untruthful, at least to the extent that it reflects that the toilet cleaned by its product would emanate fragrance, while the one cleaned by Harpic would emanate a foul smell. As stated above, HUL's claim rests on the use of 'Saline', which according to HUL has hydrophobic qualities. It is not HUL's case that the use of 'Saline' would keep the toilet fragrant; it merely states that the liquid causing bad odour would be repelled as the use of 'Saline' on the sides of the toilet bowl would not allow liquids with foul odour (referring to urine) to stick on the side of the bowl.

In the aforesaid view, we find no infirmity with the decision of the learned Single Judge in interdicting HUL from publishing the impugned advertisement on the ground that it, prima facie, denigrates and disparages Reckitt's product Harpic.

Given the nature of the controversy and the facts, the learned Single Judge has not interdicted HUL from broadcasting the impugned videos but merely directed that it remove all references to Rekitt's product and the bottle representing

ordinary toilet cleaners as the same is identifiable with Reckitt's product - Harpic. For the reasons stated above, we find no infirmity with the impugned judgment.

LW 36:05:2023

THE DIRECTOR (ADMN&HR) KPTCL v. C.P. MUNDINAMANI [SC]

Civil Appeal No. 2471 of 2023 (@ SLP (C) No. 6185 of 2020)

M.R. Shah & C.T. Ravikumar, JJ. [Decided on 11/04/2023]

Regulation 40(1)- Earning of annual increment-employee retiring the next day of such earning-whether entitled for increment-Held, Yes.

Brief facts:

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Karnataka, by which, the Division Bench of the High Court has allowed the said appeal preferred by the employees - respondents herein by quashing and setting aside the judgment and order passed by the learned Single Judge and directing the appellants to grant one annual increment which the respondents had earned one day prior to they retired on attaining the age of superannuation, the management – KPTCL has preferred the present appeal.

Decision: **Dismissed.**

Reason:

The short question which is posed for the consideration of this Court is whether an employee who has earned the annual increment is entitled to the same despite the fact that he has retired on the very next day of earning the increment?

It is the case on behalf of the appellants that the word used in Regulation 40(1) is that an increment accrues from the day following that on which it is earned and in the present case the increment accrued on the day when they retired and therefore, on that day they were not in service and therefore, not entitled to the annual increment which they might have earned one day earlier. It is also the case on behalf of the appellants that as the increment is in the form of incentive and therefore, when the employees are not in service there is no question of granting them any annual increment which as such is in the form of incentive.

At this stage, it is required to be noted that there are divergent views of various High Courts on the issue involved. The Full Bench of the Andhra Pradesh High Court, the Himachal Pradesh High Court and the Kerala High Court have taken a contrary view and have taken the view canvassed on behalf of the appellants. On the other hand, the Madras High Court in the case of P. Ayyamperumal (supra); the Delhi high Court in the case of Gopal Singh Vs. Union of India and Ors. (Writ Petition (C) No. 10509/2019 decided on 23.01.2020); the Allahabad High Court in the case of Nand Vijay Singh and Ors. Vs. Union of India and Ors. (Writ A No. 13299/2020 decided on 29.06.2021); the Madhya Pradesh High Court in the case of Yogendra Singh Bhadauria and Ors. Vs. State of Madhya Pradesh; the Orissa High Court in the case of AFR Arun Kumar Biswal Vs. State of Odisha and Anr. (Writ Petition No. 17715/2020 decided on 30.07.2021); and the Gujarat High Court in the case of State of Gujarat Vs. Takhatsinh Udesinh Songara (Letters Patent Appeal No. 868/2021) have taken a divergent view than the view taken by the Full Bench of the Andhra Pradesh High Court and have taken the view that once an employee has earned the increment on completing one year service he cannot be denied the benefit of such annual increment on his attaining the age of superannuation and/or the day of retirement on the very next day.

Now so far as the submission on behalf of the appellants that the annual increment is in the form of incentive and to encourage an employee to perform well and therefore, once he is not in service, there is no question of grant of annual increment is concerned, the aforesaid has no substance. In a given case, it may happen that the employee earns the increment three days before his date of superannuation and therefore, even according to the Regulation 40(1) increment is accrued on the next day in that case also such an employee would not have one year service thereafter. It is to be noted that increment is earned on one year past service rendered in a time scale. Therefore, the aforesaid submission is not to be accepted.

In view of the above and for the reasons stated above, the Division Bench of the High Court has rightly directed the appellants to grant one annual increment which the original writ petitioners earned on the last day of their service for rendering their services preceding one year from the date of retirement with good behaviour and efficiently. We are in complete agreement with the view taken by the Division Bench of the High Court. Under the circumstances, the present appeal deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

LW 37:05:2023

SECURITY PRINTING & MINTING CORPORATION OF INDIA & ORS v. VIJAY D. KASBE & ORS ETC. [SC]

Civil Appeal Nos.of 2023 [(@ SLP (C) Nos. 1891-1900 of 2019]

V. Ramasubramanian & Pankaj Mithal, JJ. [Decided on 18/04/2023]

Government servants- working overtime- whether entitled to overtime wages at double rate- Held, No.

Brief facts:

Challenging a common order passed by the High Court of Judicature at Bombay, in a batch of writ petitions affirming

an order of the Central Administrative Tribunal, holding that even those employees working as Supervisors are entitled to Double Over Time Allowance, the Management of the Security Printing & Minting Corporation of India1 and others have come up with these appeals.

Decision: **Allowed.**

Reason:

At the outset, it should be noted that the claim of the respondents for payment of Double Over Time Allowance arose entirely during the period from 1988 to 2005. Since the 'Corporation' was incorporated only on 13.1.2006 and all the nine production units coming under the control of the Currency and Coinage Division of the Department of Economic Affairs, Ministry of Finance, Government of India were transferred to the Corporation only with effect from 10.2.2006, the claim of the respondents obviously arose at the time when they were Central Government servants. In other words, their claim should be considered to have arisen only in relation to "service matters" of persons appointed to "a service in connection with the affairs of the Union" or in relation to "holders of civil post."

This is why the respondents approached the Central Administrative Tribunal, for the adjudication of their service matter. The respondents did not go either before the Labour Court constituted under the 1947 Act or before the Authorities empowered under other labour welfare legislations, despite Section 28 of the 1985 Act not excluding the jurisdiction of the Industrial Tribunal or the Labour Court. Keeping this in mind, let us now address a more fundamental question.

It must be kept in mind that appointment either to a civil post or in the civil services of the Union or the State, is one of a status. It is not an employment governed strictly by a contract of service or solely by labour welfare legislations, but by statute or statutory rules issued under Article 309 or its proviso.

Unlike those employed in factories and industrial establishments, persons in public service who are holders of civil posts or in the civil services of the Union or the State are required to place themselves at the disposal of the Government all the time.

In the light of the above Rule, there was actually no scope for the respondents to seek payment of Double Over Time Allowance. It is needless to say that no benefit can be claimed by anyone dehors the statutory rules. Unfortunately, the Central Administrative Tribunal completely lost sight of those Rules, and the distinction between employment in a factory and employment in Government service, despite the Union of India raising this as a specific issue in paragraph 12 of the counter filed in O.A. No.428 of 2005 before the Central Administrative Tribunal.

The claim of the respondents before the Tribunal was not based on any statutory rule but based entirely upon Section 59(1) of the 1948 Act.

Persons who are not holders of civil posts nor in the civil services of the State but who are governed only by the 1948 Act, may be made to work for six days in a week with certain limitations as to weekly hours under Section 51, weekly holidays under Section 52, daily hours under Section 54, etc. Workers covered by Factories Act do not enjoy the benefit of automatic wage revision through periodic Pay Commissions like those in Government service. Persons holding civil posts or in the civil services of the State enjoy certain privileges and hence, the claim made by the respondents ought to have been tested by the Tribunal and the High Court, in the proper perspective to see whether it is an attempt to get the best of both the worlds.

The High Court fell into an error in holding that the performance of certain functions, such as setting right malfunctioning of feeder, side-lay, double-sheet detector, photocell, etc., to ensure uninterrupted running of the machinery, are manual functions. But we do not think so.

In any case, the respondents, who are holders of civil posts or in the civil services of the State till the year 2006, could not have claimed the benefits of the provisions of Chapter VI of the 1948 Act, dehors the service rules.

In view of the above, all the appeals are allowed and the impugned order of the High Court is set aside. However, we find that some of the employees have retired, some have passed away and in respect of some who have passed away, the appeals have been abated. Therefore, even while allowing the appeals and setting aside the impugned order of the High Court, we direct the appellants not to effect any recovery from those to whom payments have already been made. No order as to costs.

Tax Laws

LW 38:05:2023

SAP LABS INDIA PVT LTD v. INCOME TAX OFFICER [SC]

Civil Appeal No. 8463 of 2022 [(@ S.L.P.(C) No.28652/2018)] with batch of appeals

M.R. Shah & M.M.Sunderesh, JJ. [Decided on 19/04/2023]

Income tax Act,1961- Section 260A- transfer pricing- determination thereof- whether Tribunal's order is appealable on the issue of question of law- Held, Yes.

Brief facts:

The present batch of Civil Appeals, mostly by the Revenue and few of the assessees arises out of judgments and orders passed by the various High Courts, more particularly the High Court of Karnataka, dismissing the appeals challenging the findings of the Income Tax Appellate Tribunal (for short, 'Tribunal') on 'Transfer Pricing' issues on the ground that

the issues decided by the Tribunal are questions of fact and as perversity is neither pleaded nor argued nor demonstrated by placing material to that effect, no substantial question of law arises for consideration under Section 260A of the Income Tax Act, 1961 (for short, 'IT Act'). The High Court of Karnataka has dismissed the appeals preferred by the Revenue by relying upon its earlier judgment in the case of PCIT v. Softbrands India (P) Ltd., reported in (2018) 406 ITR 513 (Karnataka).

Decision: **Allowed.**

Reason:

In the present batch of Civil Appeals preferred by the Revenue, the respective High Courts, more particularly the Karnataka High Court have/has dismissed the appeals preferred by the Revenue in which the Revenue challenged the determination of the arm's length price by the Tribunal, relying upon and/or considering the decision of the Karnataka High Court in the case of Softbrands India (P) Ltd. (supra). In the case of Softbrands India (P) Ltd. (supra), the High Court has taken the view that the determination of arm's length price by the Tribunal shall be final against which an appeal under Section 260A of the IT Act is not required to be entertained.

Therefore, the short question which is posed for the consideration of this Court is, whether in every case where the Tribunal determines the arm's length price, the same shall attain finality and the High Court is precluded from considering the determination of the arm's length price determined by the Tribunal, in exercise of powers under Section 260A of the Act?

Section 92C(1) thus visualizes determination of the "arms-length price" (ALP) by any of five enumerated methods, "being the most appropriate method", having regard to the "nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the board may prescribe, namely (a) comparable uncontrolled price method,(b) resale price method, (c) cost + method, (d) profit split method, (e) transactional net margin method, (f) any such other method as may be prescribed by the board. Where more than one price is determined by the most appropriate method, the arm›s length price shall be taken to be arithmetical mean of such prices."

Rule 10B of the Rules prescribes the determination of arm's length price under Section 92C. The first step in all methods is evaluation of differences between the international transaction undertaken with the "unrelated enterprise performing the comparable functions" in similar circumstances. Rule 10B of the Income-tax Rules inter alia, provides for various methods for determination of the arm's length price. Rule 10B(1)(e) prescribes the "transactional net margin method" (TNMM) with which the present case is concerned.

Therefore, while determining the arm's length price, the Tribunal has to follow the guidelines stipulated under Chapter X of the IT Act, namely, Sections 92, 92A to 92CA, 92D, 92E and 92F of the Act and Rules 10A to 10E of the Rules. Any determination of the arm's length price under Chapter X de hors the relevant provisions of the guidelines, referred to hereinabove, can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the arm's length price the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under Section 260A of the IT Act. When the determination of the arm's length price is challenged before the High Court, it is always open for the High Court to consider and examine whether the arm's length price has been determined while taking into consideration the relevant guidelines under the Act and the Rules. Even the High Court can also examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent non-comparable transactions are considered as comparable transactions or not. Therefore, the view taken by the Karnataka High Court in the case of Softbrands India (P) Ltd. that in the transfer pricing matters, the determination of the arm's length price by the Tribunal is final and cannot be subject matter of scrutiny under Section 260A of the IT Act cannot be accepted.

Thus, in each case, the High Court should examine whether the guidelines laid down in the Act and the Rules are followed while determining the arm's length price. Therefore, we are of the opinion that the absolute proposition of law laid down by the Karnataka High Court in the case of Softbrands India (P) ltd. (supra) that in the matter of transfer pricing, determination of the arm's length price by the Tribunal shall be final and cannot be subject matter of scrutiny and the High Court is precluded from examining the correctness of the determination of the arm's length price by the Tribunal in an appeal under Section 260A of the IT Act on the ground that it cannot be said to be raising a substantial question of law cannot be accepted. As observed hereinabove, within the parameters of Section 260A of the IT Act in an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case whether while determining the arm's length price, the guidelines laid down under the Act and the Rules, referred to hereinabove, are followed or not and whether the determination of the arm's length price and the findings recorded by the Tribunal while determining the arm's length price are perverse or not.

In view of the above, the impugned judgments and orders passed by the High Court dismissing the Revenue's appeals and even the appeals preferred by the assessees are required to be quashed and set aside and the matters are required to be remitted back to the concerned High Courts to decide and dispose of the respective appeals afresh in light of the observations made hereinabove and examine in each and every case whether the guidelines laid down under the Act and the Rules, referred to hereinabove, are followed while determining the arm's length price by the Tribunal or not and to that extent whether the findings recorded by the Tribunal while determining the arm's length price are perverse or not.

FROM THE GOVERNMENT

- REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES, AMENDMENT RULES, 2023
- BANK GUARANTEES (BGS) CREATED OUT OF CLIENTS' FUNDS
- MODIFICATIONS IN THE REQUIREMENT OF FILING OF OFFER DOCUMENTS BY MUTUAL FUNDS
- CONTRIBUTION BY ELIGIBLE ISSUERS OF DEBT SECURITIES TO THE SETTLEMENT GUARANTEE FUND OF THE LIMITED PURPOSE CLEARING CORPORATION FOR REPO TRANSACTIONS IN DEBT SECURITIES
- PROCEDURE FOR SEEKING PRIOR APPROVAL FOR CHANGE IN CONTROL OF VAULT MANAGERS
- ISSUE OF MASTER CIRCULAR BY STOCK EXCHANGES, CLEARING CORPORATIONS AND DEPOSITORIES
- DISPUTE RESOLUTION MECHANISM FOR LIMITED PURPOSE CLEARING CORPORATION (LPCC)
- FORMULATION OF PRICE BANDS FOR THE FIRST DAY OF TRADING PURSUANT TO INITIAL PUBLIC OFFERING (IPO), RE-LISTING ETC. IN NORMAL TRADING SESSION
- GUIDELINES WITH RESPECT TO EXCUSING OR EXCLUDING AN INVESTOR FROM AN INVESTMENT OF AIF
- DIRECT PLAN FOR SCHEMES OF ALTERNATIVE INVESTMENT FUNDS (AIFS) AND TRAIL MODEL FOR DISTRIBUTION COMMISSION IN AIFs
- USAGE OF BRAND NAME/TRADE NAME BY INVESTMENT ADVISERS (IA) AND RESEARCH ANALYSTS (RA)
- ADVERTISEMENT CODE FOR INVESTMENT ADVISERS (IA) AND RESEARCH ANALYSTS (RA)
- REMITTANCES TO INTERNATIONAL FINANCIAL SERVICES CENTRES (IFSCS) UNDER THE LIBERALISED REMITTANCE SCHEME (LRS)
- GENERAL CREDIT CARD (GCC) FACILITY – REVIEW
- PROVISIONING FOR STANDARD ASSETS BY PRIMARY (URBAN) CO-OPERATIVE BANKS – REVISED NORMS UNDER FOUR-TIERED REGULATORY FRAMEWORK

- MASTER CIRCULAR - PRUDENTIAL NORMS ON CAPITAL ADEQUACY - PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS)
- MASTER CIRCULAR - HOUSING FINANCE FOR UCBs
- FRAMEWORK FOR ACCEPTANCE OF GREEN DEPOSITS
- AUTHORISED DEALERS CATEGORY-II - ONLINE SUBMISSION OF FORM A2
- MASTER DIRECTION ON OUTSOURCING OF INFORMATION TECHNOLOGY SERVICES
- APCONNECT - ONLINE APPLICATION FOR FULL FLEDGED MONEY CHANGERS AND NON-BANK AUTHORISED DEALERS CATEGORY-II
- MASTER DIRECTION ON FRAMEWORK OF INCENTIVES FOR CURRENCY DISTRIBUTION & EXCHANGE SCHEME FOR BANK BRANCHES INCLUDING CURRENCY CHESTS BASED ON PERFORMANCE IN RENDERING CUSTOMER SERVICE TO THE MEMBERS OF PUBLIC
- MASTER CIRCULAR - ASSET RECONSTRUCTION COMPANIES
- MASTER CIRCULAR – LEAD BANK SCHEME
- MASTER DIRECTION – FACILITY FOR EXCHANGE OF NOTES AND COINS
- MASTER DIRECTION ON PENAL PROVISIONS IN REPORTING OF TRANSACTIONS/ BALANCES AT CURRENCY CHESTS
- MASTER DIRECTION – SCHEME OF PENALTIES FOR BANK BRANCHES AND CURRENCY CHESTS FOR DEFICIENCY IN RENDERING CUSTOMER SERVICE TO THE MEMBERS OF PUBLIC
- MASTER DIRECTION ON COUNTERFEIT NOTES, 2023 - DETECTION, REPORTING AND MONITORING
- MASTER CIRCULAR – HOUSING FINANCE
- MASTER CIRCULAR - BANK FINANCE TO NON-BANKING FINANCIAL COMPANIES (NBFCs)
- MASTER CIRCULAR - DISBURSEMENT OF GOVERNMENT PENSION BY AGENCY BANKS
- MASTER CIRCULAR - GUARANTEES, CO-ACCEPTANCES & LETTERS OF CREDIT - UCBs
- MASTER CIRCULAR ON SHG-BANK LINKAGE PROGRAMME
- MASTER CIRCULAR - PRUDENTIAL NORMS ON INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING PERTAINING TO ADVANCES
- MASTER DIRECTION – RESERVE BANK OF INDIA (CLASSIFICATION, VALUATION AND OPERATION OF INVESTMENT PORTFOLIO OF PRIMARY (URBAN) CO-OPERATIVE BANKS) DIRECTIONS, 2023
- MASTER CIRCULAR - CREDIT FACILITIES TO SCHEDULED CASTES (SCs) & SCHEDULED TRIBES (STs)
- MASTER CIRCULAR ON CREDIT FACILITIES TO MINORITY COMMUNITIES
- MASTER CIRCULAR - GUARANTEES AND CO-ACCEPTANCES

Corporate Laws

01 Removal of Names of Companies from the Register of Companies, Amendment Rules, 2023

[Issued by the Ministry of Corporate Affairs [F. No. 1/28/2013-CL-V(Part-111)] dated 17.04.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (1)]

In exercise of the powers conferred by sub-sections (1), (2) and (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, namely:-

1. Short title and commencement.- (1) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023.

   (2) They shall come into force on 01st May, 2023.

2. In the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (hereafter referred to as the said rules), in rule 4,-

   (i) for sub-rule (1), following sub-rule shall be substituted, namely:-

   "(1) An application for removal of name of a company under sub-section (2) of section 248 shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit in Form No. STK-2 along with fee of ten thousand rupees.";

   (ii) in sub-rule (3), clause (iv) shall be omitted;

   (iii) after sub-rule (3) the following shall be inserted, namely :-

   "(3A) The Registrar, Centre for Processing Accelerated Corporate Exit established under sub-section (1) of section 396, shall be the Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in Form No. STK-2 and all matters related thereto under section 248 having territorial jurisdiction all over India.".

MANOJ PANDEY

Joint Secretary

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

02 Bank Guarantees (BGs) created out of clients' funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/061 dated 25.04.2023]

1. Currently Stock Brokers (SBs)/ Clearing Members (CMs) pledge client's funds with Banks which in turn issue Bank Guarantees (BGs) to clearing corporations for higher amounts. This implicit leverage exposes the market and especially the client's funds to risks. Pursuant to discussions with various stakeholders, it has been decided to implement the following measures in order to safeguard the interests of the investors: -

   a. Beginning May 01, 2023, no new BGs shall be created out of clients' funds by SBs/CMs.

   b. Existing BGs created out of clients' funds shall be wound down by September 30, 2023.

2. The provisions of this framework shall not be applicable for proprietary funds of SBs/CMs in any segment and SB's proprietary funds deposited with CM in the capacity of a client.

Monitoring and reporting:

3. The stock exchanges and clearing corporations shall take stock of the current position of the BGs issued out of clients' funds by SBs/CMs and monitor the wind down to ensure implementation of the circular without any disruption of services to clients. For the purpose, stock exchanges and clearing corporations shall put in place periodic reporting mechanisms for SBs/CMs.

4. Stock exchanges and clearing corporations are directed to submit the following data to SEBI on fortnightly basis (starting from June 01, 2023):

Collateral data as on <Date> at <Name of the clearing corporation>					
Name of the SB/CM	Nature of the entity	(SB/ CM/ SCM)	Total BG amount as collateral	Total BG amount (out of clients' funds) as collateral	Total BG amount (out of prop funds) as collateral

5. SBs/CMs shall be required to provide a certificate, by its statutory auditor confirming the implementation of this circular. Such a certificate shall be submitted to stock exchanges/clearing corporations by October 16, 2023.

6. Stock exchanges and clearing corporations shall verify the compliance of the provisions of the circular in their periodic inspections/reporting. They shall also evolve adequate mechanisms to address cases of SBs/CMs who do not comply with the provisions of the circular by the stipulated dates.

7. Given the implementation of the above measures, the provisions of following SEBI circulars shall stand modified to the extent as stated hereinabove:

a. SEBI circular MRD/DoP/SE/CIR-11/2008 dated April 17, 2008 on 'Collateral deposited by clients with SBs';

b. SEBI circular MIRSD/ SE /Cir-19/2009 dated December 03, 2009 on 'Dealings between a client and a stock broker';

c. SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 on 'Enhanced supervision of stock brokers/depository participants';

d. SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25,2020 on 'Margin obligations to be given by way of pledge/re-pledge in the depository System';

e. SEBI circular SEBI/HO/MIRSD/DPIEA/CIR/P/2020/115 dated July 01,2020 on 'Standard Operating Procedure in the cases of Trading Member / Clearing Member leading to default'; and

f. SEBI circular SEBI/HO/MRD2_DCAP/CIR/2021/0598 dated July 20,2021 on 'Segregation and monitoring of collateral at client level'.

8. The stock exchanges and clearing corporations are directed to:

a. Bring the provisions of this circular to the notice of stock brokers and clearing members, as the case may be, and also disseminate the same on their websites;

b. Make amendments to the relevant bye-laws, rules and regulations for the implementation of the above provisions;

c. Communicate to SEBI, the status of the implementation of the provisions of this circular in their monthly development report.

9. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

ARADHANA VERMA
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 Modifications in the requirement of filing of Offer Documents by Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-RAC-2/P/CIR/2023/60 dated 25.04.2023]

1. SEBI, vide Circular SEBI/HO/IMD/DF2/CIR/P/2016/68 dated August 10, 2016, mandated submission of soft copy of the final SIDs along with printed/final copy seven working days prior to the launch of the scheme.

2. As part of the go green initiative, in partial modification of the aforementioned circular, it has been decided that AMCs shall file all final offer documents (final SID and final KIM) only digitally by emailing the same to a dedicated email id. viz: imdsidfiling@sebi.gov.in and there would be no requirement of filing of physical copies of the same with SEBI.

3. Accordingly, based on the consultation with Association of Mutual Funds in India (AMFI), such submission of all final SID and KIM in digital form shall be made at least two working days prior to the launch of the scheme.

4. Further, to safeguard the interests of investors in securities market, it has been decided that all new fund offers ("NFOs") shall remain open for subscription for a minimum period of three working days.

5. All other provisions mentioned in the aforesaid circular shall remain unchanged.

6. The provisions of this circular shall be applicable with effect from May 01, 2023.

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 Regulation 77 of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

VISHAKHA MORE
Deputy General Manager

04 Contribution by eligible Issuers of debt securities to the Settlement Guarantee Fund of the Limited Purpose Clearing Corporation for repo transactions in debt securities

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/CIR/P/2023/56 dated 23.04.2023]

1. A well-functioning repo market contributes to the development of the debt securities market, inter alia, by way of boosting the liquidity of the underlying debt securities and providing a facility to market participants to monetize their debt holdings without selling the underlying, thus meeting their temporary need for funds. The development of an active repo market in debt securities may also be beneficial to the Issuers as the enhanced liquidity may positively impact the yield, thereby resulting in reduced costs of raising funds to the issuers in the primary market.

2. The SEBI Board in its meeting held on September 29, 2020 permitted the setting up a Limited Purpose Clearing Corporation (LPCC) for clearing and settling repo transactions in debt securities. The Board, inter alia, also decided that an amount of 0.5 basis points of the issuance value of debt securities per annum be

collected upfront prior to the listing of such securities in order to build the Settlement Guarantee Fund of the LPCC.

3. In this regard, AMC Repo Clearing Limited (ARCL) has been granted recognition as LPCC by SEBI. The Reserve Bank of India also accorded necessary approvals to ARCL to function as a Clearing Corporation with a limited purpose and to offer central counter party services for repo transactions in debt securities.

4. It has been decided to put in place, the following framework for upfront collection of amounts as charges from eligible issuers at the time of allotment of debt securities:

   a. The eligible issuers shall be notified by the LPCC as per its risk management policy.

   b. An amount of 0.5 basis points of the issuance value of debt securities per annum based on the maturity of debt securities shall be collected by the Stock Exchanges and placed in an escrow account prior to the allotment of the debt securities. This amount is applicable on a public issue or private placement of debt securities under the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021.

   c. Stock Exchanges shall transfer the amounts so collected to the bank account of the LPCC within one working day of the receipt of the amount and inform the details of the same to the LPCC.

   d. The details of the amounts so collected shall also be disclosed by the Stock Exchanges on their websites.

   e. The above mentioned charges shall be collected on the basis of Actual. The LPCC shall provide an illustration of the calculation of the amounts to be contributed by the eligible issuers.

5. The provisions of this circular shall come into force for the offer documents filed on or after May 01, 2023, for private placement/ public issues of debt securities by such eligible issuers as specified by the LPCC. As mentioned earlier, the LPCC shall issue a circular accordingly to operationalise the same.

6. This circular is issued in exercise of powers under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets read with Regulation 55(1) of SEBI (Issue and Listing of Non-convertible securities) Regulations, 2021.

7. This Circular is available on SEBI website at www.sebi.gov.in under the categories 'Circulars' under 'Legal Framework'.

PRADEEP RAMAKRISHNAN
General Manager

05 Procedure for seeking prior approval for change in control of Vault Managers

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/59 dated 21.04.2023]

1. Regulation 8(b) of SEBI (Vault Managers) Regulations, 2021 was amended vide SEBI (Change in Control in Intermediaries) (Amendment) Regulations, 2023 dated January 17, 2023 which requires Vault Managers to obtain prior approval of the Board in case of change in control in such manner as specified by the Board. The link for the said amendment is available at SEBI (Change in Control in Intermediaries) (Amendment) Regulations, 2023

2. The procedure for obtaining prior approval in case of change in control of Vault Managers is specified as under:

   2.1. An application shall be made by the Vault Managers to SEBI for prior approval through the SEBI Intermediary Portal ('SI Portal')(https://siportal.sebi.gov.in).

   2.2. The application shall be accompanied by the following information/declaration about itself, the acquirer(s)/the person(s) who shall have the control and their directors / partners:

   a. Present and proposed shareholding pattern of the applicant.

   b. Whether any application was made in the past to SEBI by the acquirer/persons who shall have control seeking registration in any capacity but was not granted? If yes, details thereof.

   c. Whether any action has been initiated/ taken for violation of the provisions of Securities Contracts (Regulation) Act, 1956 / Securities and Exchange Board of India Act, 1992 / Depositories Act, 1996 or rules and regulations made thereunder? If yes, the status thereof along with the corrective action taken to avoid such violations in the future. The acquirer/ the person who shall have the control needs to confirm that it shall honour all past liabilities/obligations of the applicant, if any.

   d. Whether any investor complaint is pending? If yes, steps taken for resolution and confirmation that the acquirer/ the person who shall have the control shall resolve the same.

   e. Details of litigation(s), if any.

   f. Declaration of the applicant and the acquirer/ the person who shall have the control (in a format enclosed at Annexure), duly signed by their authorized signatories that the 'fit and proper person' criteria as specified in Schedule II of SEBI (Intermediaries) Regulations, 2008 are complied.

   2.3. Upon receipt of the information/declaration at Para 2.2 above, SEBI would process the

application for granting prior approval for change in control.

2.4. The prior approval granted by SEBI shall be valid for a period of six months from the date of such approval.

2.5. Applications for fresh registration pursuant to change in control shall be made to SEBI within six months from the date of prior approval.

2.6. Upon receipt of prior approval from SEBI for change in control and prior to effecting such change in control, the Vault Manager shall communicate to its existing EGR investors about the proposed change in control and an option to relocate the physical gold stored in its vault(s) to any other Vault Manager within a period of not less than 30 calendar days from the date of such communication.

2.7. The matters which involve scheme(s) of arrangement and need sanction of the National Company Law Tribunal ("NCLT") in terms of the provisions of the Companies Act, 2013, the Vault Manager shall ensure the following:

2.7.1. The application seeking approval for the proposed change in control shall be filed with SEBI prior to filing the application with NCLT;

2.7.2. Upon receipt of the information/declaration at Para 2.2 above, SEBI would process the application for granting in principle approval for change in control;

2.7.3. The validity of such in-principle approval shall be three months from the date of such approval, within which the relevant application shall be made to NCLT;

NAVEEN SHARMA

General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

06 Issue of Master Circular by Stock Exchanges, Clearing Corporations and Depositories

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/POD 3/CIR/P/2023/58 dated 20.04.2023]

1. Stock Exchanges, Clearing Corporations and Depositories (hereinafter collectively referred to as 'Market Infrastructure Institutions (MIIs)') communicate with market participants including investors on a regular basis by way of circulars, directions, operating instructions, communiques or any other mode of communication (hereinafter collectively referred to as 'guidelines') for necessary compliance. This has led to a plethora of guidelines by the MIIs on various subjects.

2. Due to the issuance of such guidelines of varied nature and based on the feedback received from the market participants, to ensure that all market participants, including investors, find all applicable provisions on a specific subject at a place, the MIIs shall ensure the following:

   a. Issue the respective Master Circulars consolidating all guidelines issued and applicable as on March 31 of every year, segregated subject-wise.

   b. Take due care to include only the relevant guidelines into the respective Master Circular while reviewing all the existing guidelines on a particular subject.

   c. Such Master Circular shall not include the following:

      i. Bye-laws, Rules and Regulations issued by MIIs.

      ii. Status of any compliance by the market participant.

      iii. Actions taken against any entity.

   d. Each Master Circular shall contain a list of all guidelines incorporated therein as well as a provision rescinding all such guidelines with effect from the date of implementation of the Master Circular. All such rescinded guidelines shall be archived on the respective websites of the MIIs.

   e. The Master Circulars shall contain a savings clause as under:

"Notwithstanding such rescission,

a. Anything done or any action taken or purported to have been done or contemplated under the rescinded guidelines before the commencement of this Master Circular shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of the Master Circular or rescinded guidelines whichever is applicable.

b. The previous operation of the rescinded guidelines or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the rescinded guidelines, any penalty, incurred in respect of any violation committed against the rescinded guidelines, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, shall remain unaffected as if the rescinded guidelines have never been rescinded."

3. The first Master Circular incorporating all the guidelines applicable as on March 31, 2023 shall be

issued on or before June 30, 2023. Subsequently, MIIs shall update the Master Circular incorporating all guidelines issued during the financial year, and issue the same on or before April 30 of each year.

4. The MIIs are directed to:

   a. Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately;

   b. Disseminate each Master Circular on their website and bring the same to the notice of all stakeholders including the Members, Depository Participants and the investors.

5. 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 Section 10 of the Securities Contracts (Regulation) Act, 1956 and Section 26(3) of the Depositories Act, 1996, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

6. This circular is available on SEBI website at www.sebi.gov.in at "Legal Framework - Circulars."

HRUDA RANJAN SAHOO
Deputy General Manager

07 Dispute Resolution Mechanism for Limited Purpose Clearing Corporation (LPCC)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/57 dated 17.04.2023]

1. Regulation 22F of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 ('SECC Regulations') mandates a recognized LPCC to put in place a dispute resolution mechanism, for settlement of disputes or claims arising out of transactions cleared and settled by it, in the manner as specified by the Board in consultation with the Reserve Bank of India (RBI).

2. Accordingly, a LPCC shall adopt the following dispute resolution mechanism for settlement of disputes or claims arising out of transactions cleared and settled by it:

a) Disputes between Clearing Members inter-se:

(i) The LPCC shall adopt an appropriate dispute resolution mechanism for deciding disputes between the Clearing Members inter-se as prescribed by SEBI from time to time.

(ii) Subject to the mechanism prescribed by SEBI from time to time in terms of 2(a)(i) above, the disputes arising between Clearing Members inter-se of the LPCC shall be settled by conciliation and/or by an arbitration panel consisting of three Clearing Members other than the Clearing Member(s) who are party to the dispute. The decision of the arbitration panel shall be final and binding on the parties to the dispute.

(iii) Subject to the mechanism prescribed by SEBI from time to time in terms of 2(a)(i) above, a Clearing Member, if not satisfied with the decision of the arbitration panel, may follow the procedure laid down in the Payment and Settlement Systems Act, 2007 and rules/ directions notified thereunder.

b) Disputes between Clearing Member or its Clients and the LPCC:

(i) All disputes between a Clearing Member and the LPCC shall be resolved as per the dispute resolution mechanism prescribed by SEBI from time to time. In case a Clearing Member or the LPCC is not satisfied with the decision as per such mechanism, then the disputes between the Clearing Member and LPCC shall be resolved in accordance with the procedure laid down in the Payment and Settlement Systems Act, 2007 and rules/ directions notified thereunder.

(ii) All disputes between a Client of a Clearing Member and the LPCC shall be resolved as per the dispute resolution mechanism prescribed by SEBI from time to time.

c) Disputes Between the Clearing Member(s) and their Clients:

Disputes arising between Clearing Members and their clients arising out of any transactions cleared and settled or intended to be cleared and/or settled by the LPCC shall be resolved as per the dispute resolution mechanism prescribed by SEBI from time to time.

d) Disputes between the LPCC and its vendors/ suppliers/service providers

Disputes arising between the LPCC and its vendors/ suppliers/ service providers shall be resolved as per the dispute resolution mechanism prescribed by SEBI from time to time.

3. The LPCC is directed to:

   (i) Bring the provisions of this circular to the notice of its Clearing Members and also disseminate the same on its website; and

   (ii) Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above circular and communicate regarding the same to SEBI.

4. This circular shall come into force with immediate effect.

5. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

PRADEEP RAMAKRISHNAN
General Manager

08 Formulation of price bands for the first day of trading pursuant to Initial Public Offering (IPO), re-listing etc. in normal trading session

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD-TPD1/CIR/P/2023/55 dated 11.04.2023]

1. SEBI vide circular no. CIR/MRD/DP/02/2012 dated January 20, 2012 prescribed parameters regarding price discovery through Call Auction and applicable price band for the first day of trading pursuant to IPO or recommencement of trading for re-listed scrips in normal trading session.

2. As aforesaid Call Auction sessions are conducted on multiple stock exchanges, the discovered price / equilibrium price pursuant to such Call Auction sessions could be different on each exchange. If the difference in these discovered prices is significant, there could be a situation wherein price bands on individual exchanges are far apart from each other, giving an incorrect picture of price band to investors.

3. Accordingly, after discussion with stock exchanges and SMAC, the following has been decided for trading on first day pursuant to IPO or re-listing (including re-listing on account of scheme of arrangement but excluding scrips for which derivative contracts are available):

   a. Call Auction session would continue to be conducted separately on individual exchanges and orders would be matched by respective exchanges after computation of equilibrium price.

   b. If difference in the equilibrium price between exchanges in percentage terms (i.e. absolute difference/minimum of equilibrium prices, expressed as %) is more than the applicable price band for the scrip, a Common Equilibrium Price (CEP) would be computed by exchanges. The CEP shall be volume weighted average of equilibrium prices on individual exchanges as determined by the Call Auction.

   c. The exchanges shall set the aforesaid CEP in their trading systems and apply uniform price bands based on the CEP, as applicable.

   d. Only unexecuted pending orders from Call Auction session within the aforesaid price band shall be carried forward to the normal market segment.

ANSUMAN DEV PRADHAN
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 Guidelines with respect to excusing or excluding an investor from an investment of AIF

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/AFD-1/PoD/P/CIR/2023/053 dated 10.04.2023]

1. SEBI Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020, inter-alia, introduced template(s) for Private Placement Memorandum (PPM) for AIFs, providing certain minimum level of information to be disclosed in a simple and comparable format.

2. It has been observed from the information disclosed in PPMs that, there is inconsistency and lack of adequate disclosure with respect to certain industry practices.

3. In this context, a proposal to review the information disclosed in PPM under the term 'Excuse and Exclusion' for excusing or excluding an investor from an investment of the AIF, was deliberated in Alternative Investment Policy Advisory Committee ('AIPAC').

4. Taking into account the recommendations of AIPAC, it has been decided that, an AIF may excuse its investor from participating in a particular investment in the following circumstances:

   4.1. If the investor, based on the opinion of a legal professional/legal advisor, confirms that its participation in the investment opportunity would be in violation of an applicable law or regulation; or

   4.2. If the investor, as part of contribution agreement or any other agreement signed with the AIF, had disclosed to the manager that, participation of the investor in such investment opportunity would be in contravention to the internal policy of the investor. Manager shall ensure that terms of such agreement with the investor include reporting of any change in the disclosed internal policy, to the AIF, within 15 days of such change.

5. Further, an AIF may exclude an investor from participating in a particular investment opportunity, if the manager of the AIF is satisfied that the participation of such investor in the investment opportunity would lead to the scheme of the AIF being in violation of applicable law or regulation or would result in material adverse effect on the scheme of the AIF. The manager shall record the rationale for such exclusion, along with the documents relied upon, if any.

6. If the investor of an AIF is also an AIF or any other investment vehicle, such investor may be partially excused or excluded from participation in an investment opportunity, to the extent of the contribution of the said fund/investment vehicle's underlying investors who are to be excused or excluded from such investment opportunity. The manager of AIF shall record the rationale for such excuse or exclusion along with the supporting documents, if any.

7. This circular shall come into force with immediate effect.

8. This circular is issued with the approval of the competent authority.

9. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

10. The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal framework - Circulars" and "Info for - Alternative Investment Funds".

SANJAY SINGH BHATI
Deputy General Manager

10 Direct plan for schemes of Alternative Investment Funds (AIFs) and trail model for distribution commission in AIFs

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/AFD/PoD/CIR/2023/054 dated 10.04.2023]

1. SEBI Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020 introduced template(s) for Private Placement Memorandum (PPM) for AIFs, in order to ascertain that certain minimum level of information in a simple and comparable format is disclosed to investors. The aforesaid PPM template(s), inter-alia, provides for disclosure with respect to Direct Plan for investors, and constituents of fees that may be charged by the AIF/ scheme of AIF, including distribution fee/ placement fee.

2. In this context, to provide flexibility to investors for investing in AIFs, bring transparency in expenses and curb mis-selling, following is specified:

A. Direct Plan for schemes of AIFs

i. Schemes of AIFs shall have an option of 'Direct Plan' for investors. Such Direct Plan shall not entail any distribution fee/ placement fee.

ii. AIFs shall ensure that investors who approach the AIF through a SEBI registered intermediary which is separately charging the investor any fee (such as advisory fee or portfolio management fee), are on-boarded via Direct Plan only.

B. Trail model for distribution commission in AIFs

i. AIFs shall disclose distribution fee/placement fee, if any, to the investors of AIF/scheme of AIF at the time of on-boarding.

ii. Category III AIFs shall charge distribution fee/ placement fee, if any, to investors only on equal trail basis i.e. no upfront distribution fee/ placement fee shall be charged by Category III AIFs directly or indirectly to their investors. Further, any distribution fee/ placement fee paid shall be only from the management fee received by the managers of such Category III AIFs.

iii. Category I AIFs and Category II AIFs may pay upto one-third of the total distribution fee/ placement fee to the distributors on upfront basis, and the remaining distribution fee/ placement fee shall be paid to the distributors on equal trail basis over the tenure of the fund.

3. The aforesaid provisions shall be complied with for investors on-boarded in AIFs/ schemes of AIFs from May 01, 2023 onwards.

4. This circular is issued with the approval of the competent authority.

5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal framework - Circulars" and "Info for - Alternative Investment Funds".

SANJAY SINGH BHATI
Deputy General Manager

11 Usage of brand name/trade name by Investment Advisers (IA) and Research Analysts (RA)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/52 dated 06.04.2023]

1. It is observed that few investment advisers and research analysts are using the brand name/trade name/logo more prominently in their advertisements, websites, publications, correspondences with clients and various documents while marketing their services rather than their name as registered with SEBI. The brand name/trade name/logo may or may not be related to the name of IA/RA as registered with SEBI and hence may mislead and create confusion in the minds of the investors.

2. While investment advisers and research analysts may use the brand name/trade name/logo, in order to ensure the transparency in such a usage of brand name/trade name/logo, they shall ensure that:

i. The information such as name of the IA/RA as registered with SEBI, its logo, its registration number and its complete address with telephone numbers shall be prominently displayed on portal/web site, if any, notice board, display boards, advertisements, publications, know your client forms and client agreements.

ii. The information such as name of the IA/RA as registered with SEBI, its logo, its registration number, its complete address with telephone numbers, the name of the compliance officer, his telephone number and e-mail address, the name, telephone number and e-mail address of the grievance officer or the grievance redressal cell shall be displayed prominently in statements or reports or any other form of correspondence with the client.

iii. Disclaimer that "Registration granted by SEBI, membership of BASL (in case of IAs) and certification from NISM in no way guarantee performance of the intermediary or provide any assurance of returns to investors" shall be mentioned on portal/web site, if any, notice board, display boards, advertisements, publications, know your client forms, client agreements, statements or reports or any other form of correspondence with the client.

iv. SEBI logo shall not be used by IA/RA.

3. The provisions of this circular shall be applicable with effect from May 01, 2023.

4. This circular is issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.

5. This circular is available on the SEBI website at www.sebi.gov.in under the category "Legal →Circulars".

AMRITA SHUKLA
Deputy General Manager

12 Advertisement code for Investment Advisers (IA) and Research Analysts (RA)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/51dated 05.04.2023]

1. Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and Securities and Exchange Board of India (Research Analysts) Regulations, 2014 provide for code of conduct to be followed by IAs and RAs respectively. In order to further strengthen the conduct of IAs and RAs, while issuing any advertisement, it is directed that IAs/RAs shall ensure compliance with the advertisement code as prescribed below:

a. Forms of communication:

i. Advertisement shall include all forms of communications, issued by or on behalf of IA/RA, that may influence investment decisions of any investor or prospective investor.

ii. The forms of communications, to which the advertisement code shall be applicable, shall include pamphlets, circulars, brochures, notices, research reports or any other literature, document, information or material published, or designed for use in any publication or displays (such as newspaper, magazine, sign boards/hoardings at any location), in any electronic, wired or wireless communication (such as electronic mail, text messaging, messaging platforms, social media platforms, radio, telephone, or in any other form over the internet) or over any other audio-visual form of communication (such as television, tape recording, video tape recordings, motion pictures) or in any other manner whatsoever.

b. Information/disclosures in the advertisement:

The information/disclosures that the advertisement shall contain, include the following-

i. Name of the IA/RA as registered with SEBI, registered office address, SEBI Registration No., logo/brand name/trade name of IA/RA, and CIN of the IA/RA, if applicable.

ii. Information which is accurate, true and complete in unambiguous and concise language.

iii. Standard warning in legible fonts (minimum 10 font size) which states "Investment in securities market are subject to market risks. Read all the related documents carefully before investing.". No addition or deletion of words shall be made to/from the standard warning.

iv. In audio-visual media based advertisements, the standard warning in visual media based advertisement and accompanying voice over reiteration shall be audible in a clear and understandable manner. For example, in standard warning both the visual and the voice over reiteration containing 20 words running for at least 10 seconds may be considered as clear and understandable.

v. Whenever the advertisement is being issued in a language other than English, it will be ensured that the standard warning is accurately translated in the language of the advertisement.

vi. In case the mode of advertisement is SMS/Message/Pop-up, social media etc. and the details such as full name, logo/brand name, full registered office address, SEBI registration number, membership number of a SEBI recognized supervisory body and standard disclaimer are not mentioned, then official website hyperlink should be provided in

such SMS/Message/Pop-up, etc. and the website must contain all such details.

vii. In case any specific security/securities are displayed in the advertisement as examples, disclaimer that "The securities quoted are for illustration only and are not recommendatory" should be mentioned.

viii. Advertisements and communications/ correspondences with clients shall include the disclaimer that "Registration granted by SEBI, membership of BASL (in case of IAs) and certification from NISM in no way guarantee performance of the intermediary or provide any assurance of returns to investors."

AMRITA SHUKLA
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 Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

[Issued by the Reserve Bank of India vide RBI/2023-24/21 A.P. (DIR Series) Circular No.03 dated 26.04.2023]

Attention of Authorised Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No. 11 dated February 16, 2021, on "Remittances to International Financial Services Centres (IFSCs) in India under the Liberalised Remittance Scheme (LRS)" and Master Direction No. 7/2015-16 on Liberalised Remittance Scheme (LRS) as amended from time to time.

2. On a review and with an objective to align the LRS for IFSCs set up under the International Financial Services Centres Authority Act, 2019 vis-à-vis other foreign jurisdictions, it has been decided to amend the directions under para 2 (ii) of the aforementioned A.P. (DIR Series) Circular dated February 16, 2021, as – "Resident Individuals may also open a Foreign Currency Account (FCA) in IFSCs, for making the above permissible investments under LRS." Thus, the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt is withdrawn with immediate effect, which shall now be governed by the provisions of the scheme as contained in the aforesaid Master Direction on LRS.

3. The Master Direction No. 7 is being updated to reflect these changes.

4. AD Category - I banks should bring the contents of this circular to the notice of their constituents and customers.

5. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

AJAY KUMAR MISRA
Chief General Manager

14 General Credit Card (GCC) Facility – Review

[Issued by the Reserve Bank of India vide RBI/2023-24/19 FIDD.MSME & NFS.BC.No.06/06.02.31/2023-24 dated 25.04.2023]

Please refer to our Circular RPCD.MSME & NFS. BC.No.61/06.02.31/2013-14 dated December 02, 2013 on the Revised General Credit Card (GCC) Scheme.

2. On review of the above, and in the light of the provisions contained in the Master Direction – Credit Card and Debit Card – Issuance and Conduct Directions, dated April 21, 2022, revised instructions on GCC are as follows:

i) The GCC Scheme shall henceforth be called "General Credit Card (GCC) Facility".

ii) The instructions shall apply to all banks which are eligible to issue credit cards under the above Master Direction.

iii) Individuals/entities sanctioned working capital facilities for non-farm entrepreneurial activities which are eligible for classification under the priority sector guidelines, may be issued General Credit Cards.

iv) GCC shall be issued in the form of a credit card conforming to the stipulations in the above Master Direction as updated from time to time.

v) The terms and conditions of the credit facilities extended in the form of GCC shall be as per the Board approved policies of the banks, within the overall framework laid down by Reserve Bank. Guidelines on collateral free lending for micro and small units issued from time to time shall apply.

vi) Bank shall adhere to the instructions on reporting GCC data as issued by RBI from time to time.

NISHA NAMBIAR
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

15 Provisioning for standard assets by primary (Urban) co-operative banks – revised norms under four-tiered regulatory framework

[Issued by the Reserve Bank of India vide RBI/2023-24/18 DOR.STR. REC.12/21.04.048/2023-24 dated 24.04.2023]

Please refer to circular DOR.REG.No.84/07.01.000/2022-23 dated December 01, 2022, in terms of which Urban Co-operative Banks (UCBs) have been categorized into four Tiers namely Tier 1, Tier 2, Tier 3 and Tier 4 for regulatory purposes.

2. The current standard assets provisioning norms for UCBs, consolidated in the Master Circular DOR.STR. REC.5/21.04.048/2022-23 dated April 01, 2022, are based on the earlier categorization of UCBs into Tier I and Tier II as defined in para 4 of circular UBD.CO.LS.Cir. No.66/07.01.000/2008-09 dated May 06, 2009, as given below:

Sl. No.	Category of Standard Asset	Rate of Provisioning	
		Tier II	Tier I
(a)	Direct advances to Agriculture and SME sectors	0.25%	0.25%
(b)	Commercial Real Estate (CRE) sector	1.00%	1.00%
(c)	Commercial Real Estate-Residential Housing Sector (CRE-RH)	0.75%	0.75%
(d)	All other loans and advances not included above	0.40%	0.25%

3. On a review, it has been decided to harmonise the provisioning norms for standard assets applicable to all categories of UCBs, irrespective of their Tier in the revised framework.

4. Accordingly, the standard asset provisioning norms applicable to Tier I, Tier 2, Tier 3 and Tier 4 UCBs under the revised framework shall be as under:

   a. Direct advances to agriculture and SME sectors which are standard, shall attract a uniform provisioning requirement of 0.25 percent of the funded outstanding on a portfolio basis.

   b. Advances to commercial real estate (CRE) sector which are standard shall attract a uniform provisioning requirement of 1.00 percent of the funded outstanding on a portfolio basis.

   c. For advances to commercial real estate - residential housing (CRE-RH) sector, which are standard, the provisioning requirement shall be 0.75 percent

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

16 Master Circular - Prudential Norms on Capital Adequacy - Primary (Urban) Co-operative Banks (UCBs)

[Issued by the Reserve Bank of India vide RBI/2023-24/17 DOR.CAP.REC.11/09.18.201/2023-24 dated 20.04.2023]

Please refer to our Master Circular DOR.CAP.REC.2/09.18.201/2022-23 dated April 1, 2022 on the captioned subject.

2. The enclosed Master Circular consolidates and updates all the instructions / guidelines on the subject issued up to April 19, 2023 as listed in the Appendix.

USHA JANAKIRAMAN

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 Master Circular - Housing Finance for UCBs

[Issued by the Reserve Bank of India vide RBI/2023-24/15 DOR.CRE.REC.No.9/07.10.002/2023-24 dated 11.04.2023]

Please refer to our Master Circular DOR.CRE.REC.No.49/09.22.010/2022-23 dated June 23, 2022 on the captioned subject (available at RBI website https://rbi.org.in/). 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

18 Framework for acceptance of Green Deposits

[Issued by the Reserve Bank of India vide RBI/2023-24/14 DOR.SFG.REC.10/30.01.021/2023-24 dated 11.04.2023]

Climate change has been recognised as one of the most critical challenges faced by the global society and economy in the 21st century. The financial sector can play a pivotal role in mobilizing resources and their allocation thereof in green activities/projects. Green finance is also progressively gaining traction in India.

2. Deposits constitute a major source for mobilizing of funds by the Regulated Entities (REs). It is seen that some REs are already offering green deposits for financing green activities and projects. Taking this forward and with a view to fostering and developing green finance ecosystem in the country, it has been decided to put in place the enclosed Framework for acceptance of Green Deposits for the REs.

3. The framework shall come into effect from June 1, 2023.

SUNIL T. S. NAIR

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

19 Authorised Dealers Category-II - Online submission of Form A2

[Issued by the Reserve Bank of India vide RBI/2023-24/16 A.P. (DIR Series) Circular No. 02 dated 12.04.2023]

Attention of Authorised Dealer (AD) Category-I banks and AD Category-II entities is invited to paragraph 4 of A.P. (DIR Series) Circular No. 50 dated February 11, 2016 on 'Compilation of R-Returns: Reporting under FETERS' in terms of which AD banks, offering internet banking facilities to their customers were permitted to allow online submission of Form A2.

2. It has now been decided to permit AD Category-II entities also to allow online submission of Form A2. AD Category-II entities shall frame appropriate guidelines with the approval of their Board within the ambit of extant statutory and regulatory framwework.

3. The terms and conditions mentioned in aforesaid A.P. (Dir Series) circular No. 50 dated February 11, 2016 shall continue to apply, as hitherto, to all Authroised Dealers. The relevant provisions of FEMA 1999, and 'Master Direction – Know Your Customer (KYC)

Direction, 2016' as updated from time to time, issued by the Department of Regulation, RBI, have to be complied with by the ADs, for all transactions.

4. Authorised Dealers may bring the contents of this circular to the notice of their constituents.

5. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

VIVEK SRIVASTAVA
Chief General Manager

20 Master Direction on Outsourcing of Information Technology Services

[Issued by the Reserve Bank of India vide RBI/2023-24/102 DoS. CO.CSITEG/SEC.1/31.01.015/2023-24 dated 10.04.2023]

Regulated Entities (REs) have been extensively leveraging Information Technology (IT) and IT enabled Services (ITeS) to support their business models, products and services offered to their customers. REs also outsource substantial portion of their IT activities to third parties, which expose them to various risks.

2. In order to ensure effective management of attendant risks, the Statement on Developmental and Regulatory Policies dated February 10, 2022, proposed the issuance of suitable regulatory guidelines on Outsourcing of IT Services. Accordingly, a draft Master Direction on Outsourcing of IT Services was released for public comments in June 2022. Based on feedback received, the finalised Reserve Bank of India (Outsourcing of Information Technology Services) Directions, 2023 are enclosed herewith.

3. The underlying principle of these Directions is to ensure that outsourcing arrangements neither diminish REs ability to fulfil its obligations to customers nor impede effective supervision by the RBI.

4. With a view to provide REs adequate time to comply with the requirements, the enclosed Directions shall come into effect from October 1, 2023.

T.K.RAJAN
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

21 APConnect - Online application for Full Fledged Money Changers and non-bank Authorised Dealers Category-II

[Issued by the Reserve Bank of India vide RBI/2023-24/13 A.P. (DIR Series) Circular No.01 dated 06.04.2022]

Attention of Full Fledged Money Changers (FFMCs) and non-bank Authorised Dealers (AD) Category-II is invited to A.P. (DIR Series) Circular No. 25 dated March 6, 2006, containing instructions for AD - Category II licence/ reporting, the Master Direction on Money Changing Activities dated January 01, 2016 (updated from time to time) containing guidelines on issuance and renewal of FFMC licence and on money changing activities as well as the Master Direction on Money Transfer Service Scheme (MTSS) dated February 22, 2017 (updated from time to time) containing guidelines for Indian Agents under MTSS.

2. A software application called 'APConnect' has been developed for processing of application for licencing of FFMC, non-bank AD Cat-II, authorisation as MTSS Agent, renewal of existing licence / authorisation, for seeking approval as per the extant instructions and for submission of various statements/returns by FFMCs and non-bank AD Cat II. The application can be accessed at 'https://apconnect.rbi.org.in/entity'.

3. The APConnect application broadly consists of the following facilities/functionalities:

   i. Registration and licensing of new companies as well as existing Authorised Persons (FFMC / non-bank AD Cat-II / NBFC eligible for AD Cat-II)

   ii. Registration of new Branches

   iii. Registration of Temporary Money Changing Facilities

   iv. Registration of franchisees

   v. Authorisation as Indian Agents under MTSS

   vi. Upgradation of FFMC to non-bank AD Cat-II

   vii. Renewal of Licences

   viii. Opening of Foreign Currency Accounts

   ix. Opening of Nostro Accounts for eligible entities

   x. Voluntary Surrender of Licence

   xi. Write-off of foreign currency notes

   xii. Submission of Returns/Statements

4. Existing FFMCs / non-bank AD Category-II shall register themselves on the APConnect application within three months from the date of issue of this circular, through the weblink indicated in para 2. Subsequent to registration on APConnect, requests for various other facilities / approvals listed in Para 3 above and submission of returns by the entities shall be done through the APConnect application. The FFMCs and non-bank AD Cat-II shall adhere to the instructions issued by the Reserve Bank, in this regard, from time to time.

5. On receipt of confirmation from the Regional Office of the Reserve Bank regarding generation of

licence through APConnect, the existing FFMCs/ non-bank AD Cat-II shall surrender their existing licence to the respective Regional Office of the Reserve Bank.

6. Eligible entities, desirous of applying for fresh FFMC/ non-bank AD Category II / MTSS Agent licence / authorisation shall submit their application only through APConnect.

7. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

VIVEK SRIVASTAVA
Chief General Manager

22 Master Direction on Framework of Incentives for Currency Distribution & Exchange Scheme for bank branches including currency chests based on performance in rendering customer service to the members of public

[Issued by the Reserve Bank of India vide RBI/2023-24/99 DCM (CC) No.G-5/03.41.01/2023-24 dated 03.04.2023]

In terms of the Preamble to and Section 45 of the RBI Act, 1934 and Section 35 A of the Banking Regulation Act, 1949; Reserve Bank of India issues guidelines / instructions for realising the objectives of Clean Note Policy as part of currency management. With a view to furthering these objectives, the Bank has formulated a framework of incentives titled Currency Distribution and Exchange Scheme (CDES) to encourage all the bank branches to provide better customer services to the members of public.

2. The enclosed Master Direction incorporates updated guidelines / circulars on the subject.

SANJEEV PRAKASH
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

23 Master Circular - Asset Reconstruction Companies

[Issued by the Reserve Bank of India vide RBI/2023-24/12 DOR.SIG.FIN. REC 8/26.03.001/2023-24 dated 03.04.2023]

In order to have all current instructions/ guidelines on the subject at one place, the Reserve Bank of India issues updated circulars/ guidelines. The instructions contained in The Asset Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 (vide Notification No. DNBS.2/CGM(CSM)-2003, dated April 23, 2003) together with Guidance Notes updated as on March 31, 2023 are reproduced below.

J P SHARMA
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

24 Master Circular – Lead Bank Scheme

[Issued by the Reserve Bank of India vide RBI/2023-24/11 FIDD.CO.LBS. BC.No.04/02.01.001/2023-24 dated 03.04.2023]

The Reserve Bank of India has issued a number of guidelines/ instructions on Lead Bank Scheme from time to time. This Master Circular consolidates the relevant guidelines/ instructions issued by Reserve Bank of India on Lead Bank Scheme up to March 31, 2023 as listed in the Appendix I.

2. This Master Circular has been placed on the RBI website https://www.rbi.org.in

SONALI SEN GUPTA
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

25 Master Direction – Facility for Exchange of Notes and Coins

[Issued by the Reserve Bank of India vide RBI/2023-24/97 DCM (NE) No.G-2/08.07.18/2023-24 dated 03.04.2023]

In exercise of the powers conferred under Section 35A of the Banking Regulation Act, 1949, read with sections 28, 38, 39, 58(1) and 58(2)(q) of the Reserve Bank of India Act, 1934, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby, issues the Directions hereinafter specified.

SANJEEV PRAKASH
Chief General Manager

26 Master Direction on Penal Provisions in reporting of transactions/ balances at Currency Chests

[Issued by the Reserve Bank of India vide RBI/2023-24/101 DCM (CC) No.G-4/03.35.01/2023-24 dated 03.04.2023]

In terms of the Preamble to and Section 45 of the RBI Act, 1934 and Section 35 A of the Banking Regulation Act, 1949, Reserve Bank of India issues guidelines / instructions for realising the objectives of Clean Note Policy as part of currency management. With a view to sustain these efforts and to ensure timely and accurate reporting of currency chest transactions, instructions on the subject have been issued from time to time.

2. The enclosed Master Direction incorporates updated guidelines / circulars on the subject.

SANJEEV PRAKASH
Chief General Manager

27 Master Direction – Scheme of Penalties for bank branches and Currency Chests for deficiency in rendering customer service to the members of public

[Issued by the Reserve Bank of India vide RBI/2023-24/100 DCM (CC) No.G-3/03.44.01/2023-24 dated 03.04.2023]

In terms of the Preamble to and Section 45 of the RBI Act, 1934 and Section 35 A of the Banking Regulation Act,

1949; Reserve Bank of India issues guidelines / instructions for realising the objectives of Clean Note Policy and enhancing the operational efficiency as part of currency management. In order to ensure all bank branches provide proper customer service, the Bank has formulated a Scheme of Penalties for bank branches including Currency Chests, for deficiency in rendering customer service to the members of public.

2. The enclosed Master Direction incorporates updated guidelines / circulars on the subject.

SANJEEV PRAKASH
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

28 Master Direction on Counterfeit Notes, 2023 - Detection, Reporting and Monitoring

[Issued by the Reserve Bank of India vide RBI/2023-24/98 DCM (FNVD)/G-1/16.01.05/2023-24 dated 03.04.2023]

The Reserve Bank of India has, from time to time, issued several guidelines/ instructions/ directives to the banks on counterfeit notes.

2. A Master Direction incorporating and updating the extant guidelines /instructions/ directives on the subject has been prepared to enable banks to have all current instructions on counterfeit note at one place for reference.

3. Reserve Bank of India has issued this Direction in exercise of its powers conferred under Section 35A and Section 56 of the Banking Regulation Act, 1949.

SANJEEV PRAKASH
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

29 Master Circular – Housing Finance

[Issued by the Reserve Bank of India vide RBI/2023-24/08 DOR.CRE.REC. No.06/08.12.001/2023-24 dated 03.04.2023]

Please refer to the Master Circular DOR.CRE.REC. No.06/08.12.001/2022-23 dated April 01, 2022 consolidating the instructions / guidelines issued to banks till March 31, 2022. relating to Housing Finance. This Master Circular consolidates instructions on the above matter issued up to March 31, 2023.

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

30 Master Circular - Bank Finance to Non-Banking Financial Companies (NBFCs)

[Issued by the Reserve Bank of India vide RBI/2023-24/09 DOR.CRE.REC. No.07/21.04.172/2023-24 dated 03.04.2023]

Please refer to our Master Circular DOR.CRE.REC. No.07/21.04.172/2022-23 dated April 01, 2022 on the captioned subject. This Master Circular consolidates instructions on the above matter issued up to March 31, 2023.

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

31 Master Circular - Disbursement of Government Pension by Agency Banks

[Issued by the Reserve Bank of India vide RBI/2023-24/10 DGBA.GBD. No.S3/31.02.007/2023-24 dated 03.04.2023]

Please refer to our Master Circular RBI/2022-23/09 dated April 01, 2022 on the above subject. We have revised and updated the Master Circular which consolidates important instructions on the subject issued by the Reserve Bank of India till March 31, 2023.

2. A copy of the revised Master Circular is enclosed for your information. This circular may also be downloaded from our website https://mastercirculars.rbi.org.in.

INDRANIL CHAKRABORTY
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

32 Master Circular - Guarantees, Co-Acceptances & Letters of Credit - UCBs

[Issued by the Reserve Bank of India vide RBI/2023-24/05 DoR.STR. REC.4/09.27.000/2023-24 dated 01.04.2023]

Please refer to our Master Circular DoR.STR. REC.9/09.27.000/2022-23 dated April 1, 2022 on the captioned subject (available at RBI website https://rbi.org.in/). The enclosed Master Circular consolidates and updates all the instructions / guidelines on the subject issued up to March 31, 2023 as listed in the Annex.

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

33 Master Circular on SHG-Bank Linkage Programme

[Issued by the Reserve Bank of India vide RBI/2023-24/03 FIDD.CO.FID. BC.No.1/12.01.033/2023-24 dated 01.04.2023]

The Reserve Bank of India has, from time to time, issued a number of guidelines/instructions to banks on SHG-Bank Linkage Programme. In order to enable banks to have instructions at one place, the Master Circular incorporating the existing guidelines/ instructions on the subject has been updated and enclosed. This Master Circular consolidates the circulars issued by Reserve Bank on the subject up to March 31, 2023, as indicated in the Appendix.

SONALI SEN GUPTA

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

34 Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances

[Issued by the Reserve Bank of India vide RBI/2023-24/06DOR.STR. REC.3/21.04.048/2023-24 dated 01.04.2023]

Please refer to the Master Circular DOR.STR. REC.4/21.04.048/2022-23 dated April 1, 2022 consolidating instructions / guidelines issued to banks till March 31, 2022 on matters relating to prudential norms on income recognition, asset classification and provisioning pertaining to advances.

This Master Circular consolidates instructions on the above matters issued up to March 31, 2023. A list of circulars consolidated in this Master Circular is contained in Annex 5.

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

35 Master Direction – Reserve Bank of India (Classification, Valuation and Operation of Investment Portfolio of Primary (Urban) Co-operative Banks) Directions, 2023

[Issued by the Reserve Bank of India vide RBI/2023-24/96 DOR.MRG. REC.01/00-00-011/2023-24 dated 01.04.2023]

The Reserve Bank of India has, from time to time, issued several guidelines / instructions / directives to the banks on Prudential Norms for Classification, Valuation and Operation of Investment Portfolio by Primary (Urban) Co-operative Banks (UCBs).

2. To enable UCBs to have current instructions at one place, a Master Direction incorporating all the existing guidelines / instructions / directives on the subject has been prepared for reference of the banks.

3. This Direction has been issued by RBI in exercise of its powers conferred under Section 35A of the Banking Regulation Act 1949 read with Section 56 thereof, and of all the powers enabling it in this behalf.

USHA JANAKIRAMAN

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

36 Master Circular - Credit facilities to Scheduled Castes (SCs) & Scheduled Tribes (STs)

[Issued by the Reserve Bank of India vide RBI/2023-24/01FIDD.CO.GSSD. BC.No.03/09.09.001/2023-24 dated 01.04.2023]

The Reserve Bank of India has, from time to time, issued a number of guidelines/instructions to banks on credit facilities to Scheduled Castes (SCs) & Scheduled Tribes (STs). The enclosed Master Circular consolidates the circulars issued by Reserve Bank on the subject till date, as listed in the Appendix.

NISHA NAMBIAR

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

37 Master Circular on Credit Facilities to Minority Communities

[Issued by the Reserve Bank of India vide RBI/2023-24/02 FIDD.GSSD. BC.No.02/09.10.001/2023-24 dated 01.04.2023]

The Reserve Bank of India has periodically issued guidelines/instructions/directives to banks with regard to providing credit facilities to Minority Communities. The Master Circular enclosed consolidates the circulars issued by Reserve Bank on the subject till date, as listed in the Appendix.

NISHA NAMBIAR

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

38 Master Circular - Guarantees and Co-acceptances

[Issued by the Reserve Bank of India vide RBI/2023-24/04 DOR.STR. REC.5/13.07.010/2023-24 dated 01.04.2023]

Please refer to the Master Circular DOR.STR. REC.8/13.07.010/2022-23 dated April 1, 2022 consolidating the instructions / guidelines issued to banks till March 31, 2022, relating to Guarantees and Co-acceptances. This Master Circular consolidates the instructions on the above matter issued up to March 31, 2023.

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

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

NOTIFICATION

New Delhi, the 3rd April, 2023

No.710/1(M)/2.–WHEREAS the draft regulations further to amend the Company Secretaries Regulations, 1982 were published as required by sub-section (3) of section 39 of the Company Secretaries Act, 1980 (56 of 1980) in the Gazette of India, Extraordinary, Part-III, Section-4, dated the 12th April, 2022, vide notification of the Institute of Company Secretaries of India number 710/1(M)/1, dated the 12th April, 2022, inviting objections and suggestions from persons likely to be affected thereby, before the expiry of the period of thirty days from the date on which copies of the Official Gazette containing the said notification were made available to the general public;

AND WHEREAS, copies of the said Gazette were made available to the general public on the 12April, 2022;

AND WHEREAS, objections and suggestions as received from the public have been duly considered by the Council;-

NOW, THEREFORE, in exercise of the powers conferred by sub-sections (1) and (3) of the section 39 of the Company Secretaries Act, 1980 (56 of 1980), the Council, with the approval of the Central Government, hereby makes the following regulations further to amend the Company Secretaries Regulations, 1982, namely:-

1. **Short Title and Commencement: -**
   (1) These regulations may be called the Company Secretaries (Amendment) Regulations, 2023.
   (2) They shall come into force on the date of their publication in the Gazette of India.

2. In the Company Secretaries Regulations, 1982(hereinafter referred to as the saidregulations), for regulation 88, the following regulation shall be substituted, namely:-

   "88. Meetings of the Council. –The Council shall hold at least four meetings in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive meetings at such time and place (including electronic mode) as the Council may determine:

   Provided that if the Council does not fix the date or place (including electronic mode) or the circumstances so warrant, the President may fix such meetings".

3. In regulation 90 of the said regulations,in sub-regulation (1), of after the words "the registered address", the words "or e-mail address as per the records of the Institute" shall be inserted.

4. In regulation 92 of the said regulations, for the word "number",the word "member" shall be substituted;

5. In regulation 93 of the said regulations, for sub-regulation (2),the following sub-regulation shall be substituted, namely:-

   "(2) If a quorum is not present within half an hour from the time appointed for the meeting the same shall be adjourned to the same day in the next week, at the same time and place or, if that day is a National Holiday, to the next succeeding day which is not a National Holiday, at the same time and place and if there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled".

6. Regulation 96of the said regulations shall be numbered as sub-regulation (1) thereof and after sub-regulation (1) as so numbered, the following sub-regulation shall be inserted, namely:-

   "(2) The Chairman shall ensure that the proceedings of the Meetings are correctly recorded and he shall have absolute discretion to exclude from the Minutes any such matters which in his opinion is or could reasonably be regarded as defamatory to any person".

7. For regulations105A and 105B of the said regulations, the following regulations shall be substituted, namely:

   "105A. Constitution of Boards.- (1)The Council may constitute a Secretarial Standards Board and an Auditing Standards Board as it may deem necessary for the purposes of carrying out such functions as may be assigned by the Council.

   (2) The Boards constituted under sub-regulation (1) shall function under the supervision, control and direction of the Council and may comprise of members of the Institute of Company Secretaries of India either in employment or in practice and representatives of such regulatory authorities, as may be determined by the Council.

   (3) If the member referred to in subregulation (2) has any pecuniary interest, direct or indirect in any such matter which is brought up for consideration of the Board, he shall disclose the nature of his interest in such matter and such disclosure shall be recorded in the proceedings of the Board.

   (4) The member referred to sub-regulation (3) who disclaims his interest shall not take part in any deliberation or decisions of the Board on matters brought up for consideration of the Board.

   Explanation.-For the purposes of this regulation, "pecuniary interest" means a reasonable likelihood or expectation of appreciable financial gain.

(5) Except as provided specifically in this regulation, the provisions in respect of meetings of the Council and its Committees, notice, adjournment, rescheduling, quorum, consideration of resolution and minutes shall be applicable to the meetings of the Boardsmutatis mutandis.

"105B. Academic Board.- (1) The Council shall constitute an Academic Board consisting of the following members, namely:-

(a) a Chairperson, who shall be a person of eminence or holding or has held the office of Vice-Chancellor in any University or deemed University or any recognized Management Institute;

(b) one professor in accountancy, finance, law or business management from any University or deemed University;

(c) one representative of the Ministry of Corporate Affairs not below the rank of a Joint Secretary to the Government of India;

(d) one person to be nominated by the Chambers of Commerce and Industry;

(e) two eminent members of the Institute, out of which one shall be practising member and another from employment;

(f) one eminent person from the legal profession;

(g) one eminent person from the field of information technology;

(h) one eminent person from the field of Human Resources;

(i) Chairman of Training and Educational Facilities Committee -ex-officio;

(j) Chairman of the Institute of Company Secretaries of India Vision Group, if any, -ex-officio;

(k) A nominee of University Grant Commission not below the rank of a Joint Secretary to the Government of India;

(l) A nominee of All India Council for Technical Education not below the rank of a Joint Secretary to the Government of India;

(m) Secretary of the Institute -ex-officio; and

(n) The Head of the Directorate of Academics shall be the member Secretary to the Academic Board.

Provided that, non-filling or vacancy of any one or more of the aforesaid members shall not affect the constitution of the Board.

(2) The President shall be the special invitee in the meetings of the Academic Board.

(3) The member of the Academic Board shall hold office for such term as may be determined by the Council and any vacancy in the Academic Board shall be filled by the Council in the same manner as the member whose vacancy occurred was filled.

(4) The member of the Academic Board shall be entitled to such sitting fee, travelling, conveyance and other allowances as may be determined by the Council:

Provided that Council Member shall not be entitled for any sitting fee.

(5) The Academic Board shall be entrusted with the task of planning and implementation of all academic activities related to students including, -

- (a) scanning of the economic and regulatory environment;
- (b) designing the syllabus and its contents and periodical review and revision thereof;
- (c) designing mode of education;
- (d) assessing and finalisation of the training requirements;
- (e) designing the mode of examination and evaluation system;
- (f) recommending necessary changes to the Council, as and when required; and
- (g) any other related academic matter:

Provided that the Board shall regularly monitor the effectiveness of the above and recommend necessary changes to the Council, as and when required.

Provided further that the terms of reference of the Academic Board may include any other area as may be determined by the Council.

(6) The Academic Board shall meet as and when required, however, at least one meeting shall be held on half yearly basis and there shall not be a gap of more than four months between two meetings.

(7) Not less than one third members of the Academic Board shall constitute the quorum.

(8) If the member has any pecuniary interest, direct or indirect, in any matter which is brought up for consideration of the Academic Board, he shall disclose the nature of his interest of such matter and such disclosure shall be recorded in the proceedings of the Board.

(9) The member referred to in sub-regulation (8) shall not take any part in any deliberation or decision of the Board on the matter referred to in the said sub-regulation.

(10) The Academic Board shall work as per the overall policy framework and vision of the Institute as decided by the Council from time to time.

(11) The Council shall review any decision taken by the Academic Board in the performance of functions assigned or delegated to it.

(12) The Council shall record the reasons in writing where it does not accept any recommendation of the Academic Board and shall disclose the same in the Annual Report of the Institute."

8 In regulation 107 of the said regulations,-

(a) in sub-regulation (2), after the words "such place", the bracketsand words "(including electronic mode)" shall be inserted;

(b) in sub-regulation (4), after the words, "and place", the bracketsand words "(including electronic mode)" shall be inserted;

9 In regulation 119 of the said regulations, in sub-regulation (2), -

(a) for the figures, letter and words "1st January of the subsequent year till the 31st December of that year," the figures, letters and words "the 19th January of the subsequent year till the 18th January of the next year," shall be substituted;

(b) in the proviso, after the words "office bearers", the words "excluding the office bearer who at any point of time held the position of Chairman" shall be inserted.

ASISH MOHAN, Secy.

[ADVT-III/4/Exty./001/2023-24]

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.

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ICSI MEGA PLACEMENT DRIVE (I) 2023

Drive Date & Time: Saturday, 20th May 2023, 10.00 am onwards

Last Date of Registration : Wednesday, 17th May, 2023

Registration Link: https://bit.ly/MPDR-2023

Dear Sir / Madam,

Greetings from The Institute of Company Secretaries of India!!!

The Institute of Company Secretaries of India (ICSI) is a Statutory Body established under an Act of Parliament viz. The Company Secretaries Act, 1980 to develop and regulate the profession of Company Secretaries in India. It functions under the jurisdiction of Ministry of Corporate Affairs, Government of India, with its Headquarters at New Delhi and Regional Offices in Kolkata, New Delhi, Chennai and Mumbai. Besides, there are 72 Chapters across India.

ICSI is organizing Mega Placement Drive at Kolkata, New Delhi, Chennai and Mumbai on Saturday, 20th May, 2023. ICSI invites your esteemed organization to participate in the ICSI Mega Placement Drive for recruiting Company Secretary(ies) for your organization.

MODALITIES

1. Prior registration is mandatory to participate in the ICSI Mega Placement Drive.
2. Interviews for various organisations would be conducted simultaneously.
3. Allotment of time slot would be based on availability and sole discretion of the Institute.

The venue and contact details of ICSI Mega Placement Drive (I), 2023 are as under:

S. No.	Address of Regional Offices	Contact Person
1	**ICSI-EIRO, Kolkata** 3A, Ahiripukur 1st Lane, Kolkata – 700 019	**Dr. Nikhat Khan,** Regional Director (East) **Shri Sumanta Dutta,** Executive Assistant Ph: 033 – 22902179/22901065 email: **eiro@icsi.edu;** sumanta.dutta@icsi.edu
2	**ICSI-NIRO, Delhi** Plot No.4, Prasad Nagar Institutional Area, New Delhi –110 005	**CS Sonia Baijal,** Regional Director (North) **Shri Himanshu Sharma,** Assistant Director Ph: 011-49343007 email: **niro@icsi.edu;** himanshu.sharma@icsi.edu
3	**ICSI-SIRO, Chennai** No. 9, Wheat Crofts Road, Nungambakkam, Chennai–600 034	**Shri DVNS Sarma,** Regional Director (South) **Shri Chelliah Murugan,** Executive (Admin) Ph: 044– 28279898/ 28268685 email: **siro@icsi.edu;** chelliah.murugan@icsi.edu
4	**ICSI-WIRO, Mumbai** 13,56 & 57, Jolly Maker Chambers No.II, Nariman Point, Mumbai –400 021	**Shri Sanjay Kumar Nagar** Regional Director (West) **Ms. Bhavna Rakte,** Executive Assistant Ph: 022 – 61307923 | email: **wiro@icsi.edu;** bhavna.rakte@icsi.edu

For queries, please contact: ICSI-HQ, Placement Cell: Ph: 0120- 408 2124, email: placement@icsi.edu

CS Manish Gupta
President, The ICSI

CS B. Narasimhan
Vice President, The ICSI

CS Asish Mohan
Secretary, The ICSI

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(A HANDBOOK ON BEST PRACTICES)

VERSION 2.0

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(Handbook on Best Practices)
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THE INSTITUTE OF
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IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

The Handbook on Best Practices titled **Corporate Governance : From Compliance to Excellence** intends to share the best practices observed in corporate governance with the India Inc. Based on the analysis of companies which participated in the 22nd ICSI National Awards for Excellence in Corporate Governance, the publication highlights governance practices adopted by Indian corporates in respect of

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TRANSPARENCY AND DISCLOSURE

RISK MANAGEMENT

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President, The ICSI	Vice President, The ICSI	Chairman, CLGC Committee and Council Member, The ICSI	Secretary, The ICSI

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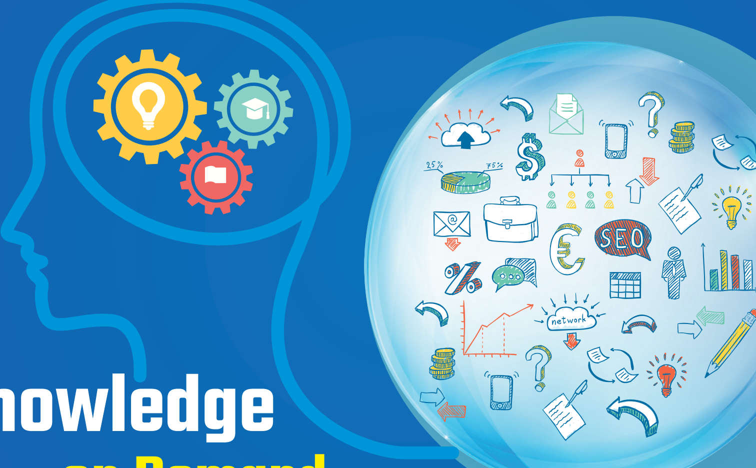

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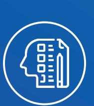
Knowledge on Demand is an initiative of the Institute providing facility to members to explore the recorded sessions on important topics as per their requirement and update their knowledge at their convenience online on the LMS Platform of the Institute

FEATURES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5

NEWS FROM THE INSTITUTE

- MEMBERS RESTORED DURING THE MONTH OF MARCH 2023
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF MARCH 2023
- ATTENTION
- UPLOADING OF PHOTOGRAPH AND SIGNATURE
- PAYMENT OF ANNUAL LICENTIATE SUBSCRIPTION FOR THE YEAR 2023-2024
- OBITUARIES
- PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2023-2024
- CHANGE / UPDATION OF ADDRESS
- LIST OF PRACTICE UNITS PEER REVIEWED / CERTIFICATE ISSUED DURING APRIL, 2023

Institute News

MEMBERS RESTORED DURING THE MONTH OF MARCH 2023

SL. NO	NAME	MEMB NO	REGION
1	CS H MADHAVAN	ACS - 10006	NIRC
2	CS JAYANTHI SRINIVASAN	ACS - 12531	SIRC
3	CS ARVIND KUMAR DUTT	ACS - 12719	NIRC
4	CS GOPAL SHARMA	ACS - 13996	SIRC
5	CS PANKAJ KUMAR GAGGAR	ACS - 15178	WIRC
6	CS AJAY JOSEPH THOPURATHU	ACS - 16122	SIRC
7	CS GIRISH VISWANATHAN	ACS - 16610	WIRC
8	CS DIWAKER BANSAL	ACS - 16832	NIRC
9	CS TARUN KACHOLIA	ACS - 16926	NIRC
10	CS VATSALYA VARSHNEY	ACS - 18977	NIRC
11	CS ANANTA NARAYAN KHATUA	ACS - 21776	WIRC
12	CS NIDHI LOCHAN	ACS - 22090	NIRC
13	CS JAYANTA SARKAR	ACS - 22209	EIRC
14	CS S GOPI GANESH GURU	ACS - 22243	SIRC
15	CS AKHILESHWAR SINGH	ACS - 25276	NIRC
16	CS NEETU VIJAY	ACS - 25549	WIRC
17	CS SUPERNA R TARE	ACS - 26631	WIRC
18	CS VIKASH KUMAR DUBEY	ACS - 27268	EIRC
19	CS PRIYA CHOUDHARY	ACS - 27838	NIRC
20	CS MANGALAGOWRI SHRIPATI HEGDE	ACS - 28066	WIRC
21	CS ANKIT KHATTAR	ACS - 28455	NIRC
22	CS TRUPTI BALIRAM WADEKAR	ACS - 28906	WIRC
23	CS SHARDUL VASANT JOSHI	ACS - 31838	WIRC
24	CS ANKIT JAGETIA	ACS - 34381	NIRC
25	CS MINAL JAIN	ACS - 36034	WIRC
26	CS KHANJAN BHARAT SONI	ACS - 36357	WIRC
27	CS SHIVANI KHANNA	ACS - 39290	NIRC
28	CS SIVANANTHAN B	ACS - 40742	SIRC
29	CS TRIPTA TOTLANI	ACS - 43278	NIRC
30	CS NATASHA MANOJ KAPSE	ACS - 45272	NIRC
31	CS MAHEENATH ANANDA	ACS - 4650	SIRC
32	CS NITESH TUKARAM MHATRE	ACS - 47155	WIRC
33	CS PRIYA WADHWANI	ACS - 47276	NIRC
34	CS SONAM GUPTA	ACS - 50491	NIRC
35	CS DHARA MANUBHAI PATEL	ACS - 53698	WIRC
36	CS PRADEEP KUMAR GARG	ACS - 55457	NIRC
37	CS MAMTA SAINI	ACS - 62256	WIRC
38	CS ALKA GUPTA	ACS - 6405	NIRC
39	CS SUNIL D GADKARI	ACS - 9110	WIRC
40	CS L V RANGANAYAKULU	FCS - 3018	SIRC
41	CS NIRMAL KUMAR AGARWAL	FCS - 3393	NIRC
42	CS RAJIV AGARWAL	FCS - 4022	NIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF MARCH 2023

SL. NO	NAME	MEMB NO	COP NO	REGION
1	CS AASHISH NEGI	FCS - 11856	18207	NIRC
2	CS ADITYA SARAF	ACS - 60107	24590	WIRC
3	CS AJAY KANTI DUTTMAZUMDER	FCS - 1201	4061	EIRC
4	CS AMIT KUMAR SINHA	ACS - 68739	25683	NIRC
5	CS ANISH JOSEPH	ACS - 67782	25251	SIRC
6	CS ANJANA BINU	FCS - 10313	12866	SIRC
7	CS ARCHANA	ACS - 53656	19930	NIRC
8	CS ARJU TYAGI	ACS - 54795	20892	NIRC
9	CS ASHIMA BHATNAGAR	ACS - 25655	14222	NIRC
10	CS ASTHA DALUJA	FCS - 10823	11227	NIRC
11	CS AVINASH KUMAR	FCS - 7717	7542	NIRC
12	CS BHAKTI MANOJ PECHIWALA	ACS - 64584	25297	WIRC
13	CS BHARAT	ACS - 51688	20293	NIRC
14	CS BHAWNA AGARWAL	ACS - 42296	15903	EIRC
15	CS CHANDNI VARDANI	ACS - 45557	26135	NIRC
16	CS DAVINDER KAUR	ACS - 27414	23864	EIRC
17	CS DEEPIKA PREMSINGH KHANGAROT	ACS - 38978	16912	WIRC
18	CS DIVYA SABHARWAL	ACS - 50170	19149	NIRC
19	CS DIVYA CHANDER SACHDEV	ACS - 64814	26000	EIRC
20	CS DIVYA NITEEN MALU	ACS - 67668	25232	SIRC

21	CS DIVYA PRAVINKUMAR LALWANI	ACS - 55222	21851	WIRC
22	CS GEETIKA DHEER	ACS - 49235	22107	SIRC
23	CS HARISH TANEJA	FCS - 5448	18879	NIRC
24	CS HARISH KUMAR SREEKANTAN	ACS - 50028	22590	SIRC
25	CS HEMANT NAYAK	ACS - 50235	18486	NIRC
26	CS HITESH KUMAR VERMA	ACS - 64527	24400	NIRC
27	CS ISHAN KUMAR VERMA	FCS - 8320	9422	NIRC
28	CS JAGADAMBIGAI KRISHNA MURTHI	ACS - 27870	10184	SIRC
29	CS KAJAL JAIN	ACS - 47315	18132	EIRC
30	CS KALYAN MUKHOPADHYAY	FCS - 4619	16181	EIRC
31	CS KAPIL GUPTA	ACS - 64005	24019	NIRC
32	CS KEDAR MANGESH LATKE	FCS - 12341	19279	WIRC
33	CS KETAN SANJEEV NAVLIHALKAR	ACS - 34560	14057	WIRC
34	CS KINJAL MAULIN SALVI	ACS - 32672	26138	WIRC
35	CS KRISHNA LAHOTY	ACS - 44901	20234	SIRC
36	CS LAKSHMI NARAYANA PANDA	ACS - 23051	8310	EIRC
37	CS LATIKA KALYANI	ACS - 52425	20038	NIRC
38	CS LISHA AGRAWAL	ACS - 56905	25524	WIRC
39	CS MEGHA NATVARLAL VARMA	ACS - 61116	23249	WIRC
40	CS MOHAMMED ABDULLAH SLATEWALA	ACS - 30888	21115	WIRC
41	CS MONAL GUPTA	ACS - 29974	21358	NIRC
42	CS NAMRITA ARORA	ACS - 53738	24991	NIRC
43	CS NEHA JAIN	ACS - 29956	10825	EIRC
44	CS NIHARIKA YASH MODI	ACS - 47981	26095	WIRC
45	CS NIRALI MAULIKKUMAR PATEL	ACS - 57358	23480	WIRC
46	CS NISCHAL SURANA	ACS - 52751	23962	NIRC
47	CS NISHANT GIRI VINOD GIRI GOSWAMI	ACS - 70480	26445	WIRC
48	CS PARAM TEJ MITTAL	FCS - 2529	21731	NIRC
49	CS POOJA VIJAY GOHIL	FCS - 12131	18078	WIRC

50	CS POONAM AGARWAL	ACS - 45452	26011	NIRC
51	CS PRASAN BAID	ACS - 57765	21871	EIRC
52	CS PRATHAMESH SHAILESH KARKHANIS	ACS - 66823	25881	WIRC
53	CS PRITI KAPADIA	FCS - 8756	24885	WIRC
54	CS PRIYANKA JAIN	ACS - 68247	25430	NIRC
55	CS RAHUL BHATIA	ACS - 41937	25305	NIRC
56	CS RAJ KAMAL SARAOGI	FCS - 3152	20284	NIRC
57	CS RAMA MANOJA MADHURI ANNAVARAPU	ACS - 48359	18221	SIRC
58	CS RANJANA HISARIA	ACS - 51784	23224	EIRC
59	CS RASHMI JUGAL KARNANI	FCS - 6531	6597	WIRC
60	CS RAVEENA SHARMA JAIN	ACS - 41175	24043	NIRC
61	CS REENA SUNIL AGRAWAL	ACS - 68721	26142	WIRC
62	CS RENU AGRAWAL	ACS - 33046	19019	NIRC
63	CS RIYA SARANG AGRAWAL	ACS - 69525	25962	WIRC
64	CS RONIL ROHITKUMAR SHAH	ACS - 60109	23756	WIRC
65	CS SANJAY	ACS - 60772	25018	NIRC
66	CS SARITA YADAV	FCS - 10914	24941	NIRC
67	CS SHANTANU PETHE	ACS - 18135	20119	WIRC
68	CS SHUBHANGI SHARMA	ACS - 50090	22431	NIRC
69	CS SHUBHICA	ACS - 35167	14162	NIRC
70	CS SIMPAL KUMARI	ACS - 20798	25731	WIRC
71	CS SUKHPREET KAUR	ACS - 66285	26369	NIRC
72	CS SUMAN MODI SHARMA	ACS - 49221	25329	SIRC
73	CS SUNIL KUMAR	ACS - 59951	25596	NIRC
74	CS SUNITA GOYAL	ACS - 37619	24212	EIRC
75	CS SUSHIL KUMAR JAIN	FCS - 4398	23191	NIRC
76	CS SWATI SHARMA	ACS - 42850	19560	NIRC
77	CS TEENA RATHI	ACS - 46419	17755	NIRC
78	CS URVASHI JINDAL	ACS - 32931	20479	NIRC
79	CS VIDHYA KUMARI RIJHWANI	ACS - 50556	22136	NIRC
80	CS VIKAS RAJU VARMA	FCS - 11046	15502	WIRC
81	CS YOGITA AGARWAL	ACS - 51057	18564	EIRC
82	CS ZALAK GHANSHYAM DODIYA	ACS - 34088	14262	WIRC

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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

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

PAYMENT OF ANNUAL LICENTIATE SUBSCRIPTION FOR THE YEAR 2023-2024

The annual Licentiate subscription for the year 2023-2024 has become due for payment w.e.f. 1st April, 2023. The last date of making payment is 30th June, 2023. The Licentiate subscription payable is Rs.1180/- inclusive of applicable GST@18%. The subscription will be paid ONLINE only using the link - http://stimulate.icsi.edu/ with your student login credentials.

Log in to the link - http://stimulate.icsi.edu/ with your student credentials.

Username – Will be your registration number.

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Click Renew option and make the payment.

For any further queries, please write to member@icsi.edu or raise query at http://support.icsi.edu

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following members:

CS M S R Prasad (15.06.1969 – 03.03.2023), a Fellow Member of the Institute from Hyderabad.

CS A. S. Arul Saravanan (12.02.1958 – 10.03.2023), an Associate Member of the Institute from Chennai.

CS R Kalyanaraman (06.09.1967 – 19.02.2023), a Fellow Member of the Institute from Chennai.

CS Murali Srinivasan (25.01.1953 – 27.01.2023), an Associate Member of the Institute from Bengaluru.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.

PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2023-2024

The annual membership fee and certificate of practice fee for the year 2023-24 has become due for payment w.e.f. 1st April, 2023. The last date for the payment of annual membership fee and certificate of practice fee will be **30th June, 2023.**

The membership and certificate of practice fee payable are as follows:

Particulars	Associate*	Fellow*
Annual Membership fee	Rs. 2950	Rs. 3540
Annual Membership fee (Opting out to receive the physical copy of Chartered Secretary Journal)	Rs.2360	Rs. 2950
Annual Certificate of Practice fee	Rs. 2360	Rs. 2360
Entrance fee** (Restoration of Associate and Fellow Membership)	Rs. 2360	Rs. 2360
Restoration fee***	Rs. 295	Rs. 295

* All Fee inclusive of applicable GST@18%.

** Applicable if annual membership fee is not received by 30th June, 2023.

*** Applicable if annual membership fee and certificate of practice fee is not received by 30th June, 2023

A member who is of the age of seventy years or above can claim 75% concession in the payment of Associate/Fellow Annual Membership fee.

A member who is Divyangjan can seek concession in annual membership fee @ 50% w.e.f. 1st April, 2021. Concession of 50% is also applicable additionally to members who are of the age seventy years or above. The member needs to submit a medical certificate to this effect for seeking this concession.

MODE OF REMITTANCE OF FEE

The fee can be remitted through ***ONLINE*** mode only using the payment gateway of the Institute's website www.icsi.edu → Online Services through Members Portal login.

1. Use ONLINE SERVICES tab on www.icsi.edu
2. Select Member Portal from dropdown
3. Login using your membership number e.g. A1234/F1234
4. Enter your password
5. Click on renew link under Notifications on your Home Page
6. Check the details and pay the fee

Payment made through any other mode is not acceptable.

The following are to be done while making online payment of annual membership fee:

1. Declaration of PAN & AADHAAR
2. Verification of your address as per Regulation 3 of the CS (Amendment) Regulations, 2020 by clicking on the given check box
3. Declaration of eCSIN (if applicable)
4. Declaration of UDIN (if applicable)
5. Declaration of GSTIN number (optional)

For more detail kindly refer FAQs on home page of www.icsi.edu, if unclear raise query at http://support.icsi.edu

Team ICSI

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

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)

Documents downloadable from the DigiLocker Platform

The National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. In the wake of digitization and in an attempt to issue documents to all the members in a standard format and make them electronically available on real-time basis, the Institute of Company Secretaries of India had connected itself with the DigiLocker platform of the Government of India. The initiative was launched on 5th October, 2019 in the presence of the Hon'ble President of India.

In addition to their identity cards and Associate certificates, members can also now access and download their Fellow certificates and Certificates of Practice from the Digilocker anytime, anywhere.

How to Access:

- Go to https://digilocker.gov.in and click on Sign Up
- You may download the Digilocker mobile app from mobile store (Android/iOS)

How to Login:

- Signing up for DigiLocker with your mobile number.
- Your mobile number is authenticated by an OTP (one-time password).
- Select a username & password. This will create your DigiLocker account.
- After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

How to Access your Documents digitally:

Members can download their digital ID Card / ACS / FCS / COP certificate(s) by following the steps given below:

1. Log in to https://www.digilocker.gov.in website
2. Go to Central Government and select Institute of Company Secretaries of India
3. Select the option of ID card / Membership Certificate / Practice Certificate
4. For ID Card, enter your membership number e.g. ACS 12345 / FCS 12345.
5. For membership certificate, Enter your membership and select ACS / FCS from drop down.
6. For COP certificate enter your COP number e.g. 12345 and select COP.
7. Click download / generate.
8. The ID Card / Membership certificate / Practice Certificate can be downloaded every year after making payment of Annual Membership fees.

LIST OF PRACTICE UNITS PEER REVIEWED / CERTIFICATE ISSUED DURING APRIL, 2023 (FINAL REPORTS RECEIVED TILL 25TH APRIL, 2023)

Sl. No.	Name of the Practice Unit	City	Year of Review	Certificate no.
1	M/s. RJSY & Associates	Mumbai	2022-23	3117/2023
2	CS Aparna Laxman Uparkar	Navi Mumbai	2021-22	3118/2023
3	M/s. Govind Khandelwal & Co.	New Delhi	2021-22	3119/2023
4	CS Madhuri Kulkarni	Bengaluru	2021-22	3120/2023
5	M/s. Ajay Khandelwal & Associates	Bareilly	2021-22	3121/2023
6	CS Sankaranarayana Iyer Venkitachalam	Kochi	2022-23	3122/2023
7	M/s. Lakshmi & Associates	Chennai	Limited Review	3123/2023
8	M/s. Arpita & Associates	Jaipur	2021-22	3124/2023
9	M/s. Prachi A. & Associates	Ghaziabad	2021-22	3125/2023
10	CS Purushottam Ashok Rasalkar	Bengaluru	2021-22	3126/2023
11	M/s. Sarita Singh & Associates	Faridabad	2021-22	3127/2023
12	CS Sumit Kumar	Kolkata	2021-22	3128/2023
13	M/s. Kumar Mandal & Associates	New Delhi	2021-22	3129/2023
14	M/s. RT & Associates	Bengaluru	2021-22	3130/2023
15	M/s. Kiran N P & Associates	Shivamogga	2021-22	3131/2023
16	M/s. Shikha Purohit & Co.	Mumbai	2021-22	3132/2023
17	M/s. Sandeep Divleen & Co.	New Delhi	2021-22	3133/2023
18	CS Thangaraj Kannan	Chennai	2021-22	3134/2023
19	M/s. Parul G & Associates	Delhi	2021-22	3135/2023
20	CS Ronak Jain	Indore	2022-23	3136/2023
21	M/s. Richa S. & Co.	Mumbai	2021-22	3137/2023
22	M/s. S. Kuruvila & Co.	Vellore	2022-23	3138/2023
23	M/s. Sandeep Agrawal & Associates	New Delhi	2021-22	3139/2023
24	CS Ketan Shantilal Dand	Mumbai	2021-22	3140/2023
25	CS Motati Gayathri	Hyderabad	2021-22	3141/2023
26	M/s. Gagan Burman & Associates	Agra	2021-22	3142/2023
27	M/s. Sourav & Associates	New Delhi	2022-23	3143/2023
28	M/s. Pramod Pachhapur & Associates	Mumbai	2022-23	3144/2023
29	M/s. S. P. Ghali & Co.	Belgaum	2021-22	3145/2023
30	M/s. ACMY & Associates	Mumbai	2021-22	3146/2023
31	M/s. Dhrumil M. Shah & Co. LLP	Mumbai	2021-22	3147/2023
32	CS Aakansha Vaid	Raipur	2021-22	3148/2023
33	CS N. S. Poornima	Salem	2021-22	3149/2023
34	M/s. G K Marppalli & Associates	Bengaluru	2022-23	3150/2023
35	M/s. Lath Deepak & Associates	New Delhi	2022-23	3151/2023
36	M/s. Kular Chirag & Associates	Ahmedabad	2022-23	3152/2023
37	M/s. Mukesh Sharma & Associates	Faridabad	2022-23	3153/2023
38	M/s. V. Ramesh & Associates	Erode	2021-22	3154/2023

39	CS Shrinivas M Devadiga	Bengaluru	2021-22	3155/2023
40	M/s. Anmol Wadhwani & Associates	Raipur	2021-22	3156/2023
41	M/s. BMR & Associates	Visakhapatnam	2021-22	3157/2023
42	M/s. P. Dhanya & Associates	Kochi	2021-22	3158/2023
43	M/s. Arora Shekhar & Company	New Delhi	2021-22	3159/2023
44	M/s. C Gaur & Associates	New Delhi	2021-22	3160/2023
45	M/s. S. Patwari & Associates	Kolkata	2021-22	3161/2023
46	M/s. Milan Malik & Associates	Delhi	2021-22	3162/2023
47	M/s. Manish Mishra and Associates	Lucknow	2021-22	3163/2023
48	M/s. MARK & Associates	Howrah	2022-23	3164/2023
49	M/s. Avi Sangal & Associates	Greater Noida	2022-23	3165/2023
50	M/s. Naveen Garg & Associates	Delhi	2022-23	3166/2023
51	CS C. N. Paramasivam	Coimbatore	2021-22	3167/2023
52	CS Sanjay Kumar Mohta	Raipur	2021-22	3168/2023
53	M/s. Siddhi S & Associates	Mumbai	2021-22	3169/2023
54	M/s. Jeny Gowadia and Associates	Mumbai	2021-22	3170/2023
55	CS P. V. Paulose	Kochi	2022-23	3171/2023
56	CS Sneha Mohan Kumar	Chennai	2022-23	3172/2023
57	M/s. Shachi Hem & Associates	Lucknow	2022-23	3173/2023
58	M/s. Purwar & Purwar Associates LLP	Thane	Limited Review	3174/2023
59	CS Dafthardar Soumya	Hyderabad	2021-22	3175/2023
60	CS T. Saraswathi	Madurai	2021-22	3176/2023
61	M/s. Mukesh Kumar Heda and Associates	Jaipur	2022-23	3177/2023
62	M/s. Jitendra Jangid & Company	Jaipur	2022-23	3178/2023
63	M/s. DNG & Associates	Thane	2022-23	3179/2023
64	M/s. M Sharma and Associates	Hyderabad	2021-22	3180/2023
65	CS Shailender Kumar	Karnal	2021-22	3181/2023
66	CS Dinesh Sharma	Jaipur	2022-23	3182/2023
67	M/s. Shyam Patil & Associates	Pune	2021-22	3183/2023
68	M/s. Navneet Kumar & Associates	Delhi	2021-22	3184/2023
69	M/s. Yellapragada & Associates	Hyderabad	2021-22	3185/2023
70	CS Tanuj Jain Susilkumar	Chennai	2021-22	3186/2023
71	CS Amulya K L	Bengaluru	2022-23	3187/2023
72	CS Priyanka Tibrewal	Kolkata	2021-22	3188/2023
73	M/s. Vibhuti Dani & Associates	Pune	Limited Review	3189/2023
74	CS Rafeeulla Shariif	Bengaluru	2021-22	3190/2023
75	M/s. Vatsal Doshi & Associates	Mumbai	2021-22	3191/2023
76	M/s. Rishita Shah & Co.	Mumbai	2021-22	3192/2023
77	M/s. SSN & Associates	Ulhasnahgar	2022-23	3193/2023
78	CS R. Thamizhvanan	Chennai	2022-23	3194/2023
79	M/s. Vinesh D Mestry & Co.	Mumbai	2022-23	3195/2023

80	M/s. VGP & Associates	Mumbai	2022-23	3196/2023
81	CS V. Mohan Rao	Hyderabad	2022-23	3197/2023
82	M/s. Meet Jogatar and Associates	Bhayandar	2022-23	3198/2023
83	CS Premasis Bhaumik	Kolkata	2022-23	3199/2023
84	M/s. Purvi Kakani & Associates	Mumbai	2022-23	3200/2023
85	M/s. Abhishek Jagdale & Associates	Pune	2022-23	3201/2023
86	M/s. Keerti Hegde and Associates	Bengaluru	2021-22	3202/2023
87	M/s. V & R Associates	Chennai	2021-22	3203/2023
88	M/s. Sapna Khandelwal & Associates	Gurugram	2021-22	3204/2023
89	CS Anil Xavier	Ernakulam	2021-22	3205/2023
90	CS Shruti Agarwal	Kolkata	2021-22	3206/2023
91	M/s V G & Company	New Delhi	2021-22	3207/2023
92	CS Anushree Keshav	Bengaluru	2022-23	3208/2023
93	M/s. TNT & Associates	Vadodara	2021-22	3209/2023
94	M/s. BRG & Associates	Bengaluru	2021-22	3210/2023
95	M/s. SNR & Associates	Bengaluru	2021-22	3211/2023
96	CS M. V. V. Prasada Reddy	Chennai	2021-22	3212/2023
97	M/s. Malay Desai and Associates	Ahmedabad	2021-22	3213/2023
98	M/s. AKB & Associates	Chennai	2021-22	3214/2023
99	CS Kamal Ashwin Lalani	Vadodara	2021-22	3215/2023
100	M/s. Ruchi Gupta & Co.	Delhi	2021-22	3216/2023
101	M/s. P K Saini & Co.	Yamunanagar	2021-22	3217/2023
102	CS S Rajendran	Chennai	2021-22	3218/2023
103	M/s. Kokila & Associates	Salem	2022-23	3219/2023
104	M/s. Giriraj A. Mohta & Company	Pune	2022-23	3220/2023
105	CS Vinod Kumar	New Delhi	2021-22	3221/2023
106	CS Krishnamurthy Madhwesh	Bengaluru	2021-22	3222/2023
107	M/s. Gargi Nath & Associates	Raipur	2021-22	3223/2023
108	CS Malali Anantharam Adarsha	Bengaluru	2022-23	3224/2023
109	M/s. Avinash K & Co.	New Delhi	2022-23	3225/2023
110	M/s. Ravi Bhat & Associates	Bengaluru	2021-22	3226/2023
111	CS Puja Mohan	Kolkata	2022-23	3227/2023
112	M/s. Pareek V. R. & Associates	Pune	2021-22	3228/2023
113	M/s. Manthan Negandhi & Co.	Mumbai	2021-22	3229/2023
114	M/s. GRNK & Associates	Chennai	2021-22	3230/2023
115	M/s. Ajinkya Gandhi & Associates	Pune	2021-22	3231/2023
116	CS G. Subhasree	Chennai	2021-22	3232/2023
117	M/s. K. Sridhar & Co.	Chennai	2022-23	3233/2023
118	CS Kishor V. Ved	Mumbai	2021-22	3234/2023
119	M/s. HNS & Associates	Bengaluru	2022-23	3235/2023
120	CS Jignesh D. Soni	Surat	2021-22	3236/2023

121	M/s. H. T. Lodhiya & Associates	Rajkot	2021-22	3237/2023
122	CS G. L. Subhramanian	Chennai	2021-22	3238/2023
123	CS Kajal Mewada	Mumbai	2021-22	3239/2023
124	M/s. Heena Gulrajani & Associates	Ratlam	2022-23	3240/2023
125	M/s. Kaustubh Moghe & Associates	Nagpur	2022-23	3241/2023
126	M/s. Amey Lotlikar & Co.	Dombivli	2022-23	3242/2023
127	CS Venkata Suresh Kumar Gadamsetti	Hyderabad	2022-23	3243/2023
128	M/s. Kumar Mukesh & Associates	New Delhi	2022-23	3244/2023
129	M/s. N Kapoor & Associates	Noida	2022-23	3245/2023
130	M/s. N R Shah & Co.	Vadodara	2022-23	3246/2023
131	CS Keyur Hasmukh Mirani	Mumbai	2022-23	3247/2023
132	M/s. Deepak Rastogi & Associates	Moradabad	2022-23	3248/2023
133	CS Thirumazhisai Puttham Shridar	Chennai	2021-22	3249/2023
134	M/s. Nitin Jaiswal & Associates	Delhi	2022-23	3250/2023
135	CS Gajanan D. Athavale	Thane-(w)	2022-23	3251/2023
136	M/s. Garg Sahil & Associates	New Delhi	2022-23	3252/2023
137	CS Krithika	Coimbatore	2022-23	3253/2023
138	CS V Shankar	Chennai	2022-23	3254/2023
139	M/s. APMG & Associates	Delhi	2022-23	3255/2023
140	M/s. Keshav Rathi & Associates	Jodhpur	2022-23	3256/2023
141	M/s. Vandana J Thakur & Associates	Mumbai	2022-23	3257/2023
142	M/s. Neeraj Jain & Associates	Delhi	2022-23	3258/2023
143	M/s. S Choraria & Associates	Kolkata	2022-23	3259/2023
144	M/s. Ashish Kapoor & Associates	Delhi	2021-22	3260/2023
145	M/s. Akanksha Mota & Co.	Mumbai	2022-23	3261/2023
146	M/s. SMR & Associates	Indore	2022-23	3262/2023
147	CS Vilas Nichat	Nagpur	2021-22	3263/2023
148	M/s. B. Chandarana & Associates	Morbi	2022-23	3264/2023
149	M/s. Divya Gupta & Associates	Delhi	2022-23	3265/2023
150	M/s. Naresh Verma & Associates	Delhi	2021-22	3266/2023
151	M/s. R N Bhat & Associates	Bengaluru	2022-23	3267/2023
152	M/s. Abhishek Mittal & Associates	New Delhi	2022-23	3268/2023
153	M/s. SAP & Associates	Navi Mumbai	2022-23	3269/2023
154	M/s. A. S. Rajan & Co.	Mumbai	2022-23	3270/2023
155	M/s. Bulbul Bansal & Associates	New Delhi	2022-23	3271/2023
156	CS Kruti Mahendra	Bengaluru	2022-23	3272/2023

COMPANY SECRETARIES BENEVOLENT FUND

Be a proud member of CSBF

The Company Secretaries Benevolent Fund (CSBF) provides safety net to the Company Secretaries who are members of the Fund and their family members in distress.

CSBF

- Registered under the Societies Registration Act, 1860 Recognised under Section 12A of the Income Tax Act, 1961
- Subscription/Contribution to the Fund qualifies for deduction under section 80G of the Income Tax Act,1961
- Has a membership base of over 15000

ELIGIBILITY : A member of the Institute of Company Secretaries of India (ICSI) is eligible for the membership of the CSBF.

HOW TO JOIN : By making an online application using the link **https://stimulate.icsi.edu/** alongwith one time subscription of ₹10,000/-.

BENEFITS

- ₹10,00,000 in the event of death of a member under the age of 60 years
- Upto ₹3,00,000 in the event of death of a member above the age of 60 years
- Upto ₹50,000 per child on time (upto two children) for education of minor children of a deceased member upto the age of 60 years.
- Upto ₹75,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

DONATION : The donation to CSBF can be made online at link **www.icsi.in/ ICSIDonation**

CONTACT : For further information / clarification, please write at email id **csbf@icsi.edu** or contact on telephone no. 0120-4522000

For more details please visit https://www.icsi.edu/csbf/home/

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

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

MISSION
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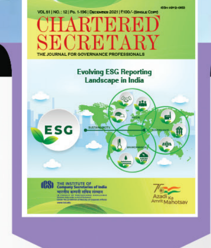

(With Effect from September 2018)

BACK COVER (COLOURED)		COVER II/III (COLOURED)	
Non – Appointment		Non – Appointment	
Per Insertion	₹1,00,000	Per Insertion	₹ 70,000
4 Insertions	₹ 3,60,000	4 Insertions	₹2,52,000
6 Insertions	₹ 5,28,000	6 Insertions	₹ 3,69,000
12 Insertions	₹ 10,20,000	12 Insertions	₹ 7,14,000

FULL PAGE (COLOURED)			HALF PAGE (COLOURED)		
	Non – Appointment	Appointment		Non – Appointment	Appointment
Per Insertion	₹ 50,000	₹ 15,000	Per Insertion	₹ 25,000	₹ 7,500
4 Insertions	₹ 1,80,000	₹ 54,000	4 Insertions	₹ 90,000	₹ 27,000
6 Insertions	₹ 2,64,000	₹ 79,200	6 Insertions	₹ 1,32,000	₹ 39,600
12 Insertions	₹ 5,10,000	₹ 1,53,000	12 Insertions	₹ 2,55,000	₹ 76,500

PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES	
Per Insertion	₹15,500	₹4,500	For ‘Situation Wanted’ ads	100
(Subject to availability of space)			For Others	200

MECHANICAL DATA		
Full Page - 18X24 cm	Half Page - 9X24 cm or 18X12 cm	Quarter Page - 9X12 cm

- The Institute reserves the right not to accept order for any particular advertisement.
- The Journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor
CHARTERED SECRETARY
Mail to : cs.journal@icsi.edu
Ext. 0120-4082123

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)

6

MISCELLANEOUS CORNER

- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER

GST Portal Updates

TIME LIMIT FOR REPORTING INVOICES ON THE IRP PORTAL

1. It has been decided by the Government to impose a time limit on reporting old invoices on the e-invoice IRP portals for taxpayers with Annual Aggregate Turnover (AATO) greater than or equal to ₹ 100 crores.
2. To ensure timely compliance, taxpayers in this category will not be allowed to report invoices older than 7 days on the date of reporting.
3. This restriction will apply to the all-document types for which IRN is to be generated. Thus, once issued, the credit / debit note will also have to be reported within 7 days of issue. For example, if an invoice has a date of April 1, 2023, it cannot be reported after April 8, 2023.
4. The validation system built into the invoice registration portal will disallow the user from reporting the invoice after the 7-day window. Hence, it is essential for taxpayers to ensure that they report the invoice within the 7-day window provided by the new time limit.
5. There will be no such reporting restriction on taxpayers with AATO less than 100 crores, as of now.
6. In order to provide sufficient time for taxpayers to comply with this requirement, which may require changes to their systems, GSTN has proposed to implement it from May 1, 2023 onwards.

Source: *https://www.gst.gov.in/newsandupdates/read/577*

ADVISORY ON BANK ACCOUNT VALIDATION

1. The functionality for bank account validation is now integrated with the GST System. This feature is introduced to ensure that the bank accounts provided by the Tax Payer is correct.
2. The bank account validation status can be seen under the Dashboard→My Profile→Bank Account Status tab in the FO portal. Tax Payers will also receive the bank account status detail on registered email and mobile number immediately after the validation is performed for his declared bank account.
3. Post validation, any bank account number in the database would have one status out of the below mentioned four status types. The exact details of the accounts can be seen by hovering mouse over these icons in the Tax Payers' dashboard in FO Portal.

Icon	Description
✔	Success
✖	Failure
!	Success With Remark
🕒	Pending for Validation

Whenever, the Tax Payer is shown 'Failure' icon with further details such as

- The entered PAN number is invalid.
- PAN not available in the concerned bank account.
- PAN registered under GSTIN, and the PAN maintained in the Bank Account are not same.
- IFSC code entered for the bank account details is invalid.

In these cases, the Tax Payer is expected to ensure that he has entered correct bank details and the KYC is completed by bank for his bank account.

4. Whenever, the Tax Payer is shown, the status of his bank account as 'Success With Remark' icon with details "The account cannot be validated since the bank is not integrated with NPCI for online bank account validation", the Tax Payer should provide alternate bank account number so that it can be revalidated to expedite further online processes.
5. If the account status is shown as "Pending for Validation" then please wait since the account will be validated by NPCI.
6. The Tax Payer at any time can add/delete the bank account details and new account details will be validated.

Source:*https://tutorial.gst.gov.in/downloads/news/advisory_on_bank_account_validation_17april2023.pdf*

MODEL ALL INDIA GST AUDIT MANUAL, 2023

A Committee of Officers (CoO) on GST Audit was constituted by the GST Council Secretariat comprising officers from the CBIC, States, GSTN and GST Council Secretariat in pursuance of discussion and decision in the 1st National GST Conference held on 25.11.2019 with the objective to have joint & collaborative efforts for GST Audit; capacity building for audit and to follow uniform practices for GST Audit in Centre and State Tax administration.

The CoO on GST Audit has come up with a **Model All India GST Audit Manual 2023.** The Manual aims to be an extensive and comprehensive document with a holistic approach towards GST Audit to not only facilitate the Audit Officers of the Centre and the States/UTs but to also create an impact in facilitating the auditees during the exercise of audit. The objective of this manual is to provide insights into the principles and procedures of audit and to give a holistic view of the entire process to the users of the Manual.

The Manual can be accessed at *https://gstcouncil.gov.in/sites/default/files/news-ticker/MODEL-ALL-INDIA-GST-AUDIT-MANUAL-FINAL.pdf*

Acts considered to be 'Other Misconduct' by Company Secretaries under Part IV of First Schedule to the Company Secretaries Act, 1980

For the purposes of the Company Secretaries Act, 1980, the expression *"professional or other misconduct"*, pursuant to Section 22 of the Company Secretaries Act, 1980, shall be deemed to include any act or omission provided in any of the Schedules i.e. First and Second Schedule to the Company Secretaries Act, 1980, 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. First Schedule is divided in to four parts and Second Schedule is divided into three parts.

Part IV of the First Schedule to the Company Secretaries Act, 1980 deals with the other misconduct in relation to members of the Institute generally, as given below: -

(1) A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct under Part IV of the First Schedule to the Company Secretaries Act, 1980, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

(2) A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct under Part IV of the First Schedule to the Company Secretaries Act, 1980, if in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

CASE STUDY

1. The Complainant has *inter-alia* alleged that the Respondent had submitted a false Due Diligence Report dated April, 2013 in respect of a company. According to the Investigations done by the Complainant it was established that during the LC devolvement period, the Respondent had submitted the said Due Diligence Report stating that the funds borrowed from banks/Financial Institutions has been used by the company for the purpose for which they were borrowed. It is also established that the report submitted by the Respondent was on the letter head of the company which is against the Company Secretaries Act, 1980. During the investigation, it was stated that the Respondent had worked with the company from January, 2013 to August, 2013 as Company Secretary. However, no Form 32 was filed before the ROC regarding his appointment as Company Secretary. As a procedure, the Respondent had to file Form 32 within 30 days from the date of appointment.

2. The Respondent has also stated that he has signed the due diligence report as per the instructions of CFO of the company. The investigation has established that the Respondent, by dishonestly issuing false Due Diligence Certificate in respect of the company which is not in a prescribed format has facilitated in deceiving/ misleading the bank into giving additional loan limits to the company. The Respondent has joined the company in December, 2012. The Board of Directors had approved his appointment and had authorised one of the directors of the company to file Form-32 with the ROC. The said Form-32 was not filed by the Board of Directors in the stipulated time and the Respondent was following up for the same with the Board of Directors. The said Form-32 cannot be filled by the Respondent, since it requires the signature of the authorised director of the company. As the appointment of the Respondent was not being regularized by the company as a part of compliance measure, he decided to resign from the company and had resigned in August, 2013.

3. During the period, when he was employed with the company, the Central Bank of India had sanctioned certain working capital limits to the company. As a part of compliance procedure for the working capital facilities sanctioned to the company, the Central Bank of India insisted for Due Diligence Report (DDR) to be submitted to them as per Circular No. RBI/2008-09/183/DBOD. No BP. BC.46/08.12.001/2008-09, dated 19th September, 2008. The DDR to be signed/ certified by a Practising Company Secretary/Chartered Accountant/ Cost Accountant. The company had submitted a DDR certified by a Practising Chartered Accountant on the letter head of the company along with the certification of the CFO of the company and the same was submitted to the Central Bank of India. Since the Central Bank of India was insisting that the DDR should also be signed by the Company Secretary of the company, the company's management led by CFO had approached the Respondent for certifying the DDR on behalf of the company as a Company Secretary. As the Respondent was employed by the company and with the assurance given by the management of the company that his appointment would be regularized, he had certified the DDR for the FY 2012-13 in the capacity of the Company Secretary of the company.

4. The Respondent has stated that 33 LC's were issued by Central Bank of India to the company in favour of the beneficiary (supplier) of material, for purchase of materials who had supplied the material to the company as per the terms and conditions stipulated in

the LC's and Central Bank of India on being satisfied that LC terms were complied with, has agreed to honour the LCs on the due date. It clearly shows/ reflects that the Central Bank of India was totally satisfied that the company had purchased materials from the beneficiaries of LC's (suppliers of materials) and had therefore agreed to honour the LC on the due date. This clearly reflects that the Central Bank of India was totally satisfied that the company had used the borrowed funds for the purpose for which it was lent and the Respondent has also certified the same in the DDR. The Respondent has also stated that he had acted with utmost professional integrity in discharging his duties while certifying the DDR on behalf of the company as a Company Secretary for the FY 2012-13. The Respondent had submitted that he has signed the Due Diligence Report (DDR) after checking all the secretarial records but not financial records. The Respondent informed his CFO that the DDR has to be issued by PCS or PCA, but the CFO insisted that the DDR submitted by the PCA was not taken by the Banker and that it should be signed by Company Secretary of the company. Accordingly, the Respondent has signed the DDR on instructions of his reporting authority i.e. CFO of the company, after checking all the Secretarial records, and for the financial records the Chartered Accountant is responsible.

5. The Respondent appeared before the Board of Discipline and submitted that he has acted as per the instructions given by the CFO of the company. He submitted that the Central Bank of India was satisfied and then agreed to honour the LC's. There was no fraud or malafide intention on his part.

6. The Complainant has confirmed that no prosecution or charge sheet was filed against the Respondent, as he was not involved in the fraud and only this complaint has been filed against the Respondent.

7. The Board of Discipline noted the opinion of the Council in the matter that the acts of the Respondent as alleged in the complaint, have brought disrepute to the profession and the Institute under clause (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980.

8. The Board of Discipline observed that upon completion of investigation, the Complainant has filed the charge sheet before the Hon'ble Court of Additional Chief Metropolitan Magistrate in June, 2017 against Managing Director, Directors, Chief Financial Officer, Chief Operating Officer and others for offences punishable under Section 120 B of IPC r/w Sec. 420, 465 & 471 of IPC and substantive offences thereof. From the format of the Due-Diligence Report signed by the Respondent on the letter head of the company, it is observed that such report should be issued either by a Practising Company Secretary or a Practising Chartered Accountant. The Respondent being a Company Secretary in employment should not have issued such report. The Respondent got instructions to sign the Due-Diligence Report from Chief Financial Officer vide his email of May, 2013 and the Respondent confirmed and provided signed report vide email of May, 2013. However, the Respondent has issued a back dated Due-Diligence Report dated April, 2013. The name of the Respondent was not found in the charge sheet filed before the Hon'ble Court of Additional Chief Metropolitan Magistrate. It is further confirmed by the Authorised Representative, during the course of the hearing that his name is not there in the charge sheet as he was not the beneficiary of the wrong done by the companies and its Directors.

9. The Respondent pleaded guilty of the misconduct and requested the Board of Discipline to take a lenient view. The Board of Discipline recorded the plea and after providing an opportunity of being heard passed an order of 'Reprimand' against the Respondent.

YOUR OPINION MATTERS

'Chartered Secretary' has been constantly striving to achieve Excellence in terms of Coverage, Contents, Articles, Legal Cases, Govt. Notification etc. for the purpose of knowledge sharing and constant updation of its readers. However, there is always a scope for new additions, improvement, etc.

The Institute seeks cooperation of all its readers in accomplishing this task for the benefit of all its stakeholders. We solicit your views, opinions and comments which may help us in further improving the varied segments of this journal. Suggestions on areas which may need greater emphasis, new sections or areas that may be added are also welcome.

You may send in your suggestions to the Editor, Chartered Secretary, The ICSI at cs.journal@icsi.edu.

Green Deposits

A green deposit is a fixed-term deposit for investors looking to invest their surplus cash reserves in environmentally friendly projects. This new offering in the market indicates the increased awareness of the importance of ESG (Environmental, Social and Governance) and sustainable investing. The investment in this fixed tenure deposit will go towards financing eligible businesses and projects that promote the transition to a low-carbon, climate-resilient, and sustainable economy.

In India, the banking regulator, Reserve Bank of India has put in place a framework for accepting green deposits, the central bank said in a notification on April 11, 2023. The framework will come into effect from June 1, 2023. The framework applies to banks, small finance banks, and deposit taking non-banking financial companies.

It aims to encourage lenders to offer green deposits to customers, protect interest of the depositors, aid customers to achieve their sustainability agenda, address green washing concerns and help augment the flow of credit to green activities. The framework comes at a time when environmental, social, and governance norms have gained focus in India. Currently, various banks like Federal Bank, IndusInd Bank, and DBS Bank India accept green deposits.

According to the framework for acceptance of 'Green Deposits', the allocation of proceeds raised from green deposits shall be based on the official Indian green taxonomy. Pending finalization of the taxonomy, as an interim measure, Regulated Entities shall be required to allocate the proceeds raised through green deposits towards the following list of green activities/projects which encourage energy efficiency in resource utilisation, reduce carbon emissions and greenhouse gases, promote climate resilience and/or adaptation and value and improve natural ecosystems and biodiversity.

Sector	Description
Renewable Energy	• Solar/wind/biomass/hydropower energy projects that integrate energy generation and storage. • Incentivizing adoption of renewable energy.
Energy Efficiency	Design and construction of energy-efficient and energy-saving systems and installations in buildings and properties. • Supporting lighting improvements (e.g. replacement with LEDs). • Supporting construction of new low-carbon buildings as well as energy-efficiency retrofits to existing buildings. • Projects to reduce electricity grid losses.

Clean Transportation	Projects promoting electrification of transportation. • Adoption of clean fuels like electric vehicles including building charging infrastructure.
Climate Change Adaptation	• Projects aimed at making infrastructure more resilient to impacts of climate change.
Sustainable Water and Waste Management	• Promoting water efficient irrigation systems • Installation/upgradation of wastewater infrastructure including transport, treatment and disposal systems. • Water resources conservation • Flood defence systems.
Pollution Prevention and Control	• Projects targeting reduction of air emissions, greenhouse gas control, soil remediation, waste management, waste prevention, waste recycling, waste reduction and energy/emission-efficient waste-to-energy.
Green Buildings	• Projects related to buildings that meet regional, national or internationally recognized standards or certifications for environmental performance
Sustainable Management of Living Natural Resources and Land Use	• Environmentally sustainable management of agriculture, animal husbandry, fishery and aquaculture. • Sustainable forestry management including afforestation/reforestation. • Support to certified organic farming. • Research on living resources and biodiversity protection.
Terrestrial and Aquatic Biodiversity Conservation	• Projects relating to coastal and marine environments. • Projects related to biodiversity preservation, including conservation of endangered species, habitats and ecosystems.
Exclusions • Projects involving new or existing extraction, production and distribution of fossil fuels, including improvements and upgrades; or where the core energy source is fossil-fuel based. • Nuclear power generation. • Direct waste incineration. • Alcohol, weapons, tobacco, gaming, or palm oil industries. • Renewable energy projects generating energy from biomass using feedstock originating from protected areas. • Landfill projects. • Hydropower plants larger than 25 MW.	

The optimistic dimension of green deposit is that allocation of funds procured through green deposits for various green projects will be subjected to an independent third-party verification or assurance annually as per the proposed RBI Framework on Green Deposits. Reserve Bank of India has stated that the third-party assessment will not absolve the entities from their obligation regarding the end use of funds for various green projects, i.e., the same procedures of internal checks and balances will be espoused as done for other kinds of loans.

The regulated entities, with the help of external firms, will undertake annual assessment of the impact associated with the funds lent or invested in green finance activities or projects through an Impact Assessment Report. Moreover, if regulated entities fail to quantify the impact of their lending or investment, they will be required to disclose, at least the reasons, the difficulties witnessed, and the time bound future plans to address the same.

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CHARTERED SECRETARY
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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 will be followed by question(s) which is/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.

Cartoons from R.K. Laxman

To make the journal more reader friendly, theme based cartoon from famous Shri R.K. Laxman's contribution which were published in earlier issues of Chartered Secretary Journal are reintroduced.

BEYOND GOVERNANCE

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In June 2013, an information was filed with the Competition Commission of India (CCI) alleging that the petitioner, along with three other companies in same business had indulged in cartelisation in respect of the tenders floated by the State Government. Pursuant to the aforesaid information, CCI issued notices to the petitioner and the other three companies seeking response as to the aforesaid allegations. On 12.02.2014, the CCI passed an order directing the Director General, CCI (hereafter 'the DG') to conduct an investigation into the allegations as levelled against the aforesaid companies. On 03.02.2015, the DG filed a report wherein it was found that the petitioner, alongwith the aforesaid companies, have indulged in 'bid-rigging' and thus has violated the provisions of Section 3(3) of the Competition Act,2002. The said companies, including the petitioner, filed their objections to the said report and they were given an opportunity to be heard on 14.05.2015. After hearing the objections advanced by the aforesaid companies, the CCI passed an order dated 10.07.2015 holding the petitioner and the said companies guilty of violating the provisions of Section 3(3) of the Act and levied a penalty at the rate of two percent of the average annual turnover on the said companies.

Aggrieved, the petitioner filed an appeal before the COMPAT impugning the order dated 10.07.2015. Similar appeals were filed by the other three companies as well. All the appeals were heard together and on 05.10.2015, COMPAT passed an order granting a stay on the order dated 10.07.2015 subject to the aforesaid companies depositing 10% of the penalty with the Registry of COMPAT.

In the meanwhile, a demand notice dated 01.10.2015 was issued by the CCI, to the petitioner, calling upon it to pay the penalty as imposed by the order dated 10.07.2015 within a period thirty days. It was further stated that the failure to deposit the aforesaid amount within the stipulated time period would attract simple interest at the rate of 1.5% per month on the principal amount and the petitioner would be liable to pay the same. It is stated that the said notice was received by the petitioner on 07.10.2015. The petitioner replied to the aforesaid demand notice on 13.10.2015, stating that COMPAT had stayed the order dated 10.07.2015 subject to deposit of 10% of the penalty amount and the same was being deposited by the petitioner in pursuance to the said order.

The aforesaid appeal was disposed of by an order dated 09.12.2016, whereby the COMPAT held the aforesaid companies, including the petitioner, guilty of 'bid rigging' and thus "constituting contravention of Section 3 of the Act". However, the Tribunal after considering the mitigating factors, reduced the quantum of penalty from 2% of the average turnover to 1% of the relevant turnover. Admittedly, the said penalty as reduced was deposited by the petitioner on 04.01.2017.

Thereafter, in January 2017, the CCI sent another demand notice dated 17.01.2017 calling upon the petitioner to deposit interest on account of a delay of fourteen months in payment of penalty. In response, the petitioner sent a letter dated 30.01.2017 denying the liability to pay interest; it contended that the question of delay would not arise, since the order dated 10.07.2015 levying of penalty was stayed and subsequently the penalty was substantially reduced by the COMPAT. In this view, the petitioner requested the CCI to withdraw the aforesaid demand notice.

In December, 2018, the CCI passed an order dated 06.12.2018 directing the petitioner to deposit a sum of ₹ 32,76,000/- as interest. Pursuant to the aforesaid order, the petitioner received a recovery notice dated 14.12.2018 calling upon the petitioner to deposit the aforesaid amount within a period of fifteen days, failing which the petitioner would be liable "for appropriate action under the provisions of the Act and the relevant regulations"

Aggrieved, the petitioner filed the present petition before the High Court.

Q. Whether the demand notice dated 01.10.2015 was illegal and therefore, unpersuasive?

Q. Whether the demand of interest on the penalty imposed by CCI, is sustainable?

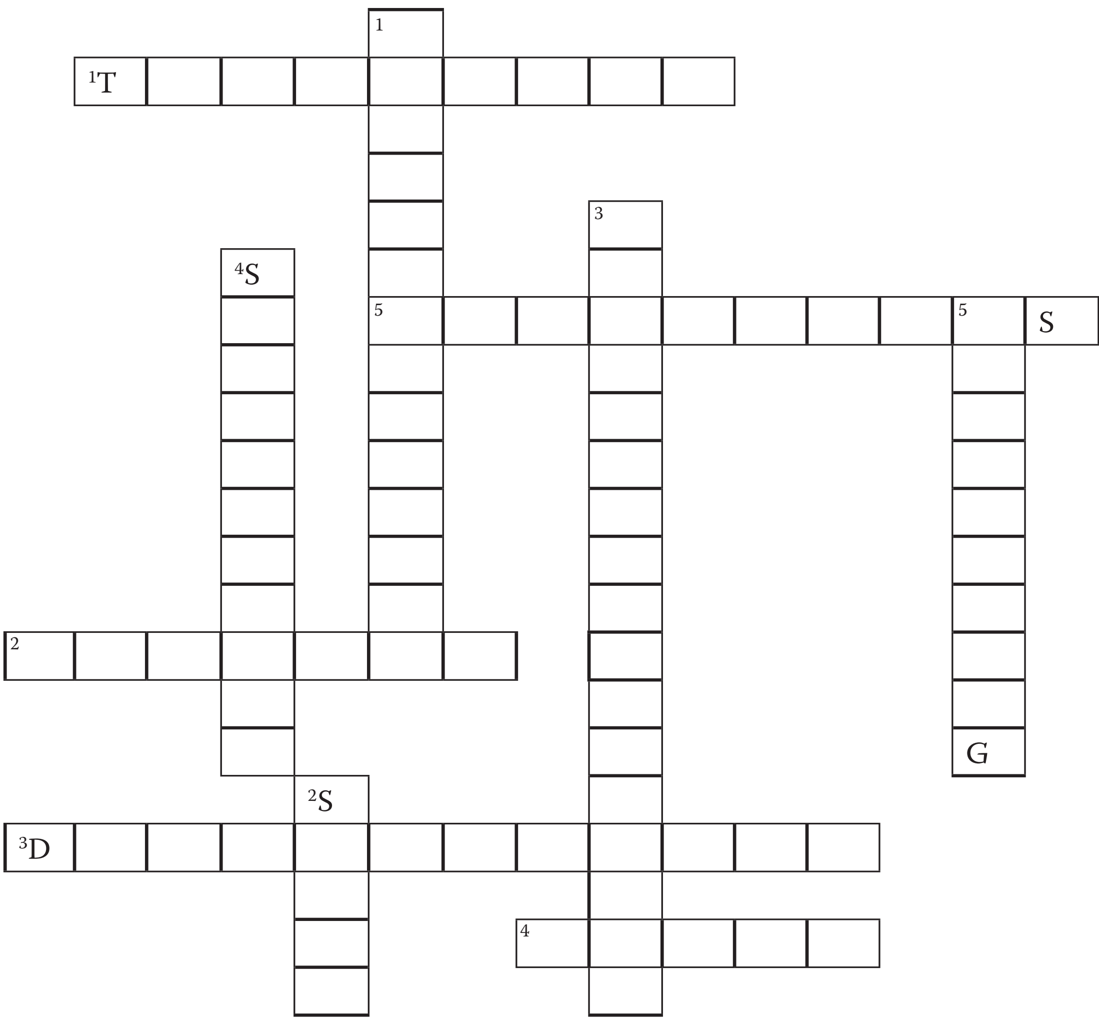
Winner of Case Study – April 2023

CS Ashish Mehta

(M.No. - A15469)

Indore

CROSSWORD PUZZLE – COMPANY LAW MAY 2023 Issue



ACROSS:

1. The Company is required to deliver share certificates of all securities within **such period** from date of allotment in case of allotment of shares.
2. FORM CAA-8 required to be filed within **such period** from end of each financial year.
3. **Such cost/amount** are deducted in computing the net profits of a company in any financial year for the purpose of section 197.
4. A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit claims in **such form.**
5. A small shareholders' director shall not be appointed in or be associated with such company in any other capacity, either directly or indirectly for **such period** from the date on which he ceases to hold office as a small shareholders' director in that company.

DOWN:

1. For reckoning the limits of directorship under section 165 of the Companies Act, 2013, **such company** is excluded.
2. The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, **within such days** from the last date of the receipt of the claims.
3. Appointment of a person as Managing director/Whole time director/manager who has attained the age of seventy years requires **such resolution** to be passed.
4. FORM G (Invitation of expression of interest) required to be published not later than **such day** from the insolvency commencement date under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
5. **Such prospectus** which does not include complete particulars of the quantum or price of the securities.

CROSSWORD PUZZLE – APRIL 2023 ANSWERS

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ACROSS:

1. A declaration by the professionals and the officers of the company engaged in the formation of the company that all the requirements of this Act and the rules made thereunder in respect of registration complied with.
2. Depositing a sum not less than such percent of amount of its deposits maturing during the following financial year called as deposit repayment reserve account.
3. A company issued fully paid up bonus shares out of such reserves.
4. An advisory committee appointed by Tribunal to advise the liquidator after passing of an order of winding up of the company shall not consist more than such number of members.
5. Public company having such paid up capital required to annex Secretarial Audit Report with its Board Report.

DOWN:

1. A declaration at the time of commencement of the business.
2. In buyback, a sum equal to nominal value of the shares so purchased shall be transferred to the such reserve account.
3. Period to file a return of appointment of a Managing Director, Whole Time Director or Manager.
4. A valuer shall not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested for such period before or after his appointment.
5. Other than Section 186(1) other provision of section 186 do not apply to investment made by such company.

Winners - Crossword April 2023

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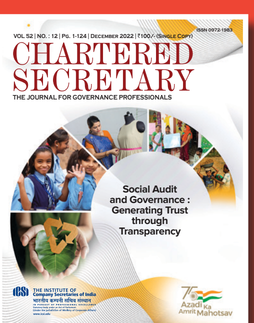

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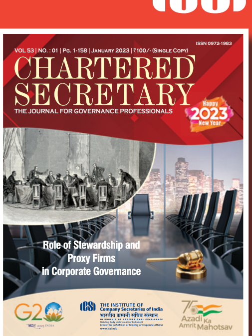

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